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# CUBA: THE NEXT RETIREMENT HAVEN?

Matias F. Travieso-Diaz, Esq.\* and Armando A. Musa, Esq.\*\*

## I. INTRODUCTION

A haven is defined as “a place offering favorable opportunities or conditions.”<sup>1</sup> A “retirement haven” is thus a location, city, state, country, or other geographic entity, offering favorable living conditions for those wishing to withdraw from business life. Many countries, including the Philippines, Costa Rica, and Belize, and domestic political subdivisions such as Florida seek to be recognized as “retirement havens.” One incentive for attaining such recognition is the benefit to the local economy from retirees spending their income and, often, their remaining capital, in the retirement haven.<sup>2</sup> Furthermore, retirees are likely to provide a stabilizing influence on society, and their presence can confer social benefits, such as their contribution to volunteer projects and other beneficial activities.<sup>3</sup>

What constitutes a “retirement haven” is somewhat subjective. Whether living conditions in a particular locale are favorable depends on a retiree’s values and perceptions. Nonetheless, several criteria are frequently mentioned in determining what locations around the world are considered favorable retirement destinations, and thus qualify as “retirement havens.”<sup>4</sup> The most often cited criteria are the availability of af-

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1. MERRIMAN-WEBSTER ONLINE, <http://www.m-w.com/cgi-bin/dictionary> (last visited Nov. 30, 2004).

2. See, e.g., Retirement Incentives Update, Belize Report, vol. 6, no. 1, <http://www.belize-report.com/info/perpturist2.html> (last visited Nov. 30, 2004).

3. See, e.g., Frank Jones, *Seniors Who Volunteer*, PERSPECTIVES ON LABOUR AND INCOME, Autumn 1999, at 9, available at <http://www.statcan.ca/english/indepth/75-001/archive/1999/pear1999011003s3a01.pdf>; see also Gene Ruffenach, *Heed the Call to Volunteer and Discover a New Career*, WALL ST. J. ONLINE, Oct. 10, 2002, <http://www.careerjournal.com/myc/retirement/20021010-ruffenach.html>. Some volunteer opportunities are available through special programs structured by non-profit organizations. For example, the Florida Association for Volunteer Action in the Caribbean and the Americas (FAVACA) sponsors a Seniors in Service Overseas Program. See Florida Association for Volunteer Action in the Caribbean and the Americas, <http://www.favaca.org/> (last visited Nov. 15, 2004).

4. For example, the magazine *International Living* publishes annual surveys of the best places in the world to retire. The selection of such places is made taking into account the following factors: (1) availability of real estate (price and ease of ac-

fordable and high quality health care, a low cost of living, incentives for immigration, the possibility and ease of acquiring real estate, and the existence of recreational and cultural opportunities.<sup>5</sup> Benign climate, physical safety, and social and political stability are also factors that influence whether a locale receives consideration as a “retirement haven.”<sup>6</sup>

This paper addresses Cuba’s potential for becoming a “retirement haven” at some point in the future and attracting retirees from developed countries, particularly the United States. The pursuit of “retirement haven” status should be attractive to Cuba given the deterioration of the country’s economy. Cuba has been in a serious economic crisis for over a decade due to the disappearance of the Socialist bloc, which previously provided the main source of trade and economic assistance for the country.<sup>7</sup> The stagnant Cuban economy and the decline in production of traditional industrial and agricultural commodities such as cane sugar suggest that Cuba will increasingly need to turn to activities in the services sector, such as tourism and immigration, to provide foreign currency revenues to the state and employment for some sectors of the population.<sup>8</sup>

Some have suggested that Cuba may already constitute an “ideal place to live” for a person considering retirement abroad.<sup>9</sup> As will be discussed below, that is clearly not the case at the present time. But Cuba has the potential to become an attractive “retirement haven,” provided the island’s government takes the appropriate steps to foster an influx of retirees from other countries. Certain actions by the U.S. Government remain necessary or highly desirable before Cuba can become a viable and attractive retirement destination for U.S. nationals and permanent residents.

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quisition); (2) culture; (3) cost of living; (4) safety and stability; (5) availability; (6) cost and quality of health care; (7) climate; (8) special benefits for immigrants; and (9) status of the infrastructure. *The Best Places in the World to Retire—Our Annual Survey*, INT’L LIVING (Sept. 1998), available at <http://www.escapeartist.com/international/bestretirement.htm> [hereinafter *Best Places*].

5. *Id.*

6. *Id.*

7. Prior to 1990, Cuba depended on the Socialist bloc (mainly the Soviet Union) for over 80% of exports and imports, and for the financing of the economy through loans and subsidies. The demise of the Socialist bloc had a catastrophic impact on Cuba, which suddenly lost its markets, its sources of supply, and its credit and financing mechanisms. Banco Central de Cuba, CUBAN ECONOMY IN THE SPECIAL PERIOD 1990-2000 7-8 (2001), available at [http://www.bc.gov.cu/boletines/otros/cuban\\_economy.pdf](http://www.bc.gov.cu/boletines/otros/cuban_economy.pdf). The deteriorating state of the Cuban economy is described in a number of papers. See, e.g., Carmelo Mesa-Lago, *The Cuban Economy in 1999-2001: Evaluation of Performance and Debate on the Future*, 11 CUBA IN TRANSITION 1 (2001), available at <http://lanic.utexas.edu/project/asce/pdfs/volume11/mesa-lago.pdf>. The series of Association for the Study of the Cuban Economy (ASCE) proceedings is available online at <http://lanic.utexas.edu/project/asce/publications/proceedings/>.

8. See Sergio Diaz-Briquets, *Medicare: A Potential Income-Generating Activity for Cuba in the Future*, 11 CUBA IN TRANSITION 185 (2001), available at <http://lanic.utexas.edu/project/asce/pdfs/volume11/diazbriquets.pdf>.

9. CHRISTOPHER HOWARD, LIVING AND INVESTING IN THE NEW CUBA 5 (2001).

This paper describes actions that a future Cuban government might implement to make Cuba a desirable "retirement haven" for foreign nationals.<sup>10</sup> We also identify some actions that the United States may take to assist Cuba in its economic reconstruction by making retirement in Cuba a possible and attractive proposition for U.S. residents and nationals.<sup>11</sup>

## II. FACTORS THAT FAVOR CUBA'S FUTURE DEVELOPMENT AS A "RETIREMENT HAVEN"

Cuba enjoys several of the advantages that qualify a country for "retirement haven" status. As noted above, a "retirement haven" should meet the following criteria: (1) easy availability of real estate; (2) ample recreational and cultural opportunities; (3) a low cost of living; (4) a safe and stable society; (5) low costs; (6) high quality health care; (7) favorable climate; (8) special benefits for immigrants; (9) and an adequate infrastructure.<sup>12</sup> As discussed in this section, Cuba already meets a number of these criteria. The balance of the paper addresses the remaining criteria and suggests steps that Cuba could take to assure this realization.

### A. TEMPERATE CLIMATE

Those extolling Cuba as a potential retirement destination place the country's favorable climate as a significant advantage. For example, Christopher Howard describes Cuba's weather in the following glowing terms:

Cuba's weather is pleasant and subtropical. The island lies in a tropical zone, but trade winds of the ocean and warm currents from the gulf stream keep the climate moderate, and less extreme than as in other tropical areas.

There are only two seasons, the dry season or *la estacion seca*, from November to early May, and the rainy season or, *la estacion lluviosa*, from May to October. It rains every day in the summer. Relative humidity is 77 percent during the dry season and 82 percent in the rainy season.

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10. The actions described in this paper include political, economic, and social changes that the current socialist government is unlikely to be willing to undertake. Therefore, our implicit assumption is that a transition to a free-market, democratic society must be underway before Cuba can position itself as a competitive alternative to established "retirement havens."

11. This paper focuses on the individual retiree who intends to live on a pension or on wealth accumulated during his or her work years. Some retirees may also be investors, that is, have sufficient capital to acquire productive assets in the country. The issues relating to foreign investment in Cuba are addressed elsewhere and will not be discussed here. See, e.g., Matias F. Travieso-Diaz & Charles P. Trumbull IV, *Foreign Investment In Cuba: Prospects and Perils*, 35 GEO. W. INT'L L. REV. 903 (2003); see also, MATIAS F. TRAVIESO-DIAZ, *THE LAWS AND LEGAL SYSTEM OF A FREE-MARKET CUBA—A PROSPECTUS FOR BUSINESS* 105-37 (1997) [hereinafter *LAWS AND LEGAL SYSTEM*].

12. See *Best Places*, *supra* note 4.

Showers can last up to an hour and are usually followed by sunshine and blue skies. Speaking of sun—there is an average eight hours of sunlight daily and 300 sunny days throughout the year.

There are no pronounced seasonal variations in temperature. The average temperature is around 77°F/ 25°C. . . . There is no danger of frost in Cuba since the lowest temperature is around 45°F.<sup>13</sup>

Undoubtedly, Cuba's temperate climate immediately rises to the forefront as one of the country's main selling points.

#### B. PROXIMITY TO THE UNITED STATES

Cuba's geographic location also makes it a potentially favored destination for retirees. The territories of both Mexico and the United States are approximately 100 miles from Cuba. In addition, Cuba has the infrastructure in place necessary to serve international passenger and cargo traffic. There are nine airports with international terminals.<sup>14</sup> Havana is three hours or less by plane from all major metropolitan areas on the eastern seaboard, as well as from Atlanta, New Orleans, Houston, and Dallas. Retirees of U.S. origin could easily travel back and forth to their former cities of residence. Of course, an air trip to Miami only takes a few minutes from most places on the island.

#### C. RELATIVELY LOW COST OF LIVING

Advocates of retirement in Cuba also tout the low cost of living on the island as a significant advantage.<sup>15</sup> In reality, the current cost of living in Cuba is lower in some respects than comparable costs in the United States, but remains high in other areas. For example, the cost of electric power, telephone service, and other services subsidized by the government is low; however, most consumer goods are scarce and available only in dollar stores at prices that are often much higher than what the merchandise would cost in the United States.<sup>16</sup> While it is impossible to pre-

13. HOWARD, *supra* note 9, at 8-9.

14. *Id.* at 175.

15. See, e.g., HOWARD, *supra* note 9, at 107-09.

16. In 1993, Cuba allowed the free circulation of U.S. dollars within the country as a measure to meet the economic crisis caused by the disintegration of the Soviet Bloc. That measure was coupled with the establishment of stores for the recovery of foreign exchange (*Tiendas de Recuperacion de Divisas*) where otherwise unavailable products are available at government-set prices, payable in dollars. It has been reported that the cost of goods at the dollar stores can be more than 200% over the cost of importing the goods. See José Alvarez, *Rationed Products and Something Else: Food Availability and Distribution in 2000 Cuba*, 11 CUBA IN TRANSITION 305, 310 (2001). Therefore, the cost of the most basic staples to a hypothetical foreign retiree in today's Cuba would probably be at least as high as the cost of the same products in other countries. It should be noted that the free circulation of the U.S. dollar has been recently rescinded, and those in possession of dollars are required to exchange them for convertible pesos at a 10% discount. It remains to be seen if the convertible pesos will have the same purchasing power of the dollar they replace or if the move will result in a further increase in the cost of goods and services. See Anita Snow, *Cuba Looks to Save Peso From Devaluation*, ASSOCIATED PRESS, Nov. 2, 2004.

dict what economic conditions will prevail in Cuba after the country makes its transition to a market economy, it is likely that the overall cost of living to a retiree in Cuba will be lower than in the United States or other developed countries. This is a reasonable expectation because the price of goods and services will tend to reflect the salaries paid to the Cuban workforce, and average Cuban salaries are likely to remain below those in the United States.

Elderly people often list assistance with domestic chores as one of their most important needs.<sup>17</sup> Currently, due to the low wages received by most Cuban workers and the existence of massive unemployment or underemployment, Cuba possesses a potentially plentiful bounty of low-cost domestic help.<sup>18</sup> Although this may not be the case after Cuba's economy has recovered, low-cost domestic service should be available to foreign retirees during and beyond the country's transition to a free-market economy.

#### D. HIGH LEVEL OF INVESTMENT IN HEALTH CARE

The Cuban government has made health care one of its top priorities, and has devoted considerable resources to improving selected aspects of the country's health care system. Cuba's health care accomplishments were recently summarized as follows:

Over the past four decades, Cuba has had many accomplishments in the area of health care, including: (1) expansion of access to nearly 100 percent of the population; (2) increase of its health indicators to levels comparable with industrialized nations, with infant mortality rate among the world's lowest; (3) the creation of a large pool of health services personnel, many of whom have been exported around the world to assist foreign governments with their health problems; (4) reduction in urban-rural differences; and (5) eradication of many diseases, particularly polio,

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17. See, e.g., DAKOTA COUNTY COMMUNITY SERVICES DIVISION, DAKOTA COUNTY AGING INITIATIVE GAPS ANALYSIS REPORT (2001), available at <http://www.co.dakota.mn.us/services/FinalGaps.pdf>. "Domestic Service is also on nearly every retiree's budget." Jenalia Moreno, *Paradise Found*, HOUSTON CHRON., Oct. 6, 2002, at 1. The average cost of domestic help in a region is often cited in articles describing the desirability of potential locales for retirees. Mary Beth Franklin, *Belize It or Not*, KIPLINGER'S PERS. FIN., June 1, 2002, at 90; Christopher Howard, *Retire to Costa Rica—An Expert Tells You How*, ESCAPE FROM AM. MAG., vol. 1, no. 1, [http://www.escapeartist.com/efan/retire\\_in\\_costa\\_rica.htm](http://www.escapeartist.com/efan/retire_in_costa_rica.htm) (last visited Nov. 15, 2004); Cheryl Taylor, *Dear Readers, International Living Conference in Dublin, Ireland*, ESCAPE FROM AM. MAG., June 2000, [http://www.escapeartist.com/international/0600\\_readers.html](http://www.escapeartist.com/international/0600_readers.html).

18. The average monthly salary of Cuban workers in 2001 was 245 pesos, equivalent to US\$9 at the then-current exchange rate. Oscar Espinosa Chepe, *Cuba: La Crisis Se Profundiza*, 12 CUBA IN TRANSITION 1, 5 (2002) available at <http://lanic.utexas.edu/project/asce/pdfs/volume12/chepe.pdf>. The current rate of unemployment and underemployment has been conservatively estimated as 20%. *Id.* The average monthly salary of employees of state-owned and mixed-ownership entities in Cuba according to the National Office of Statistics is 234 pesos, or \$11.70 according to unofficial exchange rates. See *Indicadores Generales* (2002), available at [http://www.cubagob.cu/otras\\_info/one/indicadores\\_generales.htm](http://www.cubagob.cu/otras_info/one/indicadores_generales.htm).

diphtheria, rubella and tetanus.<sup>19</sup>

Of particular interest to this discussion, Cuba has significant human and physical resources within the health care realm. The country maintains one of the highest physician-to-patient ratios in the world (58.2 per thousand persons), and equally high numbers of dentists (8.9 per thousand) and nurses (74.3 per thousand).<sup>20</sup> Physical facilities are also abundant, as there are 5.2 hospital beds per thousand inhabitants.<sup>21</sup> Although the quality of health care services delivered to the population has deteriorated significantly in recent years due to the unavailability of medicines, equipment, and medical supplies, the basic resources remain available to provide high quality health care services to foreign retirees.<sup>22</sup>

#### E. OTHER FACTORS

Cuba maintains a low crime rate and remains virtually free of violent crime. Havana boasts one of the lowest murder rates per capita and the smallest number of unsolved murders among the world's metropolitan cities. The high degree of personal safety could provide an incentive for potential retirees, particularly in comparison to the crime situations in other Latin American countries.<sup>23</sup>

Other factors that are often mentioned among Cuba's selling points to potential retirees include the physical beauty of the country, the friendliness of its people, and the richness of the island's cultural and recreational opportunities.<sup>24</sup> These and other intangible factors such as Cuba's mystique to many abroad, particularly in the United States, make Cuba a potentially favored location for many foreigners to call home.

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19. Felipe Eduardo Sixto, *An Evaluation of Four Decades of Cuban Healthcare*, 12 *CUBA IN TRANSITION* 325, 340 (2002), available at <http://lanic.utexas.edu/project/asce/pdfs/volume12/sixto.pdf>.

20. *Id.* at 332.

21. *Id.* at 341.

22. Evidence of the continuing viability of Cuba's health care system is shown by the fact that Cuba actively promotes medical tourism, that is, the travel to Cuba of foreign visitors who seek medical care and are able to pay for medical services in hard currency. For example, Cuba's state-owned Centro Iberoamericano Para la Tercera Edad (CITED) advertises its ability to serve *turismo de salud* (health tourism), geared particularly to the elderly. Its website identifies Cuba as an ideal tourist destination for senior citizens on account of the variety of health services it provides to the elderly. See *Turismo de Salud*, available at <http://www.infomed.sld.cu/instituciones/gericuba/cited/tursalud/principal.htm> (last visited Nov. 15, 2004). Cuba has historically promoted itself as a prime medical tourism destination for foreign nationals who seek Western-quality medical services at reduced prices. See The Cuban American National Foundation, *Health Care in Cuba: Myth Versus Reality*, available at <http://www.canf.org/Issues/medicalapartheid.htm> (last visited Nov. 15, 2004). Cuba's success at attracting medical tourists suggests that the country remains capable of providing high quality medical services to those who are able to pay.

23. As further discussed below, there may be political unrest and social instability following a transition to a free-market society, with an attendant increase in crime. A future Cuban government must ensure that foreign retirees are protected to the greatest extent possible from personal safety risks.

24. HOWARD, *supra* note 9, at 1-3.

### III. CURRENT IMPEDIMENTS TO CUBA'S ABILITY TO BECOME A RETIREMENT HAVEN

#### A. IMPEDIMENTS THAT APPLY TO ALL POTENTIAL RETIREES

Despite its natural advantages and the promising developments in certain areas (particularly health care), Cuba is hardly a choice destination for foreign retirees. The reasons are multiple, but fall into three categories: (1) an inhospitable, repressive, and potentially unstable, political system; (2) a government-controlled economy that has remained in a state of crisis for at least the last twelve years and shows no signs of improvement; and (3) scarcities and other day-to-day difficulties that make living in Cuba unappealing.<sup>25</sup> Because of these impediments, Cuba remains unattractive as a place to retire, and not even the current Cuban government appears to argue otherwise.

Indeed, while the Cuban government has endeavored for over a decade to encourage the influx of tourists to the island, it has taken no steps to attract retirees. This lack of initiative on the part of the Cuban government is probably not accidental. The arrival of large numbers of retirees from the capitalist world poses a potential danger to the Socialist establishment.

#### B. IMPEDIMENTS THAT APPLY PARTICULARLY TO U.S. CITIZENS AND PERMANENT RESIDENTS

Some of the current impediments to Cuba's ability to become a viable retirement haven are of particular import to U.S. citizens and permanent residents. For instance, U.S. law grants retirees who possess U.S. citizenship the right to receive their social security benefit payments abroad while residing in almost any country in the world.<sup>26</sup> However, U.S. Treasury regulations specifically list Cuba as one of a handful of countries to which the U.S. Social Security Administration (SSA) is prohibited from mailing social security benefits.<sup>27</sup>

In addition, U.S. law provides that absent an international social secur-

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25. For an insider's view of current conditions in Cuba see Chepe, *supra* note 18. Mr. Espinosa, an independent journalist, was incarcerated and sentenced in April 2003 to twenty years' imprisonment, for violation of articles 7 and 11 of Cuba's Law 88. He was accused of "activities against the integrity and sovereignty of the State" by allegedly receiving money from abroad, collecting press cuttings about meetings between representatives from the United States and dissidents as well as numerous other activities. See Amnesty Int'l, *Cuba: Medical concern/ Possible Prisoner of Conscience (POC)*, Oscar Espinosa Chepe, AI Index AMR 25/016/2003, Apr. 24, 2003, available at <http://web.amnesty.org/library/Index/ENGAMR250162003?open&of=ENG-CUB>. The plight of Mr. Chepe and others exemplifies current political conditions on the island.

26. See Social Security Online, *Your Payments While You Are Outside The United States*, SSA Publication No. 05-10137, ICN 480085 (April 2004), available at [http://www.ssa.gov/international/your\\_ss.html](http://www.ssa.gov/international/your_ss.html) [hereinafter *Your Payments Outside the United States*].

27. *Id.* Other countries to which the mailing of social security benefits is prohibited include Cambodia, North Korea, and Vietnam.



ity agreement (totalization agreement)<sup>28</sup> between the United States and the relevant foreign country, retirees who are U.S. permanent residents (as opposed to U.S. citizens) lose their right to have social security benefits mailed to them after being abroad for more than six months.<sup>29</sup> Consequently, even if the specific prohibition on sending social security payments into Cuba were repealed, the current absence of a U.S.-Cuba totalization agreement presents an obstacle to U.S. permanent residents desiring to retire in Cuba.

One important factor in the decision of U.S. nationals seeking a retirement destination will be the extent to which their retirement income will be subject to taxation by the host country. Thus, a further hindrance to Cuba's successful development into a "retirement haven" for U.S. nationals and permanent residents is the current uncertainty surrounding the Cuban government's tax treatment of various sources of retiree income. The bilateral tax treaty is a tool regularly used by countries desiring to minimize the problem of dual taxation by overlapping taxing jurisdictions.<sup>30</sup> Consequently, the absence of a tax treaty reducing the dual taxation between Cuba and the United States constitutes a further barrier to Cuba's ability to evolve as a "retirement haven."

Also, to the extent that a U.S. individual's decision to retire in a particular foreign country is influenced by the presence of home country companies that are able to provide familiar products and services in the host country, Cuba would need to address potential deterrents to foreign investment by U.S. companies in Cuba. These deterrents include the lack of a tax treaty between Cuba and the United States, the uncertain status of the tax regime to which those companies would be subjected to in Cuba, and the lack of a bilateral investment treaty that protects U.S.-

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28. The terms international social security agreement, bi-national social security agreement, and totalization agreement are synonymous and are used interchangeably. They refer to a form of agreement entered into between two countries for the purposes of coordinating their respective social security coverage and taxation regimes. Totalization agreements aim to eliminate the problems of dual coverage, dual taxation, and gaps in benefit protection that are likely to arise when an employee divides his or her work between two or more countries. *See generally* JoAnne Chernov Adlerstein, *Concerns of the Global Employer*, in 31st ANNUAL INSTITUTE ON EMPLOYMENT LAW (Bettina B. Plevan et al. co-chairs, Practising Law Institute 2002), available at 681 PLI/Lit 9 (Westlaw); *see also* Internal Revenue Service, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*, IRS Publication 54 (2004), available at <http://irs.gov/publications/p54/index.html>.

29. *Your Payments Outside the United States*, *supra* note 26; *see also*, Jonathan Weisman, *U.S. Social Security May Reach to Mexico*, WASH. POST, Dec. 19, 2002, at A01.

30. A tax treaty is an agreement between two countries that contract in order to coordinate the application of their respective—and often conflicting and/or overlapping—tax systems to cross-border transactions and investments. The aim is to ensure that only one country ends up taxing any one item of income. *See* Daniel M. Berman, *Tax Treaties—Fundamentals*, in TAX STRATEGIES FOR CORPORATE ACQUISITIONS, DISPOSITIONS, SPIN-OFFS, JOINT VENTURES, FINANCINGS, REORGANIZATIONS & RESTRUCTURINGS 2002 (Practising Law Institute 2002), available at 551 PLI/Tax 353 (Westlaw). Negotiation of a tax treaty is often a complex, drawn out process.

based investors from expropriation and other adverse government action by Cuba.<sup>31</sup>

Of course, the single largest impediment for U.S.-based persons wishing to retire in Cuba is the U.S. embargo on trade and economic transactions in and with Cuba. This topic is addressed in Part V.A below.

#### IV. STEPS THAT CUBA COULD TAKE TO FOSTER THE INFLUX OF FOREIGN RETIREES

##### A. IMMIGRATION POLICIES

###### 1. *Facilitating Immigration*

###### a. In General

In its transition to a free-market system, Cuba will need to develop policies that promote the unimpeded movement of goods, ideas, and people across its borders with minimum restriction. Once it becomes apparent that Cuba intends to liberalize its economy and to commit to a more democratic form of government, foreign investors and Cuban expatriates will want to visit Cuba in substantial numbers. During the transition, it is essential that Cuba encourage such visits by developing an open and efficient immigration policy.

The visa granting structure and procedure should be open and simple to administer. Cuba should eliminate all visa requirements for short-term pleasure or business trips originating in the United States and other developed countries.<sup>32</sup> Eliminating the need for visas avoids expending Cuba's scarce resources in the administration of the immigration program, and allows foreign travelers easy access to the island. While Cuba should seek reciprocal arrangements with the United States and other countries, the importance of U.S. travel is so significant that Cuba should unilaterally eliminate visa requirements for U.S. citizens and permanent residents, even if reciprocal treatment is not granted by the United States.<sup>33</sup>

###### b. Specific Measures for Retirees

In addition to opening its doors to foreign travelers, Cuba should institute special measures to attract the potential retiree population from developed countries, particularly the United States. Such measures could include lowered immigration requirements, the ability to import personal property free of tax, and the ability to receive income from sources

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31. See Jorge Perez-Lopez & Matias Travieso-Diaz, *The Contribution of BITs to Cuba's Foreign Investment Program*, 32 LAW & POL'Y INT'L BUS. 529 (2001).

32. There are several countries in close proximity to Cuba that have large impoverished populations. Unskilled migrants from those countries, under favorable conditions, may seek to relocate in Cuba. For that reason, some sort of visa structure must be retained to control the entry of immigrants who may become public charges.

33. See *Opening the Door for Business Travel to a Free-Market Cuba*, 1 FREE MARKET CUBA BUS. J. 8 (Shaw, Pittman, Potts & Trowbridge, Spring/Summer 1992).

outside of Cuba without paying local taxes.<sup>34</sup> A particularly useful immigration provision would grant retirees permanent resident status in Cuba as long as they qualify for treatment as such, typically by maintaining a level of income from abroad.<sup>35</sup>

## 2. *Clarifying the Legal Status of Cuban Expatriates*

It is to be anticipated that a large number of Cuban expatriates, who are now citizens or residents of the United States or other countries, will wish to return to Cuba to spend their retirement years.<sup>36</sup> However, one potential obstacle to the return of Cuban exiles is their legal status in Cuba. Presently, the Cuban Constitution provides that a person who becomes a citizen of a foreign country loses Cuban citizenship; dual citizenship is not allowed.<sup>37</sup> Thus, unless the new Constitution or other transition-period statutes provide otherwise, those Cuban émigrés who have become naturalized citizens of other countries, including the United States, will be forced to renounce the other country's citizenship and apply for reinstatement of their Cuban citizenship if they want to regain the rights of Cuban nationals.<sup>38</sup> Retired Cuban expatriates, who may feel

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34. In 1999, Belize enacted a package of such measures into law. Retired Persons (Incentives) Act of 1999, Laws of Belize, vol. II, tit. VI, ch. 62 (1999), available at <http://www.belize law.org/lawadmin/index2.html> [hereinafter Belize Act].

35. For example, Belize allows a foreign retiree to retain its protected status as long as he or she deposits in a bank or other financial institution in Belize the sum of U.S. \$2,000 (or its foreign currency equivalent) each month. *Id.* at § 3(1)(c).

36. In a survey conducted by a Spanish-language television station in Miami, "one in five Cubans in the Miami metropolitan area said they would return home, although the results are regarded . . . more as coming from the heart than the head." Laura Parker, *Radio Marti Director Ousted as Exiles Discuss Returning to Cuba*, WASH. POST, Mar. 13, 1990, at A3. It is possible, but by no means certain, that the passage of time will result in a diminution of interest by Cubans abroad to return permanently to the island.

37. Under Cuba's Constitutions, both pre- and post-revolution, a Cuban citizen who becomes a citizen of another country loses his Cuban citizenship. CONSTITUCION DE LA REPUBLICA DE CUBA (1940) [Constitution] art. 15 (Cuba), translated in CONSTITUTIONS OF NATIONS 610 (Amos J. Peaslee ed. & trans., The Hague 1956 2d ed.) [hereinafter 1940 Constitution]; see also, CONSTITUCION DE LA REPUBLICA DE CUBA (1992) art. 32 (Cuba), Gaceta Oficial, Aug. 1, 1992, available at <http://www.georgetown.edu/pdba/Constitutions/Cuba/cuba1992.html> [hereinafter 1992 Constitution]. See also *Reglamento de Ciudadanía* [Citizenship Regulations], Gaceta Oficial, Mar. 3, 1944, art. 33 [hereinafter *Reglamento*].

38. It has been argued, based on the presumed continued vitality of Cuba's 1940 Constitution (which in art. 15(a) states that those Cubans who acquire another country's citizenship lose their status as Cubans), that the automatic loss of citizenship provided by art. 15(a) should not apply to Cuban exiles that have opted to become citizens of their country of residence because doing so would bar the exiles from "participating in the Cuban political process." Jose D. Acosta, *El Marco Jurídico-Institucional de un Gobierno Provisional de Unidad Nacional en Cuba*, 2 CUBA IN TRANSITION 61, 82 (August 1992). However, the opposite argument can also be made: it is precisely to protect the Cuban political process from undue influence by those who have sworn allegiance to a foreign country that the automatic loss of Cuban citizenship provision for those who opt to become citizens of another country should remain in effect. In this context, it is instructive to recall that the process for regaining Cuban citizenship that was in place before 1959 was anything but automatic. It required a formal re-application for citizenship, followed by one year

more vulnerable due to age and other discriminatory factors, will probably welcome being placed on equal legal footing with Cuban nationals without losing their benefits as citizens of other countries.

The fact that many Cuban expatriates, reinstated Cuban citizens or resident aliens, may want to settle permanently on the island raises the question of whether Cuba will be able to accommodate a mass return of expatriates. For example, in Nicaragua's post-transition period, its president voiced concerns over repatriation and the inability of the country's fragile economy to support a mass return of exiles.<sup>39</sup> Similarly, Cuba's economy is likely to be in severe distress during the transition. Therefore, a transitional Cuban government will need to impose admission criteria based on the absence of a criminal record and financial self-sufficiency before allowing Cuban-Americans or other foreign nationals, including retirees, to settle permanently on the island.<sup>40</sup>

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of continuous residence in Cuba, followed by another formal appearance before a public official, before the reinstatement of citizenship could become effective. *Reglamento*, *supra* note 37, at art. 35.

One issue that should be considered by a future Cuban government is whether to follow the lead of certain countries, such as Israel, that allow their nationals to hold dual citizenship. The concern about protecting the Cuban political process against foreign influence could be addressed by means such as establishing relatively lengthy residence requirements before being eligible to vote, imposing limits on campaign contributions, and imposing restrictions on the ability of those holding dual citizenship to hold public office.

39. With an estimated per capita income of \$465, Nicaragua is the second poorest country in the Western Hemisphere. U.S. DEP'T OF STATE, NICARAGUA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1997 (Jan. 30, 1998). After the Sandinistas were removed from power, the Nicaraguan government reacted to its economic dilemma by pleading for hundreds and thousands of exiles to return and rebuild the country. On December 16, 1996, "President-elect Arnoldo Aleman . . . invited hundred of thousands of Nicaraguans abroad to return to their country and said they would be allowed to bring back their money and belongings tax-free." Reuters, *Nicaraguan Exiles Told to Return, Bring Assets*, FT. LAUDERDALE SUN-SENTINEL, Dec. 17, 1996, at A16. Nevertheless, the Nicaraguan government realized its weak economy could not support a mass return of its exiles, even with the economic assistance provided by the United States. Therefore, Nicaraguan President Aleman extended a plea to the United States, calling for the "U.S. government not to begin a mass deportation of Nicaraguans living illegally in the United States," and cautioned that the return of exiles must be gradual. *Id.* Cuban émigrés, on the other hand, have largely achieved a high standard of living and are unlikely to become a burden on Cuba's economy should they choose to return to the island, but to the contrary may be capable of bringing capital with them to invest in Cuba.

40. While it may be argued that Cuba may not deny admission into the country to its nationals residing abroad, it would appear that, at least with respect to those who have lost their Cuban citizenship, Cuba has the right to impose and apply immigration standards to keep unfit persons from settling in the country. Before the Revolution, Cuba denied the right to acquire its citizenship to individuals who had been convicted of a felony, those of dubious morality, and those who advocated doctrines or principles "incompatible with the current organization of the Cuban state or with its democratic regime and form of government." *Reglamento*, *supra* note 37, at arts. 25, 29.

### 3. *Removing Obstacles to Bringing Property into Cuba*

A number of countries, including Ireland, Costa Rica, and Belize, allow foreign retirees to import cars and household goods free of taxes or import duties.<sup>41</sup> Cuba should follow suit and adopt similar policies. The loss of tax revenues due to the free importation of these articles will likely be outweighed by the positive influence that such a measure would have on encouraging foreign retirees who will bring hard currency to settle in Cuba.

### 4. *Allowing the Purchase of Real Property in Cuba*

Cuba places severe restrictions on the sale of residential property. Any proposed sale is subject to the state's approval with the state reserving the right of first refusal at a state-set price.<sup>42</sup> Restrictions also exist on the ability to swap property, which is one of the favorite loopholes used by the population to avoid the restriction on home sales.<sup>43</sup> Clearly, these restrictions must be eliminated in order to develop a housing market for foreign retirees.

A number of countries prohibit or limit real estate ownership by aliens.<sup>44</sup> Cuba should avoid any such limitation, particularly with respect to residential property. In addition, buying real estate is made difficult in

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41. See Adam Starchild, *Finding Your Retirement Haven*, FAMILY HAVEN, <http://www.familyhaven.com/retirement/chapt5.html> (last visited Nov. 18, 2004) [hereinafter *Retirement Haven*]. Belize allows a foreign retiree to bring into the country, free of taxes and duties, "new and approved means of transportation" for personal use every five years after entry into the country, upon proof that the retiree has properly disposed of the means of transportation the retiree had previously imported into Belize. Belize Act, *supra* note 34, at § 4(1)(c). The definition of "approved means of transportation" includes motor vehicles, boats, and light aircraft. *Id.* at sched. A.
  42. Ley No. 65, 23 de Diciembre de 1988, Ley General de la Vivienda, art. 70 (requiring government approval for the sale of homes, with right of first refusal by the state at a state-set price). Many Cubans have found ways of circumventing the laws restricting the transfer of residential properties. Two (illegal) methods in particular are worthy of note. First, many Cubans engage in unequal *permutas* (swaps), whereby two people exchange houses of unequal value. The party receiving the house of greater value augments her portion of the trade with an agreed amount of cash. A second means of circumventing the law is the creation of phantom apartments, which then become the subject of a *permuta* for the purposes of transferring title. Eduardo M. Penalver, *Redistributing Property: Natural Law, International Norms, and the Property Reforms of the Cuban Revolution*, 52 FLA. L. REV. 107, 128 (2000).
  43. Cuba requires parties seeking to exchange houses to apply for permission to a local housing authority, which has the right to refuse permission if it suspects that the exchange is motivated by a desire for profit. Douglass S. Norvell, *Cuban Real Estate: The Next Boom?*, ILL. REAL EST. LETTER (Office of Real Estate Research, University of Illinois at Urbana-Champaign), Summer 1999, at 12, available at <http://www.cba.uiuc.edu/orer/V13-3-4.pdf>. Despite these restrictions, swapping of property for property appears to still flourish in Cuba. *Id.*
  44. For example, Mexico's Constitution prohibits the acquisition of real estate by foreigners in the area within 100 kilometers (62 miles) of Mexico's borders and within fifty kilometers (31 miles) of the coastline. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27 (2003), available at <http://info4.juridicas.unam.mx/ijure/fed/9/28.htm?s>.

a number of countries because of the absence of licensed real estate agents.<sup>45</sup> While it may not be feasible to establish regulations for licensing real estate agents in the short-term, Cuba should seek (perhaps through a revitalized Chamber of Commerce) to create a listing of real estate agencies that foreigners can rely on when attempting to purchase of property on the island.

## B. TAXATION POLICIES

### 1. Minimizing Taxation of Retirement Income

Unlike the United States, where the Internal Revenue Code aims to tax a broad range of income-generating activities,<sup>46</sup> until relatively recently, Cuba lacked a system of direct income taxation.<sup>47</sup> In fact, some have noted that Cuba does not have a tax-paying culture.<sup>48</sup> Nevertheless, in 1994, Cuba introduced a system of direct income taxation.<sup>49</sup> The system was designed primarily to tap into the sources of revenue generated by newly legalized forms of self-employment.<sup>50</sup>

The ability to raise revenues through the taxation of income is limited by Cuba's command and control economy and the insolvency of many

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45. Many countries that seek to attract foreign retirees have yet to regulate real estate agents through licensing, including but not limited to Belize, Mexico, and Costa Rica. See Franklin, *supra* note 17, at 90; MexOnline.com, *Buying Property in Mexico*, [www.mexonline.com/promex.htm](http://www.mexonline.com/promex.htm); and AXNmls, *Costa Rica Real Estate Buying Tips*, <http://realestateguide.axnmls.com/buyingrealestate.php>, respectively.

46. See I.R.C. § 61 (2000) defining gross income as all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Alimony and separate maintenance payments; (9) Annuities; (10) Income from life insurance and endowment contracts; (11) Pensions; (12) Income from discharge of indebtedness; (13) Distributive share of partnership gross income; (14) Income in respect of a decedent; and (15) Income from an interest in an estate or trust.

47. See U.S. INT'L TRADE COMM'N, *THE ECONOMIC IMPACT OF U.S. SANCTIONS WITH RESPECT TO CUBA*, Investigation No. 332-413, Pub. 3398 (Feb. 2001), ch. 3 at 3-16, available at <ftp://ftp.usitc.gov/pub/reports/studies/pub3398.pdf> (noting that Cuba basically lacked a taxation regime from 1967 to 1994).

48. See generally Archibald R. M. Ritter & J.A. Turvey, *The Tax Regime for Micro-Enterprise in Cuba* (Carleton U. Dep't Econ. Carleton Economic Paper, Working Paper No. 99-04, Feb. 2000), available at <http://www.carleton.ca/economics/cep/cep99-04.pdf> (hereinafter *Tax Regime*).

49. *Id.* Cuba's basic taxation framework consists of Ley No. 73 del sistema tributario [Law 73—Tax Systems Law], 4 de agosto de 1994, and Decreto-Ley No. 169, De las Normas Generales y de los Procedimientos Tributarios [Decree-Law 169, Of the General Norms and the Tributary Procedures], 10 de enero de 1997. Decree-Law 169 granted primary taxation authority to the Ministry of Finance and created the Oficina Nacional de Administración Tributaria [National Office of Tax Administration] (ONAT).

50. See *Tax Regime*, *supra* note 48, at 3. The legalized economic activities were primarily in the areas of transportation, housing services, and family and personal services. Furthermore, Decree-Law 141 limited self-employment to a subset of the population, namely retirees, housewives, and laid-off workers.

state-owned enterprises.<sup>51</sup> As a result, the lack of free enterprise necessarily diminishes the government's available tax base.

Once Cuba moves to a free-market economy, the tax base will broaden, and the Cuban government will be able to derive increased revenue from a wider range of wealth-generating activities likely to multiply within its borders. However, before that occurs, the government must first change certain components of its current tax regime that serve as disincentives to entrepreneurial activity.<sup>52</sup>

At the same time that Cuba enlarges its general tax base, it may also want to implement a tax policy that grants special benefits to foreign retirees. For example, Cuba might offer a combination of income tax exemptions, deductions, and credits to foreign retirees, as well as an aggressive push for pro-retiree provisions when negotiating tax treaties with other countries that may assert tax jurisdiction over the retirees.<sup>53</sup> By accounting for the special needs and concerns of retirees when formulating its revamped tax policies, Cuba could provide a stimulus for the influx of foreign retirees.

## 2. *Entering into Tax Treaties to Avoid Double Taxation of Retirees' Income*

Another taxation issue, already mentioned above, is the potential double taxation of retirees' income. As noted earlier, a U.S. citizen or resident<sup>54</sup> is subject to U.S. taxation on their worldwide income. At the

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51. See Matias Travieso-Diaz, *Cuba's Perfeccionamiento Empresarial Law: A Step Towards Privatization?*, 23 U. PA. J. INT'L ECON. L. 119 (2002).

52. An example of the rigidity of the current Cuban tax system is the "10% Maximum Cost Deductibility Rule." In determining taxable income, the current tax regime allows for the deduction of only 10% of purchased inputs. For example, if a micro-enterprise owner incurs a \$1,000 expense on purchased inputs and has gross receipts of \$2,000, he or she is allowed a deduction of only \$100 in computing taxable income, thereby imposing a tax on 95% of gross receipts. See *Tax Regime*, *supra* note 48, at 10. In contrast, with respect to business activities, section 162 of the U.S. tax code allows for full deduction, with some exceptions, of all "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." I.R.C. § 162(a) (2000).

53. The United States is one of those countries. Whereas most other countries seek to tax only their residents, the United States imposes worldwide taxation on its citizens and residents, regardless of the location of their home. This might create the problem of dual taxation. In negotiating a bilateral tax treaty with the United States, Cuba might seek to have U.S. retirees taxed only by Cuba on their retirement income, although this may prove difficult to achieve.

Furthermore, when designing tax policy, the Cuban government must remain mindful not only of efficiency and effectiveness concerns, but also of the perceived fairness of the tax laws. The main concern here is that to the extent that foreign retirees are given different, more favorable tax treatment than domestic retirees, there is a potential for the domestic taxpayers to feel that they are being unfairly discriminated against. Therefore, the government must be able to deploy credible arguments that the benefits afforded to foreign retirees provide, in the final analysis, a net benefit to the well-being of the country as a whole.

54. The term "U.S. resident" includes not only permanent residents (that is, green-card holders), but also any person who meets the substantial presence test. I.R.C. § 7701 (2000). Both U.S. citizens and residents are considered "U.S. persons," and thus are subject to worldwide taxation. *Id.*

same time, someone from the United States who retires in Cuba is likely to be treated by the government as a resident of Cuba. Therefore, assuming that Cuba will continue to impose an income tax on its residents and that the United States does not alter its long-standing policy of taxing its citizens' worldwide income, U.S. persons retiring in Cuba will likely face the risk of double taxation; in other words, both Cuba and the United States will seek to tax their income.<sup>55</sup>

By entering into a tax treaty with the United States and other countries from which retirees might hail, Cuba could achieve three objectives. First, it could reduce the incidence of double taxation of retirees' income. Second, Cuba could bring some certainty into retirees' calculations of the tax liabilities they would face in Cuba, and thus assist retirees in their planning process. And third, Cuba could use tax treaties that include retiree-friendly provisions as a signaling device to foreign retirees that Cuba welcomes them within its borders.

### C. SOCIAL SERVICES POLICIES

#### 1. *Providing Adequate, Affordable Health Care*

As discussed above, Cuba has developed a human and physical infrastructure that might be capable of providing adequate, low cost health care to foreign retirees. In the future, Cuba should seek to build upon these accomplishments and remedy the deficiencies in its facilities, equipment, and infrastructure caused by the economic crisis. As foreign retirees start considering Cuba as a potential destination, it is essential that the country have the necessary health care facilities to enable the retirees to receive needed services without having to travel outside the country.<sup>56</sup>

#### 2. *Establishing Retirement Communities*

The economic crisis has also resulted in a housing crisis of unprecedented proportions. As is widely reported, the absence of adequate housing is perhaps the greatest urban problem facing Cuba.<sup>57</sup> When a transition to a free-market economy occurs, the housing market could be very tight due to the absence of available housing and the demand from returning Cuban émigrés as well as others seeking to establish residence in the country for business reasons. Indeed, some predict that a real es-

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55. The problem of double taxation is not limited to U.S. persons. The United States is one of the few countries in the world that impose taxes based on citizenship. Most countries impose their taxes on the basis of residence. Given the multiplicity of tax systems with differing concepts and definitions, it is possible that an individual can be considered simultaneously a resident of more than one country. See Berman, *supra* note 30 (noting that most tax treaties contain tie-breaker provisions to deal with the problem of dual residency).

56. Several countries, such as Mexico and Costa Rica, have established low-premium health insurance programs that are available to foreign retirees. See *Retirement Haven*, *supra* note 41.

57. See, e.g., Ginger Thompson, *Cuban Housing a Tight Squeeze; Many Complain Prime Land Targeted for Tourists*, CHI. TRIB., Aug. 16, 1998, at 3.



tate "boom" will occur in Cuba comparable to those experienced in "Florida, California, the Colorado Highlands, . . . and other 20th Century boom locations."<sup>58</sup>

The combination of a limited supply of housing and significant, and probably speculative, demand might place housing out of reach for potential foreign retirees. For that reason, a future Cuban government may well need to develop housing communities, perhaps in partnership with foreign developers.<sup>59</sup> Such communities could integrate living and health care facilities and provide an attractive and affordable environment for retirees, thereby increasing the attractiveness of the island as a potential retirement destination.

#### D. ECONOMIC AND SOCIAL POLICIES

##### 1. *Ensuring Personal Safety of Retirees*

One of the challenges of a transitional government in Cuba will be to maintain order and assure public safety. The probability of unrest and violence during the transition makes it necessary that adequate numbers of trained, internal forces, particularly police, be available to ensure domestic stability. One of the great challenges of the transitional government will be to retrain and enlarge the roster of internal order personnel, and ensure that they are capable of maintaining law and order while exercising proper respect for due process and individual rights.<sup>60</sup>

Specifically, the safety risk to foreign retirees in Cuba may be particularly significant. Individual criminals and organized criminal groups often target foreign retirees.<sup>61</sup> If adverse economic conditions worsen Cuba's free-market transition, foreigners may fall victim to common crime, politically motivated acts of terrorism, or other violence.

##### 2. *Instituting Economic Policies that Minimize Inflation*

Countries experiencing a transition from a command-style economy to

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58. Norvell, *supra* note 43, at 11.

59. For a discussion of the status of current Cuban land development ventures and the regulatory improvements that would be valuable before commencement of further real estate development, see W. Paul Rosenau et al., *Flirting with Capitalism*, URBAN LAND, Oct. 2002, at 98. In addition to the U.S. retirement village developers, there are developers with similar expertise who have been successful in Australia and the United Kingdom, and who are seeking new sites. See Andrew Heathcote, *Retirement Villages Are as Good as Gold*, BUS. REV. WKLY., Dec. 5, 2002, at 36 (Australia); Graham Norwood, *Cash-Property – A to Z*, THE OBSERVER, Mar. 9, 2003, at 30 (United Kingdom).

60. See LAWS AND LEGAL SYSTEM, *supra* note 11, at 49-69.

61. For example, it has been widely reported that foreign nationals, including retirees, have been targeted for kidnapping and extortion by organized crime cartels in the Philippines. See, e.g., *Philippines Wkly. Rep.*, Jan. 2002, <http://www.virtual-asia.com/newsletters/samples/020107ph.pdf> (on file with author). Similar incidents have been reported in other retirement havens such as Costa Rica. See State Dep't, Consular Information Sheet, Costa Rica, Oct. 13, 2004, available at [http://travel.state.gov/costa\\_rica.html](http://travel.state.gov/costa_rica.html) (on file with author).

a more liberalized economy often experience inflation.<sup>62</sup> A prolonged, high level of inflation erodes savings, discourages investment, creates uncertainty, and causes social unrest. Various researchers have set the threshold for high inflation at levels between 2.5 and 40 percent.<sup>63</sup>

In some transition economies, there may be an initial inflationary burst as prices rise from their state-set level to their market-determined level. In other cases, there is prolonged high inflation, even hyperinflation. Latin American countries in particular have experienced bouts of chronic inflation.<sup>64</sup>

Countries have implemented a number of solutions in an attempt to curb inflation. Some countries have established independent central banks capable of formulating monetary policy without undue pressure from political actors.<sup>65</sup> Central bank autonomy allows monetary policy-makers to focus on the long-term goal of low inflation and impose fiscal discipline, free from the political pressures that often undermine it.

Countries can also manipulate their exchange rates in order to control inflation. Various countries have experimented with currency boards, multiple exchange rates, and inflation-targeting regimes, which have all achieved mixed results.<sup>66</sup> Some scholars have concluded that currency manipulation, while perhaps limiting the instability of a country's exchange rate and monetary policy, makes a country more vulnerable to external shocks, and therefore should be considered with caution.<sup>67</sup>

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62. This has been the case in most Eastern European countries, where immediate price liberalization occurred. See Bryan W. Roberts, *Inflation and the Monetary Regime During the Cuban Economic Transition*, CUBA IN TRANSITION—PAPERS AND PROCEEDINGS OF THE FOURTH ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY, available at <http://lanic.utexas.edu/la/cb/cuba/asce/cuba4/roberts.html>.

63. Recent research suggests that the threshold is different for industrialized and developing countries, and places the threshold inflation level for developing countries in the range of 7 to 11%. Mohsin S. Khan & Abdelhak S. Senhadji, *Threshold Effects in the Relationship Between Inflation and Growth*, 48 IMF STAFF PAPERS 1, 16 (Dec. 2001).

64. Average inflation in Latin American is currently the highest of any region in the world. *Latin Inflation: Another Setback*, LATIN BUS. CHRON., Apr. 2003, <http://www.latinbusinesschronicle.com/reports/reports/inflation03.htm>.

65. Guy Debelle et al., *Inflation Targeting as a Framework for Monetary Policy*, 15 ECON. ISSUES 1, 2 (Oct. 2, 1998), [http://www.imf.org/external/pubs/cat/eco\\_iss1\\_sp.cfm?s\\_year=1998&e\\_year=1998&brtype=default](http://www.imf.org/external/pubs/cat/eco_iss1_sp.cfm?s_year=1998&e_year=1998&brtype=default). Research suggests that countries that establish the independence of the central bank in the constitution have healthier levels of inflation than countries that address independence of the central bank in ordinary statutes. Eva Gutiérrez, *Inflation Performance and Constitutional Central Bank Independence: Evidence from Latin America and the Caribbean* (IMF Working Paper, WP/03/53, Mar. 2003).

66. For example, Argentina established a currency board in 1991 and fixed its peso at a 1:1 exchange rate with the U.S. dollar. ANDREW B. ABEL & BEN S. BERNANKE, *MACROECONOMICS* 21 (4th ed., 2001). This worked well for a few years, but after a four-year recession Argentina defaulted on a staggering amount of foreign debt and abandoned its set exchange rate, opting to float the peso against the dollar in January of 2002. Within a month the peso had lost about half of its value. *Id.* at 22.

67. Alex Izurieta, *Dollarization: A Dead End* (The Levy Economics Institute of Bard College, Working Paper No. 344, Mar. 2002).

Another current trend in monetary policy is called inflation-targeting. Rather than using an exchange rate as a nominal anchor, some countries set a target inflation rate and commit themselves to implementing monetary policy to achieve that target. This professed commitment seeks to increase credibility and reduce uncertainty in the markets. Many countries employ this approach today, including emerging economies such as Chile, Israel, Poland, the Czech Republic, South Africa, and Brazil.<sup>68</sup>

Evaluating techniques to control inflation is beyond the scope of this paper. Whatever mechanisms the Cuban government decides to utilize, its success will represent an important factor in persuading foreign retirees, many of whom will be living on fixed incomes, to settle on the island. While pensions or other income of foreign retirees would be in the form of foreign currency and are thus protected from fluctuations in the value of the local currency, the increase in the cost of local goods and services due to inflation would be detrimental to the retirees' financial security.

### 3. *Extending to Foreign Retirees the Equal Protection of Cuban Laws*

The fair and equitable treatment of foreign nationals should be expressly guaranteed in the Constitution through a declaration that foreign nationals enjoy the full protection of the country's laws and are subject to the same treatment given to domestic individuals.<sup>69</sup> If there is a need to create any distinctions between foreigners and Cuban nationals relating to health insurance and immigration matters, such distinctions should be justifiable and clearly set forth in the applicable legislation. Indeed, as discussed above, to the extent that disparate treatment of foreign retirees is warranted in some areas, the distinctions should be in the nature of favorable concessions to retirees to encourage their settlement in Cuba.

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68. For a detailed description of implementation of an inflation-targeting regime, see Mohsin S. Khan, *Current Issues in the Design and Conduct of Monetary Policy* (IMF Working Paper, No. 03/56, Mar. 2003), and DeBelle, *supra* note 65.

69. Article 34 of the current Cuban Constitution declares that aliens residing in Cuba are in parity with Cubans with respect to: the protection of their persons and property; the enjoyment of the rights and the fulfillment of the duties established in this Constitution, subject to the conditions and limitations established by law; in the duty to abide by the Constitution and the laws; in the obligation to finance public expenditures in the manner and amount established by law; and in the consent to the jurisdiction and decisions of the courts and the public officials of the Republic. 1992 Constitution, *supra* note 37, at art. 34. Missing from this declaration is what was included in the counterpart provision of the pre-Revolution 1940 Constitution, which also contained the following language: "With regard to the enjoyment of civil rights, under the conditions and within the limitations prescribed by law." 1940 Constitution, *supra* note 37, at art. 19. Indeed, civil rights protections, including protection of the foreigners' assets against unlawful taking by the State, must be expressly protected by the Cuban laws in order for foreign nationals to feel that they can retire in Cuba without risk of adverse action against them by the Cuban State.

## V. STEPS THE UNITED STATES COULD TAKE TO FACILITATE THE RETIREMENT U.S. NATIONALS AND PERMANENT U.S. RESIDENTS IN CUBA

### A. LIFTING THE TRADE EMBARGO PROHIBITIONS

Clearly, the first and most important step necessary to make it possible for U.S. nationals and permanent residents to retire in Cuba is lifting the U.S. trade embargo.<sup>70</sup> The current U.S. law imposes severe restrictions on travel to Cuba by persons subject to U.S. jurisdiction. The Cuban Assets Control Regulations (Regulations), promulgated by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, implement the travel restrictions and other aspects of the U.S. trade embargo against Cuba.<sup>71</sup> With very limited exceptions, current U.S. law prohibits its citizens or permanent residents from incurring expenses related to their travel to Cuba without first obtaining a license from OFAC.<sup>72</sup> Likewise, persons subject to the jurisdiction of the United States are prohibited from engaging in economic transactions in which Cuba or Cuban nationals have an interest.<sup>73</sup> Clearly, these and other aspects of the trade embargo must be removed before U.S.-based retirees could possibly migrate to Cuba. Lifting the trade embargo would require either a change in the current U.S. policy toward Cuba, or dramatic political changes on the island.<sup>74</sup>

### B. ALLOWING PAYMENT OF SOCIAL SECURITY BENEFITS TO U.S. CITIZENS AND PERMANENT RESIDENTS IN CUBA

As noted in Part III.B above, current U.S. law prohibits making cross-border payments of social security benefits to any person residing in Cuba. As a result, many U.S.-based persons who would otherwise consider retiring in Cuba may decide against it for fear of losing their social security pensions. Therefore, once appropriate conditions arise in Cuba, one of the first steps the United States should take—should it desire to cooperate with Cuba's efforts to transform itself into a "retirement haven"—is to repeal such restrictions on cross-border social security payments.

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70. A detailed discussion of the U.S. trade embargo against Cuba is beyond the scope of this paper. See, e.g., *LAWS AND LEGAL SYSTEM*, *supra* note 11, at 13-48.

71. Part 515 of the Federal Regulations contains most of the regulations that implement the U.S. trade embargo against Cuba. 31 C.F.R. § 515 (2004).

72. 31 C.F.R. § 515.560 (2004). The Cuba embargo regulations, including those governing travel to the island, were tightened significantly in June 2004. See Cuban Assets Control Regulations, 69 Fed. Reg. 33,768 (June 16, 2004).

73. 31 C.F.R. § 515.201 (2004).

74. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021 (1996), also known as the Helms-Burton Law, codified the trade embargo provisions that were in place as of March 1, 1996, and made the lifting of the embargo and the provision of aid to the Cuban people dependant on the establishment of a democratic government on the island. See generally Jorge Perez-Lopez & Matias Travieso-Díaz, *The Helms-Burton Law and Its Antidotes: A Classic Standoff?*, 7 SW J. L. & TRADE AM. 95 (2000).

## C. ENTERING INTO A TOTALIZATION AGREEMENT WITH CUBA

A problem related to, but independent of, the current U.S. restrictions on cross-border social security payments into Cuba, is the rule that cuts off the right of U.S. permanent residents to have their social security payments mailed to them outside the country after they have been abroad for at least six months.<sup>75</sup> However, this six-month rule does not apply if the U.S. permanent resident relocates to a country with which the United States has a totalization agreement.<sup>76</sup>

It is unlikely, however, that the United States will base its decision to enter into a totalization agreement with Cuba based solely on the desire to allow U.S. permanent residents to continue receiving their social security payments while present in Cuba beyond the six-month period.<sup>77</sup> Instead, the process that might move the United States to consider signing a totalization agreement with Cuba will have to address the many issues that will arise with the increase of commercial ties and cross-border movement of people between the two countries.<sup>78</sup> Perhaps illustrative of the United States' measured approach to totalization agreements is the fact that the United States has signed only twenty-one totalization agreements despite the vast number of countries with which the United States has commercial relations.<sup>79</sup>

## D. ENTERING INTO A TAX TREATY WITH CUBA

The United States is a signatory to over fifty international treaties for the elimination of double taxation.<sup>80</sup> As discussed earlier, one of the pri-

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75. See 42 U.S.C. § 402t (2000); 20 C.F.R. § 404.460 (2004).

76. 42 U.S.C. § 402t (2000); 20 C.F.R. § 404.460 (2004).

77. After all, that a U.S.-Cuba totalization agreement would ultimately vitiate the impact of the six months rule with respect to U.S. permanent residents retiring in Cuba is only a byproduct of what totalization agreements generally seek to accomplish.

78. Because the primary purpose of a totalization agreement is to ameliorate the inequities that result when a worker divides his or her working life between two or more countries, the United States will likely not perceive a need for a U.S.-Cuba totalization agreement until the countries have reached some critical mass of workers dividing their working life between the two countries.

79. See Office of International Programs, Social Security Administration, *International Agreements, Payments Outside the United States, and Social Security in Other Countries*, [http://www.ssa.gov/international/inter\\_intro.html#International\\_Agreements](http://www.ssa.gov/international/inter_intro.html#International_Agreements) (last visited Nov. 18 2004). The countries with which the United States has a totalization agreement are: Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, South Korea, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and Mexico. Although the U.S.-Mexico totalization agreement was signed in June 2004, as of the time of this writing it is still pending ratification by the U.S. Congress and the Mexican Senate. If ratified, it will enter into effect in the fall of 2005.

80. Among the countries with which the United States has signed international tax treaties are: Australia, Austria, Barbados, Belgium, Canada, the People's Republic of China, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, South Korea, Latvia, Lithuania, Luxembourg, Mexico, Morocco, the Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Slovak Republic, South Africa, Spain, Sweden, Swit-

mary purposes of tax treaties is to coordinate the application of the parties' tax systems in order to avoid needless impediments to cross-border investments and transactions.<sup>81</sup> Tax treaties accomplish this result by allocating the right to tax between the country where the income arises (the source country) and the country where the income recipient resides (the residence country).<sup>82</sup> Typically, the country giving up the right to tax a given item of income will do so by granting the taxpayer a tax credit for the foreign taxes paid to the other country.

A country's decision to forego taxation of revenue originating from abroad does not necessarily mean a net economic loss. Such a decision is premised on the expectation that the tax revenues given up will be more than offset by the economic benefits resulting over time from the retiree's moving to the country, despite the immediate loss of revenue. The negotiation of a tax treaty between the United States and Cuba would benefit Cuba and the foreign retiree if either the retiree's obligation to pay U.S. income taxes is waived and Cuba's income tax rate is lower than that of the United States, or if the retiree's obligation to pay U.S. income taxes is retained and Cuba waives application of its own income tax to retirees out of an expectation that doing so will reap greater benefits. These benefits would be measured in terms of a greater flow of retiree income into the country compared with the loss of revenues resulting from Cuba waiving its income tax.

Most tax treaties contain provisions that address a wide range of sources of income, including personal services income, interest income, royalty and rental income, portfolio income, social security income, and more.<sup>83</sup> Although domestic tax laws provide the basic rules for the treatment of these items of income, tax treaties supplement the domestic source rules and delineate the allocation of taxing authority with respect to income items subject to competing jurisdictional claims.

Of the numerous treaty provisions, arguably the most important one for retirees is the one governing the treatment of social security benefit payments. Therefore, the Cuban government would certainly need to focus on this issue in future tax treaty negotiations with the United States. Present U.S. tax treaty policy calls for exclusive source-based taxation of

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zerland, Thailand, Trinidad & Tobago, Tunisia, Turkey, Ukraine, the United Kingdom, and Venezuela.

81. See Berman, *supra* note 30, at 357-362.

82. *Id.*

83. There are three major model treaties that are used as reference points during treaty negotiations. The OECD Model Tax Treaty is relied upon heavily in negotiations between developed countries. In 1996, the United States unveiled the U.S. Model Tax Treaty that is very similar to the OECD treaty but contains some additional provisions. Since 1996, the United States has relied heavily on the U.S. Model Treaty in conducting tax treaty negotiations. The U.N. Model Tax Treaty was developed as a reference point for negotiations between developed and developing countries, and therefore some of its provisions are tilted toward higher levels of taxation by source countries. See Berman, *supra* note 30, at 379-80.

social security payments.<sup>84</sup> Because the Internal Revenue Code classifies social security payments as a U.S.-source,<sup>85</sup> the U.S. Government retains the sole right to tax an individual's social security benefit payments even when mailed abroad.<sup>86</sup> Current U.S. law imposes a tax on 85 percent of an individual's social security benefit payments.<sup>87</sup> Thus, assuming that a U.S. person retires in Mexico<sup>88</sup> and continues receiving monthly U.S. social security benefit payments in the amount of \$1,000, the United States will impose a tax on \$850 of his monthly benefits.<sup>89</sup>

Although the vast majority of U.S. tax treaties retain the exclusive source-based taxation rule for cross-border social security payments, the treaties with Canada, Egypt, Germany, Italy, Japan, Britain, and Ireland provide for exclusive residence-based taxation.<sup>90</sup> This means that the United States has relinquished its right to tax social security payments sent to individuals residing in one of these countries.<sup>91</sup> This arrangement effectively allows the residence jurisdiction to decide whether and, if so, how much, to tax U.S. social security payments. Furthermore, some tax treaties—such as the U.S.-Israeli and U.S.-Romanian tax treaties—go one step further and bar taxation of social security benefits by both the source and residence countries.<sup>92</sup>

Despite the United States' general tax treaty policy of retaining the right to tax cross-border social security benefit payments at their source, the treaties mentioned in the paragraph above are examples of foreign countries that succeeded in obtaining concessions from the United States with respect to its tax treatment of cross-border social security benefits paid to their residents, and thus provide potentially useful precedents for Cuba.<sup>93</sup> Should the United States show interest in assisting Cuba in developing into a "retirement haven," it would do well to grant Cuba exclu-

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84. See Cynthia Blum, *Should The Government That Pays Social Security Benefits Across Borders Also Tax Such Benefits?*, 18 VA. TAX REV. 621, 645-46 (1999).

85. I.R.C. § 861(a)(8) (2000).

86. See Blum, *supra* note 84, at 645-46.

87. *Id.* at 631-36.

88. *Id.* at 639-40.

89. If the person receiving U.S. social security benefits happens to be a non-resident alien, then a 30% withholding tax will be applied to 85% of the social security benefit, for an effective tax rate of 25.5%.

90. See Blum, *supra* note 84, at 641-44.

91. Although most tax treaties contain a savings clause that allows a country to reserve the right to tax all of its citizens and residents equally regardless of whether they happen to be residents of another country as well, the tax treaties with Egypt, Germany, Italy, Japan, Britain, and Ireland contain exceptions to the savings clause. In other words, a U.S. citizen who becomes a resident of one of these countries could effectively avoid U.S. taxation of their social security benefit payments.

92. Blum, *supra* note 84, at 641-43.

93. See *id.* at 655-56 and n.129 (quoting Mary Walsh, *An Irish View of the New U.S.-Ireland Tax Treaty*, WORLDWIDE TAX DAILY, Aug. 4, 1997, noting that the favorable social security provision in the U.S.-Ireland Tax Treaty owed a great deal to the aggressive lobbying of Irish recipients of U.S. social security payments; since the United States "is a popular destination for Irish emigrants, but many return to Ireland on retirement and receive social security benefits").

sive, residence-based taxation authority over cross-border U.S. social security benefits mailed to retirees living in Cuba. That way, Cuba can control the level of tax, if any, imposed on such receipts, and thereby signal to retirees the island's favorable treatment of social security benefits.

E. EXTENDING MEDICARE BENEFITS TO U.S. NATIONALS AND  
PERMANENT RESIDENTS WHO RETIRE IN CUBA

The availability of affordable, high quality health care is a major concern of individuals reaching retirement age, but it is especially critical to those contemplating retirement abroad.<sup>94</sup> Unfortunately, since its inception (unlike the Social Security program), Medicare has linked eligibility for health care benefits to the beneficiary's physical presence in the United States.<sup>95</sup> Therefore, even though individuals have contributed to the Medicare fund through payroll taxes throughout their working lives, subject to a few very narrow exceptions, the current law prohibits the Medicare program from covering any health care expenses incurred while traveling or living overseas.<sup>96</sup> This Medicare foreign-exclusion rule could create an obstacle to Cuba's development into a "retirement haven" for U.S. persons.<sup>97</sup>

Americans of retirement age view Medicare as a form of entitlement. Even though some Americans might also be covered by HMOs or Medigap policies, the coverage provided by Medicare is real. Many Americans, especially those of relatively limited means, might not be willing or able to forego Medicare coverage for the sake of retiring abroad, unless the host country is capable of meeting the health care needs of its retirees with quality, low cost services.

A post-transition Cuba could be particularly well suited to emerge as a high quality and comparatively low-cost provider of medical services.<sup>98</sup> It is unlikely that Cuba would want to bear single-handedly the added financial burden of providing medical care to foreign retirees even with the

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94. For an example, see Association of American Residents Overseas, Frequently Asked Questions, <http://www.aaro.org/faq.html> (last visited Nov. 18, 2004).

95. For an excellent detailed account of the Medicare foreign exclusion, see James R. Whitman, *Venturing Out Beyond the Great Wall of Medicare: A Proposal to Provide Medicare Coverage Outside the United States*, 8 ELDER L.J. 181 (2000).

96. *Id.*

97. Since Medicare coverage is based on the principle of territoriality, individuals who retire abroad would have to travel back to the United States to receive medical treatment that would be covered by Medicare. Although it is theoretically possible for retiree's to hop on a plane to Florida (the nearest U.S. state to Cuba) every time they want their medical treatment to be covered by Medicare, this may well prove impractical and outweigh other benefits of retiring in Cuba.

98. As noted earlier, Cuba has been for some time in the business of actively promoting medical tourism, whereby foreign patients travel to Cuba to receive medical treatment at internationally competitive rates. See HOWARD, *supra* note 9, at 92-93; see also Diaz-Briquets, *supra* note 8, at 186.



existence of sufficient medical infrastructure and trained personnel.<sup>99</sup>

Although it is perhaps safe to assume that health care will remain more affordable in Cuba than in the United States, it remains unclear whether the cost-savings will benefit foreign retirees if the lack of Medicare coverage for services received in Cuba forces them to incur substantial out-of-pocket expenses for their health care.

Foreign retirees might be able to purchase private health insurance with coverage in Cuba, but the attractiveness of Cuba in this regard as a retirement haven will then hinge on the specific economics of each prospective retiree's medical insurance situation. Thus, absent Medicare coverage, it is unlikely that foreign retirees who are unable to afford private health insurance would find Cuba an attractive "retirement haven" when they will have to personally pay for medical care. If retirees were to return to the United States to receive health care services covered by Medicare, they would incur additional travel costs, which would also make Cuba economically less attractive. Therefore, a significant number of U.S. retirees who rely on Medicare for their health-care needs, and who would otherwise consider retiring to Cuba, might quickly experience a change of heart once they discover that Medicare coverage stops at the border.

The most obvious solution to the problem would be to lobby Congress to amend the Medicare statute<sup>100</sup> by repealing the foreign exclusion for Cuba. However, absent a broader public policy goal, it is unlikely that Congress would repeal the Medicare foreign exclusion solely for Cuba's benefit, particularly because such a measure would elicit an adverse reaction from many other potential foreign retirement locations, such as Mexico and the Central American countries.

There is at least one potential policy argument for why Congress would eventually want to re-evaluate the Medicare foreign exclusion, at least with respect to Cuba.<sup>101</sup> By the year 2010, when U.S. baby boomers start entering retirement in large numbers, the number of workers per Medicare beneficiary in the United States is projected to start to decline from 3.8 in 1997 to 2.2 by 2030.<sup>102</sup> This projected decrease in payroll contributions, with a concomitant increase in Medicare outlays, is likely to place an enormous strain on the Medicare system. As a result, these events

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99. For an article discussing the tremendous financial burden imposed on Central and South Florida hospitals by uninsured foreign nationals, see Alfonso Chardy, *Foreign Visitors Burden Hospitals*, *MIAMI HERALD*, Jan. 8, 2003 (quoting a Florida Hospital Association Survey that found that "[a]mong the many challenges facing hospitals, providing healthcare services to uninsured non-US citizens is placing an additional burden on already limited financial resources" and that those hospitals who participated in the study reported spending over \$40 million in treating uninsured foreign nationals).

100. Actually, the Medicare program was created through a series of amendments to the Social Security Act in 1965. See *Social Security Amendments of 1965*, Pub. L. No. 89-97, 79 Stat. 286 (1965).

101. See Diaz-Briquets, *supra* note 8.

102. *Id.* at 186.

might very well lead Congress to devise alternative or supplemental funding sources.

One potential solution to the looming Medicare problem would include allowing Medicare to reimburse health care providers in Cuba for medical services rendered to Medicare recipients while on the island. Assuming that quality health-care in Cuba will be provided at a lower cost than in the United States, such a move could arguably result in reduced Medicare outlays for retirees who choose to retire and seek medical care in Cuba, thereby ameliorating the projected strain on the Medicare program.<sup>103</sup> Apart from potential political and legal challenges from U.S. health care providers and other foreign countries, the main difficulty with this approach is proving to Medicare that the quality of care available in Cuba meets U.S. standards.<sup>104</sup>

## VI. CONCLUSIONS

Cuba's long-term prospects of becoming a "retirement haven" appear strong, provided the country exhibits the political will to make the necessary legal changes and financial investments.<sup>105</sup> Some of these changes will be relatively easy to implement, such as enacting retirement-friendly legislation. Others will be potentially costly, such as establishing retirement communities, and will require a cost-benefit analysis given the competing claims for the limited financial resources that will be available to a transition government. Still, other changes will require the cooperation of the governments of foreign countries (including but not limited to the United States) so that tax treaties and totalization agreements can be negotiated, signed, and implemented.

Despite the difficulties, the potential benefits of having thousands of foreign nationals settle in Cuba and bring their assets and retirement income into the country appear to make considerable economic sense.<sup>106</sup> In addition, foreign retiree settlement in Cuba may provide incidental social stabilization benefits. Therefore, the authors recommend that once

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103. *Id.*

104. *Id.* at 190-93.

105. It can be argued that development of programs to foster foreign retirement in Cuba may be a misallocation of Cuba's scarce financial and human resources, and that encouraging foreigners to retire in the country may create domestic discontent due to the perceived inequality between the standard of living and facilities and services available to foreign retirees (for example, adequate housing), and the inferior living conditions of the general population. However, any program that is implemented to draw upon foreign resources to promote economic development (such as promoting foreign investment) is likely to be subject to the same criticism, and yet foreign investment is courted by the Cuban Government today and is widely recognized as an indispensable ingredient in the economic reconstruction of the country. See generally LAWS AND LEGAL SYSTEM, *supra* note 11, at 105-37.

106. While reported figures vary, as many as 50,000 Americans have retired in Costa Rica. See Valerie Marchant, *Belen, Costa Rica: It's Civilized, and It's Wild*, TIME, Dec. 11, 2000, at G4; National Association of Realtors, *Costa Rica Market Situation*, <http://www.realtor.org/intlprof.nsf/469d23f47d4701f786256811004ee3cd/ald22a3c4d6eeba0862568100067d03d> (last visited Nov. 18, 2004).

Cuba returns to a free-market economic system and improves its political relations with the United States, a program be instituted that parallels the suggestions in this paper to transform the island into the “retirement haven” it is well qualified to become.