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Client Alert

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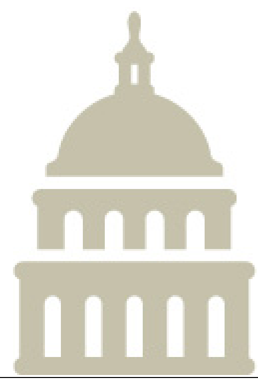
If you read one thing...

- U.S. sanctions relief implemented September 21, 2015, consolidates previous actions to roll back U.S. sanctions, reflecting the administration's commitment to promote economic engagement, and encourage trade and investment, in Cuba.
- The latest administration action allows telecommunications and Internet services providers to establish a business presence to provide U.S. authorized services in the country, including offices, joint ventures, franchises or agency relationships with business partners in Cuba. Travel and carrier services (including parcel, mail and other transportation services) and news organizations also are now able to establish a physical presence in Cuba. Companies that engage in business for the provision of goods or services that qualify for export to Cuba under BIS License Exception SCP (Support for the Cuban People) also may be authorized to establish offices.
- Despite this significant further easing of U.S. sanctions, statutory provisions that codify the comprehensive U.S. embargo against Cuba remain in force and continue to restrict other kinds of trade, investment and travel involving Cuba that are not otherwise authorized by a general or specific license from OFAC. It also remains to be seen how the Cuban government will open up the Cuban market for U.S. companies to engage in the opportunities that the easing of U.S. sanctions now allows.



Obama Administration Further Eases Restrictions to Aid Implementation of Cuba Policy

Introduction

On Monday, September 21, 2015, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) implemented amendments to the Cuban Assets Control Regulations (CACR) and Export Administration Regulations (EAR) to ease U.S. sanctions on Cuba in a number of ways, further advancing the Obama administration's new policy of engagement with Cuba initiated in December of last year (see prior alert here). Specifically, the amendments ease certain travel and financial restrictions, permit persons subject to U.S. jurisdiction to provide goods and services to Cuban nationals **located outside of** Cuba, expand telecommunications and Internet-based services in Cuba, and permit U.S. persons engaged in U.S. authorized activities in certain areas to maintain a physical presence in Cuba. Telecommunications providers are expressly authorized by the amendments to establish a business presence in Cuba by establishing "subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity to provide authorized telecommunications and Internet-based services."

This coordinated action by OFAC and BIS builds upon, and consolidates, previous changes easing U.S. sanctions on Cuba under the CACR and EAR implemented in January 2015, which relaxed restrictions on travel and commerce, increased allowable remittances, and provided allowances to expand access to Internet and telecommunications services in Cuba. The latest amendments signal the continued commitment of the administration to its reversal of long-standing U.S. policy in favor of a policy of engagement with Cuba and to create opportunities for U.S. companies in a range of business sectors to return to Cuba in ways that have been blocked by U.S. sanctions for more than half a century. Importantly, other features of the long-standing U.S. embargo on Cuba continue to restrict other kinds of trade, transactions and travel between the United States and Cuba absent general or specific authorization by OFAC.

Summary of Amended Regulations

Financial and Trade Transactions

OFAC has implemented measures permitting certain financial and trade transactions involving Cuban nationals. Specifically, the amendments:

- authorize all persons subject to U.S. jurisdiction to provide goods and services to individual Cuban nationals located outside of Cuba
- remove the $2,000 per quarter cap on donative remittance to Cuban nationals who are not officials of the Government of Cuba or prohibited members of the Cuban Communist Party
- remove the limitations on remittances that individuals may take to Cuba, which were previously set at $10,000 for U.S. persons and $3,000 for Cuban nationals, and authorize banking institutions to release funds that were previously blocked because they exceeded these limits
- permit depository institutions to maintain accounts for certain Cuban nationals located outside the United States provided that the accountholder may access such accounts only while lawfully present in the United States.

Physical Presence and Operations in Cuba

OFAC has amended the CACR to allow U.S. persons engaged in specified authorized activities, including U.S. telecommunications and Internet services providers, to establish and maintain a physical presence in Cuba through an office or other facility, such as a retail outlet or warehouse. The regulations also authorize these persons to open and maintain bank accounts at financial institutions in Cuba for use in authorized transactions, as well as to employ Cuban nationals and persons subject to U.S. jurisdiction in Cuba. This authorization applies to persons subject to U.S. jurisdiction that fall in the categories below:

- news bureaus
- exporters of certain goods authorized for export or reexport (e.g., agricultural products, supplies used by private sector entrepreneurs, and construction materials)
- providers of authorized mail and parcel transmission services
- providers of cargo transportation services
- providers of telecommunication or Internet-based services
- entities organizing or conducting certain educational activities
- religious organizations
- providers of certain travel and carrier services.

Notably, this authorization also appears to provide a basis for authorization of U.S. persons qualified to sell goods to Cuba under an expansion of BIS License Exception SCP. The license exception now authorizes exports and reexports of commodities and software to individuals and **privately-owned** entities in Cuba for use in developing software to improve the free flow of information and/or support certain private-sector activities to improve living conditions and support independent economic activity. In addition, in coordination with OFAC, BIS has amended the EAR to permit the export and reexport to Cuba of items necessary to persons authorized to establish a physical presence in Cuba.

Authorized Travel to Cuba and Travel-Related Services

The amended regulations further expand existing allowances for authorized travel to, and commerce with, Cuba. Specifically, the new amendments:

- authorize close relatives to visit or accompany authorized travelers to Cuba who are engaged in official government business, journalistic activity, professional research, educational activities, religious activities, humanitarian projects, and activities of private foundations or research or educational institutions
- establish a general license for transportation by vessels, including cruise ships, between the United States. and Cuba (without stops in third countries) of persons authorized to travel to Cuba, including visitors engaging in permissible "People-to-People" travel to Cuba
- authorize U.S. aircraft and vessels on temporary sojourn to Cuba under BIS License Exception Aircraft, Vessels, and Spacecraft
- permit U.S. authorized travelers to open and maintain bank accounts in Cuba in order to access funds while in Cuba to engage in permissible activities and transactions.

Educational Activities

The amended regulations also expand the general license for educational activities in Cuba to permit the establishment of academic exchanges and non-commercial academic research projects with universities or academic institutions in Cuba. The amendments further authorize Internet-based courses and the provision of standardized testing services in relation to professional certificate examinations, university entrance examinations, and language examinations for Cuban nationals.

Telecommunications and Internet-based Services

The latest action by the administration includes amendments to OFAC and BIS regulations pertaining to telecommunications and Internet-based services providers, including the following provisions:

- Telecommunications and Internet-service providers are authorized to establish a business presence in Cuba through the establishment of subsidiaries, branches, offices, franchises, and agency or other business relationships with any Cuban individual or entity, including ETECSA, Cuba's state-owned telecommunications service provider.
- The CACR also now authorize U.S. companies to enter into licensing agreements and engage in marketing activities in Cuba for provision of telecommunications and Internet services.
- Imports into the United States of Cuban-origin mobile applications are now authorized, and U.S. persons may employ Cuban nationals to develop such mobile applications.
- BIS has expanded the License Exception SCP to authorize exports and reexports of commodities and software to individuals and privately-owned entities in Cuba, as discussed above.
- BIS has also expanded the license exception for Consumer Communication Devices to permit the export and reexport to Cuba of leased or loaned items, such as computers, mobile phones and televisions.

Significance of the Administration's Latest Actions

The new regulatory amendments build upon, and help to consolidate, previous sanctions relief measures for Cuba by further easing sanctions related to travel, telecommunications and Internet-based services, business operations in Cuba and remittances. While the latest revisions do not provide sanctions relief for new business sectors other than those that have been the focus of policy changes initiated earlier this year, the new measures help make it more practical and achievable for U.S. companies that qualify for these allowances to pursue trade and investment opportunities on-the-ground in Cuba. This includes measures permitting such companies to establish on the ground operations and to engage more effectively with Cuban business counterparts. More fundamentally, these changes provide the latest tangible demonstration that the Obama administration is invested in the policy of engagement with Cuba announced at the end of last year, actively evaluating areas of possible opportunity for further sanctions relief and seeking to consolidate its new approach to Cuba as a hallmark of the President's legacy during his remaining months in office.

As discussed above, this latest Cuba sanctions relief focuses primarily on strategic economic sectors (e.g., travel, cargo, carrier, telecommunications and education), previously subject to sanctions relief in

January, to address practical impediments to companies interested in pursuing potential new opportunities for trade and investment in those sectors. For example, for telecommunications providers, the new sanctions relief expressly permits the establishment of “subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban national” and authorizes them to “enter into all necessary agreements or arrangements” with Cuban nationals to provide telecommunications or Internet-based services. These regulations add another dimension to the administration’s efforts to enhance the free flow of information to, from and among the Cuban people and to provide more efficient telecommunications services between the United States and Cuba.

These new measures notwithstanding, the comprehensive U.S. embargo against Cuba remains codified in statutory law that can be reversed only by an act of Congress. While there appears to be growing consensus on Capitol Hill to consider legislation to address the established legal framework of U.S. sanctions on Cuba, it remains unclear when such action will be politically feasible and legislatively achieved. Accordingly, U.S. persons and foreign companies owned or controlled by U.S. persons remain subject to core provisions of the U.S. sanctions regime that generally bar investment in, or trade with, Cuba except as authorized by OFAC, consistent with policy determinations and actions taken by the President and his administration.

Separately, it remains to be seen how and when Cuba will permit U.S. companies to enter the Cuban market to engage in the growing areas of commercial activity authorized by changes in U.S. law. While the administration has taken substantial steps to pursue engagement with Cuba this year, normalization of economic relations with Cuba also will necessitate a bilateral process for resolution of long-standing U.S. property claims against Cuba dating back to 1960. However, while these challenges remain, it is clear that U.S. and Cuban officials are committed to see to conclusion ongoing diplomatic negotiations to address these and other challenges and concerns. The latest actions by the administration to further relax U.S. sanctions measures confirm that the bilateral commitment to advance the process of engagement remains on track and progressing, with the promise of new opportunities in an opening Cuban market on the horizon.

We will continue to monitor developments as they unfold and encourage clients to contact us to learn more about how these new rules impact specific business operations.

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