

Client Update

U.S. Updates Cuba Sanctions and Export Regulations

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On Friday, January 16, 2015, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) revised its Cuban Assets Control Regulations and the U.S. Commerce Department's Bureau of Industry and Security (BIS) revised its Export Administration Regulations to implement changes that President Obama announced on December 17, 2014, regarding the U.S. embargo of Cuba. Although the revised regulations now permit many previously prohibited transactions, the core prohibitions of the trade embargo between the United States and Cuba remain in force.

REDUCED TRAVEL RESTRICTIONS

The most far-reaching change to the embargo is the elimination of the requirement that travelers obtain a specific license from OFAC before undertaking most types of authorized travel to Cuba. New general licenses in the regulations allow travel to Cuba, without prior authorization, in connection with each of the categories of travel that OFAC is permitted to license under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). These include, among others, journalistic, educational, religious and humanitarian activities, professional meetings and research, and negotiation and marketing in connection with the limited categories of U.S.-Cuba trade that have been authorized.

However, each of the general licenses is subject to conditions specified in the regulations, and those travelers not meeting the conditions will still be required to obtain a specific license. Tourist travel remains prohibited by statute. In addition, the requirement that authorized travelers in most categories must maintain a schedule consistent with full-time, purposive activity, without excessive leisure time, remains in place. Records of Cuba-related transactions must still be retained for at least five years.

Other changes facilitate authorized travel to Cuba. In the past, authorized travelers have been required to limit their living expenses in Cuba to the State Department's *per diem* expense limit for Havana, which is currently \$188 per day. Under the new regulations, the *per diem* limit has been eliminated. Additionally, U.S. credit cards may be used in Cuba for transactions incident to authorized travel, which should reduce the need for authorized travelers to carry large quantities of cash to cover possible expenses.

Authorized travelers returning from Cuba to the United States are now permitted to bring back up to \$400 worth of Cuban goods, including up to a total of \$100 in Cuban alcohol and tobacco products. However, such goods must be for personal use only. Commercial imports remain prohibited.

OFAC also has taken steps to ease the licensing requirement for businesses facilitating authorized travel to Cuba. Travel agents and airlines will no longer require a specific travel service provider or carrier service provider license, thus eliminating the need for authorized U.S. travelers to arrange travel through an authorized travel service provider or through a third country.

U.S. insurers and their foreign subsidiaries may now provide coverage and pay claims under global health, life and travel insurance policies for individuals traveling to Cuba. This new authorization applies both to authorized travel by U.S. travelers and to travel by third-country nationals who are not subject to the U.S. regulations, but it does not authorize issuance of insurance to individuals who reside in Cuba. This change to the regulations not only eliminates an inconvenience to individuals traveling to Cuba but also removes an obstacle to the competitiveness of U.S. insurers in the global travel insurance market.

AUTHORIZED DEALINGS WITH CUBAN NATIONALS IN THIRD COUNTRIES

By their terms, the Cuban Assets Control Regulations apply not only to U.S. companies and individuals but also foreign companies owned or controlled by U.S. persons. This has sometimes led to difficulties for U.S.-owned foreign businesses, such as banks or hotels, that deal with members of the general public. U.S. law previously demanded that these businesses refuse service to and freeze assets of Cuban nationals even if that treatment would violate local laws. Under the new regulations, non-U.S. subsidiaries of U.S. companies are free to transact business with individual Cuban nationals in third countries, as long as no exports of goods or services to Cuba are involved. Dealings with Cuban state-owned entities, however, will remain restricted.

Additionally, U.S. companies, organizations and individuals now may sponsor and participate in professional meetings and conferences in third countries that are attended by Cuban nationals.

Depository institutions may now reject, rather than block, most wire transfers originating and terminating outside the United States in which a Cuban national has an interest. This not only reduces administrative burdens on U.S. and U.S.-owned banks but also reduces conflicts with non-U.S. bank regulators. Transfers must still be blocked, however, if the originator or beneficiary is a prohibited official of the Cuban Government or of the Cuban Communist Party.

For other purposes, individual Cuban nationals in third countries remain blocked unless they have taken up permanent residence outside of Cuba and can document that residence. The new regulations, however, allow greater flexibility as to the documentation of permanent residence that U.S. companies can accept, and they automatically unblock previously blocked property once a Cuban national permanently relocates to a third country.

EXPANDED TRADE AND DIPLOMATIC RELATIONS

U.S. depository institutions may now open correspondent accounts at Cuban financial institutions to facilitate authorized transactions. However, Cuban banks remain forbidden from opening correspondent accounts at U.S. financial institutions.

While the embargo largely remains in place, authorized trade has been expanded in several areas. Perhaps the most significant of these is telecommunications:

- A new license exception in the Export Administration Regulations authorizes the exportation to Cuba of devices that will assist the Cuban people to communicate within Cuba, with the United States and with the rest of the world, including consumer communications devices such as personal computers, mobile phones and televisions. The new exception also authorizes news media organizations to bring their equipment to Cuba, eliminating the need to abide by the cumbersome notification and security requirements that applied under the previously available license exception.
- The Cuban Asset Control Regulations also have been amended to authorize persons subject to U.S. jurisdiction to operate telecommunications services within Cuba and between Cuba and third countries. The previous version of the regulations only authorized telecommunications services between the U.S. and Cuba.

- U.S. companies and their subsidiaries are now explicitly authorized to provide Internet-based communication services to persons in Cuba, including instant messaging, chat and e-mail, social networking, sharing of photos and movies, web browsing, blogging, web hosting (other than for promotion of tourism) and domain name registration. While some of these services may have previously been covered by exemptions or general licenses related to the transmission of information, the new general license eliminates much of the uncertainty that existed in this area.

Other new regulations are designed to aid Cuba's nascent private sector:

- Certain micro-financing activities and entrepreneurial and business training, including for private businesses and agricultural operations, are now authorized.
- Commercial imports of certain goods and services produced by independent Cuban entrepreneurs are now authorized.
- Certain exports to the Cuban private sector are now authorized, including building materials, equipment and tools for use by the private sector to construct or renovate privately owned buildings; tools and equipment for private agricultural activity; and tools, equipment, supplies and instruments for use by private sector entrepreneurs.

Subject to some restrictions, the regulations also authorize certain exports for humanitarian activity; to certain non-governmental organizations; for scientific, archaeological, cultural, ecological, educational, or historic-preservation purposes; for professional research; and for sporting events.

Ships that have traded with Cuba remain barred from entering U.S. ports for 180 days, but an exception has now been created for ships that have engaged in humanitarian or other authorized trade with Cuba. Providing goods and services to Cuban national sailors sequestered aboard ships in U.S. ports is also authorized.

The means of payment for authorized commercial exports remain restricted to "cash in advance" or certain types of third-country financing. For agricultural exports, these limitations are statutorily required by the TSRA. However, the new regulations administratively reinterpret "cash in advance" to mean "cash before transfer of title and control" rather than cash before shipment. This is intended to facilitate authorized exports to Cuba, including agricultural exports that have long been permitted but have faced practical obstacles.

Finally, in anticipation of the normalization of diplomatic relations with Cuba, several new general licenses authorize the provision of goods and services to Cuban official missions in the United States, as well as in connection with the official business of the U.S. government, third-country governments and intergovernmental organizations in Cuba.

GREATER AUTHORIZATION FOR REMITTANCES AND GIFT PARCELS

Remittances from relatives living in the United States have been a significant source of income for many individuals living in Cuba. The new regulations raise the limit on personal remittances to individual Cubans from \$500 to \$2,000 per quarter. They also authorize, without limits, remittances for humanitarian projects, support for the Cuban people and development of private business in Cuba. Remittance forwarders are no longer required to obtain a specific license form OFAC. Authorized travelers to Cuba may carry up to \$10,000 in remittances in the aggregate, increased from the previous limit of \$3,000. Existing restrictions on combining multiple gifts into a single gift parcel also have been eliminated.

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