

# Client Update

## United States Imposes New Restrictions on Cuba Trade and Travel

On November 8, 2017, the U.S. Departments of the Treasury, Commerce and State announced new restrictions on travel and other transactions with Cuba by persons subject to U.S. jurisdiction. These changes, which took effect on Thursday, November 9, 2017 implement a June 16, 2017 announcement in which President Trump declared his intention to roll back the Obama administration's policy of engagement with Cuba.

### **NEW RESTRICTIONS ON DEALINGS WITH ENTITIES OWNED BY CUBAN MILITARY, INTELLIGENCE AND SECURITY SERVICES**

From the early 1960s until the last two years of the Obama administration, the U.S. barred nearly all trade between the U.S. and Cuba and generally prohibited U.S. nationals—and companies controlled by U.S. nationals—from engaging in transactions with Cuba and Cuban nationals. Responsibility for implementing the embargo was shared between the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and the U.S. Commerce Department's Bureau of Industry and Security (BIS). In 2015 and 2016, the OFAC and BIS regulations were amended to authorize many categories of Cuba-related transactions that previously had been forbidden.

The Trump Administration's recent amendments to the OFAC regulations carve back most of these authorizations by prohibiting payments to or from entities on a new "Cuba Restricted List" published by the U.S. Department of State. The amended BIS regulations prohibit exports and reexports to entities on the Cuba Restricted List. Commercial arrangements that were in place before November 9, 2017 are exempted from the new restrictions. Apart from the introduction of the new restricted list, however, the authorizations introduced by the Obama administration remain largely unchanged.

The Cuba Restricted List targets entities controlled by the Cuban military, intelligence and security sectors. Because the military indirectly controls much of the Cuban economy, the list includes many commercial entities, including hotels and shops frequented by visitors to Cuba. This means, for example, that authorized U.S. travelers to Cuba will no longer be permitted to

purchase lodging or other services or goods at the listed establishments, nor will U.S. companies be allowed to conduct new commercial transactions with those entities.

Currently, the Cuba Restricted List includes:

- the **ministries** of Interior and Armed Forces (MININT and MINFAR);
- the **holding companies** GAESA, Gaviota, Habaguanex, UIM and CIMEX;
- a large number of **hotels** owned by the listed holding companies throughout Cuba, including some major hotels managed by well-known international companies;
- **nine stores** located in Old Havana, and a chain of stores operating in Old Havana and elsewhere in Cuba, including jewelry stores and other tourist-oriented shops;
- two **tourist agencies**;
- five **marinas**;
- **arms manufacturers, police and security agencies**, and other entities “directly serving the defense and security sectors”; and
- **miscellaneous subsidiaries** of the holding companies listed above, including advertising agencies, shopping malls, beverage producers and others.

The new restrictions apply only to transactions with the entities specifically listed. They do not restrict transactions with unlisted subsidiaries or affiliates of the listed entities.

## NEW TRAVEL RESTRICTIONS

As announced in June of this year, the new restrictions bar *independent* “**people-to-people**” travel to Cuba by persons subject to U.S. jurisdiction unless the travel was at least partially arranged before June 16, 2017. *Group* people-to-people travel remains authorized if it is organized by a U.S. organization, and the group is accompanied by a U.S. representative of the organization. “People-to-people” travel is educational travel not involving academic study but involving a full-time schedule of meaningful interaction with the Cuban people.

In addition, the amendments roll back the authorizations for **educational travel** connected with academic study. In particular, the authorization for educational travel to Cuba that is not sponsored by a U.S. institution has been eliminated unless the travel was arranged before November 9, 2017. OFAC retains the power to issue specific licenses for travel that is outside the scope of the general authorization.

The authorization for “support for the Cuban people” travel, which includes work with certain **civil-society organizations**, has been amended to require that the “traveler’s schedule of activities does not include free time or recreation in excess of that consistent with a full-time

schedule.” A similar qualification already existed under a number of the other Cuba travel authorizations.

All other existing authorizations for travel to Cuba are unaffected apart from the restrictions on dealings with entities on the Cuba Restricted List (discussed above). Significantly, U.S. airlines and other service providers may continue to rely on travelers’ self-certification that their travel to Cuba is authorized.

### **OTHER CHANGES**

The definition of “prohibited officials of the Government of Cuba” in the OFAC regulations has been rolled back to what it was before the October 2016 amendments. It now includes, for example, low-level employees of the Defense Ministry, who were removed from the definition by the Obama administration. Individuals who are “prohibited officials of the Government of Cuba” are excluded from certain authorizations, such as the authorization for personal remittances from family members and others in the United States.

At the same time, the authorization for exports to Cuba’s nascent private sector has been simplified. Previously, only certain types of items, such as tools, were included. Under the recent changes, these exports are no longer limited to a list of particular types of items, although items that are export-controlled (other than for anti-terrorism reasons) remain excluded. Exports of medical and agricultural commodities are governed by other provisions.

\* \* \*

Please do not hesitate to contact us with any questions.

For a periodic e-mail summary of developments in economic and trade sanctions, please subscribe to the Debevoise & Plimpton LLP Sanctions Alert. To subscribe, please e-mail [sanctions@debevoise.com](mailto:sanctions@debevoise.com) or sign up on the [Insights Subscribe](#) page of our website. Our sanctions-related publications may also be found at [The Sanctions Resource](#) page on our website.

#### **NEW YORK**

Carl Micarelli  
[cmicarelli@debevoise.com](mailto:cmicarelli@debevoise.com)

Zila R. Acosta-Grimes  
[zracosta@debevoise.com](mailto:zracosta@debevoise.com)

Sandeep S. Dhaliwal  
[ssdhaliwal@debevoise.com](mailto:ssdhaliwal@debevoise.com)

#### **WASHINGTON, D.C.**

Satish M. Kini  
[smkini@debevoise.com](mailto:smkini@debevoise.com)

Robert T. Dura  
[rdura@debevoise.com](mailto:rdura@debevoise.com)