
Additional Steps to Ease U.S. Sanctions and Export Controls for Cuba prior to Obama Visit

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In advance of President Obama's highly publicized trip to Cuba, the Administration took additional steps to ease restrictions on trade and travel with Cuba. These changes to the Cuban Assets Control Regulations (CACR) and Export Administration Regulations (EAR) have implications for the banking sector, shippers, the travel industry and other businesses.

On March 16, 2016, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the Department of Commerce's Bureau of Industry and Security ("BIS") took coordinated action to amend the CACR and EAR. The broad U.S. embargo on Cuba remains in place, but these changes continue the Administration's incremental expansion of permitted activities for U.S. persons and trade in U.S.-controlled items.

Banking and financial services

U-turn payments through the U.S. financial system. U.S. banks will be authorized to process funds transfers from a bank outside the United States that pass through U.S. financial institutions before being transferred to a bank outside the United States, where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction (so called "U-turn transactions"). The new general license at 15 C.F.R. § 515.584(d) will permit transactions by non-U.S. parties involving Cuba in U.S. dollars that U.S. financial institutions would otherwise have been required to block.

Processing of U.S. dollar monetary instruments. U.S. banking institutions are authorized to process monetary instruments in U.S. dollars, including cash and travelers' checks, where they are (a) presented by non-U.S. and non-Cuban financial institutions, (b) on behalf of a Cuban financial institutions, (c) where the non-U.S. financial institution maintains a correspondent account for the Cuban party and (d) where the underlying transaction is authorized or not prohibited under the CACR.

U.S. bank accounts for Cuban nationals. U.S. banking institutions are authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba to receive payments in the United States for authorized or exempt transactions and to remit such payments back to Cuba.

Trade and Commerce

Shipping. BIS will authorize vessels to transport authorized cargo from the United States to Cuba and then sail to a third country with remaining cargo that was originally loaded in the United States.

Physical and business presence. OFAC has expanded the categories of persons authorized to establish and maintain not only a “physical presence” but also a “business presence” in Cuba, including via subsidiaries, branches, offices, joint ventures or franchises. These categories now include authorized exporters, mail and cargo shippers and carrier/travel service providers, in addition to the previously authorized telecommunications and internet-based services companies (clarified to include importers of Cuban mobile applications). Physical presence is now authorized for humanitarian projects, research institutions, private foundations and other entities providing non-commercial support for the Cuban people. Such a presence may include an office, retail outlet, warehouse or other facility; related marketing; certain employment and banking; and related transactions. The EAR have been aligned with the CACR to permit exports and reexports related to an authorized business or physical presence. Further, OFAC has clarified that the physical and business presence for exporters of authorized goods includes authorization to assemble exported and reexported items in Cuba.

Cuban private sector. BIS adopted a new policy to allow case-by-case approval of licenses for the export and reexport of items that would enable or facilitate exports from the Cuban private sector. The new policy makes it possible to obtain approval for exports and reexports in sectors not previously open to U.S. companies or products.

Cuban-origin merchandise. OFAC will permit the import of Cuban-origin software (expanding the existing authorization for mobile applications). OFAC also will authorize Americans in a third country to conduct transactions involving Cuban-origin merchandise, such as the purchase and consumption of Cuban alcohol and tobacco products while abroad.

Travel and Related Transactions

People-to-people educational travel. American tourism to Cuba is still prohibited, but U.S. persons are now authorized to travel to Cuba on their own as individuals. The general license authorizes people-to-people educational travel intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence. Previously, educational travel had to be conducted in groups sponsored by an approved organization. Planned educational activities must be consistent with an individual’s full-time schedule and individuals must keep records of their activities. In FAQs published with the new regulations, OFAC clarified that incidental contact with Cubans in the course of sightseeing does not qualify for use of the general license.

Payment of salaries. Non-immigrant Cuban nationals in the United States will be authorized to earn a salary or compensation, consistent with the terms of their visas. This allows U.S. companies to sponsor or hire Cuban nationals to work or perform in the United States and allows Cuban athletes, artists, and performers with the requisite visas to earn salaries and stipends in excess of basic living expenses.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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