



CLIENT ALERT:

U.S. FURTHER AMENDS CUBAN ASSET CONTROL REGULATIONS

September 23, 2015

On December 17, 2014, President Obama announced a new U.S. policy intended to normalize relations with Cuba. Toward implementation of that policy, the Cuban Asset Control Regulations (“CACR”) were amended in January 2015. Further amendments were recently announced by the Treasury Department’s Office of Foreign Asset Control (“OFAC”) and went into effect on September 21, 2015.

While these further amendments liberalize dealings with Cuba by persons under U.S. jurisdiction, they do not lift the Cuban trade embargo, which remains in place. Of particular concern to foreign carriers, the recent amendments do not alter the 180 day rule, which provides that a vessel cannot call at a U.S. port for 180 days after calling at a Cuban port. In addition, while U.S. banks are now authorized to conduct limited financial transactions relating to Cuba, generally speaking the ban on banking transactions relating to Cuba remains in effect.

The September 21 amendments to the CACR are designed to “engage and empower” the Cuban people. The areas affected by the amendments are as follows:

Travel

- U.S. persons are now authorized by a general license to provide carrier services by vessel for persons and cargo authorized under the CACR. Such vessels cannot call at a third country when calling at Cuba. Certain lodging services aboard such vessels will also be authorized.
- For certain categories of authorized private travel to Cuba, persons subject to U.S. jurisdiction are now allowed to be accompanied by a close relative. Note that travel by U.S. persons for tourism purposes is still prohibited.
- Authorized travelers are now permitted to open bank accounts in Cuba in order to access funds for authorized transactions.

Telecommunications and Internet-based Services

- Persons subject to U.S. jurisdiction will be authorized to establish and maintain a business presence in Cuba, through subsidiaries, offices, joint ventures, etc., to provide authorized telecommunications and internet-based services.
- Persons subject to U.S. jurisdiction will be authorized to import Cuban origin mobile applications into the U.S. and to hire Cuban nationals to develop them.

Physical Presence in Cuba

- Certain persons subject to U.S. jurisdiction will be authorized to establish a physical presence in Cuba, such as an office or other facility. The authorization covers the following: news bureaus; exporters of goods authorized for export under the CACR; providers of authorized mail and cargo transportation services; providers of telecommunications and internet-based services; entities conducting educational activities; religious organizations; and providers of travel and carrier services. These entities may also open bank accounts in Cuba.

Financial and Commercial Transactions

- The limit on donative remittances to Cuban nationals, other than prohibited Cuban Government or Cuban Communist Party officials, has been eliminated entirely. The previous limit was \$2,000 per quarter.
- OFAC is issuing a general license unblocking all prior remittances which were blocked by banks because they exceeded the then-applicable caps on periodic remittances to Cuba.
- U.S. banks were formerly authorized to open accounts for a Cuban national present in the U.S., but those accounts had to be blocked if not closed before the Cuban national left the U.S. The amendments now permit banks to maintain such accounts while the Cuban national is outside the U.S., provided that the account holder can only access the account when present in the U.S.
- OFAC is issuing a new general license authorizing remittances from Cuba and from Cuban nationals located in third countries, and is authorizing U.S. banking institutions to receive such remittances.
- Person subject to U.S. jurisdiction are now authorized to provide goods and services to Cuban national located in a third country.

Ordinary Incident Transactions

- OFAC is issuing interpretive guidance clarifying that, with certain exceptions, transactions ordinarily incident to a licensed transaction and necessary to give effect to that transaction, are also authorized.

Summary

The latest amendments to the CACR create additional opportunities for U.S. businesses to engage in commerce with Cuba. However, there is still a general embargo on trade with Cuba and any entity intending to explore potential business with Cuba should carefully review the scope of permitted activities. OFAC's FAQs relating to Cuba can be found at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20150918.aspx>.

