

US Further Liberalizes Cuba Sanctions

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On March 15, 2016, in advance of the historic visit to Cuba by the President, the United States announced significant amendments to existing Cuba-related economic sanctions and export control regulations to implement the changes introduced by President Obama on December 17, 2014. Although these new measures reflect further liberalization of US economic and trade policy toward Cuba, the Cuba embargo remains in place, and many transactions between the US or persons subject to US jurisdiction and Cuba continue to be prohibited.

The amended regulations, administered by the US Department of the Treasury's Office of Foreign Assets Control (OFAC) and the US Department of Commerce's Bureau of Industry and Security (BIS), become effective on Wednesday, March 16, 2016. This action is in addition to recent regulatory changes issued by OFAC and BIS on January 26, 2016 and September 15, 2015.¹ These latest amendments, described in more detail below, expand the authorizations related to financial transactions, business activities and physical presence in Cuba, and travel by persons subject to US jurisdiction.²

Banking and Financial Services

OFAC regulations relating to funds processing and accounts for Cuban nationals have been amended as follows:

U-turn payments through US financial system and unblocking of previously blocked funds

OFAC has issued a general license that authorizes "U-turn transactions" in which Cuba or a Cuban national has an interest to be conducted through the US financial system. A U-turn transaction is a transaction in which:

¹ See our previous Cuba alerts [here](#).

² A person subject to US jurisdiction includes any individual, wherever located, who is a citizen or resident of the United States; any person within the United States; any corporation, partnership, association, or other organization organized under the laws of the United States; and any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by any citizen or resident of the United States, any person within the United States, or any entity organized under the laws of the United States.

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- the funds transfers that pass through the US financial institution originate and terminate outside of the United States, and
 - neither the originator nor the beneficiary is a person subject to US jurisdiction.

Additionally, banking institutions that are persons subject to US jurisdiction may unblock and return to the originator or originating financial institution (or successor-in-interest) previously blocked funds transfers that could have been processed as a U-turn transaction, or as part of an official government-related transaction, if processing those transfers would have been authorized if they had been sent under the current text of the provisions. If the funds were blocked on or after August 25, 1997, a report must be submitted to OFAC within 10 business days from the release of the funds transfer.

Processing of US dollar monetary instruments

A banking institution that is subject to US jurisdiction may now accept, process, and give value to US dollar monetary instruments (e.g., cash and travelers' checks) presented for processing and payment by a banking institution located in a third country in connection with an underlying transaction that is authorized, exempt, or otherwise not prohibited by the Cuban Assets Control Regulations (CACR). The third-country financial institution may not be a person subject to US jurisdiction or a Cuban national. The financial instruments must be received from a financial institution that is a national of Cuba for which the third-country banking institution maintains a correspondent account. Correspondent accounts at third-country financial institutions used for such transactions may be denominated in US dollars.

US bank accounts for Cuban nationals

Banking institutions subject to US jurisdiction may open and maintain accounts solely in the name of a Cuban national located in Cuba. These accounts may be used only for receiving payments in the United States and remitting payments to Cuba in connection with authorized or exempt transactions, such as a payment to a Cuban author for book sales. Banking institutions subject to US jurisdiction also may open and maintain accounts solely in the name of a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization for use while the Cuban national is located in the United States in such status, and to close such accounts prior to the Cuban national's departure from the United States.

Trade and Commerce

Though most transactions involving the United States or persons subject to US jurisdiction are still prohibited under US sanctions, OFAC and BIS have introduced the following authorizations, effective March 16, 2016:

Physical/Business Presence

OFAC has authorized the establishment of a business presence in Cuba for the following persons engaged in activity in support of transactions authorized by or exempt from the US Cuba sanctions that were previously authorized to maintain a physical presence:

- Exporters of goods authorized for export or reexport to Cuba or that are otherwise exempt from the CACR. This authorization includes the assembly in Cuba of items exported or reexported under such authorization or exemption. This authorization does not include the incorporation of Cuban-origin goods into such items or the processing of raw materials into finished goods in Cuba.
- Entities providing authorized mail or parcel transmission services or providing cargo transportation services in connection with trade involving Cuba authorized by or exempt from the CACR.
- Providers of authorized travel and carrier services. This authorization does not allow persons subject to US jurisdiction to establish a physical or business presence in Cuba for the purpose of providing lodging services in Cuba.

A business presence may be established through the following activities: establishing and maintaining subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban national, and entering into all necessary agreements or arrangements with such entity or individual.

A physical presence may now be established in Cuba (such as a warehouse, office, or retail outlet) for the following persons subject to US jurisdiction engaging in transactions authorized by, or exempt from, the CACR:³

- Entities engaging in non-commercial activities under the authorization for “Support for the Cuban People.”
- Entities engaging in certain authorized humanitarian projects.
- Private foundations or research or educational institutes engaging in certain authorized transactions.

These persons authorized to maintain a physical presence in Cuba may lease physical premises, including office, warehouse, classroom, or retail outlet space, and secure related goods and services, including for use in and to pay fees related to the operation of the physical premises; engage in marketing relating to the physical presence, employ Cuban nationals in Cuba, and employ individuals who are persons subject to US jurisdiction.

Conforming changes to the Export Administration Regulations (EAR) by BIS generally authorize exports and re-exports of eligible items to allow entities to establish and maintain a physical or business presence that is authorized by OFAC.

Importation of software

OFAC has authorized the importation into the United States of Cuban-origin software, expanding on the previous authorization that was limited to Cuban-origin mobile applications.

Shipping

Vessels transporting authorized cargo from the United States to Cuba will be generally authorized by BIS to sail to other countries with any remaining cargo that was unloaded in the United States provided:

- The vessel is on “temporary sojourn” to Cuba pursuant to the EAR, and
- The cargo departs with the vessel at the end of its temporary sojourn to Cuba, does not enter the Cuban economy, and is not transferred to another vessel while in Cuba.

Cuban private sector

BIS will adopt a licensing policy of case-by-case review for exports and re-exports of items that would enable or facilitate exports from Cuba of items produced by the Cuban private sector. Licenses issued pursuant to this policy generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba that primarily generate revenue for the state.

³ Authorized transactions must fall within the following categories: entities engaging in non-commercial activities authorized by section 515.574 (Support for the Cuban People); entities engaging in humanitarian projects set forth in section 515.575(b) (Humanitarian projects); private foundations or research or educational institutes engaging in transactions authorized by section 515.576; news bureaus; exporters of certain goods authorized for export or re-export pursuant to 31 CFR §§ 515.533 and 515.559; entities providing mail or parcel transmission services; providers of telecommunications or internet-based services; entities organizing or conducting certain educational activities; religious organizations; and providers of carrier and certain travel services.

Travel and Related Transactions

OFAC has issued general licenses within 12 categories of authorized travel that previously required a specific license.⁴ Travel to Cuba that falls outside of these 12 categories, including travel for tourist activities, is still prohibited. Travel pursuant to OFAC authorization requires the retention of associated travel records for five years. These travel-related changes also follow the signing of an arrangement for the re-establishment of scheduled air services between the United States and Cuba. Previously, air services were only available on a charter basis. The expansion of air travel options should provide persons in the United States greater opportunities to travel directly to Cuba.⁵

People-to-people educational travel

Previously, “people-to-people” travel was authorized as part of a sponsoring organization. The revised regulations authorize individual travel under the people-to-people authorization, without a sponsoring organization. The travel must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities. The traveler must engage in a full-time schedule of educational activities and may not spend the predominant portion of the activities engaging with certain officials of the Government of Cuba⁶ or certain members of the Cuban Communist Party.⁷ An organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license.

Payment of salaries

Previously, Cuban nationals lawfully present in the United States were limited to receiving compensation for living expenses and goods for personal consumption. This revision authorizes the receipt of salary or other compensation by a national of Cuba consistent with the individual’s non-immigrant status or non-immigrant travel authorization, provided the national of Cuba is not subject to any special tax assessments by the Cuban government in connection with the receipt of the salary or other compensation. Additionally, all transactions related to the sponsorship or hiring of a Cuban national to work in the United States are authorized so long as the employer does not make additional payments to the Cuban government in connection with the sponsorship or hiring. All transactions in connection with the filing of an application for non-immigrant travel authorization issued by the US government are also authorized.

Cuban-origin merchandise and services

Individuals subject to US jurisdiction and located in a third country now may purchase or acquire Cuban-origin goods for personal consumption while in a third country, as well as receive or obtain services from Cuba or a Cuban national ordinarily incident to travel or maintenance within that country. This change does not authorize the importation into the United States of Cuban-origin merchandise from a third country, which is currently limited only to gifts valued under \$100.

⁴ Travel-related transactions are permitted by general license for certain travel related to the following activities, subject to the criteria and conditions in each general license: family visits; official business of the US government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations or research or educational institutes; exportation, importation, or transmission of information or informational materials; and certain authorized export transactions.

⁵ For more information on expansion of scheduled air services to Cuba, please see the US Department of Transportation’s February 16, 2016 update [here](#).

⁶ Defined as Ministers and Vice-ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People’s Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

⁷ Defined as members of the Politburo, the Central Committee, Department Heads of the Central Committee, employees of the Central Committee and secretaries and first secretaries of the provincial Party central committees.

Grants and Awards

Educational grants and awards

- Persons subject to US jurisdiction may sponsor a Cuban scholar to teach or engage in other scholarly activity at a sponsoring US academic institution.
- Persons subject to US jurisdiction may provide educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest.

Although the amended regulations expand existing authorizations and implement new authorizations, the Cuba trade embargo still remains in effect. Companies doing business or wishing to do business with Cuba therefore should continue to monitor these developments closely to ensure compliance with sanctions. Penalties for noncompliance can be severe.

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