

Fifth Round of Amendments Easing Cuba Sanctions Regulations Issued Prior to President Obama's Historic Trip to Cuba

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PRACTICE AREAS

- Cuba

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The U.S. Department of the Treasury and Department of Commerce issued additional amendments to the Cuban Assets Control Regulations and Export Administration Regulations, which go into effect on March 16, 2016. This fifth round of amendments “[facilitate] travel for additional Americans looking to engage with Cubans; [allow] Cuban citizens to earn a salary in the United States; and [expand] access to the U.S. financial system as well as trade and commercial opportunities,” according to U.S. Treasury Secretary Jacob L. Lew.

Since December 2014, the Obama administration has taken steps, through the amendment of existing regulations, to allow for greater people-to-people travel and commercial ties between the U.S. and Cuba. Although the U.S. embargo against Cuba remains in place, the revised regulations and its subsequent amendments signal the most significant change in U.S.-Cuba relations in recent history.

Among the major changes included in the new amendments to the Cuba Sanctions Regulations are:

Financial Transactions

- U.S. banking institutions are authorized under the amendments:
 - to process U-turn transactions in which Cuba or a Cuban national has an interest. The amendments authorize funds transfers from a bank outside the United States passing through one or more 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.
 - to accept, process, and give value to U.S. dollar monetary instruments (cash, traveler's checks and other monetary instruments) presented indirectly by Cuban financial institutions. In addition, correspondent accounts used for transactions authorized by the amendment may be denominated in U.S. dollars.
 - to open and maintain accounts solely in the name of a Cuban national located in Cuba for the purposes of receiving payments in the United

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States in connection with authorized or exempt transactions and to remit such payments back to Cuba. For example, a Cuban author located in Cuba may open an account with a bank in the United States to receive payments for the sales of the author's books.

Trade and Commerce

- *Business and Physical Presence in Cuba.* The Department of the Treasury's Office of Foreign Assets Control ("OFAC") has expanded the existing authorization for "physical presence" (for example an office, retail outlet, or warehouse) to include entities engaged in humanitarian projects, entities engaged in non-commercial activities providing support for the Cuban people, and private foundations or research or educational institutes engaging in authorized activities.

Also, OFAC expanded the authorization for "business presence" to include exporters of goods that are authorized for export to Cuba or that are exempt from the regulations, entities providing mail or parcel transmission services or cargo transportation services and providers of carrier and travel services to facilitate authorized transactions.

- *Payment of Salaries to Cuban Nationals.* Cuban nationals in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization are authorized to earn a salary or compensation, consistent with the terms of a particular visa, provided that the recipient is not subject to any special tax assessments in Cuba.

Cuban nationals will be able to receive sponsorships or be hired to work or perform in the United States provided that no additional payments are made to the Cuban government in connection with such sponsorship or hiring

- *Shipping.* The Department of Commerce's Bureau of Industry and Security ("BIS") generally authorizes vessels to transport authorized cargo from the United States to Cuba and then sail to other countries with any remaining cargo that was loaded in the United States.
- *Cuban private sector.* BIS is adopting 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.

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- *Importation of software.* The amendments authorize the importation of Cuba-origin software.

Travel

- *People-to-People Educational Travel.* Individuals are authorized to travel to Cuba for individual people-to-people educational travel. The traveler must engage in a full-time schedule of educational exchange 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 keep detailed records to demonstrate that it has met the requirements of the general license. The prohibition on travel for tourist activities remains in place.

Grants, Scholarships, and Awards

- OFAC authorizes the provision of educational grants, scholarships or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest. For example, the provision of educational scholarships for Cuban students to pursue academic studies for a degree is authorized.

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