

Regulations Amended to Implement President Trump's Cuba Policy

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PRACTICE AREAS

- Cuba

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Following the directive of President Donald J. Trump's *National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba* (the "Memorandum"), issued on June 16, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Department of Commerce's Bureau of Industry and Security (BIS) amended, effective November 9, 2017, the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) to implement President Trump's Cuba Policy, as delineated on the Memorandum.

In addition, the Department of State issued the *List of Restricted Entities and Subentities Associated With Cuba, as of November 9, 2017* ("Cuba Restricted List"), listing "entities and subentities under the control of, or acting for or on behalf of, the Cuban military, intelligence, or security services or personnel with which direct financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba." Entities or subentities owned or controlled by another entity or subentity on the Cuba Restricted List are not treated as restricted unless also specified by name on the Cuba Restricted List.

To further explain the amendments, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published *Frequently Asked Questions Related to Cuba, as of November 8, 2017*, and the Department of Commerce published *Cuba Frequently Asked Questions, effective November 9, 2017*.

The key changes to the U.S. policy toward Cuba included in the amendments are the following:

- Persons subject to U.S. jurisdiction will be prohibited from engaging in certain direct financial transactions with entities and subentities identified on the Cuba Restricted List, such as GAESA (Grupo de Administración Empresarial S.A), Gaviota (Grupo de Turismo Gaviota), and Zona Especial de Desarrollo Mariel (ZEDM). Certain transactions are excluded from this prohibition, as further described in the Memorandum.

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- Travel to Cuba for tourist reasons by persons subject to U.S. jurisdiction continues to be prohibited; however, travel is permitted under the 12 general licenses identified in the CACR. For example, travel for non-academic educational purposes will be limited to group travel under the auspices of an organization that is a person subject to U.S. jurisdiction. Individual people-to-people non-academic educational travel is not authorized. Also, travel-related direct financial transactions with prohibited entities (such as GAESA and Gaviota) generally will not be permitted.
- The Department of Commerce's BIS is establishing a general policy of denial for license applications to export items for use by entities listed on the Cuba Restricted List. In addition, BIS has expanded its license exceptions authorizing certain license-free exports, without specifying types, to the Cuban private sector for private sector economic activities.
- These amendments are prospective and do not affect existing travel arrangements, contracts, and OFAC specific licenses that were in place or issued prior to November 9, 2017.

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