

The Regulatory Amendments to the Cuba Sanctions – What Does it Mean for American Business?

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On December 17, 2014, President Obama announced significant changes to the Cuba sanctions that have been in place for over half a century. The President, using his executive powers, relaxed many of the sanctions in place under the U.S. embargo of Cuba in order to "effect diplomatic and economic changes and to start a new course in U.S. relations with Cuba." On Friday, January 16, 2015, the U.S. Department of the Treasury (Treasury) and the U.S. Department of Commerce (Commerce) published amendments to the Cuban Assets Control Regulations (CACR) and Export Administration Regulations (EAR) to implement the changes announced on December 17. The sanctions are administered by Treasury's Office of Foreign Assets Control (OFAC) and Commerce's Bureau of Industry and Security (BIS).

The measures will greatly facilitate travel to Cuba by Americans, raise the limits on the amount of money that can be sent to Cuba, allow U.S. financial institutions to open correspondent accounts with Cuban financial institutions, and provide for increased trade and commercial activities, primarily in telecommunications, financial services, and shipping. The Cuban embargo however, stays in place. The embargo itself can only be removed by an Act of Congress. The Treasury regulations are at 31 C.F.R. Part 515, while the Commerce regulations can be found at 15 C.F.R. Parts 730-774.

The major areas in the relevant changes are set forth below.

A. Travel

Travel that was previously allowed in 12 existing categories of authorized travel by specific license will no longer require a specific license, but will be authorized by a general license. This means that if one meets the conditions set forth in the regulations, they can travel to Cuba freely without getting specific approval from the government.

The twelve categories are:

(1) Family visits; (2) official business of the U.S. government, foreign governments and certain intergovernmental organizations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, workshops, athletic and other competitions, and exhibitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutes; (11) exportation, importation, or transmissions of information or information materials; and (12) certain authorized export transactions.

There are no longer any limitations on the amount of money that can be spent on authorized expenses or incidental to travel within Cuba, including payment of living expenses and acquisition of Cuban goods for personal consumption while in Cuba. Additionally, travelers will be able to use U.S. credit and debit cards in Cuba. Finally, travel agents and airlines will be authorized to provide travel and airline services without the need for a specific license from OFAC.

It is expected that it may take up to a year to establish regular airline service between the United States and Cuba. A number of charter carriers, however, already have a specific license to fly to Cuba, primarily from Miami. These are available to persons who now wish to go to Cuba.

While it is now possible to travel to Cuba without specific permission from OFAC, there are a number of precautions that a traveler must take. First, if there is any question whether one falls under the 12 previously approved categories, the regulations governing such travel must be studied in detail. If there is still uncertainty after this, a Request for Interpretive Guidance should be filed with OFAC. Otherwise, through inadvertence, one could be found to be in violation of the embargo and subject to severe penalties. Second, even for travel under a general license, a detailed journal should be kept of one's trip. This would include the date of travel, the purpose of the travel, where one went, with whom one met, and what was discussed at those meetings. These records must be kept and be available for inspection by government authorities upon request for a period of five years.

The relaxation of these regulations **DOES NOT** authorize tourist travel to Cuba. Such travel is still covered under the old regulations that require a specific license. This means that one cannot take spouses or friends along even for a trip allowed under a general license.

B. Insurance

U.S. insurers will be authorized to provide health, life, and travel insurance policies to persons who travel to Cuba.

C. Importation of Goods

U.S. travelers to Cuba will now be allowed to bring back \$400 worth of goods bought in Cuba for personal use. This includes \$100 of tobacco or alcohol products combined, e.g., Havana rum and Cuban cigars.

D. Telecommunications

The relaxed sanctions will now allow the establishment of commercial telecommunication facilities in Cuba, and between Cuba and third countries, under a new OFAC general license. Further, the commercial export of certain items that will allow the United States and the rest of the world to communicate better with the people in Cuba will be authorized by a new Commerce license exception, Support for Cuban People (SCP). This will include the commercial sales of certain consumer communication devices, related software, hardware, and services. Internet-based communications and incidental services will be authorized by OFAC general license. Commercial sales of consumer communication devices will also be allowed, including personal computers, mobile phones, televisions, recording devices, and consumer software, under Commerce's Consumer Communication Devices (CCD) license exception instead of under a specific license.

It is critical that anyone who is providing telecommunication services or goods, whether under the new general license, the SCP, or the CCD, consult both OFAC and the BIS regulations to see if the services and goods destined for Cuba are in fact covered by these new licenses. Failure to do so could result in severe penalties.

E. Financial Services

Banks will be permitted to open and maintain correspondent accounts with financial institutions in Cuba. U.S. financial institutions will be authorized to enroll merchants and process credit and debit card

transactions for travel-related and other transactions consistent with the CACR. These financial services will now allow payments to proceed in the ordinary course between the United States and Cuba. This will greatly facilitate the buying and selling of goods and services in Cuba.

F. Remittances

The remittances allowed to Cuban nationals will be increased under a general license from \$500 to \$2000 per quarter. Remittances to Cuban nationals for humanitarian projects or in support of private businesses are authorized by a general license without limitation. The humanitarian projects include the activities of recognized human rights organizations, independent organizations designed to promote a peaceful transition to democracy, and activities of the individuals and non-government organizations (NGOs) that promote independent activity intended to strengthen civil society in Cuba. Further, the remittances under this general license are allowed to support development of private businesses, including small farms.

Certain individuals associated with the Cuban government or the Cuban Communist Party are not eligible for these remittances. One must be certain to check OFAC's List of Specially Designated Nationals and Blocked Persons (SDN list), to make sure that persons or entities on the list are not given any remittances.

Authorized travelers will be allowed to bring with them to Cuba \$10,000 in total family remittances, remittances to religious organizations, and remittances to students in Cuba pursuant to an educational license. Banking institutions, including U.S. registered brokers, or dealers in securities will be permitted to process these authorized remittances without having to apply for a specific license.

G. Third-Country Effects

The current U.S. embargo not only prohibits the export of goods and services from the United States to Cuba, it also prohibits the re-export of U.S. goods and services from third countries to Cuba. The embargo prohibits U.S. persons from engaging in any trade with Cuba no matter where they are in the world. Therefore, the embargo covers much trade from third countries that do not have sanctions against Cuba.

The new regulations greatly relax these third-country restrictions of the embargo. U.S. owned or controlled companies in third countries, including banks, will now be authorized to provide goods and services to Cubans located outside of Cuba (the embargo extended to Cuban nationals no matter where located), provided the goods and services do not involve a commercial exportation of goods or services to or from Cuba. Further, OFAC will generally authorize the unblocking of accounts to Cuban nationals who have permanently relocated outside of Cuba. OFAC will also issue a general license that will authorize transactions related to third-country conferences that are attended by Cuban nationals. In addition, for the first time since the Cuban missile crisis, foreign vessels will be allowed to enter U.S. ports after stopping in Cuba or before going to Cuba.

H. Reopening the Embassy

The new relaxed sanctions will re-establish diplomatic relations with Cuba. To facilitate this process, OFAC will issue a general license that authorizes transactions with official Cuban missions and their employees in the United States. In addition, a general license will authorize transactions with Cuba for employees and contractors of the U.S. government, foreign governments, and international organizations.

I. Support for the Cuban People

SCP license exceptions will be eligible for shipping numerous goods and services to Cuba. The goods and services must be those that will (1) improve living conditions and support independent economic activity; (2) strengthen civil society; and (3) improve telecommunications. The types of goods and services that will be allowed include building materials, equipment, and tools to be used by the private sector to build or renovate privately owned buildings, including residences, businesses, churches, and recreational facilities. The SCP license exception also covers goods for private agricultural activity and goods, equipment, supplies, and instruments for private sector entrepreneurs. Donated items for use in scientific archeological, cultural, educational, historic preservation or sporting activities will also be allowed. The SCP will allow exports and re-exports to human rights organizations and NGOs that promote independent activity to strengthen society. Persons visiting Cuba will also be able to bring professional research items for their professional use. Likewise, the news media will be able to bring communication equipment as is necessary to enable them to report the news under this SCP license exception.

The relaxation of Cuba Sanctions creates significant business opportunities for U.S. persons, particularly in the telecommunications, construction, banking, and agriculture sectors. There are also significant opportunities for those involved in the travel sector and in the import/export business. Great care must be taken though, in navigating these somewhat arcane and ambiguous regulations to ensure total compliance with what is still the ongoing Cuba embargo.

Roetzel's attorneys are available to assist you with any questions regarding the operation of the relaxed sanction regime against Cuba and actions that your company may need to take in order to pursue expanded commercial and business opportunities in Cuba. Please contact the following Roetzel attorneys for further information:

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