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PERSPECTIVES

US GOVERNMENT IMPLEMENTS HISTORIC CHANGES TO CUBA SANCTIONS REGIME

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On 17 December 2014, president Obama announced historic US diplomatic and economic policy changes towards Cuba. The policy changes are designed to further “engage and empower” the Cuban people and focus primarily on travel, financial services, importation of goods, telecommunications, consumer communications devices, insurance, remittances, third-country effects, small business growth and support of the reestablishment of diplomatic relations. On 16 January 2015, regulatory changes implementing the US policy changes became effective. Specifically, amendments were made to the Cuban Assets

Control Regulations administered by the United States Department of the Treasury’s Office of Foreign Assets Control (OFAC) and the export administration regulations (EAR) administered by the United States Department of Commerce’s Bureau of Industry and Security. This article provides an overview of the key changes in OFAC’s amended Cuban assets control regulations (New Cuban Regulations).

Changes to the Cuban assets control regulations

Telecommunications and internet-based services. The New Cuban Regulations authorise



transactions incident to the provision of commercial telecommunications services linking third countries and Cuba and within Cuba. Specifically, a general licence now authorises transactions that are related to the establishment of facilities, including fibre-optic cable and satellite facilities, to provide telecommunications services. Telecommunications services may include data, telephone, internet connectivity, radio, television, news wire feeds and similar services.

Transactions relating to certain internet-based services are also authorised, including the exportation or re-exportation from the US, or by a US

person to Cuba, of services incident to the exchange of communications over the internet, services such as instant messaging, social networking, sharing of photos and movies, web browsing, blogging and domain registration services.

Financial services. Under the New Cuban Regulations, depository institutions are now permitted to open correspondent accounts at Cuban financial institutions, enabling the processing of authorised transactions. However, the establishment of accounts in the US or with a person subject to US jurisdiction by, on behalf of, or for the benefit of, Cuba or a Cuban national remains prohibited.

In addition, the New Cuban Regulations permit expanded financing options for authorised exports to Cuba by changing the definition of the term “payment of cash in advance” to “payment before the transfer of title to, and control of” the authorised export.

Remittances. The limit on generally authorised remittances to Cuban nationals has been raised to \$2000 in any three-month period. However, the recipient of such remittances must not be a prohibited official of the government of Cuba or a prohibited member of the Cuban communist party. Authorised travellers may now carry a total amount of \$10,000 in remittances. Remittances to certain individuals and independent non-governmental organisations in Cuba for certain purposes, including pro-democracy groups and civil society groups and their members, are authorised.

Furthermore, OFAC has expanded the general licence for US banking institutions, including registered brokers or dealers and registered money transmitters, to provide services in connection with the collection or forwarding of authorised remittances.

Travel and travel services. Transactions relating to 12 categories of travel to Cuba are authorised by general licences. These permitted categories of travel include family visits, official government

business, journalistic activity, professional research and 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

“One should be aware that many sanctions on Cuba remain in place, and OFAC will be aggressively enforcing those regulations.”

educational institutes, exportation, importation, or transmission of informational materials. Furthermore, travel agents and airlines will no longer be required to obtain a specific licence from OFAC in order to provide authorised travel and air carrier services. However, travel to Cuba for tourist activities continues to be prohibited.

Use of credit and debit cards, per diem and importation of goods. The use of US credit and debit cards in Cuba is now authorised for travel-related transactions. Transactions that are incidental to the processing and payment of credit and debit cards involving travel-related transactions are also

authorised. The previous per diem limitation on authorised travellers' spending in Cuba has been eliminated and there will be no specific dollar limit on authorised expenses. Authorised travellers will also be permitted to import up to \$400 worth of goods from Cuba, including up to \$100 of alcohol or tobacco products.

Small business growth. The general licence relating to humanitarian projects has been amended to authorise certain projects intended to facilitate the development of entrepreneurial skills and small business growth. Additionally, commercial imports of certain specified goods and services that are produced by independent Cuban entrepreneurs are now permitted. The list of specified goods and services will be determined and updated by the US Department of State and published on its website.

Transactions with Cuban nationals located outside Cuba. US owned or US controlled entities in third countries are now permitted to provide goods and services to a Cuban national located outside of Cuba, so long as that transaction does not involve a commercial exportation, directly or indirectly, of goods or services to or from Cuba. However, the export to Cuba of commodities produced in the authorised trade territory and re-export to Cuba of items of US origin are not authorised.

Persons subject to US jurisdiction are now authorised to sponsor and participate in third-country professional meetings and conferences attended by Cuban nationals, but such meetings

or conferences may not relate to tourism in Cuba. In addition, banking institutions are authorised to unblock accounts of Cuban nationals who have permanently relocated outside of Cuba.

Persons subject to US jurisdiction are still prohibited from engaging in transactions with respect to any merchandise outside the US if such merchandise is of Cuban-origin, has been located in or transported from Cuba, or is made or derived from Cuban-origin materials.

Diplomatic relations and official government business. The provision of goods or services in the US to the official missions of the government of Cuba, and their employees, for the conduct of official business is now authorised. In addition, a general licence covering Cuba-related transactions by employees, grantees and contractors of the US government, foreign government and certain international organisations in their official capacities has been expanded.

Recommendations

The changes in the New Cuban Regulations reflect a significant shift in US policy towards Cuba, and while they now permit US companies to engage in a wider range of business activities in Cuba, companies subject to US jurisdiction should exercise caution in re-entering Cuban markets. One should be aware that many sanctions on Cuba remain in place, and OFAC will be aggressively enforcing those regulations. US companies entering Cuban markets

should ensure that their particular business activities are permitted under the new regulations. In addition, while certain business activities are now permissible, US firms operating in Cuban markets must be cautious and ensure that transactions incidental to their primarily permitted activities in the country do not violate US sanctions prohibitions. **RC**

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