



International Trade & Regulatory ADVISORY ■

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Initial Rollback of U.S. Sanctions on Cuba Is Limited; Trade and Investment Remain Highly Restricted

Effective January 16, 2015, the U.S. government has issued amendments to the Cuban Assets Control Regulations (CACR), which serve as the basis for the U.S. embargo on Cuba. The U.S. Department of the Treasury clarified that, despite the new amendments, most transactions between the United States, or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited, and the Office of Foreign Assets Control (OFAC) continues to enforce the prohibitions of the CACR. These changes are targeted to further engage and empower the Cuban people by facilitating authorized travel to Cuba by U.S. persons, certain limited authorized commerce and the flow of information to, from and within Cuba. Business investment and trade with Cuba continue to be highly restricted under the amended U.S. sanctions. OFAC emphatically stresses that the U.S. trade embargo remains in place. The amended regulations provide slight liberalizations to restrictions governing noncommercial travel from the U.S. to Cuba, remittances to Cuba from the U.S. and people-to-people contact. U.S. industry may find new inroads to the Cuban market in the limited liberalizations provided in three areas—financial services, telecommunications services and export of limited categories of U.S. goods—but the amendments do not constitute a significant lifting of the embargo for most commercial transactions.

General License for Certain Travel to Cuba

OFAC has issued general licenses within the 12 categories of authorized travel for many travel-related transactions to, from or within Cuba that previously required a specific license (i.e., an application and a case-by-case determination). Travel-related transactions are permitted by general license for certain travel related to the following activities, subject to criteria and conditions in each general license: family visits; official business of the U.S. 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

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institutes; exportation, importation or transmission of information or information materials; and certain authorized export transactions. Persons subject to U.S. jurisdiction who wish to engage in any travel within the 12 categories of activities specified in the CACR that does not meet the requirements of a general license will need to apply for a specific license from OFAC. Tourism remains a prohibited reason for travel to Cuba.

Changes to Policy Regarding Remittances and Certain Financial Services

Remittances constitute a significant source of revenue for private Cuban citizens, and changes to U.S. policy are intended to increase the individual economic power of private Cubans. The limits on generally licensed periodic remittances that may be sent to a Cuban national, other than a prohibited official of the government of Cuba or a prohibited member of the Communist Party of Cuba, have been raised from \$500 per quarter to \$2,000 per quarter. Certain remittances to Cuban nationals for humanitarian projects, support for the Cuban people or development of private business are now generally authorized. The amount of authorized remittances travelers to Cuba may carry has been increased to \$10,000 per authorized trip. Other changes have been made to further expand private access to capital and to catalyze growth of privately owned businesses in Cuba:

- *Use of credit/debit cards in Cuba:* Authorized travelers to Cuba may now use credit or debit cards issued by U.S. financial institutions in Cuba. No per diem limitation applies. OFAC regulations do not require financial institutions or credit card companies to accept, maintain or facilitate authorized financial relationships or transactions in Cuba.
- *Processing remittances to Cuba:* Under the new general licenses, banking institutions as defined in 31 C.F.R. § 515.314, U.S.-registered brokers or dealers in securities and U.S.-registered money transmitters are permitted to process authorized remittances to Cuba without having to obtain a specific license, subject to the quarterly limits on individuals and the recordkeeping and reporting requirements set forth therein.
- *Correspondent accounts authorized:* U.S. depository institutions, as defined in 31 C.F.R. § 515.533, which include certain financial institutions other than banks, are permitted to open correspondent accounts at Cuban banks located in Cuba and in third countries, and at foreign banks located in Cuba, but Cuban banks are not generally licensed to open such accounts at U.S. banks. Moreover, correspondent accounts may only be used for transactions authorized under the CACR.
- *Wire transfers authorized:* OFAC has issued a new general license that authorizes U.S. depository institutions to reject (as opposed to blocking) funds transfers originating and terminating outside the United States when neither the originator nor the beneficiary is a person subject to U.S. jurisdiction, provided that certain prohibited Cuban individuals do not have an interest in the transfer. U.S. depository institutions are authorized to process such funds transfers that would be authorized pursuant to the CACR if the originator or beneficiary were a person subject to U.S. jurisdiction.

OFAC and other U.S. agencies' history of robust enforcement of financial sector sanctions against U.S. and foreign banks will likely result in a cautious approach by financial institutions to the new, partial liberalization of restrictions on financial services with Cuba. Further, the significant presence of state-owned entities in the Cuban market may raise new compliance problems for banks interested in developing the Cuban market.

Telecommunications Liberalizations

OFAC has issued an expanded general license which, subject to appropriate conditions, generally authorizes transactions that establish mechanisms to provide commercial telecommunications services in Cuba or linking third countries and Cuba. Transactions, including payments, incident to the establishment of facilities, including fiber-optic cable and satellite facilities, and to provide telecommunications services linking the United States or third countries and Cuba, including facilities to provide telecommunications services in Cuba, are authorized.

OFAC has also updated the general licenses authorizing telecommunications-related transactions, including payments related to the provision of telecommunications involving Cuba or provided to Cuban individuals. Pursuant to this provision, U.S. persons may, for example, purchase calling cards for people to use in Cuba and/or may pay the bills of such people directly to a telecommunications operator located in Cuba, such as ETECSA. These steps to facilitate improved access to telecommunications services for Cubans and increased international connections are intended to increase the ability of the Cuban people to communicate freely and to better provide for efficient and adequate telecommunications services between the United States and Cuba.

Persons subject to U.S. jurisdiction also may provide additional services incident to Internet-based communications and related to certain authorized exportations and reexportations of communications items. The range of such services has been expanded to coincide with simultaneous changes to Commerce Department regulations, and such services can now be provided for a fee to certain end users. For example, transactions incident to providing fee-based Internet communications services such as email or other messaging platforms, social networking, VoIP, web hosting or domain name registration are now authorized in most circumstances. Services related to many kinds of software (including applications) used on personal computers, cell phones and other personal communications devices are also authorized, along with other services related to the use of such devices. Finally, services such as cloud storage, software design, business consulting and the provision of IT management and support related to use of hardware and software exported or reexported to Cuba pursuant to the Commerce Department's Consumer Communications Device authorization (see below) is permitted.

Export of U.S. Origin Goods Authorized in Limited Fashion Through New License Exceptions

Persons subject to U.S. jurisdiction continue to be prohibited from doing business or investing in Cuba unless licensed by OFAC. An OFAC general license authorizes the exportation from the United States, and the reexportation of 100 percent U.S.-origin items from third countries, to Cuba only in those cases the exportation or reexportation is licensed or otherwise authorized by the Commerce Department. The Commerce Department currently authorizes limited categories of items to be exported or reexported to Cuba and, effective January 16, 2015, has issued an expansion of allowable exports to Cuba under these strict conditions under new categories of license exceptions.

- *License exception SCP (support for the Cuban people)*: authorizes the export or reexport to Cuba of items designated as EAR99 or controlled on the Commerce Control List (CCL) (Supplement No. 1 to Part 774

of the Export Administration Regulations (EAR)) only for antiterrorism reasons (i.e., anti-terrorism must be the only reason for control that applies to the item as set forth in the Export Control Classification Number (ECCN) that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this exception. The item may be either for commercial sale or donated. The item must be within one or more of the following categories:

- (1) Building materials, equipment and tools for use by the private sector to construct or renovate *privately-owned* buildings, including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use;
- (2) Tools and equipment for private sector agricultural activity; or
- (3) Tools, equipment, supplies and instruments for use by private sector entrepreneurs.

License exception SCP also provides for the export or reexport to Cuba of *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation or sporting activities and creates restrictions on the types of items allowed for such noncommercial purposes.

- *License exception CCD (consumer communications devices)*: authorizes the export of certain commodities and software for consumer use in Cuba. This exception does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign-produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 C.F.R. § 515.559. The following items are eligible for licensed export:

- (1) Consumer computers classified under ECCN 5A992.c or 4A994.b or designated EAR99;
- (2) Consumer disk drives and solid state storage equipment classified under ECCN 5A992 or designated EAR99;
- (3) Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;
- (4) Graphics accelerators and graphics coprocessors designated EAR99;
- (5) Monitors classified under ECCN 5A992.c or designated EAR99;
- (6) Printers classified under ECCN 5A992.c or designated EAR99;
- (7) Modems classified under ECCN 5A991.b.2, 5A991.b.4. or 5A992.c or designated EAR99;
- (8) Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;
- (9) Keyboards, mice and similar devices designated EAR99;

- (10) Mobile phones, including cellular and satellite telephones, personal digital assistants and subscriber information module (SIM) cards and similar devices classified under ECCN 5A992.c or 5A991 or designated EAR99;
- (11) Memory devices classified under ECCN 5A992.c or designated EAR99;
- (12) Consumer "information security" equipment, "software" (except "encryption source code") and peripherals classified under ECCN 5A992.c or 5D992.c or designated EAR99;
- (13) Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;
- (14) Television and radio receivers classified under ECCN 5A992 or designated EAR99;
- (15) Recording devices classified under ECCN 5A992 or designated EAR99;
- (16) Batteries, chargers, carrying cases and accessories for the equipment described in this list designated EAR99; and
- (17) Consumer "software" (except "encryption source code") classified under ECCN 4D994, 5D991 or 5D992.c or designated EAR99 to be used for equipment described in this list.

Transactions by U.S.-Owned or -Controlled Firms in Third Countries with Certain Cuban Nationals

Any U.S.-owned or -controlled partnership, association, corporation or other organization in a third country is authorized to provide goods and services to a Cuban national who is an individual located outside of Cuba, provided that the transaction does not involve a commercial exportation, directly or indirectly, of goods or services to or from Cuba. This change does not authorize U.S.-owned or -controlled firms in third countries to reexport U.S.-origin items to Cuba, nor does it authorize any transaction prohibited by 31 C.F.R. § 515.204, including the purchase or sale of Cuban-origin goods.

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