

OFAC and BIS Ease Cuba Restrictions With New Amendments

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On January 27, 2016, the Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Department of Commerce's Bureau of Industry and Security (BIS) further eased U.S. sanctions and export control regulations applicable to Cuba. This is the third round of amendments to OFAC's Cuban Assets Control Regulations (CACR) and BIS' Export Administration Regulations (EAR) to implement the Cuba policy shift that President Barack Obama announced in December 2014. This round builds on the prior amendments in September 2015 (see client alert "[OFAC and BIS Further Ease Cuba Restrictions](#)," Sept. 29, 2015) and January 2015 (see client alert "[OFAC and BIS Implement Changes in Cuba Policy](#)," Jan. 20, 2015).

The most recent amendments promote the free flow of information between Americans and Cubans, ease terms of authorized trade, and encourage economic advancement by the Cuban people. Broadly, they simplify nonagricultural export trade financing; liberalize BIS export licensing policy with respect to certain items; ease certain restrictions relating to travel and transportation; expand the general license for transactions relating to media production and dissemination; permit travel and transactions relating to certain meetings, events, exhibitions, and competitions; and deem disaster preparedness and response an authorized humanitarian project.

Despite these changes, most elements of the U.S. embargo on Cuba remain in place, and most transactions involving Cuba by U.S. persons (and their overseas subsidiaries) and non-U.S. companies whose activities are subject to U.S. jurisdiction continue to be prohibited. Even in areas where sanctions and export controls have been eased, those relying on an OFAC general license or BIS license exception may need to meet certain conditions. Companies should therefore continue to act with significant caution in business and other dealings that involve Cuba. As with the 2015 changes, the latest amendments should be viewed as an incremental easing. Both OFAC and BIS are expected to enforce all of the restrictions that remain in place.

Key changes implemented by this most recent round of amendments are highlighted below.

Nonagricultural Export Trade Financing

OFAC has removed the financing and payment limitations for exports from the United States and re-exports of 100 percent U.S.-origin items from a third country, provided that the exports or re-exports are licensed or authorized by BIS and are not agricultural items or commodities. Previously, nonagricultural exports from the United States had to be prepaid in cash or financed through a third country. The existing financing and payment limitations remain in place for exports of agricultural items or commodities and are not expected to change in the near term, as OFAC is currently required by statute to maintain them.

Export Licensing for Telecommunications Items, Civil Aviation Items and Other Items

BIS has changed its licensing policy for exports to Cuba of certain telecommunications items and items for civil aviation. BIS will now generally approve export applications, where previously, BIS considered such applications on a case-by-case basis. BIS will also now consider licenses for exports that "meet the needs of the Cuban people" on a case-by-case basis, rather than generally deny export licenses. Such exports include equipment for agricultural production, artistic endeavors, education, disaster preparedness, public health, residential construction and public transportation. Also included in the new "case-by-case" licensing policy are exports and re-exports of items for use in construction of facilities for treating public water supplies, facilities for supplying

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electricity or other energy to the Cuban people, sports and recreation facilities, and other infrastructure that will directly benefit the Cuban people. Exports and re-exports to wholesalers and retailers of items for domestic consumption by the Cuban people also fall under that policy. Companies seeking to apply for such licenses must be prepared to demonstrate that the items in question will be used in Cuba in a manner consistent with the policy. BIS will still generally deny applications to export or re-export items to Cuba's military, police and intelligence services, as well as to Cuban state-owned enterprises that primarily generate revenue for the state, including those in the tourism industry and those engaged in the extraction or production of minerals or other raw materials.

Travel to Cuba and Related Services

Professional Meetings and Conferences. OFAC has expanded the existing authorization for travel-related and other transactions with respect to professional meetings and conferences in Cuba to include the organization of such events. OFAC had previously only authorized attendance at such professional meetings or conferences.

Professional Performances and Workshops. OFAC has similarly expanded the authorization for travel-related and other transactions directly incident to certain public performances, clinics, workshops, and athletic and nonathletic competitions to include the organization of these events. The event must be open to attendance (and, if relevant, participation) by the Cuban public. OFAC also eliminated the requirement that U.S. profits from the event be donated and that the clinics or workshops be organized and run, at least in part, by the authorized traveler.

Informational Materials, Including Media and Art. OFAC has expanded its general license authorizing travel-related and other transactions directly incident to export, import or transmission of informational materials to include professional media or artistic productions in Cuba. This authorization extends to the filming or production of media programs, such as movies and television programs, the recording of music and the creation of artwork in Cuba. OFAC also has authorized transactions relating to the creation and dissemination of informational materials, including employment of Cuban nationals in connection with such transactions.

Air Carrier Services. OFAC's regulations previously allowed for persons subject to U.S. jurisdiction to provide air carrier services for authorized travel or transportation between the United States and Cuba. The new amendments facilitate the provision of air carrier services by authorizing the entry into blocked space, code-sharing and leasing arrangements, including the entry into such arrangements with a Cuban national.

Temporary Sojourn. OFAC has authorized additional travel-related and other transactions directly incident to facilitating the temporary sojourn of aircraft and vessels as authorized by BIS for travel between the United States and Cuba. The authorization extends to certain personnel required for operation of and service on board a vessel or aircraft, including a vessel in port or an aircraft on the ground.

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