

CLIENT MEMORANDUM

President Trump Orders Regulatory Amendments to Tighten Sanctions on Cuba

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On June 16, 2017, President Trump announced a change of policy to tighten sanctions against Cuba. The changes will reverse some, but not all, of the regulatory changes made by the Obama administration to loosen restrictions on trade and travel with the island. President Trump announced that his administration's policy toward Cuba is intended to improve human rights, encourage the rule of law, foster free markets and free enterprise, promote democracy in Cuba and prevent economic activities that "disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people."

The White House memorandum with instructions to agency heads is [here](#). The White House also issued a fact sheet, available [here](#), and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued a set of Frequently Asked Questions, available [here](#).

President Trump ordered OFAC and the Department of Commerce to initiate the process of amending their Cuba regulations within 30 days. However, the agencies are not required to actually change their regulations in that time frame. None of the changes will go into effect until draft regulations have been issued, which could take several months.

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Transactions Involving Cuba's Military, Intelligence, or Security Services or Personnel

The new restrictions will generally prohibit any transactions by persons subject to U.S. jurisdiction involving certain entities that are controlled by or act for or on behalf of the Cuban military intelligence, or security services or personnel. The White House memorandum specifically identifies Grupo de Administración Empresarial ("GAESA") as such a group. GAESA is heavily involved in Cuba's economy, particularly in the tourism and hospitality sectors. The Administration contends that direct financial transactions with GAESA and other such entities disproportionately benefit these entities at the expense of the Cuban people or private enterprise in Cuba.

The U.S. Department of State is to publish a list of Cuban military intelligence, and security services entities. OFAC will then prohibit direct financial transactions by persons subject to U.S. jurisdiction with entities on this list.

The policy memorandum issued by the White House states that the regulatory changes will not prohibit transactions that are consistent with the administration's policy on Cuba, including transactions that:

- concern federal government operations, including Naval Station Guantanamo Bay and the United States Mission in Havana;
- support programs to build democracy in Cuba;
- concern air and sea operations that support permissible travel, cargo, or trade;
- support the acquisition of visas for permissible travel;
- support the expansion of direct telecommunications and Internet access for the Cuban people;
- support the sale of agricultural commodities, medicines, and medical devices sold to Cuba consistent with existing regulations;
- relate to sending, processing, or receiving authorized remittances;
- otherwise further the national security or foreign policy interests of the United States; or
- are required by law.

It appears, therefore, that subject to the exceptions noted above, the new restrictions on transactions with GAESA and other such groups will operate as an additional limitation on transactions by persons subject to U.S. jurisdiction that could otherwise be authorized under the OFAC or Commerce Department regulations.

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Restrictions Involving Travel

The President's policy also calls for a partial reversal of the Obama administration's relaxation of restrictions on travel to Cuba by persons subject to U.S. jurisdiction, specifically for individual people-to-people travel. Individual people-to-people travel will no longer be authorized. Group travel for people-to-people exchanges and educational activities will remain permitted, but the group must maintain a full-time schedule of educational exchange activities and travelers must be accompanied by a representative of the organization that sponsors such exchanges. All travelers must keep accurate records to establish that their travel was for purposes permitted by the regulations. Furthermore, the Departments of State, Commerce, and Treasury have been instructed to conduct a review of their enforcement of all categories of permitted travel.

Conclusion

OFAC has advised that any commercial engagement or travel-related arrangements that include direct transactions with targeted military, intelligence, or security services entities will continue to be permitted, provided that the engagements were in place, or the travel-related arrangements were initiated, prior to the issuance of the amended regulations. Nevertheless, it is important to be aware of the current and forthcoming enhanced restrictions and to proceed cautiously with any transactions involving Cuba.

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