

CLIENT MEMORANDUM

President's Historic Trip to Cuba Accompanied by Further Changes to Cuba Sanctions Regulations

March 22, 2016

AUTHORS

David Mortlock | **Miriam A. Bishop** | **Sarah Naseem**

Ahead of President Obama's historic trip to Cuba, the Administration announced a range of significant new measures to further alleviate the U.S. trade embargo on Cuba. On March 15, 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") amended the Cuban Assets Control Regulations ("CACR") and the Export Administration Regulations ("EAR"), respectively, effective March 16, 2016. This was the fourth round of changes to the CACR and EAR since President Obama announced in December 2014 his intention to ease restrictions against Cuba in order to engage and empower the Cuban people.

The latest amendments, summarized below, provide additional opportunities for economic and people-to-people engagement between the United States and Cuba. However, most restrictions on commercial activity between the United States and Cuba remain in place, and U.S. companies should continue to carefully examine the remaining limitations of the CACR and EAR when considering business transactions involving Cuba.

Financial Transactions

General licenses for U.S. banking institutions will give the Cuban financial system significant access to U.S. banking and to U.S. dollar transactions.

President's Historic Trip to Cuba Accompanied by Further Changes to Cuba Sanctions Regulations

Continued

- **U-Turn Transactions.** U.S. banking institutions may now process “U-turn” transactions involving Cuba or a Cuban national. This means that a U.S. bank may process a transaction originating outside the United States and transfer funds to a second bank outside the United States, where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.
- **U.S. Dollar Transactions.** U.S. banking institutions may also process U.S. dollar transactions presented indirectly from Cuban financial institutions, including dollar transactions through third-country correspondent accounts or travelers checks.
- **U.S. Accounts for Cuban Nationals.** U.S. banks may open and maintain bank accounts in the United States for Cuban nationals in Cuba with the authorization to receive payments in the United States for authorized or exempt transactions and to remit them to Cuba.

Trade and Commerce

- **Business Presence in Cuba.** OFAC expanded the existing authorization for U.S. persons to establish a “business presence” in Cuba (such as a joint venture), which has been effective since September 2015, to facilitate authorized transactions. Those that may establish a business presence in Cuba now include exporters of goods that are authorized for export and re-export to Cuba or that are exempt, entities providing mail or parcel transmission services or cargo transportation services, and providers of carrier and travel services.
- **Physical Presence in Cuba.** OFAC also expanded the existing authorization for a “physical presence” in Cuba (such as an office, retail outlet or warehouse), also effective since September 2015, to include entities that engage in authorized humanitarian projects, authorized non-commercial activities intended to provide support for the Cuban people, and private foundations or research or educational institutes.

BIS made conforming changes to the EAR to generally authorize exports and re-exports of eligible items to establish and maintain a physical or business presence that is authorized by OFAC.

- **Importation of Software.** OFAC also expanded the existing authorization for the importation of Cuban-origin mobile applications. U.S. companies can now import any Cuban-origin software.
- **Facilitating Exports from Cuba and Transit of Cargo.** BIS has adopted a licensing policy of case-by-case review for exports and re-exports of items that would enable or facilitate exports from Cuba of items produced by the Cuban private sector. However, this policy does not apply to exports or re-exports from the Cuban government or state-owned enterprises. In addition, BIS has authorized vessels to transship goods on-loaded in the United States through Cuba during a temporary sojourn (short stay) in Cuba, so long as the cargo departs with the vessel at the end of its stay, does not enter the Cuban economy and is not transferred to another vessel while in Cuba.

.....

President's Historic Trip to Cuba Accompanied by Further Changes to Cuba Sanctions Regulations

Continued

Travel

Since 2015, OFAC has significantly expanded the ability of U.S. persons to travel to Cuba by generally authorizing 12 categories of travel to Cuba, including professional research and professional meetings, educational activities, and the exportation or importation of informational materials.

- **Individual People-to-People Travel.** The recent amendments expand permissible people-to-people educational travel, by eliminating the previous requirement that such trips take place under the auspices of an organization that was subject to U.S. jurisdiction and the requirement that all travelers be accompanied by a representative of the sponsoring organization. Individuals may now organize their own travel provided the traveler engages in a full-time schedule of educational exchange activities and retains records related to the authorized travel transactions.

The statutory ban on travel for tourist activities remains in place.

- **Dealing in Cuban-Origin Merchandise in Third Countries.** OFAC also authorized dealings in Cuban-origin merchandise for personal consumption in third countries, such as the consumption of Cuban-origin alcohol and tobacco products by Americans traveling abroad.
- **Hiring Cuban Nationals in the United States.** U.S. companies are now authorized to sponsor or hire Cuban nationals in the United States to work, consistent with the terms of their non-immigrant visas. U.S. companies may sponsor or hire Cuban nationals to work or perform in the United States, provided that the recipient is not subject to any special tax assessments in Cuba and provided further that no additional payments are made to the Cuban government in connection with such sponsorship or hiring.

If you have any questions regarding this memorandum, please contact David Mortlock (202-303-1136; dmortlock@willkie.com), Miriam A. Bishop (202-303-1126; mbishop@willkie.com), Sarah Naseem (202-303-1290; snaseem@willkie.com) or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

March 22, 2016

Copyright © 2016 Willkie Farr & Gallagher LLP.

This memorandum is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum may be considered advertising under applicable state laws.

.....

WILLKIE FARR & GALLAGHER_{LLP}