

CLIENT ALERT

## BIS and OFAC Cuban Regulations Amended March 16: Expanded Authorization for Banking, Shipping, and other Transactions

MARCH 21, 2016

On March 16, 2016, the Department of the Treasury's Office of Foreign Assets Control (OFAC) further amended the Cuban Assets Control Regulations (the CACR) and the Department of Commerce's Bureau of Industry and Security (BIS) further amended the Export Administration Regulations (EAR).

These amendments are the latest in a series of amendments following President Obama's announcement in December 2014 of the United States' new foreign policy toward Cuba. A discussion of prior amendments can be found [here](#).

Highlights from the amendments are described below.

### Banking and Financial Services

Banking institutions are now authorized to process "U-turn" transactions in which a Cuban national, or Cuba, has an interest. This allows funds to be transferred from a bank outside of the United States, passing through a financial institution inside the United States, to another non-U.S. bank – so long as neither the originator nor the beneficiary is subject to U.S. jurisdiction. U.S. banking institutions also are permitted to process U.S. dollar monetary instruments indirectly from Cuban financial institutions. These instruments include cash and travelers' checks.

Additionally, banks in the United States are authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba, into which accounts the Cuban nationals may receive payments for authorized or exempt transactions under the Cuba regulations.

### Shipping to Cuba

BIS has made it easier for vessels to transport authorized cargo that is loaded in the United States to Cuba and continue on to other countries with the remaining cargo. Specifically, BIS has amended License Exception Aircraft, Vessels and Spacecraft (AVS) so that the License Exception includes the transit through Cuban territory of cargo, laden aboard a vessel on temporary sojourn to Cuba, that is destined for other countries. Previously BIS required shippers to obtain a license for that cargo to transit Cuban territory. Use of the License Exception requires that such

cargo departs with the vessel at the end of its temporary sojourn, does not enter the Cuban economy, and is not transferred to another vessel while in Cuba.

## Non-Immigrant Cuban Nationals in the United States

Under the amended regulations, non-immigrant Cuban nationals in the United States are permitted to earn a salary or compensation, consistent with their visas, so long as they are not subject to special tax assessments in Cuba. As with nationals from other countries, U.S. companies may engage in transactions connected to the hiring of Cuban nationals to work in the United States, provided that no additional payments are made to the Cuban government in connection with the sponsorship or hiring. So, Cuban athletes, artists, performers, and others will be able to travel, subject to a visa, to the United States and earn salaries without being required to renounce their Cuban citizenship.

In addition, sponsoring organizations may make educational grants, scholarships, and awards to Cuban nationals. This includes teachers, professors, and students.

## Trade and Presence in Cuba

The authorization for a physical presence in Cuba is expanded to include:

- Entities engaging in authorized humanitarian projects;
- Entities engaging in authorized non-commercial activities providing support for the Cuban people; and
- Private foundations, research institutes, or educational institutes engaging in support for the Cuban people, humanitarian projects, or other authorized projects by such organizations.

Additionally, the authorization for business presence is expanded to include:

- Exporters of exempt goods or goods authorized for export or reexport;
- Entities providing mail or parcel services or cargo transportation services; and
- Providers of carrier and travel services facilitating authorized transactions.

The changes amend License Exception Support for the Cuban People (SCP) to authorize export or reexport of EAR99<sup>1</sup> items and items controlled on the Commerce Control List only for anti-terrorism reasons for use by persons authorized to establish and maintain a physical or business presence in Cuba by OFAC.<sup>2</sup>

BIS has adopted a policy of case-by-case review for exports and reexports of items that would enable the export of Cuban-private-sector-produced items.

## Travel and Related Transactions

The regulations expand authorized people-to-people educational travel. Tourist travel to Cuba is still prohibited. Transactions involving certain Cuban-origin merchandise for personal consumption in a third country is now authorized. Of note, this amendment permits Americans traveling abroad to purchase and consume Cuban tobacco products while abroad.

## Conclusion

The CACR amendments and EAR amendments continue to expand the opportunities for transactions with Cuban entities and nationals. Financial institutions may, with proper diligence, expand services provided directly and indirectly to Cuban nationals. Shipping companies that bring cargo to Cuba will find it less burdensome to comply with export regulatory requirements. Opportunities for companies interested in engaging Cuban nationals in the

United States may expand greatly now that such persons are allowed to earn compensation in the United States without declaring themselves immigrants and renouncing Cuban citizenship.

The Cuba sanctions and export regulations, however, continue to be complex. Sound legal counsel may be needed to navigate developing business opportunities through this changing regulatory landscape.

<sup>1</sup> Items that fall under the jurisdiction of the Commerce Department but are not listed in the Commerce Control List, 15 C.F.R. Part 774 Supp. No. 1, are designated “EAR99.” Most commercial products are designated “EAR99.”

<sup>2</sup> Specifically, the regulations reference persons authorized by OFAC pursuant to 31 C.F.R. § 515.573 or pursuant to a specific license issued by OFAC.

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