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## Trump Announces Cuba Policy Targeting Commercial Dealings With Cuban Military

After much anticipation, on June 16, 2017, President Trump announced changes to U.S. policy under the existing embargo against Cuba, which reinstate some pre-Obama restrictions. The changes are relatively minor and are not expected to significantly impact most of the Obama administration's relaxation in Cuba policy. It remains to be seen exactly how the policy will be implemented through regulatory revisions, but it is clear the changes do not become effective until the revised regulations are issued, which is not expected for a few months.

The policy changes are expected to be implemented primarily by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) under its Cuban Assets Control Regulations (CACR). To the extent U.S. export control laws will be impacted (and it is not clear whether or how they will), the U.S. Department of Commerce will issue revisions to the Export Administration Regulations (EAR).

Additionally, the U.S. Department of State will be responsible for publishing a "list of entities with which direct transactions by U.S. persons generally will not be permitted," according to OFAC's FAQs published on June 16, 2017. It will be interesting to see how OFAC defines or interprets "direct transactions," as OFAC sanctions restrictions normally prohibit all dealings, direct and indirect, with proscribed entities.

***The complexity of Cuban government corporation ownership structures and business relationships may challenge even the best due diligence and compliance programs to determine whether certain relationships and transactions are permissible.***

Furthermore, the State Department has numerous senior level policy positions open. This is likely to impact the ability of the State Department to generate and publish the list for some time, which is likely to further delay the implementation of the revised regulations regarding Cuba.

## Policy Objective

In his announcement, President Trump stated that the policy changes were designed to target the Cuban military, intelligence, and security agencies, which ultimately own, control, and benefit from much of Cuba's tourism industry, and better position the United States to negotiate improved human rights conditions in Cuba (including the release of political prisoners, the legalization of political parties, and the establishment of free and internationally-supervised elections). Trump emphasized that the policy will be to enforce the embargo, enforce the ban on tourist travel, and to direct investments and benefits to the Cuban people as opposed to Cuban agencies, particularly the military, intelligence, and security outfits.

## What Doesn't Change?

Notably, U.S. diplomatic relations with Cuba remain intact, the U.S. embassy will remain in operation, and no significant changes to any of the Obama-era travel general license provisions are expected, with a few exceptions noted below. Remittances from Cubans in the United States will continue to be allowed as they first were under President Obama. The Obama Administration's elimination of the controversial "wet foot, dry foot" policy for Cuban immigrants also remains in effect. U.S. travelers will still be permitted to engage in authorized travel to Cuba by cruise ship or passenger vessel, and to travel and book airline tickets directly with airlines. Also, no changes are anticipated to what authorized U.S. travelers are permitted to bring with them on return to the United States. No mention has been made of reinstating Cuba to the list of State Sponsors of Terrorism, so we anticipate it will not be.

***Importantly, FAQs issued by OFAC indicate that the expected regulations will be prospective and will not affect existing contracts and licenses.***

Additionally, FAQs issued by OFAC indicate that "direct transactions with entities related to the Cuban military, intelligence, or security services that may be implicated by the new policy will be permitted provided those commercial engagements were in place prior to issuance of the forthcoming regulations." It remains to be seen whether this will be interpreted by OFAC to include not only engagements involving executed contracts, but also less formal arrangements like letters of intent and memoranda of understanding.

## Impact on Tourism and Travel to Cuba

The U.S. embargo has always prohibited U.S. tourist travel to Cuba. Only certain authorized categories of travel are permissible. Prior to January 16, 2015 authorized travel required advance specific licenses from OFAC. The Obama administration retained the 12 authorized categories of travel, but relaxed them to become self-certifying (if a traveler met the criteria for a category he or she could self-certify) as opposed to requiring an OFAC specific license in advance of travel.

***The only subcategory of travel that is eliminated under the Trump policy is so-called individual "people-to-people" educational travel.***

This provision has been one frequently used (or abused in some cases) by U.S. travelers who otherwise lack legitimate business, educational, professional or humanitarian reasons to visit Cuba under the 12 authorized travel categories. Group people-to-people travel remains permissible provided it satisfies the criteria provided in the CACR.

Notably, the new policy prohibits U.S. travelers from using any services run or controlled by the Cuban military, as through Grupo de Administración Empresarial S.A. (GAESA). Though counterintuitive, many of the better hotels in Cuba are owned and/or controlled (either directly or through joint ventures) by GAESA. It will be important for authorized U.S. travelers to carefully review the State Department's list of prohibited Cuban entities and plan accordingly when booking room accommodations in Cuba. Depending upon the level of detail of the State Department list and OFAC's implementing regulations, it could be either a straightforward or rather opaque process to determine whether proposed dealings in Cuba might involve proscribed entities.

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This *GT Alert* was prepared by **Kara M. Bombach, Yosbel A. Ibarra, Cyril T. Brennan, and Osvaldo Miranda<sup>‡</sup>**. Questions about this information can be directed to:

- > [Kara M. Bombach](#) | +1 202.533.2334 | [bombachk@gtlaw.com](mailto:bombachk@gtlaw.com)
- > [Yosbel A. Ibarra](#) | +1 305.579.0706 | [ibarray@gtlaw.com](mailto:ibarray@gtlaw.com)
- > [Renee A. Latour<sup>‡</sup>](#) | +1 202.533.2358 | [latourr@gtlaw.com](mailto:latourr@gtlaw.com)
- > [Cyril T. Brennan](#) | +1 202.533.2342 | [brennanct@gtlaw.com](mailto:brennanct@gtlaw.com)
- > [Carl A. Fornaris](#) | +1 305.579.0626 | [fornarisc@gtlaw.com](mailto:fornarisc@gtlaw.com)
- > [David Baron](#) | +1 202.331.3165 | [barond@gtlaw.com](mailto:barond@gtlaw.com)
- > [Michael X. Marinelli<sup>‡</sup>](#) | +1 512.320.7236 | [marinellimx@gtlaw.com](mailto:marinellimx@gtlaw.com)
- > [Sandra D. Gonzalez](#) | +1 512.320.7234 | [gonzalezsd@gtlaw.com](mailto:gonzalezsd@gtlaw.com)
- > [Osvaldo Miranda<sup>‡</sup>](#) | +1 305.579.0599 | [mirandao@gtlaw.com](mailto:mirandao@gtlaw.com)

<sup>‡</sup>Admitted to practice only in Virginia. Practice in the District of Columbia limited to matters and proceedings before federal courts and agencies.

<sup>‡</sup>Not licensed to practice in the State of Texas.

<sup>‡</sup>Admitted to the practice of law in Cuba.

<b>Albany</b> +1 518.689.1400	<b>Delaware</b> +1 302.661.7000	<b>New York</b> +1 212.801.9200	<b>Silicon Valley</b> +1 650.328.8500
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