



September 2015

## **U.S. Allows Additional Trade and Business with Cuba**

*Amendments Implement Additional Changes Laid Out by President Obama on Dec. 17, 2014*

On Sept. 21, 2015, the U.S. Government further amended the existing Cuba-related regulations to allow for certain additional types of travel and the establishment of physical business premises in Cuba. The amendments also remove certain restrictions on remittances, financial transactions, and exports to Cuba.

The regulations are effective immediately upon publication on Sept. 21, 2015, and serve to further implement President Obama's Dec. 17, 2014 announcement of a policy change with respect to Cuba, which included the official opening of the U.S. Embassy in Havana on Aug. 14, 2015.

While the amended regulations will expand business and other transactions in which U.S. persons can engage with Cuba, the United States nevertheless maintains a nearly comprehensive embargo on trade with Cuba. U.S. persons are reminded that they may only engage in transactions that are licensed or otherwise specifically authorized.

### **Summary of the Amendments**

The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) has implemented new measures in the following areas, among others:

#### **1. Continued Easing of Travel Restrictions**

The amended regulations ease travel to Cuba for authorized purposes, specifically by authorizing U.S. persons to provide carrier services by vessel (e.g., cruise ships) without the need for specific licenses, and allowing authorized travelers to open, maintain, and close bank accounts in Cuba.

Despite these changes, tourism-related travel is still not permissible so travel to Cuba by U.S. persons continues to be restricted to authorized travel categories only. U.S. persons should take note that, while certain authorized travel categories appear broad (e.g., travel related to “support for the Cuban people”), specific requirements apply to each permitted category of travel.

## **2. Permitting the Establishment of a Physical Presence in Cuba**

Under the new measures a U.S. person engaging in certain categories of authorized activities is permitted to establish a physical presence in Cuba, including an office or warehouse. Business sectors authorized include: news bureaus, exporters of goods authorized for export, mail and parcel service providers, telecommunications and Internet-based service providers, entities organizing or conducting certain educational activities, religious organizations, and travel and carrier service providers. In connection with such physical presence, U.S. persons will be allowed to employ Cuban nationals, open and maintain bank accounts in Cuba, employ U.S. persons in Cuba, and export and re-export certain items for use in establishing or maintaining the physical presence.

## **3. Expanding Telecommunications and Internet-based Services, Including Software Development in Cuba**

The new measures expand general licenses for telecommunications and Internet-based services, including authorizing certain U.S. persons to establish a business presence in Cuba for the purpose of providing authorized telecommunications and Internet-based services.

Additionally, OFAC authorized the import of mobile-applications from Cuba into the United States, as well as the employment of Cuban nationals by U.S. persons to develop such applications.

## **4. Transactions with Cuban Nationals Located Outside Cuba**

Provision of goods by U.S. persons to Cuban nationals located outside of Cuba is authorized, as long as no commercial export of goods or services to or from Cuba takes place. Further, Cuban nationals outside of Cuba may open, maintain, and close accounts at banking institutions.

## **5. Remittances**

Limits on remittances to Cuban nationals are removed entirely, and remittances that had been previously blocked may be unblocked and returned.

## **6. Exports and Re-exports to Cuba**

The U.S. Department of Commerce (Commerce) implemented new measures revising three existing license exceptions and two licensing policies with respect to Cuba. Prior to these amendments, the export or re-exports of these items to Cuba generally required a license from Commerce.

### **a) License Exception Support for the Cuban People (SCP)**

Commerce has expanded License Exception SCP to include several additional authorizations, including the following:

1. Export and re-export of leased or loaned items along with export or re-export of sales and donations.
2. Professional meetings as an authorized end-use for which authorized travelers may temporarily export or re-export items to Cuba.
3. Export and re-export of commodities and software to individuals and private sector entities in Cuba for the purpose of developing software that will improve the free flow of information or to support private sector activities is permissible.

4. Export and re-export to Cuba of items to be provided for free for promotional purposes, such as pens or T-shirts.
5. Temporary export or re-export of commodities, technology, software, replacement parts for use as tools of the trade by exporters to install, service, or repair items that have been exported or re-exported to Cuba.
6. Temporary export or re-export of commodities and software for exhibition or demonstration at trade shows or to eligible parties.

**b) License Exception Consumer Communications Devices (CCD)**

License Exception CCD was also expanded to include authorization for export and re-export of leased or loaned items along with export or re-export of sales and donations.

**c) License Exception Aircraft, Vessels, and Spacecraft (AVS)**

Commerce made certain provisions of License Exception AVS available for Cuba. First, Commerce authorized the export and re-export to Cuba of equipment and parts for use on vessels and aircraft departing the United States. Further, while the export and re-export of aircraft on temporary sojourn was already authorized, export and re-export of certain vessels on temporary sojourn is now also permitted.

**d) New Licensing Policy for Civil Aviation Safety**

A policy of case-by-case review was added for license applications for exports and re-exports of items to ensure civil aviation safety and safe operation of commercial passenger aircraft. The new policy will review items including aircraft parts and components related to flight safety, weather observation stations, airport safety equipment, and commodities used for security screening of passengers.

**e) Change in Licensing Requirement for Deemed Exports or Technology or Source Code**

Commerce also specified that a license is not required for the deemed export or deemed re-export to Cuban nationals of technology or source code designated EAR99.

**Recognize the Limitations of Permissible Cuba Activities**

U.S. businesses and individuals interested in pursuing opportunities in Cuba should continue to exercise caution and carefully review the sanctions and export provisions to determine whether proposed activities are in fact permissible under U.S. law. It will be critical for U.S. persons doing business with Cuba to implement sanctions and export compliance programs to avoid even inadvertent violations of the relevant laws. Among other measures, U.S. persons should review and consider enhancing commercial contract terms to provide expressly for termination without penalty if economic sanctions or export controls would prohibit performance of the contract. This may help to protect the individual or company doing business with Cuban entities or individuals from contractual claims by a counterparty, if one party ceases performance of the contract due to restrictions dictated by frequently changing economic sanctions and export control provisions. It is important to remember that while the amendments of Sept. 21, 2015 and Jan. 16, 2015 do ease certain restrictions on Cuba, significant sanctions and export controls remain in place.

**Restrictions under Cuban Law**

In addition to the requirement that U.S. persons must comply with U.S. laws regarding Cuba, any person wishing to do business in Cuba must obtain required Cuban authorizations prior to conducting any business in that country. The process to obtain such authorizations is governed by a foreign investment law, which the Cuban government adopted in 2014. The foreign investment law permits foreign investors to do business in Cuba through a variety of structures, including joint ventures with the Cuban government, enterprises jointly owned with the Cuban government, and 100 percent foreign-owned

enterprises. The foreign investment law also establishes the process by which foreign investors must obtain the authorization to conduct business in Cuba. However, certain business activities, including the direct hiring of Cuban employees, continue to be restricted under Cuban law. Accordingly, the recent U.S. amendments to the Cuban embargo regulations may permit U.S. persons to conduct activities in Cuba that are currently prohibited by Cuban law if not properly authorized by the Cuban authorities.

This *GT Alert* was produced by our firm's Cuba Practice, a multi-disciplinary team combining the resources of various practice areas relevant to clients doing business in Cuba, including the following:

**International Trade and Export Controls:** Based in Washington, D.C., our [International Trade and Export Controls](#) team advises U.S. and foreign clients on the full range of international goods, software, and technology transfer issues with broad experience helping our clients achieve practical, workable solutions to complex controls and related regulatory matters, including Cuban embargo regulations.

**Latin American and Iberian Practice:** The firm's award-winning Latin American and Iberian Practice brings together lawyers with wide-ranging experience representing U.S. and international clients who do business in Latin America and the Iberian Peninsula, including U.S. and foreign clients interested in taking advantage of opportunities under the changes to the Cuban embargo regulations.

This *GT Alert* was prepared by **Sandra K. Jorgensen, Kara M. Bombach,** and **Yosbel Ibarra.** Questions about this information can be directed to:

- > [Kara M. Bombach](#) | +1 202.533.2334 | [bombachk@gtlaw.com](mailto:bombachk@gtlaw.com)
- > [Michael X. Marinelli](#) ‡ | +1 512.320.7236 | [marinellimx@gtlaw.com](mailto:marinellimx@gtlaw.com)
- > [Renee A. Latour](#) ‡ | +1 202.533.2358 | [latourr@gtlaw.com](mailto:latourr@gtlaw.com)
- > [Yosbel A. Ibarra](#) | +1 305.579.0706 | [ibarray@gtlaw.com](mailto:ibarray@gtlaw.com)
- > [Julia P. Sorrentino](#) | +1 202.533.2376 | [sorrentinoj@gtlaw.com](mailto:sorrentinoj@gtlaw.com)
- > [Cyril T. Brennan](#) | +1 202.533.2342 | [brennanct@gtlaw.com](mailto:brennanct@gtlaw.com)
- > [Sandra D. Gonzalez](#) | +1 512.320.7234 | [gonzalezsd@gtlaw.com](mailto:gonzalezsd@gtlaw.com)
- > [Sandra K. Jorgensen](#) | +1 202.530.8569 | [jorgensens@gtlaw.com](mailto:jorgensens@gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney

+1 518.689.1400	+1 303.572.6500	+1 212.801.9200	+86 (21) 6391 6633
<b>Amsterdam</b> + 31 (0) 20 301 7300	<b>Fort Lauderdale</b> +1 954.765.0500	<b>Northern Virginia</b> +1 703.749.1300	<b>Silicon Valley</b> +1 650.328.8500
<b>Atlanta</b> +1 678.553.2100	<b>Houston</b> +1 713.374.3500	<b>Orange County</b> +1 949.732.6500	<b>Tallahassee</b> +1 850.222.6891
<b>Austin</b> +1 512.320.7200	<b>Las Vegas</b> +1 702.792.3773	<b>Orlando</b> +1 407.420.1000	<b>Tampa</b> +1 813.318.5700
<b>Boca Raton</b> +1 561.955.7600	<b>London*</b> +44 (0) 203 349 8700	<b>Philadelphia</b> +1 215.988.7800	<b>Tel Aviv^</b> +972 (0) 3 636 6000
<b>Boston</b> +1 617.310.6000	<b>Los Angeles</b> +1 310.586.7700	<b>Phoenix</b> +1 602.445.8000	<b>Tokyo⌘</b> +81 (0)3 4510 2200
<b>Chicago</b> +1 312.456.8400	<b>Mexico City+</b> +52 (1) 55 5029.0000	<b>Sacramento</b> +1 916.442.1111	<b>Warsaw~</b> +48 22 690 6100
<b>Dallas</b> +1 214.665.3600	<b>Miami</b> +1 305.579.0500	<b>San Francisco</b> +1 415.655.1300	<b>Washington, D.C.</b> +1 202.331.3100
<b>Delaware</b> +1 302.661.7000	<b>New Jersey</b> +1 973.360.7900	<b>Seoul∞</b> +82 (0) 2 369 1000	<b>Westchester County</b> +1 914.286.2900
			<b>West Palm Beach</b> +1 561.650.7900

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ⌘Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2015 Greenberg Traurig, LLP. All rights reserved.*