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The Next Modest Wave of Cuba Thaw—U.S. Eases Restrictions on Exports, Export Trade Financing, and Artistic Productions

On Jan. 27, 2016, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) once again amended the existing Cuban Assets Control Regulations (Cuba Sanctions Regulations) to open the door for further U.S. engagement with Cuba. The amendments remove certain restrictions on the financing of exports to Cuba as well as restrictions on transactions related to public performances and workshops in Cuba. Additionally, the amendments further facilitate travel between the United States and Cuba and authorize additional activities related to informational materials, including media productions, and professional meetings. These newly permissible activities apply to U.S. persons and persons subject to U.S. jurisdiction. Meanwhile the U.S. Department of Commerce loosened its licensing policy for the export and reexport of certain items to Cuba related to telecommunications, construction, and infrastructure.

The amended regulations are effective immediately, and serve to further implement President Obama’s policy changes with respect to the U.S. embargo on Cuba. While the amended regulations modestly expand the number and scope of Cuba-related transactions in which U.S. persons can engage, the United States nevertheless maintains a nearly comprehensive embargo on trade with Cuba. U.S. persons may only engage in Cuba-related transactions that are licensed or otherwise specifically authorized by the U.S. government.

OFAC Sanctions Revisions

Specifically, OFAC implemented the following new measures in the following areas:

1) Export Trade Financing

The amended regulations remove limitations on payment and financing terms (previously required to be cash in advance or third country financing) for the limited categories of permissible exports to Cuba, or reexports of 100 percent U.S.-origin items from third countries, as long as the items are authorized by the Department of Commerce. Notably, the

amended regulations make clear that agricultural exports continue to be subject to U.S. law prohibiting financing of such exports, other than on a cash in advance basis or through third country financing.

2) Travel

Further to the U.S. policy of improving civil aviation safety and facilitating the provision of carrier services by air, including with Cuban airlines, OFAC now authorizes U.S. persons to enter into blocked space, code-sharing, and leasing arrangements in connection with these services, including with Cuban nationals. Further, while temporary trips to Cuba of aircraft and vessels were already authorized, the amended regulations now explicitly authorize travel-related transactions directly incident to the facilitation of such trips. These changes are consistent with widely held expectations that the Obama administration and the Cuban government have been discussing the reestablishment of regular commercial air traffic between the U.S. and Cuba later this year.

3) Informational Materials and Media Productions

The existing OFAC general license that authorizes U.S. person travel and other transactions directly incident to the export, import, and transmission of informational materials now explicitly includes professional media and artistic productions in Cuba (including music recordings, movies and television programs, and artworks). Further, the general license is no longer limited to already existing materials – transactions related to the creation, dissemination, or artistic enhancement of informational materials or media productions are now authorized. Included among these authorized transactions are the employment of Cuban nationals and the remittance of associated royalties or other payments.

4) Professional Meetings

The existing general authorization for travel-related transactions associated with attending professional meetings or conferences in Cuba is expanded to allow for travel to organize such meetings on behalf of an entity. Further, transactions related to the marketing of such meetings or conference is now authorized.

5) Public Performances, Competitions, and Clinics

The amended regulations clarify that travel-related transactions are authorized for both the participation in and organization of public performances, competitions, and clinics in Cuba. Marketing activities incident to such events are explicitly authorized. Importantly, the amended regulations no longer require that all U.S. profits from public performances, clinics, workshops, other athletic or nonathletic competitions, and exhibitions in Cuba be donated to charity, and further, they no longer need to be run by the specific individual authorized to travel to Cuba.

6) Disaster Preparedness and Response

The scope of authorized humanitarian projects is widened to include disaster preparedness, relief, and response.

Exports and Reexports to Cuba

In addition to the OFAC regulations changes, the U.S. Department of Commerce amended its licensing policy for certain exports and reexports to Cuba. While most items continue to be subject to a licensing policy of denial, certain types of exports and reexports are now subject to a general policy of approval or will be reviewed on a case-by-case basis.

Policy of Approval

The following items, formerly subject to case-by-case review, are now subject to a general policy of approval:

- > Items for the safety of civil aviation and safe operation of commercial aircraft engaged in international air transportation;

- > Certain telecommunications items;
- > Certain agricultural items;
- > Items to certain human rights organizations and nongovernmental organizations; and
- > Items for use by U.S. news bureaus.

Case-By-Case Review

Additionally, the Department of Commerce now reviews on a case-by-case basis applications to export and reexport items to Cuban state-owned enterprises and agencies of the Cuban government that provide goods and services to the Cuban people, as long as those exports and reexports are made for the purpose of meeting the needs of the Cuban people. The policy applies to items used for the following activities:

- > Agricultural production;
- > Artistic endeavors;
- > Education;
- > Food processing;
- > Disaster preparedness, relief, and response;
- > Public health and sanitation;
- > Residential construction and renovation;
- > Public transportation;
- > Construction of public infrastructure facilities; and
- > Sale by wholesalers or retailers for domestic consumption by the Cuban people.

The change is notable in that U.S. regulations now recognize the possibility, subject to review on a case-by-case basis, of U.S. persons doing business directly with state-owned enterprises and agencies of the Cuban government.

Recognizing 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. It will be critical for U.S. persons doing business with Cuba to consult with their counsel regarding implementing sanctions and export compliance programs to avoid even inadvertent violations of the relevant laws. It is important to remember that while the amendments of Jan. 27, 2016, Sept. 21, 2015, and Jan. 16, 2015, do ease certain restrictions on Cuba, significant sanctions and export controls remain in place.

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