

## CLIENT ALERT

### Cuba Policy: Significant New Amendments from Treasury and Commerce

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The Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS) published new amendments to the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR). These amendments supplement the substantial relaxations announced in January and are designed to provide more flexibility and to clarify some of the practical implications with respect to certain transactions involving persons subject to U.S. jurisdiction, Cuba, and Cuban nationals.

#### Office of Foreign Assets Control

The OFAC amendments are intended to (1) clarify travel; (2) expand telecommunications and internet-based services; (3) enable U.S. persons to establish a physical presence in Cuba to support authorized transactions; (4) allow the opening and maintenance of bank accounts in Cuba; (5) provide goods and services to Cuban individuals located outside Cuba; and (6) support other activities, such as the provision of legal services to Cubans.

Many of these changes involve technical corrections to address issues that have arisen in the implementation of the earlier changes. The highlights are:

- **Travel and Related Services** – OFAC added a new authorization to allow persons subject to U.S. jurisdiction ("U.S. persons") to provide carrier services by vessel without the need for a specific license. The new general license authorizes certain lodging services aboard such vessels and clarifies who can utilize such carrier services. OFAC also has added a general license to authorize family members to accompany certain travelers traveling under general license, as well as to conduct certain transactions incident to the opening, maintaining, and closing of a bank account in Cuba.
- **Telecommunications and Internet-Based Services** – OFAC added a series of new, related authorizations including: (1) allowing U.S. persons to establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, etc., with any Cuban entity to provide authorized telecommunications and internet-based services, as well as to authorize certain licensing and marketing agreements related to previously authorized telecommunications services; (2) allowing the importation of Cuban-origin mobile applications into the United States and the employment of Cuban nationals by U.S. persons to develop such applications; and (3) expanding services related to exports of products authorized by BIS under general or specific licenses, as well as removing certain restrictions on the pre-existing scope of permissible recipients.
- **Physical Presence** – OFAC is authorizing all transactions necessary for certain U.S. persons to establish and maintain a physical presence (*e.g.*, an office or other facility) in Cuba in support of certain authorized transactions. The new authorization extends to authorized exporters, authorized importers, travel and carrier service providers, and several

other enumerated classes of entities. The new authorization includes the ability to open, maintain, and close bank accounts.

- **Financial Transactions** – OFAC has expanded the existing authorizations for financial transactions in numerous ways including: (1) removing the limitation on remittances to Cuban nationals who are not prohibited officials; (2) removing the limit on the amount of remittances that a Cuban national may carry back to Cuba; (3) unblocking certain remittances that were blocked because they had exceeded the previously authorized threshold; (4) issuing a new general license to unblock certain additional accounts that could now be rejected or processed pursuant to the new regulations; (5) authorizing financial institutions to keep accounts for Cuban nationals open even while they are not in the United States, provided access is only granted while in the United States; (6) removing the per diem withdrawal limit for Cuban nationals currently in the United States; and (7) issuing a general license for certain estate related transactions.
- **Commercial Transactions** – OFAC has expanded the existing authorization to enable all U.S. persons to provide goods or services to Cuban national individuals in third countries provided the transaction does not involve a commercial exportation directly or indirectly of goods or services to or from Cuba. Banking institutions are also authorized to open and maintain bank accounts for Cuban nationals in third countries subject to certain conditions.
- **Legal Services** – OFAC added a general license to authorize the receipt of payment for certain legal services provided to Cuba or a Cuban national. OFAC also issued a general license authorizing U.S. persons to receive certain legal services from Cuba or from a Cuban national, as well as all transactions, including payments, ordinarily incident thereto.

Additional changes to the OFAC regulations are summarized in its [Federal Register Notice](#). OFAC has also published [updated FAQs](#) on the changes.

## **Bureau of Industry and Security**

Simultaneously, BIS amended the EAR to expand the scope of its existing authorizations related to transactions with Cuba. Specifically, BIS made the following amendments designed to promote private sector activity in Cuba, support travel, and ensure safety in civil aviation and commercial passenger aircraft.

- **Expanded License Exception 'Support for the Cuban People' (SCP)** – OFAC expanded SCP by: (1) clarifying that it applies to items that are leased and loaned, not just sold or donated; (2) authorizing the temporary re-export, not just export, of authorized items when used in conjunction with certain types of authorized travel, as well as adding "professional meetings" to the list of eligible end uses; (3) introducing a requirement that temporarily exported or re-exported items be subject to the traveler's effective control; (4) authorizing the export or re-export of EAR99, or anti-terrorism (AT) controlled, commodities or software intended to develop software to improve the free flow of information or support private sector activities; (5) authorizing the export or re-export of certain EAR99 items to establish, maintain, or operate a physical presence in Cuba as authorized by OFAC and under certain conditions; and (6) authorizing the temporary (two years or less) export or re-export of certain additional items for certain end uses (items must be classified EAR99 or controlled for AT reasons only).

- **Expanded License Exception 'Consumer Communications Devices' (CCD)** – Expanding CCD by removing the reference to donation or sale to clarify that the authorization also extends to items that are loaned or leased.
- **Adding Cuba to License Exception 'Aircraft, Vessels, and Spacecraft' (AVS)** – BIS added Cuba to certain portions of AVS related to the export of equipment and spare parts for use on vessels and aircraft and authorizing certain exports and re-exports of vessels on temporary sojourn. BIS clarified that the license exception authorizes temporary sojourn of an aircraft for up to seven consecutive days. Only commodities classified as EAR99 or controlled for AT reasons can be exported pursuant to AVS to Cuba. Additionally, only certain types of vessels can utilize the new authorization.
- **New Licensing Policy for Civil Aviation Safety** – BIS added a policy of case-by-case review of license applications for exports and re-exports of items to provide safety in civil aviation and safe operation of commercial passenger aircraft.
- **Clarifying License Requirements on Technology and Source Code** – BIS further clarified that a license is not required to release EAR99 technology or source code to a Cuban national located in the United States or a third country.

Additional technical edits can be found in the BIS [Federal Register Notice](#). Like OFAC, BIS has also published [updated FAQs](#) on the changes.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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