

CLIENT ALERT

Cuba and Telecommunications: The Door Opens Wider

Sep.16.2009

Since President Obama's April 13th announcement relaxing the U.S. embargo of Cuba to increase contact between family members in the United States and Cuba and the flow of information to the Cuban people, many have awaited the details of the proposed changes. In the September 8, 2009 Federal Register, the details emerge for telecommunications and related travel, as implemented by the Treasury Department's Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS). Both agencies have jurisdiction over trade and transactions with Cuba. In addition to liberalizing family visits and family remittances, the OFAC rule changes affect certain telecommunications services, contract, related payments, and travel-related to telecommunications projects. The BIS changes relate to the export of certain telecommunications equipment. Most changes are implemented through "general licenses" or "license exceptions" in which no prior authorization is needed. Compliance with the conditions of the general licenses permits transactions and exports to occur freely. As a note of caution - the scope of such authorizations can be narrow; therefore, some interesting transactions may still require prior approval.

| OFAC CHANGES | BIS CHANGES |
|---|---|
| <p><i>Third Party Payments Related to Cuba</i></p> <p>U.S. persons may now contract with non-Cuban telecommunications providers for cell services (phones can be donated under BIS rules, see next column) in Cuba, and U.S. providers may contract individuals in Cuba to provide them with telecommunications services.</p> | <p><i>BIS Creates New License Exception</i></p> <p>A new license exception Consumer Communications Devices (CCD) authorizes the export or reexport to Cuba of communications equipment (A list of the eligible items is located in the regulations.)</p> |
| <p><i>Some Payments to Cuban Providers Authorized</i></p> <p>U.S. persons are now authorized to make payments incident to the provision of telecommunications services between the United States and Cuba and the provision of satellite radio or satellite television services to Cuba. They may also enter into and perform services (including making payments) under roaming services agreements with Cuban providers.</p> | <p><i>Eligible End-Users and Items under CCD</i></p> <p>Individuals in Cuba (other than certain Cuban Government and Communist Party officials) and independent non-governmental organizations in Cuba. Cuban Government or Communist Party officials, including schools and hospitals, are not eligible recipients. There is no limit on the number or value of units; however, all of the items must be donated.</p> |
| <p><i>Communications Links Between the U.S. and Cuba</i></p> <p>Transactions incident to establishing facilities to</p> | <p><i>New Licensing Policy</i></p> <p>For items not donated or outside the scope of CCD, a</p> |

| | |
|--|---|
| <p>provide telecommunications services linking the United States and Cuba, including, but not limited to fiber-optic cable and satellite facilities, are authorized by general license.</p> | <p>license is still required from BIS. BIS has changed its policy and will now consider applications to export or reexport items necessary to provide efficient and adequate telecommunications links between the United States and Cuba.</p> |
| <p><i>Certain Telecommunications-Related Travel Authorized</i></p> <p>New travel authorization is provided for (1) travel-related to export of items authorized by BIS; and (2) travel for participation in telecommunications-related professional meetings.</p> | |

The changes announced by OFAC and BIS will make telecommunications transactions with Cuba easier to pursue. Although President Obama's primary objective for the liberalization of the Cuban embargo was not commerce-related, the changes do provide a few commercial opportunities for U.S. companies. For instance, U.S. providers can contract with Cubans to provide telecommunications services and although sales of communications equipment between U.S. persons and Cubans are still prohibited without a license, due to the unlimited frequency and value of equipment that may be donated and exported to Cuba, presumably someone, be it a charity, church, family member, or friend will purchase the devices in the United States and send them to Cuba. Furthermore, the changes facilitate greater contact and increase the flow of information between the United States and Cuba, which can only lead to additional commercial opportunities in the future. Individual transactions require careful compliance measures, however, and those interested must exercise caution. For additional information, please contact the professionals listed to the above.

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

Jeffrey L. Snyder

Partner – Washington, D.C., Brussels
 Phone: +1 202.624.2790, +32.2.214.2834
 Email: jsnyder@crowell.com