

Understanding the January 15, 2015 Amendments to the Cuban Embargo

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On January 15, 2015, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and the U.S. Commerce Department's Bureau of Industry and Security (BIS) issued final rules amending the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) to implement key policy changes to the U.S. embargo of Cuba (collectively the "Amendments"). The policy changes were originally announced by President Obama on December 17, 2014. The changes are intended to (1) engage and empower the Cuban people by facilitating authorized travel to Cuba and certain related activities, (2) facilitate the flow of information to, from, and within Cuba, and (3) authorize certain limited activities related to trade with Cuba.

To effect these changes, the Amendments (1) authorize travel to Cuba under general licenses for authorized purposes, (2) authorize and raise limits for certain remittances to Cuba, (3) enable U.S. financial institutions to open correspondent accounts at certain Cuban financial institutions to facilitate processing of authorized transactions, (4) authorize certain transactions with certain Cuban nationals located outside of Cuba, and (5) permit a number of other activities related to telecommunications, financial services, trade, and shipping.

Importantly, modification or repeal of the entire Cuban Embargo requires future action by the U.S. Congress. The Amendments, which became effective January 16, 2015, are limited in nature and in scope. For example, there is no change to (1) the prohibition on travel to Cuba for tourism, (2) requirements of License Exception AGR, or (3) the requirement to obtain a specific license to export or reexport medicine and medical devices to Cuba or items necessary for environmental protection.

The Amendments, however, do include a new licensing policy of approval for the export/reexport of items necessary for the environmental protection of U.S. and international air quality, waters, and coastlines. That License Exemption, Support for the Cuban People (SCP), authorizes exports and reexports for three related areas: (1) improving living conditions and supporting independent economic activity; (2) strengthening civil society; and (3) improving communications.

In summary, the Amendments, subject to certain conditions, authorize the following activities:

- provide new and expanded license exceptions, together with more favorable policies on approval of specific licenses for the exports of certain types of items to Cuba where the exports are intended to improve the living conditions of the Cuban people, including certain telecommunications equipment and personal communications devices;
- loosen restrictions on certain activities undertaken in the banking, finance, and insurance sectors;
- authorize 12 categories of travel under a general license;
- remove barriers to scheduled air carrier service between U.S. and Cuba;
- ease restrictions on remittances and donations for certain purposes;
- permit limited imports of goods from Cuba; and
- authorize non-U.S. subsidiaries to conduct transactions with certain Cuban nationals located in other countries.

Despite the recent easing of certain dynamics of the Cuban embargo, U.S. and non-U.S. companies whose activities are subject to U.S. jurisdiction must continue to act with significant caution. These changes described above should be viewed as an incremental loosening. Most transactions between the U.S., or persons subject to U.S. jurisdiction, and Cuba remain prohibited. Exporters should be mindful that the remaining controls on exports and reexports to Cuba are extensive. In particular, the remaining controls continue to prohibit the export of defense articles and services as well as items controlled for national security reasons, such as dual-use items with both military and civilian applications. In order to comply with the latest changes to the EAR, U.S. exporters, and their overseas subsidiaries, will be required to conduct and document potentially extensive presale due diligence concerning the end-user and end-use of any items proposed for sale to Cuba. Companies should pay close attention to the general licenses in the new CACR that contain exceptions and conditions that must be fully met in order to be applicable.

The team at Holland & Hart is prepared to assist in answering any questions about the changes to Cuban relations and how they may impact your compliance posture. We will continue to provide you updates regarding this new, changing normalization of the Cuban sanctions regime.

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