

Client Alert

September 2015

ANNOUNCED: New Updates to the Cuban Assets Control Regulations Effective Monday September 21, 2015

In a continued effort to implement the policy changes announced by President Obama on December 17, 2014, OFAC and BIS have announced additional amendments to the CACR and EAR, respectively, which will be published and effective on Monday, September 21, 2015.

The regulatory changes discussed below are more in the line of significant changes made to the regulations since December 17, 2014. Overall, the regulatory changes loosen restrictions on travel to and business and investment in Cuba. First, the regulatory changes provide additional clarity as to how US businesses can conduct transactions and finance operations in the island, including the opening of physical locations in Cuba. Further, the changes allow certain US persons to open and maintain bank accounts in Cuba and allow certain additional financial transactions. The regulatory changes also make it easier for cruise ships and other vessels to travel to Cuba, further facilitating travel to the island.

Travel

The changes to the CACR authorize the provision of carrier services to Cuba by vessel without the need for a specific license from OFAC and clarify which categories of persons may be transported between Cuba and the US. The changes to the CACR now permit all authorized travelers to Cuba to open and maintain bank accounts in Cuba in order to access funds to undertake authorized transactions while in the island.

OFAC's changes to the CACR also remove the limitation on certain authorized remittances that authorized travelers or Cuban nationals that are permanent residents of Cuba and departing the US may carry into Cuba.

Physical Presence in Cuba for Certain US Persons

OFAC's changes to the CACR allow certain US persons to establish a physical presence in the island. The authorizations cover the following: news bureaus, certain exporters of goods authorized pursuant to the CACR, providers of authorized mail and parcel transmission services and cargo transportation services, providers of telecommunications or Internet-based services (further discussed below), providers of travel and carrier services, and organizations or entities conducting educational or religious activities.

Like persons generally authorized to travel to the island, those US persons who are permitted to establish a physical presence in the island may also open and maintain bank accounts at financial institutions in Cuba in order to undertake authorized transactions.

Providers of Telecommunications and Internet-based Services

OFAC's changes amend the regulations governing the provision of telecommunications and Internet-based services in order to allow US persons engaged in the provision of such services to establish and maintain a presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity. The US persons

providing such services may also enter into licensing agreements relating to the services and may market the services.

The changes to the CACR now permit the importation into the US of Cuban-origin mobile applications and permit US persons to employ Cuban nationals in order to develop such mobile applications.

Banking and Finance

Depository institutions were formerly allowed to open and maintain accounts for a Cuban national who was present in the US subject to the requirement that such accounts not closed prior to the departure of the Cuban national from the US be blocked. The changes to the CACR now authorize depository institutions to maintain these accounts while the Cuban national account holder is located outside the US, provided that the holder may only access the account while lawfully present in the US. The regulatory changes also remove the previous \$250 cap on payments from blocked accounts in order to more adequately allow Cuban nationals lawfully present in the US to access sufficient funds for living expenses and other transactions incident to their presence in the US.

The cap on donative remittances to Cuban nationals who are not otherwise identified in the CACR as prohibited officials of the Government of Cuba or prohibited members of the Cuban Communist Party had formerly been raised, pursuant to the changes instituted on January 16, 2015, from \$500 to \$2,000 for any consecutive three-month period. The present changes to the CACR remove the cap on donative remittances altogether, although the other limitations on the remittances remain. Depository and banking institutions subject to US jurisdiction may also open, maintain and close bank accounts for Cuban nationals located in third countries and may process remittances from Cuban nationals located in third countries to the US.

Other Changes and Amendments

Legal Services: OFAC's changes to the CACR now explicitly and generally authorize persons subject to US jurisdiction to receive, and make payment for, certain legal services from Cuba or Cuban nationals. More specifically, receiving and making payment for legal advice and counseling on the requirements of and compliance with the laws of Cuba or any jurisdiction within Cuba is authorized provided that such advice and counseling relate to transactions authorized by or exempt from the CACR.

Ordinary Incident Transactions: The regulatory changes clarify that, with certain exceptions, transactions ordinarily incident to a licensed transaction and necessary to give effect thereto are also authorized, including payments made in relation to authorized transactions.

Conclusion

The regulatory changes that will become effective on September 21, 2015 further loosen the restrictions placed on the ability to engage in business and commerce with Cuba. Notably, certain types of US businesses are allowed to establish a physical presence in Cuba while depository and financial institutions are allowed to undertake additional transactions related to Cuba and Cuban nationals in the US, Cuba and third countries. Finally, US businesses may receive and make payment for certain legal services in Cuba in order to comply with Cuban laws and regulations and engage in authorized business in the island.

The Latin America Group at Hunton & Williams will continue to closely monitor related developments. Please contact us if you have any questions or would like further information regarding the changes to the CACR that have been announced by OFAC and that will be published on September 21, 2015, or any other regulation or sanction governing the Cuban embargo.

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