



obama's reboot of u.s.-cuba relations: what does it mean?

MSK Client Alert

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Last Wednesday, President Obama announced the most sweeping changes to U.S.-Cuban relations in half a century, in effect beginning normalization to a relationship fractured by the pressures of the Cold War. Only baby steps have been taken, with the bulk of the work to be completed over a period of 18 or so months. Based on the President's announcement, in addition to the U.S. and Cuba opening embassies in their respective capitals for the first time since 1961, the immediate impact is the free flow of limited quantities of cigars and rum, but not much more – at least for now – because the law first needs to be changed. The real question is what about longer term? Let's be honest and start by saying that we cannot be certain, for the simple reason the Cuba embargo is in law and contains very little wiggle room. So, until Helms-Burton (the unofficial name of the legislation) and related enactments are changed by Congress, the President's power to bring about all of the proposed changes is severely limited. Unlike the immigration context, where there may be some discretion on the part of the Executive Branch as to how the law is administered, when it comes to the Cuba embargo, there is really very little flexibility. So, for anything significant to change for business or a wider-range of travelers, the law first needs to be updated. The agency with jurisdiction over U.S. economic sanctions laws is the Office of Foreign Assets Control (OFAC). On Wednesday morning, OFAC promptly posted to its website: "OFAC expects to issue its regulatory amendments in the coming weeks. None of the announced changes takes effect until the new regulations are issued."

While the devil is always in the details, here is what we anticipate will be those likely changes:

TRAVEL

While unlimited tourist-type travel to Cuba is not likely to be authorized immediately, certain types of travel are expected to be more widely permitted. For example, travelers going to Cuba on family visits, as journalists, for governmental activity, as professional researchers, or as scholars, educators, or

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scientists can anticipate it becoming easier to make the needed arrangements, as will those traveling for religious purposes, to participate in artistic or athletic events, and those traveling for humanitarian projects. Persons traveling to Cuba for such purposes remain able to go through travel providers authorized by OFAC. In the short-term, we have to hope the travel licensing review and approval process becomes expedited.

REMITTANCES

Individuals will be able to remit up to \$2,000 per quarter to Cuban nationals (the current limit is \$500, and exempts remittances to government and Communist Party officials). These remittances will no longer require a special license from OFAC (once the regulations are changed). If you are a company whose goods fall into one of the authorized exemptions and so you are currently selling to Cuba, your difficulty in arranging payment will remain unchanged for now -- although here, too, we can hope for expedited processing procedures and times for any needed licenses.

EXPANDED EXPORTS AND IMPORTS

The change also affects exports and imports between the two countries. Items authorized to be exported to Cuba include materials to be used to build homes and residential buildings, as well as agricultural equipment. Cigars, rum and other goods may be imported from Cuba, so long as the individual traveler meets the current personal exemption, i.e., imports no more than \$400 worth of goods, of which \$100 may be alcohol (e.g. rum) or tobacco products (e.g., cigars). The importation of goods for commercial purposes, known as the wholesale opening of trade between the two countries, does, however, require a fundamental change in the law which, given the current political climate, may be some time in coming.

BANKING

U.S. banks and financial institutions will be able to establish relationships with Cuban banks in order to facilitate the processing of international transactions. In addition, U.S. credit and debit cards, previously not usable in Cuba, will now be valid there. Again, however, these changes may take longer to occur, but hopefully will be subject to expedited license processing in the meantime.

TELECOMMUNICATIONS AND TECHNOLOGY

Cuba has very limited internet penetration and a fledgling telecommunications infrastructure. The new policy will allow the sale of certain consumer communications devices, related software, applications, hardware, and services, especially those related to telecommunications. Here again, how easy it will be to arrange payment depends on whether OFAC views itself as being able to make significant changes given the constraints of the current law, or whether it will at most be able to establish an expedited licensing process.

OFAC ACTION

A telltale sign of how sure-footed OFAC feels about its actions will be seen in whether OFAC deals with some of these changes by issuing general licenses, and so cuts through much of the existing red tape, or whether OFAC



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feels more limited in its authority and proceeds strictly by way of regulatory updates. A general license is one which grants a category of individuals or businesses authority to proceed without first obtaining a specific license covering their trip or business transaction. As noted earlier, certain categories of individuals are already permitted to travel to Cuba. They do so by relying on a general license, but first insure they fit into one of the authorized categories of travelers.

Even if OFAC does issue some general licenses, the bulk of the changes proposed to the existing law will have to be made by way of updating the regulations, while we wait for Congress to act. Even so, we are left with one fascinating question – will OFAC make the regulatory changes immediately effective upon publication or only after a comment period?

As the new policy is implemented and ties between the two nations are normalized, we can expect to hear more – a lot more – about expanded diplomatic, commercial, cultural, educational, travel and trade policies relating to the U.S. and Cuba. Stay tuned for more dramatic changes in the U.S. relationship with Cuba and how the interactions between travelers and businesses in both countries develops.