



cuba regulations change – round 1

MSK Client Alert

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In today's Federal Register, both the Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS) published the first revisions to the U.S.' Cuba economic sanctions. As expected, those changes consisted mostly of expanding existing exceptions or granting general licenses in already well-defined areas. With this round of changes, the beneficiaries are primarily financial institutions and the telecommunications and computer industries.

OFAC described the aim of its amendments to be to: "facilitate travel to Cuba for authorized purposes, facilitate the provision by travel agents and airlines of authorized travel services and the forwarding by certain entities of authorized remittances, raise the limit on certain categories of remittances to Cuba, allow U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, authorize certain transactions with Cuban nationals located outside of Cuba, and allow a number of other activities related to, among other areas, telecommunications, financial services, trade and shipping."

BIS stated the aim of its amendments was to "authorize the export and reexport of certain items to Cuba that are intended to improve the living conditions of the Cuban people; support independent economic activity and strengthen civil society in Cuba; and improve the free flow of information to, from, and among the Cuban people."

The existing travel categories in the OFAC regulations deal with educational, journalistic and religious activities, professional meetings, and humanitarian projects. In expanding those recognized activities, the new amendments allow travel agents and airlines to provide authorized travel and carrier services. Equally important, they also authorize remittances through the U.S. banking system, and do so without the need for a special license. Of course, anyone claiming to provide services under these amendments would be wise to retain all supporting documents as limitations remain on what is permitted. For example, U.S. credit and debit cards may now be used for travel-related and authorized transactions. This means U.S. financial institutions may enroll merchants and process their transactions. Financial institutions may also

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authorize depository institutions to open correspondent accounts at Cuban financial institutions. Also authorized are stored value cards, checks, drafts, travelers' checks and similar monetary instruments. Equally appealing for American travelers is these new regulations authorize the provision of health, life and travel insurance related services, all of which were previously barred.

For those permitted to commercially deal with Cuban entities under one of the existing exceptions or pursuant to a license, a significant challenge has been getting paid. The current regulations call for "cash in advance." That requirement is now being changed to "cash before shipment" or "cash before transfer of title and control" with the expectation of easing payment for authorized transactions.

The other big winners are in telecommunications and the computer industry. When it comes to telecommunications, those entities are now permitted to provide services which link Cuba and third countries, including services incident to internet-based communications and the export and reexport of related communications items. Also permitted are payment activation, installation and usage, roaming, maintenance and termination fees. Further, telecommunications companies are able now to provide fiber-optic cable and satellite facilities to allow linkage for Cuba to the U.S. or third countries. Naturally, the efforts needed to first negotiate these deals is also authorized and would include market research, commercial marketing, sales negotiations, accompanied delivery, and servicing in Cuba. Most helpful is the fact that expenses in Cuba are now permitted also for the staff which visits and returns, but the amount of time spent by that person in non-work activities is limited and cannot impinge on each person's fulltime work.

In the computer arena, the focus is internet-based services, including instant messaging, chat and email, social networking, photo and file sharing, web browsing, blogging and web hosting provided none of these efforts are related to promotion of tourism or domain name registration. These services also include software design, business consulting, information technology management services (including cloud storage), and to install, repair or replace items that are specifically listed; all fall under the Consumer Communication Devices License Exception, see 15 C.F.R. § 740.19.

Any company planning to invoke these new general license opportunities should keep in mind it is required to notify OFAC within 30 days of commencing or ceasing to offer its services. Further, while the services are being offered, each January 15 and July 15 a report must be filed detailing the total amount of all payments made to Cuba or a third country related to services authorized under these new regulations and will cover the previous six months.

There are a number of changes which related to individuals, but we are here focused on benefits for American companies. Nothing in these revisions has anything to do with immigration issues, but travelers are now permitted to carry up to \$10,000. Further, the newly revised regulations incorporate the President's position of now allowing travelers to purchase up to \$400 worth of goods, with the value of the tobacco and liquor purchased limited to \$100.

While certain agriculture, information and informational materials, donations of food and humanitarian efforts are authorized, there is nothing in the new regulations which permits the free flow of goods and services. There are, however, revised rules for professional meetings, research, educational activities, and public performances,



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religious activities, clinics, workshops, athletic and other competitions and exhibitions.

BIS' amendments explain the expansion of License Exception Consumer Communications Devices, the creation of a new License Exception Support for the Cuban People (SCP) (see 15 C.F.R. § 740.21) , but also put an interesting twist on permitted exports by specifically authorizing exports and reexports to Cuba of items for the environmental protection of the U.S. and international air quality, and waters and coastlines.

SCP includes building materials, equipment and tools to construct or renovate privately-owned buildings, including residences, businesses, places of worship and those for private sector social or recreational use; tools and equipment for private sector agricultural activity; and tools, equipment, supplies, and instruments for use by private sector entrepreneurs, including equipment for auto mechanics, barbers, hairstylists and restaurants. SCP also allows the temporary export for use in professional research for scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities. The very same telecommunications and computer related equipment which OFAC authorizes, BIS also authorizes under this license exception, along with the equipment needed for environmental protection.

When it comes to the CCD license exception, 15 C.F.R. § 740.19 contains a list of the types of computer hardware and software (including mobile phones) which are authorized for export or re-export.

BIS, too, deals with individuals by changing its regulations relative to multiple gift parcels in a single shipment, but the bulk of these new regulations is focused on changes to the export control list and so deals with goods.

As stated at the outset, the amendments published are in areas where there exists relatively clear understandings about what is and is not permitted. The more difficult issues having to do with expanding trade and eliminating any license or other trading restrictions remain. Given the current climate in Washington, D.C., the likelihood of those fundamental changes happening before Obama leaves office seem highly unlikely, but stay tuned!