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## the times are changing, but very slowly

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### *MSK Client Alert*

July 21, 2015

First, we learned relations with Cuba were thawing, and now – on July 14th – there is the nuclear deal with Iran. Many American companies are clamoring to make commercial deals with businesses in both countries – but not so fast! In fact, little has changed in terms of U.S. relations with either country, at least at the business level, although significant changes are likely in the future. With Cuba and Iran both, there are laws on the books that Congress will first have to change and, only then, will the commercial relationship be regularized.

The first step with Cuba is for the two countries to open embassies and appoint ambassadors. On July 19, 2015, full diplomatic relations were restored between the two countries. Cuba has had a head of mission in D.C. for some time. The U.S. embassy in Havana will be opened at about the same time, but the festivities of flag raising and a formal opening will await the visit of Secretary of State Kerry in about a month. There have been interest sections in both countries, with diplomats stationed at them, but normalized diplomatic relations are in the near future for the Cuba and the U.S. Until ambassadors are appointed by both countries, the chargé d'affaires serve as chiefs of mission. While the relationship continues to thaw, until the relevant sections of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 (Helms-Burton), Trading with the Enemies Act, Cuba Democracy Act of 1992, and the Trade Sanctions and Export Enhancement Act of 2000 are amended by Congress, American companies will still not be able to freely conduct business with Cuban companies, and this means they also cannot do so through third parties or non-U.S. related entities. The state of the U.S. regulations can be found at 31 C.F.R. Part 515 (Office of Foreign Assets Control or OFAC) and 15 C.F.R. Parts 730 through 774 (Bureau of Industry and Security). For now at least, those hoping to travel to Cuba will still need to fall into one of the recognized travel categories, [click here](#) for more details.

With Iran, the situation is even less predictable. The Joint Comprehensive Plan of Action (JCPOA) was entered into last week between Iran, China, France, Germany, Russia, the U.K., the U.S. and the High Representative for Foreign Affairs and Security Policy for the European Union. The first step is this plan must

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be approved by the U.N. Security Council and that, too, occurred on July 19th. The reaction of the U.S. can be found here. The key excerpts include:

- A Joint Commission consisting of representatives from the above-listed countries will be established to monitor the implementation of the JCPOA and to carry out its functions.
- The IAEA (International Atomic Energy Agency) will be requested to monitor and verify the voluntary nuclear-related measures as detailed in the JCPOA. The IAEA will also be requested to provide regular updates to the Board of Governors of the JCPOA and the U.N. Security Council.
- The signatory countries will submit a draft resolution to the U.N. Security Council endorsing the JCPOA, affirming that its successful conclusion marks a fundamental shift in its consideration of this issue and expressing its desire to build a new relationship with Iran. Of immediate interest to American businesses is the following language regarding the sanctions currently in place by the U.S. on Iran:
  - The U.N. Security Council resolution endorsing the JCPOA will terminate all the provisions of the previous U.N. Security Council resolutions on the Iranian nuclear issue simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran and will establish specific restrictions.
  - The EU will terminate all provisions of the EU Regulation, as subsequently amended, implementing all the nuclear related economic and financial sanctions, including related designations, simultaneously with IAEA-verified implementation of agreed nuclear related measures by Iran as specified in Annex V (the implementation plan).
  - The United States will cease the application, and will continue to do so, in accordance with the JCPOA, of the sanctions specified in Annex II (starting in the U.S. with the sale of commercial aircraft, and the importation of Iranian carpets and caviar), to take effect simultaneously with the IAEA-verified implementation of the agreed upon related measures by Iran as specified in Appendix V. (Note: U.S. statutory sanctions focused on Iran's support for terrorism, human rights abuses, and missile activities will remain in effect and continue to be enforced.) Eight years after adoption or when the IAEA has reached the Broader Conclusion that all the nuclear material in Iran remains in peaceful activities, whichever is earlier, the United States will seek such legislative action as may be appropriate to terminate or modify to effectuate the termination of sanctions specified in Annex II. The plan of the parties to implement this deal is contained in the implementation provisions, as noted, that is Annex V. Now that the U.N. has acted, IAEA will be asked to validate Iran's compliance with the terms of the JCPOA. Only once compliance is validated are the current sanctions relaxed on the schedule agreed between the parties. The text of the agreement (with annexes) can be

found here. While the framework exists for normalized relations between the U.S. and both Cuba and Iran, actual normalization will take quite some time, and so companies are wise to not "jump the gun." While the Cuba relationship has gotten to the point where financial transactions can be accomplished more easily than pre-thaw times, there remain many roadblocks to making a commercial deal with a Cuban company. With Iran, the nuclear deal is a great accomplishment in its own right, but a very small step in moving towards regularized commercial dealings. The great wild card in all of this is what will Congress do and when? Any doubt things have not changed



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yet when it comes to trading with Iran can be found on the

OFAC website, where OFAC states: "The U.S. government will publish detailed guidance related to the JCPOA prior to Implementation Day." Implementation Day is the combination of when the U.N. Security Council passes its resolution removing the sanctions and the EU and U.S. do the same as relates to Annex II sanctions, but the sanctions removal only occurs once the IAEA confirms compliance by Iran with the terms of the JCPOA. In the meantime, when it comes to trade with Iran, those regulations will continue to be found in 31 C.F.R. 560.