

Cuba update: Trump tightens travel authorizations and targets new restricted parties

9 November 2017

On 9 November 2017, the Trump Administration implemented the regulatory changes first announced by President Trump, [in June 2017](#), during his first major foray into U.S.-Cuba relations. The changes to the Cuba regulatory regimes administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC), the Department of Commerce's Bureau of Industry and Security (BIS), and the Department of State focus on restricting transactions with newly designated Cuban government entities and narrowing certain existing travel authorizations. The changes do, however, also have the potential to expand the scope of the existing BIS authorization for exports to the Cuban private sector for private sector economic activities.

Issuance of the State Department's Cuba Restricted List

The State Department has published a lengthy list of entities with ties to the Cuban military, intelligence, or security services or personnel that will be subject to certain restrictions.

Specifically, in its new List of Restricted Entities and Subentities Associated with Cuba (the "Cuba Restricted List"), the State Department targets entities acting under the control of, or acting on behalf of, the Cuban military, intelligence, or security services or personnel with which financial transactions would disproportionately benefit the Cuban military, intelligence, or security services or personnel at the expense of private Cuban enterprise or the Cuban people.

Not surprisingly the list includes GAESA and Gaviota, military entities that are omnipresent in Cuba's tourist industry, as well as a number of hotels.

As reflected in changes to the OFAC and BIS regulations, discussed below, exports and direct financial transactions with entities on the Cuba Restricted List will generally be prohibited for persons subject to U.S. jurisdiction. Additional time will be needed to assess the impact of this list and to see whether the composition remains static or the State Department amends it periodically, as noted in the State Department's Frequently Asked Questions.

Restricting certain financial transactions and travel

OFAC has amended the Cuban Assets Control Regulations (CACR) to restrict financial transactions with Cuba Restricted List entities and further restrict the terms of certain general licenses authorizing travel to Cuba.

In addition to generally prohibiting direct financial transactions with Cuba Restricted List entities, OFAC is amending a number of general licenses, such as the authorizations for transactions related to informational materials and for travel, to expressly exclude direct financial transactions with Cuba Restricted List entities from such authorizations, ensuring that financial transactions with Cuba Restricted List entities are generally prohibited.

Pursuant to the Trump Administration's 16 June 2017, National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM), not all transactions with Cuba Restricted List entities will be prohibited. As such, OFAC did not incorporate such restrictions into several pre-existing general licenses in order to provide for (or maintain) the exemptions set out in the NSPM. For instance, the general licenses for mail and telecommunications-related transactions and journalistic activities will not be amended, consistent with NSPM exemptions for activities that support democracy in Cuba or the expansion of direct telecommunications access for the Cuban people. Notably, U.S. businesses will continue to be permitted to engage in commercial engagements that were in place prior to 9 November 2017 (or the date the entity or subentity was otherwise added to the Cuba Restricted List). This grandfathering provision, described in OFAC Frequently Asked Question No. 74, includes authorization to continue with authorized transactions that are part of contingent or other types of contractual arrangements agreed to prior to the issuance of the amended regulations.

OFAC is also imposing additional restrictions on education, cultural exchanges, and support for the Cuban people, and related travel authorizations, as follows:

- Educational travel. OFAC will require that educational travel authorized under the CACR must now be done under the auspices of an organization subject to U.S. jurisdiction and that the traveler be accompanied by a representative of that organization who is subject to U.S. jurisdiction or obtain a certification letter from the sponsor.
 - However, if a traveler had engaged in at least one travel-related transaction (e.g., reserving accommodation or purchasing a flight) before 9 November 2017, such travel is authorized under this amended general license, provided it was consistent with the previous authorization.
- People-to-people. OFAC will remove the individual people-to-people travel general license and will require that such travel, as with the educational travel mentioned above, be conducted under the auspices of an organization subject to U.S. jurisdiction and that the traveler be accompanied by a representative of that organization who is subject to U.S. jurisdiction.
 - However, if a traveler had engaged in at least one travel-related transaction (e.g., reserving accommodation or purchasing a flight) before the announcement of NSPM on June 16, 2017, such travel is authorized under this amended general license, provided it was consistent with the previous authorization.
- Support for the Cuban people. OFAC will restrict use of the Support for the Cuban People general license, requiring that the traveler have a full-time schedule of activities that result in meaningful interaction with individuals in Cuba and that enhance contact with the Cuban people, support civil society in Cuba, or promote the independence of the Cuban people from Cuban authorities.

Finally, OFAC is amending its definition of prohibited officials of the Government of Cuba to include certain additional individuals, expanding restrictions applicable to transactions involving such persons.

New export restrictions

As with the OFAC regulation changes, BIS will revise the Export Administration Regulations (EAR) to incorporate restrictions on Cuba Restricted List entities. In addition to generally establishing a policy of denial for license applications to export items to Cuba Restricted List entities, BIS will amend the EAR's export license exceptions for gift parcels and humanitarian donations, consumer communications devices, and support for the Cuban people to additionally prohibit exports to the Cuban government officials identified in the OFAC amendment discussed above.

Broadening export authorization under the Support for the Cuban People License Exception

Contrary to most other revisions, as a step toward the easing of trade restrictions on the private sector of Cuba, BIS is expanding the authorization for items that may be exported to Cuba under License Exception Support for the Cuban People (SCP), now allowing such exports when "for use by the Cuban private sector for private sector economic activities." The change broadens the scope of items that qualify for the exception, which was previously restricted to a specifically enumerated list.

For more details about the recent changes to Cuba policy, please see the Hogan Lovells alert published on [June 19, 2017](#).

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