

ALERT

# Cuba Sanctions Liberalization Creates New Opportunities

December 17, 2014

Today, the President instructed the Secretary of State to immediately initiate discussions with Cuba on the re-establishment of diplomatic relations with Cuba, which were severed in January 1961. The Obama Administration also will ease certain sanctions against Cuba that the United States has maintained for many decades. Details about sanctions changes will come to light in coming weeks, and the practical effect of these changes will depend in substantial part on the response of the Cuban government. Yet, normalization could open new commercial opportunities for U.S. companies in financial services, communications, travel, and durable goods.

The White House announced that the U.S. Departments of Treasury and Commerce will amend the Cuba sanctions and export control regulations in coming weeks. The Office of Foreign Assets Control (OFAC)-the Treasury Department agency that administers sanctions-explained that, until then, prohibitions against Cuba travel and business remain in effect. The White House identified the following steps to expand commerce, information flows, and travel with Cuba:

## Telecom & the Internet

- Exports to Cuba of certain communications devices, software, applications, hardware, and services will be authorized.
- Exports to Cuba of certain goods related to establishing and updating communications systems will be authorized.
- Telecom providers will be able to establish infrastructure in Cuba to provide telecom and Internet services. Some caution is due, as statutory restrictions in the Cuba Democracy Act prohibit U.S. persons' investing in Cuban domestic telecom

## Practice Areas

International Trade

networks.

- The current liberalization builds on the Obama Administration's previous efforts to encourage more communications ties between the United States and Cuba. Since 2009, U.S. companies legally could sell communications services directly to Cuban counterparts-including voice and data services, mobile roaming service, satellite, and video. Building communications facilities between the United States and Cuba also is authorized.
- The practical success of these U.S. steps to encourage communications will depend significantly on the response of the Cuban government, which likewise would need to support greater flows of information between Cuba and the United States.

### **Financial Services and Remittances**

- Persons traveling in Cuba will be able to use their U.S. debit and credit cards.
- Personal remittance levels will be raised from \$500 to \$2,000 per quarter, with some exceptions.
- U.S. persons can donate to Cuban humanitarian projects and certain other Cuban enterprises without first applying to OFAC for a specific license.
- Remittance forwarders that follow OFAC rules will not need to apply to OFAC for a specific license.
- U.S. financial institutions will be allowed to establish correspondent accounts with Cuban financial institutions.
- The regulatory definition of "cash in advance" will be revised to mean "cash before transfer of title," making it easier to finance authorized exports to Cuba.
- Financial institutions will need to be careful that U.S. dollar transactions involving Cuban parties are authorized under U.S. sanctions regulations.

### **Travel**

- Travel by U.S. persons to Cuba will still be restricted. But where a U.S. person is currently eligible to travel, applying to OFAC for a specific travel license will no longer be necessary. U.S. persons may be eligible to travel to Cuba for family visits, government business, journalism, education, research, exhibitions and sports, humanitarian projects, "people to people" visits, and business travel otherwise authorized by OFAC.
- U.S. persons who follow OFAC rules governing travel services to Cuba will not need to apply to OFAC for a specific license.

### **Exports of U.S. Goods to Cuba**

- New regulations will authorize the export of certain building materials for private residential construction, certain goods for use by private sector Cuban entrepreneurs, and agricultural equipment by small farmers.

To be sure, many Cuba sanctions prohibitions are statutory, and the Obama Administration lacks the authority to lift these sanctions unilaterally. For example, restrictions will persist on investments in Cuban entities generally, entry into the United States of vessels calling in Cuba, and prohibitions on dealing in property allegedly seized by the Cuban government. Cuba would need to make significant progress towards adopting democracy in order to meet certain statutory markers for lifting the embargo completely. Some in Congress- including some in key leadership positions- are not expected to lift statutory sanctions anytime soon.

Yet, the Obama Administration's actions will remove substantial barriers to entering Cuban markets. Even Cuban cigars, the quintessential black market good, apparently will be legal to import into the United States (up to \$100 worth and if Cuba travel is otherwise eligible). Companies interested in island opportunities should watch regulatory and legislative actions closely over coming weeks.