

# Client Alert

November 2017

## Amendments to the Cuban Assets Control Regulations Implementing the Trump Administration's Policy Toward Cuba

What Happened: The Trump administration has prohibited direct financial transactions with dozens of entities listed in a "Cuba Restricted List," has prohibited individual people-to-people travel to the island and requires that group people-to-people travel be under the auspices of an organization subject to US jurisdiction.

The Bottom Line: Persons subject to US jurisdiction should review the Cuba Restricted List periodically to ensure that they are not engaging in direct financial transactions with prohibited persons when conducting business with or traveling to Cuba.

The Full Story:

On Wednesday, November 8, 2017, the US Department of Treasury's Office of Foreign Assets Control (OFAC) announced amendments to its Cuban Assets Control Regulations (CACR), which become effective as of November 9, 2017. The amendments incorporate the Trump administration's policy toward Cuba, as announced in the June 16, 2017, National Security Presidential Memorandum (NSPM) Strengthening the Policy of the United States Toward Cuba. The changes are primarily in the line of (1) prohibiting direct financial transactions with entities under the control of the Cuban military, intelligence or security service and personnel; and (2) imposing further restrictions on the ability to engage in people-to-people travel to Cuba, in each case as discussed in more detail below.

### Prohibition of Direct Financial Transactions with Entities on the Cuba Restricted List

The amendments add new Section 515.209 to the CACR, which will generally prohibit persons subject to US jurisdiction from engaging in direct financial transactions with any person that the Secretary of State has identified as an entity or subentity that is under the control of, or acts for or on behalf of, the Cuban military, intelligence or security services or personnel and with which direct financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba. The State Department's List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List) will be published in the Federal Register.<sup>1</sup> Notably, entities or subentities that are owned or controlled by another entity or subentity on the Cuba Restricted List are *not* treated as restricted unless also specified by name on the Cuba Restricted List.

It is important to note that the amendments to the CACR include conforming amendments to certain travel-related regulations, including Sections 515.560 (Travel-related transactions to, from and within Cuba by persons subject to US jurisdiction), 515.561 (Family visits), 515.564 (Professional research and professional meetings in Cuba), 515.566 (Religious activities in Cuba) and 515.567 (Public performances, clinics, workshops, athletic and other competitions, and exhibitions), that expressly provide that such

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<sup>1</sup> The Cuba Restricted List is available at: <http://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>.

travel-related authorizations do *not* authorize direct financial transactions with entities on the Cuba Restricted List. Because the majority of the entities identified in the present Cuba Restricted List are hotels, marinas and stores, persons subject to US jurisdiction traveling to Cuba should avoid engaging in activities that will result in a direct financial transaction with such entities and should verify that the traveler's proposed lodging, transportation and other accommodations do not involve direct financial transactions with entities set forth in the Cuba Restricted List.

However, Section 515.209 provides that the prohibitions described above do not apply to any travel-related transactions or transactions related to commercial engagements, including those that involve direct financial transactions with an entity or subentity on the Cuba Restricted List, provided those travel-related transactions were initiated, or such commercial engagements were in place, prior to the date that entity or subentity was added to the Cuba Restricted List. Additionally, Section 515.209 expressly clarifies that the prohibitions set forth above do not prohibit a person subject to US jurisdiction from participating in an indirect financial transaction with such entities, such as establishing or maintaining correspondent accounts or processing funds transfers as otherwise permitted by the CACR.

Finally, the Department of Commerce's Bureau of Industry and Security (BIS) is also amending its Export Administration Regulations to expressly clarify that BIS generally will deny applications to export or re-export items for use by entities or subentities identified in the Cuba Restricted List.

### **People-to-People Travel to Cuba Must Be Conducted Under Auspices of an Organization Subject to US Jurisdiction**

Section 515.565(b) of the CACR was amended to remove the authorization for individual people-to-people travel and to require that people-to-people educational travel be conducted under the auspices of an organization that is subject to US jurisdiction and that sponsors such exchanges to promote people-to-people contact, and that such travelers be accompanied by a person subject to US jurisdiction who is an employee, paid consultant, agent or other representative of the sponsoring organization.

However, Section 515.565(e) contains a "grandfathering" provision that authorizes certain people-to-people travel that previously was authorized where the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving accommodation) prior to June 16, 2017.

### **Takeaways**

Persons subject to US jurisdiction seeking to engage in future direct financial transactions with Cuban counterparties or seeking to travel to Cuba in the future should review the Cuba Restricted List to ensure that no entity listed therein is involved in such transaction. However, the amendments are not ex post facto and do not require persons subject to US jurisdiction to stop existing commercial or travel arrangements. While the amendments to the CACR prohibit direct financial transactions with entities identified in the Cuba Restricted List and impose further restrictions on the ability to engage in people-to-people travel to Cuba, both restrictions contain "grandfather" clauses.

For example, persons subject to US jurisdiction are exempted to engage in a direct financial transaction with an entity listed in the Cuba Restricted List provided that such commercial engagement was in place prior to such entity's being added to the Cuba Restricted List. Because the amendments expressly exempt from the prohibitions commercial engagements with entities or subentities that are owned or controlled by another entity or subentity on the Cuba Restricted List unless it is also specified by name on the Cuba Restricted List, persons subject to US jurisdiction may continue to engage in transactions with such entities, even if owned or controlled by an entity in the Cuba Restricted List, until such counterparty is expressly added to the Cuba Restricted List and, under the present amendments, commercial engagements entered into with such counterparty prior to its addition to the Cuba Restricted List will be deemed permitted.

The Latin America group at Hunton & Williams LLP will continue to closely monitor related developments. Please contact us if you have any questions or would like further information regarding the Cuban Assets Control Regulations or sanctions governing the Cuban embargo.

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