

# Client Alert

November 2017

## OFAC Settles Apparent Violation of the Cuban Assets Control Regulations with Credit Card Issuer

What Happened: AMEX agreed to pay \$204,277 to settle potential civil liability for 1,818 apparent violations of the Cuban Assets Control Regulations by an indirect subsidiary of AMEX whose corporate customers used their credit cards in Cuba or in transactions involving Cuba during a period of time when processing such transactions was prohibited.

The Bottom Line: OFAC will continue to bring actions against US persons who apparently violated the Cuban Assets Control Regulations, even if such actions have subsequently become generally licensed or otherwise permissible, and therefore it is important to ensure that not only present and future transactions, but also former transactions, comply or complied with the CACR.

### The Full Story:

On Friday, November 17, 2017, the US Department of Treasury's Office of Foreign Assets Control (OFAC) published enforcement information regarding a settlement reached between OFAC and BCC Corporate SA, a Belgium-based credit card issuer (BCCC). BCCC, which issues various payments products, including credits cards, to its European-based corporate customers, was acquired in March of 2009 by Alpha Card Group (Alpha Card), which in turn was owned 50 percent by American Express Company, a US financial institution (AMEX). According to the enforcement information, subsequent to Alpha Card's acquisition of BCCC, and between the time period of April 9, 2009, through February 3, 2014, BCCC processed 1,818 transactions totaling \$583,649.43 for more than 100 distinct corporate customers of BCCC whose cards were used in Cuba or that otherwise involved Cuba.

At the time such credit card transactions were processed the processing of such transactions by a US person, which includes "any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by" a US person, was prohibited by the Cuban Asset Control Regulations (CACR). In January 2015, OFAC revised the CACR to authorize US financial institutions to process credit and debit card transactions and permit the use of their credit and debit cards for certain travel to Cuba by US nationals as well as third-country nationals.

According to the enforcement information, AMEX voluntarily self-disclosed the apparent violations of the CACR as in effect prior to the January 2015 revisions. This, along with the fact that (i) BCCC has not received a penalty notice or finding of violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the apparent violations; and (ii) upon discovering the apparent violations, AMEX took swift and appropriate remedial action, were considered mitigating factors when determining the settlement amount to be requested with respect to the apparent violations of the CACR.

This recent enforcement information by OFAC highlights (i) OFAC's continued enforcement of the CACR as in effect from time to time, including enforcement for transactions constituting violations of the CACR that subsequently become licensed and permitted by the time such enforcement action was commenced; and (ii) the importance of self-disclosure of apparent violations as a mitigating factor in calculating the settlement amount requested from such US persons. Thus, it continues to be crucially important to

understand the CACR not only with respect to present and future transaction with Cuba or involving Cuba, but also with respect to legacy transactions.

The Latin America group at Hunton & Williams LLP will continue to closely monitor related developments and enforcement actions. 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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