

Reopening of U.S.—Cuba Relations: Opportunity for North Carolina Businesses?

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The loosening of trade and travel restrictions with Cuba that President Obama announced last month takes effect tomorrow, January 16, 2015. The White House explained that the changes are designed to “chart a new course” in relations with Cuba, reopening diplomatic relations with the country and signaling a relaxation of the U.S. embargo and sanctions that have been in place for more than fifty years. The policy and regulatory changes are likely to provide business opportunities for North Carolina companies, but along with those opportunities may come risks—both legal and otherwise. Despite the changes, companies wishing to do business involving Cuba or Cuban nationals should use caution and be sure to comply with applicable laws and regulations, including Treasury and Commerce Department rules.

Of significance, companies should know:

Changes Take Effect January 16, 2015

First, note that the “new course” charted by the White House does not promise to lift all sanctions against Cuba. Generally, the sanctions, many of which are imposed by the Cuban Assets Control Regulations, will remain in place. Some regulations, however, will be amended and will ease the terms of the embargo.

Specifically, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) has amended the Cuban Assets Control Regulations, which amendments are set to become effective January 16, 2015.

What Changes are on the Horizon?

The major elements of the President’s approach fall into several categories; very broadly speaking, they impact trade and travel. Many of the changes may yield opportunities for companies wishing to do business with Cuba.

Some observers believe the sectors most likely to be impacted by the thawing of U.S.-Cuba relations are Banking/Financial Services; Travel/Tourism; Telecommunications; Construction; and Agriculture.

Allowing Certain Commercial Sales and Exports from the U.S. to Cuba—and Limited Imports as Well

The White House hopes to “empower the nascent Cuban private sector” by allowing for the export of specific goods to Cuba, including (1) certain building materials for private residential construction; (2) “certain communications devices, related software, applications, hardware and services, and items for the establishment and update of communications-related systems”; (3) agricultural equipment for small farmers; and (4) goods for use by private sector Cuban entrepreneurs (it’s not yet clear what goods these are).

Conversely, licensed U.S. travelers to Cuba will be able to bring back to the U.S. limited goods. They will be authorized to import \$400 worth of Cuban goods, of which \$100 worth can be tobacco (i.e., cigars) and alcohol products (i.e., rum).

Relaxing Restrictions on Non-U.S. Affiliates and Subsidiaries of U.S. Companies

U.S.-owned or -controlled entities located in third countries will generally be licensed to provide services to and engage in financial transactions with Cuban individuals who are located in third countries. However, U.S.-owned or -controlled firms in third countries are not permitted to export unauthorized goods or services to Cuba. In addition, Cuban nationals who have moved outside Cuba and who have accounts at U.S. banks will see their accounts unblocked. Finally, U.S. persons will be allowed to participate in third-country professional meetings related to Cuba.

Facilitating Authorized Financial Transactions and Payments Between the U.S. and Cuba

Certain regulations will be loosened in order to “improve the speed, efficiency and oversight of authorized payments between the two countries.” U.S. financial institutions will be allowed to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions. Travelers to Cuba will be allowed to use U.S. debit and credit cards and there will be a change to the regulatory definition of “payment of cash in advance.” All licensed sales to Cuba must be financed either by “payment of cash in advance” or by third-country banks that are not U.S. persons or Cuban government entities. The statutory term “cash in advance” will be loosened to mean “cash before transfer of title and control” (instead of “payment received prior to shipment”), which, according to the White House, “will provide more efficient financing of authorized trade with Cuba.”

Constructing Improved Telecommunications Systems in Cuba

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In addition to loosening restrictions on exports to Cuba of the communications-related devices discussed above, U.S. telecom providers will be allowed to “establish the necessary mechanisms, including infrastructure . . . to provide commercial telecommunications and internet services” in Cuba. Specifically, the new regulations also authorize transactions “incident to the establishment of facilities, including fiber-optic cable and satellite facilities, to provide telecommunications services linking the United States or third countries and Cuba.”

Expanding and Making Easier Travel to Cuba

Travel to Cuba will be made easier but the floodgates will not be opened for U.S. tourism in Cuba. Rather, it will be easier for those persons whose travel fits into one of 12 “authorized” categories to travel to Cuba. Those categories are: (1) family visits; (2) official business of the U.S. Government, foreign governments, and certain intergovernmental organizations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, workshops, athletic and other competitions and exhibitions; (8) support for the Cuba people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutions; (11) exportation, importation, or transmission of information or information materials; and (12) certain export transactions that may be considered for authorization under existing regulations and guidelines.

Those persons falling into one of the above categories will be able to travel to Cuba under a “general” license, rather than under a case-by-case “specific” license, which means they can travel to Cuba by making arrangements through a service provider that complies with OFAC regulations (likely any travel agent or tourism company). The travelers will not have to apply first to OFAC and receive a specific license to travel to Cuba. The White House claims that these changes “make it easier for Americans to provide business training for private Cuban businesses and small farmers and provide other support for the growth of Cuba’s nascent private sector.” The White House also says that additional options “for promoting growth of entrepreneurship and the private sector in Cuba will be explored.” Travel for tourist activities, however, remains prohibited by statute.

Regarding growth of Cuba’s private sector, the amount of money that a U.S. person can send to Cuban nationals will increase from \$500 to \$2000 per quarter, and, further, a specific license will no longer be required for donative remittances to Cuba for humanitarian projects and private business development (which should increase donative investment in Cuba’s private sector, among other things).

Other Policy Changes

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In addition to the economic and business changes discussed above, the U.S. will re-establish an embassy in Havana and carry out high-level exchanges and visits with the Cuban government. The U.S. also will conduct a review of Cuba's designation as a State Sponsor of Terrorism.

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