

# President Trump Revises U.S. Policy on Cuba

## IN SHORT

**The Situation:** On June 16, 2017, President Trump announced revisions to U.S. policy toward engagement with Cuba and a limited rollback of certain sanctions relief provided by the Obama Administration.

**The Result:** As a result of the announcement, further easing of the U.S. embargo appears unlikely in the near term. In the coming months, restrictions will be imposed on: (i) dealings with entities related to the Cuban military, intelligence, or security services; and (ii) individual travel for person-to-person engagement. Otherwise, measures enacted by the Obama Administration to ease the U.S. embargo appear at this time to remain unchanged.

**Looking Ahead:** The announced changes will not take effect until revised regulations are published. In the interim, all currently authorized transactions may proceed. Even after revised regulations are issued, commercial engagements in place before they take effect likely will remain authorized.

On June 16, 2017, President Trump announced revisions to U.S. policy toward engagement with Cuba and a limited rollback of certain sanctions relief provided by the Obama Administration.

By way of policy, President Trump announced that any further improvements in relations with Cuba will be premised on concrete steps by the Cuban government to "improve the lives of the Cuban people," including measures to promote the rule of law, protect human rights, and foster political and economic freedoms. Although the United States will maintain diplomatic relations with Cuba, the nature of President Trump's announcement indicates that further steps to ease the U.S. embargo are unlikely in the short term.

The President also directed the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") to revise, respectively, the Cuban Assets Control Regulations, 31 C.F.R. Part 515, and the Export Administration Regulations, 15 C.F.R. Parts 730 to 774, to roll back certain measures implemented by the Obama Administration to ease the U.S. embargo. Although the President's delivered comments provided few details, his remarks and published guidance indicate that:

- The revised regulations will restrict transactions involving entities related to the Cuban military, intelligence, or security services, including, in particular, the Cuban military monopoly, *Grupo de Administración Empresarial* ("GAESA"). The U.S. Department of State will publish guidance and a list of prohibited entities. It remains to be seen whether this list will be a comprehensive list of prohibited parties—similar to BIS's Entity List—or a representative list that will require persons subject to U.S. jurisdiction to conduct additional due diligence.
- In order to reinforce the statutory prohibition against tourist travel, the revised regulations also will prohibit individual travel for non-academic educational purposes, which was a previously authorized category of person-to-person travel under the Obama Administration. Group travel for person-to-person engagement under the auspices of a sponsoring organization will, however, remain authorized, and the revised regulations will not affect any other categories of authorized travel, including travel by Cuban-Americans to visit family in Cuba.



Significantly, the announced changes will not take effect until OFAC and BIS release revised regulations, a process expected to take 'months.' Until the revised regulations are released, it is difficult to predict how U.S. and international companies may be affected.



Otherwise, it appears that the sanctions relief effected by the Obama Administration will remain largely unchanged, including authorizations permitting certain financial transactions, certain categories of travel (as noted above), commercial activities in certain sectors, and measures designed to encourage engagement with small, privately owned Cuban businesses.

Significantly, the announced changes will not take effect until OFAC and BIS release revised regulations, a process expected to take "months." Until the revised regulations are released, it is difficult to predict how U.S. and international companies may be affected. In the meantime, in order to provide a measure of commercial stability, OFAC and BIS have published guidance stating that: (i) businesses subject to U.S. jurisdiction may engage in otherwise authorized Cuba-related commercial engagements, including those involving GAESA, "provided that those commercial engagements were in place prior to the issuance of the forthcoming regulations"; and (ii) any changes to the regulations will be prospective, such that existing contracts and specific licenses will not be affected. Those traveling on the individual person-to-person travel general license, though, must have completed at least one travel-related transaction (e.g., purchasing a plane ticket or booking a hotel reservation) prior to the President's announcement on June 16, 2017.

Going forward, companies should be prepared for increasing difficulty in pursuing authorized business in Cuba. Although other general licenses authorizing lawful travel to Cuba are expected to remain in place, the OFAC guidance makes clear that after the regulations are issued, travel-related transactions with prohibited entities, including GAESA, generally will not be permitted. Given the pervasiveness of GAESA's control of hotels and other entities catering to travelers, this provision could make it difficult for travelers to arrange lodging and meals. Companies should also be prepared for potentially reduced domestic demand for services that support individually arranged Cuban travel.

Jones Day will continue to monitor developments.

### FOUR KEY TAKEAWAYS

1. The announced changes indicate that further easing of the Cuban embargo under President Trump in the near term is unlikely.
2. Many current provisions authorizing certain activities in Cuba will likely remain unchanged. However, the revised regulations are expected to prohibit transactions with certain entities affiliated with the Cuban military, intelligence, or security services, which may make otherwise lawful travel to Cuba difficult in practice.
3. Notwithstanding the June 16 announcement, there will be no changes to U.S. sanctions and their restrictions until revised regulations are issued in the coming months.
4. Interested parties should monitor developments as further guidance and revised regulations are issued for impacts on activities in Cuba.

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