

Memorandum

A Step Towards Normalized Relations: Relaxation of Cuba Sanctions Expands Commercial Opportunities for U.S. Business

October 17, 2016

On October 14, 2016, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the Department of Commerce's Bureau of Industry and Security ("BIS") announced groundbreaking amendments to the Cuban Assets Control Regulations ("CACR") and the Export Administration Regulations ("EAR") that open the doors for commercial activity with and concerning Cuba. Of particular note is the authorization of so-called "contingent contracts" relating to activities that remain prohibited under the CACR. This development – reflecting the Obama Administration's ongoing efforts to normalize relations with Cuba – means that U.S. businesses may now start planning for entering the Cuban market and go as far as to enter into binding contracts concerning Cuba including, for example, memoranda of understanding and tender bids, so long as they are made contingent on the underlying conduct ultimately being authorized by the U.S. government. The amendments also bolster Cuban trade and commercial opportunities in healthcare, infrastructure, and civil aviation that were previously closed to persons subject to U.S. jurisdiction. That being said, the Cuba embargo does remain in place and most transactions between the United States, or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited. OFAC has clearly stated that it will continue to enforce the provisions of the CACR. The amendments will be published in the Federal Register on October 17, 2016, and will take effect on that date.

The changes brought about by the amendments include the following:

- **Contingent Contracts:** Persons subject to U.S. jurisdiction will now be authorized to enter into contingent contracts, including, for example, executory contracts, agreements in principle, proposals in response to public tenders, or binding memoranda of understanding, for transactions prohibited by the CACR as well as to engage in transactions ordinarily incident to negotiating and forming such contingent contracts. The performance of such contracts, including, for example, provision of goods or services and the making or receiving of payments, must be made contingent on the authorization of the underlying

transaction by OFAC or any other relevant agency or the underlying transaction no longer requiring authorization. The performance of any contingent contract that is subject to licensing policies of any other federal agency must also be contingent upon any other necessary authorizations.

- **Medical Research and Pharmaceuticals:** Persons subject to U.S. jurisdiction will now be authorized to enter into joint medical research projects (including commercial and non-commercial research) with Cuban nationals and to engage in certain transactions incident thereto. Additionally, transactions incident to obtaining U.S. Food and Drug Administration (“FDA”) approval of Cuban-origin pharmaceuticals, including discovery and development, pre-clinical research, clinical research, and regulatory and licensing activities, and the importation into the U.S. of FDA-approved Cuban-origin pharmaceuticals will also be authorized. The healthcare industry related amendments also authorize persons subject to U.S. jurisdiction who are engaging in authorized health-related activities to open and maintain bank accounts at Cuban financial institutions for those purposes.
- **Vessel Transactions:** Foreign vessels which have delivered goods which would, if subject to the EAR, be classified EAR99 or would be controlled on the Commerce Control List only for anti-terrorism reasons will no longer be required to wait 180 days from departure from Cuba to enter U.S. ports for the purpose of loading or unloading freight.
- **Provision of Infrastructure and Civil Aviation Services:** Persons subject to U.S. jurisdiction will now be authorized to provide services related to developing, repairing, maintaining, and enhancing Cuban infrastructure. Persons subject to U.S. jurisdiction will also now be authorized to provide Cuba and Cuban nationals with services related to civil aviation safety and the safe operation of commercial aircraft.
- **Travel and Related Transactions:** OFAC has further facilitated authorized travel to Cuba by removing from the general license for attending or organizing professional meetings or conferences in Cuba the restriction that such a meeting or conference not be for the promotion of tourism in Cuba. Additionally, OFAC has removed the monetary value limitations on what persons returning from authorized travel may import from Cuba to the U.S. for personal use, including the limitations on tobacco and alcohol products. Additionally, OFAC has also removed the restrictions on the importation into the U.S. for personal use of Cuban-origin merchandise, including tobacco and alcohol products, acquired in third countries.

All amendments to the CACR may be found [here](#) and all changes to the EAR may be found [here](#).

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