

ALERT

Trump Administration Announces Curbs On Travel and Trade With Cuba

June 16, 2017

President Trump today announced plans to restrict tourism and trade with Cuba, retreating from certain aspects of the Obama Administration's liberalization of ties with the communist regime. Intended to strictly enforce the statutory ban on tourism to Cuba and to restrict the flow of money to the Cuban military, intelligence, and security services, the new measures prohibit individual "people-to-people" trips to Cuba, as well as most financial transactions with government entities that control the hotel and tourism industries in Cuba. Importantly, these changes will not go into effect until the relevant agencies, including the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS), issue implementing regulations, which could take a few months.

The Ban on Tourist Travel Will Be Strictly Enforced

The new policy will prohibit individual people-to-people travel to Cuba that was previously allowed under the Obama Administration, as President Trump views this category as the most ripe for abuse of the legislative ban on tourism. Group-based travel intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities, however, will remain authorized. Generally, the 12 categories of travel previously authorized – including travel for family visits, journalistic activities, professional research and meetings, educational activities, religious activities, and humanitarian projects – will also continue to be permitted.

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Notably, travel for individual people-to-people travelers who have already completed one travel-related transaction (such as purchasing a flight) prior to today's announcement will continue to be authorized even after the new regulations go into effect, assuming the travel is consistent with OFAC's current regulations. In addition, while transactions with entities related to the Cuban military, intelligence, or security services will generally be prohibited, as explained below, OFAC has stated that any travel-related arrangements that include direct transactions with such entities that were initiated prior to the forthcoming regulations will be permitted.

Most Transactions with Entities Controlled by the Cuban Military, Intelligence, or Security Services Will Be Prohibited

In addition to clamping down on certain travel to Cuba, the new U.S. policy also targets the Cuban government by prohibiting many financial transactions with companies controlled by the military, intelligence, or security services in Cuba. This broad restriction covers Grupo de Administracion Empresarial S.A. (GAESA), which is the military's business arm; some estimates indicate that 60% of the Cuban economy is controlled by the GAESA conglomerate. This measure likely will have a significant impact on travelers, as many brand name hotels and restaurants are controlled by the Cuban government.

Pursuant to the policy, there will be some exceptions to the prohibition on direct financial transactions with the military, intelligence, and security services, such as transactions related to authorized air and sea operations. Additionally, this new restriction, which will not take effect until OFAC issues implementing regulations, should not affect existing U.S. business with these Cuban entities. Indeed, OFAC issued guidance immediately before President Trump's announcement stating that "{c}onsistent with the Administration's interest in not negatively impacting American businesses for engaging in lawful commercial opportunities, any Cuba-related commercial engagement that includes direct transactions with entities related to the Cuban military, intelligence, or security services that may be implicated by the new Cuba policy will be permitted provided that those commercial engagements were in place prior to the issuance of the forthcoming regulations." Similarly, the OFAC guidance indicates that existing licenses authorizing U.S. companies to do business in Cuba will not be impacted by the forthcoming regulations.

Several other aspects of the Obama Administration's Cuba policy likely will remain in effect. President Trump has indicated that the U.S. embassy in Havana will remain open, and it appears that several other exceptions to the Cuba embargo will remain in place. OFAC and BIS have been directed to begin the process of issuing new regulations soon, although, as noted, the final regulations may not be published for several months, so stay tuned.