

Client Alert

December 2015

Cuba: The Year in Review

One year ago, on December 17, 2014, President Obama announced a policy to increase contact and engagement with the people of Cuba with an ultimate goal of normalizing relations between the US and Cuba. The announcement generated immense press coverage of and commercial interest in Cuba. Since then, the US has removed Cuba from the list of State Sponsors of Terrorism and the two countries have reopened their respective embassies, thereby formally re-establishing diplomatic relations.

Additionally, the US has undertaken a series of steps towards the normalization of relations. Following President Obama's announcement, the Department of Commerce's Bureau of Industry and Security (BIS) amended its Export Administration Regulations (EAR) and the Department of the Treasury's Office of Foreign Assets Control (OFAC) amended its Cuban Assets Control Regulations (CACR) on January 16, 2015, to implement the policy change. These regulatory changes, among other things:

- authorized travel to Cuba pursuant to different travel categories without having to request a specific license from OFAC,
- removed certain restrictions on financial institutions subject to US jurisdiction,
- authorized credit card and debit card usage in Cuba and correspondent banking agreements between US and Cuban financial institutions, and
- expanded the list of products that may be exported to Cuba pursuant to license exceptions and the types of transactions that may be undertaken in Cuba pursuant to general licenses and therefore without having to request a specific license from BIS or OFAC.

On September 21, 2015, BIS and OFAC further amended the EAR and CACR, respectively. These additional regulatory changes, for example:

- removed limits on remittances to Cuba,
- authorized the physical presence in Cuba of certain persons subject to US jurisdiction,
- further removed certain restrictions on financial institutions subject to US jurisdiction, and
- authorized the provision and receipt of legal services for and from Cuban nationals for transactions permitted by the amended regulations.

Conversely, Cuba has directly or indirectly agreed to increased engagement and commerce generally and with the United States in particular by:

- authorizing a direct correspondent banking agreement by Banco Internacional de Comercio S.A. (BICSA) with Florida-based Stonegate Bank,

- authorizing Stonegate Bank to issue a Debit MasterCard for use in Cuba with expansion for use at ATM locations starting in 2016 (although credit cards remain unauthorized),
- promulgating its second Portfolio of Foreign Investment Opportunities, and
- entering into debt settlement agreements with various creditors, including the Paris Club.

Various obstacles continue to prevent substantial engagement of and commerce with Cuba, however. These include:

- the Cuban embargo, which may only be lifted by an official act of Congress, and
- Cuba's lack of access to capital in the form of international finance from individual countries or multilateral institutions (i.e. the World Bank).

Despite this, steps continue to be taken towards the normalization of relations between the two countries. For example:

- Cuba and the United States have commenced discussions of the claims currently held by US nationals for property expropriated by the Cuban government after 1959, and
- President Obama has expressed his interest in visiting Cuba in 2016 if the conditions are right (i.e. ability to speak to pro-democracy dissidents).

Thus, the next year may feature further normalization of relations between the two countries and additional changes to the regulations governing the presently-in-place Cuban embargo, which may only be completely lifted by an act of Congress.

The Latin America Group at Hunton & Williams will continue to closely monitor related developments. Please contact us if you have any questions or would like further information regarding any of the regulatory changes in the past year, or any other regulation or sanction governing the Cuban embargo.

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