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OFAC Gives Red Light to Cuban U-Turn Transactions

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September 10, 2019 - On September 9, 2019, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) published amendments to the Cuban Assets Control Regulations (“CACR”) as a final rule in the Federal Register. The amendments re-impose limitations on U-turn transactions and remittances. These transactions and remittances had been allowed since 2015 when the Obama Administration moved to soften the U.S. embargo against Cuba. The changes represent the latest moves by the Trump Administration to pull back from Cuba engagement and tighten U.S. sanctions.

September 9 Amendments

The September 9 amendments, which take effect on October 9, 2019, will affect two types of transactions involving Cuba: U-turn transactions and remittances.

U-Turn Transactions

The new prohibition on U-turn transactions could have tremendous implications for U.S. financial institutions, as well as any foreign company utilizing the U.S. banking system while conducting business in Cuba. U-turn transactions originate and terminate outside of the U.S., but use a U.S. banking institution to process the transaction, typically because the transaction calls for payment in U.S. dollars. On March 16, 2016, pursuant to President Obama’s policy of easing financial restrictions on the Cuban regime, OFAC amended the CACR by issuing a general license for U-turn transactions. Under the 2016 amendments to CACR, 31 C.F.R. § 505.584(d), such transactions were permitted, provided that neither the originator nor the beneficiary was subject to U.S. jurisdiction. In other words, transactions relating to Cuba and a third country could be processed in U.S. dollars through U.S. financial institutions. The provisions also extended to third-country subsidiaries of U.S. banks, allowing a third-country subsidiary to originate a payment that was then processed through the parent in the U.S. before being deposited in a Cuban beneficiary bank.

Under the September 9 [amendments](#), U.S. banking institutions are no longer authorized to process U-turn transactions. This will restrict the ability of non-U.S. companies to engage in dollar payable transactions with Cuba. However, the changes do authorize banking institutions subject to U.S. jurisdiction to reject, rather than block, such transactions. This will at least allow the parties to secure other payment arrangements.

The repeal of the U-turn authorization may also [affect](#) insurers that have provided insurance coverage for foreign companies that have invested in Cuban state-owned enterprises.

Remittances

The September 9 amendments also dramatically restrict the amount of funds that may flow into Cuba via remittances. Under the Obama-era Cuba policy, there was no limit on the dollar amount or frequency of remittances Cuban-Americans could send to family members. The Obama Administration also eased restrictions on donative, or non-family, remittances. The September 9 amendments eliminate donative remittances altogether. OFAC also eliminated section 31 C.F.R. §517.570(h), which allowed financial institutions to unblock and return remittances that were blocked prior to the Obama-era regulations, but would have been permitted under the donative remittances provisions of the CACR.

In addition, the September 9 amendments place a cap of \$1000 on remittances sent to a Cuban family member per quarter, greatly reducing the flow of U.S. dollars into Cuba. The amended regulations also prohibit U.S. persons from sending remittances to Cubans who are close relatives of “prohibited members of the Cuban Communist Party,” which is defined under the CACR to mean members of the Politburo, who were already prohibited from receiving remittances from the U.S.

While restricting remittances to Cuban family members, the September 9 amendments do authorize remittances to “self-employed” individuals under 31 C.F.R. § 515.340(g). Under existing section 515.340(g), certain individuals and non-governmental organizations in Cuba are authorized to support humanitarian projects, pro-democracy groups, and the development of private businesses. Now, these remittances may also be sent to support “the operation of economic activity in the non-state sector by self-employed individuals.”

OFAC defines self-employed individuals as Cuban nationals who are either “(a) an owner/employee of a small private business or sole proprietorship; (b) an independent contractor or consultant; (c) a small farmer who owns his or her own land; or (d) a small usufruct farmer who cultivates state-owned land to sell products on the open market.”

Why This Matters

The September 9 amendments represent the latest in a series of steps taken by the Trump Administration since June 2017 to roll back the Obama Administration’s efforts to soften the U.S. embargo against Cuba. Since the Trump Administration’s Cuba policy was announced, OFAC has repealed or sharply narrowed a number of amendments made to the CACR during the Obama Administration. We anticipate further rollbacks of Obama-era Cuba policies in the coming months, particularly in the run up to the 2020 U.S. election cycle.

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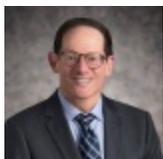
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