

# Cuba: New Easing of Sanctions

Today the White House took another major step to ease sanctions against Cuba, through new regulations issued by the Departments of Commerce and Treasury. See **80 Fed. Reg. 56898** and **80 Fed. Reg. 56915**. The new regulations build on authorizations already issued by the Administration earlier this year, further opening up trade relating to consumer communications, telecommunications infrastructure and services, and other activities to provide support for the Cuban people.

This latest round of sanctions relief enables U.S. companies, for the first time in decades, to open offices and build a physical presence in Cuba, provided that their operations relate to authorized activities in Cuba, and to export certain items to Cuba in furtherance of establishing an on-the-ground presence. In addition, U.S. companies now may use Cuban banking services, engage in marketing, provide expanded product support and training, enter into local business partnerships, and hire persons in Cuba, among other activities, in support of authorized activities. The regulatory changes also make it easier for individuals to travel and send remittances. While the embargo still remains in effect, with prohibitions on tourism and general trade with Cuba, today's developments enable U.S. companies to implement turn-key business plans in limited areas of commerce with Cuba, such as telecommunications services and the distribution of consumer communications devices.

As a summary, here is an overview of key authorizations now available to U.S. companies:

- **U.S. companies may establish and maintain a physical presence, to support authorized activities in Cuba:**
  - Authorized activities must fall within one of the following categories: news bureaus; distribution of certain goods such as consumer communications devices, agricultural products, equipment for entrepreneurs, and materials for construction or renovation of privately-owned buildings; mail and parcel services; provision of telecommunications or internet-based services; educational activities; religious organizations; and providers of carrier and certain travel services.
  - Establishment of a physical presence may include: leasing physical premises such as office, warehouse, classroom, or retail outlet space; securing related goods and services locally or exporting certain goods to Cuba for use in the physical premises; and payment of fees relating to the operation of the space.
  - U.S. companies authorized to operate in Cuba may employ Cuban nationals and employ persons subject to U.S. jurisdiction in Cuba, open and maintain bank accounts in Cuba, and engage in marketing relating to the physical space.
- **Telecommunications service providers, in particular, may:**
  - Enter into partnership with Cuban entities to provide certain telecommunications and internet-based services, including entry into licensing agreements related to such services.
  - Enter marketing arrangements and enter into all other necessary agreements or arrangements for those services in Cuba.
  - Establish any type of legal entity to conduct these telecommunications and internet services in Cuba, such as a branch, office, subsidiary, joint venture, franchise, or agency arrangement.

- **Consumer communications device manufacturers and distributors may:**

- Import Cuban-origin mobile applications into the United States, and hire Cuban nationals to develop them.
- Provide training services related to the installation, repair, or replacement of authorized certain consumer communications devices exported to Cuba.

- **Expanded export authorizations:**

- For equipment authorized for export under the Consumer Communications Devices ("CCD") or Support for the Cuban People ("SCP") exceptions, the reference to "sold or donated" is removed to permit other commercial arrangements such as leasing of products.
- Temporary exports and reexports of tools of the trade, and products intended for marketing demonstrations, are now authorized for professional meetings, provided that such items remain in the exporter's effective control, the items are EAR99 or only export controlled for anti-terrorism reasons, and the items are returned to the United States within one year.
- Kits or replacement parts or components are permitted for one-to-one repair of authorized products in Cuba.
- Commodities and software that are EAR99 or export controlled only for antiterrorism reasons may now be provided to Cuban nationals for use in development of software that will improve the free flow of information or support private sector activity.
- The SCP exception now permits exports and reexports to Cuba of items that are EAR99 or export controlled only for antiterrorism reasons, for use by U.S. persons in establishing, maintaining and operating an authorized physical presence in Cuba.
- The SCP exception now allows U.S. persons to give away EAR99 marketing merchandise as free gifts for promotional purposes, in support of authorized activities.
- A license no longer is needed for the deemed export or reexport of EAR99 technology or source code to Cuban nationals in the United States or in a third country.

- **Travel for authorized purposes is easier:**

- Travel services may now be provided by vessel.
- Family members may accompany U.S. persons travelling to Cuba for family visits, and close family members may accompany persons traveling to Cuba for certain authorized visits (government business, journalism, professional research, and humanitarian, educational, religious, education and foundation related work).
- Authorized travelers may open, maintain and close Cuban bank accounts to access funds while located in Cuba for the authorized transaction.
- The temporary sojourn license exception has been expanded to allow aircraft to remain in Cuba up to 7 consecutive days and vessels to remain in Cuba up to 14 consecutive days, and to allow such aircraft or vessels to carry spare parts for their use.

- **Additionally, several new authorizations make it easier for individuals to maintain ties with Cuban nationals:**

- The limit on donative remittances to Cuba has been removed, and previously blocked remittances have been unblocked.

- U.S. persons may provide goods and services to Cuban national individuals located outside of Cuba.
- A number of other activities are authorized, including the provision of (and receipt of payment for) certain legal services to Cuban nationals, the importation of personal gifts sent to the United States from Cuba, unblocking of estates in which a Cuban national has an interest, and various educational activities.

These changes largely are the result of feedback from U.S. companies to U.S. regulators as to the authorizations needed to implement commercially viable plans to open up communications in Cuba and to provide support to the Cuban people. However, Congressional action is still necessary to repeal the legislative trade embargo and travel ban. The authorizations issued by the Administration today have a limited scope, and the compliance requirements are highly technical. Thus, U.S. companies looking to enter Cuba should undertake a careful review of the Commerce and Treasury regulations applicable to their business plans.

For more information, please contact:

F. Amanda DeBusk, *Partner*  
+1 (202) 721-4790  
[amanda.debusk@hugheshubbard.com](mailto:amanda.debusk@hugheshubbard.com)

Melissa Duffy, *Partner*  
+1 (202) 721-4689  
[melissa.duffy@hugheshubbard.com](mailto:melissa.duffy@hugheshubbard.com)

Alan Kashdan, *Counsel*  
+1 (202) 721-4630  
[alan.kashdan@hugheshubbard.com](mailto:alan.kashdan@hugheshubbard.com)

International Trade and Customs Practice Group  
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Hughes Hubbard & Reed LLP  
One Battery Park Plaza | New York, New York 10004-1482 | +1 212-837-6000

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