

ACI's 5th Annual Economic Sanctions Boot Camp

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Managing Sanctions Risks Related to Cuba

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Tweeting about this conference?

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Jurisdictional Scope of Cuban Assets Control Regulations

- Cuban sanctions apply to all persons subject to U.S. jurisdiction, including:
 - U.S. citizens and permanent residents, wherever located;
 - all persons within the United States;
 - all subsidiaries and branches of U.S. organizations throughout the world; and
 - all persons engaging in transactions that involve property in or otherwise subject to the jurisdiction of the United States.
- Note: This includes foreign corporations owned or controlled by U.S. persons whereas some other programs do not.

Prohibitions and Blocking

- Unless authorized or exempt, all property in which Cuba or a Cuban national (absent certain exceptions) has an interest is blocked.
- All persons subject to U.S. jurisdiction are prohibited from dealing in any property in which Cuba or a Cuban national (absent certain exceptions) has an interest.
- This effectively operates as a complete bar on transactions or transfers involving a Cuban national or Cuban-origin goods and services.
- All persons subject to U.S. jurisdiction who come into the possession of blocked property are required to notify OFAC.



Prohibitions and Blocking (con't)

- These blocking provisions effectively prohibit all of the following, absent an applicable exception:
 - Dealings with Cuban nationals;
 - Exports of goods, technology, or services to Cuba;
 - Imports of and other transactions involving Cuban-origin goods or services; and
 - Dealing, assisting in, or facilitating such transaction.
- There are several exceptions to the general prohibition, such as for certain of the following activities:
 - Telecommunications services
 - Services incident to internet-based communications
 - Informational materials
 - Goods licensed for export by the Department of Commerce

Cuban Nationals Outside of Cuba

- There are no restrictions on dealings with Cuban nationals who have become citizens or permanent residents of the U.S.
 - Authorized as “unblocked nationals”
- General authorization for dealings with Cuban nationals who are permanent residents of third countries (except for property that was blocked as of the later of January 28, 2011 or when the individual gained permanent residence outside of Cuba).

Hypothetical Situations – Violation of Cuban Sanctions?

- Cuban national in another Latin American country (who is not a permanent resident of that country) walks into U.S.-owned coffee franchise and purchases a cup of coffee
- Cuban national in another Latin American country books a room at a hotel managed by a U.S. company
- U.S.-managed hotel in Latin America sells products from all around the region including Cuban cigars
- U.S. company purchases a non-U.S. company and, after closing, finds Cuban inventory on its shelves
- U.S. company seeks to purchase non-U.S. company who owns property in Cuba
- U.S. company seeks to purchase non-U.S. company that does business with Cuba

General Licenses – Travel To Cuba

- Unless authorized by a general or specific license, any person subject to U.S. jurisdiction who engages in any Cuba travel-related transactions violates the CACR and may be subject to penalties.
- Persons authorized to engage in Cuba travel-related transactions are allowed to engage in all transportation-related transactions ordinarily incident to travel to and from Cuba without any expenditure limitations.
- Authorized travelers may also engage in all transactions ordinarily incident to travel anywhere within Cuba, such as hotel accommodations, meals, local transportation, and goods personally used by the traveler in Cuba, provided that the total for such expenses does not exceed the Department of State's Per Diem Rate Allowance for Havana, Cuba.



Categories of General Travel Licenses

- Persons visiting “close relatives” who are nationals of Cuba
- Persons visiting “close relatives” who are U.S. Government employees assigned to the U.S. Interests Section in Havana
- Officials of the U.S. and foreign governments and of intergovernmental organizations of which the United States is a member traveling on official business in their official capacities
- Journalists and support personnel regularly employed in that capacity by a news reporting organization and traveling for journalistic activities
- Full time-professionals conducting professional research that is of a noncommercial, academic nature; comprises a full work schedule in Cuba; has a substantial likelihood of public dissemination; and does not fall within certain categories listed in § 515.564(c)-(e)



Categories of General Travel Licenses

- Certain professional meetings organized by an international professional organization or for commercial telecommunications transactions
- Faculty, staff and students of accredited U.S. graduate and undergraduate degree-granting academic institutions meeting certain requirements
- Members and staff of U.S. religious organization engaging in religious activities in Cuba under the auspices of the organization
- Employees of a U.S. telecommunications services provider or of an entity representing such provider

General Licenses – Numerous Restrictions

- Generally speaking, travelers should not have any free or extra time.
- Authorized travelers may engage in all transactions ordinarily incident to travel anywhere within Cuba (e.g., meals, hotel, travel) and also for transactions ordinarily incident to the transaction that is authorized.
- No general licenses for U.S. travel providers who provide services in connection with licensed travel.
- Any persons subject to U.S. jurisdiction who provides services akin to those of a travel agent with respect to Cuba must be specifically licensed with OFAC as a Travel Service Provider pursuant to 515.572(a)(1) of the Regulations.
- If the traveler is a U.S. person traveling to Cuba pursuant to a valid OFAC license, travel insurance may be issued to the traveler by a U.S. insurer without a separate license.



General Licenses – Exporting Medicine to Cuba

- U.S. Businesses may export medicine and medical devices to Cuba.
- All transactions ordinarily incident to the export of items from the U.S. to Cuba, or the re-exportation of 100% U.S.-origin items from a third country to Cuba, are generally authorized, provided the export is licensed or otherwise authorized by the Commerce Department (subject to compliance with requirements on payment/financing terms).
- In accordance with TSRA and as described in Section 746.2(b) of the Department of Commerce’s Export Administration Regulations, there is a general policy allowing exports to Cuba of medicine or medical devices, with certain exceptions.
- Payment Terms:
 - Cash in advance
 - Financing by third-country bank that are not U.S. persons or Cuban government entities (foreign subsidiaries of U.S. financial institutions ok)



Telecommunications General License

- Section 515.542(b) specifically allows all U.S. telecommunications services providers to engage in transactions incident to the provision of telecommunications services between the United States and Cuba.
- Section 515.542(c) authorizes persons subject to U.S. jurisdiction to contract with and pay non-Cuban telecommunications service providers for services provided to particular individuals in Cuba (other than certain prohibited Cubans). This provision allows someone in the U.S. to pay for the telephone service of another person who lives in Cuba.
- Transactions incident to establishing facilities to provide telecommunications services linking the United States and Cuba, including fiber-optic cables and satellite facilities, are authorized pursuant to § 515.542(d).
- Section 515.578 allows persons subject to U.S. jurisdiction to export to persons in Cuba services related to the exchange of personal communications over the Internet, such as chat, e-mail, social networking, file sharing, and other related uses.
- The authorization in this section does not extend to knowingly providing such services to members of the Government of Cuba.

Telecommunications License Compliance Requirements

- All persons utilizing the general license must:
 - Notify OFAC in writing within 30 days after commencing or ceasing to offer such telecommunication services, and
 - Furnish semiannual reports providing the total amounts of all payments made to Cuba or a third country as related to such services during the prior six months.

Case Studies: AIG

- Between January 2006 and March 2009, two AIG subsidiaries in Canada issued or renewed property and casualty insurance policies that insured Cuban risks of a Canadian corporate entity for an estimated aggregate premium of \$486,137.71.
- One of the AIG subsidiaries in Canada also maintained a D&O Liability insurance policy that insured certain directors and officers of three Cuban joint venture partners of a Canadian corporation. The estimated total premium for D&O coverage during this time period was \$55,578.08.
- From March 2006 through September 2008, another Canadian subsidiary, renewed, or maintained 3,446 individual or annual multi-trip travel insurance policies in which the insured identified Cuba as the travel destination. The total premium collected for these policies was \$337,973.25 and 103 claims were paid for a total value of \$96,910.47.
- AIG cooperated with OFAC's investigation by submitting a voluntary self-disclosure and executing a statute of limitations tolling agreement.
- OFAC determined that AIG's apparent violations constituted a non-egregious case.
- The total base penalty amount for the apparent violations was **\$413,390**.
- On May 8, 2014 OFAC announced that AIG agreed to remit **\$279,038** to settle all potential civil liability stemming from the discussed events.

Case Studies: Amex TRS

- Between December 2005 and November 2011, Amex TRS' foreign branch offices and subsidiaries issued 14,487 tickets for travel between Cuba and countries other than the United States, without authorization from OFAC.
- Amex TRS was investigated by OFAC in 1995 and 1996 for similar apparent violations of the CACR arising from the provision of travel services to and from Cuba by a recently acquired subsidiary at the time.
- OFAC provided written notice to Amex TRS that such prior conduct constituted apparent violations of the CACR.
- Amex TRS cooperated with OFAC's investigation by submitting a voluntary self-disclosure, executing a statute of limitations tolling agreement, and replying to OFAC's requests for supplemental information.
- OFAC found that the apparent violations constituted an egregious case.
- The base penalty for the apparent violations was **\$3,629,250**.
- On July 22, 2013 OFAC announced that Amex TRS agreed to pay **\$5,226,120** to settle all potential civil liability stemming from the discussed events.

Compliance Guideline Factors

- Willful or Recklessness Violation of Law
- Awareness of Conduct at Issue
- Harm to Sanctions Program Objectives
- Individual Characteristics (including Sanctions History)
- Compliance Program
- Remedial Response
- Cooperation with OFAC
- Timing of Apparent Violation in Relation to Imposition of Sanctions
- Other Enforcement Action
- Future Compliance/Deterrence Effect
- Other Relevant Factors

Canada's Foreign Extraterritorial Measures Act (FEMA)

- Often referred to as a "blocking statute," FEMA is aimed at limiting the effect of foreign extraterritorial measures.
- It is primarily an enabling statute. It authorizes the Attorney General of Canada to make orders blocking extraterritorial measures from being implemented in Canada.
- To date, FEMA has only been used to block CACR restrictions on Cuba.
- An individual or corporation that breaches either FEMA or an order made under FEMA can be subject to sanctions.
- There have been no reported enforcement actions arising from violations of the 1992 Blocking Order.

Questions?

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