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Export Controls Alert

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Biden Administration lifts some Cuba sanctions

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OFAC eases restrictions on some internet services and small entrepreneurs.



What's the impact?

- OFAC's new amendments to the Cuban Assets Control Regulations lift some restrictions on internet-based services to Cuba, including e-gaming and e-learning platforms, social media, collaboration platforms, video conferencing, automated translation, web maps, and user authentication services.
- The amendments introduce a new definition of independent private sector entrepreneurs and grants them access to the US banking system by allowing them to maintain and use a US bank account to conduct authorized or exempt transactions.

On May 28, 2024, the Department of the Treasury's Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations (CACR), expanding, e.g., authorizations for internet-based services and authorizing private sector entrepreneurs in Cuba to maintain and use a US bank account to conduct authorized or exempt transactions. OFAC also issued six new,

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Cuba-related Frequently Asked Questions (FAQs 1174-1179) and amended eight Cuba-related Frequently Asked Questions (FAQs 732, 736, 745, 748, 757, 769, 770, and 785). The amendments were officially published in the *Federal Register* and thereby came into force on May 29, 2024.

Internet-based services

OFAC amended § 515.578(a)(1) to provide examples of authorized services incident to the exchange of communications over the internet. This includes and expands certain services to support the exchange of web-based communications. For example, cloud-based services may now be exported to Cuba to support the exchange of communications over the Internet. Some of the additional services that are now authorized include social media platforms, collaboration platforms, video conferencing, e-gaming and e-learning platforms, automated translation, web maps, and user authentication services.

Definition of independent private sector entrepreneurs

OFAC amended § 515.340 by replacing the term “self-employed individual” with the term “independent private sector entrepreneur.” The new term encompasses Cuban nationals who are not a prohibited official of the Government of Cuba or a prohibited member of the Cuban Communist Party and who are one or more of the following: (a) an owner, including a self-employed individual (cuentapropista), or employee of a small private business entity, private cooperative, or a sole proprietorship located in Cuba, in each case of up to 100 employees; (b) an independent contractor or consultant; (c) a small farmer who owns his or her own land; (d) a small usufruct farmer who cultivates state-owned land to sell products on the open market; or (e) a private cooperative or small private business entity located in Cuba of up to 100 employees that is owned only by individuals described above. Examples are IT services, software development businesses, mobile application developers, food and beverage importers, production/processing businesses, packaging and food distributors, machinery manufacturing and repair businesses, shipping, logistics, expediting, and delivery of goods businesses, medical supply businesses, and mechanical services (automobile, refrigeration, and heating and A/C services and repair). It is important to note that for a Cuban private sector business to qualify under the new definition, its ownership cannot include any prohibited officials of the Cuban Government, such as the national assembly members, Cuban military officers, or certain ministry and staff regime propagandists, and prohibited members of the Cuban Communist Party.

This change is intended to reflect recent changes in the Cuban economy: “While cuentapropistas—or self-employed proprietorships—have been legal for some years, in 2021, the Cuban Government also legalized the creation of small- and medium-sized enterprises. With over 11,000 private businesses registered—operating in diverse fields from food distribution to construction to auto repair—Cuba’s private sector is now responsible for nearly one-third of all employment on the island.”

Banking system

Private sector entrepreneurs are now authorized to maintain and use a US bank account to conduct authorized or exempt transactions. This means that a US banking institution may now open and maintain an account solely in the name of a Cuban national who is an independent private sector entrepreneur for, e.g., receipt of payment for the importation to the United States of certain goods and services produced by independent Cuban entrepreneurs or payment related to authorized exports to Cuba, including through an online payment platform. Prior to this amendment, entrepreneurs in Cuba could not access the US banking system.

The amendments further reinstate an authorization for “U-turn” transactions—funds transactions that start and end outside the US but pass through the US financial system. OFAC also authorized the unblocking and return of any transfer that would have been authorized pursuant to the reinstated authorization.

Conclusion

While the comprehensive Cuba sanctions remain in place and the regulations continue to maintain restrictions on the Cuban Government and its military, intelligence, and security services, OFAC’s recent amendments are a signal of support for the “nascent, yet growing private sector.” According to a senior administration official, “These amendments will facilitate greater access to Internet-based services for the Cuban people, as well as provide the independent Cuban private sector greater access to international transactions and US banking services, including through online payment platforms.”

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