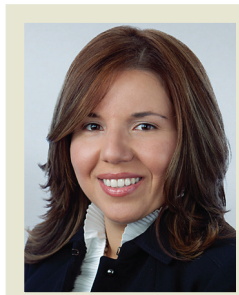


## Bridging the Divide: Cuba Today

**F**or the last half century, the United States and Cuba have been separated by more than just the 247 miles between the Port of Miami and Puerto de la Habana. Because of the economic embargo in place for much of that time, the two countries have been worlds apart. Recently, however, President Barack Obama has restored relations with Cuba, which has many U.S. businesses contemplating the prospects of potential



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new lucrative business opportunities. And for good reason. After all, Cuba represents more than 11 million potential consumers who have had little access to American goods and services for more than 50 years. And the Obama administration has recently promulgated amended regulations specifically intended “to allow more business opportunities for the nascent Cuban private sector.”

To understand the recent changes, the latest of which went into effect on September 21, 2015, some background



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is necessary. For over fifty years, the ability to travel to Cuba and do business or trade with Cuban nationals has been governed by a byzantine set of regulations administered by the Department of Treasury’s Office of Foreign Assets Control (OFAC) and the Department of Commerce’s Bureau of Industry and Security. Specifically, travel to Cuba—and the ability to engage in commercial transactions with Cuban nationals—has been regulated under the Cuban Assets Control Regulations (CACR). Trade with Cuba is governed by the Export Administration Regulations (EAR). Under the CACR and EAR, the

ability to travel to Cuba or do business or trade with Cuban nationals requires a license or an exception to the license requirement.

Under the CACR, licenses are generally available for only twelve categories of travel: family visits, official government business, journalistic activity, professional research and meetings, educational activities, religious activities, public performances or competitions, support for the Cuban people, humanitarian projects, activities of private foundations or research or educational institutes, transmission of information or informational materials,

and certain export transactions.

Licenses are either general or specific license.

If a traveler meets the specific requirements set forth in the CACR for travel to Cuba under one of those twelve categories, then he or she is entitled to a general license. If a traveler does not meet the specific regulatory requirements for one of the twelve categories (but is still traveling within one of those twelve categories), he or she can apply to OFAC for a specific license. Because general licenses do not require an application to OFAC, they make travel to Cuba far easier.

The same is true for doing business in Cuba or with a Cuban national. A U.S. person wanting to do business with a Cuban national is required to have a general or specific license. A person can transact business under a general license, without express approval from OFAC, if the transaction satisfies the specifically enumerated requirements in the CACR. If the transaction does not satisfy the specifically enumerated criteria, then a specific license is required. An OFAC general license authorizes the exportation from the United States (and the reexportation of 100% U.S.-origin items from third countries) to Cuba only when licensed by the Bureau of Industry and Security, which currently authorizes limited categories of items under the EAR.

In January, OFAC and the Bureau of Industry and Security announced new rules amending the CACR and EAR to implement the policy changes President Obama announced on December 17, 2014. On September 18, 2015, OFAC and the Bureau of Industry and Security announced additional changes to build on the previous one. Here is a general summary of the changes announced in January and the additional ones announced more recently:

**Increased Travel to Cuba:** There are three major changes to U.S. travel policy. First, the recent changes to CACR increase the types of travel (within the twelve categories) that qualify for a general license. And on a related note, close relatives (i.e., someone related to a person by blood, marriage, or adoption and is no more than three generations removed) may now accompany authorized travelers for certain educational, journalistic, professional research, and religious activities, as well humanitarian projects. Please keep in mind, though, that travel simply for the sake of tourism is still banned. Second, carrier services—defined as any person subject to U.S. jurisdiction wishing to provide carrier services to Cuba by aircraft or vessel—were previously required to obtain authorization from OFAC. Now, any person subject to U.S. jurisdiction is authorized to provide “carrier services.” Third, travel service providers—i.e., travel agent, ticket agents, tour operators, etc.—are now authorized to provide travel services in connection with travel to Cuba.

**No More Spending Limits for Travelers:** Under previous versions of the regulations, travelers were permitted to pay for living expenses and goods for personal consumption while in Cuba. But those expenses could not exceed the “maximum per diem rate” for Havana, Cuba in effect at the time of travel. The “maximum per diem rate” was published in the Department of State’s “Maximum Travel Per Diem Allowances for Foreign Areas.” Under the recent changes, there is no limit on living expenses. So authorized travelers may engage in transactions ordinarily incident to travel within Cuba. In addition, travelers may bring back up to \$400 in merchandise with them. And yes, that includes Cuban cigars (although no more than \$100 worth).

### **Use Debit and Credit Cards:**

Previously, travelers were expressly precluded from engaging in any transaction involving a credit card or debit card, unless specifically authorized to do so. That prohibition was deleted by the recent changes. Now, travelers can engage in credit card and debit card transactions. It is worth keeping in mind, however, that there are few ATMs in Cuba, and it will be awhile before many establishments have the means to process credit card payments. As such, many transactions will still require cash.

**Remittances:** Under the old CACR, U.S. persons could not donate more than \$2,000 per quarter to a Cuban national (other than a prohibited government official or member of the Cuban communist party). Additionally, U.S. persons could not carry more than \$10,000 to Cuba. Those limits have been completely removed.

### **Cuban Operations Now Permitted:**

This may be one of the most significant changes. Any U.S. person engaged in the following categories of authorized activities may establish and maintain a physical presence in Cuba: news bureaus; certain exporters (such exporters of agricultural products and construction materials); entities providing mail or parcel transmission services; providers of telecommunications or internet-based services; entities organizing or conducting educational activities; religious organizations; and carrier and travel service providers. Importantly, entities permitted to establish and maintain a physical presence in Cuba are also authorized to employ Cuban nationals, as well as open and maintain bank accounts.

**Banking:** There are three major changes when it comes to banking. First, under a new general license, persons traveling

under one of the twelve authorized categories may open and maintain bank accounts in order to access funds while in Cuba for authorized transactions. Second, depository institutions are permitted to open correspondent accounts at Cuban banks. But Cuban banks are not generally licensed to open depository accounts at U.S. banks. Third, depository institutions are permitted to maintain accounts for certain Cuban nationals in the United States in a nonimmigrant status.

**Telecommunications:** Under the recent changes, U.S. persons may engage in transactions that establish mechanisms to provide commercial telecommunications. For instance, U.S. persons are authorized to establish fiber-optic cable and satellite facilities to link the United States (and other third countries) to Cuba. In addition, U.S. telecommunications or internet-based service providers may establish a physical presence in Cuba and engage in marketing. Finally, in some instances, U.S. persons may engage directly with the Cuban state-owned telecommunications company.

In sum, while we have come a long way, the attempt to bridge the divide between the U.S. and Cuba has not eroded all the necessary obstacles to engage in free trade as we know it. Contrary to what some think, those changes did not end the trade embargo. Travel to Cuba and the ability to do business with Cuban nationals—although more widely permitted—nonetheless remain subject to byzantine regulations. Companies and individuals looking to do business in Cuba must be vigilant in staying up to date with the latest changes to those regulations. Continue to check back with our Shumaker Blog, *The Immigration Bulletin* at <http://theimmigrationbulletin.com/> for updates on the status of U.S. relations with Cuba.

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