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Client Alert: United States Announces Shift in Cuba Policy and Impending Relaxation of Sanctions and Export Controls

On December 17, 2014, the Obama Administration (the “Administration”) announced a major shift in longstanding U.S. foreign policy toward Cuba. In the coming months, the Administration will seek to normalize diplomatic relations between the United States and Cuba, ending decades of political estrangement and economic isolation. According to the White House, this historic announcement will be followed by significant changes to the current U.S. Cuba economic sanctions and export controls regime. Such impending changes may have great implications for U.S. persons interested in engaging in personal or business dealings with Cuba that are currently restricted or prohibited under U.S. law.

While complete removal of the current U.S. sanctions and export controls against Cuba would require Congressional action to repeal associated legislation, many elements of the current sanctions and export controls regime may be relaxed by the Administration by means of amendments to the regulations administered by Executive departments and their agencies. The current U.S. Cuba economic sanctions program, set forth in the Cuban Assets Control Regulations, 31 CFR Part 515 (the “CACR”), is administered by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury. The CACR generally prohibits all persons subject to U.S. jurisdiction, including branches and subsidiaries of U.S. companies, from exporting to Cuba, importing from Cuba or otherwise engaging in transactions involving Cuban interests. The CACR affords for a limited number of exceptions in the form of general and specific licenses from OFAC. Related export controls involving Cuba, set out in the Export Administration Regulations, 15 CFR 730-774 (the “EAR”), are administered by the Bureau of Industry and Security (“BIS”) of the Department of Commerce. Such export controls generally prohibit the exporting to Cuba, without a license from BIS, of items subject to the EAR. During the decades following the Cuban Revolution, U.S. sanctions and export controls have, together, effected a largely absolute trade embargo of Cuba.

In furtherance of the Administration’s new Cuba policy, OFAC and BIS will undertake incremental revision of the CACR and the EAR during the upcoming weeks and months. According to the White House, amendments to the CACR and EAR will result in significant relaxation of current restrictions on dealings with, in or involving Cuba and Cuban nationals. Noteworthy elements of the forthcoming relaxed regulatory framework include:

(A) TRADE & COMMERCE:

Authorization of commercial sales and exports of certain items to Cuba from the United States and authorization of imports of goods up to certain dollar amounts by U.S. travelers from Cuba. It is expected that the expansion of categories of permitted exports to Cuba will be broad enough to capture many consumer goods, as well as agricultural equipment and building materials.

(B) BANKING TRANSACTIONS:

Permission for U.S. institutions to open correspondent accounts at Cuban financial institutions and for travelers to use U.S. bank-issued credit and debit cards in Cuba. Authorization of such banking activities is intended to facilitate the processing of lawful transactions involving Cuba.

(C) COMMUNICATIONS:

Authorization of commercial exports of certain items that contribute to access to communications in Cuba and permission for telecommunications providers to establish in Cuba mechanisms, including infrastructure, necessary for the provision of commercial telecommunications and internet services. The White House indicated that this category of permissible transactions will include the commercial sale of certain consumer communications devices and related software, applications, hardware and services, as well as items for the establishment and update of communications-related systems.

(D) DEALINGS IN THIRD COUNTRIES:

Authorization for U.S.-owned and controlled entities in third countries to provide services to, and engage in financial transactions with, Cuban nationals in third countries.

(E) TRAVEL TO CUBA:

Expansion of authorizations for travel of U.S. persons to Cuba to permit family visits, official activities of governments and certain intergovernmental organizations, professional research and professional meetings, journalistic, educational and religious activities, exhibitions, public performances, clinics, workshops and athletic and other competitions and exportation, importation, or transmission of information or information materials, in each case subject to OFAC regulations and guidelines.

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