



# TRUMP'S CUBA POLICY

JUNE 16, 2017

## SUMMARY

- On June 16, U.S. President Donald Trump announced his administration's intention to recalibrate U.S.-Cuba relations. Trump justified the policy changes by asserting that the previous U.S. policy changes went too far in benefiting the Cuban government and military, rather than the Cuban people. He also cited ongoing human rights abuses in Cuba.
- The two most significant changes are the prohibition on U.S. companies from doing business with entities controlled by the Cuban military and the new limits on authorized travel categories (See below for analysis).
- These changes do not signal a major shift in U.S. policy. In fact, under the new policy directive, most of the Obama-era changes, such as commercial airlines and cruise agreements, remain in place. However, the overall U.S. trade embargo on Cuba continues and many activities remain prohibited between the two countries.
- These new restrictions, coupled with the relative small size of the Cuban market and a Cuban bureaucracy slow to provide approvals for market entry, may discourage some companies from pursuing business opportunities. However, many U.S. companies that have already successfully entered the Cuban market will likely be able to continue to flourish under the new policy. Others who pursue agreements in line with current regulations can also benefit from the opportunities that exist.
- Implementing the President's policy directive will fall to U.S. regulators, who will issue new regulations and clarifying documents in the coming months that provide greater clarity for U.S. companies and affected persons.

## PRACTICAL IMPLICATIONS OF TRUMP'S CUBA POLICIES

**Several Obama-era changes remain authorized under President Trump's new policies.** The newly opened U.S. Embassy remains in place, Cuba remains off the

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state-sponsored terrorism list, and agreements between the two countries to work on issues of common interest, such as combating drug trafficking and protecting the environment, remain valid. In addition, the new policies keep the unlimited cap on remittances and continue to allow telecommunications and other activities that directly benefit the Cuban people. President Obama's ease on financial transactions with Cuba also remain in place.

The two most notable changes President Trump's policy directive include:

- 1. Restrictions on transactions with state-owned enterprises affiliated with the Cuban military.** For the last two years, U.S. persons have been allowed to engage in various transactions with Cuban companies affiliated with Grupo de Administracion Empresarial S.A. (GAESA) and the Cuban military and security apparatus. Because of the military's extensive influence over Cuban commercial entities, a number of activities may now be limited. GAESA, for example, runs virtually all hotels in Cuba (including many through joint ventures with foreign companies). American travelers will likely not be able to stay in many Cuban hotels or purchase goods at some shops (though exactly how far this change goes will depend on how U.S. regulators interpret the directive).

**However, a number of exemptions and carve-outs make it easier for many previously allowed activities to continue. These include:**

- Activities that "concern airport and seaport operations" and support authorized travel to Cuba;
- Activities that support the "acquisition of visas for permissible travel;"
- Activities that "support the expansion of direct telecommunication and internet access to the Cuban people;"
- Activities that support the "sale of agricultural commodities, medicines, and medical devices sold to Cuba consistent with current U.S. law;"
- Activities related to remittance transfers

Some sectors, such as the cruise industry or privately owned Airbnbs in Cuba, could benefit if American travelers are prohibited from staying in some of the best hotels on the island.

- 2. Restrictions on travel.** Before 2014, all U.S. persons wishing to travel to Cuba required a specific license from the U.S. Department of Treasury with presumption of denial unless they fit into one of 12 categories. The Obama administration removed the need to apply for a license and instead allowed individuals to self-certify that their travel fits under one of the allowed categories. With Trump's changes, the majority of people who fit under one of these categories still will not require a specific license. However, those interested in "people-to-people" exchanges and "educational travel" will once again be required to travel as a part of a group authorized by the Treasury Department. This additional hurdle will likely put a damper on U.S. travel to the island, though it may also create opportunities for group travel operators to enter the space. As required by the previous administration, travelers must keep a record of their travel for at least five years after their travel date.

**In addition, President Trump has stated he will direct the Office of Foreign Asset Controls (OFAC), the U.S. Treasury Department's regulatory arm, to take a more aggressive audit posture.** In theory, this could result in more criminal penalties. In practice, however, this is unlikely to affect many people. OFAC, which also manages sanction regimes on Iran and Russia, among other priority countries, does



not have sufficient resources to investigate more than a handful of Cuba travel cases at a time and would most likely prioritize larger visits.

The implementation of Trump's policy directive will fall to U.S. regulators, particularly OFAC, who will issue new regulations and clarifying documents that will clarify implications for U.S. companies and others, including individual travelers in the coming months. In the meantime, uncertainty around ownership structures of the sprawling state-owned entities in Cuba may freeze aspects of commercial engagement as U.S. businesses as Cuban officials struggle to understand what types of transactions are legally permissible.

**As discussed in ASG's previous analyses, it is important to note that Congress has the ultimate authority to lift the embargo.** In fact, efforts to repeal the embargo have been underway. Republican Congressman Thomas Emmer (R-MN) sponsored the Cuba Trade Act of 2017, which has 15 cosponsors and proposes to repeal the embargo. The bill will not pass this year or next – Congress's Republican leadership will not allow a vote on legislation to ease the embargo – but 14 of the 15 cosponsors are Republicans, an indication of significant bipartisan support to continue engaging with Cuba. And, just two weeks ago, a bipartisan group of over fifty senators reintroduced the 2015 Freedom to Travel to Cuba Act to repeal all travel restrictions.

## CUBA'S REACTIONS AND NEXT STEPS

**President Trump's new directive comes as Cuba is preparing for a leadership transition.** President Raul Castro has announced he will retire as head of state in February 2018, marking the beginning of an expected transfer of power to the next generation of party leadership. Although Castro's successor has yet to be confirmed, relations with the United States could play a role on the pace of continued reform in Cuba. The Trump administration's harsher rhetoric and new limits on travel and commerce will likely reinforce the debate between Cuban reformers who want to deepen relations with the United States and hardliners who remain wary of their northern neighbor. That said, the strong support among the American public and private sector for continued engagement with Cuba and that fact that Trump has left much of his predecessor's policy in place, could ultimately allow more reform-minded officials to prevail. As the Cuban economy sputters, and Venezuela largess declines, Cuba needs additional foreign investment.

For more information, please see [White House Fact Sheet on Cuba Policy](#) and the [U.S. Department of Treasury's FAQs](#).

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*ASG's Latin America Practice* has extensive experience helping clients navigate the Cuban market. For questions or to arrange a follow-up conversation please contact [Karen Poreh](#).

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