

# PUBLICATION

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## Treasury Department Issues FAQ on Impact of Cuba Policy Shift

June 21, 2017

**On June 16, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a press release answering 12 "Frequently Asked Questions" ahead of President Trump's announcement of a revised U.S. policy towards Cuba. The changes will be implemented into the Treasury Department's Cuban Assets Control Regulations, as well as the Department of Commerce's Export Administration Regulations. However, the FAQs explain that the policy changes will likely have little impact on most U.S. businesses, as the revisions will not affect existing business contracts and licenses formed prior to the update. The most significant changes regard restrictions on (1) authorized individual travel, and (2) direct transactions with entities related to the Cuban military, intelligence or security services. Despite widespread press coverage of President Trump's rollback of Obama-era Cuba policy, the announced changes may ultimately have minimal effect on business activity unless you engage in trade with such specified, prohibited Cuban entities.**

President Trump's June 16 [remarks](#) emphasized that the current shift in policy is motivated by a desire to restrict the flow of U.S. currency to the military, security and intelligence apparatuses of the Castro regime. OFAC stated in its release that it plans to issue the regulatory amendments in the upcoming months, and that the announced changes will not take effect until these regulations are issued. The State Department also plans to publish a list of entities with which direct transactions will be prohibited.

### Practical Effects

President Obama's 2016 Cuba policy directive allowed the Treasury Department to ease its sanctions restrictions on individual "people-to-people" travel to Cuba, particularly for students and researchers. However, OFAC will now prohibit any individual travel that does not include academic study as part of a supervised degree or exchange program. Such educational trips will further be limited to group travel, and those groups will be required to "maintain a full-time schedule of educational exchange activities" intended to promote contact with the Cuban people and independence from the Cuban government.

While the announced changes will affect a limited group of businesses, it could be significant for the hotel industry. The changes prohibit prospective travel arrangements or business engagements that involve "direct transactions" with Cuban military, intelligence or security services. While OFAC will likely further define "direct transactions," the Cuban military arm for state-run businesses known as GAESA controls large swathes of the Cuban economy, particularly in the tourism industry. U.S. companies will likely be barred from financial transactions with the GAESA conglomerate and its affiliates or subsidiaries, including Gaviota, a GAESA division serving an estimated 40 percent of all foreign tourism in Cuba. For example, Marriott's Starwood Hotels operates a popular Gaviota-owned Sheraton in Havana. It may be difficult, or more likely impossible to open such Gaviota-operated businesses under the updated OFAC licensing requirements.

While it remains to be seen how these amended policies will be enforced, it is critical for U.S. companies that engage with Cuba to stay up to date on the upcoming Treasury and Commerce revisions to the current sanctions regulations. This is particularly true for companies that contract with GAESA and its related entities, as the true extent and reach of the massive Cuban-run conglomerate is not entirely clear. Conducting proper due diligence will be the key to ensuring your company does not engage in trade with a restricted entity. However, companies who have already legally conducted such a transaction as of June 16, 2017, or who do

not plan to sell their goods to the specified prohibited military, intelligence or security services, will generally be unaffected by this weekend's announced changes. In sum, despite President Trump's assertion that these amendments are a complete cancellation of President Obama's Cuba directive, the changes will not significantly impact the majority of U.S. companies.

If you have any questions regarding the content of this alert, please contact any member of [Baker Donelson's Global Business Team](#).