# U.S. Tightens Cuba Embargo; Senate Passes Iran/Russia Sanctions Bill; Arab Nations Boycott Qatar

June 19, 2017

International Trade Controls

On Friday, June 16, 2017, President Donald J. Trump announced a tightening of the United States' long-standing Cuba embargo, rolling back some of the easing implemented during the Obama Administration and described in our prior client alerts. The Trump Administration's approach is outlined in a National Security Presidential Memorandum, but the full scope of this policy shift will not be known until the Treasury Department's Office of Foreign Assets Control ("OFAC") adopts new regulations in the coming months. As OFAC clarified in its Frequently Asked Questions, none of the changes announced by the President last week take effect until the new regulations are issued.

The U.S. Senate has also passed a bill that would codify existing sanctions and impose new sanctions against Russia, and also impose new sanctions against Iran. This bill now goes to the House of Representatives. Additionally, the boycott of Qatar by Saudi Arabia, the United Arab Emirates, and other countries raises issues under the U.S. antiboycott regimes administered by the U.S. Treasury and Commerce Departments. These recent developments potentially present legal risks for companies operating in Russia and the Middle East.

## The Cuba Embargo: Reversing Certain Obama-Era Changes

### Key Changes

Speaking in Miami, the President made a long-awaited announcement regarding his Administration's direction on Cuba. Although the President said he was "cancelling the last Administration's completely one-sided deal with Cuba," the policy announced by the President does not reverse a number of the changes the Obama Administration made over a two-year period starting in December 2014.

Instead, the President directed the Treasury Department to issue regulations implementing two key changes to the Cuba embargo. First, the Department will reinstate a prohibition on individual (self-directed) people-to-people travel to Cuba by persons subject to U.S. jurisdiction. Second, the Department will issue regulations prohibiting transactions with entities that are under the control of, or act for or on behalf of, Cuban military, intelligence, or security services or personnel. "Persons subject to U.S. jurisdiction" to whom the U.S. sanctions apply include U.S. companies and their non-U.S. branches and offices; individual U.S. citizens and lawful permanent residents (green-card holders), wherever located or employed; any persons when physically present in the United States; and non-U.S. entities that are owned or controlled by a U.S. person.

Notably, many Obama-era changes are likely to remain in place. The U.S. embassy in Havana will remain open. Aside from individual people-to-people travel, other travel authorizations in the Cuban Assets Control Regulations ("CACR") should continue to be available, so long as they do not entail dealings with the Cuban military, intelligence, or security services. This includes general licenses authorizing travel related to professional meetings and research, including commercial meetings/research, market research, sales or contract negotiations, and accompanied delivery of authorized exports. Further, travel to Cuba by cruise ship and passenger vessel will continue. Additionally, it does not appear that the Administration intends to reverse authorized trade in a number of areas, including agricultural/medical commodities and activities that build democracy and expand telecommunications and internet access for the Cuban people. Persons subject to U.S. jurisdiction also can continue to make authorized remittances to Cuba.

Further details on exactly what will change and how will not be known until revised regulations are published, which the Administration said would occur "in the coming months." Notably, OFAC indicated in its FAQs that its forthcoming regulations "will be prospective and thus will not affect existing contracts and licenses."

**People-to-People Travel**

In March 2016, the Obama Administration amended the general license in Section 515.565(b) of the CACR to remove the requirement that people-to-people educational travel take place under the auspices of an organization subject to U.S. jurisdiction and that travelers be accompanied by a representative of that organization. This allowed U.S. persons to independently engage in and self-direct their travel to Cuba, subject to certain limitations. Critics of the Obama-era policy argued that the authorization of individual people-to-people travel skirted the statutory ban on tourist travel to Cuba by persons subject to U.S. jurisdiction.

The President has directed the Treasury Department to restore the requirement that all people-to-people educational travel, other than that carried out as part of academic study pursuant to a degree program, take place under the auspices of an organization subject to U.S. jurisdiction and that travelers be accompanied by a representative of the organization to ensure they maintain a full-time schedule of permissible educational activities. Notably, this change will not affect existing plans for individual travel so long as one travel-related transaction (e.g., purchasing an airline ticket or reserving accommodations) occurred prior to Friday's announcement and the travel is otherwise in compliance with the CACR.

**Prohibition on Dealings with the Cuban Military and an Expanded List of Cuban Government Officials**

Companies subject to U.S. jurisdiction that are engaged in authorized trade in Cuba or with Cuban entities likely will be most affected by the announced restriction on any dealings with entities that are under the control of, or act for or on behalf of, Cuban military, intelligence, or security services or personnel. This will include a prohibition on financial transactions with Grupo de Administracion Empresarial S.A. ("GAESA"), a conglomerate of business enterprises controlled by the Cuban military. GAESA is widely reported to own or control enterprises involved in many sectors of the Cuban economy, including having an expansive presence in the tourism sector.

Notably, the new restrictions will be prospective. OFAC stated in its FAQs that "any Cuba-related commercial engagement that includes direct transactions with entities related to the

Cuban military, intelligence, or security services that may be implicated by the new Cuba policy will be permitted provided that those commercial engagements were in place prior to the issuance of the forthcoming regulations."

The full scope of this prohibition will not be known until the Secretary of State publishes a list of such entities, and OFAC issues regulations implementing this restriction. Regardless, given the degree to which GAESA is intertwined with the Cuban economy, this prohibition is likely to have a significant effect on the ability of U.S. businesses to engage with their Cuban counterparts.

Additionally, the President has directed the Secretary of the Treasury to restore the definition of "prohibited officials of the Government of Cuba" in the CACR that had been in place for a number of years prior to being substantially narrowed by the Obama Administration. In October 2016, the Obama Administration narrowed this definition to include only members of the Council of Ministers and flag officers of the Revolutionary Armed Forces. Friday's announcement reverses this change, and once corresponding regulations are published, this definition will again cover a much broader group, likely capturing a range of senior civil servants, labor union officials, senior employees of state-run media organizations, members and employees of Cuba's Supreme Court, and senior Communist Party officials. Restoring the earlier version of the definition will narrow the range of authorized activities with government and Communist Party officials. Persons subject to U.S. jurisdiction may not engage with these officials for purposes of certain transactions otherwise authorized by the CACR, including providing remittances, entering into contracts for the provision of telecommunications services, exporting to such officials services incident to the exchange of communications over the internet, and certain other specified types of transactions. In addition, persons subject to U.S. jurisdiction who travel to Cuba under a people-to-people general license cannot have the predominant portion of their activities involve prohibited officials.

### Recordkeeping Requirements and Auditing

In addition to the key changes discussed above, the Trump Administration signaled an intention to enforce recordkeeping requirements in the CACR, and to audit compliance with requirements related to Cuban travel. The Treasury Department's Office of the Inspector General will be responsible for evaluating the Department's activities with respect to this audit requirement. While organizations that arrange group travel should have systems in place to comply with recordkeeping requirements, individuals who travel to Cuba under travel authorizations will need to take extra care to ensure that appropriate records are being maintained, including schedules that demonstrate full-time itineraries of authorized activities.

## The Senate Passes Iran/Russia Sanctions Bill

On Wednesday, June 14, 2017, the United States Senate passed S. 722, "An Act to Provide Congressional Review and to Counter Iranian and Russian Governments' Aggression," by a 98-2 margin. Originally framed as an Iran sanctions bill, the measure was amended by the Senate to incorporate a range of Russia-related sanctions after bipartisan agreement was reached among the Senate leadership.

With respect to Iran, key provisions of the bill would impose new sanctions targeting Iran's ballistic missile program and weapons-proliferation activities, support for terrorism, and human rights violations. The measure also would require the imposition of secondary sanctions against

parties that engage in the sale of certain types of military equipment to Iran and impose additional sanctions against Iran's Islamic Revolutionary Guard Corps ("IRGC").

With respect to Russia, the bill would (1) codify existing U.S. sanctions against Russia and Crimea; (2) require the President to submit a report to Congress if the President proposes to terminate or otherwise ease U.S. sanctions against Russia, and block any such proposed action if Congress adopts a disapproval resolution; and (3) expand certain sectoral and secondary sanctions targeting the Russian economy.

In the area of sectoral sanctions, the measure would shorten the maturity period of restricted "new debt" for both Russian financial institutions (OFAC Directive 1) and energy companies (OFAC Directive 2). The bill also authorizes the Secretary of the Treasury to impose sectoral sanctions against state-owned entities operating in the Russian railway, shipping, or metals and mining sectors, but Executive Order 13662 (March 20, 2014) already had established broad authority for sanctions targeting "such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury."

Notably, the Senate bill appears to expand the reach of an OFAC directive imposing sanctions on certain aspects of the Russian energy sector. That measure, OFAC Directive 4, currently prohibits "the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory" where the transaction involves an entity on the Sectoral Sanctions Identifications List subject to Directive 4. The bill would expand the directive to also prohibit U.S. persons from providing goods, services (except financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil *outside of Russia* if a Russian energy firm is involved and if the project involves a person subject to Directive 4. "U.S. persons" for purposes of the Russia sanctions include U.S. companies and their non-U.S. offices and branches; individual U.S. citizens and lawful permanent residents (green-card holders), wherever located or employed; and persons physically present in the United States.

Additionally, the bill authorizes (but does not require) the President to impose secondary sanctions against persons that: (1) make certain investments that directly and significantly contribute to the enhancement of Russia's ability to construct energy export pipelines; or (2) provide to Russia goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipelines by Russia. These provisions already have prompted expressions of concern in Europe, with regard to the potential impact on energy pipelines that would supply certain European markets.

In other areas, the bill requires the President to impose secondary sanctions (subject to a Presidential waiver authority) on any person that engages in or provides certain support for certain activities undermining cybersecurity and with respect to significant corruption in Russia. The Senate bill also converts certain of the optional secondary sanctions set out in the Ukraine Freedom Support Act of 2014 to mandatory secondary sanctions, including the secondary sanctions with respect to special Russian crude oil projects, but gives the President discretion not to impose such secondary sanctions if he determines that it is not in the U.S. national

interest to do so. If enacted into law, the bill would also call for secondary sanctions against parties that knowingly support the Syrian government's acquisition of certain weapons.

The Senate bill is likely to undergo changes in the House of Representatives. House leadership has expressed concern that the Iran sanctions provisions do not go far enough. Additionally, the Trump Administration is pushing back against the measures in the Senate bill that would prohibit the President from easing or lifting sanctions against Russia if Congress adopts a resolution of disapproval. Moreover, the House version likely will address concerns that the Senate bill could have unintended impacts for U.S. and non-U.S. companies as a consequence, for instance, of the expansion of Directive 4 to third-country projects. To this end, Congressional senior leadership and committee staff have expressed a willingness to hear from those in the private sector that may be affected by the bill. Importantly, there is still time to engage in this dialogue as the House Foreign Affairs Committee is unlikely to begin its mark-up of the bill before the end of June.

## Certain Arab Nations Boycott Qatar

On June 5, 2017, Saudi Arabia, Bahrain, Egypt, and the United Arab Emirates (joined by Yemen, Libya, and the Maldives) announced a severing of ties with the Gulf nation of Qatar. The nations expelled Qatari diplomats, visitors, and residents and halted all land, sea, and air traffic to and from Qatar.

The action has ramifications for U.S. persons (including non-U.S. entities controlled-in-fact by U.S. persons) and taxpayers that are subject to U.S. antiboycott programs administered by the U.S. Commerce and Treasury Departments. Whereas to date those antiboycott measures have focused principally on the Arab League boycott of Israel, companies now must give consideration to this additional unsanctioned non-U.S. boycott. Covington has extensive experience advising companies on U.S. antiboycott compliance obligations and can assist clients seeking to navigate this complex new environment.

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Covington has deep experience advising clients concerning international sanctions and antiboycott law, and advising on public policy dimensions of sanctions legislation. We will continue to monitor developments in this area, and are well-positioned to assist clients in understanding how these recent announcements may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls practice:


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