

LEGAL UPDATES

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Amended Rules Create Opportunities Under Cuba's 2030 Renewable Energy Plan

In the months preceding President Obama's recent visit to Cuba, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) and the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) issued rules amendments that have gradually authorized further trade between the U.S. and Cuba in approved areas. The amended rules, together with similar programs enacted by the Cuban government, create new opportunities for U.S. companies to participate in an estimated \$US 3.5 billion of development in the Cuban renewable energy sector.

Export License Requirements Relaxed

Under the amended rules, BIS will now generally approve Cuban export licenses for items related to renewable energy or energy efficiency. BIS will also consider and issue licenses on a case-by-case basis approving exports for construction of electricity production facilities and infrastructure that will benefit the Cuban people. If U.S. companies obtain an appropriate BIS export license, the OFAC rules will permit them to perform installation, maintenance and other related services within Cuba for the exported items. The OFAC rules would also allow the companies to form local Cuban subsidiaries, enter into joint ventures with Cuban nationals and establish a physical presence in Cuba to perform the aforementioned services.

If an exporter obtains a BIS license to export items, an additional OFAC license generally is not required to perform services in Cuba that are ordinarily incident to those exports. However, a separate OFAC license may be required for more extensive services, depending on the facts and circumstances of each transaction. (Husch Blackwell's Technology, Manufacturing & Transportation

Insider further describes the most recent BIS and OFAC amendments in blog posts dated January 28, 2016, and March 17, 2016.)

The new U.S. rules coincide with plans by Cuba's Ministry of Energy and Mines (MINEM) to develop infrastructure sufficient to produce at least 24 percent of the country's electricity through renewable energy sources by the year 2030. In 2014, the Cuban government enacted Law No. 118 (the Law of Foreign Investment), which provides tax and business incentives for foreign companies doing business in Cuba and establishes a portfolio of development projects designated to receive special support from the Cuban government. The portfolio includes projects such as livestock biogas electricity production facilities, wind farms, solar power plants, hydroelectric plants and bioelectrical plants that will produce electricity from sugar cane and marabú scrub. Cuba also has significant opportunities to reduce its dependence on foreign oil imports by increasing its biofuel production.

What This Means to You

The BIS and OFAC amendments are relatively recent, and it is still unclear exactly how the agencies will interpret and apply the new rules. It is also unclear how MINEM's 2030 renewable energy plan will develop. In any event, under certain conditions the new U.S. rules do permit U.S. companies to travel to Cuba without a license to perform market research, conduct marketing efforts and perform preliminary contract negotiations. As a result, interested exporters may be able to begin networking and establishing relationships in Cuba while they wait for the licensing program and portfolio projects to take shape. Travelers making such trips must still comply with several requirements, including a strict prohibition on tourism activities.

If energy exporters apply for Cuban export licenses from BIS and/or OFAC, they should carefully prepare their applications to adequately cover all aspects of their contemplated transactions that might require licensing approval.

Contact Us

Husch Blackwell's Cuba team closely monitors trade developments in Cuba and advises clients on possible opportunities. Please contact John Crossley, Grant Leach, Anna Kimbrell, David Agee, Cortney Morgan, or Linda Tiller with questions.