

# KIRKLAND ALERT

June 21, 2017

## Changes in U.S. Cuba, Russia and Iran Sanctions Create Uncertainty for Global Businesses

On June 16, 2017, President Trump announced that the U.S. government would reverse certain of the Obama administration's policy efforts to liberalize U.S. relations with Cuba. President Trump stated that he "seek[s] a much better deal for the Cuban people and for the United States of America," specifically with respect to economic relations and human rights.<sup>1</sup> The imposition of the changes is delayed until relevant agencies issue implementing regulations, and the effect of the announcement is not a complete roll-back of increased U.S.-Cuba economic relations. The primary objective of the Trump administration's policy changes is to channel economic benefits away from the Cuban government by prohibiting transactions with entities related to the Cuban military, intelligence and security services, including by tightening restrictions on travel to Cuba. However, there are substantial impacts of which U.S. companies and their foreign subsidiaries will need to be aware. In particular, U.S. private equity funds will need to exercise special caution with respect to their non-U.S. portfolio companies.

In addition, on June 15, 2017, the U.S. Senate voted 98-2 in favor of imposing new sanctions on Iran and Russia.<sup>2</sup> The Senate bill contemplates extensive codification of current Russia sanctions, which would restrict any future lifting of sanctions through executive branch action.

We have summarized below the key takeaways from these recent U.S. sanctions developments.

### *Key Changes in Cuba Sanctions Target Cuban Military, Tourism Sector*

The Trump administration's new policies will be primarily implemented through:

- Prohibiting transactions with Grupo de Administracion Empresarial S.A. ("GAESA"), the business arm of the Cuban military run by Raul Castro's son-in-law that is deeply involved in the Cuban tourist sector.
  - The State Department will publish a list of additional entities with whom direct transactions by "persons subject to U.S. jurisdiction" will be prohibited, likely including all Cuban military branches.
  - U.S. companies may continue any commercial engagements involving the Cuban military, intelligence, or security services, as long as such engagements existed prior to the policy changes.

**The Cuba policy changes aim to channel economic benefits away from entities related to the Cuban military, intelligence and security services.**

- Prohibiting “individual people-to-people travel,” i.e., travel that is unrelated to academic studies for a degree program or sponsored by an organization that aims to promote people-to-people contact, which was widely perceived as a loophole to the statutory ban on U.S. tourist travel to Cuba.
  - The Department of Treasury will conduct regular audits of travel to Cuba to ensure compliance.
  - Individuals and groups will still be able to travel to Cuba without a specific license from OFAC under [12 other accepted categories](#).
  - The prohibition is applied prospectively only from the date of the announcement.

**According to Sen. Corker, the Senate’s bill is “a clear signal to both Iran and Russia that our country will stand firm in the face of destabilizing behavior.”**

### *Certain Obama-Era Policies Will Continue*

While the shift in Executive branch policy is significant, many [Obama-era Cuba policies](#) will remain in place for the time being:

1. The United States and Cuba will continue to maintain diplomatic relations and embassies in each country’s respective capital.
2. Remittances may continue to be sent to Cuba.
3. Cuba will not be re-listed as a state sponsor of terror.
4. The new policy will not revive the “wet-foot-dry-foot” immigration policy, which facilitated expedited citizenship for Cuban refugees.
5. Air and cruise service to and Cuba will remain permissible, subject to compliance with the new travel restrictions.
6. Travelers may continue to bring goods (e.g., cigars and rum) purchased in Cuba back to the United States.

### *Senate Bill Would Strengthen Sanctions on Iran and Russia*

According to Sen. Bob Corker (R-TN), Chair of the Senate Committee on Foreign Relations, the Senate’s bill strengthening sanctions on Iran and Russia is “a clear signal to both Iran and Russia that our country will stand firm in the face of destabilizing behavior.”<sup>3</sup> The bill would:

1. Expand sanctions related to Iran’s ballistic missile program;
2. Increase sanctions targeting Russia’s defense, mining, metals, shipping and railway sectors;

3. Target Russian individuals supplying weapons to Syria and conducting cyberattacks against the United States; and
4. Codify existing Russia sanctions implemented by the Obama administration.<sup>4</sup>

While the House of Representatives will need to pass the bill for it to become law, these proposed changes indicate strong bipartisan support in the Senate to continue to impose sanctions on Iran unrelated to its nuclear program and the [Joint Comprehensive Plan of Action](#). The Russia sanctions likewise indicate a continuing focus on using economic sanctions as tools of statecraft, although critics fear that codifying sanctions in statute diminish their force and effectiveness by making these tools less flexible in meeting fluid U.S. national security requirements.

### *Key Takeaways*

- The rapidly changing sanctions landscape will require U.S. companies doing business overseas to carefully think through [how to ensure compliance](#) with new and different U.S. regulations.
- Companies should account for the potential impact of other legal regimes (e.g., in the EU), which may impose different — or even conflicting — compliance obligations.
- Companies should also consider how U.S. foreign policy priorities may impact their longer-term international business strategies.

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- <sup>1</sup> The White House Press Office, Remarks by President Trump on the Policy of the United States Towards Cuba (June 16 2017), <https://www.whitehouse.gov/the-press-office/2017/06/16/remarks-president-trump-policy-united-states-towards-cuba>
  - <sup>2</sup> Congressional Review of Sanctions Imposed with Respect to the Russian Federation, S.722, 115th Cong. § 215 (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/722/text#toc-idA2750776FDE3416A9F8EA5B0BDD37CA0>.
  - <sup>3</sup> U.S. Comm. on Foreign Relations, Senate Overwhelmingly Passes Iran and Russia Sanctions (June 15, 2017), <https://www.foreign.senate.gov/press/chair/release/senate-overwhelmingly-passes-iran-and-russia-sanctions>
  - <sup>4</sup> Countering Iran's Destabilizing Activities Act of 2017, S.722, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/722/text>.
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