

Cross Border Business Law Blog

A Reality Check for Travel to Cuba in 2016

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With news of the resumption of commercial aviation flights to Cuba, and other changes in the Cuba embargo accomplished through Presidential executive order, it would appear at first blush that the time is ripe to travel to Cuba to investigate commercial opportunities there. But appearances can be deceiving, and we wanted to report on the reality of Cuba travel and the opportunities there:

- For most U.S. businesses, critical impediments for commercial projects must be removed by Congress, especially the restrictions on financing commercial projects. Many had hoped that the Obama Administration would assure U.S. banks that financing and credit term restrictions would be eased, but this has been a very slow process.
- There have long been congressional exemptions from the embargo, chiefly in the areas of medical supplies, agriculture and telecommunications, but the reality is that the Cuban government imposes demands and restrictions on these projects that make them significantly less feasible and profitable for U.S. businesses.
- It is relatively easy now to visit Cuba, but making a trip to explore commercial opportunities has both legal and practical challenges for U.S. executives.

There is no shortage of U.S. and Cuba-based businesses who will assist U.S. commercial enterprises to investigate business opportunities in Cuba, but there is often a huge gap between what is promised, and what can be delivered. The simple fact is that the Cuban government has carefully negotiated and managed the expansion of large commercial projects in Cuba with many other countries in businesses over the past 20 years, and they are doing the same with U.S. businesses. The Cuban government has already embarked on large infrastructure, natural resources and tourism projects with Spanish, French, Chinese, Venezuelan and many other international companies, and many U.S. business will find they are “late to the party.”

While there are thousands of Cubans eager to engage in business with U.S. companies, the reality is that a relatively small number of senior Cuban government officials actually have the authority and political power to negotiate and execute transactions. And these Cuban officials will always cite the remaining statutory elements of the Cuban embargo as the prime example

of why the U.S. Congress should loosen the embargo for a particular transaction. For those who have previously engaged in transactions with Cuba under general and specific licenses from the U.S. Department of Treasury Office of Foreign Assets Control (OFAC), the current rush to investigate Cuban commercial opportunities sounds like the same old story – U.S. businesses are often asked to be the “messenger” to the U.S. Congress from the Cuban government as part of extended, difficult commercial negotiations that drag out while that “message” is being transmitted.

There are several other important aspects of the reality check for Cuba:

- While travel to Cuba involves very little chance of enforcement by U.S. Customs and Border Patrol (CBP) officers, the fact is that without a directly applicable general or specific license, a traveler may wind up having to withhold information about their trip to Cuba from CBP.
- Even though Mexican and Cuban customs officials often try to make it easy for U.S. citizens to avoid CBP questions by not stamping passports, sometime a passport is stamped inadvertently, leaving permanent evidence of a potentially unlicensed travel to Cuba.
- Executives from public companies who have Sarbanes-Oxley (SOX) regulatory compliance and reporting obligations have a greater burden when undertaking Cuban travel. The financial and credit terms of Cuba-related transactions are particularly complicated.
- Potential corruption and solicitation of bribes are a fact of life when dealing with Cuban “business facilitators” or negotiating commercial transactions. The Foreign Corrupt Practices Act (FCPA), aggressively enforced by the U.S. Justice Department and the U.S. Securities and Exchange Commission, applies to licensed and unlicensed activities in Cuba. Executives traveling to Cuba need to recognize the same FCPA “red flags” that occur with other international projects.

So, while these are busy and encouraging times regarding U.S.-Cuban relations, U.S. business executives should think carefully about their strategic opportunities and challenges, their Cuban partners, and their SOX compliance obligations before they sign up for one of the myriad Cuban market exploration options now available. If the decision is made to make the trip, we recommend doing some “ground-truthing” between what U.S. and Cuban business facilitators are saying, and what the realities are.

Below are links to a couple articles containing some practical advice for travelers to Cuba:

[Questions, answers on new rules for Americans visiting Cuba \(Business Insider\)](#)

[10 Things Every American Should Know Before Traveling To Cuba \(Elite Daily\)](#)

Tags: Cuba, Customs, Embargo, FCPA, Sarbanes-Oxley (SOX), U.S. Customs and Border Officers