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INSPIRE CUBA COMPLIANCE GUIDE WITH U.S. SANCTIONS ON CUBA¹

Introduction

Cuba is one of a handful of countries² subject to an economic embargo and other comprehensive economic sanctions by the United States government. As a general rule, the U.S. Department of Commerce (“DOC”) Bureau of Industry and Security (“BIS”) prohibits the export or re-export of U.S. goods by persons subject to U.S. jurisdiction.³ Separately, the U.S. Department of the Treasury’s (“USDT”) Office of Foreign Assets Control (“OFAC”) also administers additional commercial, financial and travel related sanctions on Cuba. Similar to BIS-administered sanctions, as a general rule, all persons subject to U.S. jurisdiction are prohibited from engaging in all commercial, financial or travel related transactions involving Cuba. All persons subject to U.S. jurisdiction must comply with the embargo and the economic sanctions regime administered by BIS and OFAC or risk exposure to civil fines and/or criminal punishment.⁴ The only exception to the general rule above are licenses issued pursuant to (a) a case-by-case review and approval by BIS or OFAC, as the case may be, or (b) the availability of a license

¹ Contact Andy Garcia (Compliance Director and licensed Florida attorney) for more information at board@inspirecuba.org or 407-618-9407. (<https://www.floridabar.org/about/section/profile/?num=1010495>).

² <https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>.

³ Covers all items subject to the Export Administration Regulations (“EAR”), including most items in EAR99. See part 734 of the EAR (<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

⁴ 31 CFR 515.329 (2021) defines “Persons Subject to U.S. Jurisdiction” to include: (a) any individual, wherever located, who is a citizen or resident of the U.S., (b) Any person within the United States, (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or any State, territory, possession, or district of the United States; and, (d) any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) above. Section 515.308 (2021) defines “Person” as “an individual, partnership, association or other organization.”

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exemption under the law not requiring BIS or OFAC, as the case may be, to review and approve an export or transaction.⁵

This Guide deals exclusively with the availability of license exemptions from BIS and OFAC (“General License Exemptions” or “GLEs”). Due to the regulatory complexity, lengthy processing delays and great expense involved in obtaining a license authorization on a case-by-case basis, the Board of Directors of Inspire Cuba adopted a resolution that limits Inspire Cuba’s operations to activities in Cuba authorized under one or more available GLEs. ***A person subject to U.S. jurisdiction (which includes Inspire Cuba, see Footnote 4) that undertakes an activity covered by a GLE requires no additional license, reviews or approvals from the U.S. government. The activity is deemed authorized by law.***

Objective

This Guide aims to accomplish the following:

1. Clearly explain which GLEs are available to Inspire Cuba by law.
2. Clearly explain which activities Inspire Cuba can freely undertake under the GLEs available to Inspire Cuba by law and how Inspire Cuba may determine which items or category of items may be freely exported or re-exported to Cuba pursuant thereto.
3. Clearly explain Inspire Cuba’s obligations to the U.S. government and others when undertaking activities or exports subject to the GLEs that are available to Inspire Cuba.
4. Reassure our partners, donors and financial supporters and other stakeholders of Inspire Cuba’s strict compliance with U.S. administered Cuba sanctions and all other laws applicable to Cuba.
5. Implement the compliance guidelines recommended by the U.S. government for organizations dealing with sanctioned destinations and individuals.
6. Fulfill Inspire Cuba’s Board of Director’s duty to establish a clear and accurate compliance process with respect to Inspire Cuba’s activities in Cuba.

⁵ See 15 CFR 746.1(a)(1) (<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

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In furtherance of the above stated objectives and in accordance with the specifications dictated by Inspire Cuba’s Board of Directors, this Guide is periodically updated in order to reflect any changes and revisions to U.S. law. This Guide was last updated on June 11 of 2021.

Although the Board of Directors of Inspire Cuba may use this Guide as a roadmap to help it inform its decisions, this Guide shall not be relied upon as a substitute for seeking expert advice and consulting the most recent changes to the laws and regulations (including inquiring whether new laws or regulations might have been enacted), as may be applicable. ***This Guide is, therefore, produced, published and distributed for information purposes only.***

US-DOC-BIS ADMINISTERED SANCTIONS

The law authorizes via GLEs certain exports and re-exports of goods from the U.S. by persons subject to U.S. jurisdiction.⁶ Two of the specific categories expressly authorized by GLEs which are relevant to Inspire Cuba are “Gift Parcels and humanitarian donations”⁷ and a “License Exemption Support for the Cuban People (SCP).”⁸

1. GLE for Gift Parcels

This GLE authorizes gift parcels provided that:

(A) The recipient is one of the following:

1. Religious organization
2. Charitable organization, or
3. Educational organization⁹

⁶ 15 CFR 746.2 (2021).

⁷ 15 CFR 746.2(a)(1)(viii) (2021).

⁸ 15 CFR 746.2(a)(1)(xiv) (2021).

⁹ 15 CFR 740.12(a)(1) (2021).

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(B) The item exported is provided to the recipient free of charge (*excluding handling charges or fees levied by importing country- Cuba).¹⁰

(C) The gift parcel or donation package shows the label “*U.S.A. Gift Parcel*” on the addressee side.¹¹

(D) If the item(s) is one listed in the Commerce Control List (“CCL”), then it must be one authorized only.¹²

(E) The item is otherwise one of the following:

1. Food (including vitamins)
2. Medicines, medical supplies and devices
3. Receive only radio equipment and batteries
4. Clothing
5. Personal Hygiene Items
6. Other items of a type normally sent as gifts between individuals¹³

(F) The items in the gift parcel are in a quantity that would be considered a quantity normally given as gifts between individuals (The DOC will look at whether there are multiple items of the same type and at whether multiple shipment of the same item is sent to the same donee).¹⁴

(G) Except for food, no more than one (1) gift parcel is sent from the same donor to the same donee in any one (1) calendar month.¹⁵ A license application is required for excess transactions.

(H) The combined total U.S. value of the gift parcel, excluding food, is \$800 (USD).¹⁶

(I) No gift parcel is sent to specifically designated officials of the Cuban government¹⁷

¹⁰ Id.

¹¹ Id.

¹² See 15 CFR 740.19(b) “Eligible Commodities and Software.”

(<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

¹³ 15 CFR 740.12(a)(2)(i)(B) (2021).

¹⁴ Id.

¹⁵ 15 CFR 740.12(a)(2)(i)(B)(iii) (2021).

¹⁶ 15 CFR 740.12(a)(2)(i)(B)(iv) (2021).

¹⁷ Specifically designated officials of the Cuban government are listed in 15 CFR 740.12(a)(2)(i)(B)(v) (2021).

(<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

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(J) No gift parcel is sent to organizations administered or controlled by the Cuban government or the Cuban Communist Party.

(K) The gift parcel is sent directly by a commercial or gift forwarding service or organization, with each gift parcel showing the name and address of the donor and the donee, and clearly notated with the words “*GIFT-Export License is not required.*”¹⁸

2. GLE for Humanitarian Donations

This GLE authorizes certain export and re-exports of humanitarian donations provided that:

(A) The donor is an organization with experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries. The requirement for a verifiable system of distribution can be satisfied with either one of the following:¹⁹

1. Permanent staff maintained in the recipient country (Cuba)
2. Periodic spot-checks in the recipient country by members of the exporter’s staff
3. An agreement with a monitoring system in place

(B) The donation must be intended to satisfy basic human needs; which, in turn means one of the following only: health, food, clothing, shelter, and education.

(C) The donations are provided free of charge to the beneficiaries (except for handling fees and imports duties imposed by recipient country).

(D) No expressly excluded items are included in the donation²⁰

(E) Donor must comply with the recordkeeping requirements found in part 762 of the EAR²¹

in addition to the recordkeeping requirements set forth below:

1. Types of projects and commodities
2. Specific classes of beneficiaries

¹⁸ 15 CFR 740.12(a)(3)(i) (2021).

¹⁹ 15 CFR 740.12(b) (2021).

²⁰ List of expressly excluded items found in 15 CFR 740.12(b)(5) (2021).

²¹ See 15 CFR 762 (2021) for a full list of records that are required to be maintained.

(<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

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3. Information concerning source of funding

3. GLE for “Support for the Cuban People (SCP)”

This GLE authorizes certain exports and re-exports to Cuba that are intended to (1) support the Cuban people by improving their living conditions, (2) supporting independent economic activity, and (3) strengthening civil society, provided that:

For export and re-export of items to (1) [support the Cuban people by improving their living conditions] and (2) [supporting independent economic activity], subject to the following conditions:

(1) The item is designated as EAR99 under the CCL and the only reason for control applying to the item is anti-terrorism,²² and

(2) The item belongs to one of the following categories:

1. For use by Cuban private sector for private sector economic activities (except that it cannot primarily generate revenue for the state or contribute to the operation of the state)

2. To be sold directly to individuals in Cuba for their personal use other than to prohibited individuals²³

For export and re-export of items to (3) [strengthen civil society], subject to the following conditions:

(1) The item is designated as EAR99 under the CCL and the only reason for control applying to the item is anti-terrorism,²⁴ and

(2) The item belongs to one of the following categories:

1. Donated items for use in scientific, archeological, cultural, ecological, educational, historic preservation, or other sporting activities and subject to the additional condition that the activity does not relate to any item enumerated in the United States Munitions List (Found in 22 CFR 121) or the CCL (Found in Supplement 1 of Part 774 of the EAR).

2. Other temporary exports or re-exports permitted by travelers for certain uses and condition to certain requirements as specified in 15 CFR 740.21(b)(2)(i) through (v).

²² 15 CFR 740.21 (2021).

²³ See 15 CFR 740.21(d)(4)(ii) and (iii) for a list of prohibited individuals.

²⁴ 15 CFR 740.21 (2021).

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3. Other exports and re-exports to human rights organizations, individual or non-governmental organizations that promote independent activity intended to strengthen civil society.

USTD – OFAC ADMINISTERED SANCTIONS²⁵

4. GLE for Humanitarian Projects

All exports or withdrawals from the United States to Cuba are authorized pursuant to the humanitarian activities listed below:²⁶

1. Medical and health related projects
2. Construction projects intended to benefit legitimately independent civil society groups
3. Disaster preparedness, relief and response
4. Historic preservation
5. Environmental protection
6. Projects involving formal or non-formal educational training; within or outside Cuba, on the following topics only: business, civic education, journalism, advocacy and organizing, adult literacy and vocational skills
7. Community based grassroots projects
8. Projects to develop small scale private enterprises
9. Projects for agricultural or rural development that promote independent economic activity
10. Micro financing projects; except for loans, credit extensions, and

²⁵ The following GLEs authorize most of Inspire Cuba's activities in Cuba. Title 31, Code of Federal Regulations ("CFR"), sections:

- 515.575 "Humanitarian Projects,"
- 515.560 "Travel Related Transactions to, from and within Cuba by Persons subject to U.S. jurisdiction,"
- 515.574 "Support for the Cuban People,"
- 515.570 "Remittances" (*No longer authorized since 09.06.2019. See "Resources" heading).
- 515.573 "Physical Presence,"
- 515.590 "Provisions of Grants, Scholarships and Awards."

²⁶ 31 CFR 515.575. The term "Transactions" is defined in section 515.309 as (1) any payment or transfer to such designated country or national and (2) any export or withdrawal from the U.S. to the designated foreign country. Pursuant to OFAC regulation from 09.06.2019, any payment or transfer that could be characterized as a remittance must be limited to \$1,000 USD per quarter in a year.

(https://home.treasury.gov/system/files/126/cuba_fact_sheet_20190906.pdf).

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11. Projects to meet basic human needs.

Subject to the following additional requirements:

- (1) The traveler's activities in Cuba do not include free time or recreation in excess of that consistent with a full-time schedule, and,
- (2) The traveler maintains specific records of financial transactions while in Cuba.²⁷

5. GLE for Travel Related Transactions

Travel related transactions are authorized for those individuals or organizations that are engaging in **GLE Humanitarian Projects or GLE Support for the Cuban People**²⁸ (as administered by OFAC only), if it falls into one of the following categories:²⁹

- Transportation to and from Cuba (Including visa processing),
- Living expenses to acquire goods for personal consumption in Cuba,
- Importation of Cuban merchandise for personal use only,
- Processing of certain financial transactions in Cuba, including credit, debit and drafts.

6. GLE for Support for the Cuban People (SCP)

All travel related transactions authorized above are subject to the following additional restraints:

- (1) The activities purported to provide support to the Cuban people are carried out by one of the listed organizations; which includes, individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba;³⁰ and,

²⁷ These records must comply with the requirements outlined by sections 501.601 (they must be kept for at least 5 years) and 501.602. (they must be immediately turned over to the U.S. government upon demand on affidavit under oath).

²⁸ This refers to GLE SCP under 31 CFR 515.574 and not under 15 CFR 740.21.

²⁹ 31 C.F.R. s. 515.560 (2021).

³⁰ 31 C.F.R. s. 515.574(a)(iii).

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(2) Each traveler engages in a full-time schedule of activities that enhances contact with the Cuban people, and, results in meaningful interactions with individuals in Cuba.

(3) The individuals traveling must choose to stay at *casa particulares* [private rental homes] over other authorized staying accommodations,

(4) The individuals traveling must choose to eat at Cuban *paladares* [home based restaurants] or private venues,

(5) The individuals traveling must choose to buy from privately owned stores run by self-employed Cubans (*cuentalpropistas*) [entrepreneurs], and,

(6) In addition to all the above referenced activities, the traveler must engage in additional (non-specified) support for the Cuban people activities in order to meet the exemption.

7. GLE for Physical Presence in Cuba

Authorizes individuals and organizations engaging in humanitarian projects to engage in all transactions³¹ necessary to establish and maintain a physical presence in Cuba, including leasing physical space, hiring Cuban nationals, opening and maintaining bank accounts in Cuba, and depositing funds into Cuban maintained accounts.

8. GLE for Provision of Grants, Scholarships and Awards to Cuban Nationals

Authorizes individuals and organizations subject to U.S. jurisdiction to provide grants/awards/scholarships to Cuban nationals or independent organizations in Cuba provided the grants/awards/scholarships are to be used for authorized humanitarian project activities.

³¹ The term “Transactions” is defined in section 515.309 as (1) any payment or transfer to such designated country or national and (2) any export or withdrawal from the U.S. to the designated foreign country.

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LAW/REGULATIONS UPDATES TRACKER

DATE	AGENCY	CHANGES
09.16.2019	OFAC	Mandated that “People to People” travel must be conducted through an organization incorporated in the U.S. and the persons traveling must be accompanied by a representative of that organization. Specifically states what category of Cuban nationals cannot receive remittances and placed a cap on remittances in the amount of \$1,000 per quarter. Eliminated donative remittances that were previously permitted under 31 CFR 515.570. (https://home.treasury.gov/system/files/126/cuba_fact_sheet_20190906.pdf).
09.23.2020	OFAC	Mandated restrictions on lodging when visiting Cuba (lodging is prohibited in any place owned by an entity identified by the State Department in the Cuba Prohibited Accommodations List) and prohibited the importation of Cuban origin alcohol and tobacco products. Eliminated the independent standalone basis for authorizing the attendance and organizing of professional meetings and conferences, public performances, clinics, workshops, competitions and exhibitions in Cuba (thus attending or organizing the aforementioned is not necessarily prohibited if it is in connection to activities authorized pursuant to a separate GLE). (https://home.treasury.gov/system/files/126/cuba_fact_sheet_20200923.pdf).
10.26.2020	OFAC	Included FINCIMEX (the Cuban government owned remittance processor company in Cuba) as a sanctioned entity in the Department of State’s Cuba Restricted List (CRL), thereby prohibiting any remittance from the U.S. to Cuba that is processed by FINCIMEX. This resulted in the immediate discontinuation of Western Union services in Cuba in connection to processing U.S. remittances. (https://home.treasury.gov/system/files/126/cuba_fact_sheet_20201026.pdf).

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RESOURCES

U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”)	https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/cuba-sanctions
U.S. Department of State, Cuba Restricted List (“CRL”)	https://www.state.gov/cuba-sanctions/cuba-restricted-list/
U.S. Department of State Cuba Prohibited Accommodations List (“PAL”)	https://www.state.gov/cuba-sanctions/cuba-prohibited-accommodations-list/
Department of Commerce, Bureau of Industry and Security (“BIS”)	https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/cuba