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## K&L Gates Establishes Cuban Opportunities Task Force

### *United States Policy Alert*

*By Matthew J. Norton*

On December 17, 2014, President Barack Obama announced major changes in U.S. policy with respect to Cuba, unveiling the most substantial steps toward diplomatic and trade normalization since the United States severed relations and imposed a full trade embargo in 1961. In response to this development, K&L Gates has organized a Cuban Opportunities Task Force—an interdisciplinary, multi-office team designed to meet the needs of clients who are interested in pursuing investment in Cuba and to better understand the implications of this announcement.

The restoration of ties between the United States and Cuba opens a new marketplace for global commerce. Although the embargo remains in effect, President Obama may use executive power as soon as next month to unilaterally loosen restrictions on trade, commerce, and financial transactions with Cuba. Current restrictions are codified in the Cuban Assets Control Regulations ("CACR"), administered by The Office of Foreign Assets Control of the Department of Treasury, and the Export Administration Regulations, administered by The Bureau of Industry and Security of the Department of Commerce.

The State Department plans to start a review that could lead to Cuba's removal from the current list of state sponsors of terrorism, which includes countries like Iran, Sudan, and Syria. If Cuba were to be removed from the list, the country would no longer be subject to the sanctions and scrutiny of counterterrorism mechanisms set up after 9/11. The State Department's review, which could last up to six months, will consider whether Cuba has supported international terrorism over the past six months and whether it has renounced the use of terrorism and ratified treaties against terrorism. A recommendation to remove Cuba would need to be approved by the President, but would then go to Congress, which could not block the move except by separate legislation that would have to be signed by the President.

President Obama called for an end to the 50-year economic embargo of the island, but Congress must change the 1996 Helms-Burton Act and other laws that restrict most travel and trade with Cuba, and many Republicans along with some Democrats have vocalized opposition to resuming trade. Nevertheless, the announcement signals a significant step toward restoring relations between the two countries and could have an immediate impact on several industries and areas of law, including the following:

### *Telecommunications*

The Commerce Department will move to allow U.S. companies to export construction and telecommunications equipment, among other things, for sale in Cuba to build a broader Internet infrastructure on the island, which currently contains very little Web access and then only at select tourist hotels. The new policy allows for the exportation of computer, Internet, and telecommunications technologies, including hardware, software, and related services.

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### *Real Estate; Travel and Hospitality*

Last year, some 400,000 Americans traveled to Cuba. Though broad U.S. tourism is not yet a reality, the Obama administration is expanding the categories of legal travel to Cuba, which will now include family visits, government business, journalism, professional research and meetings, educational activities, religious activities, “support for the Cuban people,” humanitarian projects, private foundation work and research, import/export work, art and athletic performances, clinics and workshops, and other export transactions. New rules will also make it easier for qualifying parties to travel to Cuba by (i) allowing the direct purchase of airline tickets to Cuba rather than requiring travelers to go through a travel agent and chartered flight; and (ii) permitting U.S. persons to participate in third-country professional meetings and conferences related to Cuba.

Additionally, the Administration announced that travelers may use credit and debit cards issued by U.S. banks. Under an amended CACR, licensed U.S. travelers will be authorized to import US\$400 worth of goods, of which no more than US\$100 can consist of tobacco products and alcohol combined. The Treasury Department is also quadrupling the amount of money that can be sent from Americans to Cubans each quarter, from US\$500 to US\$2,000, and is loosening banking restrictions.

American resort and hospitality developers have long dreamed of being able to invest and develop in Cuba. Cuba has a 3,570-mile coastline, and the Caribbean island is only 90 miles from Key West. To put that in perspective, the distance from New York to Miami is 1,281 miles, one-third the size of Cuba's coastline. In addition to the embargo being lifted for U.S. direct hospitality and real estate development, the Cuban government will need to enact private property and tourism legislation before seeing a wave of American investment. Nonetheless, American hospitality investors will most likely look into joint venture structures with qualified investors through non-U.S. subsidiaries.

### *Finance*

The President announced plans to facilitate authorized transactions between the United States and Cuba, including U.S. institutions being permitted to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions. Further, U.S.-owned or controlled entities in third countries will be generally licensed to provide services to, and engage in financial transactions with, Cuban individuals in third countries. Further, general licenses will unblock the accounts at U.S. banks of Cuban nationals who have relocated outside of Cuba.

### *Exports and Trade*

The Administration plans to broaden the types of goods that may be sold and exported to Cuba and ease the required financial terms. The Treasury Department plans to issue a series of regulations to ease agricultural exports. The Commerce Department said it would loosen an array of export limits, including the sale of tools and equipment to small businesses not owned by the Cuban government, like construction companies, agricultural businesses, automobile repair, and beauty shops. Restrictions on scientific, athletic, and cultural goods, such as musical instruments, will also be relaxed. Further, the Treasury Department will amend the CACR's definition of the statutory term “cash in advance” to specify that it means “cash before transfer of title,” a move that will be applauded by

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American exporters. Finally, the Administration announced that foreign vessels would be allowed to enter the United States after engaging in certain humanitarian trade with Cuba.

### *Reparations and Property Recovery by Cuban-Americans*

The issue of reclaiming lost property that was confiscated after Castro's rise to power remains at the forefront of the minds of many Cuban-Americans. This reclamation of property from the government, or compensation in lieu of, will most likely create a cross-border legal battle and will likely be the subject of much lobbying and negotiation.

### *Summary*

The President's announcement last week will have significant political ramifications, which should lead to increased economic opportunities for American businesses in Cuba. Nevertheless, significant barriers remain.

Led by Charleston partner Matt Norton and Miami partner Dan Casey, the Cuban Opportunities Task Force facilitates the deployment of K&L Gates' broad platform of offices and services to assist our clients in addressing these issues. The task force is positioned to call upon the various relevant disciplines in the firm to handle the multitude of issues that will arise as U.S.-Cuban relations normalize and business opportunities ripen. The task force will be comprised of attorneys from the firm's Miami, Washington, D.C., New York, Houston, Sao Paulo, London, Brussels, and Charleston offices, among others, as well as from a range of the firm's practice groups, including international trade, policy and regulatory, telecommunications, finance, energy and infrastructure, labor and employment, real estate, resort and hospitality, maritime, intellectual property, e-commerce, cross-border tax, corporate, and litigation.

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