

Charting a New Course for U.S. Business in Cuba



The Obama administration's diplomatic initiative with Cuba is being carefully watched by U.S. multinational companies with an interest in exploring business opportunities in this market.

The United States and Cuban governments will establish formal bilateral diplomatic relations on July 20, 2015. Embassies will soon be opened in both Havana and Washington, D.C. Although the trade embargo remains in place and there is no timeline for the U.S. Congress to remove it, opportunities exist for certain industries now.

THE CURRENT STATE OF PLAY

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) and the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) earlier this year put in place a series of regulatory changes that include facilitating travel to Cuba for authorized purposes, allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions, and permitting a number of commercial activities in telecommunications, financial services, trade and shipping.

SIX THINGS YOU SHOULD KNOW ABOUT THE EMERGING U.S.-CUBAN RELATIONSHIP

- 1 U.S. companies with an interest in the Cuban market are still required to navigate a complex set of laws, regulations and procedures, and there remain significant barriers to full diplomatic and economic engagement between the United States and Cuba. The U.S. government will soon open a U.S. Embassy in Havana, which can be a resource for U.S. companies in the near future.
- 2 The Obama administration's authorization of select commercial sales and exports from the United States into Cuba is not primarily designed to promote U.S. exports or investment, but rather, to empower the nascent Cuban private sector and support entrepreneurship. This creates unique challenges for U.S. companies in developing an entry strategy and defining realistic business goals for the Cuban market.
- 3 Doing business in Cuba will be a difficult venture for any U.S. company because of the country's lack of modern infrastructure, functioning private sector, and efficient governance. There is no Bilateral Investment Treaty (BIT) in place between Cuba and the United States – this means there is no legal protection for foreign investors or a means to resolve disputes between U.S. companies and Cuban entities. In addition, the Cuban state typically insists on having a majority stake in any partnership with a foreign company, and U.S. companies are still prohibited from entering into such agreements.

- 4 A corporate social responsibility (CSR) strategy will be particularly important for any U.S. company looking at market opportunities in Cuba. This means finding and working in partnership with a dependable non-government organization (NGO) partner in Cuba.
- 5 There are immediate business opportunities in industry sectors where companies can contribute to Cuba's social development (such as food/agribusiness and healthcare), building its economic infrastructure (building materials, technology and finance) and eventually private sector job creation (tourism).
- 6 Travel by U.S. citizens to Cuba must be conducted within the following 12 licenses: family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations or research or educational institutes; exportation, importation, or transmission of information or information materials; and certain authorized export transactions.¹

EARLY OPPORTUNITIES FOR U.S. COMPANIES

There are early opportunities available for U.S. companies in selected business sectors. For example, in telecommunications, Treasury has revised federal regulations to facilitate investment in telecommunications services between the United States and Cuba. Treasury is now authorizing transactions that establish mechanisms to provide commercial telecommunications services linking third countries and Cuba and in Cuba, and authorizing services incident to internet-based communications and related to certain exportations and re-exportations of communications items.² Cuba ranks 125th in the world in telecommunications development.³

In financial services, the removal of Cuba from the U.S. government's list of terrorism sponsors will make it easier for banks and financial institutions to consider the Cuban market. Treasury is authorizing depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions and to permit U.S. financial institutions to reject and process certain funds transfer transactions. U.S. financial institutions are authorized to enroll merchants and process credit and debit card transactions for travel-related and other transactions. U.S. insurance companies can now provide coverage for health, life, or travel insurance policies for individuals ordinarily resident in a third country who travel to or within Cuba; health, life, and travel insurance-related services are permitted for authorized U.S. travelers to Cuba.⁴

Treasury is also authorizing certain micro-financing activities and entrepreneurial and business training, such as for private businesses and agricultural operations, as well as commercial imports of certain specified goods and services produced by independent Cuban entrepreneurs.⁵

The U.S. Department of Commerce has revised its regulations to permit export and re-export licensing of selected goods that provide support for the Cuban people in three areas: [1] improving living conditions and supporting independent economic activity; [2] strengthening civil society; and [3] improving communications.⁶

WEBER SHANDWICK & CUBA

Weber Shandwick is watching the evolution of U.S. policy in Cuba with great interest so that we can advise corporations and help facilitate their business agenda. Our firm has worked with many countries around the world over the past three decades during times of transformative political and economic change – from Latin America and Eastern Europe to Asia-Pacific. We have guided some of the world's largest corporations and most prestigious brands on market entry and engagement strategies around the globe.

Here is how we can advise companies considering a Cuban market entry strategy:

- U.S. companies and citizens are still prohibited from doing business or investing in Cuba unless licensed by the U.S. Department of the Treasury. Some U.S. companies are discussing projects with Treasury that would enable them entry into the Cuban market in a manner that does not violate U.S. sanctions. Weber Shandwick can advise on the communications elements of such a strategy.
- Help select U.S. multinational companies organize a fact-finding visit to Cuba to better understand the current business and diplomatic landscape and begin discussing engagement. In Cuba, we have relationships on the ground that can provide unique intelligence and access.
- Identify and nurture partnerships between corporations and Cuban-based foundations/non-profit organizations that can facilitate the type of economic and social progress that lies at the heart of the U.S. government's intent to promote a more democratic, prosperous and stable Cuba.
- Advise companies on the importance of establishing corporate reputation and the role of external communications, public affairs and marketing in building new commercial enterprises.
- Work with multinational companies to demonstrate responsible corporate citizenship, and advise on creating and implementing effective corporate social responsibility (CSR) initiatives.

It will be years before there is a full normalization of trade and investment ties between Cuba and the United States. But a new course is being charted today, and companies interested in being market leaders should closely monitor legal and regulatory developments and begin to explore opportunities for future engagement, even within the confines of the existing sanctions regime.

¹Source: Office of Foreign Assets Control, U.S. Department of the Treasury

²Source: Office of Foreign Assets Control, U.S. Department of the Treasury

³Source: ITU

⁴Source: Office of Foreign Assets Control, U.S. Department of the Treasury

⁵Source: Office of Foreign Assets Control, U.S. Department of the Treasury

⁶Source: U.S. Department of Commerce

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