

# SIMPLIFIED GUIDE TO UNDERSTANDING CUBA SANCTIONS FOR ORGANIZATIONS OR INDIVIDUALS DOING BUSINESS WITH INSPIRE CUBA, INC. (“*Inspire Cuba*”)<sup>1</sup>

## Introduction

Cuba is one of only three countries<sup>2</sup> currently subjected to an embargo and comprehensive sanctions by the United States government. As part of the embargo and the sanctions regime in place, a license from the United States Department of Commerce Bureau of Industry and Security (“BIS”) is needed to either export or re-export all items subject to the Export Administration Regulations (“EAR”), including most items in EAR99.<sup>3</sup> All persons subject to United States jurisdiction must comply with the embargo and the sanctions regime administered by BIS.<sup>4</sup> In practice, almost every item in existence is subject to control and may not be exported from the United States to Cuba unless a license issued by BIS is first obtained or a license exemption covering that item is available.<sup>5</sup>

Separately, the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) administers additional commercial, financial and travel related Cuba sanctions. Similarly to BIS-administered sanctions, no commercial, financial or travel related transactions involving Cuba can be undertaken by any person subject to United States jurisdiction unless a license is first issued by OFAC or a license exemption is available for that transaction.

This Guide deals exclusively with license exemptions, also often referred to as General License Exemptions (“GLEs”). *Inspire Cuba* limits its operations to activities in Cuba that are authorized under one or more available GLEs. GLEs are available for certain BIS items and OFAC transactions. **If a person subject to United States jurisdiction undertakes an activity covered by GLEs, then the activity is automatically authorized, and no additional permits or certifications are required from BIS or OFAC.**

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<sup>2</sup> The other two countries being Iran and Syria.

<sup>3</sup> See part 734 of the EAR [here](#).

<sup>4</sup> 31 CFR 515.329 (2018) 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 (2018) defines “Person” as “an individual, partnership, association or other organization.”

<sup>5</sup> See [15 CFR 746.1\(a\)\(1\)](#).

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With this Guide, we hope to accomplish the following:

1. Clearly explain **which activities** *Inspire Cuba* can freely undertake under GLEs and **which items or category of items** *Inspire Cuba* may freely export or re-export to Cuba
2. Clearly explain **which exemption** applies to certain activities or exports commonly undertaken by *Inspire Cuba* so that classification becomes easier for *Inspire Cuba*'s board of directors; therefore, contributing to the implementation of a more effective compliance process
3. Clearly explain *Inspire Cuba*'s **obligations** when undertaking activities or exports subject to GLEs
4. Reassure our business partners, financial supporters and other stakeholders of our strict compliance with Cuba sanctions
5. Implement the compliance guidelines recommended by the United States government for organizations dealing with sanctioned destinations and individuals

### **Sanctions Administered by the United States Department of Commerce Bureau of Industry and Security ("BIS")**

Certain exports and re-exports are authorized without a specific issued license by BIS, provided that: (1) they fall within a specific category and (2) other separate requirements are met.<sup>6</sup>

Two of the specific categories expressly authorized are "Gift Parcels and humanitarian donations"<sup>7</sup>—which are further divided into two for purposes of this Guide; and a "License Exemption Support for the Cuban People (SCP)."<sup>8</sup>

In addition to the two specific categories above, other exports and re-exports not falling within the purview of the GLEs but still involving any of the activities listed below may be authorized in a case by case basis by BIS issued licenses:

1. Agricultural production
2. Artistic endeavors
3. Education
4. Disaster preparedness, relief and response
5. Public health and sanitation

### **GLE for Gift Parcels**

This GLE authorizes gift parcels provided that:

- (1) The recipient is one of the following:
  1. Religious organization
  2. Charitable organization, or
  3. Educational organization<sup>9</sup>
- (2) The item exported is provided to the recipient free of charge (\*excluding handling charges or fees levied by importing country- Cuba)<sup>10</sup>

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<sup>6</sup> 15 CFR 746.2 (2018).

<sup>7</sup> 15 CFR 746.2(a)(1)(viii) (2018).

<sup>8</sup> 15 CFR 746.2(a)(1)(xiv) (2018).

<sup>9</sup> 15 CFR 740.12(a)(1) (2018).

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- (3) The gift parcel or donation package shows the label “**U.S.A. Gift Parcel**” on the addressee side<sup>11</sup>
- (4) If the item(s) is one listed in the Commerce Control List (CCL), then it must be one authorized only.<sup>12</sup>
- (5) 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 individuals<sup>13</sup>
- (6) 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).<sup>14</sup>
- (7) 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.<sup>15</sup> A license application is required for excess transactions.
- (8) The combined total U.S. value of the gift parcel, excluding food, is \$800 (USD).<sup>16</sup>
- (9) No gift parcel is sent to specifically designated officials of the Cuban government<sup>17</sup>
- (10) No gift parcel is sent to organizations administered or controlled by the Cuban government or the Cuban Communist Party.
- (11) 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.**”<sup>18</sup>

#### **GLE for Humanitarian Donations**

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

- (1) 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:<sup>19</sup>
  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

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> See [15 CFR 740.19\(b\)](#) “Eligible Commodities and Software.”

<sup>13</sup> 15 CFR 740.12(a)(2)(i)(B) (2018).

<sup>14</sup> Id.

<sup>15</sup> 15 CFR 740.12(a)(2)(i)(B)(iii) (2018).

<sup>16</sup> 15 CFR 740.12(a)(2)(i)(B)(iv) (2018).

<sup>17</sup> Specifically designated officials of the Cuban government are listed in [15 CFR 740.12\(a\)\(2\)\(i\)\(B\)\(v\) \(2018\)](#).

<sup>18</sup> 15 CFR 740.12(a)(3)(i) (2018).

<sup>19</sup> 15 CFR 740.12(b) (2018).

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- (2) 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
- (3) The donations are provided free of charge to the beneficiaries (except for handling fees and imports duties imposed by recipient country).
- (4) No expressly excluded items are included in the donation<sup>20</sup>
- (5) Donor must comply with the recordkeeping requirements found in part 762 of the EAR<sup>21</sup> in addition to the following other recordkeeping requirements:
  1. Types of projects and commodities
  2. Specific classes of beneficiaries
  3. Information concerning source of funding

### **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 and (2) supporting independent economic activity, (3) strengthening civil society, or (4) improving the free flow of information to, from and among the Cuban people, 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 Commerce Control List (CCL) AND the only reason for control applying to the item is anti-terrorism,<sup>22</sup> 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 individuals<sup>23</sup>

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 Commerce Control List (CCL) AND the only reason for control applying to the item is anti-terrorism,<sup>24</sup> 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 Commerce Control List (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 \(v\)](#).

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<sup>20</sup> List of expressly excluded items found in 15 CFR 740.12(b)(5) (2018).

<sup>21</sup> See [15 CFR 762 \(2018\)](#) for a full list of records that are required to be maintained.

<sup>22</sup> 15 CFR 740.21

<sup>23</sup> See 15 CFR 740.21(d)(4)(ii) and (iii) for a list of prohibited individuals

<sup>24</sup> 15 CFR 740.21

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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.

Other two additional categories are authorized but they are not included in this Guide for not being relevant to *Inspire Cuba's* scope of work.

## **Sanctions Administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC")<sup>25</sup>**

### **GLE for Humanitarian Projects**

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

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

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<sup>25</sup> 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,"
- **515.573** "Physical Presence,"
- **515.590** "Provisions of Grants, Scholarships and Awards."

<sup>26</sup> 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.

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9. Projects for agricultural or rural development that promote independent economic activity
10. Micro financing projects; except for loans, credit extensions, and
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.<sup>27</sup>

### **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<sup>28</sup> (not to confuse with GLE Support to the Cuban People SCP administered by BIS and discussed above), if it falls into one of the following categories:<sup>29</sup>

- 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.

### **GLE for Support for the Cuban People (SCP) administered by OFAC**

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;<sup>30</sup> and,
- (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,

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<sup>27</sup> 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)

<sup>28</sup> This refers to GLE SCP under 31 CFR 515.574 and not under 15 CFR 740.21.

<sup>29</sup> 31 C.F.R. s. 515.560.

<sup>30</sup> 31 C.F.R. s. 515.574(a)(iii).

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(5) The individuals traveling must choose to buy from privately owned stores run by self-employed Cubans (*cuentapropistas*) [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.

### **GLE for Remittances**

Donative remittances to Cuban nationals are authorized provided the following conditions are met:

(1) The remittance is not made from a blocked source<sup>31</sup>.

(2) The recipient is not a prohibited government official in Cuba.<sup>32</sup>

(3) The remittance is not made for emigration related purposes.

(4) The remitter (person receiving remittance) in Cuba, if an individual, is 18 years or older.

(5) The remittance is made by either an individual or organization engaging in an activity authorized by GLEs, which includes humanitarian projects.<sup>33</sup>

### **GLE for Physical Presence in Cuba**

Authorizes individuals and organizations engaging in humanitarian projects to engage in all transactions<sup>34</sup> 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.

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<sup>31</sup> A *blocked source* is defined in section 515.319 as an account in which a *designated Cuban national* has an interest, *except* for unblocked nationals. A *designated Cuban national* is defined in section 515.305 as a national of Cuba, including *specially designated persons*. An *unblocked national* is defined in section 515.307 as a person licensed pursuant to section 515.505, which includes Cuban nationals who are *permanent residents of the United States and United States citizens* who are also Cuban citizens).

<sup>32</sup> A *prohibited government official* is defined in sections 515.337 and 515.338 as members of the Council of Ministers, flag officers of the Cuban Revolutionary Armed Forces, members of the Politburo, members and employees of the Cuban National Assembly, members of any provincial assembly, chief sectors of the Committees for the Defense of the Revolution, any directors or secretaries of any Cuban agency, any secretaries or first secretaries of the Confederation of Labor of Cuba ("CTC" in Spanish), any editors or directors of any state run media and any member or employee of the *Tribunal Supremo Popular* [equivalent to Supreme Court of Justice].

<sup>33</sup> 31 C.F.R. s. 515.570.

<sup>34</sup> 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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### **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.

For more information, contact Andy Garcia –Compliance Director at Inspire Cuba at [board@inspirecuba.org](mailto:board@inspirecuba.org) or by phone at 407-716-1398.