

Changes in Cuba May Impact the Insurance Industry

INTERNATIONAL | LIFE, ANNUITY, AND RETIREMENT LITIGATION | BUSINESS TRANSACTIONS | AUGUST 15, 2016



Barry Leigh Weissman

While much remains to be determined, the recent easing of U.S. restrictions on travel to and trade with Cuba may bring opportunities for U.S. and global insurance companies. However, many questions and obstacles remain. This article touches on some of them.

Travel Insurance

Americans may now travel to Cuba for one of 12 purposes¹ without a specific license from the U.S. Office of Foreign Assets Control (OFAC).² However, even though the United States is now allowing travel, the Cuban government requires that all travelers have insurance to cover any medical expenses incurred while in Cuba.³

Insurance companies domiciled in the United States selling insurance to U.S. citizens traveling to Cuba are authorized to pay for services involving health insurance, life insurance, travel insurance, and emergency medical services in Cuba.⁴ However, as tourist travel is still banned, U.S. insurance companies can only provide insurance for those persons authorized to travel to Cuba for one of the 12 enumerated purposes, or under a specific OFAC permit. Any medical bills that are incurred in Cuba must be settled prior to leaving Cuba. Medical facilities in Cuba do not accept health and/or medical insurance plans unless they specifically provide insurance for travel to Cuba (your regular health insurance policy will not pay for services in Cuba, as discussed below). Travel insurance sold by U.S. companies will be able to directly disburse payments to medical and assistance service providers in Cuba.

U.S. domiciled insurers are authorized to issue policies and pay claims for non-U.S. nationals traveling to or within Cuba if the non-U.S. national has purchased a global policy—a policy not issued specifically for travel to Cuba⁵—prior to visiting Cuba. However, beyond these specific global health, life, or travel insurance policies authorized by 31 C.F.R. §515.580, U.S. insurers are not permitted to issue policies or pay claims for non-U.S. persons traveling to Cuba.⁶

Marine Insurance

U.S. insurance companies/underwriters may now also provide vessel insurance to boaters engaging in authorized activity in Cuba. On July 20, Novamar, a specialist in the marine and yacht insurance segment, announced it is offering a policy for U.S.-flag yachts navigating Cuban waters. Vessels \$50,000 in value or greater are eligible for coverage. Cuba endorsement premiums start at \$500. The limit on stays is 14 calendar days.

Business Insurance Coverages

The following are compulsory business insurance coverages for those opening businesses in Cuba:

- workers' compensation (Cuban social security—not handled by the insurance market);
- medical expenses insurance for visitors to Cuba or those temporarily residing in the country; and
- third-party automobile liability for foreign residents (including diplomats) and for vehicles carrying either freight or people.

Third-party auto insurance coverage is not required to obtain a driver's license in Cuba for personal use. However, if you are not a Cuban citizen or are providing services such as transportation of goods or people the Ministry of Transport will require third-party coverage.

Cuban Foreign Investment Law No. 118 requires that joint ventures and foreign-owned companies insure all property and

casualty risks.⁷ To favor the Cuban insurance market, the law requires that Cuban insurers be given the first opportunity to provide this coverage.⁸ However, if the Cuban insurers "do not offer terms that align with international markets," foreign insurers can step in. Regardless, however, the insurers must comply with Cuba's Ministry of Finance and the Cuban Insurance Regulator (SSC) rules.⁹ With only two domestic insurance companies presently operating in Cuba, an influx of investment could ultimately result in business for foreign insurers. However, the difficulties associated with an underdeveloped insurance market in Cuba may impede joint ventures or foreign investment in the country altogether. Unfortunately, there has been no guidance provided as to how one would obtain Ministry of Finance or SSC permission to gain the clearance required to obtain insurance from the international marketplace, or as to how a non-Cuban insurer would be permitted to provide such insurance for foreign companies in Cuba.

The new OFAC FAQs make clear that U.S. reinsurers cannot participate in arrangements for which the underlying activity¹⁰ is not authorized, such as providing coverage for a foreign company offering investment opportunities in Cuban state-owned enterprises. In other words, U.S. reinsurers may be prohibited from participating even if the foreign company is operating lawfully, simply because the foreign company is not operating under an authorization from OFAC.

However OFAC states explicitly that providing cargo insurance is authorized as long as the underlying export transaction itself is authorized, and that an authorization to offer insurance coverage allows for the payment and settlement of claims under the policy.

Cuban Carriers

There are only two operational carriers in Cuba: Esicuba and ESEN, subsidiaries of the state-owned holding company Caudal. Esicuba is the only writer of general liability as well as the majority of property policies, with the exception of agriculture. ESEN covers liability coverage for motorized vehicles, as well as being the only writer for agriculture and life insurance in Cuba. Asistur is one of the only national brokers and Intermar is one of the only loss adjusters; both are also subsidiaries of Caudal.

Nonadmitted insurance and fronting operations do not appear to be permitted in Cuba. While the law dictates that insurance must be purchased from a local insurer, as discussed above, it also provides for international insurers to be able to provide coverage but does not explain how that will be accomplished. In 2013 Brazilian insurer Capemisa announced it applied to become the first private insurer in Cuba. However, despite the fact that it reported it had received authorization to sell travel insurance in 2015, the company's website says it has temporarily suspended offering an insurance product in Cuba and expects to re-launch soon.

¹ 31 C.F.R. § 515.560(a)(1)(12). ² *Fact Sheet: Treasury and Commerce Announce Regulatory Amendments to the Cuba Sanctions*, U.S. DEPARTMENT OF TREASURY (Jan. 15, 2015). ³ *Insurance Information for Travelers to Cuba*, CUBA TOURIST BOARD IN CANADA. ⁴ 31 C.F.R. § 515.560, Note 2. ⁵ 31 C.F.R. § 515.580; *Frequently Asked Questions Related to Cuba*, U.S. DEPARTMENT OF THE TREASURY (2016). ⁶ *Id.* ⁷ *Id.* ⁸ *Id.* ⁹ *Id.* ¹⁰ 31 C.F.R. § 515.573(d).