

Client Alert

June 2019

Trump Administration Halts Cruises to Cuba and Imposes Other Travel Restrictions

What Happened: On Wednesday, June 5, 2019, the Trump administration introduced further restrictions on non-family travel to Cuba. The US Department of the Treasury's Office of Foreign Assets Control amended the Cuban Assets Control Regulations to prohibit "people-to-people" travel to Cuba. In addition, the US Department of Commerce's Bureau of Industry and Security issued a rule that will deny export licenses for private and corporate aircraft and passenger and recreational vessels interested in travel to Cuba.

The Bottom Line: Persons and entities subject to US jurisdiction, particularly those involved in the travel sector, should ensure that they are conducting their businesses and operations in accordance with the new Cuban travel restrictions introduced by the Trump administration. In order to ensure compliance, they should not engage in people-to-people travel and should not send private or corporate aircraft or passenger or recreational vessels to Cuba.

The Full Story

On November 9, 2017, in order to implement the National Security Presidential Memorandum-5, "Strengthening the Policy of the United States Toward Cuba" (**NSPM-5**), the US Department of the Treasury's Office of Foreign Assets Control (**OFAC**) amended § 515.565(b) of the Cuban Assets Control Regulations (**CACR**) to require that people-to-people educational travel be conducted "under the auspices of an organization that is subject to U.S. jurisdiction and sponsors such exchanges to promote people-to-people contact." The effect of this amendment was to remove authorization for individual people-to-people educational travel, which had previously been authorized under the Obama administration. Both individual and group people-to-people travel allowed persons subject to US jurisdiction to travel to Cuba for educational activities and cultural exchanges.

On April 17, 2019, National Security Advisor Ambassador John Bolton announced additional regulatory changes to further enforce NSPM-5 and the Trump administration's foreign policy toward Cuba. He declared that the US Department of Treasury would strengthen restrictions on non-family travel to Cuba.

OFAC removed the authorization for group people-to-people travel in § 515.565(b) of the CACR effective as of June 5, 2019. However, the amendment includes a "grandfathering provision" that permits previously authorized group people-to-people travel where the traveler has already completed at least one travel-related transaction, such as reserving accommodations or purchasing a flight. The remaining categories of authorized travel are as follows: family visits; official business of the US 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 exhibits; 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.

Furthermore, OFAC added a note to § 515.572(a)(2) of the CACR emphasizing that export or re-export of vessels or aircraft providing carrier services requires separate approval from the US Department of Commerce. On its part, the US Department of Commerce's Bureau of Industry and Security (**BIS**) issued its

own rule that will deny export licenses for passenger and recreational vessels and private and corporate aircraft interested in travel to Cuba. BIS's Export Administration Regulations (**EAR**) outlines licensing policy for exports and re-exports that generally will be approved, denied or reviewed on a case-by-case basis. BIS amended its EAR to create a general policy of denial for Cuba license applications involving passenger and recreational vessels and private and corporate aircraft and make such vessels ineligible for license exception. As a result, private and corporate aircraft, cruise ships, fishing boats, sailboats and other similar aircraft and vessels generally will be prohibited from traveling to Cuba.

The new rules promulgated by the Trump administration will significantly impact the travel sector. Tour companies and similar ventures will have to assess how to best modify their Cuban operations in order for them to remain viable. For example, some tour companies have discussed re-characterizing their trips from "people-to-people" travel to "support for the Cuban people" travel with a volunteerism component. Cruise lines will likely be hit the hardest as they are no longer permitted to travel to Cuba due to the EAR amendments. This restriction will require cruise lines to adjust itineraries and re-route trips while trying to keep passengers satisfied. Commercial issues may also arise for companies outside of the travel sector. It is important to note that whereas private and corporate aircraft will be generally prohibited from traveling to Cuba, these amendments do not affect commercial aircraft travel to Cuba.

The Latin American group at Hunton Andrews Kurth LLP will continue to closely monitor related developments on this issue and the broader US sanctions regime for Cuba. In the meantime, please contact us if you have any questions or would like further information.

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