

New Cuba Sanctions Measures Prohibit “People to People” Travel to Cuba and Restrict Use of Commercial Aircraft and Recreational and Passenger Vessels

June 5, 2019

In a June 4 announcement, the Trump administration further ratcheted up U.S. sanctions and export controls against Cuba by prohibiting group “people-to-people” travel to Cuba and the use of noncommercial aircraft and passenger and recreational vessels for travel to Cuba. The measures, which were foreshadowed in a foreign policy speech by U.S. National Security Advisor John Bolton in Miami on April 17, 2019 (see our previous [client alert](#)), represent a significant escalation of sanctions, as they eliminate authorizations that have permitted the largest numbers of U.S. travelers to visit Cuba in recent years. As a result, U.S. persons (including green card holders) can only travel to Cuba without a license if such travel falls in one of the remaining categories of authorized travel, including family visits, journalistic activities, professional research and professional meetings, humanitarian projects, and certain educational activities under the auspices of academic institutions.

Furthermore, the changes announced on June 4, 2019 effectively bar U.S.-origin cruise ships, sailboats, fishing vessels, and corporate and private airplanes from traveling to Cuba, further limiting available conduits for travel to the country.

Removal of “People-to-People” Travel Authorization

Effective June 5, 2019, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) rescinded a general license under the Cuban Assets Control Regulations (CACR) that permitted U.S. persons to travel to Cuba to participate in educational exchanges to promote “people-to-people contact” under the auspices of a sponsoring organization. In recent years, the “people to people” authorization has provided the basis for the largest number of U.S. travelers to travel to Cuba. At the same time, critics of U.S. engagement with Cuba in Congress and within the Trump administration have increasingly criticized travel engaged under the “people to people” authorization, characterizing it as a form of “veiled tourism” that channels funds to the Cuban military, intelligence, and security services.

In conjunction with OFAC’s elimination of the “people-to-people” authorization on June 5, OFAC issued a “grandfathering” provision to authorize certain group people-to-

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people travel that was authorized under the previous general license, provided that the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving a hotel room) before June 5, 2019.

Importantly, OFAC did not rescind or alter any of the other general licenses in the CACR authorizing other categories of travel to Cuba. These remaining categories of authorized travel include, for example, family visits, journalistic activities, professional research and professional meetings, humanitarian projects, and certain educational activities under the auspices of academic institutions.

The changes to the CACR, which are effective on June 5, 2019, are available [here](#). OFAC also released new [FAQs](#) regarding these changes.

Restrictions on Use of Noncommercial Aircraft and Passenger and Recreational Vessels to Cuba

In coordination with OFAC, on June 5, 2019, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) implemented changes to the Export Administration Regulations (EAR) to restrict noncommercial aircraft (e.g., corporate and private aircraft) and passenger and recreational vessels (e.g., cruise ships, sailboats, and fishing vessels) from traveling to Cuba. Importantly, these changes do not affect commercial aircraft (i.e., commercial aircraft operating under Air Carrier Operating Certificates or certain other Federal Aviation Administration certificates or specifications) or cargo vessels that are authorized to travel to Cuba.

Specifically, BIS removed noncommercial aircraft and passenger and recreational vessels from the scope of License Exception Aircraft, Vessels, and Spacecraft (AVS), meaning that any person seeking to export or reexport such U.S.-origin aircraft or vessels to Cuba must obtain a license from BIS. BIS will consider such license requests under a general policy of denial, absent a countervailing U.S. foreign policy or national security interest. These restrictions also apply to foreign aircraft and vessels that are "subject to the EAR," including foreign aircraft and vessels with U.S.-origin content exceeding 25 percent.

Unlike the changes implemented by OFAC, BIS did not include a grandfathering clause with respect to these amendments to the EAR. Thus, even if a U.S. traveler booked a "people-to-people" trip to Cuba before June 5, 2019, as a practical matter, he or she would still be unable to travel to Cuba on a U.S.-origin cruise ship or other passenger or recreational vessel or noncommercial aircraft.

The June 5, 2019 amendments to the EAR are available [here](#). BIS also released corresponding [FAQs](#) regarding these changes.

Conclusion

These modifications to U.S. sanctions on Cuba were consistent with public statements made in U.S. National Security Advisor Bolton's speech in Miami in April. Though expected, these measures represent a significant escalation of U.S. sanctions on Cuba by the Trump administration, given the significant revenue that "people-to-people" travel and cruise ships visits have generated for Cuban entrepreneurs and the public sector. It remains to be seen the extent to which the changes will result in a further decrease in travel to Cuba from the United States, which could also lead to a

decrease in the demand for and availability of commercial airline services to Cuba from the United States.

In the weeks ahead, it is foreseeable that the Trump administration will further tighten sanctions on Cuba to effect other policy statements made during National Security Advisor Bolton's April 17 speech in Miami. These include statements indicating that the Trump administration will rescind the existing OFAC general license allowing U.S. banks to process "U-turn" transactions involving Cuba (i.e., transactions that originate and terminate outside the United States) and will impose a cap on personal family remittances to Cuba of \$1,000 per person per quarter. But currently, the timing and specifics of the administration's next steps on Cuba sanctions are uncertain.

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