

2020: A Hard Year for Cuba Travel

September 25, 2020

On September 24, 2020, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) amended the Cuban Assets Control Regulations (“CACR”) to further restrict travel and travel-related transactions. In particular, OFAC:

- (a) Added a new prohibition on lodging at hotels and other properties owned by the Cuban government or certain other prohibited persons;
- (b) Removed two travel general licenses to prohibit travel for (i) professional meetings/conferences and (ii) public performances, clinics, workshops, certain athletic competitions, or exhibitions; and
- (c) Removed four general licenses to prohibit the importation of Cuban-origin alcohol and tobacco products.

These changes became effective on **September 24, 2020** and are summarized below.

A. Lodging Prohibition

OFAC has added a new Section 515.210 to prohibit “persons subject to U.S. jurisdiction”¹ from lodging, paying for lodging, or making reservations for or on behalf of any third party to lodge at any property owned or controlled by the Cuban government or certain other prohibited persons. Only if OFAC otherwise licenses U.S. persons to engage in these transactions may they lodge, pay for lodging, or reserve lodging at a targeted hotel or other property.



The firm’s practice encompasses virtually every aspect of aviation law, including the impact of U.S. sanctions on air carrier operations. For additional information on the matters discussed in this article, please contact the following attorney:

Lonnie Anne Pera
202.973.7913
lpera@kmazuckert.com

KMA Zuckert LLC
888 17th Street, NW, Suite 700
Washington, D.C. 20006
Telephone: (202) 298-8660
Fax: (202) 342-0683
www.kmazuckert.com

This document has been prepared by KMA Zuckert LLC to inform its clients and other parties of legal developments of interest. The views expressed herein do not constitute legal opinion or advice and should not be used as such.

© 2020 KMA Zuckert LLC

¹ The CACR defines “person subject to U.S. jurisdiction as (a) any citizen or permanent resident of the United States; (b) any person in the United States, (c) any corporation or entity organized under the laws of the United States or any state, territory, possession, or district of the United States, and (d) any entity that is owned or controlled by (a) or (c). This summary uses the term “U.S. persons” to denote “persons subject to U.S. jurisdiction.”

2020: A Hard Year for Cuba Travel

Page 2 of 3

At the same time OFAC amended CACR, the U.S. Department of State (“DOS”) published a new list of “Cuba Prohibited Accommodations” or “CPAs”. This List identifies over 425 properties for being owned or controlled by:

- (i) The Cuban government;
- (ii) A prohibited member of the Communist Party;
- (iii) A prohibited official of the Cuban government; or
- (iv) Any close relative of (ii) or (iii).

The CPA List is available on the DOS website at: <https://www.state.gov/cuba-sanctions/cuba-prohibited-accommodations-list/cuba-prohibited-accommodations-list-initial-publication/>.

To fully implement the new Section 515.210 prohibition (the “Lodging Prohibition”), OFAC has amended various general licenses to indicate whether the general license overcomes the Lodging Prohibition. If a general license expressly excludes lodging from the scope of the authorization, U.S. persons may **not** reserve, stay at, or pay for lodging at a CPA, unless OFAC issues a specific license. On the flip side, if a general license does **not** expressly incorporate the Lodging Prohibition, U.S. persons may stay and pay for lodging at a CPA.

Importantly, OFAC has amended all but one of the travel general licenses to impose the Lodging Prohibition. While most travel general licenses authorize qualifying U.S. persons to travel to Cuba – such as to visit close relatives – they do not authorize the Licensed Traveler to lodge at a hotel on the CPA List. Only persons qualifying for the general license (in Section 515.562) to travel on official government business may reserve through a third party, stay at, and pay for lodging at a CPA.

This new prohibition is significant in many respects:

- It is a new and separate prohibition – in addition to the direct financial transaction (“DFT”) prohibition in Section 515.209. Under the DFT prohibition, U.S. persons may not engage in direct financial transactions with entities and sub-entities identified on the DOS List of Cuba Restricted Entities (“CREs”). ***The CRE List includes hotels that are identified on the CPA List.***
- Both the Lodging Prohibition and the DFT Prohibition will apply unless the applicable travel general license does not impose these prohibitions.
- OFAC has exempted only one travel general license from the Lodging Prohibition (*e.g.*, for official government travel). By contrast, five travel general licenses are exempt from the DFT Prohibition. For example, the general license authorizing travel for journalistic activities does not permit lodging at CPAs but does permit direct financial transactions with CREs. Because most (if not all) hotels on the CRE List are also identified as CPAs, qualifying journalists must ensure that they comply with the new Lodging Prohibition, notwithstanding their exemption from the DFT Prohibition.

B. Removal of Two Travel General Licenses

OFAC has removed the general license (in Section 515.564(a)(2)), which authorized U.S. persons to travel for purposes of attending or organizing professional meetings and/or conferences in Cuba. This travel general license was important in that it allowed (for example) employees, consultants, or agents of U.S. travel agencies and U.S. airlines to attend meetings relating to their services (including to discuss safety and security of flights to Cuba). U.S. attorneys, under this travel general license, could attend meetings and/or conferences in Cuba relating to their legal services. With the removal of this general license, U.S. persons now must apply for and obtain

2020: A Hard Year for Cuba Travel

Page 3 of 3

OFAC specific licenses before they may travel to participate in (or organize) professional meetings or conferences in Cuba.

In addition, OFAC has removed the travel general license (in Section 515.567(b)), which authorized U.S. persons to attend public performances, clinics, workshops, certain athletic competitions, or other competitions or exhibitions. By removing this general license, OFAC now prohibits U.S. persons from traveling to Cuba to participate in athletic competitions, unless another general license applies. (There is another general license that permits, subject to conditions, qualifying U.S. athletes to participate in athletic competitions held under the auspices of an *international sports organization*.) In another example, U.S. persons cannot travel to Cuba for purposes of attending public concerts or other types of public performances. The amended CACR states that OFAC will consider issuing specific licenses on a case-by-case basis, if the Cuban people may attend or participate in the public event or activity.

C. Restrictions on Alcohol and Tobacco Imports

OFAC also has removed four general licenses that permitted the importation into the United States of Cuban-origin alcohol and tobacco products. As a result of this action, Licensed Travelers may not bring Cuban rum (or other types of alcohol) or Cuban cigars in their accompanied baggage. Foreign nationals may not import Cuban-origin alcohol or tobacco products into the United States. In addition, U.S. persons may not import Cuban-origin alcohol or tobacco products from third countries. These items are now likely to be confiscated upon arrival in the United States, and such confiscation may result in an OFAC enforcement matter.

* * * *

The new Lodging Prohibition as well as other restrictions apply to U.S. persons and permanent residents (wherever located) and to foreign nationals in or traveling through the United States. The Lodging Prohibition also applies to travel agencies, reservation systems, and air carriers that are subject to U.S. jurisdiction. This includes foreign organized entities that are owned and controlled by U.S. persons. The amended CACR – with the new Lodging Prohibition – directly impacts a substantial majority of U.S. persons who are licensed to travel to Cuba. Even though OFAC has not prohibited lodging at private homes (that are not listed as CPAs), the decrease in permitted accommodations will negatively impact travel to Cuba.

OFAC's removal of two travel general licenses, moreover, will impact certain travelers, particularly those who need to travel in connection with the flights to Cuba. U.S. travel agency representatives will need to apply for and obtain OFAC specific licenses before they attend any meetings in Cuba relating to their travel services. Unless U.S. air carrier representatives qualify for another travel general license, they also will need to obtain OFAC specific licenses. It remains to be seen whether OFAC will issue specific licenses authorizing travel to attend meetings at which Cuban government officials will be present.