

# CUBA EMBARGO CONTINUES TO PRESENT RISKS FOR TRAVEL COS.

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With three multimillion dollar enforcement actions in the past year, the U.S. government has put the travel industry on notice that it will continue to vigorously enforce its Cuba embargo. The U.S. Treasury Department's Office of Foreign Assets Control announced settlements with CWT BV on April 18, 2014, for nearly \$6 million and with Decolar.com Inc. on May 6, 2014, for \$2.81 million for travel-related violations of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (CACR).

These followed last year's widely publicized settlement with American Express Travel Related Services Co. Inc. for \$5.23 million. OFAC announced a fourth enforcement action on May 8, 2014, for American International Group Inc., part of which involved travel insurance for persons visiting Cuba.

All four of the enforcement actions targeted travel services activities by non-U.S. companies or foreign branches acting outside of the United States. The CACR prohibit persons subject to U.S. jurisdiction — which includes non-U.S. companies owned or controlled by U.S. persons and foreign offices of U.S. companies — from entering into transactions involving property in which Cuba or its nationals have an "interest." This language is interpreted expansively by OFAC to prohibit transactions or

services relating to Cuba, including travel and tickets to or from that country.

Despite specific efforts to relax certain travel restrictions on Cuba, the U.S. continues to maintain a broad embargo on trade and transactions with Cuba and Cuban nationals. The United States applies its Cuba policies with extraterritorial jurisdiction on subsidiaries of U.S. companies and U.S.-origin products (such as aircraft) outside of the United States. Most other jurisdictions, including the European Union and Canada, have relatively open trade and travel policies with regard to Cuba. This can create compliance challenges for travel service providers and air carriers.

## Cuba Enforcement Actions

Decolar is a Delaware company headquartered in Buenos Aires, Argentina, whose foreign subsidiaries provided more than 17,836 persons with flight reservations for travel between Cuba and non-U.S. countries and/or hotel reservations for stays in Cuba. Decolar voluntarily disclosed the apparent violations, leading to the settlement.

OFAC noted several aggravating factors, which include: Decolar relied on oral assurances from a third party that no OFAC license was required rather than exercising due diligence;

there were a large number of transactions over time; the company's senior management was aware of the foreign subsidiaries' Cuba-related activities; Decolar's status as a large and sophisticated travel services provider; and the company had no risk-based compliance program.

CWT is a travel service company based in the Netherlands but majority-owned by U.S. parent, Carlson Wagonlit Travel, and consequently subject to U.S. jurisdiction. CWT reportedly provided travel services to 44,430 persons traveling to and from Cuba in violation of the U.S. embargo between August 2006 and November 2012. Like with Decolar, CWT was noted as being part of a sophisticated international company, engaging in a large number of transactions with Cuba and lacking an adequate compliance program.

American Express TRS settled with OFAC on July 22, 2013, after disclosing that its foreign branches and subsidiaries issued 14,487 tickets for travel between Cuba and non-U.S. countries between December 2005 and November 2011. OFAC had investigated American Express TRS for similar apparent violations in 1995 and 1996 and the enforcement announcement criticized the company for its failure to address the prior issues relating to Cuba.

OFAC also noted that some of the tickets for Cuba were issued in countries with "antidote" measures designed to prevent companies from complying with the U.S. embargo of Cuba. However, OFAC did not assign any aggravating or mitigating weight to the conflict of U.S. and foreign law under the facts of the case.

U.S. insurance giant AIG reached a smaller settlement of \$279,038 with OFAC on May 8, 2014, for insurance provided by three AIG subsidiaries in Canada relating to Cuba. Part of that settlement was for subsidiary Travel Guard Canada selling, renewing or maintaining 3,446 travel insurance policies where the insured identified Cuba as the travel destination between March 2006 and September 2008. Travel Guard Canada also paid 103 claims on those policies.

### **When Can Companies Support Travel to Cuba?**

Adding somewhat to the confusion for non-U.S. companies, the United States has opened avenues for lawful travel to Cuba under specified circumstances. Travel service providers must be authorized by OFAC to provide services in support of such travel. Under § 515.572 of the CACR, TSPs include:

Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba.

TSP services and support can include reservations, ticketing and payment for charter flights to Cuba as well as flights between a third country and Cuba operated by a third-country carrier.

However, TSP activities are limited to specific types of travel authorized under OFAC general licenses and by

specific licenses where permitted under the regulations. Permitted travel activities are described in Sections 515.560 and 515.533 of the CACR and include family visits, official government travel, journalism, religious visits, humanitarian and charity-related travel, and certain travel related to authorized exports and telecommunications. OFAC specific licenses can be applied for in connection with travel for these authorized areas where not covered by a general license.

Tourist travel, however, is not authorized by existing OFAC regulations under any circumstances. Not only is engaging in or supporting tourist travel prohibited under the CACR, but also specific licenses are not available to (a) U.S. or foreign individuals hoping to travel for tourism to Cuba, or (b) travel service providers or transportation companies supporting such travel.

### **Lessons for the Travel Industry**

These enforcement actions serve as a reminder to U.S. companies as well as their subsidiaries and offices in foreign countries that the United States continues to strictly enforce its Cuba embargo, despite its steps to open some travel. They also highlight the fact that the CACR apply not only to activities in the United States but also the activities of non-U.S. companies acting completely outside of the United States when they are a subsidiary of a U.S. company or otherwise owned or controlled by a U.S. person.

While this extraterritorial application of U.S. sanctions rules is controversial in the European Union, Canada and other countries, the exposure of non-U.S. companies and their

corporate parents or owners to the U.S. economy puts OFAC (and federal prosecutors wielding criminal penalties) in a position to enforce the embargo. Acting in a European country with “antidote” laws countering the U.S. Cuba embargo has not deterred U.S. enforcement or helped companies avoid large fines.

Providers in the travel or transportation industry whose business can include ticketing, reservations or other support services relating to Cuba should always determine whether (a) they are U.S.

owned or controlled, and (b) whether they have potential contacts with the United States that may give rise to jurisdiction.

Where there is any potential for U.S. jurisdiction, it will be important for companies to understand the requirements of U.S. sanctions rules, conduct appropriate due diligence on transactions, implement a suitable companywide compliance program, identify a responsible compliance officer and institute training for key personnel.

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