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## ***US Airlines & Cruise Ships Can Transport Foreign Passengers To Cuba; Can Starwood Accept Foreign Guests & Tourists? The Answer Is Yes.***

**The question:** Did the Obama Administration authorize by regulation a United States company to earn revenues from an activity that is prohibited by law for United States persons?

A person seeking a reservation at Four Points By Sheraton Havana (opened 27 June 2016) must complete a “*Certification Regarding Authorized Travel To, From, And Within Cuba*” which states “*To comply with Starwood Hotels’ policies, each traveler must complete the below ‘Certification.’ If you do not check a box under Section 1, you are certifying that you are not a person subject to the jurisdiction of the United States.*” Thus, a citizen of France visiting the Republic of Cuba for the purpose of tourist activities would not be required to complete the Certification to confirm a reservation at the property.

When interacting today with Four Points Sheraton Online Chat, the Associate shared “*must read to caller instead of property conditions*” which consisted of the rules governing potential guests subject to United States jurisdiction. The Associate further explained “*I am only advised on the US jurisdiction. I can reach out to the hotel and have them email you?*”

In 2016, the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury issued a license(s) to Stamford, Connecticut-based Starwood Hotels & Resorts Worldwide (2015 revenues exceeded US\$5.7 billion) to manage properties owned by Republic of Cuba government-operated entities located in the city of Havana, Republic of Cuba.

The properties are Gran Caribe-owned Hotel Inglaterra; Habaguanex-owned Hotel Santa Isabel and Gaviota-owned (which is controlled by the Revolutionary Armed Forces of the Republic of Cuba) Hotel Quinta Avenida (re-branded 27 June 2016 as Four Points by Sheraton Havana; <http://www.starwoodhotels.com/fourpoints/property/overview/index.html?propertyID=4531>).

Bethesda, Maryland-based Marriott International (2015 revenues exceeded US\$14 billion) is acquiring Starwood Hotels & Resorts Worldwide and confirms its discussions with Republic of Cuba government-operated companies to identify property-management opportunities within the Republic of Cuba.

If the OFAC authorized Starwood Hotels & Resorts Worldwide to accept payment from persons who are not within the twelve (12) categories of travelers defined by the OFAC, those persons could be defined as engaging in “tourist activities” within provisions of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000, and thus be transactions prohibited by statute, not subject to regulatory interpretation.

A position of the Obama Administration issued through discussions amongst senior-level staff at The White House, United States Department of State, and OFAC: There exists no reasonable means for a hotel, which is subject to discrimination laws and regulations of the country within which it operates, to selectively determine who may be accommodated and a global hospitality company might be subject to third-country (or body) extraterritorial measures; the laws and regulations of the Republic of Cuba need to trump the laws and regulations of the United States.

From the United States Department of the Treasury: There is no general license currently authorizing this activity by a United States company, so any activity related to this would have to be authorized by specific license. In determining whether to grant a license, OFAC would consider the individual facts and circumstances presented in any applications to provide hospitality services relating to Cuba, including whether travelers are persons subject to United States jurisdiction and the purpose of their travel. However, it is important to note that OFAC typically consults with the United States Department of State in making its licensing determinations, and consistent with such foreign policy guidance and applicable law, can make specific licenses as broad or narrow as necessary.

That the OFAC authorized Starwood Hotels & Resorts Worldwide to earn revenues from “tourist activities,” United States-based airlines may have a means to dispute restrictions placed upon them by the OFAC and United States Department of Transportation (DOT).

United States law prohibits persons subject to United States law from visiting the Republic of Cuba for the purpose of tourist activities. There is an OFAC regulatory (not statutory) exception- if a person not subject to United States law is making all payments relating to the visit on behalf of the person subject to United States law; this is defined as “*fully hosted travel*” and thus authorized.

In the 1990’s, the U.S.-Cuba Trade and Economic Council assisted with the coordination of the **first** and **second** fully-hosted Familiarization Tours (FAM TOURS) to the Republic of Cuba by senior-level executives of United States-based airline companies, hotel companies, cruise line companies, vehicle rental companies, tour operators, financial services companies, and travel agents. Republic of Cuba government-operated Havanatur sponsored and paid for the FAM TOURS.

The TSREEA specified twelve (12) categories of eligible travel to the Republic of Cuba by a person subject to United States law:

**(b) Prohibition on travel relating to tourist activities**

**(1) In general**

Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.

**(2) Definition**

In this subsection, the term “tourist activities” means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).

(Pub. L. 106–387, § 1(a) [title IX, § 910], Oct. 28, 2000, 114 Stat. 1549, 1549A–71.)

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for the applicable general and specific licensing criteria):

- (1) Family visits (general and specific licenses) (see § 515.561);
- (2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (general license) (see § 515.562);
- (3) Journalistic activity (general and specific licenses) (see § 515.563);
- (4) Professional research and professional meetings (general and specific licenses) (see § 515.564);
- (5) Educational activities (general and specific licenses) (see § 515.565);
- (6) Religious activities (general and specific licenses) (see § 515.566);
- (7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (specific licenses) (see § 515.567).

515.567);

(8) Support for the Cuban people (specific licenses) (see § 515.574);

(9) Humanitarian projects (specific licenses) (see § 515.575);

(10) Activities of private foundations or research or educational institutes (specific licenses) (see § 515.576);

(11) Exportation, importation, or transmission of information or informational materials (specific licenses) (see § 515.545); and

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms (general and specific licenses) (see §§ 515.533 and 515.559).

Penalties for violating provisions of the TSREEA may be criminal and civil; and are contained within the Trading with the Enemy Act of 1917.

The OFAC authorizes persons subject to United States law and persons subject to the jurisdiction of the United States to use direct airline flights and cruise ships from the United States to the Republic of Cuba.

A citizen of France, for example, visiting the United States is a “person subject to U.S. jurisdiction” under the Cuban Assets Control Regulation, 31 C.F.R. part 515 (the “CACR”), and therefore can be transported on a direct flight to the Republic of Cuba provided that he/she qualifies for a general license in one of the twelve (12) categories listed § 515.560 of the CACR or under a specific license from OFAC or is “transiting the United States en route to Cuba.”

The OFAC has authorized by general license lodging for authorized travelers (i.e., persons subject to United States law and persons subject to the jurisdiction of the United States licensed within one of the twelve categories) aboard a vessel that is providing carrier services between the United States and the Republic of Cuba. This authorization could be considered to include hotels, a stationary vessel, managed in the Republic of Cuba by Starwood Hotels & Resorts Worldwide.

#### **Starwood Hotels and Resorts Announces Groundbreaking Expansion to Cuba**

**March 19, 2016**

*Becomes First Hospitality Company to Obtain U.S. Treasury Department Authorization to Operate In Cuba  
Signs Two Agreements and Letter of Intent to Open Hotels in Havana in 2016*

HAVANA--(BUSINESS WIRE)-- Starwood Hotels & Resorts Worldwide, Inc. (“Starwood”) (NYSE:HOT) today signed three new hotel deals in Cuba, marking the first U.S. based hospitality company to enter the market in nearly 60 years. This announcement follows receipt of authorization from the U.S. Treasury Department for Starwood to operate hotels in Cuba. Long-time Havana icon, Hotel Inglaterra, will join The Luxury Collection and Hotel Quinta Avenida will become a Four Points by Sheraton. Both hotels will undergo renovations before raising their new brand flags later in 2016. The Company also announced that it has signed a Letter of Intent to convert the famed Hotel Santa Isabel into a member of The Luxury Collection.

Thomas B. Mangas, Starwood’s Chief Executive Officer, said: “Starwood’s history of creativity, innovation, sustainability and being a first mover is core to who we are and what has made us a formidable competitor in the industry with a long, global lead. I am proud of our team who worked tirelessly to make today possible. With Cuba’s rich history, natural beauty and strong culture, there is no question the entire U.S. hospitality industry has watched Cuba with great interest, and we are thrilled to lead the charge and bring our sophisticated, high-end brands into the market at this inflection point.”

Kenneth S. Siegel, Starwood’s Chief Administrative Officer and General Counsel, added: “We are confident Starwood is the right partner to help write the next chapter of relations between Cuba and American business, and we moved quickly and enthusiastically to pursue opportunities following recent government actions. As we’ve seen throughout the world, our entry into new markets has a positive effect on local communities, preserving and protecting the culture and delicate ecosystems while improving employment opportunities, which were driving forces in our discussions.”

#### **Hotel Signings**

Jorge Giannattasio, Starwood’s Senior Vice President and Chief of Latin America Operations, said: “We are excited to add this sought-after destination to our growing Latin American and Caribbean portfolio, and offer our loyal guests more choice in this evolving market. Hotel conversions, like those we announced today, allow us to preserve history, architecture and culture while offering a unique branded experience. With our long-standing, locally based and highly experienced team in Latin America and the Caribbean, we look forward to welcoming guests to Cuba for many decades to come.”

Starwood has partnered with owner Gran Caribe to rebrand the renowned Hotel Inglaterra as a member of The Luxury Collection. A national landmark just steps from the Gran Teatro de La Habana in the heart of downtown Havana, the Inglaterra first opened its doors in 1875 and is home to the famed Gran Café el Louvre, which has hosted artists and

travelers for over a century. Upon completion of the preservation and conversion projects later this year, the hotel will offer 83 rooms and reopen under The Luxury Collection banner.

Starwood has signed an agreement with Grupo de Turismo Gaviota S.A. , owner of Hotel Quinta Avenida in Havana's Miramar district, to rebrand the hotel as Four Points by Sheraton Havana later this year. The hotel will cater to business travelers with approximately 186 rooms and state-of-the-art meeting facilities.

The Company also has signed a letter of intent with Habaguanex, owner of the famed Hotel Santa Isabel, to convert the nineteenth century colonial-style palace to a member of The Luxury Collection, pending U.S. Treasury Department approval. Situated on the Plaza de Armas and overlooking Havana Harbor, the Santa Isabel will offer Starwood guests a conveniently situated respite in the heart of Havana's historic city center, with 27 rooms, including 11 suites.

#### Steps to Groundbreaking Announcement

On December 17, 2014, President Obama announced plans to normalize diplomatic relations between the United States and Cuba, and in August 2015, the U.S. Embassy in Cuba was reestablished. Then, last month, the U.S. and Cuba signed an agreement that provides U.S. airlines the opportunity to operate up to 110 daily roundtrip flights, which would resume commercial airline service between the two countries for the first time in more than 50 years and promises to vastly increase the number of Americans traveling to Cuba.

Keith Grossman, Senior Vice President and Deputy General Counsel of Starwood, concluded: "Through our discussions and due diligence, it became clear that Starwood was the right choice for its unique approach to hospitality, sustainability and design that would enrich the local communities and enhance the guest experience. We plan to cultivate local talent, provide career enriching opportunities, and locally source art, décor, food, and materials to ensure we deliver authentic experiences."

#### About The Luxury Collection® Hotels & Resorts

The Luxury Collection® brand is comprised of world-renowned hotels and resorts offering unique, authentic experiences that evoke lasting, treasured memories. For the global explorer, The Luxury Collection offers a gateway to the world's most exciting and desirable destinations. Each hotel and resort is a unique and cherished expression of its location; a portal to the destination's indigenous charms and treasures. Originated in 1906 under the CIGA® brand as a collection of Europe's most celebrated and iconic properties, today The Luxury Collection brand is a glittering ensemble, set to exceed 100 of the world's finest hotels and resorts in more than 30 countries by the early 2016. All of these hotels, many of them centuries old, are internationally recognized as being among the world's finest. For more information and new openings, visit [theluxurycollection.com](http://theluxurycollection.com) or follow Twitter, Instagram and Facebook.

#### About Four Points

Four Points is travel reinvented. With over 200 hotels in nearly 40 countries, Four Points meets the needs of the everyday traveler and offers guests exactly what they need on the road. Four Points combines timeless style and comfort and an authentic sense of the local as well as genuine, always-approachable service, all around the world. To learn more, visit [www.fourpoints.com/experience](http://www.fourpoints.com/experience). Stay connected to Four Points on [facebook.com/fourpoints](https://www.facebook.com/fourpoints).

#### About Starwood Hotels & Resorts Worldwide, Inc.

Starwood Hotels & Resorts Worldwide, Inc. is one of the leading hotel and leisure companies in the world with nearly 1,300 properties in some 100 countries and approximately 188,000 employees at its owned and managed properties. Starwood is a fully integrated owner, operator and franchisor of hotels, resorts and residences under the renowned brands: St. Regis®, The Luxury Collection®, W®, Westin®, Le Méridien®, Sheraton®, Tribute Portfolio™, Four Points® by Sheraton, Aloft®, and Element®, along with an expanded partnership with Design Hotels™. The Company also boasts one of the industry's leading loyalty programs, Starwood Preferred Guest (SPG®). Visit [www.starwoodhotels.com](http://www.starwoodhotels.com) for more information and stay connected @starwoodbuzz on Twitter and Instagram and [facebook.com/Starwood](https://www.facebook.com/Starwood).

Neither the OFAC nor Starwood Hotels & Resorts Worldwide have commented upon the rationale for the properties to accept guests and receive payment from those guests when those guests do not qualify within the twelve (12) categories of travelers defined by the OFAC. A hint may be in the use of the term "loyal guests" in a 12 March 2016 media release by the company; an expansive term (Starwood Preferred Guest program members would be considered "loyal guests") rather than a constrictive term.

According to a 12 March 2016 media release, Hotel Quinta Avenida (now Four Points By Sheraton Havana) will "cater to business travelers." This statement telegraphed an opinion by the OFAC as expansive with its definition of "business travelers" to include individuals who do not possess a United States passport, but are engaged in commercial activities consistent with United States law and United States regulations.

The Ministry of Tourism of the Republic of Cuba has not commented as to the structure of the licenses issued to Starwood Hotels & Resorts Worldwide.

Surprising would be the government of the Republic of Cuba authorizing one or more properties solely for the use of the twelve (12) categories of visitors authorized by the OFAC. The acquiescence to a provision of United States law could be perceived as humiliating.

From a financial perspective, the properties could support themselves as the total number of rooms is 296; at a rack rate of US\$600.00 per night (rates begin at US\$196.00 per night), with an annual occupancy rate of 75%, the total room (using US\$300.00 per night average) and incidental revenues would be approximately US\$4+ million. The total number of guests would be 135,000 on an annual basis, representing approximately 7% of the available regularly-scheduled commercial airline route seats from the United States during the first year.

In June 2016, the USDOT issued the first round of regularly-scheduled commercial flight routes for the Republic of Cuba. For the first 52-week period, the total number of authorized airline seats for the regularly-scheduled commercial routes is 1,904,396 (or 2,159,196 using 157-seat aircraft average for Havana). The fifty-two week total regularly-scheduled commercial airline passenger capacity from the United States to the Republic of Cuba represents 54% (to 61%) of the Republic of Cuba's 3,524,779 tourist arrivals in 2015.

## **Frustration**

Where United States-based companies, and their attorneys, struggle is having the reasonable belief that with 205 days remaining for the Obama Administration, likely will be the OFAC approving just about license request that will result in optics that are "*big, bold, beautiful and sustainable*," yet, having to continue with the investment of resources to create a license application narrative based upon existing, and often complex regulations.

Most executives wish that the Obama Administration would publicly confirm what the executives know privately is confirmed- that the Obama Administration will not permit a regulation to interfere with a good proposal. As for a statute, the Obama Administration needs a reasonable position as to how it does not apply... and the OFAC can issue a license if necessary.