

Client Alert

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Despite Recently Announced Reform, Cuban Government Signals Continuing Reforms “Without Haste But Without Pause”

After President Obama on December 17, 2014, announced a policy change designed to engage and empower the Cuban people, Carnival Corporation (“Carnival”) announced that their Fathom brand would offer cruises to Cuba commencing in May 2016 that, due to their volunteer nature, would be permitted forms of travel to Cuba under the revised US regulations. However, in April, despite having received permission by both the US and Cuban governments to operate these cruises, Carnival was still prohibited, by Cuban law, from selling tickets to Cuban-born travelers in the US, due to the Cuban prohibition on Cuban-born persons’ entering Cuba in any boat or ship. A purported class-action lawsuit was subsequently filed against Carnival in Florida alleging that Carnival discriminated against Cuban-born persons by “adopt[ing] Cuba’s policy to disallow Cuban-born persons from traveling to Cuba by ship.” Carnival responded to the lawsuit and protests outside its headquarters by stating that it would postpone its cruises unless Cuba changed its entry policy. On Friday, April 22, 2016, Cuban state media announced the loosening of the maritime ban on Cuban-born persons and, as a result, the initial voyage of the Fathom brand to Cuba is scheduled to take place on May 1, 2016.

This example reflects some of the difficulties that US businesses wanting to engage in business with Cuba experience, despite the changes in US regulations. Additional reforms by the Cuban government regarding the ability of US persons to do business in Cuba are expected to remain sluggish. On April 16-19, 2016, the Cuban Communist Party held its seventh Cuban Communist Party Congress, a four-day meeting of about 1,000 representatives of the Cuban Communist Party that occurs every five years. The congress serves as the forum in which party members debate several documents and plans for the future regarding Cuba’s economic situation, present reforms and reform plans for the subsequent five-year period. Given that it was announced that reform will continue “without haste but without pause,” it appears that free-market reforms in Cuba will continue at a slow pace, managed by conservative politicians.

It was expected that the congress could be the forum in which the Cuban government would speed up the process of change that began during the Cuban Communist Party’s sixth congress in 2011 and discuss or announce policies complementary to the policy change announced by President Obama on December 17, 2014, and the conforming changes made to federal regulations regarding Cuba. The previous congress in 2011 had resulted in 313 guidelines (*lineamientos*) designed to update the economy and allow a limited opening toward the free market. Since then, only about 21 percent of the guidelines have been implemented, while about 77 percent are in the process of being implemented and no progress has been made on about 2 percent. For the next five-year period, there will now be 268 guidelines consisting of 31 guidelines with the wording from the previous congress, 193 that have been reworked and 44 completely new ones.

President Castro noted that whereas five years ago foreign investment in infrastructure and production represented 45 percent of the total, investments in those two areas are now 70 percent of the total. Although the Cuban government promulgated investment and economic reforms announced during the previous congress, economic growth from 2011 to 2015 averaged only 2.8 percent annually. Despite this

underperformance, President Castro stated that economic changes will likely proceed at the same “without haste but without pause” pace of the previous five years.

President Castro will remain the Cuban Communist Party’s first secretary for a second term and will therefore remain in a position of influence and power even after he is supposed to relinquish the presidency in 2018. Although the congress outlined age and term limits for party leadership posts, these limits are not expected to go into effect until the next congress, further delaying the process of transitioning leadership to the party’s younger generations, who may be stronger advocates for reform. José Ramón Machado Ventura, an 85-year-old voice against some of the country’s biggest recent economic reforms and a man that even President Castro has criticized for rigidity, will continue to serve as the party’s second secretary for a second term. Similarly, the party congress also chose the 15-member Political Bureau but it is mostly devoid of fresh faces associated with the party’s younger generations. Although five members are new, none of them are recognized as high-profile advocates for reform.

The Latin America group at Hunton & Williams LLP will continue to closely monitor related developments. Please contact us if you have any questions or would like further information regarding the normalization of US-Cuba relations or any regulation or sanction governing the Cuban embargo.

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