

# Client Alert

November 2018

## The Trump Administration Continues to Increase Pressure on Nicaragua

What Happened: On November 27, 2018, President Trump issued a new executive order on Nicaragua requiring the blocking of all property and interests in property belonging to any person determined by the Secretary of the Treasury to be involved with or assisting corrupt practices, the abuse of human rights or the destabilization of democratic processes in Nicaragua. On this same date, the Senate passed an amended version of the Nicaraguan Investment and Conditionality Act (NICA Act), which would establish restrictions on lending to the Government of Nicaragua by international financial institutions. The NICA Act now heads back to the House of Representatives for final consideration and, if approved, to the president's desk for signature.

The Bottom Line: Corporations and persons with interests in Nicaragua and Central America should actively monitor the continued increased US sanctions on the Government of Nicaragua (including both current and former Nicaraguan government officials).

### The Full Story

On November 27, 2018, President Trump issued a new executive order titled "Blocking Property of Certain Persons Contributing to the Situation in Nicaragua" (the Executive Order).

The Executive Order blocks, and prohibits the transfer, payment, exportation, withdrawal or other dealing in, all property and interests in property that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of any United States person, if such property or interests in property belong to any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in (a) serious human rights abuse in Nicaragua; (b) actions or policies that undermine democratic processes or institutions in Nicaragua; (c) actions or policies that threaten the peace, security or stability of Nicaragua; or (d) any transaction or series of transactions involving deceptive practices or corruption by, on behalf of or otherwise related to the Government of Nicaragua or a current or former official of the Government of Nicaragua, such as the misappropriation of public assets or expropriation of private assets for personal gain or political purposes, corruption related to government contracts or bribery;
- (ii) to be a leader or official of an entity that has, or whose members have, engaged in any activity described in (i) above or of an entity whose property and interests in property are blocked pursuant to the Executive Order;
- (iii) to be an official of the Government of Nicaragua or to have served as an official of the Government of Nicaragua at any time on or after January 10, 2007;

- (iv) to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services in support of: (a) any activities described in (i) above or (b) any person whose property and interests in property are blocked pursuant to the Executive Order; or
- (v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Executive Order.

The prohibitions prescribed by the Executive Order apply except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to the Executive Order, and notwithstanding any contract entered into or any license or permit granted prior to the date of the Executive Order. Thus, for example, a specific license previously issued by the Office of Foreign Assets Control (OFAC) to engage in a transaction with a person sanctioned by the Executive Order would be superseded by the Executive Order and any such transaction with a person sanctioned by the Executive Order should cease immediately, unless a future specific license is granted pursuant to the Executive Order.

The Executive Order also suspends the unrestricted immigrant and nonimmigrant entry into the United States of persons determined to meet one or more of the criteria set forth in (i) – (v) above and prohibits the donation of articles such as food, clothing and medicine to such persons. Finally, without limiting the generality of the foregoing prohibitions, the Executive Order clarifies that the prohibitions include the making of any contribution or provision of funds, goods or services by, to or for the benefit of any person whose property and interests in property are blocked pursuant to the Executive Order and the receipt of any contribution or provision of funds, goods or services from any such person. Thus, beyond merely blocking the property and interests in property of such persons, the Executive Order also prohibits essentially all commercial transactions with such persons.

It is important to note that the criteria set forth in (i) – (v) above appear to be drafted with a broad scope, even explicitly including in (iii) above officials serving or who have served the Government of Nicaragua at any time on or after January 10, 2007. The term “Government of Nicaragua” is also broadly defined, including any political subdivision, agency and instrumentality of the Government of Nicaragua such as the Central Bank of Nicaragua. Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet such criteria would be at risk of being sanctioned as described above and added to OFAC’s Specially Designated Nationals And Blocked Persons List.

Also in connection with US sanctions on the Government of Nicaragua, the Nicaraguan Investment and Conditionality Act, which establishes restrictions on lending to the Government of Nicaragua by international financial institutions, could soon become law. On November 27, 2018, the Senate passed an amended version of the NICA Act previously passed by the House of Representatives. The NICA Act as amended by the Senate now heads back to the House of Representatives for final consideration. If the bill is approved by the House of Representatives without further amendments, it will be subject President Trump’s approval. If it becomes law, the NICA Act, among other things, would direct the president to instruct the US executive director at each international financial institution to use US influence to oppose any loan for the Government of Nicaragua’s benefit, other than for basic human needs or to promote democracy, unless the Department of State determines that the Government of Nicaragua, among other actions, is taking effective steps to hold free, fair and transparent elections. The NICA Act would provide the US government an additional tool to sanction and put pressure on Nicaragua in connection with its recent human rights and corruption crises.

The Latin America group practice at Hunton Andrews Kurth LLP will continue to closely monitor related developments in the US sanctions regime with respect to Nicaragua. Please contact us if you have any questions or would like further information regarding US sanctions against Nicaragua.

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