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Have Cruise Lines Sunk Themselves?

Changing Cruise Line Itineraries May Influence Decision

What Defines “*Meaningful Interaction*”

Audit Could Require Millions Of Pieces Of Paper

Obama Administration Elasticity

Trump Administration Constraint

The Obama Administration was not intent upon enforcing who could not travel to the Republic of Cuba because it did not support the statute which prohibited travel for the purpose of tourism. The Obama Administration permitted an elasticizing of the twelve (12) statutorily-authorized definitions as to who could visit the Republic of Cuba.

The Trump Administration is nearing the end of an internal analysis: If two 3,000-passenger cruise ships arrive to the Port of Havana, how do 6,000 passengers have, as regulations for the statute require, “*meaningful interaction between the traveler and individuals in Cuba*” during a several hour visit? What does a Republic of Cuba national gain from the brief encounter other than money? Isn’t a cruise ship, by definition, a vehicle to transport and service tourists? Isn’t a cruise ship passenger, by definition, a tourist- regardless of whether they believe it so? Can “*meaningful interaction*” be reasonably defined? Is the definition a function of the individual rather than the government?

When Miami, Florida-based **Carnival Corporation & plc**, commenced cruises on 1 May 2016 to the Republic of Cuba, it used the 704-passenger *Adonia* and the itineraries were licensed by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury and managed through its *Fathom* subsidiary which specialized in travel with a social impact. Importantly, the cruise itinerary only included the Republic of Cuba- it was not a component of a multi-country cruise which are designed for tourism. Given a lack of marketplace interest, soon the *Fathom* cruises to the Republic of Cuba ceased and the Republic of Cuba was increasingly included on regularly-scheduled mainline cruise ship itineraries, but with on-shore excursions within the Republic of Cuba that were marketed to be in compliance with OFAC regulations.

Since that 1 May 2016 inaugural cruise by the *Adonia*, there are few cruises by any company, including Miami, Florida-based **Norwegian Cruise Line** and Miami, Florida-based **Royal Caribbean International**, that only have the Republic of Cuba as the multi-day cruise destination.

According to the Republic of Cuba, in 2018 the three-largest United States-based cruise lines and smaller cruise lines delivered more than 500,000 passengers to the Republic of Cuba. The majority of passengers traveled on cruise itineraries that included multiple countries.

If cruise lines could not be profitable with Republic of Cuba-only cruises, then is the message to the OFAC that the passengers are not focusing upon the Republic of Cuba? If the Republic of Cuba is one of two or three or four countries on a cruise itinerary, what percentage of passengers would not participate on the cruise if the Republic of Cuba was excluded? That data will likely be important for the cruise lines to compile.

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The OFAC authorized (specific licenses and general licenses) the cruises under the “*educational travel*” provision within the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000. The licensee is the cruise line rather than the passenger; the cruise line has potential liability as the passenger is reasonably relying upon the licensee to operate within the confines of United States laws, regulations and policies. To mitigate liability, cruise lines have been requiring passengers to self-certify that they adhere to the statutory and regulatory requirements of the TSREEA.

United States airlines are not considered licensees and passengers traveling from the United States to the Republic of Cuba are self-certifying that they adhere to one of the twelve authorized categories of travel to the Republic of Cuba. The third-party companies that are processing the self-certifications are also not licensees. The passenger is wholly-responsible for compliance with the OFAC regulations.

The OFAC can reach back five years to seek documentary evidence of compliance. Because the OFAC has not yet sought action against United States-based companies engaged in providing travel-related services does not exempt compliance. Individuals remain liable for their actions.

All general and specific licenses issued by the OFAC are subject to change or revocation at any time should the terms of the license no longer be deemed as consistent with United States policy.

The Trump Administration may require the airlines, cruise lines and tour operators to provide the documentation since 1 May 2016 from each passenger who has traveled to the Republic of Cuba under their license. That’s potentially millions of pieces of paper subject to audit by the OFAC... and how long would that take to complete? And, would the cruises be permitted to operate during the audit process?

12 Categories Of Permitted Travel

There are twelve (12) categories of travel authorized by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury; the categories were codified into law by the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA).

The authorized categories are: 1) family visits 2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations 3) journalistic activity 4) professional research and professional meetings 5) educational activities 6) religious activities 7) public performances, clinics, workshops, athletic and other competitions, and exhibitions 8) support for the Cuban people 9) humanitarian projects 10) activities of private foundations or research or educational institutes 11) exportation, importation, or transmission of information or information materials and 12) certain authorized export transactions.

Travel to the Republic of Cuba for the purpose of tourism by individuals subject to United States law is prohibited by United States law- not by regulation and not by policy.

The statute within the TSREEA: “(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

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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.)”

From The OFAC:

“What is *individual* people-to-people travel, and how does the President’s announcement impact this travel authorization?”

Individual people-to-people travel is educational travel that: (i) does not involve academic study pursuant to a degree program; and (ii) does not take place under the auspices of an organization that is subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact. The President instructed Treasury to issue regulations that will end individual people-to-people travel. The announced changes do not take effect until the new regulations are issued.

Will *group* people-to-people travel still be authorized?

Yes. Group people-to-people travel is educational travel not involving academic study pursuant to a degree program that takes place under the auspices of an organization that is subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact. Travelers utilizing this travel authorization **must**: (i) maintain a full-time schedule of educational exchange activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities, and that will result in meaningful interaction between the traveler and individuals in Cuba; and (ii) be accompanied by an employee, consultant, or agent of the sponsoring organization, who will ensure that each traveler maintains a full-time schedule of educational exchange activities. In addition, the predominant portion of the activities engaged in by individual travelers must not be with prohibited officials of the Government of Cuba or prohibited members of the Cuban Communist Party (as defined in the regulations). Once OFAC issues the new regulations, new *individual* people-to-people travel will not be authorized.

Will organizations subject to U.S. jurisdiction that sponsor exchanges to promote people-to-people contact be required to apply to OFAC for a specific license?

No. To the extent that proposed travel falls within the scope of an existing general license, *including* group people-to-people educational travel, persons subject to U.S. jurisdiction may proceed with sponsoring such travel without applying to OFAC for a specific license. It is OFAC’s policy not to grant applications for a specific license authorizing transactions where a general license is applicable.”

20. What constitutes “support for the Cuban people” for generally authorized travel and other transactions? This general license authorizes, subject to conditions, travel-related transactions and other transactions that are intended to provide support for the Cuban people, which include activities of recognized human rights organizations; independent organizations designed to promote a rapid, peaceful transition to democracy; and individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba. In accordance with the NSPM, OFAC is amending this general license to require that each traveler utilizing this authorization engage in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities and that result in meaningful interactions with individuals in Cuba. OFAC is also amending this general license to exclude from the authorization certain

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direct financial transactions with entities and subentities identified on the State Department's Cuba Restricted List. The traveler's schedule of activities must not include free time or recreation in excess of that consistent with a full-time schedule in Cuba. For a complete description of what this general license authorizes and the restrictions that apply, see 31 CFR §515.574