

CRUISE CONTROL: US SANCTIONS CLOSE THE DOOR ON CUBAN PEOPLE-TO-PEOPLE CRUISES

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On June 5, 2019, the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) amended regulations to ban “people-to-people” cruises from the US to Cuba. Simultaneously, the US Department of Commerce’s Bureau of Industry and Security (“BIS”) amended regulations to ban US vessels from transporting passengers from the US to Cuba. As a result, US-to-Cuba cruises will be eliminated. It is unlikely that they will be reinstated any time soon.

The US maintains a comprehensive embargo on Cuba, which generally prohibits US persons (i.e., US citizens and residents) from travelling to Cuba, and prohibits US cruise companies from conducting cruises to Cuba. However, US persons *may* travel to Cuba if they fall within one of 12 exceptions to the rule, such as participation in educational activities. Within the exception for educational activities was a subcategory known as “people-to-people” travel. Under the “people-to-people” exception, US persons generally *could* travel to Cuba, and US cruise companies *could* travel from the US to Cuba, so long as participants engaged in a full-time schedule of activities that enhanced contact with the Cuban people. Although the exception imposed numerous requirements, such as record-keeping and a requirement that participants not engage in “tourist” activity, “people-to-people” cruises proved a popular option for US passengers and cruise companies to engage in Cuba cruises.

The history of people-to-people cruises dates back 20 years to 1999, when former President Clinton first implemented the program, permitting cruise operators to apply for a license from OFAC to conduct the cruises. In 2003, former President Bush revoked the licensing process, but it was reinstated in 2011 by former President Obama. In 2015, former President Obama eased the restrictions by issuing a “general license,” which meant that cruise operators could conduct people-to-people cruises without obtaining a specific license from OFAC. The requirements were further eased in 2016, when former President Obama permitted US persons to self-certify their compliance, effectively permitting non-US cruise companies to engage in unmonitored people-to-people cruises. These last changes were revoked by President Trump in 2017, so that the compliance and monitoring requirements were reinstated, but cruise companies could continue to conduct people-to-people cruises from the US to Cuba under the general license.

TERMINATION OF PEOPLE-TO-PEOPLE CRUISES

On June 5, 2019, OFAC eliminated the people-to-people exception from the US embargo of Cuba. Not only was the general license revoked, but OFAC announced that it will adopt a general policy of denial with respect to applications for a specific license for people-to-people travel. In other words, the new rules revert to the state that existed prior to 2011, when people-to-people cruises were prohibited, not just the 2011-2015 period, when cruise companies could obtain a specific license for travel.

In addition, BIS amended the general license permitting cruise ships and other vessels to be “exported” from the US to Cuba, which generally means that cruise ships and other passenger vessels cannot travel from the US to Cuba. Furthermore, BIS announced that it will adopt a general policy of denial with respect to applications for a specific license for such voyages. (Cargo vessels delivering authorized goods to Cuba, such as certain agricultural goods, continue to be licensed to trade between the US and Cuba.)

Under a grandfathering rule, travelers may continue to rely on the people-to-people exception, so long as they completed at least one travel-related transaction (such as purchasing a ticket) prior to June 5. However, the BIS restrictions on exports contain no grandfathering rule, even for ships in transit. Accordingly, as of June 5, any cruise ships en route from the US to Cuba generally must divert to another destination.

POLICY CONSIDERATIONS

The revocation of people-to-people Cuba cruises should not come as a surprise. President Trump has aggressively targeted Cuba, especially after he accused Cuba of helping Venezuela’s Nicolás Maduro-led government circumvent US sanctions designed to oust Maduro’s regime. (For a summary of US sanctions on Venezuela see our [2019 briefing](#), and our [2017 briefing](#).) In April 2019, OFAC imposed sanctions on several non-US ships and shipowners that had transported crude oil from Venezuela to Cuba. On April 17, President Trump’s National Security Advisor John Bolton announced that travel to Cuba would be significantly curtailed. At the same time, US Secretary of State Michael Pompeo announced the lifting of a waiver under the 1996 Helms–Burton Act, which now permits US nationals to bring a lawsuit against anyone “trafficking” in property confiscated by the Fidel Castro regime in the wake of the 1959 Cuban Revolution.

WHAT COMES NEXT?

US persons may continue to travel to Cuba pursuant to one of the 12 categories of travel permitted by OFAC (which no longer includes “people-to-people” travel), but the changes implemented by OFAC and BIS effectively shut down all cruises from the US to Cuba.

Although the new Cuba sanctions clearly relate, at least in part, to events in Venezuela, there is no guarantee that a positive resolution of the Venezuela crisis will lead to a relaxation of the Cuba sanctions. President Trump has indicated that if his desired regime change occurs in Venezuela, US sanctions in Venezuela will be eliminated. In contrast, there is no basis to suggest that Venezuelan regime change would lead to a reversal of Cuba sanctions. Accordingly, it is unlikely that the sanctions will be relaxed, or that people-to-people cruises will be reinstated, any time soon.

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