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CUBA CRUISE/FERRY LEGAL FRAMEWORK

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Background on Havana Harbor

Havana Docks Corporation obtained a port concession from the Government of Cuba from 1934 to 1960 to operate at the entrance of the harbor of Havana three piers: the "San Francisco," "Machina" and "Santa Clara," linked with a large marginal building.

The piers and buildings were used for warehousing purposes, cargo deposits and for merchandise provisionally stored pending Customs clearance. Each pier consisted of a two-story concrete building with an apron equipped with platforms and a double railroad track to permit direct unloading of cargo from ships to railroad cars and vice versa. All official port authorities were located within the marginal building, such as the Customs House of Havana, the Inspector General of the Port, the Immigration Department and other governmental agencies.

During 1998, Cuba authorized the creation of the first joint venture between the Cuban company, Cubanco, S.A., and the foreign company, Silares Terminales del Caribe from Italy. The company's object was to operate the cruise terminals in the ports of Havana, Santiago de Cuba and Punta Frances in the Isle of Youth (Isle of Pines). The Cuban Executive Council of Ministries granted to this joint venture the

exclusive concessions to operate several ports and to conduct maritime services for 20 years with the option for another 20-year term. However, the Cuban government cancelled the concessions and agreements and transferred the cruise operations to a Cuban enterprise of the Cuban Ministry of Transportation, named Aries Transporte S.A. in 2005 (7 years after inception)

U.S. Re-establishes Ferry Services to Cuba

For the first time in five decades, the U.S. is allowing ferry service between Florida and Cuba. According to the Office of Foreign Assets Control's (OFAC) authorizations, vessels may only call at ports in Cuba that are found by the U.S. Coast Guard under the Maritime Transportation Security Act (46 U.S.C. § 70108) to have effective anti-terrorism measures. Vessels may only operate carrying passengers on commercial vessels from the United States to Cuba if they are examined and certified by the U.S. Coast Guard to ensure compliance with all international standards and certifications applicable to international voyages, including, among other things, the Safety of Life at Sea Convention; the Load Line Convention; Convention on Standards of Training; Certification and Watch keeping for Seafarers; the MARPOL Convention and the Tonnage Convention. Additionally, vessels must be in compliance with U.S. domestic regulations

for financial responsibility, pollution prevention and navigation safety contained in 33 C.F.R. Parts 1 – 199.

A treasury spokeswoman confirmed that Cuba also must approve the ferry operations. Therefore, understanding Cuba's laws and regulations is crucial in obtaining the required licenses and permits to re-establish the ferry and cruise operations between both countries. U.S.-Cuba legislations contemplate a bureaucratic structure that requires knowledge and experience to be in full compliance with both countries' laws and regulations as well as with the applicable international law.

Cuban Legislation Related to Ports:

- Decree-Law 230 of 2002: Decree-Law of Ports
- Decree 274 of 2002: Regulation of the Cuban Ports
- Resolution 143 of 2006: Classification of Ports
- Law 115 of 2013: Navigation Law

Cuban Port Concessions:

The Executive Committee of the Council of Ministries is the entity responsible for granting administrative concessions in the Cuban ports.

Request and Approval Process:

Cuban legal persons (Cuban companies) and foreign natural and foreign legal persons may request the approval of the administrative concessions. The concession request will be presented to the Cuban Ministry of Transportation through the National Port Administration (APN in Spanish). The applicant will provide the following information:

- a) Name and domicile of the applicant
- b) Description of the objectives, activities, organization and services in accordance with the master plan to develop a particular port
- c) Description of the area and its location
- d) A technical, financial and economic feasibility plan

- e) Capital contributions and capital composition
- f) Chronology of the investment plan, including initial investment and subsequent contributions
- g) Economic solvency affidavit, identity of the parties and documentation of the legal person
- h) Additional documentation relevant to the project

The General Council of the APN will review all the documentation presented prior to submission to the Cuban Ministry of Transportation for its opinion. Once the Ministry of Transportation completes the file, it will be presented to the Executive Council of the Cuban Ministries for a decision.

The approval or denial of the request will be made within a term of 60 natural days from the date the request was presented. The decisions will be provided to the applicant through the Ministry of Transportation.

The concession agreement includes the following information:

- a) Identity and legal personality of the concessionaire
- b) Geographical description of the authorized port
- c) Conditions
- d) Investment schedule
- e) Characteristics of the project
- f) Development activities
- g) Applicable special regime
- h) Terms of the concessions
- i) Other appropriate terms and conditions

The term of the port concession will not exceed 30 years and may be renewed for successive periods not exceeding the original term.

Concessionaire Rights and Obligations:

According to Decree 230 (Regulations of the Cuban Ports), the concessionaire shall perform the

approved activities continuously. The concessionaire can only perform the approved activities granted in the concession agreement.

The concessionaire has the following obligations:

- a) Limit the performance of his activities to the fulfillment of the objectives of the approved project
- b) Invest, at least, the minimum amount of capital required in the approval of the concession within 180 days from the date of the registry of the concession in the Official Registry of Concessionaires
- c) Maintain the infrastructure in accordance with the concession and guarantee adequate conditions in the workplace
- d) Report the results of the operations, as stipulated in the concession agreement, to the authority that granted the concession
- e) Protect the environment and prevent the contamination of the area
- f) Stay current in his tributary obligations
- g) Improve the efficiency of the port and introduce technological innovations
- h) Allow regular inspections and provide information upon request to the authority
- i) Register in the concessionaire register
- j) Apply the Cuban labor legislation

Reasons for Revocation of the Concession:

- a) Non-compliance with the object, obligations and/or conditions of the concession agreement as well as the lack of activity for a period longer than 180 days

- b) Interruptions and changes in the services rendered without just cause or by applying higher tariffs than approved
- c) Lack of compensation to third parties due to damages originated in the operations of the concession or by no compliance with his contractual obligations
- d) Act against third parties involved in the operation of authorized services
- e) Assign or transfer concessionaire rights without approval of the authority as well as the lack of maintenance and conservation of the assets subject to the concession
- f) Lack of appropriate insurance coverage as well as the lack of environmental protection
- g) Breach of any obligations or conditions established in the Cuban legislation

Observations:

Cuban ports seem to be ready to receive an estimated 500,000 U.S. visitors by sea annually immediately. The port of Havana, together with the ports of Santiago, Cienfuegos, Matanzas and Mariel, may have the capacity to handle around 3 million passengers annually.

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