

Client Alert

March 2019

Trump Administration Allows Lawsuits Against Cuban Entities on the Cuba Restricted List

What Happened: On Monday, March 4, 2019, U.S. Secretary of State Mike Pompeo notified Congress that the Trump administration is suspending for an additional 30 days legislative authorization for lawsuits related to Cuban-seized property. Beginning on March 19, 2019, however, the Trump administration will allow for the enforcement of Title III of the Helms-Burton Act against Cuban entities or sub-entities identified by the State Department on its List of Restricted Entities and Sub-entities Associated with Cuba (“Cuba Restricted List”).

The Bottom Line: The Trump administration is actively considering allowing lawsuits under Title III of the Helms-Burton Act. It is the first U.S. administration to take the step of not waiving Title III, exposing Cuban entities and sub-entities that “traffic” in “confiscated” property to suit in federal court. Multinationals doing business in Cuba should analyze whether steps are necessary to mitigate potential lawsuits under Title III, as well as analyze the limitations of Title III’s potential application. Claimants seeking to file Title III claims must serve a letter on the target companies to notify them of their intention to sue.

The Full Story

The Helms-Burton Act (also known as the Cuban Liberty and Democratic Solidarity [Libertad] Act of 1996) codifies U.S. sanctions against Cuba and grants U.S. nationals with claims to property confiscated by the Cuban government the right to file suit in U.S. courts against persons “trafficking” in such property. See 22 U.S.C.A. § 6081. As noted in our January 2019 Client Alert, every presidential administration since the law’s enactment has routinely suspended this lawsuit provision for six-month periods.

Today, Secretary Pompeo announced to Congress that the Trump administration would suspend the right to bring suit for an additional 30 days, through April 17, 2019, while it assesses the impact of the suspension on the situation in Cuba and related national interests. This suspension does not apply, however, to Cuban entities or sub-entities identified by the State Department on the Cuba Restricted List. Therefore, the Trump administration will activate and enforce Title III to a limited extent beginning on March 19, 2019, exposing the Cuban entities and sub-entities that “traffic” in property which was “confiscated” by the Cuban government on or after January 1, 1959, to suit in U.S. courts. Title III defines “trafficking” to include purchasing, receiving, using, transferring or otherwise acquiring confiscated property, as well as engaging in a commercial activity using or otherwise benefiting from confiscated property. It is unclear, however, how U.S. courts will interpret the statute.

Companies doing business in Cuba should analyze whether steps are necessary to mitigate potential lawsuits under Title III, as well as analyze the limitations of Title III’s potential application. Those companies involved in trafficking which are going to be sued will receive notice in writing which, pursuant to the statute, shall include a statement of intention to pursue a claim under Title III, a demand that the company cease “trafficking” in that person’s property, and a copy of the Attorney General’s summary of the provisions of and remedies available under Title III. Generally, a company’s involvement in the delivery of international telecommunications, trading of securities publicly held or traded, and use of property incident to lawful travel to Cuba does not constitute “trafficking” under the statute and is,

therefore, not grounds for a claim. Moreover, Title III actions may not be brought more than two years after a company has stopped “trafficking” in the confiscated property.

The Latin American group at Hunton Andrews Kurth LLP will continue to closely monitor related developments on this issue and the broader U.S. sanctions regime for Cuba. In the meantime, please contact us if you have any questions or would like further information.

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