

Trump Administration Activates Title III of Helms-Burton Act, Opening Door to Multinational Lawsuits and Countersuits

Background

On April 17, 2019, the Secretary of State announced that the Trump administration would no longer suspend Title III of the Helms-Burton Act thus allowing US individuals to file lawsuits against companies which are operating in Cuba and “trafficking” in confiscated property as of May 2.

Since becoming law in 1996, Title III of the Helms-Burton Act has consistently been waived under successive Republican and Democratic administrations. Earlier this year, however, the Trump administration signaled that it would reverse this policy. A review period was announced, and then extended – but the waiver expires and the provisions of Title III become effective on May 2.

Impact

This new policy puts US, EU, Canadian, Mexican and other companies active in Cuba in a precarious position. If a company “trafficks” (meaning uses or profits from) property nationalized in Cuban revolution, it could face lawsuits from US persons with a claim to that property.

The governments of Canada and the European Union reacted strongly to the announcement stating that they will consider all options at their disposal to protect their commercial interests including through the World Trade Organization and their blocking statutes. As a result, US plaintiffs suing under Title III of Helms-Burton could face countersuits from Canadian and EU companies. The laws in Canada and the EU prohibit companies from complying with Helms-Burton or judgements rendered thereunder and allow such companies, which are targeted by a U.S. claimant, to countersue.

How We Can Help

We have for years advised companies both inside and outside the US on the US embargo of Cuba, including the provisions of Titles III and IV of Helms-Burton. We are among the few US law firms that represented non-US clients under State Department investigation shortly after Helms-Burton was enacted for allegedly “trafficking” in Cuban property, a claim to which was held by a US person. We have also advised non-US companies in connection with the US sanctions risks of pursuing investment opportunities in Cuba.

Our global Litigation Practice has litigated cases involving international and government-regulatory issues and regularly represents non-US corporations and foreign government institutions in litigation raising issues similar to those implicated in Title III of Helms-Burton. Notably, they regularly defend claims involving the US Foreign Sovereign Immunities Act, Antiterrorism Act, Alien Tort Statute, Torture Victims Protection Act, Trafficking Victims Protection Act and international law.

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