

Client Alert

January 2019

Trump Administration Considering Allowing Lawsuits for Seized Assets in Cuba

What Happened: On Wednesday, January 16, 2019, US Secretary of State Mike Pompeo notified Congress that the Trump administration is suspending legislative authorization for lawsuits related to Cuban-seized property for 45 days, rather than the customary six months.

Bottom Line: As noted in our [November 2018 Client Alert](#), the Trump administration is actively considering allowing lawsuits under Title III of the Helms-Burton Act. The Helms-Burton Act allows US nationals to sue foreign companies, individuals, and the Cuban government for property confiscated by the Cuban government. Since its passing in 1996, however, every presidential administration, including the current administration, has suspended the right to bring legal action.

The Full Story

The Helms-Burton Act (aka “The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996”) was signed into law after the Cuban government shot down two planes belonging to Miami-based humanitarian international search-and-rescue support group Brothers to the Rescue, killing the four pilots and spotters aboard the aircrafts. The act codifies US sanctions against Cuba and grants US nationals the right to sue over property confiscated from them by the Castro regime since 1959. See 22 U.S.C.A. § 6081 (“To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro’s wrongful seizures.”). Under the act, the president of the United States has the authority to suspend the lawsuit provision (often called “Title III”) for periods of six months, if the president determines it is “necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” 22 U.S.C.A. § 6085.

In the 23 years since its passing, every administration has suspended the right to bring suit for the full six months, partially due to opposition from the international community (including pressure from trading partners like Mexico, Canada, and European countries that have invested in Cuba) and fears it could create chaos in the US court system due to an avalanche of potential lawsuits.

In an unprecedented move, Secretary Pompeo announced to Congress on Wednesday that the Trump administration would only suspend the right to bring suit for a period of 45 days. In a recent release, the Office of the Spokesperson for US State Department stated the 45-day extension “will permit us to conduct a careful review of the right to bring action under Title III in light of the national interests,” adding that the department “encourage[s] any person doing business in Cuba to reconsider whether they are trafficking in confiscated property and abetting this dictatorship.”

The move has been met with some criticism in both Cuba and the United States. In the first official Cuban response to the news, Cuba’s Foreign Minister Bruno Rodriguez wrote on Twitter that the Trump administration’s move was “political blackmail” and a “brutal attack against international law.” Here, the nonpartisan U.S.-Cuba Trade and Economic Council, which supports American business in the island, said the administration’s move was calculated to “create uncertainty and, thus, anxiety.”

If Title III went into effect, it would likely stifle foreign investment that the Cuban government has been seeking to buttress its beleaguered state-dominated economy. For now, however, the status quo remains intact.

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

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