



THE REGULATORY FUNDAMENTALS GROUP LLC

Changes to Cuba Sanctions May Impact Investors

May 24, 2019

This article was published in the RFG Weekly Roundup™ on May 24, 2019.

About RFG

RFG helps clients proactively understand regulatory and legal issues (and solutions) that arise from engaging in investment activities. RFG represents clients that have approximately \$150 billion in combined assets under management, including a consortium of the nation's leading endowment investment offices. RFG advises clients through its weekly newsletter, white papers, webinar presentations, semi-annual programs, and its online knowledge management portal, RFG Pathfinder®.

For more information, visit www.RegFG.com.

Changes to Cuba Sanctions May Impact Investors

The following article has been provided by Rich Matheny at [Goodwin Procter LLP](#).

Reversing the position of every prior administration to consider the issue, the Trump administration [recently authorized](#) federal lawsuits against persons and entities that have “trafficked” in property interests that the Cuban government has confiscated from U.S. persons following the 1959 Cuban revolution. Title III of the Helms-Burton Act of 1996, the statutory authority for these lawsuits, defines the term “traffic” with striking breadth, capturing nearly all direct and indirect commercial activity using or benefiting from confiscated property, including present, future, and contingent personal property or real property interests (other than certain residential properties).

The Department of Justice’s Foreign Claims Settlement Commission has certified 5,913 claims valued at over \$8 billion (with accrued interest), which describes a potentially expanding universe of Title III claimants that could take advantage of this new right of action. Several Title III lawsuits have been filed, including one against Carnival Corporation regarding the use of confiscated property for the embarking and disembarking of cruise passengers in Cuba, and one by Exxon Mobile Corporation against Cuban entities relating to the use of oil refineries and service stations.

Title III *exempts* from its scope the trading or holding of *public* securities, suggesting that institutional investors could not be made to respond directly for the Cuba business activities of public companies in which they have invested. Holding shares in *private* companies is not similarly exempted, which in theory could expose the investor under Title III, assuming the other elements of a claim are present. In either case, investors would be wise to understand whether an investment target—public or private—has some connection to confiscated property in Cuba.

Most likely to be affected by Title III lawsuits are companies in Canada and the European Union, many of which have actively participated in the Cuban economy—for instance, in Cuba’s travel and hospitality industry. Compounding the problem are antidote laws, including in Canada and the EU, that *prohibit* compliance with U.S. sanctions against Cuba, setting up the possibility that a company could confront conflicting legal obligations. Other risks include difficulty obtaining financing, reputational harm, and decreased demand in the Cuban market resulting from these and other changes in U.S. policy towards Cuba.

Diligence efforts on companies with business in Cuba should now assess the use of or benefits derived from property in Cuba that may have been confiscated from U.S. interests, and the related prospects of future liability to Title III claimants and potentially diminished value of such Cuban business. If you would like assistance on issues relating to Title III of the Helms-Burton Act or U.S. sanctions against Cuba, you can contact Rich Matheny at Goodwin Procter LLP, at 202-346-4130 (rmatheny@goodwinlaw.com).