

Client Alert

April 2019

Trump Administration Will Prevent US Travel to Individuals Who Traffic in Property Confiscated by the Cuban Government

What Happened: On April 17, 2019, National Security Advisor John Bolton confirmed that the Trump administration will take actions to actively enforce Title IV of the Helms-Burton Act, which allows the Secretary of State to deny visas to individuals who traffic in confiscated property.

The Bottom Line: Executives of foreign and US companies who “traffic” in “confiscated” property, and their family members, may be prevented from traveling to and/or entering the United States on a long-term basis. Multinationals doing business with or in Cuba should analyze whether steps are necessary to mitigate the threat of penalization under Title IV, as well as analyze the limitations of Title IV’s application.

The Full Story

In 1996, Congress passed the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (commonly known as the Helms-Burton Act), which codifies US sanctions against Cuba. Title IV of the Helms-Burton Act specifically grants the US government the authority to deny visas and exclude from the United States persons who “traffic” in property confiscated from US nationals by the Cuban government. Such persons include corporate officers, principals, and shareholders with controlling interest, as well as their spouses, minor children, and agents. Although Title IV was never suspended, previous Presidential administrations have not actively enforced the provision. On April 17, 2019, however, National Security Advisor John Bolton announced that the Trump administration will begin enforcement of Title IV, indicating that the US government will deny visas and exclude from the United States persons who “traffic” in confiscated property.

Under procedures spelled out in the US State Department’s Foreign Affairs Manual (FAM), determinations under Title IV will be made by the Office of Cuban Affairs within the Bureau of Western Hemisphere Affairs. Individuals who are found to be ineligible or excludable will be notified by mail. Their names will be entered into the security databases that immigration officers consult before either approving and issuing visas at US consular posts or allowing admission at US air, sea, or land ports of entry. Individuals who already have visas in their passports will be notified that their visas will be revoked within 45 days.

Determinations under Title IV are permanent and affect applicants for both nonimmigrant (temporary) and immigrant (permanent) visas and admission. The only exceptions and exemptions are for foreign diplomatic and consular personnel, representatives and officials of international organizations, and those who seek temporary admission for medical reasons or to appear in court for Helms-Burton litigation. However, the FAM does provide mechanisms for submitting evidence that a Title IV determination was erroneous or that the individual has divested the property and eliminated ties with Cuba.

While the definition of “trafficking” is broad, including purchasing, receiving, using, transferring, or otherwise acquiring confiscated property, as well as engaging in commercial activity using or otherwise benefiting from confiscated property, there are limitations that narrow Title IV’s application. 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 exclusion or visa denial.

Companies doing business with or in Cuba should analyze whether steps are necessary to mitigate the effect of Title IV. This analysis includes, for example, an understanding of the limitations of Title IV's potential application, identification of commercial relationships that could be considered "trafficking", and diligence of relationships in connection with any business with or in Cuba.

The Immigration practice and 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 for Cuba. In the meantime, please contact us if you have any questions or would like further information.

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