

# The New Suits of Havana: How Non-U.S. Companies May Soon Be Sued for Their Business in Cuba

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Picture your company being hauled into U.S. court to defend litigation for your Cuba business that is lawful in your home country. That is the scenario that The Trump administration and Cuba hawks in Congress are aiming to arrange. The Trump administration is preparing to part the practice of past presidents to allow U.S. persons to sue non-U.S., non-Cuban companies for doing business in Cuba, dealing in property seized by the Cuban government since the 1959 revolution.

## A new Right of Action on Cuban Business

Title III of the Helms-Burton Act (aka the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996) provides for U.S. citizens to sue foreign companies and individuals over commercial property confiscated by the Cuban government. However, since 1996 every president has waived the provision of grounds for suit because of the objections of the international community.

On March 4, 2019, the [State Department announced](#) it would partially suspend the waiver of Title III of the Helms-Burton Act, opening the possibility of certain lawsuits against Cuban entities. On April 17, the possibility of lawsuits against any foreign company for dealings in Cuba may be a reality.

Beginning earlier this year, we saw hints that the Trump administration would take a different path from its predecessors. On January 16, the [Secretary of State reported](#) to Congress that it would only suspend Title III for 45 days (rather than the customary 6 months) beyond February 1. During those 45 days, The State Department conducted a review of the right to bring action under Title III in light of the national interests of the United States and efforts to expedite a transition to democracy in Cuba.

Effective March 19, 2019, until April 17, 2019, Title III will be *partially* suspended. During that period, U.S. citizens will have the right to bring action against Cuban entities and sub-entities on the State Department's [Cuba Restricted List](#). The Cuba Restricted List identifies entities and sub-entities under the control of Cuban military intelligence or security forces.

## Lawsuits Against Non-U.S. Companies Doing Business in Cuba

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In comments on the partial suspension of Title III, a senior State Department official noted the State Department will monitor the impact of the partial suspension and assess whether a further suspension is necessary thereafter.

If, after April 17, Title III is not fully suspended, non-U.S. companies doing business in Cuba may be sued for trafficking in property that was confiscated by the Cuban government on or after January 1, 1959.<sup>[1]</sup>

That may sound like old news, but there are some 2 Million Americans of Cuban descent in the United States, according to the [Pew Research Center](#). Many of those families had their property confiscated before they immigrated or fled to the United States. You can be certain that those families remember the violation of their property, and that any number of American lawyers will be looking for opportunities to help those families bring suit against any company they believe they can show dealing with the Cuban Government.

## **Safeguards on potential Cuba sanctions**

There are some limitations that may protect non-U.S. companies, but they may only be useful *after* a suit has been brought.

1. Title III claims are time-barred in that claims may not be brought more than two years after the trafficking has ceased to occur.
2. Certain jurisdictions, including Canada, Mexico, the United Kingdom, and the European Union, have enacted measures to counteract the possible effects of the Act that would render judgments under the Act unenforceable.
3. EC Regulation 2271/96 may limit discovery needed to support Title III claims.

For those reasons, even if the Title III is not suspended for non-Cuban companies come April 17, non-U.S. companies may have some recourse in law to avoid the worst of a potential suit.

We recommend that companies undertake an assessment of their Cuban business, closely monitor how the U.S. government treats this potentially powerful right of action, and consult with counsel on defense planning in the event that suits against non-U.S. companies are allowed on April 17.

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[1] See Section 302 of the [Helms-Burton Act](#). Section 4(13) of the Act defines “trafficking” broadly to cover any person who:

*knowingly and intentionally sells, transfers, distributes, conducts financial operations or disposes in any other manner confiscated property or purchases, receives, holds, controls, manages or holds an interest in confiscated property; or engages in a commercial activity using, or otherwise benefits from, confiscated property; or causes, directs, participates in, or profits from, trafficking, or otherwise engages in trafficking through another person.*

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