

Practice Update

Trouble Ahead? Mixed Signals from Administration on Doing Business in Cuba

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While senior administration officials have repeatedly assured the business community that the president does not want to disrupt the ongoing Cuba-related activity of companies operating in compliance with U.S. law, recent statements and developments portend a more robust effort to rollback Obama-era progress toward normalizing ties between the United States and Cuba.

Against the backdrop of the new restrictions issued in November 2017 on U.S. travel to Cuba and creation of a list of Cuban commercial entities with which American companies can no longer conduct business, the administration publicly pledged to respect contracts signed between American companies and Cuban counterparts before November 2017 and to renew any expiring licenses that U.S. businesses require to continue ongoing operations. However, businesses with Cuba interests and operations should note recent statements, including:

- In November and December 2018, senior administration officials were quoted saying that Cuba policy is undergoing a comprehensive review.
- On November 15, the State Department moved to add additional Cuban companies to its restricted Cuban entities list.

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- Also in November, National Security Advisor John Bolton confirmed that the State Department is evaluating whether or not to continue to suspend title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act, commonly known as Helms-Burton. This controversial provision, which would allow U.S. persons to sue non-U.S. companies that “traffic” in “confiscated property” in U.S. courts, has been suspended every six months by successive presidential administrations since the law was passed in 1996.
- In December, the media reported that the State Department—under pressure from lawmakers in South Florida—would review the terms of a landmark deal between Major League Baseball (MLB) and the Cuban Baseball Federation (Federación Cubana de Beisbol—FCB) to end the human trafficking of Cuban baseball players who aspire to play in the major leagues.
- In January 2019, the State Department issued a 45-day suspension of title III of Helms-Burton—instead of the usual six months—leading to widespread speculation that the suspension may be allowed to lapse.
- Recently, there have been a number of reports that the Administration is considering adding Cuba to the list of countries considered State Sponsors of Terrorism. This comes in the aftermath of the political turmoil in Venezuela and Cuba’s continuing support for the Maduro regime.

Many American companies, including airlines, cruise lines, telecommunications providers, family remittance providers, online travel platforms, insurance providers, and others, provide vital Cuba-related commercial services and may be significantly impacted by an intensified effort to rollback progress.

Akerman’s Cuba practice has developed a comprehensive analysis of the legal risks, potential actions, and defenses relating to claims which could

arise from the implementation of Title III. We are poised to work closely with our clients to identify any potential exposure resulting from the activation of this rule.