Trump Administration Imposes Further Sanctions on Venezuela, Nicaragua and Cuba; Opens Helms-Burton Act Floodgate

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COMMENTARY

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IN SHORT

The Situation: On April 17, 2019, the Trump Administration announced additional sanctions targeting the so-called "troika of tyranny" – Venezuela and its key regional allies, Nicaragua and Cuba. These sanctions notably include implementation of Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act (known as the "Helms-Burton Act").

The Solution: In addition to new restrictions that will impact the Venezuelan and Nicaraguan financial sectors, the Trump Administration has, in a break with prior administrations, not only furthered rollback sanctions relief provided under the Obama Administration, but also opened, for the first time, the floodgates to litigation under the Helms-Burton Act.

Looking Ahead: Given the Trump Administration's heightened focus on Latin America, companies doing business in Venezuela, Nicaragua, and Cuba should review their operations to mitigate the risks posed by increasingly complex compliance and liability considerations.

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Venezuela

Building on sanctions targeting the oil trade between Venezuela and Cuba earlier this month, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated the Central Bank of Venezuela and its director on the List of Specially Designated Nationals and Blocked Persons ("SDN List") in response to the Maduro Administration's efforts to "plunder Venezuelan assets and exploit government institutions to enrich corrupt insiders." Although the United States has taken steps to mitigate impact on the Venezuelan people, designation of the Central Bank tightens the financial net cast around Venezuela and poses increased risks for anyone – including non-U.S. companies – conducting USD-denominated transactions with Venezuelan counterparties.

Nicaragua

OFAC seeks to curtail similar activities in the Nicaraguan financial sector, designating Venezuela-linked Banco Corporativo S.A. ("BanCorp") – as well as Laureano Ortega Murillo (the son of Nicaraguan President Daniel Ortega and Vice President Rosario Murillo) – on the SDN List in connection with their respective "roles in corruption and money laundering for the personal gain of the Ortega regime" in Nicaragua, which has been subject to sanctions since November 2017. Notably, BanCorp, an indirect subsidiary of Petróleos de Venezuela S.A. ("PdVSA"), BanCorp has been blocked by operation of law since January 28, 2019. Although BanCorp appeared poised to escape those restrictions through purchase by the Government of Nicaragua, designation ensures that it remains blocked, preventing its renewed use as an alleged "haven for OFAC-sanctioned persons."

Cuba

In addition to targeting shipments of Venezuelan oil to Cuba, the Trump Administration announced substantial measures to address Cuban human rights abuses and support for the Maduro Administration, as well as apply pressure on Cuba to transition to democracy.

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Specifically, the United States announced it will (i) prohibit USD-denominated transactions through third country financial institutions – so-called "U-turn" transactions that pass through the U.S. financial system; (ii) cap non-commercial, personal remittances to Cuba; and (iii) restrict non-family travel to Cuba.

Although formal guidance is not yet available, these measures continue the rollback of Obama Administration sanctions relief (discussed here and here) and, given the financial restrictions, may chill economic engagement with Cuba.

More significantly, the United States will employ previously-suspended or sparingly-used tools provided under the Helms-Burton Act.

In a stark departure from more than twenty years of U.S. policy, the Trump Administration will no longer suspend the right of action authorized by Title III. As of May 2, 2019, U.S. nationals will be able to bring actions in federal court against any person that "traffics" in property expropriated by the Government of Cuba on or after January 1, 1959. It is estimated that anywhere from 75,000 to 200,000 claims could be filed.

In the absence of case law, the scope of potential liability under Title III remains unclear but may be sweeping. Title III provides a broad cause of action against not only companies that directly exploit confiscated Cuban property, but also companies that only indirectly benefit or profit from such properties. Thus, even companies with limited nexus to Cuba may find themselves defending claims.

The consequences of liability are likewise substantial. Title III provides for money damages equal to the fair market value of the property (rather than damage to claimants or value derived from the property), attorneys' fees and costs, and under certain circumstances, treble damages.

The administration will also ensure that, pursuant to Title IV, persons who have trafficked in confiscated property are denied entry into the United States.

This change in policy is not without controversy. Mexico and, in a joint statement, Canada and the European Union, oppose the change and indeed have long objected to extraterritorial application of U.S. sanctions. Each maintains blocking legislation prohibiting compliance with the Cuba embargo and blocking recognition of, and allowing damages related to, judgments based on Title III.

Given the consequences of liability and complexities posed by blocking legislation, companies trading in Cuba, currently or in the past, should carefully assess their exposure.

TWO KEY TAKEAWAYS

1. In light of the Trump Administration's focus on Latin America, companies doing business in Venezuela, Nicaragua, and Cuba should review their operations to mitigate the risks posed by increasingly complex compliance and liability considerations.

2. Specifically as to Cuba, companies doing business there should carefully assess their potential exposure under Title III of the Helms-Burton Act.


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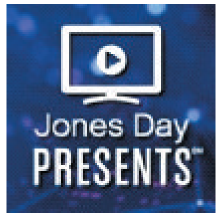

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