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Title IV- Restricting Travel Into The United States
22 Potential Targets In 12 Countries
One Company Already Restricted
2018 revenues approximately US$550 billion
2018 market capitalization approximately US$770 billion
What Will EU Do? What Can EU Do? Does US Care?

On 17/18 March 2019, the Trump Administration is planning to permit Title III and further implement Title IV of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as "*Libertad Act*").

Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim where the owner of the certified claim has not received compensation from the Republic of Cuba or from a third-party who is using the asset.

Title IV restricts entry into the United States by individuals who have connectivity to unresolved certified claims. One company is currently subject to this provision.

There is a rationale for companies and individuals who are targets of **Title IV** actions by the United States Department of State to find commercial, economic and political value from negotiating a settlement(s) with a plaintiff(s).

Upon settlement, the companies and individuals may no longer be subject to impediments to their operations relating to the Republic of Cuba and other countries which are a focus of the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury and of the Office of Legal Adviser (**OLA**) of the United States Department of State.

Settlements would reasonably result in an increase to the operational value of an asset located in the Republic of Cuba- the value of the asset increases as governments, financial institutions, investors, partners, and suppliers have increased confidence in long-term market-based viability.

With settlement, there could be commercial, economic and political value to those who were subject to certified claims from having an ongoing presence of companies and individuals subject to United States jurisdiction as a shareholder, partner or leaseholder- meaning that if a company settles with the owner of an asset, and the owner is of Cuban descent residing in the United States or an individual not of Cuban descent, or company located in the United States, there may be an optical and practical benefit- lessening stigma, lessening risk, increasing opportunity and increasing value of the asset.

What Is Title IV?

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) Grounds for Exclusion.--The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act-- (1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national; (2) traffics in confiscated property, a claim to which is owned by a United States national; (3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

Executives From Canadian Company Remain Subject To Title IV

From Media Reports on 10/11 July 1996: Under the measures announced today (10 July 1996) by the State Department, the director of the Toronto-based company, Sherritt International Corp., will be barred from entering the United States, along with eight of his top officers and their immediate families. The ban will take effect in six weeks, after a waiting period designed to allow the company time to terminate its investments in Cuba. At a briefing in Washington announcing the notification of the company executives affected, State Department spokesman Nicholas Burns defended the provision affecting families as "*likely to enhance . . . the threat that is contained very clearly in Helms-Burton*." Burns said company executives were notified in letters dated Tuesday that after 45 days, they will not be allowed to enter the United States. The period is supposed to allow the company time to reconsider its investments in Cuba. "*It is unconventional*," Burns said. "*It is a very tough action that we are taking today*."

Potential Targets For Visa Action

The following companies have been mentioned by claimants (certified and non-certified) as potential targets of lawsuits using provisions of Title IV.

The targeted companies will expectedly be those who have meaningful financial exposure within the Republic of Cuba and, but not necessarily, have meaningful financial exposure within the United States. In some instances, the reputational impact upon a company may, rather than the financial exposure, be a catalyst for agreeing to a settlement.

The combined revenues of the companies in 2018 were approximately **US$500 billion** and the combined market capitalization of the companies in 2018 was approximately **US$600 billion**:

Amstelveen, Netherlands-based **KLM**
Beijing, China-based **Air China**
Frankfurt, Germany-based **Lufthansa**
Geneva, Switzerland-based **MSC Cruises**
Istanbul, Turkey-based **Turkish Airlines**
Leuven, Belgium-based **Anheuser-Busch InBev**
London, United Kingdom-based (controlled by Turkey-based interests) **Global Ports Holding**
London, United Kingdom/Rotterdam, Netherlands-based **Unilever**
Madrid, Spain-based **Iberia Airlines**
Madrid, Spain-based **NH Hotel Group**
Moscow, Russia-based **Gazprom**
Palma de Mallorca, Spain-based **Iberostar Hotels & Resorts**

Palma de Mallorca, Spain-based **Melia Hotels International**
Paris, France-based **Accor SA**
Paris, France-based **Air France**
Paris, France-based **Pernod Ricard**
Shenzhen, China-based **Huawei Technologies**
Tokyo, Japan-based **Mitsubishi (an entity)**
Toulouse, France-based **Newrest Group Holding**
Toronto, Canada-based **Air Canada**
Toronto, Canada-based **Sherritt International**
Vevey, Switzerland-based **Nestle SA**

Certified Claims Background

There are 8,821 claims of which **5,913** awards valued at **US$1,902,202,284.95** were certified by the USFCSC and have not been resolved for nearing sixty years. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value of the 5,913 certified claims approximately **US$8,521,866,156.95**.

The first asset to be expropriated by the Republic of Cuba was an oil refinery in 1960 owned by White Plains, New York-based **Texaco, Inc.**, now a subsidiary of San Ramon, California-based Chevron Corporation (USFCSC: CU-1331/CU-1332/CU-1333 valued at **US$56,196,422.73**).

The largest certified claim (*Cuban Electric Company*) valued at US$267,568,413.62 is controlled by Boca Raton, Florida-based **Office Depot, Inc.** The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International**. The smallest certified claim is by *Sara W. Fishman* in the amount of US$1.00 with reference to the Cuban-Venezuelan Oil Voting Trust.

The two (**2**) largest certified claims total US$449,377,207.76, representing **24%** of the total value of the certified claims. Thirty (**30**) certified claimants hold **56%** of the total value of the certified claims. This concentration of value creates an efficient pathway towards a settlement.

Title III of the Cuban Liberty and Democratic Solidarity (**Libertad**) Act of 1996 requires that an asset had a value of US$50,000.00 when expropriated by the Republic of Cuba without compensation to the original owner. Of the 5,913 certified claims, 913, or **15%**, are valued at US$50,000.00 or more. Adjusted for inflation, US$50,000.00 (3.70% per annum) in 1960 has a 2019 value of approximately US$427,267.01. The USFCSC authorized 6% per annum, meaning the 2019 value of US$50,000.00 is approximately US$1,649,384.54.

The ITT Corporation Agreement

In July 1997, then-New York City, New York-based **ITT Corporation** and then-Amsterdam, the Netherlands-based STET International Netherlands N.V. signed an agreement whereby STET International Netherlands N.V. would pay approximately US$25 million to ITT Corporation for a ten-year right (after which the agreement could be renewed and was renewed) to use assets (telephone facilities and telephone equipment) within the Republic of Cuba upon which ITT Corporation has a certified claim valued at approximately US$130.8 million. *ETECSA*, which is now wholly-owned by the government of the Republic of Cuba, was a joint venture controlled by the Ministry of Information and Communications of the Republic of Cuba within which

Amsterdam, the Netherlands-based Telecom Italia International N.V. (formerly Stet International Netherlands N.V.), a subsidiary of Rome, Italy-based Telecom Italia S.p.A. was a shareholder.

Telecom Italia S.p.A., was at one time a subsidiary of Ivrea, Italy-based Olivetti S.p.A. The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US$181,808,794.14 is controlled by Bethesda, Maryland-based Marriott International**.**

Libertad Act of 1996
Sec. 306. Effective date.
TITLE IV--EXCLUSION OF CERTAIN ALIENS

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) Grounds for Exclusion.--The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act-- (1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national; (2) traffics in confiscated property, a claim to which is owned by a United States national; (3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) Definitions.--As used in this section, the following terms have the following meanings: (1) Confiscated; confiscation.--The terms "confiscated" and "confiscation" refer to-- (A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property-- (i) without the property having been returned or adequate and effective compensation provided; Or (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and (B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay-- (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government; (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or (iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) Traffics.--(A) Except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally-- (i) (I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property, (II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or (III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property, (ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include-- (i) the delivery of international telecommunication signals to Cuba; (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national; (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba. (c) Exemption.--This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.