New lawsuit under Title III of Helms-Burton Act

On 3rd January 2021, a new lawsuit based on Title III of the Helms-Burton Act was filed against a Singapore company. It should be recalled that, although the Helms-Burton Act came into force in March 1996, the application of Title III relating to the "trafficking" of assets confiscated by the Cuban government was suspended until President Donald Trump reactivated it on 2nd May 2019. Title III regulates the protection of property rights over Cuban assets owned by US nationals, including those of Cuban nationals who have acquired US citizenship, as is the case of the plaintiffs. To this end, the Helms-Burton Act grants the right to sue any natural or legal person who, after a period of three months from the effective date of Title III, profits from the exploitation or "trafficking" of property that has been confiscated by the Cuban government from 1st January 1959 until the effective date of the Act.

The plaintiffs, Mrs. Hilda Castanedo and Mrs. Emma Diaz identify in their complaint three companies belonging to the Trafigura Mining Group: (1) "Trafigura Group Pte. Ltd. (identified as "Trafigura Parent", a company with registered office in Singapore), (2) "Trafigura Pte. (Identified as Transfigura Trader, incorporated in Singapore) and (3) "Trafigura Trading LLC" (Subsidiary of Transfigura Parent, incorporated in Texas, USA). The Mining Group manages mining operations, develops projects, conducts technical audits of existing and potential projects, and provides advisory and support services to other companies operating under the Trafigura brand. Furthermore, according to the plaintiffs, the Trafigura Mining Group publishes consolidated financial statements, and attributes profits and losses to all members of the Group, including the defendant companies.

According to the complaint, the Singaporean company "Trafigura Pte. Ltd." participates in a joint venture with the Cuban government, called EMINCAR, through which it has made investments and is developing its activity in the mining sector in the province of Pinar del Río. Specifically, it would use the terminal, warehouses and facilities of the port of Santa Lucia to transport the minerals extracted to the port of Mariel, as well as for the transport of machinery and means necessary for the development of mining extraction through the construction of facilities such as a mineral treatment plant, a water treatment plant, and transport infrastructures such as roads.

The claimants allege that the said facilities and land, including the Port of Santa Lucia, correspond to the properties confiscated by Fidel Castro's regime in 1960, consisting of a large lead and zinc mining operation, for which no financial compensation was ever received. Mrs. Hilda Castanedo and Mrs. Emma Díaz claim to have inherited the confiscated properties from their father, Waldo P. Díaz, the sole successor to Minas de Matahambre, S.A. at the time of the confiscation. Waldo died in 1962 and it is not mentioned whether he was a citizen of the United States or not.

It should be recalled that there are several conditions that must be met to bring a claim under Title III of the Helms-Burton Act. Among them, to have standing, the claimant must be a national of the United States. It appears that this requirement is met with respect to both plaintiffs, as they obtained US citizenship prior to March 1996. However, they will have to prove the nexus between the confiscated property and their standing to sue.

The lawsuit does not involve a Foreign Claims Settlement Commission (FCSC) certified cause of action. Of the 34 Title III lawsuits filed so far, only 11 of them are certified claims.

For further information please contact:

Cuban Desk of Andersen

Ignacio Aparicio
Partner Corporate / M&A
Director of the Cuban Desk
ignacio.aparicio@es.Andersen.com

The above comments are for information purposes only and do not constitute professional opinions or legal advice, nor do they necessarily include the opinions of the authors. If you are interested in obtaining additional information or clarification of the content, please contact us by telephone on +34 963 527 546/34 917 813 300 or by e-mail at communications@es.Andersen.com.