

## Your Life Sciences Investments in Cuba: A Time Bomb?

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The coverage of Title III can be extremely broad. It provides U.S. nationals with a private cause of action not only against persons who are alleged to be directly exploiting confiscated Cuban properties (which could include leases in real estate) previously owned by U.S. nationals, but also against persons who are alleged to be indirectly benefiting or profiting from “trafficking” by third parties. The term “traffics” is broadly defined, in Section 4(13) of the Helms-Burton Act, to cover, *inter alia*, the lease, possession, use or management of confiscated property, as well as the “engagement in a commercial activity using or otherwise benefiting from confiscated property” and participating in such trafficking.

According to a U.S. Department of State [briefing](#), the Foreign Claims Settlement Commission — an independent agency within the U.S. Department of Justice — has certified close to 6,000 claims for property confiscated in Cuba with an approximate total value of US\$2 billion (US\$8 billion with interest). The U.S. State Department estimates that there could be up to 200,000 uncertified claims, potentially implicating “tens of billions” of dollars.

If a judgement is issued ordering a company to provide compensation to the U.S. claimant, the U.S. claimant may enforce the judgment (1) in the United States if the company being ordered has assets in the United States or (2) in other countries where that company holds assets. However, it could be difficult to enforce judgements from the U.S. court in other countries, because the United States has not entered into any international agreement on the reciprocal recognition and enforcement of court-based (as opposed to arbitral) judgments.

Significantly, several jurisdictions, including the European Union (EU) and Canada, have enacted “blocking statutes” to counter certain unilateral sanctions adopted by other countries, such as the United States. These statutes may block judicial recognition or enforcement of judgments or administrative decisions issued by U.S. courts or other authorities based on Title III. Further, they may entitle companies to recover damages (including legal costs) suffered as a result of Title III claims against the original claimant or any person acting on its behalf or as an intermediary. Therefore, “blocking statutes” could conceivably provide a remedy for companies affected by Title III claims.

The EU Blocking Statute, for example, entitles EU persons (including companies incorporated in the EU) whose interests are affected by Title III claims to initiate litigation before EU Member States’ courts where the original claimant in the United States, or any person acting on its behalf or as an intermediary, holds assets. Possible recovery may take the form of seizure and sale of those assets, including shares in EU companies held by the original claimant or any person acting on its behalf or as an intermediary.

Thus, if a U.S. company is ordered to pay compensation to the original claimant under Title III, the EU subsidiaries of the U.S. company could conceivably file a counter claim in an EU Member States’ court to the extent that they suffered damages from the U.S. litigation. The key consideration in such a case would be whether the original U.S. claimant has significant assets in the EU.