Table of Contents

CHAPTER 1. INTRODUCTION TO THE CUBAN LEGAL SYSTEM

I. CUBAN CONSTITUTIONS PRIOR TO 1959
   § 1:1 The Constitution of 1897
   § 1:2 The Constitution of 1901
   § 1:3 The Platt Amendment
   § 1:4 The Constitutions of 1928 and 1934
   § 1:5 The Constitution of 1940

II. CUBAN FUNDAMENTAL LAW OF 1959
   § 1:6 Overview
   § 1:7 Expropriation laws
   § 1:8 Agrarian reforms
   § 1:9 Nationalization Law No. 851 of 1960
   § 1:10 Expropriation Law No. 890 of 1960
   § 1:11 Urban Reform Law
   § 1:12 Law No. 989 of 1961 regarding “abandoned property”
   § 1:13 Expropriations under the “Revolutionary Offensive”

III. THE CONSTITUTION OF 1976
   § 1:14 Background
   § 1:15 Modifications to the 1976 Constitution

IV. CUBAN LEGISLATION AND GOVERNMENT STRUCTURE
   § 1:16 Cuban National Assembly of Popular Power
   § 1:17 Council of State
   § 1:18 Council of Ministries
   § 1:19 Courts
   § 1:20 Judicial system
   § 1:21 Basic principles of the judicial system
   § 1:22 People’s courts
   § 1:23 Office of the Attorney General
V. SELECTED PROVISIONS OF THE CUBAN CONSTITUTION OF 1976

§ 1:24 Property and ownership

VI. THE CUBAN CIVIL LAW SYSTEM

§ 1:25 Civil Code
§ 1:26 Legal persons

VII. CUBAN CORPORATE LAW: SELECTED CONCEPTS

§ 1:27 Joint ventures (mixed companies) and foreign owned companies in Cuba
§ 1:28 Anonymous share companies
§ 1:29 Registration process
§ 1:30 Management
§ 1:31 Rights of shareholders
§ 1:32 Obligations of shareholders
§ 1:33 Liquidation of commercial companies and reasons for company dissolution

VIII. CUBAN CONTRACT AND CIVIL LAW: RELEVANT TOPICS

§ 1:34 The Cuban contract
§ 1:35 Sale and purchase contract
§ 1:36 International Sale of Goods contract
§ 1:37 Performance of obligations
§ 1:38 Assignment of obligations and assumption of debts
§ 1:39 Security for the performance
§ 1:40 Default and extinction of obligations
§ 1:41 Seizure of goods
§ 1:42 Illicit acts
§ 1:43 Liability of legal persons

Appendix 1A. Cuba’s State and Government Structure: Diagram
CHAPTER 2. THE U.S. EMBARGO AND OTHER LAWS REGARDING CUBA

I. U.S. TREASURY DEPARTMENT’S OFFICE OF FOREIGN ASSETS CONTROL (OFAC) AND THE CUBAN ASSETS CONTROL REGULATIONS (CACR)
   A. INTRODUCTION AND BACKGROUND
      § 2:1 Cuban Assets Control Regulations (CACR)—Background
      § 2:2 —Objectives
   B. OPERATION OF THE CUBAN ASSETS CONTROL REGULATIONS
      § 2:3 Prohibited transactions
      § 2:4 “Persons” subject to the prohibitions of the regulations
      § 2:5 Penalties

II. CUBAN DEMOCRACY ACT OF 1992
   A. INTRODUCTION
      § 2:6 Overview
      § 2:7 Key provisions

III. CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996 (“HELMS-BURTON ACT”)
   A. INTRODUCTION
      § 2:8 Overview of U.S.-Cuba Policy since the inception of the embargo and the radical premise of the Helms-Burton Act
   B. TITLE III: LAWSUITS IN U.S. COURTS ARISING FROM THE ACQUISITION OR USE OF U.S. CONFISCATED PROPERTIES IN CUBA
      § 2:9 Operation
      § 2:10 Definition of key terms
      § 2:11 Lawsuit Liability
C. HELMS-BURTON TITLE IV: EXCLUSION FROM
THE UNITED STATES OF “TRAFFICKERS” IN
“CONFISCATED” PROPERTIES IN CUBA

§ 2:12 Overview
§ 2:13 “Trafficking”
§ 2:14 Cuban properties covered
§ 2:15 Enforcement to date
§ 2:16 Possible denial of entry into the U.S. of foreign
    corporate officers

D. NEGOTIATED “AUTHORIZED” USE OF
CLAIMED PROPERTIES

§ 2:17 How the U.S. views such authorized use agreements
§ 2:18 Prohibitions on financing

E. PRESIDENTIAL AUTHORITY TO MODIFY THE
EMBARGO AND CONDITIONS NECESSARY TO
TERMINATE THE EMBARGO UNDER THE
HELMS-BURTON ACT

§ 2:19 Executive branch authority and the U.S. embargo on
    Cuba post-“codification” by the Helms-Burton Act
§ 2:20 The peculiar problem of travel restrictions
§ 2:21 Conditions mandated by the Helms-Burton Act for the
    lifting of the embargo: Must they be satisfied before it
    can be lifted?

IV. TRADE SANCTIONS REFORM AND EXPORT
ENHANCEMENT ACT OF 2000

§ 2:22 Overview of the TSRA
§ 2:23 General license authorizing travel-related and
    associated transactions that are directly incident to
    commercial activities permitted
§ 2:24 License exception AGR: The step-by-step process to be
    followed by the exporter

CHAPTER 3. AN ANALYSIS OF THE
RECENT LEGAL DEVELOPMENTS IN THE
ENFORCEMENT OF THE U.S. TRADE
EMBARGO AGAINST CUBA

I. INTRODUCTION

§ 3:1 Overview
Table of Contents

§ 3:2 Statutory basis for the U.S. embargo against Cuba
§ 3:3 —Criminal and civil penalties for embargo violations
§ 3:4 —Examples of criminal prosecutions for embargo violations
§ 3:5 Examples of civil penalty cases OFAC for Cuban embargo violations—OFAC enforcement of transactions prior to December 17, 2014
§ 3:6 —OFAC enforcement of transactions after December 17, 2014
§ 3:7 —OFAC ‘blocking’ funds
§ 3:8 Importing Cuban merchandise into the United States

II. LEGAL AUTHORITY OF OFAC TO INVESTIGATE TRANSACTIONS, DETERMINE VIOLATIONS, AND ASSESS PENALTIES

§ 3:9 OFAC
§ 3:10 Investigation of transaction
§ 3:11 Determining violation
§ 3:12 Assessing civil penalty
§ 3:13 Audits

III. FORMER PROHIBITIONS REGARDING CUBA

§ 3:14 Overview
§ 3:15 No importing from or exporting to Cuba
§ 3:16 Former OFAC requirements that now seem outdated
§ 3:17 Limited family visits to Cuba
§ 3:18 Authorized expenditures
§ 3:19 Remittances: Then and now
§ 3:20 Current Obama administration policy on spending limits in Cuba
§ 3:21 General versus specific licenses issued by OFAC
§ 3:22 Applying for a specific license with OFAC
§ 3:23 Applying for a specific license from BIS

IV. CURRENT OFAC AND BIS REGULATIONS AND POLICIES

§ 3:24 Airlines and vessels traveling between the United States and Cuba
§ 3:25 Cuban cigars are okay once again
§ 3:26 Cuba is not yet generally ‘open for business’
§ 3:27 Imports to the United States from Cuba
§ 3:28 U.S. State Department’s § 515.582 list
§ 3:29 Exports to Cuba approved by the BIS
V. CONCLUSION

§ 3:30 Doing business with Cuba after the Obama administration

CHAPTER 4. TRAVEL, MIGRATION AND REMITTANCES: OBAMA ADMINISTRATION’S NORMALIZATION POLICY AND ITS IMPLEMENTING REGULATIONS

I. INTRODUCTION

§ 4:1 Policy overview

II. SELECTED CATEGORIES OF REVISED REGULATIONS

§ 4:2 Travel to Cuba
§ 4:3 The Obama administration’s regulatory amendments on remittances
§ 4:4 The Obama administration’s regulatory amendments on vessels
§ 4:5 Telecommunications
§ 4:6 Export of authorized commodities and services
§ 4:7 U.S. exporters of goods under the “Support for the Cuban People Provisions” of U.S. Commerce Department regulations
§ 4:8 Obama administration’s regulatory amendments on banking and financial transactions

CHAPTER 5. LEGAL FRAMEWORK FOR FOREIGN INVESTMENT IN CUBA

I. INTRODUCTION AND BACKGROUND

§ 5:1 Foreign Investments and Decree-Law No. 50 of 1982
§ 5:2 Law No. 77 of 1995 and the Ministry of Foreign Investment Cooperation (MINVEC)

II. THE NEW CUBAN FOREIGN INVESTMENT ACT, LAW NO. 118 OF 2014

§ 5:3 Comparison with previous foreign investment legislation
III. RELEVANT ASPECTS OF THE LAW NO. 118 AND DECREE-LAW NO. 325 OF 2014

§ 5:4 Scope and purpose of the Act
§ 5:5 Guarantees to the investors
§ 5:6 Sectors and priorities for investment

IV. NEGOTIATION AND APPROVAL OF FOREIGN INVESTMENTS

§ 5:7 Establishing the relationship
§ 5:8 Documents required for the presentation of businesses
§ 5:9 Documents for the foreign investment proposal
§ 5:10 Levels for business approval
§ 5:11 The negotiation process
§ 5:12 Foreign Investment-Related Business Evaluation and Approval Commission
§ 5:13 Approval—Authorization
§ 5:14 Forms of foreign investments
§ 5:15 Registration and incorporation rules
§ 5:16 Contributions of capital stock and their valuation

V. INTERACTION WITH OTHER REGULATIONS

§ 5:17 Banking system
§ 5:18 Export and import systems

VI. TECHNICAL ASPECTS OF DOING TRADE WITH CUBA

§ 5:19 Preliminary requirements
§ 5:20 Labor system
§ 5:21 Special taxation system
§ 5:22 Reserves and insurance policies
§ 5:23 Registration and financial information
§ 5:24 Science, technology, environment and innovation
§ 5:25 Supervision (inspections and audits)
§ 5:26 Dispute resolution

CHAPTER 6. CUBAN BANKING LAWS AND REGULATIONS

I. INTRODUCTION

§ 6:1 Overview
§ 6:2 Recent developments in debt restructuring and negotiations
II. CUBAN FINANCIAL SECTOR REFORMS

§ 6:5 The Cuban Central Bank
§ 6:6 Structure of Cuba’s banking system
§ 6:7 Bank licenses

III. FINANCIAL INSTITUTIONS IN CUBA

§ 6:8 Registered commercial banks
§ 6:9 Registered foreign banks
§ 6:10 Registered non-banking financial institutions

IV. CUBAN MONETARY AND EXCHANGE SYSTEM

§ 6:11 Dual monetary system
§ 6:12 Exchange rate system
§ 6:13 Collections and payments
§ 6:14 Monetary policy and interest rates
§ 6:15 Credit policy
§ 6:16 Cuba’s credit rating

V. CONCLUSION

§ 6:17 Decentralization and integration

CHAPTER 7. CUBAN REAL ESTATE LAWS

I. INTRODUCTION

§ 7:1 The Cuban real estate market
§ 7:2 Foreign investment legislation
§ 7:3 The Socialist Constitution of 1976
§ 7:4 The Impact on Law No. 118 of 2014

II. PROPERTY RIGHTS IN CUBA

§ 7:5 The right of usufruct
§ 7:6 Surface rights

III. OWNERSHIP AND TRANSFERS OF PROPERTY

§ 7:7 Ownership rights
§ 7:8 Cuban property registry
§ 7:9 The recordation process
§ 7:10 Cuban mortgage legislation

xx
IV. CONCLUSIONS

§ 7:12 Developing the real estate sector

CHAPTER 8. CUBA’S PATENT LAW

I. GENERALLY

§ 8:1 Introduction and scope

II. PATENT LAW

§ 8:2 Introduction
§ 8:3 The competent authority
§ 8:4 Patentable subject matter
§ 8:5 Requirements for patentability
§ 8:6 Filing and prosecution of the patent application—application requirements
§ 8:7 —The definiteness standard
§ 8:8 —Who can file a patent application
§ 8:9 Duration of the patent grant
§ 8:10 Licensing the patent
§ 8:11 —Doha declaration provisions
§ 8:12 Assignments

III. CONCLUSION

§ 8:13 In summary

CHAPTER 9. CUBA’S TRADEMARK LAWS

I. GENERALLY

§ 9:1 Introduction and scope

II. TRADEMARK DECREE-LAW NO. 203 AND ITS REGULATIONS

§ 9:2 The competent authority
§ 9:3 Mark definition
§ 9:4 Registration application requirements—Formalities
§ 9:5 —Absolute bars
§ 9:6 —Relative bars
§ 9:7 The application process—Requirements
§ 9:8 —Formalities examination
CHAPTER 10. MARITIME LAW IN CUBA

I. INTRODUCTION

§ 10:1 Background
§ 10:2 Structure of the new Maritime Law and establishment of the National Maritime Authority
§ 10:3 Purpose and scope of the new Maritime Law

II. PORTS AND PORT FACILITIES

§ 10:4 The National Port Authority and the National Ports System

III. VESSEL REGISTRATION AND FLAGGING REQUIREMENTS

§ 10:5 The National Ship Registry

IV. OWNERSHIP OF VESSELS

§ 10:6 Modes of acquiring ownership
§ 10:7 Co-ownership

V. ABANDONMENT OF FOREIGN VESSELS

§ 10:8 Procedures for abandonment and effect on vessels
Table of Contents

VI. SHIPBUILDING, SHIP REPAIRS, AND SHIPBREAKING

§ 10:9 Licensing requirements
§ 10:10 Responsibility for operations and clean-up

VII. TEMPORARY ANCHORING OF VESSELS

§ 10:11 Authorization by Port Marshal

VIII. MARITIME PROTECTION AND SAFETY

§ 10:12 Certificates of compliance

IX. PREVENTION OF MARINE POLLUTION

§ 10:13 Reporting requirements, and civil and criminal liability

X. MARITIME LIENS AND SHIP MORTGAGES

§ 10:14 Ranking of liens
§ 10:15 Ship mortgages

XI. SHIPOWNERS, CAPTAINS AND CREW

§ 10:16 Cuban shipowners
§ 10:17 Crew requirements, qualifications and responsibilities
§ 10:18 Seamen’s documents

XII. NAVIGATION AND SHIPPING

§ 10:19 Access to local ports and navigation requirements
§ 10:20 Innocent passage
§ 10:21 Cabotage laws
§ 10:22 Procedures regarding maritime traffic
§ 10:23 Arrivals and departures from Cuban ports
§ 10:24 Pilotage

XIII. MARINE ACCIDENTS AND NAVIGATION RISKS

§ 10:25 Definition of “marine accident”
§ 10:26 Liability in collision cases
§ 10:27 Wreck marking and removal
§ 10:28 Forced arrivals

XIV. SALVAGE AND FINDS

§ 10:29 General and particular average
§ 10:30 Life salvage
§ 10:31 Finds

XV. MARINE INVESTIGATIONS AND REPORTING, AND CIVIL LIABILITY FOR DAMAGES
§ 10:32 Reporting marine accidents
§ 10:33 Investigating marine accidents
§ 10:34 Liability for damages and insurance requirements

XVI. SHIP ARRESTS (ATTACHMENT)
§ 10:35 Procedural requirements
§ 10:36 Appointment of custodian

XVII. CHARTER PARTIES
§ 10:37 Definition of charter party
§ 10:38 Types of charter parties

XVIII. THE CARRIAGE OF GOODS AND PASSENGERS
§ 10:39 Carriage of goods
§ 10:40 Carriage of passengers

XIX. TOWAGE
§ 10:41 The contract of towage

XX. MARINA DEVELOPMENT AND NAUTICAL TOURISM
§ 10:42 Regulation of marinas under Decree-Law No. 314

XXI. CUBA-UNITED STATES MARITIME BOUNDARY AGREEMENT AND RELATED ISSUES
§ 10:43 Boundary demarcation
§ 10:44 Related maritime boundary issues

CHAPTER 11. ENVIRONMENTAL LAW

I. INTRODUCTION
§ 11:1 Overview

II. CUBA'S ENVIRONMENTAL CHALLENGES
§ 11:2 Environmental challenges
III. ENVIRONMENTAL LAW
§ 11:3 In general
§ 11:4 The Ministry of Science, Technology and Environment
§ 11:5 The National Environmental Strategy
§ 11:6 The Constitution
§ 11:7 Law No. 81
§ 11:8 Related laws
§ 11:9 Climate change law and policy

IV. TOPICS OF INTEREST
§ 11:10 Land use
§ 11:11 —Planning and zoning
§ 11:12 —Coastal zone management
§ 11:13 —Watershed management
§ 11:14 —Protected areas
§ 11:15 Environmental impact assessments and licensing
§ 11:16 Energy
§ 11:17 —Electricity
§ 11:18 —Offshore oil development

V. ENVIRONMENTAL ENFORCEMENT
§ 11:19 Administrative, civil, and criminal liability

CHAPTER 12. ARBITRATION AND MEDIATION IN CUBA
I. INTRODUCTION AND BACKGROUND
§ 12:1 Foreign investments and ADR

II. COMMERCIAL ARBITRATION IN CUBA
§ 12:2 The Arbitration Court for Foreign Trade (ACFT)

III. CUBAN COURT OF INTERNATIONAL COMMERCIAL ARBITRATION (CCICA)
§ 12:3 Decree-Law No. 250 of 2007
§ 12:4 Legal framework
§ 12:5 Jurisdiction
§ 12:6 Arbitration rules and procedures in Cuba
§ 12:7 Choice-of-law
IV. ARBITRATION AND THE CUBAN JUDICIAL SYSTEM

§ 12:8 Interplay with the judicial system

V. INVESTMENT ARBITRATION IN CUBA

§ 12:9 Definition of foreign investments
§ 12:10 Standard of treatment
§ 12:11 Expropriation and compensation
§ 12:12 Repatriation of profits
§ 12:13 Dispute resolution mechanisms
§ 12:14 Investor-host state dispute
§ 12:15 State-to-state disputes
§ 12:16 Contribution of BITS to the practice of arbitration in Cuba

VI. MEDIATION IN CUBA

§ 12:17 Background
§ 12:18 Procedural considerations

VII. CONCLUSION AND RECOMMENDATIONS

§ 12:19 Practical considerations regarding ADR in Cuba

Index