

# Legal Experts Cautious About Business Opportunities in Cuba

by John Pacenti  
jpacenti@alm.com

With an overnight thaw in U.S.-Cuba relations, legal experts were cautious Wednesday about visions of U.S. companies doing business in Cuba.

They want assurances disputes will be handled through international arbitration and are concerned about hiring Cuban workers, which in the past meant paying salaries to the Cuban government.

Catchphrases used repeatedly by lawyers with an eye on Cuba was “I’m cautiously optimistic,” “it’s wait and see” and “that’s down the road.”

“I’m sure it will have an impact, but of course we don’t know what impact it will have,” said Manuel Gomez, a law professor at Florida International University in Miami. “To assume that this means there are going to be a lot of changes on the island, well, I don’t see a basis for that yet.”

Law firms hoping to get a foothold in Cuba parallel companies looking to establish a presence on the island. With new business ventures would come the inevitable business disputes and more legal work.

But those days aren’t around the corner, said Pedro Freyre, an Akerman partner in Miami and chair of the firm’s international practice.

“It’s one thing to say what we want to do, and it is another thing what

the Cuban government believes it wants to do and what it wants U.S. businesses to do and what it will allow them to do,” he said.

But attorneys definitely see the joint announcements as something positive for the bottom line.

“We expect South Florida lawyers to be at the forefront advising clients on the implications of the expected changes,” said attorney Jose Sirven, who leads Holland & Knight’s financial services practice group and arrived from Cuba when he was 4 in 1960. “Our clients across our platform, but particularly in South Florida, will want to know what the changes mean to them. Financial institutions in particular will have to review and revamp their policies and procedures to meet the expected changes.

Attorney Ricardo Martinez-Cid, president of the Cuban American Bar Association, said the organization had no official position but has long supported dissident lawyer groups on the island.

“For so many years we have been hearing about impending changes and different reforms, but they haven’t resulted yet in any meaningful benefit to the Cuban people, which is at the end of the day is all we are interested in,” he said.

## EMBASSY TO REOPEN

President Barack Obama and Cuban President Raul Castro made their joint-

ly timed announcements about re-establishing diplomatic relations and a prisoner exchange.

The U.S. will soon reopen an embassy in Havana, ease travel bans for family visits, government business and educational activities. Tourist travel, however, remains banned. For cigar lovers, the longstanding ban on importing the finest stogies is over.

Not everybody was thrilled with the announcement.

Former U.S. Attorney Marcos Jimenez, now a Miami partner with McDermott Will & Emery, said he is thrilled Alan Gross was released after five years but noted Obama needs to recognize a 2003 U.S. indictment is pending against two Cuban pilots and a Cuban general for shooting down a U.S. civilian aircraft, killing all four aboard.

“What this administration has ignored is that the Castro brothers are responsible for the deaths of tens of thousands of people and that is being swept under the rug,” Jimenez said.

Freyre, who was born in Cuba, described Wednesday’s chain of events as a “watershed moment,” but so much more needs to be done before any meaningful business can be done between the two countries.

The U.S. Office of Foreign Assets Control, which was responsible for enforcing the five-decade embargo, must establish new rules with a

mutually agreeable mechanism for dispute resolution.

"You need to have a body of law and more importantly a body of jurists to assure investors that when there is a dispute it will be heard in accordance with fair rules and due process and by a fair and impartial decision-maker," Freyre said.

#### **ARBITRATION**

Cuba has done business with companies from Europe, Canada and elsewhere, and many of those companies have agreed to have any legal disputes resolved by arbitration through the International Chamber of Commerce in Paris, he said.

But there remain some very human problems. The Cuban government does not allow foreign companies to hire Cubans directly. Instead, they pay the Cuban government, which distributes pesos to the workers.

"That has been a very troubling aspect with doing business with Cuba," Freyre said. "It has come under severe criticism of labor unions and human rights."

As a result, Cuban employees of international companies often get additional compensation under the table, he said.

He also cited a lack of corporate and trade law in Cuba.

"The ability to have mortgages and liens—the normal stuff that businessmen need to put in capital and secure—Cuba is still a long way away," Freyre said.

The first step is for the U.S. to establish trade as a confidence-building measure. "Then maybe we can open up a distributorship, then you can go on from there to an agriculture venture or a processing plant," he said. "That's when you are going to see a keen interest in significant investment in Cuba, particularly in the hospitality industry."

Attorney James P. Gueits, a partner

at Levine Kellogg Lehman Schneider + Grossman in Miami, said he remains skeptical any real economic reform can happen in Cuba until it embraces human rights reforms even if there are assurances of international arbitration and legal transparency.

"Assuming with all of these perceived safeguards in place, a U.S. company would still be doing business at their peril," he said.

Miami attorney Andrew Hall represents the sons of a Cuban businessman killed by revolutionary forces in 1959. He won a \$2.8 billion verdict in 2011 against Cuba and is working to collect. Diplomatic relations or not, he said Cuba remains a U.S.-designated sponsor of terrorism.

"This is a historic moment for U.S. government relations, but it does not take back the years of torture, agony and terrorism my client's family had to endure," Hall said. "The normalized relations will not affect our billion-dollar verdict. We will continue to go after those entities that conspired with the Cuban government years ago."

#### **NEW CONVERSATION**

U.S. Rep. Ileana Ros-Lehtinen, R-Miami, born in Havana in 1952, said the president may have broken long-established law by using an executive order to normalize relations with Cuba.

"The liberalization policies aimed at easing trade and remittances to Cuba is another propaganda coup for the Castro brothers, who will now fill their coffers with more money at the expense of the Cuban people," she said.

The Cuban American National Foundation, long a supporter of the embargo, said the changes were "unprecedented in its scope and places the success of these policy changes on the Cuban regime extending limited space and rights to the Cuban people."

Peter Schechter, director of the Adrienne Arsht Latin America

Center, commended Obama's move. He said normalizing relations with Cuba has long been supported by most Americans and that very normalization that would lead to improved human rights in Cuba.

"The ever-smaller, yet still noisy pro-embargo crowd in this country will surely kick and scream over these changes, accusing the president of 'giving in' to the Castros. They are wrong," he said in a statement. "The conversation can turn away from U.S. sanctions policy to fully focus on a half-century of dictatorship and repression. The international community, which normalized relations with Cuba long ago, can now openly encourage a democratic Cuba. And isn't that the whole point?"

Gomez, the FIU law professor, agreed renewing diplomatic relations between the long-time foes is a function of the world economy.

"This shows no country today can operate in isolation or in a vacuum," he said. "There is pressure from outside, not just political pressure but economic pressure, from the international business community who says, 'I won't invest there unless I get this.'"

**John Pacenti can be reached at 305-347-6638.**