

CUBA: LIFE AFTER FIDEL CASTRO AND EXPECTATIONS FOR THE TRUMP ERA

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As Donald Trump is inaugurated as the 45th President of the United States of America, there are hopes in post-Fidel Castro Cuba that the pace of reform on the Caribbean island will speed up, though there are also widespread concerns that the Trump presidency will have the effect of slowing down the “normalisation” of relations between the two countries.

As Miami celebrated and Havana mourned the passing of Fidel Castro in 2016, lawyers on both sides of the Atlantic have spoken to **The Latin American Lawyer** about the potential impact of recent domestic and international political developments on Cuba’s future economic outlook.

A total of 55 per cent of a group of lawyers surveyed by The Latin American Lawyer agreed that Fidel Castro’s death will have no influence on the reform process taking place in the country. However, 44 per cent are confident that the pace of reforms will quicken.

Even though Fidel Castro was largely absent from Cuba's political and economic life after stepping down due to ill health in 2006 – and handing over the presidency in 2008 to his brother Raul Castro – he still cast a massive shadow over the country, its economic reform process and US-Cuba relations. His death and the election of a new American president has deepened uncertainty and made it more difficult to predict what's next for Cuba.

One partner at a US law firm says the death of Fidel Castro has "definitely had less impact than everyone thought it would – the transfer of power in Cuba has already happened." Adolfo Garcia, partner and head of the Cuba practice group at Brown Rudnick, agrees, saying the transition in Cuba has occurred, with indications that current president Raul Castro has already elected a successor.

Cuba might not be a priority for President-elect Trump when he takes office, according to survey participants, however 88 per cent said the normalisation of relations between the two countries might slow down.

Lawrence W. Diamond, partner and chair of the Cuba Business Group at Duane Morris, agrees that the election of Donald Trump might make the Cuba-US relations 'normalisation process' slower.

Meanwhile, Garcia does not expect drastic changes in the US policy towards Cuba. "In fact, given the reality of the Republican Party, the best case scenario might be that Trump does nothing and leaves the opening towards Cuba as it stands, at least for now," he says.

Diamond warned that a potential reversal of Obama's policies towards Cuba – as forecast by some in the Trump camp – might make it more challenging for international clients to invest. However, on the subject of ongoing domestic economic reform, he placed the onus on Cuba itself: "There would seem to be no good reason for Cuba to abandon the path to greater economic health and independence regardless of any relations with the US."

Meanwhile, survey respondents highlighted a number of challenges for international clients investing in Cuba, with a majority (66 per cent) expressing concerns about the negative impact of Cuba's internal bureaucracy. Lourdes Dávalos, associate in charge of the Cuba practice at Uría Menéndez, stated that the lengthy time it takes to negotiate with state-owned enterprises is a major obstacle to doing business in the country.

Nevertheless, international clients are interested in opportunities in Cuba and law firms have either maintained or expanded (particularly since December 2014, when Cuba and the US restored diplomatic relations) specialised practice groups to cater for those clients. Uría Menéndez, for example, has a group dedicated to assisting clients with their investments in Cuba, says Dávalos. Similarly, Brown Rudnick in Boston has extensive experience in advising clients in matters related to Cuba and its team includes Cuban-qualified lawyers.

Elsewhere, Spanish law firm Olleros Abogados has assisted clients with investments in Cuba for nearly 20 years and, in 2015, it [signed](#) a strategic partnership with US-based McDermott Will & Emery to share client referrals and coordinate their wider commercial strategy in the country. "Our firm is willing to open a branch in Havana as soon as the system allows international firms to operate," says Ignacio Aparicio, managing partner of Olleros in Valencia and a key partner in the firm's Cuba practice group.

Other law firms are less enthusiastic. Though Erik Richer La Flèche, a partner at Stikeman Elliott in Canada, says his law firm has over 20 years experience assisting foreign investors in Cuba and will continue to provide such services as and when required, he adds "we view Cuba as a niche market and will not dedicate additional resources to our Cuba practice," he concludes.

Meanwhile, Raquel Flórez, Madrid-based co-head of the Latin America group at Freshfields Bruckhaus Deringer, points out that having cross-border M&A experience with strong relationships with local counsel will help firms set up teams clients need in challenging markets such as Cuba.

One of the many reasons for the scepticism of a number of law firms could be the fact that, despite the restoration of diplomatic relations, Obama's visit to Cuba and the efforts by his administration to open avenues for business, the US sanctions against Cuba are still in place. According to Adolfo Garcia, US laws regulating or forbidding trade with Cuba are the "single most important factor for the majority of clients willing to invest, and those laws haven't changed." He says the lack of success of the long standing policy of sanctions might lead to the embargo being dropped. He concludes: "The election of Donald Trump will be far more important in US-Cuba relations [than the death of Fidel Castrol, I do hope Trump proves to be the shrewd businessman he is when it comes to dealing with Cuba."