

JUNE 2021

LEGAL UPDATES IN CUBA



LUPICINIO
INTERNATIONAL LAW FIRM



Lupicinio International Law Firm began its activity in Cuba in 1996, and has an official correspondent agreement, approved by the Cuban Ministry of Justice, with the great Cuban firm Bufete Internacional.

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INTRODUCTION

This newsletter summarises all of the most important legal news in Cuba. It includes information about the new reforms, business opportunities and laws

Despite the pandemic we are experiencing, Cuba is growing and offers great guarantees for foreign investment. The legal sector and the business law sector are evolving, and we adapt to the changes through global efficiency."

Lupicinio Rodríguez
Managing Partner
Lupicinio International Law Firm (LILF)

"In exceptional circumstances, Cuba is making progress in updating the economic and social model, the monetary order and the production of new legal norms."

Yirina Morales
Director
Bufete Internacional

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Cuba steps on the accelerator of economic reforms.

After the economic crisis resulting from the pandemic and an estimated 11% decline in GDP in 2020, the Cuban government is trying to relaunch the economy. The problem is that inflation is necessary because of the measures, which include: the new price of goods sold by state enterprises (forced to make them more expensive by the withdrawal of subsidies); the wage hike decreed on 1 January; and because of the new tariffs for public services, where state support has also been reduced.

Moreover, to avoid spiralling inflation, the Cuban government has decided to impose maximum prices, a viable tool in a country that is tight on production and markets. As a result, there has been an expansion of the black market and a notable shortage of supplies.

Cuba promotes business opportunities in the tourism sector.

The Cuban Minister of Tourism, Juan Carlos García Granda, stated that the country has 76,000 rooms managed by different national and international hotel chains, 75% in the 4 and 5 star categories. Specifically, Spain is present with capital contributions in 12 joint ventures.

The Tourism Development Plan is a key tool for the planning of tourism resources, covering programmes aimed at the development of special activities such as nautical activities, nature, real estate developments associated with golf courses, etc.

Likewise, the Ministry of Tourism, in its Portfolio of Opportunities for foreign investment, promotes 120 projects, including the construction of hotels, the development of water parks and theme parks.

Moreover, to avoid spiralling inflation, the Cuban government has decided to impose maximum prices, a viable tool in a country that is tight on production and markets. As a result, there has been an expansion of the black market and a notable shortage of supplies.

The project for Family Code (opinions of the Professor of Civil Law of the University of Havana).

Of all the responsibilities in Civil Law, the manner of constituting marriage, as set out in the constitutional text, is probably the most complex. Marriage is a small part to be legislated. The new Family Code goes much further than that and must also implement legislation concerning equality and recognition of all the forms in which Cuban families are currently organised; parental and family relationships; protection for the elderly and people with disabilities; as well as family violence, among other issues.

As for marriage, the new regulation, in the words of Pérez Gallardo, reserves for the new regulation the determination of the subjects between whom it can be contracted, the number of them, the competent authority for its formalisation, the matrimonial impediments, the documents to be provided, and the other requirements for its formalisation and legal effects, as dictated in Article 82 of the Law of Laws.

Similarly, according to Leonardo Pérez, the constitutional purposes of marriage are not regulated, "or at least not explicitly determined in the Constitution".

The Supreme Law also recognises the de facto union as another source of family formation, which is currently one of the most common family models, not only in the Cuban context. The low rates of marriage and the high rates of divorce are proof of this.

In Pérez Gallardo's opinion, "the Constitution thus breaks with a long tradition in Cuba, dating back to the Law of Laws of 1940, of trying to equate de facto unions with marriage".

It will be a long and narrow road on which to build the new family law in Cuba, the Doctor points out. But "only with a sense of justice, family solidarity, fortitude and open minds, cultivated in the values of diversity, plurality and inclusion, will it be possible to build the law to which we are politically and constitutionally called".

Draft Administrative Process Law

The main aspects regulated by the Law are as follows:

The administrative process is regulated in a separate law, taking into account the peculiarities that distinguish it and the rights that are protected.

The supplementary application of other legal regulations, such as the "Law of the Courts of Justice" and the "Code of Procedure" is established.

It is envisaged that administrative jurisdiction covers claims against the administrative acts, regulatory provisions, material actions and omissions of: (a) the Council of Ministers, within the scope of its executive-administrative powers, its Executive Committee and its subordinate or attached dependencies or entities; (b) the bodies of the Central State Administration, their subordinate or attached entities and, as appropriate, their territorial delegations or directorates; (c) the governors, within the scope of their executive-administrative powers and the structures of the provincial Administration, as well as their subordinate or attached dependencies and entities; (d) the councils of the municipal administration and other structures of the municipal administration, as well as their subordinate or attached dependencies and entities; (e) the national, provincial or municipal entities and companies that provide public services, perform any public function or exercise public powers; (f) the Office of the Comptroller General of the Republic; and (g) the Office of the Attorney General of the Republic, except for the control of criminal investigation and the exercise of public criminal prosecution.

The jurisdiction in administrative matters also deals with questions arising from the liability of the public administration.

The following matters are excluded from this jurisdiction:

- (a) Those of a military nature, national defence, State security and measures taken in exceptional circumstances to safeguard general interests;
- (b) external relations;
- (c) monetary, exchange rate, financial, fiscal and banking policies;
- d) planning of the national economy;
- (e) the resolutions of the National Assembly of People's Power and the Council of State;
- (f) the performance of the President of the Republic of Cuba, the Vice-President and the Prime Minister;
- (g) the Council of Ministers, as the Government of the Republic;
- (h) the actions of governors in their provincial governmental function and the Provincial Councils;
- (i) the ordinances and agreements of the municipal assemblies of People's Power;

(j) binding rules for all courts issued by the Governing Council of the Supreme People's Court, as well as binding instructions issued by that body to establish uniform judicial practice in the interpretation and application of the law;

(k) the electoral function;

(l) control of the criminal investigation and the exercise of public criminal action on behalf of the State by the Office of the Public Prosecutor of the Republic;

(m) those attributed to the constitutional, civil, family, criminal, labor and social security, and commercial jurisdiction.

The People's Supreme Court shall hear, in addition to cassation appeals and review proceedings, lawsuits brought in the first instance against the activities of the National Assembly of People's Power and the Council of State, the Presidency of the Republic, the People's Supreme Court, the Office of the Attorney General of the Republic, the Office of the Comptroller General of the Republic and the National Electoral Council in matters of civil service personnel and the management of assets or economic content, the Office of the Comptroller General of the Republic and the National Electoral Council, and against administrative acts, regulatory provisions, material actions and omissions adopted or to be adopted by the Council of Ministers, within the scope of its executive-administrative powers, its Executive Committee and its subordinate or attached agencies and entities, as well as the financial liability derived from the foregoing.

The rule that people must first complain to the administration before they can go to court is maintained.

An ordinary procedure is regulated, as a general type of procedure, in which orality is reinforced by means of a hearing, which offers greater possibilities for communication between the court and the persons involved in the conflict.

The time limits laid down in the law may be reduced by up to one half or up to one third when the urgency of the matter so warrants.

Draft of the Law on the Courts of Justice

The main changes introduced can be summarised as follows:

The public service character of judicial activity is emphasised and the principle of independence is strengthened.

The principles of constitutional supremacy, impartiality, effective equality, proactivity, legal certainty, pre-established judge, obligation to rule, binding nature of judicial decisions, integrity of immunity of magistrates and judges are added.

Guarantees of the judicial function, including: access to justice, due process, effective judicial protection, transparency, professionalism, quality, exclusivity, evaluation, responsibility and accountability.

Alternative methods of conflict resolution and the possibility of judicial settlement by harmonious and consensual means are recognised.

Variations in the composition of the courts are envisaged, so that they can be made up of a single judge in cases of minor conflict and of little importance.

The collegiate composition of the courts is made more flexible, with the number of professional and lay judges varying according to the nature of the dispute.

In order to facilitate access to justice, most disputes are to be heard and resolved by the municipal people's courts or their territorial sections.

The Plenum of the Supreme People's Court judges is incorporated.

The election of professional judges of provincial and municipal people's courts is entrusted to the Governing Council of the Supreme People's Court.

The treatment of professional magistrates and judges is adjusted to ensure that it guarantees improvement, the pursuit of quality services and promotes stability in the judicial system.

The disciplinary regime for magistrates, judges and court officials is redesigned on the basis of criteria of comprehensiveness and respect for ethical principles and due process.

The stipend for food and transport is maintained for lay judges who do not receive income from their work.

The State's financial responsibility is regulated, charged to the budget of the Supreme People's Court, for damages caused by court officials and employees in the exercise of their judicial functions, due to negligence or inexcusable ignorance, independently of their personal obligation to respond in the disciplinary and criminal order.

The use of information and communication technologies and advances in science, technology and innovation is included as a general principle in the exercise of the judicial function.

Draft Process Code

This proposal has led to a trend of judicial action that favours the active role of judges in judicial proceedings, with special respect for the principles of orality and immediacy, which allow them to develop fully. At the same time, it has provided the courts with procedural instruments, among which the broad possibilities for interaction with the parties stand out.

The procedures for resolving claims in civil, family, commercial, labour and social security matters are integrated into a single law.

The protection of persons in vulnerable situations is reinforced, for which purpose sufficient powers are conferred on the court to adopt reasonable adjustments at any stage of the procedure, prosecutorial intervention is adapted and the figure of the "defender" for the representation of minors, persons with disabilities, the elderly, victims of violence and absent persons, among others, is provided for.

The name of the subject "labour" is changed to "labour and social security" and "economic" to "commercial".

Immediacy, contradiction, rational assessment of evidence and the court's own initiative are reinforced.

Precautionary measures and preliminary proceedings to secure or prepare the process, the possibility of adopting them ex officio or at the request of a party, at any stage of the proceedings and, as a matter of urgency, when required, are regulated.

The possibility of bringing the review process is extended to the President of the Supreme People's Court, the General Prosecutor of the Republic, the Minister of Justice and other persons who were not a party but are harmed by the court decision.

Oral proceedings are strengthened in all proceedings, leading to better communication between the court and the persons involved in the conflict.

Provision is made for shortening procedural deadlines to the extent that the urgency of the case so requires.

The inheritance process related to the death of the person is updated and perfected, which is maintained as an independent type by its nature.

Judicial assistance and control of international commercial arbitration is regulated independently; its content is brought into line with the international treaties in force for the country with regard to interim measures and the taking of evidence in support of arbitration, enforcement and the declaration of nullity of arbitral decisions.

Draft Criminal Procedure Bill

The draft project took into account the recommendations of the National Assembly of People's Power of 2011 and 2017 on the need to carry out a comprehensive study of the criminal justice system in order to consolidate legal security, the protection of citizens' rights, institutionalism, social discipline and internal order. The conceptualisation of the Cuban economic and social model conceives that the State guarantees the exercise and protection of rights and duties in accordance with the Constitution of the Republic, the international treaties in force for the country and the laws. It is based on a diagnosis that identified 26 shortcomings that needed to be resolved in the new law or that required different treatment, related to fundamental rights and guarantees and the need to integrate into a single body of law the multiple modifications made over the years that the current law has been in force.

From the point of view of the theoretical foundations, the concept of social dangerousness was abandoned as a criminological principle guiding criminalisation processes and replaced by that of social harmfulness, understood as the capacity of the act under analysis to harm or put at risk of harming the legal good that is being protected.

In order to be in line with international treaties, an express declaration is made on the prohibition of enforced disappearances, torture, cruel, inhuman or degrading treatment and punishment and deprivation of liberty outside the cases and with the formalities established by law.

The principle of the presumption of innocence is reinforced, with the proviso that, in case of doubt on issues of fact, the most favourable outcome is that of the accused, with the burden of proof on the prosecution, and irrespective of the testimony of the accused and his or her family members, including the unmarried partner.

The preliminary draft expressly declares respect for the dignity, physical, mental and moral integrity of the accused, and the right not to be the victim of coercion or violence to force him or her to testify. The text includes the principle of prohibiting a person from being tried twice for the same act, as well as the inviolability of the home, correspondence and other forms of communication, which are not carried out in accordance with the provisions of the law, and declares illegal any information obtained in violation of the law.

It recognises the right of every accused person to a defence and to legal assistance from the beginning of the proceedings, which must be complied with within 24 hours in the case of detention, and within five days of the complaint, when at liberty; at which time he or she acquires the status of a party, has the right to propose evidence and examine the case file, among others.

As a reinforcement of the rights and guarantees enshrined in the Constitution of the Republic and the international treaties in force for the country, the draft bill includes the possibility of nullity of procedural acts that cause prejudice to the participants, due to the fact that they have been executed in violation of these regulations or the formalities established in the procedural law, which can be decreed *ex officio* by the authority in whose proceedings the case is being processed or at the request of a party.

The subjects of the proceedings are defined, recognising the victim or injured party as a party to the proceedings, as well as his or her right to assist the prosecutor if he or she so wishes. Its power to bring a civil action is extended when it is instituted as a party, while at the same time establishing the possibility of waiving it and establishing appeals.

The draft bill provides for alternatives to ensure compensation for the victim and the injured party before the oral trial, in certain crimes with a financial impact, such as the case of an agreement between the victim and the accused or defendant. It defines the obligation of the Public Prosecutor's Office to bring a civil action when the victim or injured party does not bring it or improperly waives it.

Of particular impact is the introduction of the principle of opportunity in crimes of recklessness and intentional crimes whose penal framework does not exceed five years of imprisonment, provided that the illegal act is of little social harm, the offender has suffered a physical or psychological penalty, the offender is under eighteen years of age and the criminal action is not serious, nor shows contempt for the life and rights of others, nor is the offender a repeat offender. It can also be applied in property crimes that have not been committed with violence or intimidation, or when there is the presence of an effective collaborator. In deserving cases, an administrative fine may be imposed on the beneficiary for the act committed, together with the confiscation of the goods and the satisfaction of civil liability, where applicable.

The draft bill incorporated what is currently regulated in the Penal Code, regarding the possibility of administrative treatment for crimes with a penalty of up to three years' imprisonment, for acts of little harm, both in terms of the consequences and the characteristics of the perpetrator.

Similarly, conditional acquittal was introduced for crimes with a penalty scale of up to five years' imprisonment, which makes it possible for the prosecutor to waive criminal prosecution when the defendant satisfactorily fulfils the obligations imposed on him or her.

Special treatment norms are introduced for accused persons under eighteen years of age, with the aim of reinforcing their guarantees and strengthening the protection suggested by the International Convention on the Rights of the Child. Therefore, the following essential rights were incorporated: immediate information of their detention to their parents or legal representatives, the possibility of testifying in the preparatory phase or attending the oral trial accompanied by them, having legal assistance from the moment of detention and the exceptional nature of the imposition of the precautionary measure of provisional detention, among others.

In line with the surrounding reality, the use of information and communication technologies is recognised at all stages of criminal proceedings, provided that the authenticity, confidentiality, protection and security of data and information are guaranteed.

Regarding the use of the special investigative techniques provided for in the treaties in force for the Republic of Cuba and in the current law, in accordance with constitutional guarantees, the power of the prosecutor to approve them was maintained; and the power of the court to grant an extension, if requested, when the sixty days that the prosecutor can authorise, in principle, as the maximum time for their application has elapsed, was introduced.

The prosecutor is granted the power to authorise all proceedings that affect the constitutional rights of individuals, and to impose the precautionary measure of pre-trial detention.

With regard to pre-trial detention, judicial control was incorporated through the possibility for the accused or their defence counsel to request the court to modify or revoke this measure, once the legal remedies aimed at the same end have been exhausted before the prosecutor.

On the other hand, it is compulsory to modify or revoke this precautionary measure when its duration reaches the lower limit of the sanction established for the offence or the most serious of the offences that gave rise to its imposition, and the compulsory control of this measure once the year of detention has elapsed.

In the regime of precautionary measures, for the first time, those that can be applied to legal persons are defined, and the range of those that can be applied to natural persons is extended.

Exceptionally, the Attorney General of the Republic is empowered to decree the confidentiality of the proceedings during the preparatory phase, for reasons of national security.

Similarly, it introduces the possibility that at any time during the proceedings the accused or his lawyer may express their agreement with the conclusions of the accusation and with the sanction requested, allowing the court, with the consent of the victim, to pass sentence without any further procedure, without being able to impose a different sanction to that requested by the prosecution. This procedure is not applicable in cases in which a sanction of life imprisonment or death has been requested, or when it implies an undermining of the rights and guarantees constitutionally recognised for the accused, or serious harm to the interests of the state, or harm to third parties, with special emphasis on persons protected by their situation of vulnerability.

The draft bill improves the procedure for the establishment of post-criminal therapeutic security measures for persons addicted to alcohol or other drugs or substances with similar effects and mentally handicapped persons, extending their guarantees, with the compulsory presence of a defence counsel, the existence of evidence for the prosecution, the hearing before the court and the right to appeal.

The procedures for judging a legal person, for the retroactive application of criminal law and against accused persons, defendants and absent defendants were incorporated, while the review procedure was improved, restricting its grounds as a consequence of the implementation of a broader cassation appeal, although notorious injustice was included as a new ground for review. The rules of the summary procedure were extended to offences punishable by up to three years' imprisonment, and the direct statement procedure was incorporated, with a definition of the requirements under which it is applicable and its terms. The draft bill provides for a system for the imposition and enforcement of fines imposed by the court as disciplinary corrections in criminal proceedings, and the amount of the fine has been increased and expressed in quotas rather than in pesos, as is the case under the current law. Similarly, a title was added on international criminal cooperation, with a broad treatment of its institutions in accordance with the treaties in force for the Republic of Cuba. The eighth book was devoted to perfecting the procedural provisions relating to the execution of the sentence. In general, the terms and deadlines foreseen in the law for the different procedures were adapted.

AWARDS

TOP RANKED Law Firms: Cuba



The cultural link between Spain and Cuba has allowed Lupicinio International Law Firm to maintain its presence in Cuba since 1996.

We are the only Spanish firm with an official correspondent with a Cuban law firm approved by the Cuban Ministry of Justice, as well as our own presence on the island, which allows us to offer full legal services to our clients.

Together with our allies in Havana we have handled countless cases representing banks, oil companies, biomass companies, hotel complexes, airlines, construction companies, food and beverage companies and the media both on the island and in the Mariel Special Economic Development Zone, which was created in 2013 to attract foreign investment.

Chambers 2021

Lupicinio International Law Firm and Bufete Internacional have been **recognised by Chambers & Partners for many years for their expertise in Cuba, ranking in the top bands**. In addition, our lawyers in the International Transactions Department have been prominent in resolving litigation in Cuba, Russia and Iran. The experience of our sector-focused international team ensures that we understand the industries and can tailor advice to the real business issues at stake. We specialise in a variety of sectors such as infrastructure, energy (including oil and gas, mining and renewable energy resources), healthcare, transportation and government services.

In addition, Imara Betancourt, coordinator of the Cuba office, has been ranked in 'Associates to watch' also in the Latin America and Global sectors.



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