

## Interview with Fátima Rodríguez: "Many companies are seriously considering scaling back or leaving Cuba"

*Legal Section*

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**Fátima Rodríguez** joined **Lupicinio International Law Firm** as head of the Criminal Law Department in 2015, having previously worked at a law firm specialising in criminal law. She has been involved in cases such as the *Tarjetas Black*, *Canal de Isabel II*, *Púnica*, *Vitaldent*, *Tándem* and *Villarejo* cases.

**A psychologist and holder of a PhD in Law** from the Complutense University of Madrid, she is also a lecturer at Villanueva University in Madrid and on the Master's in Access to the Legal Profession at the Garrigues Study Centre, and head of the Compliance section of 'Women in a Legal World' (WLW). Rodríguez spoke to Lex14 about the situation in Cuba and the new sanctions, an area in which Lupicinio is arguably the most specialised firm in Spain.

**Question.** What concerns companies in Cuba the most?

**Answer.** Today, what worries companies most is not just the existence of sanctions, but the tightening of the regulatory framework: a new executive order from the US President that designates almost any relationship with key sectors of the Cuban economy as a 'risk area', starting with energy and the military-industrial network, whose influence extends to a wide range of sectors within the country's economy. This combination of extraterritoriality and regulatory ambiguity means that a decision taken in Washington can leave contracts, investments or lines of financing that had been operating without issue for years hanging in the balance.

In practice, many companies are seriously considering scaling back or even leaving the Cuban market before risking a sanction. Rather than a 'political' reaction, this is a cold assessment of risks: if one does not know precisely who the suppliers and customers are, who is behind each corporate structure, and to what extent there are links to the sanctioned network, the fear of being indirectly affected skyrockets. Hence, the central question for any operator is both simple and complex: "Do these

sanctions really affect me and, if so, where and how?”. The answer can only come from rigorous *due diligence* on supply chains, local partners and beneficial owners.

At Lupicinio, we see many operators with a very specific concern: how all this will affect their access to the international financial system, their correspondent banks, their insurers and their reputation outside Cuba. The fear is no longer limited to receiving a fine, but to being internally classified by global banks and suppliers as a ‘high-risk client linked to Cuba’, which can result in account closures, policy cancellations, credit restrictions and much more intense scrutiny of any transaction, however lawful it may be from a legal standpoint.

**Q.** What protocols are being put in place and how are they being helped?

**A.** In this context, serious companies have stopped viewing sanctions compliance as a mere formality and treat it as a matter of survival. They are implementing specific policies for Cuba, sector-specific risk maps (energy, logistics, banking, tourism, etc.), reinforced approval processes and screening systems that automatically block transactions with entities or individuals linked to the sanctioned network. Added to this are more thorough and regular *due diligence* procedures, as well as impact reports analysing how the sanctions affect the sector in which they operate and the business group to which they belong, identifying points of contact with sensitive counterparties and proposing alternative business routes.

From an international firm such as ours, with almost four decades of experience in Cuba, our support operates on two levels. One is highly technical: interpreting the new executive order, translating it into clear operational criteria (‘this is allowed, this is not, this requires a licence’), redesigning contracts, corporate structures and supply chains to reduce exposure, and properly documenting decisions. And another, more human one: supporting local management and business teams in difficult decisions, where they must balance accountability to the parent company with their commitment to the country and to their own Cuban employees.

**Q.** What defence strategies are available?

**A.** When a company finds itself under the scrutiny of a sanctioning authority, the first line of defence today is being able to demonstrate that it has not turned a blind eye. That it had a robust compliance programme in place, tailored to the risks in Cuba, that it reacted swiftly to any sign of a breach, and that it cooperated transparently with the regulator. That narrative – ‘prudence ex ante, diligence ex post’ – often makes the difference between an exemplary sanction and a more proportionate resolution.

Furthermore, European companies have certain instruments to protect themselves against the excessive extraterritoriality of some US regulations, known since the days of the Helms-Burton Act and analysed in depth by authors such as Professor **José Luis Iriarte**. This is where European Union law, the Blocking Statute and,

where appropriate, arbitration or litigation come into play to challenge the most disproportionate effects. These are not magic solutions, but they do serve as a reminder that companies are not completely defenceless against unilateral decisions by third countries.

**Q.** Which sectors are most affected?

**A.** With this new executive order, the impact is concentrated on the key sectors of the Cuban economy: energy, military-industrial conglomerates, mining, transport, banking and financial services. The ramifications of these conglomerates mean that other sectors end up being dragged down with them, such as the hotel sector, where Spanish investment is particularly significant. If access to fuel, financing and certain technological inputs is cut off, it is not only these sectors that suffer, but all the activity that depends on them: from retail trade to the food cold chain or the running of hospitals and schools.

In practice, many projects that were already difficult to finance are now becoming almost impossible to undertake. Banks that previously agreed to work with certain exceptions are beginning to close the door out of sheer fear of breaching the Executive Order. And this creates a domino effect: suppliers pulling out, insurance policies not being renewed, freight costs rising or services disappearing, and a growing perception that any activity linked to these sectors could end up tainting the rest of the group's business.

**Q.** Are you considering leaving Cuba?

**A.** There is no single answer. Some companies, particularly those with recent or limited exposure, are clearly in retreat mode: they are freezing new investments, scaling back operations and, at the same time, devising plans for an orderly exit should regulatory risk continue to escalate. For groups with a presence in multiple sanctioned jurisdictions, Cuba is beginning to feature in an internal ranking of 'difficult countries' where, at times, it does not come out on top.

Conversely, for companies that have been on the island for decades, with deep-rooted relationships with the country and its communities, the logic is different. Rather than 'shutting up shop and leaving', they are asking themselves how to continue, but in a different way: by reducing exposure to particularly sensitive sectors, sharing risk with local partners or those from third countries, or focusing on activities clearly covered by humanitarian exceptions. Internally, discussions have shifted away from whether to stay or not, and are now focused on the conditions under which it is responsible to continue. At the same time, investors in Cuba must weigh up the relative importance of their interests in the United States and decide whether it is in their best interests to leave the Caribbean country to safeguard their position in North America, or, conversely, to remain in Cuba because it is a more strategic market for them than the US market itself.

**Q.** Are you seeing US companies preparing to enter the market?

**A.** In the current climate, at first glance it is difficult to imagine US companies ‘preparing positions’ in the traditional sense to enter Cuba when there is an Executive Order on the table that tightens the noose, and when initiatives have even been put forward in Congress to toughen the **Helms-Burton Act** itself. However, anyone familiar with the history of bilateral relations knows that strategic and economic interest in the island has never disappeared; what changes is the way in which that interest manifests itself.

It should not be forgotten that, thanks to various licences, US companies have remained or established themselves in Cuba or have continued to export to the country. If a more favourable scenario were to emerge in the future, they could play a very significant role in the recovery of the Cuban economy. Rather than visible moves, what is perceived today – and what we are told by business circles – is a very close observation: market research, scenario analysis, discreet contacts and the conviction that, should a window of normalisation ever open, no one will want to be left out.

The paradox is that the harsher the sanctions, the more this logic of ‘waiting in readiness’ is reinforced, even though the official message remains one of maximum pressure rather than openness.

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