

DOMICAN REPUBLIC



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# **DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN**





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IN LATIN AMERICA AND THE CARIBBEAN



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## DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

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The following currency notations are used in this book.

ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

*Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.*



The Dominican Republic offers outstanding advantages to foreign and national investors. The significant incentives and facilities offered by the Dominican State complement the many inherent factors that make this Caribbean country an attractive target for investments.

The Dominican Republic is:

- A country with a long and consolidated democratic free enterprise tradition in the region
- The second largest country in the Caribbean region
- Beneficiary of preferential access to the United States and European Union
- The principal commercial partner of the United States in the Caribbean
- Member of the Multilateral Investment Guaranty Agreement
- Signatory to the Dominican Republic - Central American Free Trade Agreement (DR-CAFTA)
- A popular tourist spot in the Caribbean region
- A world-class model in the development of duty-free zones
- Fertile for agricultural harvest
- Rich in mining resources of bauxite, nickel, gold, silver and other materials
- A country with abundant, trainable and economic hand labor
- A country with social and political stability

The Dominican Republic Constitution establishes a democratic government divided into three powers, similar to the United States. Presidential, congressional and municipal elections are also held every four years. The current and recently elected President, Danilo Medina, was elected in May 2012. The Dominican Republic territory is divided in 31 provinces and one national district.

## FOREIGN INVESTMENT

The Dominican Republic guarantees full convertibility and rights of repatriation of 100% of a foreign investor's dividends, after the payment of the corresponding applicable taxes. The Foreign Investment Law No. 16-95 of 1995 and its Ruling of Application No. 380-96 grants foreign investors exactly the same rights as domestic investors, eliminating any discrimination to the foreign investment, which is encouraged by the government. There are neither controls nor restrictions over the free conversion of currency.

Investment in the Dominican Republic generally has significant guarantees against political risks, inconvertibility and expropriation, granted by institutions such as the Overseas Private Investment Corporation (OPIC), the United States agency that provides financing and insurance for major international projects and the Multilateral Investment Guarantee Agency (MIGA), a World Bank agency.

The Center of Export and Foreign Investment of the Dominican Republic (CEI-RD), created by Law 98-03 in 2003, is the official agency of the Dominican government for the promotion and development of the Dominican exports and attracting foreign investment to the country, in order to contribute to the competitive insertion of the Dominican Republic in international markets.

## AREAS OF INVESTMENT

### Free Zones and Other Special Investment Areas<sup>1</sup>

A Free Zone is defined as an area under special customs and tax controls established by law. Companies in the Free Zones are authorized to produce goods and services destined for the external market., i.e., its export. The Dominican government acknowledges the importance of them for the generation of jobs and development of the country, and for that reason grants significant tax incentives to free zone companies, in accordance with Law No. 8-90 of Free Zones in the Dominican Republic.

Among these incentives are the following exemptions:

- **Taxes**, custom rights, tariffs, and any other incumbency, on the import of raw material, equipment, construction materials, edifications parts, office equipment, etc., so long as they are destined to habilitate or operate the Free Zones.

<sup>1</sup> It is important to point out that by virtue of the Article 27, paragraph 4 of the Subvention Agreement of the World Trade Organization, adopted in the Fourth Ministerial Conference of said organization, celebrated in Doha, Qatar, from the 9 to 14 of November of 2001, it is likely that by 2015 the National Council of Free Zones of Export (CNZFE) will review/withdraw some of the incentives contained in Law No. 8-90.

- **Income Tax.** Except those in which the Free Zone companies transfer or render services to individuals or legal entities in the Dominican Republic. This due to the fact that the transfer of goods and services by a Free Zone to the Dominican Republic is considered an import, and in that vein, in addition to the import tax stated in the Tariff of the Dominican Republic, regarding the specific good, the ex-fabric value, plus the services related to the movement of the cargo, the Tax to Selective Consumption (if applicable) and the Tax on Transfer of Industrialized Goods and Services, a 2.5% tax over the value of the gross sales made in the local market, must be paid, for the concept of income tax.
- **Transfer of Industrialized Goods and Services (ITBIS)** or added value of those goods acquired for the development of the operations of the Free Zone.

The exports are exempt, and the exporters have the right to deduct the value of the taxes of the goods used to make the imported goods. The goods and services transferred from the Dominican Republic to a Free Zone are treated as exports, and thus are exempt.

Over the past 20 years, Free Zones have become an important sector of the Dominican economy.

The Free Zone enterprises are classified in three categories:

- **Industrialized and of Services.** Those dedicated to the manufacture of goods and the provisions of services.
- **Border line.** Those that are necessarily located within 3 to 25 kilometers from the border line that separates the Dominican Republic and Haiti.
- **Special Free Zones.** Those that, due to the nature of their production processes, require for some of its operations, proximity to immovable resources (i.e., the industries may need to be established in a specific location near natural resources, or geographic, economic and/or infrastructure conditions may require them to be located at a specific spot). In these cases, Special Free Zones can be created. The incentives to special Free Zones last for 15 years, which can be renewed.

### ***Different Types of Investment in Free Zones and the Procedure for Installing a Free Zone Company***

Investors interested in the Free Zone segment can do so under the following methods:

- Establishing an Export Free Zone company;
- Establishing themselves as an operator of Free Zones;
- By investing in one or both of the above.

From the options described above, the most common one is the establishment of an Export Free Zone. Virtually all Free Zone applicants choose to apply by means of a special purpose corporate vehicle. All its shareholders can be foreigners.

The applicant corporation proceeds to negotiate and obtain a lease for the industrial building to be used at a Free Zone Park, taking into account factors such as available transportation facilities, labor force, and accessibility to sea and airports, among others. Some industrial Free Zone Parks are privately owned; others are owned by the governmental Corporation for Industrial Promotion (*Corporación de Fomento Industrial*).

The National Council of Export Free Zones grants authorization to qualified Free Zone businesses, upon receipt of the following:

- Request form for permit;
- Contract or letter of intent of lease of a Free Zone authorized park;
- Incorporation documents of the company, indicating the relation of the shareholders or partners, their nationality and contribution;
- Solvency letter or similar document that identifies the investors;
- Certificate check covering the costs of the permit issuance;
- Sample of the product that is going to be manufactured and the expectations of the jobs and investment that will be made.

## **TOURISM**

The Dominican Republic, due to its stunning beaches and landscape, climate and privileged geographical location, has developed along different parts of its territory areas that are mainly devoted to tourism, one of the main sources of the national economy. The Ministry of Tourism is the entity responsible for ensuring the promotion of tourism in the Dominican Republic and the compliance with the provisions of the Organic Law of Tourism No. 541-69 and its amendments.

Within this sector, the areas that have been flourishing are related to the establishment of:

- Hotels, ruled by the Regulation No. 2115 of Classification and Standards for Hotel Establishments dated 13 July 1984, and its amendments.
- Restaurants whose legislation is Regulation No. 2115 of Restaurants' Classification and Standards dated 13 June 1984, and its amendments.
- Casinos, which are governed by Law No. 351 of Gaming Venues from 1964, and its amendments.

In consideration of the revenues that the tourism industry represents to the Dominican economy, the Law No. 158-01 of Promotion of Tourism Development, and its amendments, declared certain areas for the development of tourism activities that are of special interest for the Dominican government, and in order to encourage investment in them, awarded to companies domiciled in the country a series of exemptions, among which are included exemptions from taxes and import tariffs, income taxes, assets and the transfer of industrialized goods and services or value-added, for a period of 10 years. The Promotion Council (CONFOTUR) is the organism in charge of the enforcement of said law.

## TELECOMMUNICATIONS

The development of the Telecommunications sector for the development of any nation in the world is vital. Previously, the only companies that rendered telecommunication services in the Dominican Republic were "CODETEL" and "TRICOM." In November 2000, the subsidiary of the France Telecom Group, Orange Dominicana, came to the Dominican Republic, and received a warm welcome. From then on, other companies have embarked as competitors in this segment. Currently the number of competitors in the telecommunications market has increased vigorously, and today we have more than 10 companies rendering telecommunication services. Among them are Orange, ONEMAX, Claro-Codetel, BEC-TEL, WIND TELECOM, TRICOM, VIVA and ASTER, among others.

Consequently, the participation of telecommunications in the Gross Domestic Product (GDP) has been, since 2008, over 15%.

This is a result of certain reforms adopted by the Dominican Republic since 1998. Specifically, the promulgation and publication of the General Law of Telecommunications No. 153-98, which promotes fair competition, effective and sustainable within the telecommunications sector.



The referred Law regulates the installation, maintenance and operation of networks, services and the provision of telecommunication equipment, and establishes the classification of communication services, which can be public or private. Likewise, it consecrates the secrecy and inviolability of communications and information issued through telecommunications services, except where any judicial intervention is involved.

The regulatory entity in telecommunications matters, created by said law, is the Dominican Telecommunications Institute (INDOTEL), and it is authorized to grant concessions to third parties for the provision of public telecommunications services, and licenses for the use of radio public domain, and to watch over the quality of the service rendered to the end consumer.

## **CONSTRUCTION AND REAL ESTATE SECTOR**

Construction in the Dominican Republic has reached a considerable development level. The population growth has contributed to this impulse, which has been mostly vertical. Additionally, the Dominican Republic has increased the level of its public infrastructure, through the construction of elevators, bridges, highways and recently the Santo Domingo Metro, which is currently under construction of its second line. This segment of the economy is regulated by Law No. 675 of 1944, and its modifications, relating to Urbanization, Public Ornament and Constructions, and by Law No. 687 of 1982, about the Creation of an Engineering System, Architecture, and related branches.

Also by virtue of Law No. 189-11 for the Development of the Mortgage Market and Trust in the Dominican Republic, the creation of trusts for low-cost housing is conceived. These type of homes are described by the Law as housing units with a sales cost equal or inferior to two million pesos (DOP2 million), annually adjusted by inflation, that count with the participation of the public and/or private sector. In order to incentivize and stimulate the creation of construction trusts for the development of low-cost housing, the Law grants several tax incentives and exemptions.

## **REAL ESTATE SECTOR**

Law No. 108-05 of 23 March 2005 on Real Estate Registration, and its modifications, establishes a system for the registry of ownership and other rights over real property. The Registry of Titles, as the organism in charge of the registry of the real estate rights previously adjusted, issues a Title Certificate to the name of the owner, which serves as justification for the right of ownership, irrevocably, perpetually, absolutely and enjoying the full guarantee of the State.

A real estate purchase is registered in the Registry of Titles corresponding to the jurisdiction in which the property is located. It is extremely important for

the prospective purchaser to request, prior to purchase, a copy of the Title Certificate to verify that everything is in order and the property has no registered mortgage or other encumbrance, and that the Title Certificate is transferable to the purchaser.

## **Acquisition of Real Estate Property by Foreigners**

For a bit over a decade, foreigners, whether an individual or legal entity, can acquire real estate in the Dominican Republic, by complying with practically the same requirements as a Dominican national. Previously, Decree No. 2543, which was repealed by Presidential Decree No. 21098 of 19 January 1998, required foreigners to get an authorization from the President of the Dominican Republic before being able to purchase a property.

Currently, the Ministry of Interior and Police keeps a record of all real estate property in the Dominican Republic acquired by foreigners for statistical purposes only. Title Registrars, Civil Registries Directors and mortgage offices must send a copy to the Ministry of Interior and Police of every act or document whereby a foreign individual or legal entity (even if resident and domiciled in the country) acquires one or more real properties located in the Dominican Republic, within 15 days of receipt of same.

## **Film Industry in Dominican Republic**

Law No. 108-10, for the stimulation of the Cinematographic Activity, modified by Law No. 257-10, has as its main purpose the stimulation and regulation of the creation, production, distribution, exhibition and cinematographic and audiovisual formation, and related technical industries, in the Dominican Republic. Likewise, and through said legal document, it has created:

- The General Direction of Cinema (DGCINE), whose main role is the promotion and incentivizing of the development of the national cinema industry, as well as other aspects related to cinematographic and audiovisual development;
- The Intersectorial Council for the Promotion of the Cinematographic Activity in the Dominican Republic (CIPAC), which works as a superior organ of the General Direction of Cinema (DGCINE); and
- The Cinematographic Promotion Fund (CIPAC), administered by the Board of the Intersectorial Council for the Promotion of the Cinematographic Activity (CIPAC), through the General Direction of Cinema (DGCINE), for the stimulation and permanent promotion of the national cinematographic and audiovisual industry, facilitates a system that provides financial support, warranties and investments for the benefit of the producers, distributors, merchants and exhibitors of national

film, as well as for the development of formative politics within the cinematographic environment.

Finally, it is important to highlight that the law for the stimulation of the cinematographic activity brings along considerable fiscal incentives from which any national or foreign individual or legal entity can benefit, that administers, generates, promotes or develops cinematographic plays and other audiovisual plays that comply with the requirements established by said law.

## **BUSINESS ENTITIES**

Different types of legal vehicles have traditionally existed in the Dominican Republic to organize business. However, until recently, the predominant way to establish commercial operations was by setting up a Joint Stock Companies (Sociedades Anónimas). With the enactment of the General Law of Commercial companies and Individual Enterprise of Limited Liability, No. 479-08, and its modification through Law No. 31-11, new corporate means of doing business are made available to the current options that exist under the old, and partially overruled, Commerce Code.

While there are several corporate forms in the Dominican Republic, the most common corporate vehicles are:

### **LIMITED LIABILITY COMPANY (LLC)**

An LLC can be formed with a minimum of two partners and a maximum of 50. Its corporate capital has to be of at least DOP100,000 and is divided into quotas of at least DOP100 that are represented in non-negotiable titles and the partners' responsibility is limited to the value of their contribution. All companies are subject to a tax payment of 1% of the incorporation capital.

While the quotas are freely transferable among partners, so long as the preferred rights among them is respected, approval of three-quarters of the rest of the quotaholders is needed to transfer the quotas to a third party.

LLCs are directed by one or more managers who necessarily need to be an individual, regardless of whether they are partners of the company or not, resident or not in the Dominican Republic.

An annual partners' meeting needs to take place within the three months after the end of the fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the partners, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the partners

can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

### **INDIVIDUAL COMPANY OF LIMITED LIABILITY** (*EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA, E.I.R.L.*)

An Individual Company of Limited Liability, as indicated by its name, can only be incorporated by one individual and its commercial name chosen freely. There is no minimum or maximum for its corporate capital and the company can be transferred as a business unit. The company is run by a manager who can be the owner itself or any other individual appointed by the owner. The manager must prepare an annual management report within three months of the closing of the fiscal year.

It works as a commercial entity in the sense that it has its own patrimony and full legal personality to develop any kind of business.

### **JOINT STOCK COMPANY** (*SOCIEDADES ANÓNIMAS, S.A.*)

For its incorporation, a minimum of two shareholders is required, and there is no maximum. Its corporate capital must be at least DOP30 million and its shares, which are freely negotiable, must have a nominal value of at least DOP1.

The company is managed by a board of directors of at least three members, who can be a legal entity, except for the title of president, which necessarily has to be executed by an individual. For the other positions in the board, if a legal entity is designated, an individual must be appointed as a representative of the legal entity and that person will assume all the conditions, obligations and liabilities as if that individual was named director on its own name.

Also one or more surveillance officers called “*comisarios de cuentas*” must be appointed, and they must necessarily be an accountant, a business administrator, economist or financier, with three years of experience, and will hold their title for at least two fiscal periods.

An annual shareholders’ meeting must be convened within 120 days after the closing of the previous fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the shareholders, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the shareholders can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

## **SIMPLIFIED JOINT STOCK COMPANY (*SOCIEDAD ANÓNIMA SIMPLIFICADA, SAS*)**

This company type is incorporated with the participation of two or more shareholders, and there is no maximum number of shareholders that can be part of it.

The minimum corporate capital must be at least DOP3 million from which at least one-tenth (DOP300,000) must be paid-in. The value of its shares is established by the bylaws, and they can only be nominative.

The shareholders decide if the administration of the company is going to be through a board of directors, a president or single director.

An annual shareholders' meeting must be convened within 120 days after the closing of the previous fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the shareholders, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the shareholders can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

## **ESTABLISHMENT OF A FOREIGN BRANCH**

Any foreign company that complies with the requirement for its incorporation in its country of origin can have a registered domicile in the Dominican Republic and obtain a Mercantile Registry at Chamber of Commerce and a Tax Payer ID, by depositing a certified copy of its articles of incorporation and bylaws and Mercantile Certificate Registry or similar document (duly notarized with the Apostille or legalized before the Dominican Consulate of the country where the commercial entity is incorporated), along with the minutes of the shareholders' meeting approving the establishment of a branch in the Dominican Republic.

Also, according to the General Law of Commercial companies and Individual Enterprise of Limited Liability, foreign entities are subject to registration in the Dominican Republic when, in accordance with the referred company law when doing any business in the Dominican Republic, and pursuant to the Law of Mercantile Registry, all commercial entities must be registered in the corresponding Chamber of Commerce, which will depend on the location of the domicile fixed in the Dominican Republic. Certificate Registry must be renewed every two years and updated as needed.

## TAXATION

### INCOME TAX

The Dominican Republic has a taxation system that is mainly territorial. In this sense, individuals as well as legal entities, nationals and foreign, are subject to tax payment of their rent originated from Dominican source.

#### Applicable Rate to Individuals

All persons whose annual income amounts to DOP290,243.01 will be subject to the payment of income tax of a rate of 15% to 25%, depending on the amount of their income. This amount is annually adjusted by inflation.

#### Applicable Rate to Legal Entities

An income tax rate of 29% is applied to legal entities domiciled in the country.

### WITHHOLDING AGENT

The Dominican Tax Code requires that some persons, depending on their condition, act as withholding agents with regard to the taxable income that they pay to certain people, among which are:

- The employer with regard to the payments made to their workers every month, in accordance with the fixed rate established for each case;
- Commercial entities, 10% in relation to the dividend payment made from a Dominican source, disbursed to its shareholders, regardless of whether it's an individual, legal entity, foreign or national.

The legal entities that acquire shares or quotas, 1% with regard to the value paid to the seller of the shares or quotas, whether an individual, legal entity, national or foreigner, which constitutes a payment to the tax on capital earning, generated in occasion to the sale, if applicable.

- The legal entities, with regard to the payments and commissions paid to individuals that are not dependent on them.

### DIVIDENDS

A dividend is all distributions made by a legal entity to its shareholders or partners, by virtue of their participation, but does not include the distribution made in shares or quotas in favor of its shareholder or partner. The dividends from Dominican sources disbursed to individuals or corporations are taxed at a 10% rate.

A 10% withholding applies to all repatriation of local income from a locally established branch to its parent company abroad.

## **Foreign Payments and Tax Withholding in the Source**

All payments or credits from Dominican sources made to persons neither resident nor domiciled in the Dominican Republic are subject to a withholding of 29%, with few exceptions.

### **Interest Paid**

Payments or credits from Dominican sources proceeding from loans contracted with foreign institutions are subject to a withholding of 10%.

## **TAX ON ASSETS**

Commercial entities must annually pay a 1% tax on all their assets. This payment can be made in two parts, with six months of separation from one another; the first payment is due at the same date as the income tax. A tax asset becomes a credit for income tax payments.

## **TAX ON REAL ESTATE PROPERTY AND TRANSFER**

The tax on real estate property (IPI/IVSS) imposes a 1% annual rate on all real estate properties destined for living or commercial activities and/or those urban properties with no edification whose proprietor is a individual. This tax is applicable only to individuals. Real estate located in rural zones dedicated to agriculture labor, or properties that are worth less than DOP6.6 million, are exempt from payment of this tax.

Business entities pay taxes on real estate properties through the payment of the asset tax, in which all real estate property that the company owns must be included.

On the other hand, the transference of real estate property is subject to a fixed rate of at least 3% of the fiscal value of the property.

## **TAX ON TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES – VAT TAX**

The Tax on transfer of Industrialized Goods and Services (*Impuesto sobre Transferencia de Bienes Industrializados y Servicios, ITBIS*) or valued added tax, is set on:

- The transfer of industrialized goods that have been submitted to some type of transformation process (industrialization), including imports;
- The import of industrialized goods; and
- The provision of services and leases.

Individuals as well as moral entities that perform one of the activities enumerated above are subject to the payment of said tax, which rate is currently 18%.

The payment of this tax should be made within 20 days after the period to declare month by month, and in case of import, at the moment that the duty tax is paid. Late payments will incur surcharges and interest.

## **TAX TO SELECTIVE CONSUMPTION** (*IMPUESTO SELECTIVO AL CONSUMO, ISC*)

In accordance with Title IV of the Tax Code, and its modifications, certain goods of national production, for its fabrication and import are held to a special tax, which falls exclusively on them, denominated Selective Tax to Consumption (ISC). These goods are:

- Alcoholic beverages
- Tobacco products
- Telecommunication services
- Payments made by check by entities of financial intermediation, as well as the payments made by wire transfers
- Insurance in general
- Petroleum products

## **NATIONAL REGISTRY OF TAXPAYERS**

All individuals and corporations doing business in the country must register with the National Registry of Taxpayers.

### **Resolution of Tax Disputes**

The decisions taken by the tax authority can, in most cases, be submitted for a revision process, and then through the different resources available in accordance to the Tax Code, before the Tributary and Administrative Court.

### **Infractions and Sanctions**

The Tax Code defines tax offenses in detail. Misdemeanors include nonfraudulent tax evasion, delay, noncompliance by taxpayers as well as noncompliance by tax officials and other government employees. More serious infractions include tax fraud, clandestine trade of taxable products and falsification of values. Sanctions for these infractions range from revocation of licenses, business closing, impoundment and fines, up to imprisonment.

## **INCENTIVE LAWS**

In order to promote and incentivize the investment, national or foreign, in some sectors of the economy, several laws have granted certain exemptions in the



payment of taxes that derive from the activity that is undertaken, from which we can name, among others, the following:

- Law No. 16-95 of Foreign Investment
- Law No. 158-01 of Encouragement to the Tourism Development for the Poles of Few Resources and New Poles in the Provinces and Localities of Great Potential
- Law No. 28-01 of Special Cross-Border Development
- Law No. 329-07 of Competition and Industrial Innovation
- Law No. 8-90 of Regulation and Encouragement of Free Zones
- Law No. 171-07 of Incentives to Retired and Renter of Foreign Source
- Law No. 57-07 of Renewable Energy
- Law No. 108-10 for the Promotion of the Cinematographic Activity

## INTELLECTUAL (INDUSTRIAL) PROPERTY

The Industrial Property Law (Law No. 20-00 of 8 May 2000) represents a considerable legal and institutional advance and complies with the 1995 Marrakesh “TRIPS” Agreement. It promotes the dissemination and transfer of technology, and the socioeconomic and technological benefits for the country.

### PATENTS

Every innovative idea that is the creation of human intellect and that can be applied in the industry field can be subject to a patent. Said innovative idea can refer to a product or a new procedure.

Patent applications are submitted with certain documents and information to the National Office of Industrial Property (*Oficina Nacional de la Propiedad Industrial-ONAPI*).

Once the application is considered and approved, the National Office of Industrial Property proceeds to:

- Record the patent in the appropriate registry
- Provide the applicant with a certificate of the patent document
- Issue a duplicate of the patent registration document upon request by the patent owner

**Licenses:** The proprietor or applicant of a patent can grant exploitation licenses to third parties, and must deposit the contracts that grant them at the ONAPI.

Said entity can grant in some cases, if it deems it appropriate: mandatory licenses because of a refusal to negotiate; mandatory license for lack of exploitation; and/or mandatory license for anticompetitive practices.

## Terms

The maximum duration of a patent registration is 20 years, contingent on the payment of an obligatory annual fee. Payment of the first fee is made before the beginning of the third year. Failure to pay the fee results in expiration of the patent.

## TRADEMARKS

In accordance with the Dominican Law of Intellectual Property, a trademark is any sign or combination of signs subject of graphic representation apt to distinguish the products or services of a business entity, of the products or services from another business entity.

In order to obtain a trademark, the following documentation and information must be submitted to the National Office of Industrial Property:

- Name and domicile of the petitioner, or name and domicile of the representative of the petitioner, if the latter does not have a domicile or establishment in the country
- Name of the trademark in question if it is a nominative trademark
- A reproduction of the trademark if it is a styled, figurative, mixed or three-dimensional trademark
- Complete listing of the qualifying trademark categories, according to the International Classification of Products and Services of Nice, identifying the corresponding numbers
- Proof of payment of established fee

## Terms

The registration of a trademark expires after a period of 10 years; however, it can be renewed for periods of the same duration. The registration of a trademark can be cancelled at the request of an interested party if said trademark hasn't been utilized in the country for over a period of three years.

## LABOR LAW

In compliance with the Dominican Labor Code, all employers must submit records to the Ministry of Labor of each employee, along with work, salary, vacation schedules, inspections and overtime.

## SALARIES

The Labor Code authorizes a National Salary Committee to establish the national minimum wage for different sectors. The wage scale is structured according to the size of the company the employee works for and the sector of industry in which they are involved.

## HIRING OF FOREIGNERS

The law requires a labor contract to be filed with the Ministry of Labor before hiring foreigners to work in the country in order to determine if the contract is justified, i.e., if local personnel could not perform the work. This is a pre-requisite for residency. As a rule, contracts for technicians or management personnel are routinely approved. At least 80% of the total number of employees in a corporation must be Dominican nationals.

## EMPLOYEE RIGHTS

The Dominican Labor Code confers certain rights to workers, including:

- A Christmas bonus (usually one month's salary)
- A profit-sharing bonus
- Paid vacation leave
- Severance and other benefits proportional to job tenure in the event of "unjustified" dismissal (the Code defines "just cause" in detail)
- Three months of paid maternity leave
- Special protection for employees engaged in forming a labor union

These rights are well known to the labor force in general and claims against employers are common. Labor Courts tend to favor the workers. Therefore, employers must be careful to adhere to the detailed provisions of the Code.

While Dominican workers are legally free to form labor unions, few have actually been established in free zone companies.

## SOCIAL SECURITY

The Law No. 87-01 establishes the Dominican Social Security System (*Sistema Nacional de Seguridad Social, SDSS*), through which a regime is destined to

guarantee, through the State and the citizens, that all the population is protected against the risks of aging, incapacity, suspension by advance age, survival, illness, maternity, childbearing and labor risks. Public organizations as well as private organizations participate in it.

In spite of there being three types of financing regimes, we will only comment on the contributing one, in which the employees (regardless of whether they are public or private) together with the employer distribute the cost of the social security. The contribution made in this regime is 9.97% of the employee's total salary, which is financed with an employee contribution of 2.87% and 7.10% contributed by the employer.

### **LAW NO. 173 FOR THE PROTECTION OF THE AGENTS/IMPORTERS OF GOODS AND PRODUCTS**

This Law aims to protect those individuals or legal entities that, within the Dominican Republic, are dedicated to the distribution of goods and services produced by foreign companies. The provisions of Law 173 are of public policy and, among other things, prohibit termination of the concession contract without just cause. It also sets out factors to be taken into account when calculating the compensation that corresponds to the concessionaire, in occasion to the damages that the termination of the contract of concession may cause, and these are quite favorable for the latter one.

In order to enjoy the privileges granted by the Law, it is necessary to register before the Central Bank of the Dominican Republic the foreign companies of which the concessionaire acts as agent through a request to that institution, which must include the name of the foreign company and its management, together with documents that prove the relationship between them.

Currently, contracts with the United States companies or individuals are outside the framework of Law 173 unless stipulated otherwise by application of DR-CAFTA rules.

### **TRUSTS IN THE DOMINICAN REPUBLIC**

On 16 July 2011 Law No. 189-11 was enacted for the Development of the Mortgage Market and Trusts in the Dominican Republic, which in addition to other important matters, introduces the much anticipated Trust. In addition to said Law, several rulings have been enacted for the application of the different legal figures established by the Law.

The trust is defined by our Law as the act through which one or more people, individual or legal entity (called grantor(s)) transfer property rights or other real or personal rights, to one or more legal entities (trustee), for the incorporation

of a separate estate or trust estate. The trustee administers the estate in accordance with the instructions of the grantor(s), in favor of one or several people called beneficiaries, with the obligation to reinstate them once the extinction of said act, to the person designated in such, or in accordance with the law. The trustee cannot be designated beneficiary of the trust.

Only the following people can be trustee:

- The legal entities incorporated in accordance with the laws of the Dominican Republic, for the sole purpose of acting as trustee of trusts;
- The administrators of investment funds;
- The intermediary of values;
- The multiple banks;
- The associations of savings and loans; and
- Other entities of financial intermediation previously authorized to those ends by the Monetary Board.

Even though a trust can be created to serve any purpose or legal end that is not contrary to the morals, public order and good manners, the Law has identified and established six kinds of trusts:

- Succession Planning Trust
- Cultural, Philanthropist and Educative Trust
- Investment Trust
- Real Estate Investment Trust
- Public Offering of Securities and Products Trust
- Guarantee Trust

Likewise, it is important to point out that the creation of a trust comes with certain tax exemptions, such as the transfer of assets to the trust by the grantor, which will be exempt from income tax and the tax of capital earning, in the cases that are applicable.

## **ENVIRONMENT**

The hope of achieving the conservation, protection, improvement and restoration of the environment and natural resources while ensuring their sustainable use prompted the enactment of the General Law of Environment and Natural Resources, No. 64-00. Additionally, the Dominican Republic has different regulations for the specific protection of the various natural resources that are part of the environment. The agency responsible for enforcing the rules related to the environment, ecosystems and natural resources is the Ministry of Environment and Natural Resources.

For its part, Law No. 64-00 provides that any project, infrastructure work, industry, or any other activity which by its nature can affect, in one way or another, the environment and natural resources must obtain a permit or an environmental license, depending on the magnitude of the effects that it may cause, for which the payment of a bond is mandatory.

This law also provides tax incentives to investments destined for the protection of the environment or its improvement and the sustainable use of natural resources.

Finally, the Ministry of Environment and Natural Resources is empowered to impose administrative sanctions such as fines and the limitation and restriction of activities that cause harm or risk to the environment, the confiscation of objects used to cause them, and in extreme cases partial or total closure of the premises where the violation takes place. For its part, the court may punish the violations of the law and committing environmental crimes with imprisonment of six days to three years.

## **PUBLIC PROCUREMENT**

The hiring of public works and concessions, as well as purchase and procurement of goods, services, consulting and rent with option to own and leasing, is regulated by Law No. 340-06 of Procurement and Contracting of Goods, Services, Construction and Concessions and its amendments, and its ruling of application, the Decree No. 543-12 of 6 September 2012, enacted by the President Danilo Medina (this decree revokes and replaces the previous Decree No. 490-07, of Procurement and Contracting of Goods, Services, Construction and Concessions).

The contracts are subject to one of the following procedures:

- Competitive bidding
- Restricted tendering
- Draw works
- Direct purchase or contracting
- Price comparison
- Minor purchases
- Reverse auction

On the other hand, concessions can only be granted through public bidding, whether national or international, and they can be made by nationals, foreign or both, but its convocation must always be made by a convocation published in the national press. The duration of the concession can never be greater than 75% of the usefulness of the good, work or service.

No sale, contract or granted concession enjoys automatic exemption of taxes and tributes; for that, the approval of the same by the National Congress is required.

## **MONETARY AND FINANCIAL SYSTEM**

Under the provisions of the Monetary and Financial Law No. 183-02, the Monetary and Financial Administration consists of:

- The Monetary Board
- The Central Bank of the Dominican Republic
- The Superintendence of Banks of the Dominican Republic

The previously mentioned law has two objectives, one relating to the regulation of the monetary system on the stability of currency, and the other directed to the regulation of the financial system, dedicated to ensuring compliance with the liquidity conditions, solvency and management that any financial intermediary institutions must fulfill.

Among the most significant contributions in the law are:

- The free convertibility of national currency against other currencies;
- Allowing the participation of foreign investment and financial intermediation through representative offices;
- Requiring institutions of financial intermediation, for the purpose of protection of the individual, the obligation of banking secrecy about which they receive deposits from the public. In this sense, they must publish the price of the various services they provide to their customers;
- Creating rules to protect users of banking services;
- In order to ensure transparency in the management of financial intermediation entities, documents related to transactions must be retained for a period of 10 years after the transaction. They should also make public their financial statements.

## **SECURITIES MARKET**

In order to promote the development of the Securities Market, produce the increment of the offer and demand for securities that respond to the necessities of the economy, secure and organize an efficient and transparent securities market, Law No. 19-00 of Security Market, and its Ruling for use, were enacted. The organisms in charge of overseeing the law are the Securities Superintendence (*Superintendencia de Valores*) and the National Board of Securities (*Consejo Nacional de Valores*).

In order to make a public offering of securities, the following steps need to be taken:

- Request to the Securities Superintendence to approve the public offering;
- Register as issuer, and register the securities in the National Registration of Securities, Exchanges and Products;
- Proceed with the negotiation of the securities.

Among the main dispositions of the law are:

- The regulation of the participants that take part in the market
- The obligation to keep all private information secret
- Giving the Superintendence of Securities (*Superintendencia de Valores*) the faculty to impose administrative sanctions that range from DOP50,000 to DOP1 million; if there is recidivism, sanctions can be doubled. In addition to these sanctions, the courts can impose a fine from DOP500,000 to DOP10 million and imprisonment from six months to two years, depending on the severity of the infraction.

On the other hand, Law No. 189-11 for the Development of the Mortgage Market and Trusts in the Dominican Republic states that the financial entities that are authorized to operate in the Dominican Republic by the corresponding organisms, can issue values of public offering for capturing resources destined to the mortgage financing of housing and the construction sector, such as: (i) mortgage letters; (ii) mortgage bonuses; (iii) mortgage bonds; (iv) contracts of mortgage participation; (v) mutual endorsable mortgages; (vi) mutual mortgages non-endorsable; (vii) shares of closed funds of investments and mutual funds or open; (viii) values of trusts; (ix) security mortgage values; and (x) those other values authorized by the Monetary and Financial Authority.

The mortgage loans that are financed through the values and instruments listed above cannot be seized, nor encumbered by creditors of the entity of financial intermediation which originated of the loans list, and issuer of the values backed by same.

## **MONEY LAUNDERING**

In accordance with Law No. 72-02 against the Laundering of Assets from Illicit Traffic of Drugs and Controlled Substances and other serious infringements, a person is involved in money laundering when he or she transfers, acquires, possesses, manages, hides, conceals or prevents the determination of those real property, funds or instruments that are the product of a serious offense, and is aware of it. People who are associated or facilitate the commission of such activities are also guilty of money laundering.



On the other hand, some obligations, designed to prevent money laundering, are imposed to different persons, such as:

- Customer identification and/or third party beneficiaries
- Reporting of cash transactions exceeding USD10,000
- Reporting suspicious transactions
- Retaining documents that support in detail the transaction, for a period of 10 years, among others.

The infractions established in the law are punishable with imprisonment for three to 20 years and fines.

## **BUSINESS PRACTICES: RIGHTS OF COMPETITION AND CONSUMER**

### **Antitrust**

The Dominican Republic's Constitution consecrates the right to free enterprise, trade and industry. Law No. 42-08 on the Protection of Competition for its part, and in order to promote effective fair trade, competition and commercial good faith, forbids monopolies and prohibits those involved in the economic activity of markets (whether individuals or business entities) any action that causes damage to the benefit of consumers and users of goods and services in the country, among which are the following:

- Anticompetitive agreements
- Abuse of dominant position
- Acts of unfair competition

The National Commission for Competition Defense is the entity created to ensure the compliance of said law.

### **Bribery in Commerce and Investment**

Bribery in commerce and investment is sanctioned by Law No. 448-06. Said law sanctions individuals and/or legal entities that offer, promise or grant to a public authority some sort of payment or benefit in return from said functionary not making or making a pertinent act to the exercise of his/her functions that affects the commerce or investment, national or international. The sanction to these actions, for the public functionary as well as the briber, is three to 10 years of imprisonment and the payment of the corresponding fine. Additionally, the briber can be disqualified from the exercise of the commercial activity for a period of two to five years. In the event that the briber is a moral entity, the imprisonment reaches its legal representative and the entity is condemned to its closure or intervention for a period of two to five years. The recidivism of these actions is punished with imprisonment and more severe fines.

## CONSUMER RIGHTS

In order to guarantee an equal relationship among providers, consumers of goods and users of services, Law No. 358-05 of Protection of Rights to the Consumer or Users was approved. This law, in addition to creating the National Institute of Protection of the Consumer Rights (Pro-Consumer) (*Instituto Nacional de Protección de los Derechos del Consumidor "Pro-Consumidor"*) to guarantee the fulfillment of the dispositions contained on it, recognizes in favor of the consumers or users of services, fundamental rights that the providers must comply with, such as the creation of a mechanism for the consumers or users of services so they can claim the rights that the law grants them. It favors the consumer whenever there is a need interpreting the law or on any contract of sale of products or services.

For the specific case of adhesion contracts, they must be deposited in the Executive Direction of Pro-Consumer, having the faculties to request that the provider modify clauses that generate obligations that are contrary to the rights and interests of the consumers and users. Likewise, the consumers or users can request the review of standard form contracts. In this vein, the following clauses are considered void:

- The ones that limit or reduce the responsibility of the provider in regard to the defects or vices of the products or services;
- Those that cause some sort of limitation or renouncement of the rights that the law recognizes to the consumers and users, or excessively favor the rights of the provider;
- Exclusively imposes the use of alternative conflict resolution;
- Allow the provider the modification without previous notice to the terms and conditions of the contract, among others.

In terms of the rights that the law recognizes to the consumer or user of services, it emphasizes the right of safety, guarantee, education and information for the consumption and use of the goods and services. The exercise of this right forces the providers to provide the consumer or user, on the label or similar support, in the Spanish language, clear form, accurate, suitable and sufficient information to ensure the preservation of health, security and economical interests of the consumer or user of services, so the consumer is able to make an adequate and reasonable choice.

Finally, this law establishes the joint civil liability of manufacturers, importers, distributors, retailers, providers and the other people that intervene in the commercialization of goods and services, in front of the consumers and users of services, with regard to the losses and damages that they might suffer, as a result of the use of the product or service given.

## TRADE

With the approval of the Dominican Republic – Central American Free Trade Agreement (DR-CAFTA), the implementation of which began on 1 March 2007, there is a broadening of the commercial perspectives of the Dominican Republic and a strengthening of the commercial relationship with the United States and the other five signatory parties.

Among the objectives and benefits of the DR-CAFTA, we can mention:

- The strengthening of the relationship with the world's largest economy
- The elimination of commercial obstacles and the smoothness of trans-border transactions among the signatory parties
- The promotion of conditions of loyal competition within the free trade zone
- The increase of investment opportunities
- The creation of a trustworthy environment with straightforward commercial and investment rules
- The strengthening of the institutions
- The stimulation of commercial ventures
- The enforcement of transparency in public procurement

The scope of the agreement includes commercial transactions of products and services and it contains provisions that stimulate investment, as well as the protection of intellectual property rights, access to government contracts and respect to labor and environmental laws. It also contains norms that stimulate transparency and the solution of controversies arising out of the commercial exchange among the signatory parties.

Among the other relevant treaties and agreements that the Dominican Republic has signed and that contribute to its commercial development are:

**Agreement of Economic Association between the European Union and the Cariforo countries (*Acuerdo de Asociación Económica, AAE*)**, which was signed by the Dominican Republic on 15 October 2008. The purpose of this treaty is to help the countries of the Cariforum State to give the necessary steps to achieve the sustainable development of their nations, throughout and also in order to accomplish the increase of investments and the initiative of the private sector, to improve the commercial politics of the states of the Cariforum and the matters relating to commerce, their integration in the global economy, the elimination of poverty, among others.

To these ends, the signing parties of the European Union, from the moment of the subscription of the agreement, agreed that the imported goods that came

from the countries that conform the CARIFORO (CARICOM and Dominican Republic) will be free of tariff, while the CARIFORO nations will be doing it gradually

Additionally and within the objectives of the agreement is the intention of strengthening the relations between the signing parties, which will aid the Dominican Republic to depend less on the United States economy.

**Free Trade Agreement Dominican Republic – CARICOM.** This agreement was subscribed between the Dominican Republic and 13 countries of the Community of the Caribbean. It was subscribed on 22 August 1998, and put into effect on 1 December 2001.

In terms of the lowering of the tariff duties of the products imported by the signatory parties, and due to the inequality of the economic development of some of the parties, two regimes were established: (a) one that reaches the Dominican Republic and the most developed nations of the CARICOM, in which the relationship is reciprocal, and free of duty tax; and (b) another, with the less developed nations of the CARICOM, where the relationship is asymmetrical and the Dominican Republic is treated as a favored nation.

If there is any discrepancy between the dispositions of the AAE and this agreement, the disposition on either one of them that establishes the most freedom in commerce will be the one that will be applied.

On the other hand, imported products that were manufactured in a Free Zone will be encumbered with the tariff of favorite nation.

**Free Trade Agreement between the Dominican Republic and Central America.** This agreement was undersigned by the Dominican Republic on 16 April 1998, and was put into effect in 2001. This agreement established the elimination of the duty tax on goods imported by the signing parties. In case a clause of this agreement and the DR-CAFTA are contradictory, the disposition on either one of them that establishes the most commercial freedom will be the one that will be applied.

**Agreement of Partial Reach Between the Dominican Republic and the Panama Republic.** This agreement was subscribed on 1985; however, it was put in effect in 2003. This agreement has the peculiarity that it contains a list of products that are free from tariff by both parties, a list of products that are free from duty tax only by the Dominican Republic but not by the Panama Republic, and another list of products that are not held to duty tax by the Panama Republic, but not by the Dominican Republic.

## RESIDENCY/IMMIGRATION

The process for obtaining a Dominican residency begins with obtaining a temporary residence visa, granted by the Ministry of Exterior Relations of the the country of origin of the individual, followed by the permanent residency and finally naturalization and citizenship. A special regime applies to investments residency requests.

### APPLICATION FOR NATIONALITY

Law No. 1683 of 21 April 1948 and its amendments establish the time frame needed, depending on the circumstances of each case, in order to be able to request the Dominican nationality. The time frames required are usually between six months of legal residency in the country to two years. Travel outside the country for less than a year, with the intention to return, does not interrupt the continuity of the period of residency. The application is made via the Ministry of Interior and Police and eventually granted by Presidential Decree. The procedure typically takes 12 to 18 months.

## CONFLICT RESOLUTION

The judicial administration of the Dominican Republic is placed in the hands of the Judicial Branch, which is comprised as follows:

- First Instance courts (civil and commercial or criminal)
- Courts of Appeals
- Supreme Court of Justice

Additionally, there are specialized courts that deal only with those matters that the law expressly grants them faculty, such is the case of Labor courts, Family court, District Court of Girls, Boys and Teenagers, Real Estate Jurisdiction, Administrative and Tributary Court, Superior Electoral Court and Constitutional Court.

A foreigner that doesn't have a legal domicile in the country, unless it is a commercial entity duly registered in the Dominican Republic, must present a *judicatum solvi* bond before it is able to introduce a claim, in order to guarantee any damage that the lawsuit could cause to the local party, unless the latter renounces this right. Parties may waive this bond in a contract.

The Dominican courts can rule on any infraction caused by a foreigner in our country, and those conflicts that rise from commercial relationships where the Dominican jurisdiction is chosen as the forum for the resolution of conflicts between the parties.

## **ALTERNATIVE CONFLICT RESOLUTION**

Among the different types of alternative conflict resolution are mediation, conciliation, and arbitration; the most predominant are conciliation and arbitration.

The conciliation is very utilized in our country, mainly due to the fact that some areas, such as labor suits or claims under the Protection to the Consumer Law, for example, require that a conciliatory phase must take place before going to the Dominican justice system.

Additionally, the use of arbitration to settle conflicts that arise in commercial activities keeps growing. Due to this, the Law of Commercial Arbitration, No. 489-08 was enacted. This law overrules the articles of the Civil Procedure Code that previously reigned on the matter.

This law is applied to all arbitration that takes place in the Dominican Republic, whether parties are nationals or internationals.

## **RECOGNITION OF ARBITRATION AWARD AND APPLICATION OF FOREIGN RULINGS AND AWARDS**

If the forced execution of the arbitration award is needed, it will be required to the Court of First Instance of the place it was dictated.

On the other hand, the decisions that come from competent foreign authorities, including those taken by courts or foreign arbitrators, are executable in the Dominican Republic, as long as the party that seeks the execution requests to the Court of First Instance of the Dominican Republic, the corresponding executor.

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