

Pellerano & Herrera  
*Attorneys at law*

DOING BUSINESS IN THE  
DOMINICAN REPUBLIC  
2010



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This Legal Guide is a publication of the Dominican Republic law firm of Pellerano & Herrera. It has been prepared for those interested in investing in the Dominican Republic and seeks to provide information about the country, the laws that regulate the Dominican economic and social environment, and the Dominican investment climate.

This Legal Guide does not constitute legal advice or a legal opinion about any specific matter; should legal advice or other professional assistance be required, the services of a competent professional person should be sought.

This Legal Guide contains information that has been updated as of February 2010.

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## FOREWORD

### **The Dominican Republic: An excellent investment climate.**

The Dominican Republic is a country that progresses and advances. The facts show that the country has been growing in the last several years, in a consistent manner in all areas. A careful look at the economic indicators shows that this growth has been sustained and indicates that the Dominican economy is dynamic.

An increasing number of corporate transactions involving foreign entities are taking place in the Dominican Republic. This ranges from Mergers and Acquisitions to investments in important - and growing- Dominican industries including mining, construction, insurance and the project finance of hydro-electric facilities, power plants and parts. The country is also seeing more securitization of corporate receivables and other assets.

The legal environment for these and similar types of corporate financings is quite favorable, as a wide range of laws have been revised or enacted in recent years to promote foreign investment.

The Dominican Republic is a country that is recognized for the political stability and social peace that it enjoys; the warmth with which it opens its doors and its heart to receive those who visit it; and the emotion with which it prepares itself to receive them.

In this legal guide, Pellerano & Herrera presents to its readers the information that will help them to identify investment opportunities in the country's different industries, along with the laws and regulations that govern such investments and the ability of individuals who are not citizens to live and carry out commercial and business activities in the country.

# CULTURAL, POLITICAL AND ECONOMIC CONTEXT



## GENERAL INFORMATION

The Dominican Republic is a country that offers multiple business and investment opportunities as a result of a variety of different factors, including the following:

**Geographical Position:** The Dominican Republic, located in the center of the Caribbean, enjoys a competitive advantage by virtue of its enviable geographic position. This allows it to access with relative ease the North, South, and Central America markets, as well as to serve as a bridge between those markets and the European continent for the commercialization of goods and services.

**Legal Framework:** The Dominican economy is supported by a streamlined regulatory process, which has led to a variety of measures opening and commercially integrating the economy in recent years. Having recognized that the Dominican market depends on international economic integration, the Dominican government has opted to generate a legal foundation that allows for sustained economic stability as well as the liberty and security for the commercialization of goods and services to the different economic agents that participate in the economy.

**Economic Stability:** By virtue of a regular government effort to ensure development of, and investment in, the country's markets, the Dominican Republic has seen a consistent and growing economic stability during the last several years.

## GEOGRAPHY

The Dominican Republic shares the island of La Hispaniola with Haiti, situated in the Caribbean between Cuba and Puerto Rico. With an area of 48,442 square kilometers (or about 18,000 square miles), and occupying two-thirds of the island, the Dominican Republic is the second largest nation in the Caribbean.

The Dominican Republic has a subtropical climate, with an average annual temperature of 26°C (78°F) and humidity that varies between 65% and 80%, with two main rainy seasons: from May to July, and from October to November.

The country has a large geographical diversity: extensive white sandy beaches, fertile valleys with beautiful vegetation, desert areas with dune formations, and impressive mountain chains. Pico Duarte, which is the highest mountain in the Caribbean, and Lake Enriquillo, which is the lowest point in the Caribbean, illustrate this diversity, which also extends to the country's fauna and flora.

## POPULATION AND DEMOGRAPHY

The Dominican population is the result of an intense mixture of races, in which three main components participated: Indians, Europeans, and Africans. This process has made the Dominican a synthesis of the best of several different worlds.

From a cultural point of view, there is a Hispanic influence, which is evidenced by the fact that Spanish is the Dominican Republic's official language and by the fact that most of the population is Catholic, although the Dominican Constitution establishes freedom of religion.

The 2002 National Census indicated that the Dominican population was about 8.6 million people. Estimates made more recently, in 2008, indicated that the population was around 9.5 million people. In terms of the age of the total population: 47% of Dominicans are between 15 and 44 years old; 34% below 15 years of age; and 19% over 45. The country has a large and varied work force, in which university graduates, workers with basic skills and knowledge, and the general labor force are intertwined.

## INFRASTRUCTURE

The Dominican Republic has been preparing a broad, sufficient, and developed physical infrastructure adjusted to the requirements of a society focused towards the production and commercialization of goods and services. The communication and transportation facilities are of particular note.

**Roads:** The Dominican roadways are among the best in the region, joining practically all locations in the country.

**Airports:** The country has a modern, broad, and efficient airport system formed by eight international airports located throughout the nation, which also provide extensive domestic flights.

**Ports:** The country has 11 important ports located close to key production centers. The most important ports are Puerto de Haina, Santo Domingo, and Boca Chica, which is one of the most modern and dynamic ports in the Caribbean.

**Telecommunications:** The Dominican Republic's telecommunications system is one of the main competitive advantages that the country has. This service is provided primarily by private suppliers and it is among the most advanced and efficient telecommunications systems in the world.

## POLITICAL AND ECONOMIC SITUATION

The Constitution of the Dominican Republic defines the government as democratic, republican, and presidential. Likewise, it indicates that the exercise of power is distributed in three independent branches: executive, legislative, and judicial.

The Dominican Republic is an indisputable democracy. Recent elections have taken place with absolute transparency, without any questioning, and



with large voter turnout. The traditional political leadership has been slowly replaced by a new generation of young leaders who aspire to develop a viable economy encompassing global competition, a responsible public sector, and decentralization.

The Dominican economy presents two clearly defined segments: (i) the external economy, for which the main variables for growth are tourism and industrial free zones, and (ii) the domestic economy, for which the dynamic growth sectors have been communications, construction, electricity, commerce, and transportation.

During the last few years, the Dominican Republic has had an enviable macroeconomic stability. The results for the period from the last year illustrate:

1. A growth rate of 5.4%.
2. A stable exchange rate between RD\$33.83 and RD\$36.07 for US\$1.00.
3. Accumulated inflation during the period of 10.76%.

During the decade of the 1990s, the Dominican Republic initiated the first wave of reforms to modernize the country's legal system and the economic framework under which companies operate in the country. The goals were to: (i) adapt the economy to the competition being generated in the international environment; (ii) facilitate the ability of economic groups to compete in the regional and global economy; and (iii) promote the flow of foreign capital. This process is still ongoing, with a second wave initiated this decade to modernize the legal system as it regulates specific industries, such as the banking and monetary system, as well as the rules governing corporations, competition, and consumer protection.

The main reforms that have taken place include new laws with respect to telecommunications, the securities markets, industrial property, intellectual property, exports, the environment, fiscal reform, electricity, electronic commerce, monetary and financial reform, migration, elections, insurance, and the national police, among others.

Social reforms also have occupied a large part of the legislative agenda. The most significant social reforms were the adoption of the code for the protection of boys, girls, and teenagers and the Social Security law.

Finally, there have been legislative measures that have been adopted for the implementation of the DR-CAFTA, primarily in the area of intellectual property.

The most significant reforms that have taken place over the last few years to promote the modernization of the Dominican economy and local and foreign investment are discussed below.

## THE MODERNIZATION OF THE DOMINICAN LEGAL SYSTEM

## SECURITIES MARKETS

The public securities market of the Dominican Republic is regulated by Law 19-00 of Securities Market, adopted on May 8, 2000; Decree No. 201-02 issued by the Executive Power on March 19, 2002, which contains the rules for the application of Law 19-00; and Decree No. 729-04, dated August 3, 2004, which includes the new rules for the application of that law.

The main objective of this legislation is to promote the development of a public securities market and to encourage increases in the purchase and sale of securities in a secure and transparent climate. This body of law forms the legal framework that regulates the public offer of securities, the creation and issue of shares of securities, and the creation and activities of the different parties in the market. Law 19-00 regulates self-regulated participants, such as the stock exchange, products markets, and securities intermediaries, as well as non-self-regulated parties, such as the compensation chambers, the centralized deposit of securities, the risk qualifiers, investment funds, administrators of funds, mutual funds, and the creators of shares of stock; it also establishes sanctions for persons and participants in the securities market who violate these rules. Likewise, it creates the government entities in charge of supervising and regulating the system and its agents: the Superintendent of Securities and the Securities National Council.

This body of law also establishes the concept of confidential or insider information and prohibits persons who have this information from negotiating securities for their own benefit or the benefit of third parties, where the price may be influenced by virtue of that information, until it is public knowledge.

Finally, Law 19-00 creates an income tax exemption (for domestic and foreign individuals and business entities) for dividends resulting from investments made in fixed instruments and other investments. Likewise, Law 19-00 creates exemptions for the purchase and sale of securities approved by the Securities Superintendent, as well as the yield, the securities transfer tax, and the withholding tax established by Article 309 of the Tax Code.

## MONETARY AND FINANCIAL SYSTEM

The Dominican monetary and exchange system is regulated by Monetary and Financial Law No. 183-02, from November 16, 2002. This law establishes a series of rules that seek, with respect to the banking system, to regulate financial intermediaries to guarantee the stability of the Dominican banking system. The monetary system is under the supervision, control, and regulation of the Monetary and Financial Administration, which is comprised by the Monetary Board, the Central Bank, and the Bank Superintendent.

With the goal of promoting and making financial operations more flexible, this law establishes the principle of free convertibility of the national currency with other currencies. In this sense, it establishes that parties have the right to make transactions in foreign currency in accordance with general contracting

rules and that debts will be paid in the currency to which the parties have agreed. Likewise, this law establishes the free determination of interest rates, which parties can establish using market conditions.

#### FOREIGN INVESTMENT

Law 16-95 for Foreign Investment, adopted on November 20, 1995, along with the governing rules in Decree No. 380-96, later modified by Decree No. 163-97, established for the first time the principle of equality in the treatment of foreign and national investments. This principle later served as the basis for other legal developments, such as the elimination of the special requirements for the purchase of real estate property by foreigners and the opening of the banking system for foreign capital established in the Monetary and Financial Law. The only remaining restrictions on foreign investment are where national security matters are implicated.

For purposes of collecting statistics only, a foreign investor must notify the Central Bank of its investment within 90 days to obtain an automatic Certificate of Registration of Foreign Investment. At one point, this certificate granted the investor the right to freely transfer abroad the invested capital, including the earnings and the complete benefits declared during each fiscal year, after the payment of corresponding taxes. After the Monetary and Financial Law and the liberalization of the currency exchange that resulted, this certificate serves now only for statistical purposes, as noted above.

To promote foreign investment in the country and to enhance exports, the Center for Investment and Export (CEI-RD) has been created. Its mission is to promote exports and to attract foreign and national capital by improving the general export and investment climate. Toward that end, the CEI-RD offers the following free services to investors:

1. Specific information on investment areas;
2. Preparing specialized discussions for investors;
3. Coordinating roundtable discussions;
4. Receiving complaints;
5. Following up on specific cases;
6. Involving itself in cases of conflicts between investors and the public administration; and,
7. Consulting on the national tax system.

#### PROMOTION OF NATIONAL COMPETITIVENESS

The government is executing an ambitious program for promoting the competitiveness of the country's industries. Toward that end, the regulatory developments that have taken place include:

1. Creation of the Competition National Council on November 3, 2001 by means of a Presidential Decree, and ratified on January 10, 2006 by means of Law No. 1-06, with the object of formulating, implementing, and developing competitiveness strategies for the Dominican economy.
2. Adopting Law 1-02 of Disloyal Practice on Commerce and Measures for Safety, which establishes laws for the behavior of business agents to promote free competition and to prevent distortions resulting from disloyal business practices.
3. Law No. 56-07, which declares the following industries to be a national priority: textile chains, confection and accessories, furs, and manufacturing of leather shoes.
4. Adoption of the Defense on Competition General Law No. 42-08, which (i) ratifies and recognizes the constitutional right of free enterprise, commerce, and industry, and (ii) makes it clear that that is compatible with economic efficiency, effective competition, and commercial good faith. Law No. 42-208 has as a main objective to promote and defend effective competition to increase the economic efficiency in the market for goods and services, to generate benefits and value in favor of consumers and users of these goods and services within the Dominican Republic.
5. Industrial Competitiveness and Innovation Law No. 392-07, issued with the goal of creating a new institutional framework that allows the competitive development of the manufacturing industry, proposing policies and programs that stimulate the renewal and innovation of industry.
6. Commercial Entities and Individual Enterprises of Limited Responsibility Law No. 479-08, which proposes a modernization of the regulation on corporate matters in the Dominican Republic.

## INTERNATIONAL COMMERCE AND COMMERCIAL OPENING

International commerce plays an important part in today's world, and, of course, in the Dominican economy. The government and the private sector have made significant efforts to fortify this dimension of the economy, achieving, in general, quite satisfactory results. Significant interest has been paid to the development of industrial free zones and to matters related to competition. Efforts toward regional integration have culminated in the adoption of bilateral and multilateral agreements with several countries.

### IMPORTS

The country imports products from all over the world, but especially from the United States. During the first half of 2008, the total imports of the country increased by US\$3,044 million, at least in part due to increases in the price of oil, food, and materials.

The Customs Code, contained in Law 14-93 from August 28, 1993, organized the customs taxes, adopting the Codification and Designation Organized System used internationally and, with it, the process of calculations and payment was simplified.

To adjust to the requirement of the GATT, Law 146-00 of December 27, 2000 was approved. It introduced customs reform and established new rates. It also maintained and reinforced exemptions for strategic sectors of the economy. This customs modification contributes to the increase in the country's competitiveness.

Article VII of the GATT, which became applicable in July 2001, establishes a method for the valuation of merchandise. The Global Commerce Organization (OMC) authorized the Dominican Republic to temporarily exonerate 24 points from the value system of the GATT.

Customs taxes are calculated and paid in Dominican pesos. The official exchange rate at the moment of payment is used to determine how to convert the customs taxes from pesos. Apart from the customs taxes, importers must pay the following:

1. the Selective Consumption Tax charged to certain products, which ranges from 10% to 130% and which is calculated on the price CIF of the merchandise plus the customs taxes, and,
2. The Tax on the Transfer of Industrialized Goods and Services (ITBIS); outside industrial free zone areas, the exemptions are clearly defined and identified.

The Dominican Republic has made great advances with respect to customs, which plays an important role in the implementation of various international treaties.

These advances have transformed the view of the customs agency in the minds of Dominicans. This change is demonstrated not only by the income that is received, but also by the improvement of the institution itself, reflected in the quality of its personnel, the efficiency of its procedures, and the transparency of the operations.

## EXPORTS

The preferential rights that the Dominican Republic has to enter markets in the United States and Europe, as well as the progress it has made to open markets with neighbors in Latin America and the Caribbean, has made exports an important component of the Dominican economy.

The Dominican Republic exports a great diversity of finished and semi-finished products. A large part of the exports are created in industrial free zones; these include electric components, jewelry, and medicine. Traditional exports include sugar, coffee, cocoa, and tobacco. The country also exports some minerals.

The main destinies for exports are the United States (including Puerto Rico), the United Kingdom, Holland, Canada, Haiti, Belgium and Luxemburg, South Korea, and the Netherlands.

The documents generally required to export goods are the following:

1. Sole Export Form;
2. Knowledge of Departure or Air Guide;
3. Certificate of Origin; and
4. Sanitary and Fitosanitary Certificate.

Additionally, in some cases there are local activities for some products that are regulated by public institutions or if the destination country requires it.

The current laws protect the following benefits:

1. The reimbursement of the customs rights and encumbrances paid for raw materials;
2. Simplified compensation for customs rights and encumbrances; and
3. The system of temporary admission for the improvement of goods.

Exporters admitted by CEI-RD to this system must present a bond that guarantees the payment of the customs taxes in case the imported goods remain in the country.

#### PREFERENTIAL ACCESS TO THE UNITED STATES MARKET

The right of preferential access granted to Dominican exports to enter into the United States market has been an essential part in the development of the Dominican export industry. It was an excellent tool for the growth of the Dominican textile industry and, in particular, for industrial free zones, under which most of the local textile enterprises have been organized. Several legal developments, since 1974, have made this process viable, culminating with the signing of the Free Trade Agreement with Central America and the United States (DR-CAFTA).

#### AGREEMENT WITH THE EUROPEAN UNION

The Lome and Cotonou agreements have been two very important tools for the collaboration between the Dominican Republic and Europe through the countries in the ACP (Africa, Caribbean, and Pacific). These agreements have promoted and increased economic, social, and cultural development, and have established and diversified international relationships. Certainly, under this system, Dominican exports to the European Union have increased, such as tobacco, textiles, bananas, pineapples, coffee, rum, and oranges, among others.

Recently, the Dominican Republic signed an Agreement for the Economic Association between the countries of the CARIFORUM and the European Union

and its member states. The spirit of this agreement is to reinforce commercial relations and promote regional integration and cooperation within an effective legal framework for commerce and investment.

#### REGIONAL ALLIANCES

The Dominican Republic is leading the efforts to promote the commercial integration of countries in Latin America and the Caribbean. Within this context, the Dominican Republic's Executive Power created in 1997 the National Commission for Commercial Negotiations, with the goal of reaching commercial agreements in the most efficient and beneficial way possible for the Dominican Republic. This Commission forms a negotiation team that has been developing this process with the rest of the nations in the region.

The Dominican position has been oriented toward an approach to the closest geographical region, proposing the forming of a strategic alliance with the countries of Central America and CARICOM. This would permit the Dominican Republic to broaden the market and the export capacity of these countries and to negotiate along with powerful other entities in the hemisphere.

The country has already signed an International Commerce Treaty with Central America, another similar agreement with the Caribbean Community or CARICOM, and a Commercial Treaty with the Republic of Panama. With the CARICOM, the Dominican Republic shares in the Forum for ACP Countries in the Caribbean. With Central America, CARICOM, the Dominican Republic and several other nations form a part of the Caribbean States Association (AEC).

All these developments take place within the context of the World Commerce Organization, of which the Dominican Republic is a member, as of the signing the Marrakech Agreement in 1994.

**FREE TRADE AGREEMENT WITH CARICOM.** The Caribbean Community or CARICOM provides political cooperation and the creation of a common market among the English speaking countries in the region.

The Dominican Republic has been part of CARICOM since August 22, 1998, when the Free Trade Agreement was signed between the Dominican Republic and CARICOM. This agreement was ratified by the Dominican National Congress in January 2000 and frees more than 85% of the commerce among these markets, for an estimated 47 million consumers. Also, the agreement seeks to promote the active participation of the private sector, broadening and strengthening economic relations between the parties.

**CENTRAL AMERICA FREE TRADE AGREEMENT.** On April 16, 1996, the Free Trade Agreement Central America-Dominican Republic was signed. The participating countries were the members of the Economic Integration System for Central America, consisting of Costa Rica, El Salvador, Honduras, Nicaragua, and Guatemala. This agreement was ratified in March 2002.

The treaty relates to goods, services, and investments. It is consistent with the postulates of the OMC and with the process of the creation of the ALCA, and it grants mutual commercial opening to all customs, with the exception of a limited number of products. This treaty opens the Dominican Republic to a potential market of around \$30,000 million and more than 40 million consumers.

**CARIBBEAN STATES ASSOCIATION (AEC).** The Caribbean States Association was created in 1992 to increase and consolidate the economic relations among the members, as well as to develop strategies that increase the members' comparative advantages. It seeks to establish a free trade area between its members, negotiate jointly with other economic blocks and international organizations, and develop facilities for transportation and communication.

**PARTIAL INTERNATIONAL TREATY WITH THE REPUBLIC OF PANAMA.** On February 6, 2003, Panama and the Dominican Republic signed a commercial treaty that consists of rules for the application of the treaty; a list of products that are approved and included in the treaty, with the corresponding specific origin rules for each particular product; and an agreement for the promotion and mutual protection of investments. This treaty entered into effect in November 2003.

**FREE TRADE AGREEMENT BETWEEN THE UNITED STATES, CENTRAL AMERICA, AND THE DOMINICAN REPUBLIC (DR-CAFTA).** The Free Trade Agreement between the Dominican Republic and the United States is a great achievement in international commerce. Through it, the Dominican Republic may export its merchandise, goods, and services within the territory of the United States, its main commercial partner. It was issued by the United States government on March 1, 2007.

In August 2002, the United States Congress granted authority to the president of the United States to establish a Free Trade Agreement with Central America. In March 2004, the Dominican Republic and the United States arrived at an agreement that established the appropriate legal framework recognizing the differences in the level of development and the size of the economies of the two countries.

The objectives of the DR-CAFTA are the following:

1. Promote competitive conditions within the Commerce Free Zone;
2. Increase the opportunities for investments in the parties' territories;
3. Protect and apply in an appropriate manner the intellectual property rights of the parties;
4. Create efficient procedures for the application and compliance with the Free Trade Treaty (TLC) for its joint administration and for the solution of controversies; and
5. Establish guidelines for bilateral, regional, and multilateral cooperation.



THE DOMINICAN REPUBLIC AND THE WORLD COMMERCE ORGANIZATION (OMC). The Dominican Republic is guided by the parameters established by the OMC to establish economic and commercial integration at the global level. The Dominican Republic also is a signer of the Declaration of Doha.

Adapting the Dominican Republic to the rules established by the OMC has entailed significant modifications to all areas of the economy.

The OMC understands that from October 2002, the Dominican Republic has shown a progressive and sustained support of economic development. It indicates that the country has progressed considerably, by having very liberal commerce and investment systems with broad participation in global commerce.

THE DOMINICAN REPUBLIC AND TAIWAN. The Dominican Republic and Taiwan signed a letter of intent for a Free Trade Agreement, to promote commerce and investment between both nations.

AGREEMENT FOR ECONOMIC ASSOCIATION BETWEEN THE COUNTRIES OF THE CARIFORUM AND THE EUROPEAN UNION AND ITS MEMBER STATES. The spirit of this agreement, recently ratified by the Dominican National Congress, is to enforce commercial relationships and promote regional integration and cooperation within an effective framework for commerce and investment between both parties.

#### SOURCES FOR FINANCING

The Dominican Republic is benefited by several international financing programs and insurance against political and exchange risks. It is a member of the Multilateral Investment Guarantee Agency (MIGA), an agency of the World Bank that promotes the flow of capital toward member countries that are in the development stage and that insures against political risk, counsels governments to attract investments, shares information, and mediates disputes between investors and governments. Likewise, the Foreign Private Investments Corporation (OPIC) is active in the Dominican Republic with programs for financing and insuring investments against risks.

The European Investment Bank offers long term loans with low interest for the financing of projects within ACP countries, mainly in industrial, tourist, mining and energy, transportation, and telecommunications.

#### BILATERAL AGREEMENTS FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Dominican government has accelerated the process of negotiation of bilateral promotion and protection agreements for investment with different nations in the matters of direct foreign investment (IED) based on reciprocity. These negotiations are designed for the legal promotion and protection of investment and the Dominican's economic development.

Among the agreements of this type are those signed with Spain, Ecuador, France, China, Argentina, CARICOM, and Central America. Others are in the process of negotiation.

# MAIN INVESTMENT SECTORS

## TELECOMMUNICA- TIONS

During the last few years, telecommunications has been one of the most dynamic sectors of the national economy. As a result of this growth it was necessary to obtain a new area code for the Dominican Republic. Therefore, in addition to 809, the Dominican Republic now has 829 as a second area code.

The basic governing legislation of this industry is General Telecommunications Law No. 153-98 from May 27, 1998. With the adoption of this law came the modernization of the telecommunications industry, adapting it to the parameters established in this area by international organizations such as the World Commerce Organization (OMC) and the International Union for Telecommunications (UIT). In this sense, Law 153-98 regulates the installation, maintenance, and operation of Web sites, the rendering of services, and the supply of telecommunication equipment to guarantee that telecommunication services are accessible to the whole population, to promote free competition, and to promote the development of this industry.

Law 153-98 created the Dominican Institute of Telecommunications (INDOTEL), an entity that began operations in 1999 and since then has worked to ensure the application of the law and organization and promotion of the telecommunications market.

In addition, Law 153-08 promotes:

- The principle of free telecommunications services, so that any entity that meets the established requirements has the right to request concessions for telecommunications services in the country.
- Free competition, by promoting the free functioning of the telecommunications market.
- The confidential nature of communications, to the effect that all communications, information, and data that is transmitted by means of telecommunication services in the country are confidential, subject only to instances of judicial intervention.
- The freedom of businesses to establish their own prices except where practices restrict competition, in which case the regulatory authority has the power to establish prices. Likewise, the law establishes the obligation for interconnection between companies, but grants them the freedom to establish the governing terms.

One of the main objectives of Law 153-98 is the establishment of a legal and technical framework for the regulation of the radio spectrum within the Dominican Republic. In this regard, by decree No. 518-02 from July 5, 2002, INDOTEL approved the National Plan for the Designation of Frequencies, and on June 20, 2002 the Rules for the Transmission of FM (Resolution 045-02) and the Rules for the Transmission of AM (Resolution 046-02).

## BANKING

On November 26, 2002, Monetary and Financial Law No. 183-02 was adopted, with the goal of giving more legal security to banking operations and modifying the legal rules applicable to banking activities to modernize and adapt them to today's environment. Law 183-02 redefines the organization structure of the regulating and supervising entities of the financial system and establishes norms for the functioning of financial entities in which the concept of financial intermediation and universal banking is essential; it also reflects free market, openness, and preventative supervision concepts.

Law 183-02 establishes multiple banking systems and classifies the entities of the system into: Multiple Banks, Credit Entities, Loan and Savings Associations, and Associations for Credit and Savings. The law frees banking services by granting equal treatment to foreign financial intermediaries, establishing the parameters for their ability to operate in the Dominican Republic. Likewise, it authorizes foreign banks that are not domiciled in the country to establish representative offices in the Dominican in accordance with existing statutes.

The establishment of financial intermediaries is subject to the approval of the Monetary Board, with the opinion of the Banking Superintendent.

With respect to banking prudence, the law takes into account modern international trends, inspired by the basic principles of Basilea. The law:

- establishes that the solvency coefficient may not be below 10%, calculated with respect to assets valued over risk;
- the concentration of risk is regulated by prohibiting operations that imply direct or indirect financing to a person or group over 20%; and,
- establishes a cap for the total value of fixed assets.

The law reaffirms the obligation to maintain at the Central Bank the liquid reserves under the legal reserve system, establishes norms with the object of facilitating the supervision of financial entities, creates minimum requirements for internal governing by means of specific operating procedures, and establishes a preventive supervision model based on a process of follow up on the minimum conditions of liquidity and solvency to avoid regulatory insolvency.

The law's preventative approach is manifested especially in the system that is created to confront financial difficulties that may appear in these entities. In this sense, the law creates a procedure for regularization that is initiated as soon as any deficiencies are identified.

Likewise, the procedure for dissolution is intended to protect depositors by trying to avoid liquidation. For this purpose, the law creates a Contingency Fund to guarantee deposits up to an amount of RD\$500,000 per depositor.

The law creates a system of infractions and sanctions. The entity as well as its administrators and related entities may incur administrative responsibility and be subject to sanctions provided in the law. Likewise, specific infractions can be subject to criminal prosecution.

## INSURANCE

The insurance industry is regulated by Law 146-02 of Insurance and Bonds dated September 11, 2002, which applies to all insurance operations, reinsurance, and bonds made within the Dominican Republic. The Insurance Superintendent is in charge of the operations of insurance companies, reinsurance companies, intermediaries, and adjustors.

In general, insurance that covers risks in the Dominican Republic must be executed in the country, except when it is related to insurance surplus lines. The insurance branches in which insurance and reinsurance companies may operate are personal insurance, general insurance, and bonds.

The law establishes the necessary requirements to act as an insurance and reinsurance company, as an intermediary, or as an adjuster, as well as the process for requesting to initiate operations and for acting as a local or international insurance or reinsurance company. Also, the law establishes everything relating to insurance and bond contracts, such as contracts, contents, payment of principal and claims, among other things, and establishes the creation of a guarantee fund to guarantee the obligations derived from these contracts.

## FREE ZONES

Free zones are geographical areas within the country that are subject to special fiscal and customs rules within which companies dedicated to the production of goods or provision of services for the external market are located. The Free Zone system in the Dominican Republic is one of the most advanced in the world. At the end of 2006, there were a total of 56 parks in operation, with approximately 555 enterprises, 45% of which were located in the northern region, 23% in the National District and the Province of Santo Domingo, 14% in the east region of the country, and 11% in the south region. Of all the parks, 61% were the property of the private sector, 34% belonging to the government, and 5% were of mixed ownership.

The main activities of the Free Zones are the manufacture of textiles, services, and the commercialization and production of tobacco and other products.

The Dominican Free Zone system has always been especially attractive for investors for the advantages that it offers, such as:

1. Incentives that exempt companies from the payment of taxes;
2. Preferential access to export to the United States and European markets without the need of payment of entry rights;

3. The possibility of obtaining financing from local and foreign institutions; and,
4. Low cost of labor.

Free zones operate under Law No. 8-90 from January 15, 1990, which seeks to promote the establishment of free zones and the growth of those in existence, regulating their activities and development. This law creates the National Council for Export Free Zones (CNZF), an organization that is in charge of regulating and supervising the sector that defines and classifies free zones, indicates the requirements for installation and incentives, and regulates the sale of production at the local market. The tax benefits that the law grants to free zone companies are the exemption of 100% of:

- (i) income tax generated by the operations of the company for a period of 15 years from the beginning of operations;
- (ii) import taxes on machinery, equipment, tools, and raw materials for operations;
- (iii) corporate incorporation, fusion, and reform taxes;
- (iv) taxes over the transfer of real estate property within the free zone;
- (v) indirect taxes on consumption;
- (vi) ITBIS and tax over assets; and
- (vii) municipal taxes.

Law 28-01 from 2001 creates a special development zone near the border with Haiti. It declares as a national interest the protection and encouragement of companies that are established in that zone, with the goal of promoting the development of the frontier with Haiti, for which it establishes a preferential system that grants rights, subject to specific limitations, to special fiscal incentives.

Likewise, Law 480-08 of International Financial Zones creates the legal framework for the establishment of International Financial Zones for the offering to foreigners of financial services and related activities. As for the rest of the free zones under other laws, Law 480-09 grants considerable fiscal incentives for enterprises that qualify to operate under it.

## TOURISM

Because of its natural resources, its climate, its cultural and historical interest, its accessibility, good prices, and political stability, the Dominican Republic is at present the island with the greatest tourist interest in the Caribbean.

The Tourism Organic Law No. 541 is from December 31, 1969. The tourism industry began to grow in the 1970s, mainly because of government initiatives. From the decade of the 1980s, the tourist industry started to include a larger private participation. Today tourism is one of the pillars of the Dominican economy.

The tourist industry is supervised by the Tourism Department of State, which has offices in different parts of the world as well as in the Dominican.

The government continues to promote the development of several tourist zones in the country and is interested in promoting private investment in the tourist industry. On October 9, 2001, Law 158-01 was issued for the “Promotion of the tourist development for areas with poor development resources and new areas in the provinces and localities with greater potential and the creation of the official fund for the tourist promotion” and the government issued Decrees No. 1125-01 on November 20, 2001 and No. 74-02 on January 29, 2002 to regulate its application. The current Tax Code recognizes the possibility that in the tourism areas there may be fiscal exemptions.

During the first nine months of 2008, the country received more than three million nonresident visitors, which represented an increase of 2% with respect to the same period in the prior year. Tourists spend an average of US\$112.00 per person and spend an average of 9.26 nights. During this period, hotel occupancy was 73.6%.

## AGRICULTURE

Traditionally, the Dominican Republic has been an agricultural country. Its territory is distributed as follows: 52% mainly forests, 20% for cattle, 26% for agriculture and 2% for conservation.

The country is the biggest exporter of agricultural and cattle products in the region. The main agriculture products in the country are rice and beans, and the articles that are exported the most are sugar, coffee, cocoa, and tobacco. Since the end of the 1980s, other products have been exported, such as fruits, roots, and other vegetables. The products that have enjoyed the biggest growth are rice, cocoa, beans, potatoes, tobacco, and coffee. The same has occurred with non-processed tobacco, coffee beans, grain cocoa, and sugar cane.

The Dominican Republic has been experimenting with organic agriculture, which is a growing market. The main organic products are dry coconuts, bananas, biodynamic bananas, pineapples, mangos, lemons, green coffee, spices, crude coconut oil, and cocoa.

A branch that has recently grown in an exceptional manner is livestock, fish, and wildlife, especially the production of chickens and eggs.

The Agriculture State Department (SEA), with the support of other institutions, is the agency in charge of this area of the economy.

## MINING

Traditionally the extraction of minerals has been an important activity in the Dominican Republic, which exports gold, silver, nickel, marble, granite, and limestone. The importance of the mineral resources of the country has made this one of the most important industries for investment.

The mining activities are regulated by Law 146 from 1971. The supervising agency of this industry is the General Direction of Mining, an agency of the Industry and Commerce State Department.

## CONSTRUCTION

Interest in construction is growing among both public and private entities. During the first nine months of 2008, the participation of the PIB in this industry was 5.3%. The increase in this activity during the same period generated a growth in loans granted by the banking industry to the construction industry of 17.3% when compared with the same period in the prior year.

The government's activity increased by 63%, especially because of damages resulting from hurricanes that affected the country.

Law 322 of 1981 establishes certain requirements for foreign entities that wish to participate in the bidding process of government projects. Foreign participation in a contract for the construction of infrastructure may not be over 50%, except that it can be as high as 70% when domestic participation cannot be over 30%.

## ELECTRICITY

In 1997, Law 141-97 for the Reform of the Public Enterprise ordered the capitalization of the Dominican Electricity Corporation (CDE). In 1999, the country finished the privatization of the generation and distribution units of the Dominican Electricity Corporation, which were converted into three distribution companies and two generation companies and transferred to foreign-owned companies.

In 2001, General Electricity Law No. 125-01 was approved in an effort to promote the expansion of the sector and the efficiency of the service. It regulates all stages of production, transmission, distribution, and commercialization of electricity, as well as the functions of the state organizations. Additionally, it reiterates the exclusive right of the Dominican government to regulate the energy sector, and recognizes the importance of private industry in the generation, transmission, distribution, and commercialization of electricity. The rules for the application of this law were issued by Decree No. 555-02 from July 19, 2002.

This law also makes it clear that the transmission of electricity and hydroelectric generation shall always be in the public sector and that the activities of the government in this industry shall be subject to the same rules applicable to private companies.

The institutions that supervise the energy industry and the execution of Law 125-01 are the National Energy Commission and the Electricity Superintendent.

Law 125-01 establishes the legal framework that regulates everything concerning the development of the Dominican energy industry, covering aspects such as the requirements to participate in this industry, interconnection, price, and sanctions for the possible violations by any of the participating parties.

# COMMERCIAL ORGANIZATION

The General Law for Commercial Entities and Individual Limited Liability Companies No. 479-08, from December 11, 2008, regulates all forms of corporate entities doing business in the country. The law explains that a commercial entity is two or more persons or entities that obligate themselves to contribute goods to engage in operations or business for the purpose of participating in earnings and losses. All commercial entities are registered in the Mercantile Registry.

Dominican law recognizes the following different types of corporate structures and business forms:

## COLLECTIVE NAME SOCIETIES

Collective name societies are entities with two or more partners that respond to the obligations of the society in a limited, joint, and subsidiary manner. The responsibility of the partners is secondary, as they are liable for the payment of the debts after actions are initiated against the society itself, and jointly because each partner is responsible for the total amount of the debt.

**Corporate Name:** Its corporate name must contain the name of the partners or one or several of them followed by the words “and company” or its abbreviation.

**Capital and Transferability:** In terms of capital, the law establishes that its rules are determined freely by the partners under the partnership agreement and it does not establish a minimum capital amount. Nevertheless, a society may not issue negotiable shares in exchange for the contributions of partners, as those contributions are not transferable without the unanimous consent of all partners.

**Administration and Supervision:** Even though all partners are considered managers in this type of society, they may name one or several administrators. The administrators, in the absence of any limit to their powers by the bylaws, may engage in all activities in the interest of the entity. Vigilance officers are not required and partners shall decide if they wish to create this position in their society.

**Decision Making at the Partner Level:** The law requires unanimity of votes, which do not have to be declared at a general meeting, for decisions that exceed the powers of the administrators; the transfer of the interest of partners; the



entrance of new partners; modifications of the bylaws; and the transfer of all or almost all assets of the society.

**Dissolution:** rules for the dissolution of a society are established in the bylaws. Nevertheless, in theory this type of society is dissolved by the death of one of the partners, unless the partners have agreed in the bylaws that in case of death the society shall continue with the heirs or only with the surviving partners. In the event the society continues with the surviving partners, the heirs of the deceased partner or the surviving spouse will be creditors of the society for the value of the rights of the partner who has died.

## LIMITED PARTNERSHIP

A limited partnership is a society that is comprised of two types of partners: one or several named partners that respond jointly and secondarily to all business obligations and one or more silent partners, with responsibility limited to the limited partner or partners' capital contributions.

**Corporate Name:** A limited partnership's corporate name must contain the name of the named partner, or of one or more of them, followed by the words "and company" or its abbreviation, followed by the words "Sociedad en Comandita" or "S en C."

**Capital and Transference:** There is no minimum capital requirement, but the bylaws must establish the amount of the contributions of all partners, the proportion within this amount that corresponds to each classification of partners, and the part that corresponds to the category of partners in the payment of dividends or liquidation.

Under the law, corporate participation may not be transferred except with the unanimous consent of all partners, except that bylaws may establish that the interest of silent partners are freely transferable among the rest of the partners and that the interest of partners may be transferred to third parties with the agreement of all silent and named partners.

**Administration, supervision, and decision making by partners:** Administrators are designated by a majority of votes, although silent partners may not be managers or representatives and may not interfere in management. The role of silent partners is to inspect the limited partnership, approve the financial statements, and designate and remove managers and representatives. A vigilance officer is not required. No general meeting of partners is required, and partners may make decisions jointly without a general meeting. In this sense, partners vote with respect to modification of the bylaws, the naming and removal of managers and representatives, and liability actions against them, as well as to approve financial statements.

**Dissolution:** This kind of entity is dissolved with the death of one of the named partners, unless the partners have agreed to continue the entity under the guidelines of the law.

## LIMITED PARTNERSHIP BY SHARES

A limited partnership by shares is formed by one or more named partners, who respond jointly, unlimited, and secondarily to corporate obligations, and three or more silent partners who act as shareholders and, as such, only are liable for the losses of their contributions.

**Corporate Name:** Even though Law 479 does not indicate this expressly, the corporate name must contain the name of the named partners or of one or several of them followed by the words “and company” or its abbreviation, followed by the words “Limited Partnership.”

**Capital and Transference:** The law does not contain capital rules or any restriction on transfer for this kind of entity. Nevertheless, it is understood that the laws for a silent partnership and the anonymous society of private subscription that are compatible with the characteristics of a limited partnership apply.

**Administration, supervision, and decision making by partners:** The supervision and administration of the Limited by Shares Partnership may include one or several managers, a vigilance board, one or more vigilance officers, and the general assembly.

## JOINT STOCK COMPANY

A joint stock company is a limited liability company formed by one or more partners, whose responsibility for the losses of the entity is limited by their contributions. For this reason it is one of the most commonly used commercial entities. The joint stock company may be publicly or privately owned.

Public joint stock companies are those that obtain financing, as capital or debt, using mass communication or publicity. Private joint stock companies are those that do not use the securities exchange market as a source of expansion or financing for their operations.

**Corporate Name:** The corporate name must contain the words “Sociedad Anonima” or “S.A.”

**Capital and Transference:** Corporate capital is represented in shares, which are essentially negotiable. In public subscription joint stock companies, the minimum authorized capital and the value of shares are determined by the Securities Superintendent. For private joint stock companies, the law establishes a minimum authorized corporate capital of RD\$30,000,000 and a minimum nominal value for shares of RD\$100, which amounts are adjusted every three years by the Industry and Commerce State Department in accordance with the Consumer Index Products issued by the Central Bank. One tenth of the Authorized Corporate Capital must be paid in and subscribed.

The law does not establish any kind of restriction for the transference of shares. Nevertheless, it establishes that within private subscription joint stock companies, shareholders may agree to restrictions, so long as they do not contain any prohibition on the transfer of shares. Likewise, the law establishes a preferential right for the subscription of shares, even though shareholders may waive this right.

## LIMITED LIABILITY COMPANIES

**Administration and Supervision:** These companies are administrated by a Board of Directors composed by a minimum of three members. Legal entities may not serve as president in this type of company. In terms of supervision, the law establishes that these companies must be supervised by one or several vigilance officers that are named for three fiscal periods and have the mission to verify accounting values and company documents; to ensure that accounting is performed in accordance with current rules; and to verify the annual accounts presented by the board of directors and the documents addressed to the shareholders indicating the annual accounts and financial situation. Vigilance officers have to be certified public accountants with at least three years of experience in auditing companies and may not be employees of the company, among other requirements.

In addition, public subscription joint stock companies are subject to the supervision of the Securities Superintendent during the formation and organization process, as well as in all corporate actions relating to the modification of bylaws, the issue of negotiable titles, transformation, and liquidation.

**Decision making at the shareholder level:** The supreme decision making entity is the general meeting of shareholders, which agrees or ratifies all operations.

A limited liability company is the entity formed by a minimum of two and a maximum of 50 partners, none of which have personal responsibility for corporate debts. This form of commercial organization is used for medium-sized businesses and closed capital entities.

**Corporate Name:** The corporate name may have the name of one or more partners and must be followed by the words “Sociedad de Responsabilidad Limitada” or the initials “S.R.L.”

**Capital and Transference:** The social capital of the SRL is divided into equal and indivisible parts denominated corporate quotas, which cannot be represented by negotiable shares or have a nominal value below RD\$100. The minimum corporate capital of the S.R.L. is RD\$100,000; the Industry and Commerce Secretary of State is obligated to review every three years the minimum and maximum amounts of the corporate capital for this type of company.

Corporate quotas are freely transmissible by succession or in case of liquidation of the assets of a marriage and are freely transferable between family members. Likewise, there is freedom of transfer of the corporate quotas, unless otherwise established in the bylaws. The assignment of corporate quotas to third parties requires the consent of 3/4 of the partners, apart from other conditions and formalities.

**Administration and Supervision:** The administration is in charge of one or several managers, who must be physical persons and who are individually equipped with the broadest powers to act in the name of the company under any circumstances. The managers may not be designated for more than six years. The designation of a Vigilance Officer is not necessary, but the financial statements of the company must be audited.

Decision making at the partner level: Each partner has the right to vote on corporate decisions and has the same number of votes as the corporate quotas that the partner possesses. The general meetings of stockholders may be held for the approval of corporate decisions but are not necessary.

## INDIVIDUAL COMPANY OF LIMITED RESPONSIBILITY (E.I.R.L.)

An E.I.R.L. is a company of limited liability that belongs to one person and that has the legal ability to exercise rights and obligations, which form an independent and separated entity from the rest of the assets of the person who owns the E.I.R.L. Legal entities may not incorporate or purchase companies of this type.

**Corporate Name:** The corporate name of the company must have at the beginning or the end the words “Empresa Individual de Responsabilidad Limitada” or the initials “E.I.R.L.” It cannot include the name, last name or part of the name, nickname, or any other naming of a person, which may not be used as a distinction of the company.

**Capital and Transference:** The law does not establish a limit on the amounts of contributions to be made by the owner of the company, so it may be freely established and increased by the same, in accordance with the formalities established by law.

An E.I.R.L. may be transferred, in accordance with the formalities and conditions established by law.

**Administration and Supervision:** The owner may designate one or several managers to assume their functions. There is no requirement for a vigilance officer; nevertheless, the financial statements of the company must be audited before being presented at the annual general meeting.

## ACCIDENTAL ENTITY AND FOREIGN ENTITIES

Law 479 recognizes the accidental or participation entity, which does not have a legal personality.

On the other hand, the legal personality of foreign legal entities is recognized by Law 479, as long as the requirements for the same have been met in their origin legislation; such an entity must register at the Mercantile Registry, as is required of local entities, as well as at the General Income Tax Department if it operates within the country. Law 479 recognizes the equality of foreign entities with local entities before the law, and therefore declares that foreign entities do not have any obligation to provide any legal bond when acting in the Dominican courts.

## OTHER DISPOSITIONS OF LAW 479

The law establishes corporate processes that were not previously regulated, such as fusions and separations, the increase and reduction of corporate capital, and the dissolution and liquidation of legal entities.

The law also establishes in detail the fiscal obligations of administrators and includes criminal penalties to punish the violation of law by companies and administrators.

# LEGAL FRAMEWORK FOR COMMERCIAL ACTIVITIES

There are several legal provisions that regulate or affect business transactions in the Dominican Republic. This section examines those that are most important: the tax system, labor laws, environmental laws, the protections for intellectual property, and laws for commercial transactions and electronic commerce.

## TAX SYSTEM

The tax legislation in the Dominican Republic is the Tax Code adopted in May 1992 and modified several times since then. There also is the General Law for the Department of Internal Revenue (DGII), the entity that is in charge of the payment of internal taxes, as well as several laws for specific taxes, incentives, and promotions.

By virtue of these laws, the primary taxes in the Dominican Republic are the following:

### INCOME TAX

Any legal entity or individual residing in the Dominican Republic and the undivided successions of people living in the country are subject to the payment of taxes over their income from Dominican sources and from sources outside the Dominican Republic from investments and financial gains.

#### Income Tax for Individuals

Individuals residing or domiciled in the country pay an income tax from any employment, as well as from income earned from the exercise of a profession, commercial activities or investments, or financial earnings from abroad. The amounts paid for income tax for individuals are determined for fiscal year 2010 on the following schedule:

- Income until RD\$349,326.00 are exempted.
- Income from RD\$349,326.01 to RD\$523,988.00; 15% of the surplus of RD\$349,326.01.
- Income from RD\$523,988.01 to RD\$727,761.00 shall pay RD\$26,199.00 plus 20% of the surplus of RD\$523,988.01.
- Income from RD\$727,761.01 and beyond, shall pay RD\$66,954.00 plus 25% of the surplus of RD\$727,761.01.

The income tax for individuals is to be declared and paid no later than March 31 of each year; nevertheless, during the first 10 days of each month, public and private entities must withhold and pay directly to the DGII the corresponding taxes for the salaries paid to their employees and the independent contractors that rendered any service in the preceding month. The payment must be made by means of certified check to the Administration or in the name of the Collector of Internal Taxes.

#### Income Tax for Legal Entities

Companies, public entities that have a commercial nature, and other entities, undivided successions, association of persons, societies in fact, irregular societies, and any other form of organization that is not expressly defined are considered legal persons for this tax. In accordance with the tax law, these entities are subject to the payment of taxes for income, utilities, and benefits obtained in a determined fiscal period, minus the deductions approved by law.

Out of this net income, the applicable rate for legal entities with domicile in the country is 25 % over the net income from fiscal year 2007.

The deadline to present the Legal Entities Declaration (Form IR-2) and payment is 120 days from the date of the closing of the fiscal year, which shall be one of the four dates expressly permitted by law.

#### Advance Payments

The law also establishes the payment of monthly advanced payments, which can be applied against the annual income tax. During the first 15 days of each month all legal persons and single owner businesses, which tax rate (that which results from the division of the tax paid for the fiscal period between the gross income of the same fiscal period) is less or equal to 1.5%, must pay the corresponding advanced payments on the basis of 12 equal monthly payments, resulting from applying 1.5% to the gross income declared in the previous fiscal year. If the effective tax rate is higher than 1.5%, they have to pay an advance payment of one twelfth of the tax paid in the previous presentation.

Individuals or legal entities that develop commercial and industrial activities shall not pay the 1.5% advanced payment, as long as the annual income from said activities is equal to or less than RD\$5,000,000.00. Any payment required to be made shall be made by certified check in favor of the Collector of Income Tax.

#### Capital Gain

Capital gain income also is subject to a tax. To determine the capital gain subject to a tax, a taxpayer deducts from the price or value of the transferred asset the cost of acquisition or production adjusted by inflation. The capital gain that is received by a taxpayer is subject to the payment of income tax, which is currently 25% of the gain.

To determine the capital gain produced by the sale of goods or rights situated, placed, or used economically in the Dominican Republic by a foreign enterprise, the DGII estimates the value of the sale taking into account the value of the sale of shares of the company that owns the asset or right and its value with respect to the global value of the company whose shares have been transferred.

### Withholding

Legal entities and single owner businesses act as retention agents when they pay or credit at the account of other physical persons or undivided successions, as well as other entities not exempt from the payment of taxes, except to legal entities. Withholding is made over the gross income as indicated below:

- a) 10% over the amounts that are paid or credited to an account for the rent or lease of any type of good or real estate asset, as an advance;
- b) 10% over the fees, commissions, and other remunerations and payment for the rendering of services by physical persons, not executed in a family relationship, which provisions require the direct intervention of an individual, as an advance on the account;
- c) 15% over the prizes or earnings obtained in lotteries, scratch lotteries, lotos, lotoquiz, electronic games, and any other type of prize offered through promotion or public campaigns, as a definite payment;
- d) 0.5% over the payments made by the state or its dependencies, including state enterprises and decentralized and autonomous organizations, to physical and legal persons, for the acquisition of goods and services in general, not executed as a family relationship, as an advanced payment; and
- e) 10% for any other kind of income not established by these dispositions, as an advance payment.

**Payments made abroad:** Whoever pays or credits to an account income that is taxable from Dominican sources to nonresident persons or persons not domiciled in the country, which are not interests paid to the accounts of financial institutions abroad, or dividends, must withhold and pay 25% of said income to the Dominican taxing authorities.

**Interests Paid Abroad:** Whoever pays or credits to an account interests of Dominican sources from loans contracted with foreign credit institutions must withhold and pay the Dominican taxing authorities as a one-time payment a tax equal to 10% of those interests.

### Tax Support

From January 1, 2007, all individual and legal entities domiciled in the Dominican Republic, which have operations of the transfer of assets, delivery for use, or render services for a fee, must issue the corresponding tax support documents as follows:

- Invoices that generate tax credit and/or establish costs and expenses. This refers to the documents that record commercial transactions for the purchase and sale of goods and/or services, and allows the buyer that requests it to support the expenses and costs towards the income tax or credits for the purpose of ITBIS.
- Invoices to final consumers (without fiscal credit value). These are the tax documents that support the credit of the transfer of goods, the delivery in use, and the rendering of services to final consumers.
- Debit Notes. These are the documents that sellers of goods and/or presenters of services issue to recoup costs and expenses, such as penalties incurred by the vendor after the issue of the fiscal support.
- Credit Notes. These are documents issued by the vendors of goods and/or presenters of services for future modifications to the original conditions of sale originally agreed upon, that is, to cancel operations, effect returns, grant discounts, and fix errors or similar cases.

For the purpose of avoiding disturbances in the development of the economic activities, the Tax Administration may use the authorization of special fiscal support documents, such as the register of informal providers and the register of minor expenses.

All fiscal support documents must have an authorization number to be issued, which shall be granted by the DGII, and this number must always be established in the printed support. For example: “Valid for Fiscal Credit” and “Valid for Final Consumer.”

In case that the contributor that is in charge of issuing the fiscal support, does not issue the same, be it because it is an occasional sale or service, or because the good or service is exempt and it is a small contributor, or in other particular cases that may present themselves, the purchaser of the good or service may itself issue the special fiscal support, called a register of special expenses, duly authorized by the DGII, to confirm these operations as a fiscal credit. This special support will be subject to the same requirements as the normal supports, with the only exception that the issuing party will be the purchaser and the vendor will be the recipient.

The Register of Minor Supports is different from the abovementioned special support, as it is a type of fiscal support that is issued by the company in favor of itself in order to cover minor expenses such as fixing of tires, vendors' expenses, transportation, petty cash, agriculture, fishing, carpenter services, wood services, electrical services, etc.

#### Reporte de Informaciones de Comprobantes Fiscales

All contributors that present monthly declarations for ITBIS have to report the information of the operations that demonstrate the costs and expenses for income tax purposes, the advances used as credits for the purposes of ITBIS,



and the withholdings of the ITBIS made to third parties, which have to be presented every month no later than on the 15th day of each month.

The contributors that are not obligated to present ITBIS declarations and that do not effect withholdings of said tax have to present an annual report 60 days after the closing of the fiscal year in case of legal entities and no later than February 28 of each year for individuals and single owner businesses.

The persons or entities that are obligated to present ITBIS declarations must send each year within the 60 days after the date of closing the information on all income generated during the fiscal year supported with the fiscal supports in accordance with the format that is already established.

Companies with fiscal years closing other than December 31 must report the information of sales and operations during the fiscal year, using the available format for enterprises with the fiscal year closing of March 31, June 30, or September 30.

#### TAX ON THE TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES (ITBIS)

The ITBIS is the tax over the transfer and import of industrialized goods, as well as the rendering of services. Physical persons and legal persons (foreign and domestic), that make transfers and imports of industrialized goods or render services have the obligation to pay this tax. The rate of this tax is 16% and is calculated over the price of the transfer or the service that is provided.

During the first 20 days of each month, all contributors that transfer industrialized goods and services or importers of industrialized goods, must declare and pay the Tax on the Transfer of Industrialized Goods and Services (ITBIS) by means of certified check in favor of the Collector of Internal Revenue. The payment to be made corresponds to the excess in favor of the DGII that results from the surplus of ITBIS that was invoiced to clients during the presentation of services or the sale of goods to which this tax applies over the ITBIS advanced to the suppliers at the moment of acquisition of goods and services used to produce taxed income with the referred tax, or the values that were paid to Customs at the moment of introduction into the country of goods to which the same applies, which are employed to produce goods and services also subject to this tax.

#### REAL ESTATE PROPERTY TAX

It is levied with a 1% tax, real estate properties that are destined for housing, commercial and industrial activities belonging to individuals whose value -including the land- surpasses RD\$5,000,000.00. Such value is annually adjusted by inflation. This tax shall be filed during the first 60 days of each year, and be liquidated in two installments, one of 50%, on March 11 of each year, and the remaining balance of 50% on September 11 of the same year.

## TAX ON ASSETS

The Tax on Assets is applied to all assets that are registered in the general balance of the contributor, not adjusted by inflation, after applying the deductions for depreciation, amortization, provision for unrecoverable accounts receivable, investments in stock in other companies, lots located in rural areas, agricultural real estate, and taxes that have been paid in advance.

Financial Intermediary entities, as defined in the Monetary and Financial Law No. 183-02 from December 3, 2002, the National Bank for the Development of Housing and Production, the Administrators of Pension Funds as defined by Law 87-01 from May 9, 2001 which creates the Dominican System for Social Security and the pension funds that these administrate; the intermediaries in the securities exchange market, the administrators of investment funds, and title companies as defined by Law 19-2000, from May 8, 2000; as well as the electric generation, transmission and distribution enterprises as defined by the General Electricity Law No. 125-01, from July 26, 2001, will pay this tax on the basis of the total of their fixed assets, free from depreciation, such as they appear in their general balance.

The amount liquidated for the concept of this amount will be considered a credit against the Income Tax corresponding to the declared fiscal year. In case the liquidated amount is equal or superior to the Tax Over Assets to be paid, the obligation of payment shall be considered extinguished. If after the payment there is a difference to be paid, as the amount of this exceeds the Income Tax, the contributor must pay the difference in two equal parts.

The declaration of Tax over Assets will be presented jointly with the sworn statement of income of the company and will be paid 50% at the moment of presenting said declaration and 50% six months thereafter.

## TAX ON THE INCORPORATION OF COMPANIES

The incorporation of limited partnerships, joint-stock corporations, and companies is subject to the payment of a tax of 1% of the authorized corporate capital of the same, which shall never be below RD\$1,000.00. This tax shall apply likewise to the entities of fact and in participation.

## SELECTIVE TAX ON CONSUMPTION

The Selective Tax on Consumption applies to the transfer of some goods of national production at the manufacturing level, as well as their importation, and the rendering of telecommunications, insurance services, and the payment by check or wire transfers.

The applicable rate for these services is the following:

- a) 10% over the value of telecommunications services;

- b) 16% over the value of insurance;
- c) Specific amounts that vary per liter of absolute alcohol;
- d) Specific amounts that vary per cigarette pack;
- e) 0.0015 over the value of checks or electronic banking transfers.

Persons, companies, or enterprises, national or foreign, that produce or manufacture these goods in the last stage of the process are obligated to pay this tax; as well as the importers of goods taxed with this tax, on their own account or for third parties and the providers of services to which this tax applies.

The payment of this tax is made within the first 20 days of the month following the declared period. Importers must pay this tax along with customs taxes.

Insurance companies are taxed with this tax at a rate of 16%, except for those insurance companies established by virtue of Law 87-01. Electrical appliances are taxed with this tax from 10% to 20%.

#### TAX ON THE TRANSFER OF REAL ESTATE

Real estate transfers are subject to a tax of 3% over the higher value, if any, that results between that which is stated in a purchase agreement and the value assigned by the DGII. This tax also applies to the transfer of real estate property purchased through loans granted by financial intermediaries so long as the purchased house or lot destined with said loan has a value of over one million pesos, an amount that is adjusted by inflation. This tax must be paid within the period of six months from the time a transfer document has been signed; failure to make such payment can lead to a 3% surcharge and interest in accordance with the provisions of the Tax Code.

#### TAX ON THE TRANSFER OF MOTOR VEHICLES

The transfer of motor vehicles is subject to a onetime tax of 2% over the value that is greater from the one stated in the purchase contract and the value assigned by the DGII, which shall be paid within three months from the date in which said transfer document has been signed; failure to make such payment can lead to penalties in accordance with the Tax Code.

#### SPECIAL INCENTIVES FOR FOREIGN PENSIONERS AND THOSE LIVING ON AN INCOME

Recently promulgated Law 171-07 for Special Incentives for Foreign Pensioners and Persons Living on an Income is intended to provide those who are pensioned as well as those who live off a fixed income that complies with the requirements and conditions established by the law with the same benefits and exemptions granted to foreign investors and citizens residing abroad. The law allows such individuals to obtain a definitive residence in 45 days; exempts

them from the payment of taxes on furniture and personal goods; and partially exempts them from the payment of taxes on motor vehicles.

Additionally, those persons that fall under this law shall have the following benefits, in accordance with the conditions and stipulations established by this law:

1. Exemption on the taxes on real estate transfer, for the first property that is purchased;
2. Exemption of 50% of the taxes on mortgages, when creditors are financial institutions duly regulated by the Financial and Monetary Law;
3. Exemption of 50% of Real Estate Property taxes, when applicable;
4. Exemption on taxes related to the payment of dividends and interests, generated within the country or abroad; and,
5. Exemption of 50% of capital gains taxes, so long as the pensioner is the primary shareholder of the company that is subject to the payment of this tax and said company does not engage in industrial or commercial activities.

## LABOR LAWS

The relationship of companies with their employees is regulated by the Labor Code, contained in Law 16-92 from June 17, 1992. The Labor Department of State supervises the law governing these relationships, and Labor Courts have jurisdiction over labor disputes.

### QUOTAS FOR DOMINICAN EMPLOYEES

At least 80% of the workers in a company must be Dominican citizens. The managers and other employees that have supervising functions must preferably be Dominicans and there are no restrictions at the administrative level.

### WORK PERIODS

The normal work week is 44 hours; a normal work day is 8 hours. The common practice is to work from Monday to Friday and, in some companies, on Saturday. Part time workers cannot work more than 29 hours per week.

### PAID LEAVE

The law grants five days in case of marriage, three days in case of death of a close family member, and two for a father whose wife has had a child.

### VACATIONS

All employees who have more than one year working have the right to enjoy a vacation period of 14 work days.

## SEXUAL HARASSMENT

The law prohibits employers or their representatives from committing actions that may be considered to be sexual harassment of an employee.

## MATERNITY PROTECTION

Employers may not terminate a worker during pregnancy or for three months after the birth of a child without just cause. To discharge an employee with just cause, an employer must obtain the prior authorization of the Labor Department, among other requirements. Women have the right to ask for their vacation right after their postnatal leave and to request, during the first year of their child's life, half a day off work a month to take the child to the doctor.

## MINIMUM WAGE

Dominican labor legislation establishes a minimum salary for non-sectorized private industry employees, which is established periodically by the National Salary Committee. In accordance with Resolution No. 1-2009 of this institution, the minimum monthly salary amounts to eight thousand four hundred and sixty-five Dominican Pesos (RD\$8,465.00) for workers who provide services in the industrial, commercial or the services industry of the private sector, in companies which assets exceed four million Pesos. On the other hand, employees of companies with assets ranging between two and four million pesos, will have a minimum monthly wage of five thousand eight hundred and twenty Dominican Pesos (RD\$5,820.00). Finally, the minimum monthly salary will be of five thousand one hundred fifty-eight Dominican Pesos (RD\$5,158.00), for entities with assets below two million pesos. For some industries, special minimum wages apply.

## OVERTIME, NIGHT WORK, AND HOLIDAYS

In these cases, the amounts that have to be paid by the employer over the basic salary of the employee are 35% for overtime, 15% for nighttime work, and 100% for extra hours that exceed 68 hours in a workweek, as well as for work on Sundays and holidays.

## EMPLOYEE BENEFITS

The employee benefits contemplated by law are Christmas salary, participation in the benefits of the company, and payment of annual vacations.

## TERMINATION OF LABOR CONTRACTS

A labor contract may be terminated, among other reasons, by layoff, in which case it is not necessary to indicate any cause; by firing, when there is a justified cause; and by mutual consent. During the first three months of work, employees may be terminated without the need to pay any sort of compensation. After

this period they shall have indemnification rights in accordance with their time as employees.

In case of justified firing in accordance with the causes and procedures established in the Labor Code, an employer will not have to pay any indemnification to the employee; if the firing is found to be unjustified, the employee has the right to receive full indemnification.

Payments made to employees who are terminated are not subject to the payment of income tax.

## SOCIAL SECURITY OBLIGATIONS

On May 10, 2001, Law 87-01 for Social Security was issued. This legislation completely modifies the social security system in the country and is intended to establish the Dominican Social Security System (SDSS) within the framework of the Dominican Constitution, and to regulate and develop the rights and obligations for the state and citizens with respect to the financing for the protection of the population against risks for old age, incapacity, termination for old age, survival, sickness, maternity, infancy, and labor risks.

The law establishes a transition period of 10 years for the progressive construction of the social security system.

The Dominican Social Security System (SDSS) created under the present law is comprised of a complex web of state, mixed, and private agencies, such as the National Social Security Council (an organization that establishes policies in this matter), Social Security Treasury (to charge contributions, distribute, and pay financial resources), Pensions Superintendent, Health and Labor Risk Superintendent, National Health Insurance, Pension Fund Administrators, Health Risks Administrators, Providers of Health Services, etc.

This law regulates the functioning of all these entities, establishing the rights and obligations of all participants, including the state, employees, and beneficiaries.

Law 87-01 establishes three systems for the payment of the obligation of social security:

- A contributory system that applies to employees of public and private entities, which is financed jointly by employees and the employers.
- A subsidized system that applies to unemployed and incapacitated persons, which is financed by the state;
- A subsidized contributive system that applies to independent professionals, which is financed by beneficiaries and the state.

Under the contributory system, coverage is provided through the following manner:

1. Insurance against Risks of Old Age, Incapacity and Survival (Pensions),

2. Family Health Insurance (for the employee and the employee's family), and
3. Insurance against Labor Risks.

The employer must finance 70% of the cost of the pensions and the health insurance, while the employee must pay the remaining 30%. The employer must finance 100% of the insurance against labor risks and 0.4% of the salaries for the contribution to the Social Solidarity Fund.

Pensions are financed with 7.5% of the employee's salary. The employee shall pay 7.12% and the company 2.88% of said costs; the maximum amount to be contributed is equivalent to 20 minimum salaries.

Family health insurance is financed with 10% of the salary of the employee. In case of the maximum payable salary it is equivalent to ten minimum salaries. The employer must pay 7% and the employee shall pay 3% of said costs. Nevertheless, Law 187-01 establishes a gradual process of five years before reaching this contribution level.

The insurance against labor risks is financed with 1% of the employee's salary, plus an additional contribution of 0.6% of the salary, depending on the type of activity and the level of risk of the work, all paid by the employer. The law establishes the possibility of a reduction of the applicable rates as an incentive to improve security measures in the workplace.

The implementation of the provisions contained in the abovementioned law has been advancing. Given the complexity of the matter, the objectives that it seeks, and the diversity of industries to which it applies, it is a slow process. Its progress requires communication to reach agreements to unify favorable policies for all parties, while maintaining the objectives established by the law.

Law 64-00 of Environment and Natural Resources from August 17, 2000 along with other special laws in the tourism, electricity, telecommunications, and other areas that apply to certain environmental factors establish the legal framework of environmental law in the Dominican Republic. Likewise, internationally, the Dominican Republic is the signer of a series of conventions, agreements, and protocols generally from the Development Program of the United Nations (PNUD) that are related to the environment and/or natural resources.

The main objective of Law 64-00 is to supply the rules for the protection, development, and restoration of the environment and natural resources by means of sustainable development. Law 64-00 recognizes the importance of the protection, conservation, and sustainable use of natural resources for the good of humanity. It creates as an essential duty of the state the effective protection of the environment, adopting for these purposes a policy to be executed with the participation of all institutions related to the environment and sharing with the general population and with each person in particular. It also recognizes the principle of caution.

## ENVIRONMENTAL LAW

Law 64-00 regulates the pollution of soil, water, and air; dangerous products, elements, and substances; municipal and housing wastes; human living and sound pollution. It regulates the concession of the rights to use natural resources. The administration for environment and natural resources is under the jurisdiction of the Environment and Natural Resources Department of State (SEMARN).

Any project, infrastructure, industry, or any other activity that by its characteristics may affect the environment and natural resources must obtain from SEMARN in advance an Environmental Permit, for which the interested party must present an Environmental Impact Declaration (DIA), at its own cost, or an Environmental License, for which an Environmental Impact Study shall be necessary, in accordance with the effects that it may cause under the criteria of the SEMARN. Resolution 05/2002 from March 18, 2002 of the Environment and Natural Resources Department of State creates the Rules for the System of Environmental Permits and Licenses, the Explication Name for Structures, Activities and Projects, and establishes the Proceedings for the Request of Environmental Permit for Existing Installations and the Evaluation of the Environmental Impact.

These permits and licenses obligate those who receive them to assume the administrative, civil, and penal responsibility for damages that are caused to the environment and natural resources, assuming also the legal and economic consequences pertinent if said damages have their origins in a violation of the terms of the environmental permit or license.

In order to ensure the compliance with the conditions established in the Environmental Permit or License, the SERMAN has the authority to make environmental audits, and the party responsible for the project or infrastructure must comply and inform periodically on the self-monitoring program. Likewise, there is an obligation to present a performance bond in an amount equal to 10% of the total costs of the infrastructure or investments that are required to comply with an Environmental Management and Application Program.

Law 64-00 establishes administrative and penal sanctions for those that violate its rules. The administrative sanctions may be applied by the Environmental and Natural Resources State Department and include fines, as well as the suspension or closing of operations. It provides for environmental crimes, which may be penalized with fines and prison, apart from the obligation of repairing any damages that are caused and other measures such as the closing of the establishment and the withdrawal of the permits.

In 2004 the Protected Areas Law 202-04 was issued, which modifies and strengthens the protected areas that had been established by Law 64-00.



## INTELLECTUAL PROPERTY PROTECTION

The complete reform for the protection of intellectual property rights in the Dominican Republic, enacted in 2000, was a great achievement in the modernization of the legal framework governing the country's economic activities and a significant step in the process of complying with the OMC's obligations. Moreover, as a result of the application of the DR-CAFTA, the Author Rights and Industrial Property Rights Law have been the object of recent modifications.

Law 20-00 from May 8, 2000 on Industrial Property has as its main objective to create the legal framework that contributes the transference and distribution of technology and the benefits of the products and users of technical knowledge and that effectively protects industrial property rights, achieving an equilibrium between the rights and obligations of the owners that promotes the social, economic, and technological development of the country. Decree No. 599-01 establishes the rules for application of Law 20-00.

Law 20-00 is in accordance with the dispositions of the ADPIC and other international agreements. It establishes that the classifications for registration must be in accordance with the internationally recognized classifications system: for patents and industrial models the Strasburg Convention from March 24, 1971 applies; for Industrial Designs the Locarno Agreement from October 8, 1968 applies; and for trademarks the Niza Accord from June 15, 1957 applies.

The government agency in charge of granting patents and registering industrial property is the National Industrial Property Office (ONAPI).

Civil and criminal sanctions may be applied in case of an infraction of industrial property rights, which include damages as well as fines and/or prison.

### PATENTS

Patents may be obtained to protect inventions, utility models, and industrial designs. An invention is defined as any idea or creation of the human intellect related to products or procedures, capable of being applied in industry. It must be novel – it must be unknown in the relevant industry. Likewise, it must have an inventive character; it must not be able to be deduced by a person with technical knowledge in the matter or from existing technology.

Matters that are not patentable include:

1. Discoveries that consist in revealing something that already exists in nature, scientific theories, and mathematical methods.
2. Exclusively aesthetic creations;
3. Information presentations;
4. Computer programs;
5. Therapeutic and surgical methods for animal and human treatment, as well as treatment and diagnostic;

6. Living matter and substances that exist in nature;
7. New uses for products or procedures already patented; and,
8. Economic or business plans, principles, or methods and those that refer to purely mental, industrial, or gaming activities.

Inventions that are contrary to the public order or moral standards or that are hazardous to human health and life or the environment are not patentable. Plants, animals, and essential biological processes for their production also are not patentable. In this sense, only non-biological or microbiological processes may be patented, while vegetable improvements are regulated by a special law.

Requests for patents are directed to the ONAPI and must contain the following elements:

- Identification of the inventor, requestor (if it is different from the inventor), and legal representative;
- Proof of title of the invention;
- Name, description, one or several samples, drawings, summary of the invention; and
- Payment of the corresponding fees.

The law grants the ONAPI the ability to study and decide requests that are deposited, applying the process established for this purpose. Patents are granted for a period of 20 years.

The period for invention patents may be postponed once, for a maximum period of three years, in cases where the ONAPI has incurred an unreasonable delay in granting registration of a patent, in accordance with the periods established in the DR-CAFTA.

Law 20-00 establishes a reduction of up to 20% of the rates for the request and maintenance of patents when the same inventor is the requestor or the beneficiary of the patent and its economic situation, duly confirmed by the ONAPI, does not permit the inventor to cover all the costs to request or maintain the patent.

## TRADEMARKS

Law 20-00 protects all kinds of trademarks, including collective trademarks and certification trademarks, defining them in a broad manner. The registration grants the exclusive right of the use of the registered trademark. The previous use period (more than six months) determines the priority for the registration. It also recognizes certain rights of priority for trademarks registered abroad. The new trademarks are registered in favor of the person who requests it first.

Among the distinctive signs that may not be registered are some prohibitions relative to the sign itself, as are the following:

- Signs that may be used in commerce to describe the product;
- Generic or scientific denominations of products, colors, etc.;
- Signs that are contrary to the public order or morals;
- Signs that ridicule persons, religions, countries, or others;
- Signs that may deceive the public in terms of the nature or the qualities of the product, etc.

Other prohibitions are related to the rights of third parties, such as:

- Similar signs to trademarks that are registered or in use for similar or related products, or similar in branding, commercial names, or registered brands;
- Signs that copy, imitate, or translate famous signs, when the likeness may cause confusion;
- Signs that affect the rights of the property of third parties, or the name, image, or prestige of entities or organizations; and,
- Signs that infringe on authors' rights.

The ONAPI receives and studies requests presented in accordance with the procedure established for said effect. The registration grants the exclusive right for the use of the trademark and authorizes its bearer to oppose third parties' use of the same, unless in case of usual commercial indications. It grants a registration period of 20 years, renewable for consecutive periods of 10 years. The requests for renewal must present the proof of use of the trademark.

The bearer of a mark may not oppose the use of the trademark by third parties, in relation to products that are in the market, within the country or abroad, for the same person or with that person's consent, or by persons economically related to that person, as long as the product, its packaging, and labels have not suffered alterations or deterioration.

## COMMERCIAL NAMES

Law 20-00 protects distinctive signs such as names, brands, signs, slogans, origin denominations, etc. The right for the exclusive use of a commercial name comes from its first commercial use. The protection is granted even before registration and ends with the use of the name. Only in cases of commercial slogans, the right of exclusive use is created by registration.

Commercial names may not be composed of indications or signs that are contrary to public order or moral standards, or that may create confusion in the public in terms of the nature, activities, or any other aspect related to the company or business associated with the same or its products and services.

Registration is not obligatory, functioning as an assumption that the possessor has adopted and legally uses said commercial name. The procedure for registration

is similar to that of trademarks. Registration is granted for renewable periods of 10 years, except for the original denominations, which registry is indefinite.

The costs of the procedures related to the recognition and exercise of industrial property rights have been established by ONAPI, as indicated in Law 20-00.

#### AUTHOR RIGHTS

Article 8 of the Dominican Constitution establishes a fundamental right of the person for the recognition and protection of property rights over scientific, artistic, and literary works. On August 21, 2000 Law 65-00 was issued for Author Rights. The main objective of this legislation is to provide a legal and institutional framework in accordance with the dispositions of the Agreement of the Aspects of Intellectual Property Rights related to Commerce (ADPIC), which allows for the protection of authorship rights in the Dominican Republic, taking into account the national interest. Decree 362-01 from March 14, 2001 grants the rules for application of Law 65-00.

The National Office for Author Rights (ONDA) is the national authority in charge of ensuring the protection of author rights and the application of the law. For these purposes, the law has granted ample administrative, supervision, and arbitration powers. Its supervision activities are enforced by the obligation of any importer or distributor of commercial goods, services, and equipment with author or related rights to register the same.

Likewise, the country has ratified the following international conventions in this matter:

- Berne convention for the Protection of Literary and Artistic Works 1886;
- Universal Convention for Author Rights from 1952;
- Rome Convention for the Protection of Interpreters, Audio Producers, and Radio transmission Organizations from 1961; and,
- Treaties of the Intellectual Property World Organization (OMPI) for the Rights of Authors and Interpreters and Phonograms of 1996.

Law 65-00 protects all kind of original intellectual creations that may be fixed, transmitted, or reproduced by any existing means or are existing in print, reproduction, or dissemination. It also protects the independent creations derived from original works, such as those resulting from the adaptation, translation, or in another manner transformation of the original.

It also protects and regulates the exercise of rights related to author rights, to efficiently fight the illegal retransmissions of television and the unauthorized reproduction of musical productions, which were two of the biggest holes under the past legislation. Related rights are granted to artists for their interpretation, to the producers of phonograms for their recordings, and other radio transmitters

(including the original transmission by cable, fiber optics, or other method) for their radio and television programs.

Finally, it protects the works of Dominican authors who reside in the country or who are nationals or reside in countries that belong to international treaties ratified by the Dominican Republic, as well as works for which first publication has taken place in the country (or in a country signatory to an international treaty) or that have been published in the country (or in a country signatory to an international treaty) within 30 days following its first publication. In the absence of international treaties, the protection of foreign works will be subject to reciprocity.

The author is the titleholder of the original author right over the author's creation. All the rights conferred to other persons, by virtue of law or contract, have a derivative character. Authors have the moral and economic right over their creations. Moral rights permit the following: 1. Receive credits for its creation; 2. Oppose changes that may affect the merit of its creation; 3. Abstain from publishing its creation or to maintain it in anonymity; and 4. Take the work out of circulation, as long as the author compensates for damages that this decision can entail.

Moral rights are inherent in the author. At the moment of death, they are transferred to the author's legal heirs or to the state in the absence of them, which parties have the right to exploit the creation for a period of 50 years.

Economic rights allow the author to exploit the author's creation by means of any method of use, publication, reproduction, or distribution that exists or may exist and grants rights to third parties for this. The methods of use are independent among themselves, and therefore the author may transfer the author's rights separately for each method of use. The law regulates the different kind of contracts and licenses for the transfer of economic rights.

The distribution, reproduction, publication, or other use of creative works without the consent of the author or titleholder, totally or partially, is illegal and therefore may be subject to civil and criminal sanctions. To ensure the protection of rights, the author or title bearer for the distribution of the author's work may apply or require the application of methods, systems, or machines that prevent the transmission, reproduction, or modification of the work without the author's authorization.

An author's rights begin with the creation, being independent of their support material. Therefore, the formalities of registration established in Law 65-00 are not obligatory. The objective of registration is to grant publicity to the author's rights and the agreements related to them and to grant guarantees of authenticity and security to the author's rights and related rights holders.

Any creative work protected by author's rights, artistic interpretations, phonograms, and transmissions that are protected by related rights, as well as any agreement in respect to the same and the sentences and decisions that affect it, may be registered.

The associations for collective administration of author's rights, regulated by Law 65-00, must be registered before this entity.

Law 65-00 establishes administrative, civil, and criminal sanctions for the violation of author's rights.

## COMMERCIAL TRANSACTIONS

### PURCHASE OF REAL ESTATE PROPERTY

The purchase of real estate properties or real estate rights by foreigners is not subject to any special condition; the same system applies as governs national purchasers.

Before purchasing real estate, it is appropriate to directly verify the situation at the Title Registry Office and to obtain written confirmation of the result of such an investigation. This is usually done by the request of an Encumbrances Certification from the Title Registry. This system protects the purchaser from the existence of any sale or mortgage that has not yet been registered when the buyer deposits its contract for the purpose of registration.

The quick registry of sale is very important. In this regard, a buyer must deposit at the Title Registry an original of the purchase agreement, legalized at a Notary Public, along with a Certificate of Ownership in the name of the seller, which shall be cancelled and substituted for a new one in the name of the buyer.

The register of the transference of the real estate property at the Title Registry Offices requires the payment of the following taxes and fees:

- 3% of the price of the property; and,
- Stamps under Law 80-99, which are calculated in the following manner: the price of the property minus RD\$20,000 and the rest of the amount/1,000 X 13 + 232.00; this value shall be adjusted for inflation.

Another important aspect is Law 18-88 from February 5, 1988 for the Tax on Sumptuous Houses and Urban Lots With No Edification, modified by Law 288-04 of the Fiscal Reform, that establishes a tax on real estate property with a value over five million pesos with a rate of 1% of the surplus of this amount.

The granting of mortgages and pledges is regulated by the Civil Code, the Commerce Code, the Real Estate Registration Law, and other special laws.

### MORTGAGES

In general, any type of real estate right can be mortgaged, be it property, use, or exploitation rights. Installations also will be considered as real estate and may be mortgaged. Mortgages over future real estate are not accepted; nevertheless, the interests of a mortgage creditor extend to the improvement made on the property after the contract.

The main obligation must be valid and its nullity also will cancel the mortgage. The secured obligation may, however, be conditioned or eventual, in which case the mortgage also will be conditioned or eventual. Likewise, a mortgage

may be granted to ensure future obligations, which allow guaranteeing financial instruments such as credit lines and cards. The mortgage debtor must have a duly registered title for the mortgage to be valid with respect to third parties. The persons with conditional property rights may grant mortgages under the same conditions that affect their rights.

A mortgage must be registered in the Title Registry offices of the place that the property is located by means of the deposit of the guarantee contract and the Certificate of Title. The date of the registry is the date of the deposit, even though the physical issue of the Certificate of the Mortgage Creditor may be done several weeks later.

The tax to be paid at the moment of registration is a unified tax of 2% of the amount of the loan.

Registration allows the mortgage creditor to have a priority on the payment of the creditor's debt over other creditors, including mortgage creditors that have not registered their rights. In this case, the creditor will receive payment first over the results of the sale of the property, unless there are privileged creditors (employees, fiscal administration, legal fees, etc.)

Any mortgage creditor may initiate a process of real estate embargo as provided by law, under the obligation of certain publicity measures intended to permit other creditors to join the process. The creditor may, by virtue of the right that is conferred by law, establish embargos over properties even though the same have been transferred to third parties.

#### CHATTEL PLEDGE

The encumbrances over chattel may be with or without relinquishing possession, if the debtor transfers the possession to the creditor, or not.

In case of pledges without relinquishing possession, there are several legal ways to protect the right of the creditors from the eventual sale or additional encumbrance by the debtor. On the one hand, Law 6186 from 1966 establishes chattel pledges without relinquishing possession over perishable goods, equipment, inventory, and agriculture products. On the other hand, Law 483 of Conditional Sale of Goods allows the seller to maintain the property right over the goods until the seller receives the total payment of the purchase price and registers the contract in the offices established for this means. Under Laws 607 and 505, there also is a system for the registration of ships and planes.

A pledge may cover intangible goods, such as credits, bank accounts, contracts, etc., in which case the debtor of the obligation granted as a pledge must be notified. Likewise, a pledge may take the form of an "accessory transfer," in which case the debtor transfers an intangible to the creditor as a form of secondary payment. This is used mainly on accounts payable.

The creditor that wishes to execute an intangible good (or a good given as a pledge without relinquishing possession) has the option to force a public sale or to request the court to assign the property of the good.

## ELECTRONIC COMMERCE

On September 4, 2002, Law 126-02 on Electronic Commerce, Digital Documents and Signatures was issued. The rules for the application were approved by Decree No. 335-03 from April 8, 2003. This legislation seeks to adapt the legal framework of the country to new technology and permits the benefit of the opportunities that the new digital technologies offer for the promotion of economic activities and the execution of commercial activities in the global market. Specifically, its objectives are the following:

- To facilitate electronic commerce within and among the nations;
- To validate transactions that have been made by means of new information technologies;
- To promote and support the development of technological initiatives related to electronic commerce and to promote the use of these services and distribution among the population.

Law 126-02 is based on model laws on the matter prepared by the Commission of the United Nations for the International Mercantile Rights (CNUDMI) regulating concepts of origin, conservation, data messages, and digital documents to grant legal validity to the same. At the same time, the rules for application specify the conditions for the use of the digital signature, differentiating it from the electronic signature; establish the requisites for the establishment of certification entities; and regulate the certificates of digital signatures and non-credited entities.

Law 126-02 applies to all type of information in the form of a digital document or message, except for obligations with the Dominican government by virtue of international treaties or conventions and in the written warnings that legal requirements must be necessarily printed on certain products because the risks that their commercialization, use, or consumption imply.

Law 126-02 grants legal validity to digital documents and data messages. Likewise, legal requirements shall be considered fulfilled by the use of documents or digital signatures when the law requires written confirmations, written signatures, and original conservations, so long as they comply with the dispositions established for digital documents or digital signatures. Also, the electronic medium may be used for the execution of contracts as evidence, and shall have the same force as documents signed under private signature. In terms of a digital signature, the same shall have the same force and effect as a written signature, if it incorporates the following attributes:

- It is used by only one person;
- It is subject to be verified;
- It is under the exclusive control of the person that uses it; and,
- It is tied to the information, digital document, or message to which it is associated, in a way that if they are changed, the digital signature is invalid.



The rules for the application of Law 126-02 establishes the difference between the valid digital signature and the digital signature; even though this last one does not have the same legal value as the secured digital signature, because it has not been issued by authorized certifiers of the regulatory entity, it does not lack complete value.

The law establishes several simple assumptions of the integrity, origin, concordance, reception, time, and place of issue of digital documents and data messages.

The rules for the application of Law 126-02 establish a voluntary accreditation system for the providers of certification services at the regulatory entity, regulating the Certification Entities, the Registration Units, and the Providers of Electronic Signature Services.

INDOTEL has the obligation to supervise and control the activities developed by certification entities.

Digital certificates issued by Certification Entities must contain at least the following information:

1. Digital signature of the Certification Entity;
2. Name and electronic address of the subscriber;
3. Identification of the subscriber named in the certificate;
4. Name, electronic address, and place where the activity is done by the Certification Entity and the past history of the authorization that has been obtained;
5. Public key of the subscriber;
6. Methodology used to verify the digital signature of the subscriber;
7. Serial number of the certificate;
8. Date and hour of the issue and expiration of the certificate; and
9. Identification of the Certification Policy under which the certificate is issued.

For the transmission of certificates of secure digital signature, the identity of the requestor shall be confirmed by means of an identification card number, a passport number, or any other official document.

# LEGAL FRAMEWORK FOR FOREIGN PERSONS

## ENTRY AND DEPARTURE

Foreign investors whose business or activities require their visit to the Dominican Republic or to transfer their residence to the country will find here information about the most important laws and dispositions that will affect their entry and stay in the Dominican territory, as well as their civil and family life in the country.

### ENTRY REQUIREMENTS

In general terms, a foreign person needs a Dominican visa to enter the country. The visas are classified as Diplomatic, Official, Courtesy, Business, Dependent, Tourism, Residency, and Study and are issued by the Exterior Service of the Dominican Republic or by the Foreign Affairs State Department.

Citizens of countries with which the Dominican Republic has signed agreements for the exemption of the requisites for visa may enter the country for a period of 60 days with the only requirement of purchasing a tourist card, which may be acquired at the arrival airport. These countries are the following: Antigua & Bermuda, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Brazil, Costa Rica, Croatia, Curacao, Denmark, Dominica, El Salvador, Slovenia, Spain, United States of America, Finland, France, Guatemala, Luxemburg, Greece, Guyana, Hungary, Ireland, Turks and Caicos, Italy, Jamaica, Mexico, Monaco, Netherlands, Poland, Portugal, Andorra, United Kingdom, Norway, Czech Republic, Germany, Russia, St. Kitts and Nevis, San Marino, Saint Vincent and Granada, Santa Lucia, Switzerland, Surinam, Trinidad and Tobago, Crane, Venezuela, and Yugoslavia.

### DOMINICAN RESIDENCE

Foreigners may acquire the right to reside in the country by:

- Obtaining a residence visa at the Dominican Consulate abroad or at the External Relations Department of State in the country; and,
- Obtaining a provisional or permanent residence card at the Migration National Department.

Requesting a residence visa, provisional or permanent, requires the following documents:

1. Request letter;
2. 509-F Form, completely filled out;
3. Letter of Guarantee of a person in the company of a Dominican or a Dominican company;
4. Certificate of good conduct;
5. Medical Certificate;
6. Labor contract, bank letter, or any other type of evidence of economic solvency;
7. Four 2" x 2" front pictures and three 2" x 2" side pictures;
8. Birth certificate;
9. Copy of passport;
10. Certification by the Migration General Department of the last date of entry to the country. The proceeding is similar to the request of the residence visa for spouses and children.

The request for provisional residence must be accompanied by the following documents:

1. Request letter;
2. B-1-A Form, completely filled out;
3. Copy of the passport and the residence visa;
4. Certification of the residence visa issued by the Foreign Affairs State Department;
5. Letter of Guarantee of a Dominican citizen or resident, legalized before a Notary Public;
6. Six 2" x 2" photos (four from the front and two from the side);
7. Sworn statement of the economic solvency of the requestor, before two witnesses;
8. Certificate of good conduct, issued by the National Police;
9. Payment of the amounts indicated for the following concepts:
  - a. RD\$1,800.00 for the medical exam;
  - b. RD\$500.00 for the deposit of the request;
  - c. RD\$250.00 in stamps;
  - d. RD\$20.00 for the Form B-1-A.

The provisional residence card is obtained within a period of three to four months after the deposit of the request and is valid for a year. When the provisional residence expires, the requestor may request a permanent

residence card, which is valid for renewable periods of three years. Foreigners with permanent residence in the country may obtain a personal identity card.

All documents coming from abroad that are to be presented at the Foreign Affairs State Department or Migration Department must be legalized by the competent authority of the country from the country of origin and by the Dominican Consulate closest to the place of issue, and, if not in Spanish, they must be translated by an Official Translator.

The Center for Export and Investment (CEI-RD) has introduced a special program for foreign investors to speed up the process to obtain the Dominican residence. This program applies to foreign investment made in the country by means of a contribution of capital to a commercial entity duly established in accordance with the laws of the Dominican Republic, for a minimum amount of US\$200,000.00 or its equivalent in Dominican currency. This contribution must be in accordance with Law 16-95 for Foreign Investment and has to comply with the procedure for registration to be effective for this purpose.

#### DOMINICAN CITIZENSHIP

Dominican nationality is obtained:

1. By being born in the Dominican territory;
2. By being the child of a Dominican mother or father;
3. By naturalization.

A foreign person may obtain Dominican citizenship if he or she has resided in the country for at least two years. This continuous residence may be reduced.

The request for citizenship is made to the President by way of the Secretary of State of Police and Interior. It must include:

1. Basis on which the citizenship is requested;
2. Certificate of non-delinquency issued by the corresponding authority in the country of origin;
3. Birth Certificate, translated and legalized;
4. Explanation if the requestor has changed nationality;
5. Receipt of payment of taxes for RD\$10.00 from the Collector of Internal Revenue;
6. Five 2" x 2" photographs;
7. Any other document that justifies the request; and,
8. Two certified letters issued by the Department of Immigration of the Dominican Republic, establishing that:
  - a. The interested person is a resident of the country; and,

- b. His or her file contains a letter of guarantee required to obtain a residence in accordance with the law.

The granting of nationality is at the discretion of the Dominican President. After the publication of this decree in the Official Gazette, the requestor must swear allegiance to the Dominican Republic. An indication of this oath shall be published also in the Official Gazette. The naturalization process lasts one to two years. The President of the Republic has the power to revoke the nationality under certain conditions.

## IMPORTANT ASPECTS OF DOMINICAN FAMILY LAW

### MARRIAGE

Foreigners who wish to marry in the Dominican Republic must present the following documents:

1. Original and copy of passport;
2. Certificate of being single issued in the country of origin, duly legalized; and,
3. Tourist card, residence card, or identity card, whichever is applicable.

The marriage is celebrated by the Officer of the Civil Status of the domicile of one of the spouses in the presence of at least two witnesses. The marriage certificate contains the complete names of the spouses, a declaration that they have been joined in marriage, the date of the celebration, and the signature of the Officer, the spouses, and the witnesses. The canonical marriage has the same effect as a civil ceremony.

The Civil Code regulates the financial relationship between spouses. The community of assets system is the “legal system” that automatically applies to all couples who are married in the Dominican Republic and do not expressly elect another system. Within this system, there are three types of goods: 1. Common goods, which belong equally to both spouses; 2. Assets property of the husband; 3. Assets property of the wife. The community is composed by all chattels of the spouses, present or in the future, as well as the real estate purchased during the marriage. The assets belonging to the spouses include real estate property bought before the marriage, properties acquired through inheritance, and the reinvestment in personal goods.

Law 189-01 from November 22, 2001 grants husband and wife joint administration of community assets.

The dissolution of marriage by divorce or death of one of the spouses leads to the determination of divisible assets, the recouping of the personal goods by each spouse (or his or her heirs) and the participation in the rest of the common assets between the spouses (or their heirs). This liquidation and partition process may be made amicably by means of a notary act, or, in the lack of agreement, in court.

Spouses who wish to adopt a different system may choose among the marriage systems established by law, such as the separation of assets, single heir system

(sistema dotal), and universal community. They also can create a completely different one or elect a system under foreign law. The spouses, before the celebration of their marriage, must draft an agreement to this effect at a notary public, which must be registered at the Civil Status Officer in the marriage certificate at the time the ceremony occurs. After the marriage, the spouses may not change the system, even when they are divorced and later decide to remarry.

## DIVORCE

Divorce may be:

1. **By mutual consent.** The mutual consent divorce may only take place after two years and before 30 years of marriage. Likewise, the husband may not be over 60 years old or the wife over 50 years old.

Spouses who wish to be divorced must execute a notary document in which they declare their intentions to be divorced and agree, among other things, on the distribution of assets, the custody of underage children, and the payment of alimony. This act must be ratified by the Judge of the First Instance of the domicile of the spouses, who, after verifying that the legal formalities have been complied with, will order the divorce by means of a sentence. This sentence cannot be appealed and, within a certain term period, must be registered, pronounced, and published.

2. **By determined cause.** A divorce because of determined causes may be requested because of the incompatibility of character, absence, adultery, criminal action, physical abuse, abandonment of the home, alcoholism, and drug addiction.

The competent court is the Justice of the First Instance of the domicile of the spouse that is being sued. This court, after being presented with the evidence and having heard the witnesses for each party, orders the divorce in favor of one of the spouses and decides, among other things, on the custody of underage children, if any, and the payment of alimony. In general, children under four years of age must remain with the mother and those older than that may stay with the spouse that obtains the divorce, but the court may always take into account special circumstances.

After the appeal period has expired without there being the exercise of any recourse, which period is two months, the formalities of registration, pronouncement, and publication of the divorce must be met.

3. **Special.** Special divorce or quick divorce applies only to foreign persons or Dominican citizens that reside abroad and that wish to divorce by mutual consent. These must sign an agreement before a notary public in their country of residence in which they declare the intention to divorce, they agree over the distribution of assets, the custody of the underage children, and the payment of alimony; at the same moment they grant competence to the Judge of the

First Instance to decide on the divorce. This agreement must be legalized at the corresponding Dominican Consulate.

At least one of the spouses must be present on the day of the hearing, while the other spouse may be represented by means of a special power of attorney duly notarized and legalized. The judge will require certified copies of the certificates of marriage and of birth of the children.

The process for the decision of the court, the registration, pronouncement, and publication of the divorce takes from one to four weeks. Likewise, for the divorce to be valid abroad, the same must be certified by the Attorney General of the Dominican Republic, the Foreign Affairs State Department, and the embassy or consulate of the country where the divorce is to be applied.

## ADOPTION

Adoption is regulated by the Code for the Protection of Minors, contained in Law 136-03. The National Council for Infancy and Teenagers (CONANI) is in charge of coordinating the adoption procedures. The request for adoption must comply with the dispositions of the International Convention for the Protection of Minors and other international measures in the interests of the minor.

Dominican legislation establishes only the privileged adoption procedure, which is irrevocable and grants the person being adopted the same rights as a legitimate child.

To adopt a minor in the Dominican Republic, a person must:

- Be older than 30 years of age;
- Be part of a marriage at least five years long if they are foreign and three years if they are Dominicans;
- Be at least 15 years older than the minor who is being adopted;
- Live with the minor in the country for at least 30 days if the child is older than 15 years old and 60 days if the child is younger than that;
- Show a declaration of loss of parental authority in case of abandoned children; and,
- Present any children over 12 years old to the court.

It is important to indicate that all documents for the adoption must be authentic and must be certified by the Dominican Consulate or consular representation of the Dominican Republic in the country where the adopter is coming from, as well as the country of origin or residence of the parents that are adopting and finally by the Foreign Affairs State Department in the Dominican Republic. If they are not in the Spanish language, they must be translated in the Dominican Republic, by an official translator, duly certified by the Attorney General of the Dominican Republic.

The adopters must present the request at the Court for Boys, Girls and Teenagers of the domicile of the person or entity under whose care the minor is at. This request is presented to the Defender of Boys, Girls, Adolescents and Family for this officer's knowledge and opinion, within a term of five days. If this officer receives and presents it to the judge, after pondering if enough evidence was deposited to decree the adoption, a sentence will issue within the following 10 days.

Once the sentence has been obtained at court:

- (i) It shall be published in a national circulation newspaper;
- (ii) It shall be sent to at least one of the adopters and the biological parents;
- (iii) It shall be registered in the Civil Registry;
- (iv) The dispositions of the sentence at the offices of the Officer of the corresponding Civil Status shall be transcribed, once the authorization of the Civil Status Central Registry is obtained; and,
- (v) It must be legalized at the Attorney General of the Dominican Republic, the Foreign Affairs Department of State and the consulate of the country of origin of the adopters to permit the child to leave the Dominican Republic, replacing the original birth certificate. Finally, copies of all documents must be deposited at the General Migration Direction, and the parties must have an interview with that institution, which will grant the permit to depart the country to the adopted child.

## SUCCESSIONS

The Civil Code establishes different succession orders so as to regulate transfer of assets following death. Succession is distributed in equal parts among surviving relatives who belong to the highest order, from the following succession order: First: descendants; Second, parents and siblings; Third, ascendants; Fourth, collaterals; Fifth, spouse; and, Sixth: the state.

Dominican law establishes a legal reserve in favor of children and, in the absence of children, parents of the deceased. This legal reserve is 50% of the assets if the deceased leaves one offspring, 66.66% if two children are left, and 75% if three or more are left. If the deceased leaves no descendants, the reserve for both parents is 50% and 25% if it is only one parent.

In accordance with Law No. 288-04 of the Fiscal Reform, the tax on successions is 3% of the value of the succession mass, after the corresponding deductions for the case of successions. In case of donations the tax shall be 25% of the value of the donation.

The successions of foreign persons who have assets in the country are subject to the payment of these taxes in respect to said assets. Likewise, for persons residing abroad that benefit from a succession, the corresponding rate is increased by 50%.



## FOREIGNERS UNDER THE DOMINICAN PENAL LAW

The liquidation and the payment of the tax is necessary for heirs to obtain the transfer in their favor of the different titles and other rights of the deceased, as long as certain procedures are kept, in accordance with the type of asset it refers to.

The Dominican Penal Code establishes three types of infractions in accordance with its importance: misdemeanor, felony, and crime. The applicable sanctions to each type differ significantly.

The criminal courts have the competence to condemn the person declared as guilty to the payment of indemnifications in favor of the victims. Likewise, the confiscation of property is possible if the same constitutes evidence or the result of the crime.

Among the infractions subject to special laws are:

1. Issuing checks without funds;
2. Drug trafficking and money laundering, which are crimes;
3. Violation of Law 50-88 over Drugs and Controlled Substances, Law 72-02 over the Laundering of Assets and Rules 19-03 over the Custody of Ceased Goods;
4. Fiscal offenses and felonies, sanctioned by fines; and
5. Violation of the Tax Code from 1992.

### INFRACTIONS ON DOMINICAN JURISDICTION

Dominican courts have the jurisdiction to judge foreigners who commit infractions within the country, even when the victim also is a foreigner.

Infractions committed by Dominican citizens abroad may be judged by Dominican courts under the following conditions:

1. The infraction is penalized by Dominican laws;
2. The accused has not been judged abroad;
3. Dominican authorities have received a formal complaint from the victim or foreign government; and,
4. The accused is within the country.

### EXTRADITION

Extradition is the formal delivery of a person by one country to another, for the extradited person to be judged or sanctioned. Extradition is established in the Constitution, treaties, conventions, and other international agreements. In the absence of treaties, Dominican laws establish that extradition may be granted by the country in accordance with reciprocity between the countries.

The Dominican Republic has signed extradition treaties with the United States of America and Spain. Also, the country is a signatory to the International Extradition Convention of 1981. With some variations, these treaties contain the following elements:

1. The offense must be of certain significance and lack any political motives;
2. There must be a formal request, made through the proper channels;
3. The country that makes the request must be competent to judge the infraction that motivates the request;
4. The obligation of delivering the accused shall apply if all the conditions established in the extradition treaty are met;
5. The accused may not be judged or sentenced for an infraction different from the one that motivated the extradition;
6. The extradition may not be granted if the infraction has expired or if the accused has been accused and carried out a sentence;
7. If the extradition is requested to execute a sentence, the pending condemnation must be at least six months; and,
8. The extradition may be delayed for health problems of the accused, or so the accused may be judged or complete sentence in the country, for acts committed within its territory, different from those that motivate the extradition.

#### DEPORTATION

Foreigners that engage in the following activities in the Dominican Republic may be arrested and deported to their country of origin:

- Illegal entry to the country, use of false documents, permanence in the country after the expiration of the visa, violation of immigration laws, etc.;
- Engaging in subversive activities against the Dominican government;
- Drug trafficking in violation of current laws;
- Commission of crimes within five years after entry to the country; and,
- Practice of prostitution or related activities.

Where foreigners turn into a public nuisance within five years following their entry to the country, the immigration inspectors are in charge of investigating these cases and obtaining an arrest order. Foreigners may not be deported without the possibility of defending themselves of the charges of which they are being accused.

## LEGAL AND JUDICIAL SYSTEM

### LEGAL SYSTEM

Dominican law has its basis in the Napoleonic Codes adopted in France at the beginning of the Nineteenth Century, which were inserted formally in the Dominican legal system in 1884. There is a Civil Code, a Civil Procedure Code, a Penal Code, a Penal Procedure Code, and a Commerce Code, and Dominican judges are knowledgeable about decisions of the French courts to interpret these codes. There have been modifications, but some of the decisions still are obsolete. For this purpose, new versions have been in the works for several years.

The Dominican judicial system is also based on the French judicial system. The basic structure of the judicial power is ruled by the Political Constitution (Articles 63 to 77) and the Organic Law of the Judicial Power (Law 821 and its modifications). The Civil Procedure Code, the Penal Procedure Code, the Cassation Procedure Law, Law 327-98 of Judicial Career, and Law No. 4697 of the Autonomy of the Budget Legislative and Judicial Power regulate its functioning.

The Dominican judicial system is comprised of the Justice of the Peace; Justice of the First Instance; Appeal Court; and Supreme Court of Justice. There also are specialized courts that have competence on specific matters. These are the Labor First Instance Court and Court of Appeals; Tax Court; Land Court; First Instance; and Court of Appeals for Boys, Girls and Teenagers, Created by Law 14-94 for the Protection of Boys, Girls and Teenagers. In the Dominican Republic there are no juries; judges decide cases and pronounce sentences. They are designated by the Supreme Court.

There are courts to which the Constitution and the law grants the power to solve conflicts. They are the Central Electoral Board; Superior Administrative Court (Law 1494 from 1947); Police Court (Law No. 285 from 1966 with its modifications); and the Military Court (Law 3489 from 1953).

The Dominican Republic recognizes the “Calvo” doctrine, by which the Dominican courts also have the competence to judge the disputes derived from events that have occurred totally or partially on Dominican territory. Nevertheless, courts recognize the rights of the contracting parties to submit the conflicts that may appear among them at foreign courts or international arbitration. However, there are certain restrictions to this liberty. The disputes that fall under the jurisdiction of the Dominican laws or dispositions that are considered of public order are the exclusive domain of the Dominican courts.

In accordance with Law 1494 from 1947, disputes that come from special agreements subscribed by the state with foreign investors must be submitted to the administrative courts, which have the exclusive competence to decide the cases in which the public administration is involved.

## LITIGATION

### FOREIGN PARTIES BEFORE THE DOMINICAN COURTS

The country's civil and procedural laws regulate the participation of foreign parties in the procedures at the Dominican courts.

By virtue of the principle of contractual liberty, a foreign law may be chosen as the applicable legislation for a contract, so long as they do not contradict the law of public order, as these may not be waived by private contracts.

A foreigner who is complaining in the Dominican courts may be obligated by the counterpart to supply a "judicatum solvi" bond as a guarantee for the payment of the costs or indemnifications that may result in the legal action. This requisite can be applied where the foreigner does not have a legal domicile in the country. As there is no specific legal disposition to limit the amount of the bond, the Dominican counterpart sometimes asks for exaggerated amounts as a way of delaying the course of a lawsuit. The Dominican party may waive the right to request the bond in case of litigation. Laws 20-00 of May 8, 2000 over Industrial Property and 65-00 from August 21, 2000 over Author's Rights contain exceptions to these requirements by establishing that societies and foreign persons will not have to present this bond to initiate actions relative to the violation of intellectual property rights recognized by these statutes.

To be able to be presented at the Dominican courts, private documents that are executed abroad must comply with the following requirements:

1. Be legalized by a notary public or the officer that has the function to certify signatures at said country;
2. The legalization must be certified by the competent authority to legalize the signature of the notary or officer;
3. The document must be certified by the corresponding Dominican Consulate; and,
4. The signature and capacity of the Consulate must be certified in the Dominican Republic by the Foreign Affairs State Department.

Official documents issued abroad must be authenticated by the diplomatic agency or consular office corresponding to the country of origin, apart from requirements 3 and 4 above. Documents that are not in Spanish must be translated by an official translator in the country or a similar officer in the country of origin, in which case the signature of the translator must also comply with requisites 2, 3 and 4 above. The entire requirements are applied, likewise, for the deposit of documents at the offices and government dependencies.

The possibility of execution of the decisions issued by foreign courts or arbiters is conditioned by a declaration issued by a Dominican court that said decision is valid and applicable in the Dominican territory. The request to obtain said declaration or exequatur must be presented at the First Instance Court that will review the decision.

This process usually transforms itself into a similar litigation to the ordinary actions initiated before the court, so this procedure may last for years.

## ARBITRATION

Persons or enterprises may opt to resolve their commercial conflicts outside the judicial courts, submitting their claims at conciliation courts or arbitration panels that offer better guarantees of obtaining a quick and efficient result. This is possible when the litigation does not refer to public order laws.

**Local Arbitration.** Procedural laws establish an arbitration process for commercial matters under the jurisdiction of the Civil and Commercial Chamber of the Court of First Instance. Nevertheless, this does not present too many more advantages than a normal judicial process. Much more convenient is the arbitration system created by Law 50-87 from 1987 of Chambers of Commerce and Production.

In application of this legislation, an Arbitration and Conciliation Board (CAA) was created that may serve as an arbiter for the solution of conflicts between individuals and/or companies. Its rules for application were inspired by the International Chamber of Commerce (CCI). By virtue of Law 50-87, the decisions of the CCA are definitive, may be executed immediately, and are not subject to any recourse at the judicial courts.

**International Arbitration.** In October 2001, the Dominican Republic became a member of the New York Convention on the Recognition and Execution of Arbitration Decisions from 1957. This convention regulates the recognition by the national courts of the arbitration clauses, the obligatory sending to arbitration courts by said judicial courts in accordance with the arbitration clause, the execution and the judicial recognition of arbitration sentences, and the causes for the denial of said recognition or execution. This measure implies a significant progress to the legal framework applicable to foreign investments in the country.

The most significant effect of the convention is the simplification of the execution of foreign arbitration decisions in the Dominican Republic. Within this context, the Convention establishes that no condition may be imposed that is substantially more expensive nor provides for higher tariffs or fees for the recognition or the execution of the arbitration decisions to which this Convention applies than those applicable to the recognition or execution of local arbitration decisions, so long as they have complied with the formalities for legalization and translation.

The national courts may reject the execution of these decisions in specific cases established by this convention.

Finally, it is important to note that the ratification of the convention entails significant implications for the international recognition of local arbitration decisions, which may be more easily executed in other countries that are, like the Dominican Republic, state signatories of the convention.

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