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The International Comparative Legal Guide to: Business Crime 2012

A practical cross-border insight
into business crime

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Dominican Republic

Jiménez Cruz Peña

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

The *Ministerio Público* is the authority responsible for investigating and prosecuting crimes. It is a nationwide body, hierarchically organised and independent from any other state department or agency in terms of administration, budget and functions. It is headed by the Attorney General (*Procurador General de la República*), who is appointed by the President. District attorneys and other representatives act in defence of society before the courts.

The *Ministerio Público* generally initiates preliminary investigations and carries out or orders all pertinent and required measures to determine how the crime occurred and who was responsible for it. It also has the obligation to file the accusation and defend it during the trial.

The *Ministerio Público* does not participate in the investigation and prosecution of certain crimes of a private nature (infractions regarding violation of property, defamation and libel, intellectual property, and checks).

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

As stated above, the *Ministerio Público* is the agency in charge of prosecuting crimes. It is organised by divisions depending on the matter being prosecuted and the tribunal before which the criminal action is brought.

The *Ministerio Público* controls the investigations of crimes. However, the Judicial Police assists in the investigation process and gathering of evidence. Police agents and officers have to comply with the orders given by the *Ministerio Público* or judges; they may not modify them or put them off.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

There are divisions within the *Ministerio Público* which are in charge of investigating and prosecuting crimes in a particular field, such as money laundering (*Unidad de Antilavado de Activos*) and corruption (*Dirección Nacional Persecución De La Corrupción Administrativa*). Other governmental agencies, such as the General Agency for

Internal Revenues, or the Banks Superintendence, are in charge of verifying the correct compliance of law by particulars and entities, and have the obligation to report to the *Ministerio Público* any violations to the criminal laws.

2 Organisation of the Courts

2.1 How are the criminal courts in the Dominican Republic structured? Are there specialised criminal courts for particular crimes?

According to article 69 of the Penal Procedure Code, the only tribunals with jurisdiction to decide over criminal actions are the Supreme Court of Justice, the Court of Appeals, the First Instance Courts, the *Juez de la Instrucción*, the *Juez de Ejecución Penal*, and Justices of the Peace.

Criminal First Instance Courts may be composed of one judge, if the maximum sentence provided for the infraction is 2 years' imprisonment and/or payment of fines or if the case being tried is of a private nature. The court may be composed of three judges when the prison sentence provided by the law exceeds 2 years.

The *Juez de la Instrucción* intervenes only during the preliminary phase of the proceedings, controlling the legitimacy of the investigations carried out by the *Ministerio Público*. These judges conduct the preliminary hearing to determine if sufficient evidence exists for a trial to be held.

The *Juez de Ejecución de la Pena* resolves all issues related to the enforcement of the sentence. Justices of the Peace (*Jueces de Paz*) decide over misdemeanours, violations to traffic law, municipal affairs, and others as prescribed by law.

2.2 Is there a right to a jury in business-crime trials?

No, there is no jury system in the Dominican Republic.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in the Dominican Republic to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

- o Fraud and misrepresentation in connection with sales of securities

Articles 145 to 149 of the Penal Code provide the legal basis for the

prosecution of fraud and misrepresentation, in general terms, in connection with public or authentic acts, acts of commerce and banking. This crime involves the person who commits fraud and misrepresentation, and the person who uses the false document. In the same manner, articles 150 to 152 provide sanctions with a lesser sentence for fraud and misrepresentation contained in private documents.

The elements of this crime are: (a) the alteration of the truth in a written document; (b) that the alteration be made through one of the acts stated in the law (falsification of signatures, material alteration of a document by adding or modifying words, data, numbers, etc., insertion of provisions, obligations, releases, supposition of person, insertion of provisions different from those agreed upon, to state false acts as if these were real); (c) an injury; and (d) the intention.

More specifically, article 116 of Law 19-00 on Stock Markets incriminates the following acts regarding securities:

- To provide false background information or facts, with malicious intent, to the Superintendence of Securities, stock and product exchanges, and the public in general.
- The issuance by stock administrators, stock exchanges and stock brokers of false certifications on transactions made in the markets or in which they have participated.
- Maliciously false statements made by directors, managers and officers of issuers, in the act of issuance of securities of public offerings, in the prospect, in the documents filed, along with the request for registration, in the information provided to the Superintendence of Securities, to the holders of securities, or in the news or ads published by them.
- To mislead or induce error by broadcasting false news in the securities market to obtain benefits or advantages for themselves or third parties.
- To provide false information regarding an entity or person involved in the securities market.

o Accounting fraud

When false declarations, data, statements or numbers are included in accounting books for purposes of defrauding the Tax Administration, article 236 of the Tax Code considers it a tax crime. Law 479-08 on Commercial Companies, as amended, also sanctions frauds committed by managers, directors, shareholders or any other person involved with the bookkeeping and accounting reports of the company. Law 633, which creates the Institute of Authorized Public Comptrollers, also refers to accounting frauds committed by authorised comptrollers, or by private parties who submit false data for the elaboration of accounting reports.

Also, article 116 of Law 19-00 on Stock Markets typifies as a criminal action an authorised comptroller or auditor reporting false statements regarding the financial situation of a company or particular obliged to declare.

o Insider trading

Article 2 of Law 19-00 on Stock Markets lists the individuals who are considered to have access to inside information on companies, including: members of the board of directors, managers, officers, consultants, and employees of certain hierarchy; managers, members of the board and employees of risk qualifiers, auditors, employees of the Central Bank of the Dominican Republic, spouses; and certain relatives of all people listed, among others. If any of these individuals, while executing security transactions of any kind in the securities market, provide or use inside information for themselves or to the benefit of others, they are guilty of committing a crime subject to criminal penalties as per article 116 of Law 19-00.

o Embezzlement

Articles 169 to 172 of the Penal Code sanction embezzlement

carried out by government officials against the Dominican state. According to the legal provisions, this crime occurs when the employee fails to deposit funds, deliver or return amounts when ordered, or fails to deliver tax stamps and receipts, or movable properties including equipment, furniture, supplies and other things of value. Also, the appropriation by any officer or employee of money, properties, supplies or things of value, for use other than that for which they were delivered or given under custody, or failure or refusal to report or pay the exact amount of money, tax stamps, equipment, materials, supplies or other things of value received, is considered *prima facie* evidence of embezzlement.

o Bribery of government officials

The relevant Dominican laws that prohibit bribery of domestic government officials are Law No. 41-08 of Public Service that creates the Secretariat of State for Public Administration, enacted in 2008 (Law No. 41-08), and articles 177 to 173 of the Penal Code.

Dominican law prohibits the payment of a bribe and the solicitation or acceptance of a bribe by a public official. In particular, laws concerning bribery of public officials prohibit:

- public officials from accepting directly or through a third person gratuities, gifts, commissions or rewards as payment for acts related to their positions; and
- any person from offering to a public official, directly or through a third person, gratuities, gifts, commissions or rewards as payment for acts related to their positions.

o Criminal anti-competition

Law No. 42-08, on the Defense of Competition, considers the following acts as concerted practices and anti-competition agreements, which are therefore illegal:

- to agree to impose prices, discounts, extraordinary charges, or other selling conditions, as well as to exchange information that would produce the same objective or effect;
- to coordinate or agree on offers or the withdrawal on bidding processes, tenders or contests;
- to distribute or assign segments or part of a goods or services market assigning specific time or space, providers or clients;
- to limit the production, distribution or commercialisation of goods or the rendering and/or frequency of services, without regard to their nature; and
- to eliminate competitors from the market or limit their access, from a position of a purchaser or seller of specific goods.

Concerted practices and anti-competitive behaviour are prohibited as long as they are performed or planned among competitors acting together, except for those that may be part or complementary to an integration or association process agreed in order to achieve better efficiency of the productive activity or to promote innovation or productive investment.

The law also prohibits the abuse of a dominant position and unfair competition. In evaluating abuse of a dominant position the contribution or reduction of such behaviour to economic efficiency shall be examined through an analysis of the net effect of said behaviour; that is, if its anti-competitive effects overcome pro-competition effect or not, or increase or decrease of economic efficiency.

Although Law 42-08 indicates that these acts may give rise to the application of criminal sanctions, it fails to clearly specify in which cases these acts amount to a criminal violation and which would be the applicable sanction. Hence, the legal basis has to be found in the infractions listed by the Penal Code, such as fraud and misrepresentation.

o Tax crimes

According to article 204 of the Tax Code, the following constitute

tax crimes: (1) tax fraud; (2) clandestine commerce and manufacture of goods subject to taxation; and (3) manufacture and falsification of currency or securities.

Article 236 of the Tax Code defines tax fraud as the intent to induce the officer in charge of assessing the taxes to err, either through simulation, hiding, manipulation or any other form of fakery, with the goal of obtaining partial or complete evasion. Article 237 lists a few cases of tax fraud, such as: (1) to declare, state, or enter in accounting books, balance sheets, rolls, manifests, or other documents: false data; facts; or numbers, or to omit circumstances that seriously influence the determination of the tax obligation; (2) to use merchandise or products benefiting from exemption for purposes or for persons to which the exemption does not apply; (3) to hide taxable goods, or to identify as domestic merchandise those introduced on a temporary basis; and (4) in the case of entities acting as withholding agents, non-payment of amounts withheld or collected for taxes within the time limits set by the Code. This list is not limitative.

According to article 238 of the Tax Code, the intent to defraud is presumed when: (1) two or more sets of books are kept for the same accounting, and have different entries; (2) there is evident contradiction between the data on the tax returns and the books, documents, and other related records; (3) the amount of the tax evaded exceeds RD\$100,000.00; or (4) the interposition of another person is used to carry out the taxpayer's business or receive taxable income, avoiding payment of the corresponding taxes.

Article 240 of the Tax Code refers to cases of clandestine commerce and manufacture of goods subject to taxation, and article 242 refers to the crime of manufacturing and falsifying currency or securities.

o Government-contracting fraud

The Penal Code includes several provisions relating to fraud committed against the government. Also, Law 340-06 on Public Procurement and Contracting typifies as a criminal infraction the act by an entity or individual of falsifying, concealing, or covering up any material fact, or of making any materially false statement, or using any false document in the bidding and adjudication process of a contract by the government.

o Any other crime of particular interest in the Dominican Republic

In accordance with Law No. 72-02 on Money Laundering and Illicit Trafficking of Drugs, money laundering is committed when a person transfers, acquires, possesses, manages, hides, conceals or prevents the determination of real property, funds or instruments that are the product of a serious offence, and is aware of it. People who are associated or facilitate the commission of such activities are also guilty of money laundering.

Serious offences include illegal drug trafficking, illegal arms trafficking, any crime related to terrorism, illegal traffic of humans or their organs, kidnapping, extortions related to video and audio recordings, vehicle theft when it involves transporting the vehicle to another country for the purpose of selling it, sexual trafficking, currency forgery, fraud, and any other infractions sanctioned with at least three (3) years of imprisonment under Dominican law.

Law 72-02 lists specific institutions and individuals who have the obligation to prevent, impede or detect asset laundering. These are: (a) regulated financial institutions; (b) persons or entities dedicated to securities, investments or futures brokerage; (c) persons or entities working with currency exchange; (d) the Central Bank of the Dominican Republic; and (e) any other person or entity involved in activities that could be used for asset laundering such as casinos, real estate brokerage, car dealers, insurance companies and brokers, weapons dealers, professional services, etc.

3.2 Is there liability for inchoate crimes in the Dominican Republic? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

According to article 2 of the Penal Code, all attempts to commit a crime will be considered a crime when they are manifested from the beginning of its execution, even when the action is not completed due to causes beyond his/her control despite having done everything in his/her power to consummate it. Hence, the elements of an attempted crime are: (a) the beginning of an execution; (b) the contingent cause; and (c) the intention. These circumstances are subject to the discretion of the judges.

Attempts to commit misdemeanours are not considered as such, except where a special law provides it (article 3 of the Penal Code).

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Yes, there is entity liability for criminal offences. Although the Penal Code does not contain any provision in this regard, the Supreme Court of Justice long ago stated that entities could be held liable for a criminal offence when there were specific provisions in a law establishing that liability. Specific laws have been passed which establish the entity's liability for criminal offences, as well as the sanctions to be imposed, such as the Tax Code, the Labour Code, Law 19-00 on Stock Markets, Law 72-02 on Money Laundering and Illicit Trafficking of Drugs, Law 64-00 on Environment and Natural Resources, and Law 53-07 against Cyber-Crime. The entity's liability may be of a civil and criminal nature.

With the enactment of Law 479-08 on Commercial Companies this criteria was firmly established, and according to article 513 entities may be held criminally liable and subject to penalties such as fines, temporary or permanent closure of their places of business, prohibitions to engage in certain activities, and dissolution. In addition to the entity, the founders, presidents, comptrollers, legally appointed or *de facto* directors, officers and agents of the entity are subject to penalties for violations of the criminal provisions contained in Law 479-08, as well as other crimes which they may commit while performing their functions.

In addition to the above, article 1384 of the Dominican Civil Code establishes civil liability of a person who is in charge of another, as in case of employers and their employees.

The way to exempt the company from liability is to prove that it has not authorised that person to perform the action that generated this liability, or that it took all necessary steps to prevent the commission of that crime.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Yes, the different laws and the criteria of the Supreme Court of Justice are that in case the entity becomes liable for a crime, prison sentences shall be applied to the representative of the entity, who has to be included in the complaint as a defendant given his capacity as representative of the entity.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

No, there is no policy or preference as to when to pursue an entity or an individual in case of entity and personal liabilities.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

According to article 45 of the Penal Procedure Code, the statute of limitations is as follows:

- For crimes sanctioned with imprisonment, a period of time equal to the maximum sentence provided by the Penal Code, which in no case may exceed 10 years or be less than 3 years.
- For crimes sanctioned with non-custodial sentences, the period is 1 year.

The statute of limitations begins to run from the date the crime was committed, if it was completed; or from the date the latest action was executed in cases of attempts to commit a crime; or in case of continuous acts or acts of permanent effects, from the date the continuation or permanence ceased (see article 46 of the Penal Procedure Code).

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

See question 5.1 above regarding continuous infractions.

5.3 Can the limitations period be tolled? If so, how?

According to article 47 of the Penal Procedure Code, the limitations period is tolled upon:

- filing of the accusation;
- rendering of the judgment, even if it is not final; and
- default of the defendant.

When the statute of limitations is tolled, the period starts to run from the beginning.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

Articles 279 and 285, as well as the Penal Procedure Code, provide the rules and guidelines for the investigations phase. Investigations are initiated by the *Ministerio Público* when a denunciation is presented by any person who has knowledge of the commission of a crime, an oral complaint is filed by the victim, or following the report submitted by the police when first inquiries are made at their own initiative or at the *Ministerio Público's* initiative.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Articles 155 to 165 of the Penal Procedure Code set forth the

mechanisms for judicial cooperation between the Dominican Republic and any other state, in the investigation of crimes or extradition of the accused. The office of the District Attorney works regularly with law enforcement agencies of other countries and investigation offices such as the INTERPOL and the DEA of the United States.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The *Ministerio Público* may request any government official to provide certain information in a specified time frame. The person who holds any objects or documents relevant for the investigation has an obligation to deliver them when requested, or else the objects or documents will be confiscated.

Also, with the authorisation of a judge, the *Ministerio Público* may inspect private places or commercial offices when there are reasonable grounds upon which to believe the existence of useful evidence for the investigation or the punishable act. This inspection is carried out in the presence of the person in charge or representative of the entity, or in his/her absence, of any employee (see articles 175, 180 and 184 of the Penal Procedure Code). The judge may also authorise the confiscation of correspondences, and the interception of telecommunications (see articles 191 and 192 of the Penal Procedure Code).

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

When the *Ministerio Público* has reasons to believe that a company holds documents relating to the crime and relevant to the investigation, it will require the company to produce them. Non-compliance with this request may result in the seizure of the documents with the authorisation of the judge. Also with the authorisation of the judge, the *Ministerio Público* may raid a company under investigation.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does the Dominican Republic recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Dominican's labour laws protect personal documents of employees, even if located in company files?

According to article 187 of the Penal Procedure Code, medical files, as well as correspondences by and between the defendant and his/her appointed defence attorney, are protected by professional secret. These may not be seized by the *Ministerio Público*.

The Constitution enacted on January 26, 2010, recognises as a personal right the protection of private correspondence, documents or data stored in physical, digital, electronic or any other kind of format, and further provides that these may only be seized, intercepted or registered by order of a competent judge, in the instruction of matters

before courts of law, and preserving at all times the secrecy of what is private and not related to the corresponding legal process.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

The government can demand an employee to produce documents or can seize documents at his office or home, following the procedure discussed in questions 7.1 and 7.2, if these documents are relevant to the investigation.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

The government can demand a third party to produce documents or can seize documents at the third person's office or home, following the procedure discussed in questions 7.1 and 7.2, if these documents are relevant to the investigation.

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

If the *Ministerio Público* contends that the employee, officer, or director of a company has information relevant to the case, they may be called upon to answer questions while the crime is being investigated, or be summoned to appear before the *Juez de la Instrucción* for the preliminary hearing, or before the judge when a trial has been ordered. Any person who has been summoned as a witness has the obligation to appear and give declarations about the reality of the facts and incidents. The witness may abstain from giving declarations on facts that may incriminate him/her. During the preliminary phase, and trial hearing, questioning of witnesses takes place in a court, before the judge. Questioning of certain government officials may take place in the place where their office is located, or at their residence.

The director of the company or officer in charge will not appear as a witness but as a representative of the company.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

For the same reasons as above, a third person may be asked to appear before the *Ministerio Público* or the judge and be submitted to questioning.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

Under article 194 of the Penal Procedure Code, as a general rule a person may refrain from answering questions that incriminate him/her; however, if the judge or court, or the *Ministerio Público*, considers that the witness is making use of this prerogative without

proper motives, they may force him to depose. Also according to article 197, a person who is bound by professional secrecy has the right to refuse to answer questions.

Spouses and companions, and certain relatives may also refuse to answer certain or all questions (see article 196 of the Penal Procedure Code).

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

After the preliminary investigations have concluded, the *Ministerio Público* may file: (a) an accusation, if enough evidence exists of the crime committed; or (b) order closure of the files if it has not been possible to verify the occurrence of the crime, or if the person liable for the acts has not been identified, or not enough evidence has been gathered in support of the accusation, or it is evident that the act committed is not a crime (see article 281 of the Penal Procedure Code).

If the accusation is filed, a preliminary hearing is carried out before the *Juez de la Instrucción*, where evidence will be presented for the judge to evaluate if a trial could be held or not.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

The Criminal Procedure Code states that the *Ministerio Público* decides to pursue a legal action when it evaluates that there is sufficient evidentiary support to identify the person or entity liable for a crime. In that same regard, article 281 lists the cases where the *Ministerio Público* may decide not to charge an entity or individual with a crime, and instead order the closure of the file. These cases are:

- When there are not enough elements to verify the occurrence of a crime.
- When a legal impediment prevents the initiation of a legal action.
- When it has not been possible to identify the accused.
- When there is not enough evidence in support of an accusation, and there is no reasonable possibility to obtain new evidence and incorporate it into the process.
- When at the same time there a justifiable reason for the crime or the person cannot be held criminally liable. When it is evident that an act does not typify a criminal infraction.
- When the legal action has extinguished.
- When the parties have settled.
- When there is the possibility for a pre-trial diversion (*criterios de oportunidad*).

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

According to article 34 of the Criminal Procedure Code, the *Ministerio Público* may decide to omit prosecution of one or several of the punishable acts, with respect to one or some of the accused, or limit prosecution to one or some of the criminal offences, in the following cases:

- (a) When the punishable act does not affect in a significant manner the protected right or seriously harm public interest.
- (b) When the accused has suffered severe physical or psychic damage as a consequence of the punishable act, which causes a disproportion in the imposition of a sanction, or when the moral damage suffered from an involuntary infraction is difficult to overcome.
- (c) When the sentence that applies to the act or offence that will not be prosecuted is of minor importance in comparison to the sentence that applies to the remainder of the acts or offences, or the sentence that would be imposed in a process instructed abroad.

Also, the Code provides for conditional suspension of the sentence in case the defendant found guilty has not been previously condemned (article 341). In this case, however, the prosecution and trial are carried out and this measure is applied after the judgment is rendered.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

Yes, under the general rule on civil liability established in articles 1382 and 1383, any individual has the right to recover damages for personal injuries stemming from a defendant's intentional or unintentional acts leading to personal injury. In such cases where the damage results from a criminal infraction, the criminal courts have the power to award civil penalties and remedies. However, according to article 50 of the Criminal Procedure Code, a criminal court empowered in a criminal case must determine that there has been a criminal violation of a particular provision of the Penal Code before civil damages can be awarded for such a violation.

If a civil court is to award civil damages for violation of the Penal Code, it must wait for a determination by the criminal court that a criminal violation has occurred; if the defendant is found not guilty in the criminal case, a civil plaintiff cannot then receive damages against the defendant on those same facts.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Each party has the burden of proof of the arguments put forward during a trial.

9.2 What is the standard of proof that the party with the burden must satisfy?

There is no standard of proof set. Judges have discretionary powers to evaluate and weigh the evidence, and determine if the elements of the crime have been demonstrated and the burden of proof satisfied. Any doubts in the determination of the commission of the act and determination of liability favour the defendant.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The judge is the arbiter of fact and determines whether the party has satisfied the burden of proof.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

An accomplice of a crime may be held liable and sentenced with the penalty immediately below the one given to the authors of the crime, according to article 59 of the Penal Code. The elements of the offence are:

- that there is a main punishable act;
- that the act qualifies as a crime;
- that the aid be made through one of the means specifically provided by the law, either prior to or at the same time the crime is being committed. These means are set by article 60 of the Penal Code, and are basically the use of gifts, promises, threats, abuse of power or authority, schemes or guilty plots to provoke the act, or give instructions, or provide weapons for the perpetration of the act; and
- that cooperation in the crime is intentional.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

The intent is an element required for all criminal charges, which may vary in extent and scope depending on the crime (for some, the intent is the act of knowingly committing the punishable act in awareness of the consequences and the law, in other cases it is the intent to cause harm). Each party has the burden of proof of their respective motions and defences. The accuser has the burden of proof of all constitutive elements of a crime, including intent.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

In principle, ignorance of the law may not be invoked as a defence, except when knowledge of the law was impossible especially due to a cause of *force majeure*, in which case the defendant has the burden of proof.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

Errors or ignorance of facts may be a defence for lack of intent. The defendant has the burden of proof.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

The person that becomes aware that a crime has been committed may report it to the *Ministerio Público*, the police or any other agency that aids criminal investigations. It is not mandatory, unless you are a: (1) government official; (2) doctor, pharmaceutical, nurse and any other person involved in medical science; or (3) public accountant and notary public, with respect to crimes over public funds (see articles 262 and 264 of the Penal Procedure Code).

In the case of money laundering, Law 72-02 imposes an obligation to report to the National Commission Against Asset Laundering any suspicious act that may qualify as asset laundering upon regulated financial institutions, persons or entities which provide brokerage activities of securities, investments or futures, persons or entities working with currency exchange, the Central Bank of the Dominican Republic, and any other person or entity involved in activities that may be used in asset laundering. Failure to report to the Commission is considered a violation of the law and is subject to sanction.

Also, the Tax Code imposes upon officials and employees of the General Agency for Internal Revenues, the obligation to report to the Tax Administration any act that may be considered an infraction to the law.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

Yes. At any moment prior to the trial phase, the *Ministerio Público* may request the judge to apply the rules of a resumed process if any of the circumstances below arise:

- When the punishable act is sanctioned with imprisonment of no more than 5 years, or a non-custodial sentence.
- When the accused admits that he/she committed the act and an agreement is reached on the amount and type of sentence to be awarded, and the legal interests.
- When the defence attorney asserts with his/her signature that the defendant has consented to all non-disputed issues.

The *Juez de la Instrucción* evaluates this request and may either accept it or deny it. If the request is denied, the assertions made to support this request by the defendant and by the *Ministerio Público* may not serve as recognition of guilt or leniency in the trial phase.

Also, in any case the parties may agree on the facts, and have a judge determine in trial the sentence that will apply (article 366 of the Criminal Procedure Code).

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in the Dominican Republic, and describe the favourable treatment generally received.

There is no specific rule in this regard. The extent of cooperation

and treatment received in return is at the discretion of the *Ministerio Público*, and will depend on the facts and issues of the case.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

Yes, a defendant may agree to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter sentence than the maximum (article 366 of the Penal Procedure Code).

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

This request is presented before the judge who verifies compliance with the formal requirements and discusses the categorisation of the crime and submission of proofs with the parties. A trial has to be set for the discussion of the sentence that will be imposed.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

Article 339 of the Penal Procedure Code sets the issues the court has to take into consideration when imposing a sentence on the defendant, which are:

- the degree of participation of the defendant in the commission of the crime, his/her motives, and his/her conduct following the act;
- personal characteristics of the defendant, his/her education, economic and family situations, working opportunities and capabilities to improve and surmount the situation;
- cultural background of the group or class where he/she belongs;
- the social and cultural environment of the place where the crime occurred;
- the future effect of the sentence upon the defendant and his/her relatives, and the possibilities of reinsertion into society;
- the state of the jails and compliance with the sentence; and
- the severity if the damage caused to the victim, his relatives and society in general.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

Besides the elements of any particular crime, the court must determine (a) that the entity is legally formed, (b) that the crime and sanction to be imposed on the entity are contained in a law that is in effect, (c) that the act was perpetrated by a director, officer, manager, shareholder, employee or any other representative, while acting in that capacity, in benefit of the entity, and (d) who is/are the

individual(s) that is/are also liable for the crime committed, and who will serve the criminal sentences resulting from the punishable acts.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

There is no jury system, so no verdict is entered. The cases end with the judgment issued by the empowered judge or court.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

Criminal sentences where the court condemns the defendant may be appealed by the defendant, and criminal sentences where the court acquits the defendant may be appealed by the *Ministerio Público* and the victim, according to article 416 of the Criminal Procedure Code. The civil party may appeal the decision made on damages.

16.3 What is the appellate court's standard of review?

The object of the appeal and the court's review shall be limited to the following causes:

- 1) violation of the rules relating to the trial being oral, adversarial, or public;
- 2) manifest faults, contradictions and lack logic in the motivation of the judgment, or when it is based on evidence illegally gathered and submitted to trial in violation of the rules;
- 3) omission of substantial requirements in the acts, which violate the right to a proper defence; or
- 4) violation of the law due to non-compliance or erroneous application.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If the court upholds the appeal, it may:

- directly render a judgment on the case, based on the factual verification contained in the appealed judgment, and if this results in the acquittal of the defendant or extinguishment of the sentence, it may order the defendant to be set free; or
- when a new evaluation of the evidence is required, order the celebration of a new total or partial trial before a court different from the one that issued the appealed judgment, but of the same level and within the same Judicial Department.

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