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# Doing Business In... 2022

Dominican Republic: Law & Practice

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# DOMINICAN REPUBLIC

## Law and Practice

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## CONTENTS

<b>1. Legal System</b>	<b>p.3</b>	<b>6. Competition Law</b>	<b>p.12</b>
1.1 Legal System	p.3	6.1 Merger Control Notification	p.12
<b>2. Restrictions to Foreign Investments</b>	<b>p.4</b>	6.2 Merger Control Procedure	p.13
2.1 Approval of Foreign Investments	p.4	6.3 Cartels	p.13
2.2 Procedure and Sanctions in the Event of Non-compliance	p.4	6.4 Abuse of Dominant Position	p.13
2.3 Commitments Required From Foreign Investors	p.5	<b>7. Intellectual Property</b>	<b>p.14</b>
2.4 Right to Appeal	p.5	7.1 Patents	p.14
<b>3. Corporate Vehicles</b>	<b>p.5</b>	7.2 Trade Marks	p.15
3.1 Most Common Forms of Legal Entities	p.5	7.3 Industrial Design	p.15
3.2 Incorporation Process	p.6	7.4 Copyright	p.16
3.3 Ongoing Reporting and Disclosure Obligations	p.6	7.5 Others	p.17
3.4 Management Structures	p.6	<b>8. Data Protection</b>	<b>p.17</b>
3.5 Directors', Officers' and Shareholders' Liability	p.7	8.1 Applicable Regulations	p.17
<b>4. Employment Law</b>	<b>p.7</b>	8.2 Geographical Scope	p.17
4.1 Nature of Applicable Regulations	p.7	8.3 Role and Authority of the Data Protection Agency	p.18
4.2 Characteristics of Employment Contracts	p.7	<b>9. Looking Forward</b>	<b>p.18</b>
4.3 Working Time	p.7	9.1 Upcoming Legal Reforms	p.18
4.4 Termination of Employment Contracts	p.8		
4.5 Employee Representations	p.9		
<b>5. Tax Law</b>	<b>p.9</b>		
5.1 Taxes Applicable to Employees/Employers	p.9		
5.2 Taxes Applicable to Businesses	p.10		
5.3 Available Tax Credits/Incentives	p.11		
5.4 Tax Consolidation	p.12		
5.5 Thin Capitalisation Rules and Other Limitations	p.12		
5.6 Transfer Pricing	p.12		
5.7 Anti-evasion Rules	p.12		

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## 1. LEGAL SYSTEM

### 1.1 Legal System

The legal system in the Dominican Republic is civil law. Its origins can be traced to the proclamation of the Constitution in 1844 that established the nation as a republican state, and the Decree No. 48, of July 4th, 1845 issued by the National Congress, which ordered Dominican courts to observe and apply the called “French Codes of the Restoration”, or the Civil, Commercial, Criminal, Civil Procedure, and Criminal Procedure codes of France at the time.

Currently, the main characteristics of the civil legal system in the country are:

- a system of rules and principles generally codified, and in which the written law is directly applied over case law; and
- a primarily legislative power that legislates and oversees in the representation of the people of the Dominican Republic, and a judicial system that interprets, but its case law, besides the decisions issued by the Constitutional Court, does not create a mandatory precedent.

The sources of law in the Dominican Republic are, as listed in order of hierarchy: the Constitution, International treaties signed by the Dominican Republic regarding human rights, binding decisions from the Constitutional Court, codes and laws, presidential decrees, and Administrative Resolutions.

Justice is administered at a national level, and jurisdiction is assigned by territory, in as many Judicial Departments and Districts as created by law.

The Judicial Branch is one of the three branches of the Dominican government. The attributions of the Judicial Branch are to administer justice free

of charge, in private or public law, between individuals or legal entities, by judging and enforcing under the terms of article 149, paragraph 1 of the Constitution of the Dominican Republic.

The Judicial Branch is compounded by the Supreme Court of Justice and courts of first and second instance. Besides the Judicial Branch, the Constitutional Court and the Superior Electoral Court are constitutional autonomous institutions.

#### The Constitutional Court

The Constitutional Court was created by the Constitution proclaimed on 26 January 2010. The Court’s mission is to guarantee the supremacy of the Constitution, defend the constitutional order, and protect fundamental rights. The Constitutional Court is the supreme body of interpretation of the Constitution and the interpretation of laws with respect to the Constitution. It is the only court that issues binding decisions that generate precedents, and thus, applicable not only to the parties involved but also to third parties, as are state powers and public entities.

It is composed of 13 judges appointed for nine years.

#### The Superior Electoral Court

The Superior Electoral Court is the highest authority in electoral contentious matters, and it judges on disputes arising within or among political parties and issues concerning elections. It is an autonomous organ with legal status and functional, administrative, budgetary, and financial independence. It is composed of five judges, each elected for four years, with the possibility of being re-elected.

#### The Judicial Branch

##### *The Supreme Court of Justice*

The Supreme Court of Justice is the highest court of ordinary judicial bodies and exercises

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jurisdictional control over all courts, except the Superior Electoral Court and the Constitutional Court. In a cassation appeal, the Supreme Court does not rule over the merits or facts of the case but rather only examines whether the law has been correctly applied. In other words, such appeal is not about the facts but the law.

The Supreme Court of Justice has three chambers: The Civil and Commercial Chamber, the Criminal Chamber, and the Land, Labor, Administrative and Tax Chamber. The Supreme Court of Justice also issues judgments in Plenary, which includes all the Supreme Court judges as the highest-ranking organ of the Supreme Court, and the Gathered Chambers, which includes all three divisions of the Supreme Court of Justice to decide on second cassation appeals based on the same motives.

### *The Courts of Appeals*

The Courts of Appeals are jurisdictionally below the Supreme Court of Justice, and decides on appeals against first instance judgments and first instance of criminal matters brought against public officials such as judges and prosecutors. Appellate Judges are appointed by the Supreme Court of Justice.

Courts of Appeals are divided into specialised courts, as follows:

- Criminal Chamber of the Court of Appeals;
- Civil and Commercial Chamber of the Court of Appeals;
- Labor Court of Appeals;
- Superior Administrative Court;
- Superior Land Court; and
- Court of Appeals of Children and Adolescents.

### *The First Instance Courts*

Below the Courts of Appeals, in terms of jurisdiction, are the first instance courts, which decide

on all matters that are and are not expressly attributed by law to another court. First Instance judges are appointed by the Supreme Court of Justice. These are divided into:

- Ordinary courts of first instance divided into halls. These include the Civil and Commercial First Instance Court and the Criminal First Instance Court;
- the Justice of First Instance of General Jurisdiction (Land Court); and
- Specialised courts of first instance: the Labour Courts, the Children and Adolescent Courts, the Execution of Judgment Judge, the Examining Judge, and the Restructuring and Liquidation Court (Bankruptcy Court).

### *The Justices of Peace*

Finally, the Justices of Peace are jurisdictional bodies with the lowest hierarchy in the judicial order and are unipersonal courts that decide on specific legal matters as determined by law. The Justices of Peace are classified as follows - Justice of Peace for General Matters, Justice of Peace for Municipal Matters, and Justice of Peace for Traffic Matters.

## **2. RESTRICTIONS TO FOREIGN INVESTMENTS**

### **2.1 Approval of Foreign Investments**

Foreign investment does not require prior approval in the Dominican Republic, but once made, it must be registered before the Export and Investment Center of the Dominican Republic (CEI-RD).

### **2.2 Procedure and Sanctions in the Event of Non-compliance**

The interested foreign investor must submit an application form to the offices of the CEI-RD within 180 calendar days from the date on which the foreign investment occurred. The required

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documents include the application for registration, which contains information on the capital invested and the area of the investment, proof of entry into the country of the foreign capital or physical or tangible assets, and commercial incorporation documents or authorisation to operate a branch office by establishing legal domicile in the country. The reinvestment of profits (in the same or another company) must be registered within 90 days. Once the documents are approved, the CEI-RD issues a registration certificate within 15 working days upon payment of a fee that varies according to the amount of the investment.

Registration of foreign investment with the CEI-RD is compulsory, but failure to do so is not subject to any sanctions.

## 2.3 Commitments Required From Foreign Investors

Not applicable, taking into consideration that no authorisation is required.

## 2.4 Right to Appeal

Based on Law 107-13, the party affected by an administrative decision has the right to file appeals against it before the issuance institution. The administrative appeals are open to any decision that ends a procedure before the administration, that prevents its continuance, causes a lack of legal protection, and harms legal rights or causes irreparable damages.

According to Law 107-13, the affected party can file a reconsideration appeal against the decision before the same entity that issued it. After such appeal is decided, in case of an adverse decision, the affected party may file a hierarchical appeal before the superior entity of the precedent organisation. The decision issued by the latter may be subject to an administrative contentious appeal before the Administrative Court, beginning the judicial proceedings against the

administration. The affected party can waive the administrative appeals and file an appeal directly before the Superior Administrative Court. The decision of this Court may be subject to a cassation appeal before the Supreme Court of Justice.

Besides the administrative and judicial procedures against administrative decisions, if there is an investment treaty signed between the Dominican Republic and the investor's country, the affected party might be entitled to initiate the dispute resolution procedure established by the applicable treaty, as long as there is a breach of the standards and protections set out in the treaty. The Dominican Republic is part of several investment protection treaties, including with the USA, Spain, France and The Netherlands.

## 3. CORPORATE VEHICLES

### 3.1 Most Common Forms of Legal Entities

The General Law on Commercial Companies and Individual Limited Liability Companies number 479-08 (hereinafter "Law 479-08") recognises seven corporate vehicles through which it is possible to carry out commercial operations in the Dominican Republic. However, the following three are the most used:

- Limited Liability Company ("SRL" – Spanish initialism) (*Sociedad de Responsabilidad Limitada*) – it is incorporated by the contributions of two or more persons and may not exceed the maximum limit of 50 persons. The partners are not personally liable for the economic losses of the company, and their liability for its losses is limited to their contributions to the capital. The capital of this type of company is divided into equal and indivisible parts called social quotas; even though there is no minimum capital, considering that this type of entity shall have at least two partners, there

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should be at least two quotas of DOP100.00 each. The administration of this entity is carried out by a manager or board of managers, who act as its legal representatives.

- Corporations (“SA” – Spanish initialism) (*Sociedades Anónimas*) – it is incorporated between two or more persons, who are called shareholders, obligated in the event of economic losses, up to the limit of their contributions to the capital. The authorised capital stock must be not less than 30 million Dominican pesos, and the subscribed and paid-in capital shall be equivalent to 10%. The capital is divided into negotiable securities called shares. The administration of the corporation is managed by a board of directors composed of at least three members.
- Simplified Corporations (“SAS” – Spanish initialism) (*Sociedad Anónima Simplificada*) – it is incorporated by two or more persons, called shareholders, who are liable for the economic losses of the corporation up to the amount of their contributions to the capital stock. As a minimum authorised capital stock, by law, an amount of three million Dominican pesos is required, and the subscribed and paid-in capital shall be equivalent to 10%. The administrative body is freely determined by its partners in the by-laws.

### 3.2 Incorporation Process

The incorporation process implies several steps, namely:

- registry of the commercial name of the entity before the National Office of Industrial Property (ONAPI, by its Spanish acronym);
- drafting and signing of the by-laws and other corporate documents that apply;
- registry before the Mercantile Registry of the corresponding Chamber of Commerce, according to the social domicile of the entity in the Dominican Republic; and

- registry under the National Tax Registry (RNC – Spanish initialism), before the General Agency of Internal Revenues (DGII, by its initialism in Spanish).

This process may last up to 30 days as of the date of the registration of the commercial name.

### 3.3 Ongoing Reporting and Disclosure Obligations

A private company must hold an annual ordinary general partners meeting to submit to the partners the accounts corresponding to the fiscal year. Therefore, at the end of the fiscal year, the members of the administrative body and the statutory auditor (*comisario de cuentas*) – when applicable – must prepare a report on the annual inventory of the accounts and the operations carried out by the company for the end of the current fiscal year, submitted for the approval of the annual ordinary general partners meeting.

In addition, any change in the company (ie, shareholder or partner composition, the composition of the administrators, capital stock, domicile) must be notified to the National Tax Agency. Likewise, depending on the applicable tax, there is a monthly or annual reporting obligation before the National Tax Agency.

### 3.4 Management Structures

In the Dominican legislation and as explained before, the management body of the company will depend on the type of company. The most common management body is the two-tier system (dualistic governance model), where there is a separation between management and supervisors. The board of directors oversees the management and holds powers of representation of the company, while other officers are responsible for the day-to-day management.

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### 3.5 Directors', Officers' and Shareholders' Liability

Regarding management, vis-à-vis the partners or shareholders, the powers of the manager shall be determined by the by-laws. If none are applicable, the manager can undertake the necessary management in the interest of the company. Even with respect to third parties, the manager shall be vested with the broadest powers to act, in all circumstances, on behalf of the company, subject to the powers expressly attributed to the partners by law.

A principle similar to “piercing the corporate veil” is established in Law No. 479-08, stipulated for cases of fraud against the law or a breach of public order or actions taken to the detriment of the rights of the partners, shareholders or third parties. In this sense, it is important to note that a court decision ordering “piercing the corporate veil” does not result in the nullity of the corporation and will only produce effects in the specific case for which it has been declared.

## 4. EMPLOYMENT LAW

### 4.1 Nature of Applicable Regulations

The basic laws governing employment relationship matters are the Labor Code of the Dominican Republic, the Regulation for the Implementation of the Labor Code, the Social Security System Law and all the International Labour Organization (ILO) Agreements ratified by the Dominican Republic.

Apart from the principles established by the Labor Code, which guide judges and labour authorities in applying labour policies and standards, as well as in the solution of issues not expressly provided for by law, collective bargaining agreements are recognised by local law to govern employment relationships.

Any employee agreement contrary to labour laws is null and has no legal effect.

### 4.2 Characteristics of Employment Contracts

There is a presumption that a labour contract exists whenever a person renders a personal service to another, even if the terms of this relationship are not recorded in writing. However, foreign employment, specific work or service employment, fixed period and teleworking contracts must be in writing.

Labour contracts are presumed to be for an indefinite time until proven otherwise. Parties can set a date for the expiration of their labour relations in their contract. These contracts cease to exist without any liability once the term expires, or upon the complete execution of the works, in case the contract was agreed for specific work or service. The Labor Code establishes that these types of contracts can be entered into if:

- it is in accordance with the nature of service to be provided;
- its objective is to provisionally substitute an employee absent due to leave, vacation or another temporary impediment; and
- it is agreed to be in the interests of the employee.

### 4.3 Working Time

An employee's daily shift cannot exceed eight hours, and the working week cannot be more than 44 hours. However, Article 150 of the Labor Code provides for some exceptions to the work shift duration requirements if:

- employees serve as representatives of the employer;
- employees serve in management or supervisory positions; or
- employees are employed by small businesses, usually by family members.

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The usual practice is to work 40 hours from Monday to Friday and, in some companies, the remaining four hours on Saturday.

Article 149 of the Labor Code establishes that a daytime workday may run between 7am and 9pm, while a nocturnal workday runs between 9pm and 7am. A workday may also be considered mixed, provided it includes both daytime and nocturnal hours, and only if the nocturnal portion is less than three hours. A longer nocturnal part will deem the entire workday nocturnal.

Every employee has the right to a weekly rest of 36 hours uninterrupted. Its timing can be agreed upon by both parties and may fall on any day of the week.

If the employee works on a weekly rest day, such employee shall have the right to receive a 100% bonus on their regular salary or an equivalent rest day.

As an exception, the normal work period may be extended to exceed eight hours a day or 44 hours a week. Quarterly, working overtime may not exceed 80 hours.

Overtime hours shall be paid to the employee as follows:

- an additional 35% of the regular hourly rate for each overtime hour up to 68 hours per week; and
- an additional 100% of the regular hourly rate for each hour in excess of 68 hours.

#### 4.4 Termination of Employment Contracts

Labour contracts may be terminated by:

- the employer or the employee, through a unilateral termination without cause (“*desahucio*”);

- the employer, through a dismissal with cause (“*despido*”); or
- the employee, through a resignation with cause (“*dimisión*”).

If the employment agreement is terminated during its first three (3) months, the employee is not entitled to any payment of severance or indemnity.

According to the Labor Code, the employee is entitled to payment of severance in the following cases:

- unilateral termination without cause by the employer (“*desahucio*”);
- unjustified dismissal (“*despido*”) by the employer; and
- justified termination by the employee (“*dimisión*”).

The last two must be declared as unjustified and justified, respectively, by a labour court.

The employer that dismisses the employee without cause (“*desahucio*”) must give the employee advance notice of such termination. The length of such advance notice depends on the employee’s tenure on the job. In lieu of giving such notice, the employer may decide to pay the employee the number of salary days corresponding to the period of the advance notice.

The employer who dismisses the employee without cause (“*desahucio*”) must pay the employee severance benefits. This payment is proportional to the extent of the employment. Advance notice and severance must be paid to the terminated employee within ten calendar days following the termination date. If the employer fails to do so, it must pay the employee compensation equal to one day’s salary for each day of delay until final payment.

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Employees can implement collective redundancies. If it is a large termination, it is recommended, prior to executing them, that the employer contacts the Ministry of Labor to provide information on the process.

## 4.5 Employee Representations

Employees have the right to participate in the design, adoption, and implementation of preventive actions within the health and workplace safety committee. Such participation includes consultation on risk assessment, the consequent planning and organisation of preventive action, and access to the corresponding documentation.

Under the Labor Code, employee representation occurs when a labor union is formed and collective bargaining agreements exist. Collective bargaining agreements may regulate the amount of wages, working hours, breaks and vacations and other working conditions. Collective bargaining agreements can include all agreements intended to ensure compliance in good faith with its provisions.

## 5. TAX LAW

### 5.1 Taxes Applicable to Employees/ Employers

In the Dominican Republic, based on the current status of the tax legislation, employers are not subject to payment of payroll tax; instead, employers are appointed by law as withholding agents for payment of income tax by their employees. Employers and employees have the following tax and social security obligations in accordance with the applicable law.

#### Withholding of Income Tax of Employees

According to the provisions of the Dominican Republic's Tax Code approved by Law 11-92 of 16 May 1992 and its subsequent modifications

("Tax Code"), employers are considered as withholding agents for the payment of the income tax of its employees. Under said circumstances, employers are mandated to withhold the income tax payable from the payment of salaries applicable to their employees.

#### Tax on Complementary Retributions

In addition to withholding of income tax of its employees, employers must withhold a 27% tax on the real value of complementary benefits granted to their employees, such as the provision of housing, motor vehicles, payment of domestic service, education assistance, life, and health insurance, other than within the social security system, expense accounts, as well as the application of special discounts in the acquisition of goods and services.

#### Social Security Contributions

As provided by Law 87-01 of 9 May 2001, and its modifications ("Social Security Law") that create the social security system of the Dominican Republic, employers are mandated to withhold an amount equivalent to 2.87% from the salaries of their employees as a contribution to the Old Age, Disability and Survival Insurance, while the employer shall contribute an amount equivalent to 7.18% of the salaries paid to its employees as a contribution to the same insurance. Additionally, the employer shall withhold 3.04% of the salary paid to its employees as a contribution to the Family Health Insurance, while the employer shall pay an amount equivalent to 7.09% of the salaries paid to employees as a contribution to the Family Health Insurance.

Although the Old Age, Disability and Survival Insurance is managed by private sector Pension Fund Managers (AFP), and the Family Health Insurance is managed by private sector Health Risk Managers (ARS), all contributions to social security shall be paid by the employers to the

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Social Security Treasury or TSS, which is a government agency.

## 5.2 Taxes Applicable to Businesses

Companies performing operations in the Dominican Republic are mandated to be registered before the National Taxpayers Registry or RNC, administered by the General Agency of Internal Revenues or DGII by its initialism in Spanish.

As provided by the Dominican Tax Code, companies operating in the Dominican Republic that generate income from Dominican sources are subject to paying taxes in the Dominican Republic.

### Main Taxes

The main taxes applicable to companies operating in the Dominican Republic are the following:

- Income Tax, currently at a rate of 27% on income generated by companies domiciled in the Dominican Republic or performing operations in the Dominican Republic.
- Tax on Transfer of Industrialized Goods and Services or ITBIS, equivalent to VAT, currently at 18%, although certain goods are subject to a reduced rate of either 8% or 12%, applicable in the transfer of any movable goods and rendering of services, except for goods and services expressly exempted from said tax by the provisions of the Tax Code.
- Tax on Assets is paid annually at a rate of 1% on the assets of the entity. The payment of this tax can be compensated up to 100% with the payment of income tax by the entity, acting as a minimum tax.
- Excise Tax, established by the Tax Code and payable on the consumption of certain goods and services, including, in particular, a tax of 0.15% on the issuance of bank checks and transfer of funds, 16% tax on insurance policies, 10% tax on telecommunications servic-

es, among other goods and services subject to this tax.

- Capital Gain Tax as per the provisions of article 289 of the Tax Code shall be applicable at of rate of 27% on the capital gain generated by the disposition of shares or assets located in the Dominican Republic, as well as by the indirect disposition of assets located in the Dominican Republic by means of the transfer of shares of foreign entities owning assets located in the Dominican Republic.

### Withholding Taxes

In addition to taxes payable by companies, companies operating in the Dominican Republic are mandated by the provisions of the Tax Code to act as withholding agents for payments made to third parties, in addition to the withholdings to its employees described in the previous section. The main withholding obligations of companies operating in the Dominican Republic are as follows.

#### Dividends

Companies shall withhold a 10% on payment of dividends or other utility distributed to its partners or shareholders according to the provisions of article 308 of the Dominican Republic Tax Code.

#### Interests paid to individuals

Companies shall withhold a 10% on payment of interests paid to individuals as definitive and final payment of income tax according to the provisions of article 306 of the Dominican Republic Tax Code.

#### Interests paid to companies domiciled abroad

Companies shall withhold a 10% on payment of interests to companies domiciled abroad of the Dominican Republic as final and definitive payment of income tax according to the provi-

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sions of article 306 of the Dominican Republic Tax Code.

### **Services rendered by companies located abroad**

Companies shall withhold a 27% on payment of services rendered by companies domiciled abroad of the Dominican Republic as final and definitive payment of income tax according to the provisions of article 305 of the Dominican Republic Tax Code.

### **Other Taxes**

Other taxes that may apply to companies in the Dominican Republic for the performance of specific transactions shall be as follows:

- Company incorporation tax at 1% of the social capital of the company. The same tax shall be applicable for capital increases of the companies.
- Real Property transfer tax at 3% on the value of the property transferred.
- Motor vehicle transfer tax at 3% on the value of the transferred vehicle.

### **5.3 Available Tax Credits/Incentives**

The granting of tax incentives is discussed in article 244 of the Constitution of the Dominican Republic, authorising the National Congress to approve tax incentives laws that affect certain works or companies towards which it is convenient to attract the investment of new capital for the promotion of the national economy or any other object of social interest.

In that instance, in the current state of the Dominican Republic legislation multiple tax incentive laws benefit certain sectors of the economy or the investment in areas or regions considered of social interest for the state of the Dominican Republic.

The main tax incentives laws currently in place in the Dominican Republic are the following:

- Law 8-90 of 15 January 1990 on Export Free Trade Zones provides for exemptions on income tax, ITBIS, import tax and tariff and customs duties on equipment and materials among other companies established in the Export Free Trade Zones operating in the Dominican Republic.
- Law 12-21 of 22 February 2021 on the creation of the Border Development Zone, which grants tax exemptions for up to 30 years from the enactment of the law on income tax, excise tax on telecommunications and insurance, tariffs, custom duties and ITBIS on the import of equipment and materials, tax on real property transfer, as well as other tax incentives to industrial companies established and operating in seven provides located in the border with Haiti.
- Law 158-01 of 9 October 2001 and its modifications on the incentive of touristic development that provides for exemptions for up to 15 years on payment of income tax, real property transfer tax, tariffs, custom duties and ITBIS in the import of equipment and furniture to the operation of hotels and touristic projects, as well as complementary touristic offer projects, duly classified by the Tourism Incentive Council known as CONFOTUR.
- Law 57-07 of 7 May 2007 on the incentive of renewable energy, which provides for tax exemption on the tariffs and customs duties as well as ITBIS in the import of equipment for the generation of electricity from renewable sources, including the installation of renewable energy generation projects, as well as the importation of renewable energy generator equipment for self-consumption.
- Law 108-10 of 12 November 2010 and its modifications on incentive of cinematographic activities, that provides for exemptions on ITBIS for producing cinematographic works

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in the Dominican Republic, and the possibility to generate transferable tax credits for the total amount of expenses incurred in the production of cinematographic works performed in the Dominican Republic duly registered before the National Cinema Agency or DGCINE, among other incentives to the construction of film industry infrastructure and development.

## **5.4 Tax Consolidation**

The current state of the tax law in the Dominican Republic does not consider the possibility of tax consolidation.

## **5.5 Thin Capitalisation Rules and Other Limitations**

By means of the provisions of paragraphs I, II, III, IV and V to article 287(a) of the Tax Code, the National Congress included certain rules against the thin capitalisation of companies in the Dominican Republic. These provisions, further developed by means or articles 5 and 6 of the Decree of the Executive Branch 50-13 of 13 February 2013, provided that the total amount of interest paid by the company deductible of the taxable income shall not more than the result of dividing an amount equal to three times the average annual equity of the company by the average annual balance of all the company's interest-bearing debts.

## **5.6 Transfer Pricing**

The Tax Code provides in article 281 for certain transfer price rules applicable to individuals and entities operating in the Dominican Republic that mandates for transactions performed by the taxpayer with related parties to be convened according to the prices or amounts agreed between independent parties, in comparable operations and under the same or similar circumstances.

For said purposes, the Tax Code, as well as ancillary regulations contained mainly by the Decree of the Executive Branch 78-14 of 6 March 2014 and general rules issued by the DGII, contemplates further development in establishing the criteria for identification of the related party, valuation methods applicable to the determination of the arm's-length valuation of the transaction, and the obligation to perform an annual declaration of operations with related parties.

## **5.7 Anti-evasion Rules**

The Tax Code provides for sanctions to infractions to the tax law from administrative sanctions, including payment of default interest and recharges, to payment of fines and ultimately to criminal infractions of up to two years of prison, without prejudice to possible sanctions for money laundering derived from a tax infraction that may imply sanctions of up to 20 years of prison as provided by Law 155-17 on the prevention of money laundering and financing of terrorism.

Administrative sanctions shall be applicable for infractions of evasion of payment of taxes as well as for failure to comply with formal duties of the taxpayers, consisting mainly of the information obligations of the taxpayers to the tax authorities as derived from the provisions of the Tax Code and ancillary regulations.

## **6. COMPETITION LAW**

### **6.1 Merger Control Notification**

Pursuant to the applicable legislation of the Dominican Republic, it is not necessary to obtain prior approval from any state institution to perform a merger or acquisition transaction, nor to perform any notification to the agency in charge of the application of General Competition Law 42-08, dated 16 January 2008 ("General Competition Law") and promoting effective competition

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in the market, the National Commission for the Defense of Competition (“Pro-Competencia”).

## 6.2 Merger Control Procedure

Under the current Dominican Republic’s Competition Legislation, there is no requirement for mandatory merger notification to any state agency.

## 6.3 Cartels

The General Competition Law forbids and sanctions unfair and anti-competitive commercial agreements and practices that may create barriers in the market and the abuse of dominant positions. The sanctions for such penalised actions or practices refer to the payment of penalties, lack of validity of the activities undertaken, civil sanctions (payment of damages), and criminal sanctions, depending on the case.

As per the provisions of the General Competition Law, the following are considered anti-competitive agreements and practices:

- agreements on prices, discounts, extraordinary charges, other conditions of sale and the exchange of information that has the same object or effect;
- arrangements or co-ordinated offers or abstention in bids, contests and public auctions;
- agreements tending to distribute or assign segments or parts of a market of goods and services indicating a specific time or space, suppliers and clientele;
- limiting the production, distribution or commercialisation of goods; or benefit and/or frequency of services, regardless of their nature; and
- eliminating competitors from the market or limiting their access to it, from their position of buyers or sellers of certain products.

## 6.4 Abuse of Dominant Position

The existence of an economic concentration in a relevant market does not in itself entail any legal restriction. In this regard, the General Competition Law does not sanction the mere existence of a dominant position in the market held by one or several economic agents but the abuse of such dominant position (ie, the conduct of the economic agent).

Article 4(f) of the General Competition Law defines “dominant position” as: “The control of the relevant market enjoyed by an economic agent, by itself or jointly with others, and which gives it the power to hinder the maintenance of effective competition or allows it to act in such market independently of the behavior of its competitors, clients or consumers”. The possession of a dominant position in the market or its increase, by itself, does not constitute a violation of the present law.

More precisely, article 6 of the General Competition Law states that “[...] are prohibited all conducts that constitute an abuse of a dominant position by economical agents in a relevant market[.]” and typifies the conducts as follows:

- Subordinate the sale decision to the condition that the buyer abstains from buying or distributing products or services from other competitive agents.
- Imposition by the supplier, of prices and other sale conditions to its resellers, without any justifiable commercial reason.
- The sale or other conditional transaction for acquiring or supplying another additional good or service that is different or distinguishable from the principal.
- The sale or other transaction subject to the condition of not contracting services; acquiring, selling or providing goods produced, distributed or commercialised by a third party.

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- The negativity of selling or providing, to a certain economic agent, goods or services, that in normal conditions are available or being offered to third parties when there is an absence, in the relevant market, of available alternate suppliers that wish to sell in regular conditions. There is an exception for such actions of negativity to negotiate by the economic agent when there is a breach of the contractual obligations by the client or potential client, or the commercial history of the client, or the potential client shows a high index of damaged goods or returns, lack of payment or any other similar commercial reason.
- The application, in commercial and services relations, of unequal conditions for equivalent transactions puts certain competitors at a disadvantage compared to others without any justifiable commercial reason.

## **7. INTELLECTUAL PROPERTY**

### **7.1 Patents**

All procedures related to industrial property in the Dominican Republic are carried out before the National Office of Industrial Property (ONAPI) and under Law 20-00 on Industrial Property of the Dominican Republic (“Law 20-00”) and related regulations.

The application goes through a form exam where it is verified that it contains all the requirements and documents that support the registration claim. According to Dominican regulations, there are two types of patents: invention and utility models.

The patent application can be made through the International Patent System (Patent Cooperation Treaty or PCT), a way by which applicants can manage the patent application in several or all

the countries that signed this agreement. This system simplifies the application process, but each country must evaluate and analyse whether the patent can be registered before the authority in charge.

The invention patent is any idea, creation of the human intellect capable of being applied in the industry that meets the conditions of patentability of novelty, inventive level and industrial application. An invention may refer to a product or process. The granting of an invention patent has a duration of 20 non-renewable years counted from the date of application.

The utility model is any form, tool or instrument or mechanism that allows a better or different operation of the applied object or provides a technical effect that it did not have before; it must meet the characteristics of novelty and industrial application, and, unlike invention patents, utility models do not apply to procedures, only to objects or products. Utility models have a duration of 15 years from the date of application.

The patent registration process is as follows:

- Patent application before ONAPI.
- Formal examination – the ONAPI Department of Inventions has a period from the date of application to issue results of examining the form of the patent. In case of formal errors, the applicant will be notified and must correct them within the time established by Law 20-00. If the modification is not submitted within the established time, it is understood that the file has been abandoned and will be archived ex officio.
- Notification as a result of the formal examination – if everything is in order, the applicant must pay for the publication. If 18 months elapse from the date of application and the payment has not been made, the application

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will be considered abandoned and archived ex officio.

- Publication of the application and observations – the applicant must pay for the publication of the application within 18 months from the date of filing of the patent. After 18 months, the ONAPI publishes the patent application so that any person can submit substantiated observations regarding the patentability of the invention within 60 days from the date of publication.
- Substantive Examination – the applicant must proceed with the payment of the substantive examination fee within 12 months from the date of publication of the application. If this term expires without paying the fee, the application will fall automatically into abandonment and be filed ex officio.
- Patent grant – if the application meets all the substantive requirements indicated, the patent is granted.
- Patent grant publication – the granted patent is published in the Official Gazette of the ONAPI.

## 7.2 Trade Marks

According to the Dominican Law, a trade mark is a sign used to distinguish the products or services of a company from the products or services of other companies. In order to carry the registration before the National Office of Industrial Property (ONAPI, Spanish acronym), it is necessary to define the classes within which there is an interest in registering the trade mark. The classes to be registered must be according to the NICE International Classification. Trade mark certificates are granted for a term of ten years, renewable indefinitely from the issuance of the registration.

If a trade mark is going to be registered in more than one class, a multi-class registration application would be made before ONAPI, ie, several

classes would be included in the same trade mark registration application.

The trade mark registration process in the Dominican Republic follows these steps:

- Trade mark application before the ONAPI.
- Formal examination – if the ONAPI considers that it does not meet one of the requirements, it issues an office observation, and the applicant has 60 days to amend it.
- Material examination – if the ONAPI considers that it does not comply with any of the prohibitions referred to in the Industrial Property Law, it will notify the applicant so that within 60 days it can respond to the objections raised.
- Publication – once the application has been examined, the Distinctive Sign Department of ONAPI will order the approval of the trade mark application to be published in the institution's Official Gazette.

After publication, the applicant must wait 45 days so that any third party considered affected by this application can file an opposition. If, after said term, ONAPI does not receive any opposition, it will proceed to issue the corresponding trade mark registration certificate.

## 7.3 Industrial Design

According to Law 20-00, an industrial design is any meeting of lines or colour combinations or any two- or three-dimensional external shape incorporated into an industrial or craft product to give it a special appearance without changing the destination or purpose of the product.

The main requirements for the registration of industrial designs under Dominican law are the following:

- Novelty – a design is considered new when no identical design has been disclosed to the

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public before the filing date of the application before a Registry Office or, where appropriate, the priority date.

- Singular Character – this refers to the general impression on an informed user that must be different from the general impression caused on the said user by any other industrial design available to the public before the date of application for registration or priority.

It is possible to register two or more industrial designs in the same application, considering that they apply to products within the same classification class.

The industrial design registration process in the Dominican Republic follows these steps:

- Application before the ONAPI that will include the following – in this section, in addition to the request for the granting of the industrial design, the graphic reproduction or photograph of the industrial design or a sample of the product must be included in the case of two-dimensional designs on textile material, paper or any other flat material. In addition, the products to which the design will apply and the class and subclass of the products must be detailed (the class and subclass of the products can be made in accordance with the Locarno Classification, ie, an international classification for industrial designs).
- Substantial or substantive examination of the application – the ONAPI conducts a substantial examination to verify the novelty and singular character (originality) in relation to other existing designs.
- Concession of the Registry – if the application complies with all the requirements, ONAPI issues the industrial registry certificate and orders publication in the Official Gazette.

The granting of an Industrial Design registration grants the owner protection of five years

from the date of filing the registration application before ONAPI, extendable for two additional periods of five years.

## **7.4 Copyright**

All procedures related to Copyrights in the Dominican Republic are carried out before the National Office of Copyrights (ONDA, Spanish acronym) and under Law 65-00 on Copyrights of the Dominican Republic (“Law 65-00”).

Copyrights under Dominican Law include any literary or artistic production or literary or artistic expression in the scientific domain that can be disclosed, fixed or reproduced by any means or process known or as yet unknown.

The non-limiting list protected as copyright includes books, conferences, speeches, dramatic works and musical works, choreographies, audiovisual works, sculptures, musical compositions, drawings, photographic works, architectural works, computer programs (software) and databases. Law 65-00 protects works derived from original works, eg, adaptations, translations or other types of transformation that modify the original work.

These rights start with the creation of the work. The registration of a copyright is to grant publicity and greater legal certainty to the owners who are protected, so if they are not registered before ONDA, it does not harm the exercise of the rights, although it is recommended to mitigate risks of being infringed by third parties.

Copyright accrues to the author during his lifetime and their spouse, heirs and successors in title for 50 years after his death. In the case of duly established joint authorship, 50 years commences on the death of the last joint author.

The registration of work can be done online or in-person before the ONDA. It is necessary

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to complete the data of the author or authors through a form, the work to be registered and a copy in PDF, JPG format or in the digital support that applies depending on the type of work; in case of software registrations, it is also necessary to deliver the source code. The registration certificate is issued in approximately ten business days.

In the case of software registrations, it is also necessary to deliver the source code.

## 7.5 Others

In the Dominican Republic, intellectual property is divided into industrial property and copyright. In the case of software and databases, they are considered part of the copyright category, and their registration is not mandatory so that the copyright is recognised and applies the general characteristics of Copyrights under Law 65-00.

Trade secrets are considered industrial property. According to the Industrial Property Law, these are considered any undisclosed commercial information that a natural or legal person possesses, can be used in any productive, industrial, or commercial activity, and is likely to be transmitted to a third party. Due to their nature, they will not be registered before the National Office of Industrial Property.

## 8. DATA PROTECTION

### 8.1 Applicable Regulations

Data protection is mandated by the provisions of the Constitution of the Dominican Republic as part of the rights to dignity of each person. Therefore, the Constitution provides that any handling of personal data shall be performed in compliance with principles of quality, legality, loyalty, security and use for a specific purpose. Additionally, the Constitution allows any person, through judicial action, to demand the updating,

opposition to processing, correction or erasure of information that illegitimately affects their rights.

The main regulation applicable to data protection is Law 172-13 on Data Protection, Public Records, Data Banks or other technical means of data processing for reporting purposes, whether public or private. Although the general principles for treating and transferring personal data are enshrined in Law 172-13, this special regulation has primarily applied to claims before credit information societies.

The law stipulates that those entities that handle personal data must conserve the information under the security conditions required to impede its alteration, loss, consultation and unauthorised use or access. With regard to these conditions, the law requires companies that store such information to adopt and implement technical, organisational and security measures to safeguard personal data and prevent the alteration, loss, use, consultation and unauthorised access thereto.

Furthermore, this Data Protection Law governs a person's right to privacy and secrecy. Entities storing personal data or involved in the processing or handling thereof have an obligation to safeguard such information, which survives the termination of such entity's relation, commercial or otherwise, with the individual. The Law provides exemptions for public safety/health and national security, subject to a court order.

### 8.2 Geographical Scope

In an international context, Dominican law mainly applies the principle that the processing and transferring of personal data is deemed unlawful unless the title owner of such data has given free, explicit consent in writing or by any other means that can be validated. For example, among other aspects, when the transfer of data is necessary

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for executing a contract between the owner of the data and the person in charge of the treatment or for executing pre-contractual measures.

As such, the law provides that every person has the innate right to:

- decide if and how information about his person and property is used;
- access freely such data; and
- require the updating, correction and destruction thereof, regardless of whether that information is stored in private or public databases.

These rights of access, rectification, cancellation and opposition are independent rights. The exercise of any of them is not a prerequisite for the exercise of another.

### **8.3 Role and Authority of the Data Protection Agency**

There is no specific regulatory body or Data Protection Agency to supervise compliance with the legislation, but in the case of credit information entities, the Data Subject may request compliance with the provisions of the Law through judicial action against the Data Controller.

Furthermore, every person has the right to take legal action to find out about the existence and access the data contained therein in public or private records or data banks and, in the case of discrimination, inaccuracy or error, demand the suspension, rectification and updating of those in accordance with Law 172-13.

## **9. LOOKING FORWARD**

### **9.1 Upcoming Legal Reforms**

At present, there are several legislative initiatives under analysis in the Senate and the Chamber of Deputies of the Dominican Republic, and their

approval would be a significant contribution to the development of legislation affecting different social and legal areas, namely, justice and human rights, industry and commerce, labour, economy and taxation, modernisation, technology and media, among other matters of interest to society.

### **Justice and Human Rights**

In the area of justice and judicial organisation, several legislative initiatives are under analysis by the committees of the National Congress, and the following are worth mentioning:

- The bill that creates the Judge of Civil Enforcement is an initiative that seeks to create the Judge of Civil Enforcement, a judicial figure that will oversee verifying compliance with the due process of law in enforcing any title with the force of law, provisional enforceable judgments of civil, commercial, or labour nature, and full enforceable decisions, as well as condemnatory judgments that carry pecuniary interests.
- The bill to amend the Criminal Code of the Dominican Republic, in which amendments to the current legislative text are discussed, refers to criminal offences such as corruption, domestic or intra-family violence, sexual violence, discrimination, abortion, as well as penalties, constituent elements for their classification and aggravating factors.

### **Industry and Commerce**

In the area of industry, commerce and investment, there is the bill for the promotion of investment in the Dominican Republic, which establishes a legal framework applicable to foreign and national persons making investments in the territory of the Dominican Republic. The legislative initiative:

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- grants ease of procedures before governmental institutions for the establishment and registration of investments;
- delimits the different forms of investment;
- establishes a system to accompany the investor to obtain the necessary documentation for issuing the corresponding permits and licences, the management of the procedures and compliance with the deadlines;
- simplifies the obtaining of the residence for investment; and
- creates a figure to intercede and seek solutions to the obstacles faced by investors in the country.

At the same time, a bill to stimulate investment, development, innovation, and scientific and technological research is being studied by the National Congress.

## Labour

In the employment area, paid domestic work, the creation of unemployment and work suspension insurance, wage indexation, and the regulation of telecommuting or teleworking are the legislative reforms being discussed with special emphasis in the National Congress.

## Economy and Taxation

Among the initiatives of interest in tax matters, the bill on public trusts is being studied, which aims at regulating the organisation, structure, and operation of this type of trust entered by the state, as the trustor, with respect to assets or rights that are part of its patrimony or to manage and execute works or projects of public interest.

In addition, a tax reform that legislators are discussing refers to the refund of the tax on the transfer of industrialised goods and services to foreign tourists and non-residents in the country who make purchases of nationally produced or imported goods.

With a recent enactment, to be more specific on 20 February 2020, of Law 47-20 on Public-Private Partnerships and aimed at boosting investment and facilitating the development of public infrastructure projects and public-private partnerships financed with public or private funds, the bill introducing special measures applicable to this type of projects was also introduced. The legislative initiative establishes measures applicable in states of exception or urgency for strategic projects and provides for a simplified procedure for evaluation, including facilities for the execution of the different stages of the project.

## Modernisation, Technology, and the Media

In the area of intellectual property and data protection, the bill on cybersecurity management in the Dominican Republic is one of the reforms being discussed and analysed by the National Congress. This legislative initiative aims to strengthen the regulatory framework for the management of cybersecurity of information and communication technology infrastructures of the Public Administration and critical infrastructures in the Dominican Republic. Among the projects proposed by this reform is the creation of a National Cybersecurity Center and a National Cybersecurity Council, as well as the identification of an action plan to prevent and manage cybersecurity incidents.

Finally, as a consequence of the effects of the COVID-19 pandemic, a bill has been promoted to regulate the use of digital media for all judicial and administrative processes that are processed before the organs of the Judiciary, providing for the creation of a judicial portal that allows requests to be made, matters to be submitted and access to all information related to judicial processes through digital media, as well as the implementation of communications and notifications through digital media, the creation of the electronic file, and the regulation of electronic signatures and the holding of virtual hearings.

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**Jiménez Peña** was established in 2003 and is one of the largest international law firms in the Dominican Republic, with 23 lawyers and all the resources to handle any legal challenge that a local and global business community may face. The firm's dedication to integrity, responsiveness, and professional excellence mean its expert lawyers are turned to in many areas critical to business, such as corporate transactions, project finance, tax, labour, and government relations. A pioneer of international

arbitration in the Dominican Republic, the firm regularly intervenes in cases before major arbitration institutions, both as local counsel and lead counsel. Clients include Fortune 500 companies, multilateral organisations, domestic and foreign financial institutions, private investment funds, individual investors, and government entities, among others, across a wide spectrum of industries. The firm frequently participates in drafting fundamental legislation and contributing to professional publications.

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# DOMINICAN REPUBLIC LAW AND PRACTICE

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