

DOING BUSINESS IN  
THE DOMINICAN REPUBLIC

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*This legal guide is a publication of  
the law firm Pellerano & Herrera.  
Its purpose is to provide general information  
to persons interested in investing in  
the Dominican Republic. The information  
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# DOING BUSINESS IN THE DOMINICAN REPUBLIC

*The law firm Pellerano & Herrera is pleased to present this legal guide to all companies and persons interested in doing business in the Dominican Republic.*

*The information contained herein has been obtained from reliable sources and is offered on the basis of three main criteria: significance, actuality and relevance.*

*This document has been conceived to serve as a guide to potential investors wishing to do business in the Dominican Republic, in order to provide them with useful information about the country, the reform process that has been taken place in the last years, and the excellent climate for investment currently prevailing in the country.*

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## FOREWORD

A place to invest ...The Dominican Republic

A set of questions always precedes the decision to invest. The answers to such questions are actually what form the basis to the taking of any final decision.

To invest in the Dominican Republic is not a difficult decision to make. Any investor will find that most, if not all, of the questions that he may ask can be answered in a favorable light leading to such a step.

There is no doubt that the Dominican Republic is a country that is progressing and moving forward. Figures and facts show that for more than half a century the country has in every aspect been steadily growing and moving forward.

A close look to economic indicators shows that this growth has been sustained and that, when there have been short recession periods the Dominican economy has always recovered with even more dynamism. It shows furthermore the substantial structural and functioning changes that the Dominican society has been going through.

Among the main changes experienced by Dominican society are the following:

- From being a largely rural society it has been transforming into an urban society.
- From being a society based on agricultural production, it has been changing into a society based on services.
- From being an isolated society it has been developing to a particularly open and cosmopolitan nation.

The Dominican Republic is a country that stands out for the climate of political stability and social peace it enjoys, and for the warmth with which it opens its doors and heart to those who come to visit it.

# CULTURAL, POLITICAL AND ECONOMIC BACKGROUND



## 1 GENERAL INFORMATION

The Dominican Republic is a country that offers multiple opportunities for business and investment.

- Its strategic geographic position allows an easy access to the markets of the United States, Latin America and the Caribbean.
- Its growing economy is supported by an ongoing process of modernization, and reinforced by aggressive efforts to promote trade liberalization and economic integration.
- It enjoys an environment of political stability and democratic consolidation.

For all these reasons, the Dominican Republic conforms the ideal option for companies and persons of any nationality wishing to expand their investments.

### GEOGRAPHY

The Dominican Republic shares with Haiti the island of Santo Domingo, which is located in the Caribbean, between Cuba and Puerto Rico.

The Island has an extension of 77,914 square kilometers, of which the Dominican Republic occupies two thirds with an extension of 48,442 square kilometers. It is thus, after Cuba, the second largest country in the Antilles.

The climate is semitropical, with an average yearly temperature of 26°C (78°F). The air humidity goes from 65% to 80%, and there are two main rainy seasons: from May to July, and from October to November.

The Dominican Republic has a great geographic diversity: extensive white-sanded beaches, fertile valleys with exuberant vegetation, desert zones with dune formations and mighty mountain chains.

A proof of this great diversity is the fact that it is in the Dominican Republic where both Pico Duarte, the highest peak in the Caribbean (3,175 meters above

sea level), and Lake Enriquillo, the lowest point in the Caribbean (144 meters below sea level) may be found.

The country is also proud to have an impressive fauna and flora diversity, which mainly lives and develops within an important system of protected areas, formed of several natural parks, scientific reserves, wildlife refugees, panoramic landscapes, archeological sites, architectural monuments and submarine zones of historic and cultural interest.

The city of Santo Domingo is the capital of the Dominican Republic, which has also other cities of demographic, economic and cultural importance, such as Santiago de los Caballeros, San Pedro de Macoris, La Romana, Puerto Plata and Barahona.

## HISTORICAL OVERVIEW

The Dominican Republic is a free and sovereign country focused towards the sustainable development of its people, its institutions and resources in a context of globalization efforts and the responsible interaction of its agents.

It is a young country that proclaimed its independence on 27 February 1844, a feat that had to be defended with courage in order to be kept.

When the Spaniards arrived at the island on December 5, 1492, it was inhabited by a group of Arauaco Indians called “Tainos”, but this population vanished in a relatively short time after the discovery. The hard physical work they were forced to carry out, the “European” diseases and the poor quality of the food they were given, were among the main causes for this.

Named by its Spanish settlers “Hispaniola”, the island became the basis for the expansion of the Spanish empire into the new world, and the main expeditions to the other American and Caribbean territories started from its shores.

The city of Santo Domingo (originally named “La Isabela”) was founded in 1496, and soon became a real cultural center, which saw the light to the first cathedral, the first hospital and the first university of America, among many others.

It was in 1966 when started the process of democratic consolidation and development of the national economic structures that has contributed to the current political and economic stability of the country.

Since then eleven democratic elections have been held, alternating in power the three main political parties:

- Partido Reformista Social Cristiano: Joaquin Balaguer, in 1966, 1970, 1974, 1986, 1990 and 1994.
- Partido Revolucionario Dominicano: Antonio Guzman in 1978, Salvador Jorge Blanco in 1982 and Hipólito Mejía in 2000.
- Partido de la Liberación Dominicana: Leonel Fernandez, in 1996 and 2004.

## POPULATION AND DEMOGRAPHY

In general terms, the Dominican population is the result of an intensive mestization process in which, on a higher or lesser degree, mainly three components have participated: Aborigine, European and African. As a result of this process, the Dominicans have become a combination of the best of several worlds.

From the cultural standpoint, "hispanity" clearly predominates, which is strongly present in the different aspects of Dominican life. This is shown in the fact that Spanish is the official language of the Dominican Republic and that most of the population is of catholic religion. However, in this regard it should be pointed out that the Constitution of the Dominican Republic recognizes the freedom of religion, which explains the existence of all types of religions that practice their activities in all normality.

The population of the Dominican Republic reaches almost 8.6 million inhabitants. As to gender, the population is quite evenly distributed: there are 4,297,325 women and 4,265,216 men, that is, about 50% of each sex.

Finally, it should be pointed out that the Dominican population within 15 and 44 years old accounts for 47% of the whole country population, while 34% are below and 19% are above this group.

## WORKFORCE

A report from recent years published by the Central Bank shows that the economically active population of the Dominican Republic is estimated in 3,314,993 people.

It also shows that from this figure around 59.15 % are dedicated to services, 16.92% to the industry and only 16.41% to agriculture. 7.52% had no branch of economic activity and are looking for a job for the first time.

The country has a wide and diverse workforce, ranging from university graduates both at a professional and technical level, workers with basic knowledge and skills and workers in general.

## INFRASTRUCTURE

All throughout the years the Dominican Republic has developed a large physical infrastructure, highly developed and adapted to the requirements of a society focused towards production and the marketing of goods and services.

Certainly, this infrastructure is an important support to productive activities.

Special mention should be made of transport and communication facilities both at a local and international level.

### Roads

The road network that links practically all of the country's destinations is one of the best of the region, while air and maritime services include the main lines worldwide.



## Airports

The country has a modern, wide and efficient airport system that receive cargo and passengers traveling directly from North America, South America and Europe. It comprises six airports located all throughout the national territory used for international flights, as well as other available for domestic flights.

## Ports

The country has also 11 important ports. The main are the Haina Port, Santo Domingo Port and Boca Chica Port, which is one of the most modern and dynamic of the Caribbean.

These seaports and airports, which handle both cargo and a growing number of travelers, are located within a short distance of industrial centers.

## Telecommunications

The telecommunications system is one of the main competitive advantages that the Dominican Republic has to offer for its performance in any sector of economic activity.

These services are wholly provided by private suppliers, and ranks doubtless as one of the most advanced and efficient, not only in the Caribbean but also worldwide.

The role that telecommunications have to play today in productive processes and all other aspects of society life enhance the meaning of the availability of these technical resources, which should thus be highlighted as adding significant value to the business offer of the Dominican Republic.

## Electricity

The electricity supply is still an important challenge for the authorities and an excellent opportunity for investors.

The energy supply is not enough to meet the growing demand of the population and industrial sectors of the country. For this reason measures have had to be taken to rationalize the energy distribution to all sectors of national life. In turn the population has been forced to find private solutions such as the purchase of electricity generators for both domestic and industrial use.

The main initiative taken in the last years to face successfully this situation was the capitalization of companies that provided this service under the framework of the Law for Capitalization of Public Companies. Another important act was the passing of the General Electricity Law.

## 2 POLITICAL AND ECONOMIC OUTLOOK

The Dominican Republic is currently going through an important process of democratic consolidation, and the results of the last three presidential elections held in 1996, 2000 and 2004 reflect the growing democratic maturity of the nation.

These election processes have been carried with transparency, without questionings and with great poll participation.

The traditional political leadership that had ruled the country since the beginning of the democratization process in the sixties has been gradually being replaced by a younger generation of leaders who are trying to achieve an economically feasible project comprising global competition, public sector responsibility and decentralization.

While this process takes place, the country is experiencing very important moments for its future from the economic standpoint.

Since 1996 the country had achieved the highest economic growth rates in Latin America, as a result of the constant macroeconomic stability and the gradual increase of private sector participation.

In this regard, the growth experienced by the Dominican economy between the years 1996 and 2000 captured the attention of the international community, being praised by institutions such as the International Monetary Fund and the Economic Commission for Latin America and the Caribbean. In fact, during five consecutive years the country had been breaking its annual growth record.

During recent years, the economy grew 2.7%, a low rate when compared with precious years, but still five times higher than the average growth rate in Latin America, in spite of adverse factors, such as the September 11 events, the raise in oil prices and the world economic recession, which affected important sectors like tourism and free zones.

The Dominican economy shows two clearly different economic profiles: on the one hand, the external economy, whose main growth factors have been tourism and industrial free zones, and on the other hand, the domestic economy, whose main growth factors have been communications, electricity, construction, commerce and transport.

Free zones and tourism have developed independently from the general commercial environment of the country, for the following reasons:

- Special legislation has protected the rights of foreign investors,
- Particular tax structure has granted a fair treatment for new local and foreign participants, and
- A competitive environment has favored innovation.

It should be noted that the victory of Dr. Fernandez at the presidential poll on 2004 caused, maybe more a psychological motivation than an economic one, certain important developments worthy of mentioning:

1. A significant reduction of the exchange rate, which has largely stabilized at approximately RD\$30.00 per US\$ dollar.

2. Reduction of interest rates.
3. Reduction of inflation rate to close at 29% at the end of the year.
4. Increase return of capitals that had been placed abroad.

## 3 POLITICAL SYSTEM

The Constitution of the Dominican Republic defines the government system as being democratic, republican and presidential. It also provides that the exercise of power is divided among three independent branches: executive, legislative and judicial.

### EXECUTIVE BRANCH

The President of the Republic exercises the Executive Power.

The President is elected through direct vote, together with the Vice-president, for a four-year-period. They may be re-elected for an additional period, according to the last amendment made to the Constitution in 2002.

To be elected President, the candidate must gain a majority vote of at least 50% plus one.

If none of the candidates obtains such majority, a second poll will take place at which the population will decide between the two candidates that had the best results during the first poll.

The President of the Republic is the Head of State, Government and Public Administration, as well as the Commander in Chief of the Armed Forces.

A cabinet of ministers (“Secretarios de Estado”) that he designates assists the President in his function.

Since August 2004, the President of the Republic is Leonel Fernandez and the Vice-president is Rafael Alburquerque, of Partido de la Liberacion Dominicana (PLD), which won in the first election round with a majority vote of 57.11%.

### LEGISLATIVE BRANCH

The Legislative Power is invested in the National Congress, composed by two chambers: the Senate and the Chamber of Deputies.

The members of both chambers are elected through direct majority vote for four year periods. Re-election is always possible, without any limitation.

The Senate is composed of 32 members, one for each province and one for the National District. The office of Senator and Deputy are incompatible with any other position or employment at the Public Administration.

The Chamber of Deputies is composed of 150 members elected directly by the inhabitants of the respective province or National District, at a proportion of one deputy for every 50,000 inhabitants plus fraction exceeding 25,000, but never less than two.

## JUDICIAL BRANCH

The Judicial Power is in the hands of the Supreme Court of Justice and the other judicial courts established under the Constitution and the laws. It has administrative and financial autonomy.

The Judicial Power is charged of administering justice in order to ensure the respect, protection and supervision of rights recognized under the Constitution and laws.

Its higher organ is the Supreme Court of Justice, which is composed of 16 judged appointed by the National Council of Magistrates, an entity created by the constitutional reform of 1994 to ensure the independence of the judicial branch.

The National Council of Magistrates is presided by the President of the Republic and has the following members:

- The President of the Senate and a Senator chosen by the Senate from a different party than the President of the Senate.
- The President of the Chamber of Deputies and a Deputy chosen by the Chamber of Deputies from a different party than the President of the Chamber of Deputies.
- The President of the Supreme Court of Justice.
- A judge of the Supreme Court of Justice chosen by this court, which serves as Secretary.

# 4 PROCESS OF LEGAL MODERNIZATION AND TRADE LIBERALIZATION

Like the rest of the world, the Dominican Republic has been transformed by the phenomena of globalization, and since the year 1991 has been involved in a reform process oriented towards the modernization of the legal and economic framework under which businesses operate in the country, with the view of adapting its economy to the new competitive standards, accelerating its insertion within global and regional economic groups, and promoting the flow of foreign capital.

This process of economic modernization and gradual integration to global markets, combined with the human and natural resources of the country, and with the investment opportunities offered by most of the productive sectors, make the Dominican Republic a place of interest throughout the world.

## LEGAL REFORM

In the early nineties, new legal codes were adopted in the fields of tax, labor, customs, and recently criminal law, with the passing of the Criminal Procedure Code. However, the turning point for the liberalization of the Dominican economy was undoubtedly the passing of Law 16-95 on Foreign Investment, which eliminated all restrictions to foreign investment, and marked the beginning of many other significant reforms.

During the last seven years, the legislative train has accelerated and many areas have been subject to comprehensive reforms that have enhanced the competitiveness of the Dominican economy, and provided the institutional basis for its development. One of the main concerns has been the conformation of our legal standards to the mandates of the World Trade Organization, as provided in the text of most of the new laws themselves.

The main comprehensive reforms carried out in the last years include new legal statutes on telecommunications, stock markets, industrial property, copyright, export promotion, environmental protection, tax and customs reform, electricity, electronic commerce, monetary and financial reform, child protection, public attorney office, office of public accounts, money laundering, risk prevention of financial entities, migration, elections, insurance, national policy, among others.

The most important innovation experienced for law enforcement has been the implementation on September 2004, of the new Criminal Procedure Code.

The liberalization trend has not however been the sole concern and, especially in the last two years, social reform has also had an important place in the legislative agenda, which has been involved in the passing of laws in the fields of education, civil rights protection and health. In this regard, one of the most important reforms has been the new social security law, which modernizes and enlarges the social security system in the country. However, the application of this reform has been very slow.

## PRIVATIZATION

One of the main challenges for the modernization of the State was the privatization of public companies. This has been deemed necessary because, despite the bad performance of these enterprises, there was a general consent that these were still valuable assets that could be improved with fresh capital and modern management.

Law 141-97 on the Reform of Public Companies was adopted on 24 June 1997, with the aim of improving the efficiency of public enterprises and the quality of services they provide to the public by opening up such enterprises to private investment. The law provides a capitalization process with financial contributions from private investors. Private companies would acquire 50% of the capital and take over the management of the public company. The selection of companies is made through international bidding.

Under the legal framework provided by this legislation, the country has been able to transfer to the private sector, many public assets that had become a burden to the administration.

This process has mainly included:

1. The leasing for a 25 year period to Cementos Nacionales and Marmotech of the Mines of Salt and Plaster, the National Marble company, as well as the capitalization of Molinos Dominicanos (flour mills), and the national airline "Dominicana de Aviación".

2. The generation and distribution of energy: the generation units of the CDE (Itabo and Haina) were transferred to Seaboard Corporation and New Caribbean Consortium, while the distribution companies were transferred to Union Fenosa (North and West distribution units) and AES (South distribution unit). Afterwards, in a transaction that has been on the spotlight for a long time, the State re-purchased from Union Fenosa the units that this company had acquired.

3. The leasing of the ten sugar mills belonging to Consejo Estatal del Azúcar. As it may be appreciated, the adoption of this law was an important step for the liberalization and modernization of the national economy, because the capitalization process, although subject to controversy and technical obstacles, has helped to alleviate the charge that public companies are for the Government, and has resulted in the country receiving large amounts of foreign investment that surpassed in the year 1999, when the main capitalization processes took place, the record amount of 1.3 billion dollars.

It should be pointed out that this process has not been limited to Law 141-97, and that also outside the scope of this legislation the Government has been transferring the administration of its agencies to private hands. An example of this is the contract for the modernization, expansion and administration of the public airports (AILA, Gregorio Luperon, Maria Montez and Arroyo Barril) that was awarded to Consorcio Aeropuertos Dominicanos Siglo XXI (AERODOM).

## PROMOTION OF NATIONAL COMPETITIVENESS

The Government is executing an ambitious program to promote the competitiveness of Dominican economic sectors, particularly in the agricultural fields, as an essential step within the process of globalization of the economy. In this context, it has taken the following measures:

1. Creation of a National Bank of Competitiveness, with the aim to provide financing for the development of strategic economic sectors;
2. Adoption of Law 1-02 on Antidumping Practices, which seeks to protect local producers against foreign imports for a lesser value than the sale price in the country of origin;
3. Several measures intended to increase the competitiveness of Dominican exports and free zone companies.

## REGIONAL INTEGRATION

As we will see in more detail in the Chapter on International Trade, the Dominican Republic has been making significant efforts to widen its trade relations with, and join the different economic groups of the region, having become one of the most dynamic and innovative countries within the process of regional integration in the area. These efforts have already produced concrete results, mainly noticeable in the signature of free trade agreements with Central America and the Caribbean. In addition, the Dominican Republic signed

a partial Free Trade Agreement with Panama, a Free Trade Agreement with Venezuela and the DR-CAFTA, signed with the United States and other nations of the region.

Finally, it should be noted that the Dominican Republic is a member of the World Trade Organization (WTO), whose function lies in facilitating the application, administration and functioning of multilateral trade agreements and to favor the achievements of its objectives, being also the framework for the application, administration and functioning of multilateral trade agreements.

# MONETARY AND FINANCIAL SYSTEM

## 1 LEGAL FRAMEWORK: LAW 183-02

### MONETARY AND FINANCIAL LAW

In the year 2002 ended the process of approval of the new legal framework for monetary policy and banking business in the Dominican Republic, which for more than half a century had been regulated by the laws resulting from the financial reform of 1947.

Thus, on 16 November 2002 the Monetary and Financial Law No. 183-02 was passed, which is the result of a consensus reached among very diverse sectors of the public and private financial levels of the national and international community, after an intensive consultation process.

### OVERVIEW OF THE LAW

The Monetary and Financial Law is divided into four parts:

#### Title I on “Regulatory and Institutional Framework”

This part contains the regulation principles of the monetary and financial system, the basic organizational norms of the Monetary and Financial Administration, and transparency rules.

#### Title II on “Regulation of Monetary System”

This title deals with currency regulations and monetary issue, open market operations, inter-banking market, management of international reserves, legal reserves, payment and compensation system, foreign exchange regime and loan facilities of the Central Bank as lender of last resort.

#### Title III on “Regulation of Financial System”

These provisions set out the types of institutions subject to regulation, their legal regime and special corporation rules, the admission of foreign entities, descrip-



tion of operations that are allowed, subject to authorization and prohibited, prudential norms, bank transparency, forms of supervision, bank regulation and liquidation, and sanctions.

#### Title IV on “Additional, Final, Transitional and Abrogation Provisions”

These provisions enable to connect the law with other related areas and provide the necessary rules to conform the current situation to the new standards.

#### PURPOSE OF REGULATION

The law provides that the purpose of monetary regulation is to maintain price stability, which is indispensable for national economic development, while the purpose of financial regulation is to see to the compliance with the liquidity, solvency and management conditions set forth in the law by entities of financial intermediation, in order to ensure the normal functioning of the system in an environment of competition, efficiency and free market (Article 2).

#### MONETARY AND FINANCIAL ADMINISTRATION

Law 183-02 adopts the organization concept of Monetary and Financial Administration, which includes the Monetary Board, the Central Bank and the Superintendence of Banks, and which in an organized manner, is granted the exclusive attribution to regulate the monetary and financial system throughout the national territory.

##### a) Monetary Board

The Monetary Board is under the Constitution the regulatory body of the financial and monetary system, and the higher organ of the Central Bank and the Superintendence of Banks.

It has the following functions:

- To determine the nation's monetary, exchange and financial policies.
- To adopt monetary and financial regulations for the application of the law.
- To grant and revoke authorizations to operate as financial entity, and to authorize mergers, acquisitions, etc. among entities.
- To designate, suspend or remove employees of the Central Bank and Superintendence of Banks.
- To decide on appeals filed against decisions of the Central Bank and the Superintendence of Banks.

The Monetary Board is also entitled to adopt regulations of general application to regulate the monetary and financial system. In this regard, the law improves the conditions of exercise of the faculty of regulation of the Board, which is subordinated to the law.

The regulatory measures of the Board may be subject to the control of the court when appeals are filed against a decision issued by virtue of such regulations.

This body shall be composed as follows:

- Three permanent members (the Governor of the Central Bank, who presides over it, the Minister of Finance and the Superintendent of Banks)
- Six members designated by the President of the Republic for a renewable two-year-period, not being able to be removed of their posts without just cause, and removal may only be decided by majority vote of \_ of the members of the Board.

#### b) Central Bank

The Central Bank is a public entity of Public Law with its own legal personality. As the only issuing entity, it is granted autonomy under the Constitution. It has the function to execute monetary, exchange and financial policies, pursuant to the Monetary Program approved by the Monetary Board and by using the instruments provided in the law.

#### c) Superintendence of Banks

The Superintendence of Banks has the mission to carry out, with full functional autonomy, the supervision of financial entities, in order to see to the compliance of their legal obligations, requiring them to make the relevant risk provisions, to comply with the legal provisions and to impose sanctions. It has also the attribution to propose the authorizations and revocations of financial entities that the Monetary Board has to evaluate.

#### d) Guarantees of Autonomy

Law 183-02 sets forth the necessary safeguards to ensure that the Monetary and Financial Administration carries out its functions in an independent and autonomous manner.

Firstly, the Administration is granted the resources required to execute its functions with budgetary and financial independence (Article 5).

Furthermore, the law seeks to strengthen the professionalism of the Administration's human resources through a personnel regime that focuses on merit and professional capability, includes rules intended to ensure impartiality in the exercise of their functions, reaffirms the confidentiality duty and creates a severe regime of personal financial liability in the event of misappropriation of funds (Articles 6-8).

In addition, the law provides special attention to the professionalism and independence of the Administration's higher organs in order to prevent political appointments and conflicts of interest. For such purpose, it sets out in detail the selection criteria for a fixed time-period of the members of the Monetary Board, its compensation regime and grounds of removal, creating furthermore statutes for the Central Bank's Governor and the Superintendent of Banks.

In this same context, the mechanisms of monetary transparency, through which the Administration is obliged to inform the public of its activities, seek to ensure that the Administration performs properly with its duties (Articles 22 and 23).

Public protection against the Administration's decisions is reached by virtue of new administrative and litigious-administrative appeals that may be filed by

affected parties. In this regard, the creation of a Litigious-Administrative Court for Monetary and Financial Issues to decide on appeals filed against administrative decisions issued by the Monetary Board is one of the most significant contributions of the reform (Article 77). The law grants a one-month-period for the filing of the respective appeal with the Court (Article 4.b).

Moreover, a mandatory public consultation procedure is established in order to enable interested parties to file their comments regarding regulation proposals of the Administration (Article 4.g).

## CURRENCY AND EXCHANGE

According to the Constitution, the national currency is the Dominican Peso. Law 183-02 abrogated Monetary Law No. 1528 of 1947, which had become obsolete, since it provided that a Dominican peso has the same value as a US dollar.

This legal framework provides that the foreign exchange regime shall be based on the free exchange of national currency against foreign ones, being economic agents able to execute transactions in foreign currency under any terms that they may wish to agree upon. The Central Bank may not, under any circumstances, require that certain international exchange operations shall be solely made with the Central Bank or under conditions preventing that the market freely determines prices.

## SOURCES OF FINANCING

### Local and Foreign Loans

Financial institutions grant generally short or medium term loans, with periods of one to five years, but the financing of constructions and projects with government funding can be long term, with periods of ten to twenty years.

Law 312 of 1919 used to set a mandatory interest rate of 12% per year. However, the Monetary Board allowed banks to charge “commissions” whose rates depended on the prevailing market conditions. This statute was abrogated by the Monetary and Financial Law No. 183-02, which provides that interest rates for any type of transaction shall be freely determined by the market (Article 24).

As to the interest rates of the last years, we may mention the following:

- The average loan interest rate charged by banks in 2002 was 26.1%, while the deposits interest rate was 31.39%.
- In 2003, the loan rate was 16.79% and the deposits rate 20.53%.
- In 2004, multiple banks had a loan interest rate of 30.88% and a deposit rate of 21.27%. These rates were similar at the other financial entities.

As to loans in foreign currency, there is no legal or exchange restriction to their execution. Law 183-02 provides that transactions made in Dominican Republic may be agreed in local or foreign currency, establishing that debts shall be paid in the currency agreed-upon by the parties.

The foreign creditor needs only to register the loan at the Central Bank, and the debtor will then be able to pay in foreign currency obtained through the private exchange market any amounts due under the agreement. Since 1994, when the

need of prior approval from the Central Bank was eliminated, this registration is a mere formality for statistical purposes.

Under the Tax Code, interests on international loans were subject to a 15% withholding tax, payable by the local debtor. Law 146-00 on Tax Reform reduced this rate to 5%, which was again raised to 15% by Law 92-04 on Bank Risk Prevention.

## MULTILATERAL ORGANIZATIONS

At an international level, the Dominican Republic benefits from different programs for project financing, and for investment insurance against exchange and political risks, both of which contribute to make the country an attractive and safe place for the placement of investments.

Since the Dominican Republic belongs to a number of international organizations, the investor who decides to carry out a project in the country could benefit from the facilities for project financing and investment guarantee that are available under different international schemes.

International organizations such as the World Bank and the Inter-American Development Bank (IADB) grant credit facilities under good conditions for the realization of projects in sectors considered to be important for the development of the national economy. Private projects in areas like agriculture, tourism and industry benefit from these programs. In this regard, in the year 2001 the International Financing Corporation (IFC), of the World Bank Group, opened a branch in the country in order to be able to provide direct financing to local companies in areas of strategic importance for development. Furthermore, also in that year the Dominican Republic became a member of the Multilateral Investment Fund (MIF), a fund managed by the IADB to provide financial resources for private sector development, particularly small enterprises.

Furthermore, the Dominican Republic is a member of the Multilateral Investment Guarantee Agreement (MIGA), an agency of the World Bank established in the year 1988 to promote the flow of capitals to its developing member countries. The MIGA grants guarantees to cover the risks of impossibility of exchange into foreign currency, expropriation, non-compliance of contract by the government and civil disturbance or war.

The Overseas Private Investment Corporation (OPIC), a government agency of the United States, is also active in the country with financing facilities and investment insurance programs against certain risks.

## EUROPEAN DEVELOPMENT FUNDS

The European Investment Bank (EIB) is an institution of the European Union that, under the framework of the Lome/Cotonou Convention, offers long-term and low-interest loans for the financing of projects in ACP countries. The EIB grants loans to the Dominican Republic mainly in the following sectors: industry, tourism, mining and energy, as well as transport and telecommunications when the project is related to one of the mentioned sectors.

EIB loans are generally used for the application of the National and Regional Indicative Programs set forth by the Lome Convention, which are prepared jointly by each ACP country and the EU every five years, and contain, among other information, an indication of the economic areas that should benefit from the financial support and the projects to be executed for such purposes. These funds are channeled through the European Development Fund Office of the Government. Under the first financial protocol of the recently approved Cotonou Agreement, which substitutes and enlarges the benefits of the Lome Convention, a substantial amount of financial resources will be made available to ACP countries: more than 25 billion euros over the next seven years.

For the period 2003-2008, the Dominican Republic will receive approximately 200 million euros, of which 176 million will be for donations and the rest will be for regional projects and loans channeled through local banks.

In this regard, the country was chosen by the Center for the Development of Enterprise (CDE), an ACP-EU institution financed by the European Development Fund to support ACP companies and partnerships between ACP-EU contractors in the fields of industry, agriculture, construction, tourism, telecommunications, transport and others, to be the seat of its first regional office in the Caribbean. This decision was taken on the basis of the fact that approximately 40% of the CDE's portfolio for the region has been invested in the Dominican Republic.

Furthermore, in March 2002, the Dominican Republic was selected as model for all 77 ACP countries for the use of Cotonou funds, and the EU opened an office in the country to channel funds to other nations of the region. This local office will also facilitate the negotiations towards the execution of a trade partnership agreement of ACP countries with the EU that would enter into effect in 2008.

## 2 THE DOMINICAN REPUBLIC STOCK MARKET

### DEVELOPMENT OF THE STOCK MARKET

The local stock market started to develop, very slowly at first, under Law 3553 of 1953, which allowed the creation of the National Stock Exchange and the National Commission of Securities, and more rapidly at the end of the eighties, under Presidential Decree No. 554-89, that created the Stock Market of the Dominican Republic (BVRD) as a non-for-profit self-regulated institution, which started to operate in 1991.

Despite the limitations resulting from the lack of adequate legislation, transactions at the BVRD grew if not considerably, at least steadily during the nineties. With the passing of Law 19-00, which fills in the legislative gaps that were limiting the expansion of financial markets in the country, the Dominican stock market has been acquiring significant value, for both local and foreign companies. Volumes negotiated at the BVRD reached record levels in the year 2001, going from RD\$4,041.7 million in 2000 to RD\$22,680.6 million in 2001, an increase of 461.2%.

In the year 2002, the BVRD made operations for RD\$24,841.9 million, for an increase of 9.52%. The average interest rate was 18.9%. As of October 2003 the volume of transactions of the Santo Domingo Stock Market was RD\$16,129,021,469.69 and the average rate was 24.42%.

The Stock Market has been a valuable tool for local investors, which have through it managed from the start the amount of 79,014,600,495.07.

### LEGAL FRAMEWORK: LAW 19-00

Law 19-00 on Stock Markets was passed on 8 May 2000, with the purpose to provide a general framework to regulate public offers, issues and issuers of securities, in order to promote the development of an organized, efficient and transparent financial market in the Dominican Republic.

The Executive Branch issued on 19 March 2002 Presidential Decree 201-02, which contains the application regulations of Law 19-00. The Central Bank has concluded the process of creation of the Superintendence of Securities, which has its own budget, siege, human and technical resources.

#### a) Definitions

Law 19-00 provides a modern and comprehensive framework to the public offer of securities in the Dominican Republic, as it can be appreciated in the following definitions contained therein.

It defines Security (“valor”) as an interest or group of interests of essentially economic nature that may be negotiated at the stock exchange, including stock, bonds, obligations, letters, merchandise titles and other instruments resulting from the titling process. It also includes future contracts and purchase-sale options on securities and products, as well as titles of any other nature.

Two markets may be differed:

- Primary market, including the operations for the first placement of securities, by means of which their issuers obtain the financing for their activities.
- Secondary market, including the operations for the transfer of securities that have been already placed through the primary market, with the aim of providing liquidity to their holders.

A public offer of securities is that addressed to the public in general, or to specific sectors thereof by any of the means of massive communication, to buy, sale or negotiate securities of any nature at the stock market. Offers that do not fulfill these conditions will be deemed as private and as such will not be subject to the provisions of Law 19-00.

In this type of transactions transparency plays a key role. Therefore, special attention is paid to the use of information that may be considered as privileged. Privileged information is defined as the knowledge of activities, facts or events unknown to others that are capable of having an influence on the price of publicly offered securities. The use of such information on its own behalf is illegal and subject to criminal sanctions.

## b) Market Actors

Law 19-00 regulates the main economic agents that participate at the Dominican stock market.

*Stock Exchanges (“Bolsas de Valores”).* They are self-regulated institutions that provide duly registered brokers with the services they require to carry out security transactions and to act as intermediaries in such transactions. Law 19-00 provides regulations on how the capital of these institutions shall be invested.

*Product Stock Exchanges (“Bolsas de Productos”).* They are self-regulated institutions that provide their members the services they require to carry out commercialization activities of products originated at, or destined to, agriculture, agro-industrial and mining sectors, as well as papers representing merchandises, future and derivative contracts on merchandise, and shall favor free competition and transparency in the market.

*Intermediaries (“Intermediarios de Valores”).* These are national or foreign companies or individuals whose main activity is to act as intermediaries in transactions involving publicly offered securities. Stock Offices (“Puestos de Bolsa”) operate both within and outside the Stock Exchange, while Stock Brokers (“Agentes de Valores”) operate only outside the Stock Exchange. Stock Offices are liable for their transactions at the Stock Exchange and are obliged to provide guarantees to ensure the fulfillment of these obligations.

*Compensation Chambers (“Cámaras de Compensación”).* They have the sole purpose of being the counterpart of all purchase and sale operations of future contracts, options and other papers or similar obligations authorized by the Superintendence of Securities. They shall also manage, control and liquidate operations, open positions, current accounts, margins and available surpluses made or kept by clients or brokers in the stock market.

*Central Deposit of Securities (“Depósito Centralizado de Valores”).* Stock exchanges and other companies may act as central deposit of securities, understood as the group of services provided by market actors with the aim of keeping in custody, assigning, compensating and liquidating securities negotiated in cash. The owner of deposited securities shall be deemed to be that which is registered as such at the deposit. Deposits are responsible for the authenticity, existence, value and conservation of deposited securities.

*Risk Qualifiers (“Calificadoras de Riesgo”).* They are charged of evaluating and qualifying the risk of securities offered to the public, on the basis of the issuer's solvency and liquidity, the nature of the paper and the probability of non-payment, among other factors.

*Funds (“Instituciones de Inversión Colectiva”).* Law 19-00 creates both Mutual and Closed funds (“Fondos Mutuos o Abiertos” and “Fondos de Inversión Cerrados”), which until then did not exist in the Dominican Republic. Mutual Funds are

defined as a changing patrimony formed of contributions made by physical or legal persons for their investment in publicly offered securities, which are managed by an administration company at the members risk. Contributions or fund installments (“cuotas del fondo”) may be repurchased at any time, which is not the case in the Closed Funds.

*Titling Companies (“Titularizadoras”).* Titling activities (defined as the placing of property with the purpose of backing up the interests granted to the holders of the securities issued on the basis of such property, the transfer of assets to such property and the issue of the respective securities) may be executed by authorized institutions or by companies that carry out exclusively this kind of activities.

### c) Regulatory Bodies

The supervision and regulation of the Dominican stock market is granted to the Superintendence of Securities (“Superintendencia de Valores”) and the National Securities Commission (“Comisión Nacional de Valores”).

The Superintendence of Securities promotes, regulates and supervises the stock market, seeing to the compliance of the law, and being entitled to apply administrative sanctions and fines, and to file legal actions. It is an independent organ, with its own legal personality and patrimony, and relates to the State through the Monetary Board. It is partly financed by contributions charged on the commissions made by brokers, as well as annual contributions of administration and titling companies.

This office shall authorize the entry of, and supervise, all market actors, as well as the placing of public offers of securities, and shall maintain a Stock Market Registry, with all public information related to the securities offered, and the institutions participating, at the market.

The National Securities Commission proposes the candidates for the appointment of the Superintendent and the Intendent of the Superintendence of Securities, and serves as an appeals institution for the decisions of the supervisory office, as well as arbitrator in the conflicts arising between market participants.

It is composed of seven members: one Central Bank officer appointed by the Monetary Board, an officer appointed by the Ministry of Finance, the Superintendent of Securities and four private sector members appointed by the Executive Power for periods of two years, two from a pool of three candidates proposed by the stock exchange and stock brokers associations, and two from a pool of three candidates proposed by the product stock exchange associations.

### d) Public Offers

The Superintendence of Securities must previously authorize any public offers of securities in the market, after having verified that the offer complies with the relevant legal requirements, which depend on the nationality and time of operation of the issuer.



Among the documents required for local companies we find economic and financial information of at least the last three years of operation, legal information, and description of securities, with risk classification when applicable. Companies with less than three years of operation may still offer their securities in the market, but only during special sessions regulated accordingly.

Intermediaries offering foreign securities in the market shall present the respective registration certificate issued by the market regulatory body of the country of origin of the issuer. Furthermore, foreign legal persons wishing to participate at the Dominican primary market must fix legal domicile in the country. Securities in foreign currency may be placed in the market provided they have been previously registered with the Superintendence of Securities.

Securities or papers issued by the Dominican government or any of its organs may be placed at the market without their having to be previously authorized by the regulatory body. This also goes for multilateral organizations to which the Dominican Republic belongs, as well as foreign governments or central banks, subject to reciprocity, the presentation of its country-risk classification, and the proof of the authenticity of the offered papers.

Offers may be placed after the information related to the securities and their issuers has been registered at the Stock Market Registry, at the request of the interested party.

#### e) Insider Trading

Law 19-00 prohibits insider trading providing that persons who have access to privileged information shall refrain from transacting operations, for their own or others benefit, with any securities whose price may be influenced by such information, for as long as such information has not been made public.

The Superintendence of Securities has the task to ensure the integrity of the market by finding out and preventing the illegal use of privileged information. Law 19-00 provides a list of persons considered to have access to privileged information.

#### f) Sanctions

Law 19-00 provides administrative and criminal sanctions in the event of non-compliance with its provisions.

- Administrative sanctions are applied by the regulatory body and may include fines and the closure of business.
- The Court of First Instance may apply criminal sanctions. In general, the infringement of the law may be punished with fines of up to five million pesos and prison of up to two years. Certain more serious violations established in the law may be punished with fines of up to ten million pesos and prison of up to ten years.

#### g) Tax Exemptions

Stock market transactions have been exempted from all taxes. Earnings on securities placed on the stock market have also been exempted from income tax, as

### 3 LEGAL REGIME OF FOREIGN INVESTMENT: LAW 16-95

well as payments made abroad to foreign institutions that have invested in the Dominican stock market.

#### h) Application Regulations of Law 19-00

On 3rd August 2004 the Executive Power issued Decree 729-04 containing the application regulations of the Stock Market Law.

Law 16-95 of 20 November 1995 regulates foreign investment. The regulations for its application are contained in Presidential Decree 380-96, later amended by Presidential Decree 163-97.

The adoption of these legal provisions was one of the most important steps taken within the process of liberalization of the national economy. By recognizing that foreign investment contributes to the economic growth and social development of the country, and thus creating an attractive legal framework for foreign investors, this legislation provides one of the main tools to promote the flow of capitals to the country, and to adapt the national economy to the current trend of global markets.

#### BACKGROUND TO LAW 16-95

Law 861 of 1978, which Law 16-95 abrogated, provided the rules and conditions that foreign investors had to comply with in order to be able to buy, prior approval of the Central Bank, the foreign currency needed to remit abroad a portion of the capital invested and of the dividends obtained from the investment. The Central Bank needed sometimes years to approve the repatriation and make the foreign currency available to the investor. Furthermore, the surplus above the percentage allowed for the repatriation of profits and capital, as well as the investments that did not fulfill the requirements of the law, did not have the right to this process, all of which presented a serious restraint to the repatriation of funds.

On the contrary, Law 16-95 allows almost any type of foreign investor, without the need of prior approval from the Central Bank, to buy through the commercial banks the foreign currency needed to remit abroad all the capital invested and the dividends obtained from the investment. These provisions entailed a substantial amendment of the regime applicable to foreign investments that led to a significant increase in the amount of foreign investment being channeled to the country.

#### OVERVIEW OF PROVISIONS

##### a) Equal Treatment of Foreign Investment

Law 16-95 sets the principle of equal treatment between national and foreign investments, securing them the same legal protection, without any discrimina-

tion. This principle is first expressed in the elimination, for the purposes of the law, of all prohibitions and restrictions established before to foreign investment in many economic sectors, such as public service enterprises, mining, banking, insurance, transport, etc.

In line with this principle, Law 16-95 abolished Article 12 of Law 173 of 1966 on the Protection of Agents and Licensees, thus allowing foreign persons and companies to register under such law as agents or representatives of foreign firms, and benefit from the protection granted to the local agent in the event of unjust termination of its agreement by the foreign company. Before only persons or companies that complied with certain nationality or residence requirements had the right to receive the protection granted by Law 173.

This concept has guided legal amendments already approved or in process, such as the elimination of the requirements for the purchase of real property by foreigners, and the opening up of the banking sector to foreign capital established in the Monetary and Financial Law.

The only restrictions result from the establishment of certain areas where foreign investment is prohibited:

- (i) disposal of toxic or radioactive waste non generated in the country,
- (ii) activities affecting public health and the environment, and
- (iii) production of equipment and materials directly related to national defense, unless the approval of the President of the Republic has been obtained.

#### b) Definition of Foreign Investment

The foreign investment that can benefit from the provisions of Law 16-95 is largely defined as “any contribution coming from abroad, belonging to foreign persons or companies, or to Dominican persons residing abroad, to the capital of a company operating locally”.

According to Article 2 foreign investment can take the form of:

1. Capital contributions;
2. In-kind contributions;
3. Intangible technological contributions, such as trademarks, product models, industrial procedures, technical assistance and others, and;
4. Financial instruments issued and traded abroad that have been authorized by the Monetary Board. Under the previous law only capital and in-kind contributions were allowed.

Pursuant to Article 3, foreign investment can be destined to:

1. The capital of any type of business association, including branches of foreign companies;
2. The purchase of real property, and;
3. The acquisition of shares or other financial instruments authorized by the Monetary Board. The previous law allowed only limited liability companies incorporated in the Dominican Republic to be the target of foreign investment.

Finally, as to the sector where the investment is made, all previous restrictions, which prohibited foreign investment in certain areas and limited it in others,

were abolished. Therefore foreign investors may participate in any sector of the national economy, without any limitation outside the minor restrictions set forth in Law 16-95 itself.

### c) Registration Procedure

The procedure that required Central Bank authorization was exchanged for a simple notification procedure with statistical purposes. Now it is enough for the foreign investor to notify its investment within 90 days after its placement in the country in order to obtain automatically a Certificate of Foreign Investment Registration.

Law 16-95 placed this registration formalities under the responsibility of the Central Bank. However, Law 98-03 transferred these attributions to the Center for Export and Investment (CEI-RD).

### d) Free Repatriation of Dividends and Capital

The investor provided with a Certificate of Foreign Investment has the right to remit abroad in foreign currency, through the private exchange market:

- All the capital invested and all capital gains, and
- All dividends declared each fiscal year, after payment of the income tax.

### e) Non-Registered Investments

The lack of registration of foreign investments at the Central Bank does not affect in any way the validity of such investments. However the investor will have difficulty to freely repatriate its funds abroad, since without a Certificate of Foreign Investment he will not be able to go to the commercial banks in order to buy the foreign currency necessary to remit abroad the dividends obtained or the capital invested.

## INVESTMENT PROMOTION (CEI-RD)

The Export and Investment Center (CEI-RD) is the new governmental body created to promote the flow of investments to the country and the development of export sectors. It results from the merger of the Office of Investment Promotion (OPI-RD) and the Dominican Center for Export Promotion (CEDOPEX). Its role is to promote the offer of exports and the flow of foreign and national capital, by strengthening the general export and investment climate, in order to make more competitive the country offer, improve the balance of payments and contribute to sustained economic development.

The Department of Investment Promotion has the primary aim to design and execute programs for the country's promotion at events, fairs, forums, seminars, etc. intended to ensure a competitive position of the Dominican Republic within the international scene of foreign investment.

The Section of Incentives to Investors offers free services to investors in the following areas:

- Specific information about investment sectors;
- Drafting individual consultations to investors;

- Coordinating legal round tables;
- Reception of complaints;
- Follow-up of specific projects;
- Intervening in the event of conflicts between investors and the Public Administration;
- Offering opinions to investors about the national tax system.

## REGISTRATION OF INVESTMENTS

Law 98-03, which created the Center for Export and Investment (CEI-RD) transferred to this entity all of the attributions regarding registration of foreign investment that the Central Bank had.

Therefore, now the requests and documents from foreign investors must be filed with the Department of Registration of Foreign Investment of CEI-RD, which evaluates the requests and issues the respective Certificate of Foreign Investment Registration and/or Technology Transfer, as the case may be. This Certificate proves that the investment has been duly registered.

The advantages of the registration for foreign investors are the following:

1. Requirement to obtain residence as investor.
2. Legal right to remit capital abroad, prior notice to CEI-RD (Law 16-95 and its Application Regulations). For capital gains, no prior approval is needed.
3. Official certification from the Dominican State of the registration of the investment.
4. Legal support from CEI-RD to companies duly registered and certified at the Center.
5. Certificate of foreign investment registration as public support to obtain financing abroad.

The documents that the investor needs to file in order to obtain registration of its foreign investment are the following:

1. Application letter to CEI-RD indicating the name of the foreign investors, local receiving company (taxpayer number), amount of investment in US\$ and sector of the investment project.
2. Incorporation documents of the company.
3. List of shareholders and Board of Directors.
4. Share Certificates of the investment.
5. Notary statement declaring that the total amount of foreign currency has been used for the investment project.
6. Capital contributions: evidence of the entry of foreign currency in the country (such as bank transfer or exchange receipts).
7. In-kind contributions: copies of commercial invoice, payment of custom duties and bill of lading.
8. Copies of previous registration certificates, if any, for the purpose of substitution.

For the registration of License Agreements for Technology Transfer, the following documents must be filed:

1. Copy of agreements.
2. Proof of ownership of foreign licensor over the technology.
3. If it may affect the environment in its area of influence, certification of the Ministry of Environment and National Resources with the relevant provisions for the recovery of ecological damage.
4. Request of issue of Certificate of Technology Transfer, indicating term of the contract, foreign licensor and local licensee.

### BILATERAL INVESTMENT PROTECTION AGREEMENTS (IPAS)

In order to complement Law 16-95 and further promote foreign investment, the authorities have accelerated the negotiation process of bilateral agreements for investment protection (IPA'S) with several nations. These are international agreements concerning foreign direct investment (FDI) that, based on reciprocity, intend to promote and grant legal protection to investments thus promoting the economic development of the country.

These instruments are recognized as a source of trust for foreign investors, given that they allow to create a favorable investment climate, promoting the flow of private capital and initiatives from this sector. Among the agreements of this nature already in force we find those signed with Spain, Ecuador, France, Popular Republic of China, Chile, Argentina, CARICOM and Central America and DR-CAFTA. Others are still in the process of negotiation, Colombia, Peru, Israel, Taiwan, Canada, Korea, Denmark, Norway, Sweden, Germany, Russia, Check Republic, Belgium, Austria, Venezuela and Ukraine.

### LAW 72-02 ON MONEY LAUNDERING

#### Background and Objectives

On 10 June 2002 the Dominican Republic passed Law 72-02 on Laundering of Assets Obtained from the Illegal Traffic of Drugs and Controlled Substances, in order to satisfy the need of a legal framework adapted to international standards in the fight against money laundering. Previously this subject was under the scope of Law 55-02, but this statute had certain gaps, mainly concerning the distribution of goods, products or instruments obtained from illegal activities.

The country assumed international commitments that led to the adoption of an statute that could serve to control effectively the transnational phenomena of drug-trafficking, such as the International Convention against Corruption held in Caracas in 1996, the United Nations Convention against Organized Crime held in Palermo, Italy, in 2002, and others.

This legislation, together with its application regulations contained in Decree 20-03 of 14 January 2003, has the main purpose of defining the acts that categorize the offense of laundering from certain criminal activities, as well as providing precautionary measures and criminal sanctions. In the same regard, the law seeks

to establish the mechanisms and tools required to prevent and uncover money laundering, to determine the persons that are subject to the law and the administrative sanctions deriving from non-compliance.

## SCOPE OF THE LAW

### a) Definitions

*Asset:* Monies, securities, papers, notes or goods obtained from a serious offense.

*Competent Authorities:* Under judicial competent authority are meant judicial courts and the public general attorney, as well as the entities charged of supervising and seeing to the compliance of the law by the persons subject to its provisions: the Superintendence of Banks, the Internal Tax Office and the Drug Control Office.

*Confiscation:* To deprive a person of property a definite basis by virtue of a decision of a competent court.

*Seizure or Freezing of Funds:* The temporary prohibition to transfer, exchange, sale or move property, or the custody or temporary control of property by virtue of an order of the competent court or authority.

*Serious Offense:* The illegal traffic of drugs, controlled substances, illegal traffic of weapons, any crime related to terrorism, illegal traffic of persons, illegal traffic of human organs, kidnapping.

### b) New Public Bodies. Functions:

1. *National Committee Against Money Laundering:* Created with the aim to promote, coordinate and recommend policies for the prevention, detection and repression of laundered assets. Its main attributions are as follows:

- To coordinate public and private sector efforts intended to avoid the use of the economic, financial and commercial system for money laundering;
- to recommend to the Executive Power any legal and administrative measures that may be needed to strengthen the available mechanisms for preventing and investigating money laundering;
- To elaborate the annual budget of the Committee and the other entities created by the new law. This Committee shall be presided over by the President of the National Drug Council and further composed of the General Public Attorney of the Republic, the Minister of Finance, the Superintendent of Banks and the President of the Drug Control Office.

2. *Financial Analysis Unit:* This is the executive body of the National Committee against Money Laundering. Its main attributions are: to receive, request, analyze and divulge to the competent authorities the reports of suspicious financial transactions and the reports of cash transactions for more than US\$10,000, to provide technical support to other competent authorities, and others.

3. *Office for Custody and Management of Seized Assets:* This is an institution attached to the National Committee Against Money Laundering. Its main purpose is to guard, administrate and sale assets seized because of the perpetration of any of the offenses provided in the law. It is entitled to enter into agreements with private companies, whether national or foreign, and to manage the seized assets.

### c) Offenses

For the purposes of Law 72-02, any person that knowingly makes any of the following transactions with goods, funds or instruments obtained from a serious offense perpetrates money laundering:

- To exchange, transfer, transport, purchase, hold, use or manage such property;
- To hide, conceal or prevent that the real nature, origin or movement of the rights over such property be determined.
- To associate, assist, facilitate or advise for the perpetration of any of the previous activities.

### d) Sanctions

Persons committing the crime of money laundering shall be punished with imprisonment of 3 to 20 years and fines of 50 to 200 minimum salaries, depending on the particular circumstances of the case and the occurrence of any aggravating factors such as the participation of organized criminal groups, the association of persons to commit the crimes, and others.

### Precautionary Measures. Use of Seized Property

Any seized funds and goods shall be inventoried and transferred to the Office for Custody and Management of Seized Property.

Under its Article 9 and following, the law provides that when a money laundering case is under investigation, the competent judicial authority may at any time order the provisional seizure of property in order to ensure the preservation of the goods, products or instruments related to the offense until a final judgment has been rendered.

Goods in danger of being deteriorated or that require permanent action for their preservation, shall be sold at public auction or bid provided the owner of the property does not object. The sums obtained from the sale shall be placed on Deposit Certificates of the State-owned commercial bank (“Banco de Reservas de la República Dominicana”) until a final judgment has been rendered.

### Confiscation of Property

Pursuant to Articles 31 and following of the law, when there has been infringement, the court shall order the confiscation of the goods, products or instruments related to the crime or the payment of a fine for the same value.

In the case of confiscated property obtained from illegal drug-trafficking, the National Committee against Money Laundering shall use it as follows:

- 15% for institutions dedicated to rehabilitation of drug addicts;



- 50% for the Drug Control Office;
- 35% for the National Drug Council, to prevent and to educate against drug consumption.

### Persons Subject to the Law

Under Article 38 and following, the following persons are subject to the law:

- Financial entities legally regulated;
- Physical or legal persons dedicated to brokerage of securities or papers, investments or futures;
- Physical or legal persons acting as intermediaries for foreign exchange (exchange agents, etc.);
- Central Bank of the Dominican Republic;
- Casinos;
- Activities of real property promotion or sale;
- Insurance companies and agents;
- Any other business activity that due to its nature may be used for money laundering.

### Obligations

The persons indicated above must comply with the following obligations, among others:

1. To identify their clients with the identity card or passport;
2. To inform, within the first 15 days of the month, the Financial Analysis Unit, via Superintendence of Banks for institutions under its supervision, of all cash transactions exceeding US\$10,000;
3. To keep for at least ten years the records of the transactions and the identity of the persons or companies that have made the transactions or that have entered into business relations with the entity;
4. To maintain confidentiality by not saying to the client or other parties that the information has been forwarded to the competent authorities;
5. To create appropriate procedures or bodies for internal control and managerial communication in order to avoid and prevent the realization of money laundering activities.

It should be noted that the legislation on money laundering provides for international cooperation. It establishes that the court or competent authority shall through the appropriate channels cooperate with foreign courts or competent authorities in order to provide and receive assistance regarding money laundering activities related to illegal drug-trafficking and other serious offenses, in accordance with the relevant legal provisions and norms of international law.

## LAW 92-04 ON BANK RISK PREVENTION

### Background

The Monetary and Financial Law No. 183-02 was published on 3 December 2002. Its main purpose is to regulate the monetary and financial system of the nation, for which it is necessary to maintain price stability and to ensure that financial entities comply with the minimum liquidity, solvency and administration requirements set forth in the law. This with the aim to ensure the normal functioning of the system in an environment of competitiveness, efficiency and free market.

However, after the collapse of some of the financial entities conforming the Dominican bank system, an extraordinary legal framework became necessary in order to complement Law 183-02 and thus prevent the occurrence, or minimize the effects, of further similar situations.

In this regard, Law 92-04 was published on 4 February 2004, which created the Extraordinary Program of Risk Prevention for Financial Entities.

### Objectives

The main objectives of this statute are to enhance the attributions of the Monetary and Financial Administration, and to see to the compliance of liquidity, solvency and administration requirements by financial entities.

To reach its aim, the statute sets forth the Extraordinary Program of Risk Prevention for Financial Entities (hereafter “the Program”) through the creation of a fund to channel public and private contributions. The objective of this Program is to protect depositors and to prevent the risk of a system failure, which may adversely affect the payment system and the provision of basic financial services as a whole.

### Implementation and Functioning of the Program

In order to execute the Program, the Central Bank created the Fund for Bank Consolidation (hereafter “the Fund”), which has the following purposes: a) bank capitalization and/or restructuring of assets; b) asset compensation; or, in the last instance, c) guarantee of deposits.

The Fund shall be managed by the Central Bank and shall be solely used for the purposes, and according to the procedures, established in the law. It is a separate fund, formed of mandatory contributions of financial entities and other sources, as provided in the law. This Fund shall have a separate accounting and independent legal personality. It is under the management of a board of directors composed of five members appointed on a honorary basis by the Monetary Board and governed by the regulations of this Board.

The Program may come into application when a financial entity is facing difficulties, whether related to solvency, viability, liquidity or non-compliance by shareholders of capitalization goals within the terms provided in the regulation for conformation of capital or in its regularization plans.

Here, if the Superintendence of Banks considers that there are clear indicators

that the financial system may suffer a negative domino effect because of such difficulties, it shall submit a motivated proposal to the Monetary Board for the application of the procedures contained in the Extraordinary Program. This proposal shall include a restructuring plan for the concerned entity, as well as an evaluation of the estimated cost of each alternative.

If the Monetary Board approves the proposal, it will issue a motivated resolution asking the Superintendence of Banks to carry out the necessary precautionary measures in order to protect the interests of depositors. Thereafter, the Superintendence of Banks shall be entitled to exercise all functions, and to adopt or mandate, any actions that it may deem necessary to implement the Program, including the suspension of shareholders and managers rights, removal of managers and adjustment of capital, in accordance with the financial analysis made pursuant to the relevant norms and best international practices.

For such a resolution to be put into effect, a positive vote of both the Central Bank Governor and the Minister of Finance is required. Furthermore, the President of the Republic should express that he does not object to the measure. In order to ensure that the Program and the Fund may work and operate properly, there is a contribution that all financial entities have to pay. Such contributions shall be levied on the total amount of deposits received from the public through authorized financial instruments. The minimum annual rate of contributions is 0.17%, payable quarterly.

### Potential Effects of Implementation

a) *Solvency Ratio Higher than Regulatory Minimum.* When the Superintendence of Banks finds that the financial entity has a solvency ratio higher than the regulatory minimum, it is possible to perform a partial capitalization with the resources of the Fund, which shall be used to purchase shares or related debt in order to enable the entity to reach the minimum solvency ratio. For this, it is required that the managers who may have been performing bad practices have left the institution and that the Superintendence of Banks has already started the relevant investigations in order to determine the eventual civil or criminal liability of such persons.

In any case, the financial entity under the Program must fulfill the following requirements:

- a) To ensure that the loans granted to related persons are not in default and that a reduction calendar is established until the statutory limit has been reached;
- b) To recognize fully the losses and realize the capital reduction with the resulting effect on the share value of the entity;
- c) To strengthen the management of the financial entity, including the appointment by the Fund of the number of members at the Board of Directors of the entity that may be deemed necessary;
- d) To ensure that the members of the board of directors have the moral standards and honesty required by the Fund.

Furthermore, the shareholders shall sign a memorandum of understanding with the Superintendence of Banks, which shall regulate the following aspects:

1. The composition of paid-up capital. Related debt shall not be higher than 25% of the regulatory capital.
2. A copy of the minutes of the extraordinary general meeting of shareholders where the decision to increase the capital and to accept the purchase of shares by the Dominican State was taken.
3. The respective compensation to the contribution of the Fund to the capital, that is, the contributions to be made to the assets of the financial entity in exchange for the increase of interest in its capital.
4. A re-purchase plan of the State interest by private shareholders.
5. A restructuring and business plan of the financial entity. The plan shall include quarterly mandatory goals, aimed at maintaining a financial structure that may ensure the fulfillment of regulatory requirements and the generation of enough income to carry out the re-purchase plan. Furthermore, that plan shall include quarterly financial and economic estimates, besides an intensive supervision plan of the Superintendence of Banks comprising the presence of a supervisor at the financial entity.
6. A contractual clause providing that the Superintendence, in the event of serious and/or repeated non-compliance of the goals established in the re-purchase and/or restructuring plan, shall be solely entitled to put an end, even if anticipated, to the terms of such plans.

b) *Solvency Ratio Lower than Regulatory Minimum.* If the financial entity has a solvency ratio lower than the regulatory minimum established by the Monetary Board, shareholders will be offered the option to increase or integrate the capital, as long as the managers that may have been performing bad practices have left the institution and that the Superintendence of Banks has already started the relevant investigations in order to determine the civil or criminal liability of such persons. Later, they may also benefit from the program of partial capitalization with resources of the Fund.

If the shareholders do not make the required contributions, steps will be taken to identify one or more investors that may be interested in purchasing the entity under the Program. In this case, the Fund will cover the deficit between assets and liabilities and will inform the other banks of the system of the possibility of making offers for mergers or acquisition of assets and liabilities. Entities interested in a merger or acquisition may file their offers within a period not longer than eight days after the date of notice.

The assets and liabilities excluded from the balance sheet of the financial entity subject to a program of total capitalization shall conform the balance sheet of a new financial entity. In this manner, all liabilities excluded from the concerned entity will be transferred to the balance sheet of the new entity. These liabilities should at least include all first-rank privileged claims.

The excluded assets of the financial entity subject to the Program shall have the same value of excluded liabilities and shall be excluded under the criteria of trying to ensure the financial and commercial feasibility of the new entity.

If after such exclusions the net nominal value of profitable assets is still lower than the first rank privileged claims, the Fund will cover the deficit up to an amount not higher than the value of such claims.

On the other hand, the Superintendence and the Central Bank shall have, after the expiration of the eight-day-term granted for a purchase, merger or direct capitalization by the Fund of the entity subject to the Program, a maximum period of 72 hours to grant the license to the new financial entity and approve the dissolution of the old one. As a precautionary measure, the financial activities of the concerned entity shall be suspended as soon as there has been a decision to apply a total capitalization program with resources of the Fund.

c) *Non-Viable Financial Entity*. If the financial entity submitted to the Program has been considered to be non-viable and no other financial entity is willing to purchase its first-rank privileged claims, while all other possibilities for the transfer of assets and liabilities have been exhausted, the Fund will proceed to pay the deposits within a term of no more than 30 days. Here the deposits referring to offshore transactions shall not be taken into account.

In this case, financial entities will be invited to participate at a selection process to choose the payment bank. In the absence of candidates, the payments shall be made by the State-owned commercial bank (“Banco de Reservas”).

### Sanctions

Administrators, directors, managers or general proxies of financial entities who occupy such positions when the entity has been submitted to the Program, or that have done so up to 12 months before such date, will be prevented from participating as such in the Dominican financial system. Furthermore, they will be subject to the administrative and criminal sanctions provided in the Financial and Monetary Law 183-02.

The members of the board of directors, officers, managers or employees of a financial entity subject to the Program that have granted loans, discounts or other financial transactions, directly or through third parties, to shareholders or related persons of that entity, whether individuals or companies, infringing the provisions of Article 45, paragraph e) and Article 47, paragraph b) of the Monetary and Financial Law 183-02, shall be punished with 3 to 10 years of prison and a fine not higher than ten times the value of the committed fraud, or 2,000 public sector minimum salaries if no reference value can be identified.

Finally, it should be noted that the beneficiaries of any of such transactions, shall be punished with the same sanctions as those applicable to the officers themselves.

## REGULATION OF ASSET EVALUATION

In order to complement Law 92-04 on Risk Prevention for Financial Entities, and financial activity in general, the Monetary Board adopted on 31 December 2004 the “Regulation of Asset Evaluation”.

The purpose of this regulation is to establish the method that financial entities have to follow to evaluate, compensate and sanction risks in their assets and reserves. To this effect, it defines the criteria, notions, variables and classifications that financial entities have to follow to evaluate and measure risks in their loan portfolio, investments, fixed assets, assets received in the collection of credits, other assets and reserves. In the same way, it sets forth the criteria to eliminate or sanction irrecoverable assets from the balance sheet.

These norms shall apply to the following financial entities, whether public or private:

- Multiple Banks
- Savings and Credit Banks
- Credit Corporations
- Savings and Loans Associations
- National Bank for Promotion of Housing and Production
- Other financial entities that the Monetary Board may deem advisable to include.

It should also be mentioned that these rules also apply to financial entities still operating as Development Banks, Mortgage Banks or Small Financial Entities, until their transformation in any of the financial entities established in the Monetary and Financial Law.

# INTERNATIONAL TRADE

International trade plays a key role in the Dominican economy. Imported components are estimated to account for 60% of the value of the goods consumed in the local market, while exports have increased considerably in the last years mainly through the development of free zones.

The preferential export rights enjoyed by the Dominican nation to enter the United States and European markets, as well as the process of regional integration undertaken by the Dominican Republic, have largely contributed to the development of the external sector and offer a wide range of export opportunities.

## 1 IMPORTS

### MAIN IMPORTS

The country imports products from all over the world, but close to 40% comes from the United States.

The main imports are oil and oil products, vehicles, boilers and machinery, house appliances, iron and steel, plastic materials, carton and pharmaceutical products. In relation to consumption products, the main imports are fat and animal oils, wheat, milk and dairy products, cereals, seeds and fish.

As to free zone imports, many raw materials are imported for assembly and then re-exported. These products include textiles, shoes, medical equipment, etc.

Raw material imported by free zones comes, in order of significance, from the following nations: United States, Popular Republic of China, South Korea, Taiwan, Puerto Rico and Italy.

It should be noted that between 1993 and 2005 the balance between free zone

exports and imports has been positive and stable, as it may be appreciated in the following table, expressed in US\$ million.

### FREE ZONES EXPORTS-IMPORTS

Year	Exports	Imports	Balance
2001	4,481.60	2,826.40	1,655.20
2002	4,317.30	2,600.30	1,717.00
2003	4,406.08	2,530.90	1,875.18
2004	4,685.20	2,519.90	2,165.30
2005	4,734.60	2,407.30	2,327.30

### CUSTOM DUTIES

The Customs Code contained in Law 14-93 of 28 August 1993, harmonized customs tariffs, adopting the internationally recognized Harmonized System of Codification and Designation of Goods. The wide variety of categories and rates that previously existed was in this way eliminated, and only six tariffs were established. These amendments simplified considerably the procedure for the calculation and collection of custom duties.

However, these amendments were still far behind the requirements of the GATT and this situation, together with the fact that custom authorities use very discretionary valuation methods, resulted in the country having the highest custom duties of the region.

That is the reason why a customs duties reform was passed by way of Law 146-00 of 27 December 2000, which sets new duty rates of 0.3%, 8%, 14% and 20%, thus reducing the top 35% existing before. Furthermore, duty exemptions for strategic economic sectors have been maintained and reinforced.

In this regard, duties were reduced for a series of raw materials, equipment and high technology accessories used for these sectors, some of which are even subject to a zero rate in order to make them more competitive. The Bill for Custom Duties Rectification submitted to Congress reinforces these measures, enlarging the number of products that will benefit from reduced duties with the aim to improve competitiveness of the national industry.

On the other hand, from July 2001, Article VII of the GATT as method of valuation of merchandises entered into effect, as provided in Law 146-00 (as amended by Law 12-01 of 17 January 2001). The WTO has authorized the Dominican Republic to exempt 24 items from being subject to the GATT valuation method for a tran-



sition period of two years. These include milk, milled rice, clinker, used tires, air conditioners, fridges, laundry machines, ceramic, used vehicles, tractors, etc.

Custom duties are calculated and paid in Dominican pesos. The conversion into pesos of the value of the goods is made according to the official exchange rate applicable at the time of payment. In addition to custom duties, the importer has to pay the following:

1. The selective consumption tax charged on certain products, which ranges from 10% to 80%, calculated on the CIF price of the good plus custom duties, and;
2. The tax on the transfer of industrialized goods and services (ITBIS), which accounts for 16% of the CIF price of the product plus duties and selective consumption tax if applicable.

Apart from free zones, there are very few exemptions to the payment of import taxes. These are limited to some basic products, agricultural products like insecticides and herbicides, articles to be used by international organizations or the diplomatic corps, articles to be used for religious worship and samples for exhibition at international fairs.

## IMPORT DOCUMENTS

In some cases, such as for chemical and pharmaceutical products, import licenses are required. Furthermore, certain permits are required for the import of agricultural products. Some of these products, like rice, sugar, corn, onions, garlic and chicken parts, are subject to import quotas.

On the other hand, a consular invoice that approves the transaction must accompany all imports. It may be obtained at the Dominican consulate closest to the port of loading. Generally considered by exporters to the Dominican Republic as an unnecessary hindrance to trade, the possibility of its elimination and substitution by a fixed value stamp has been the object of much debate.

## 2 EXPORTS

The preferential rights that the Dominican Republic enjoys in order to export its products to the United States and Europe, together with the progress of trade liberalization with its neighbors of Latin America and the Caribbean, make exports an attractive sector with good perspectives of growth. Furthermore, legal measures are being taken in order to increase the competitiveness of the sector.

In fact, according to a report of the Center for Central American Studies, Dominican exports to the United States during the year 2003 amounted to 45.5% of all of the country's exports, which reached around 473 billion pesos. During the last years, exports to the United States have always kept a dynamic rhythm, growing at an average rate of 6.2%.

An analysis of commercial flows between the United States and the Dominican Republic shows that La Florida is the largest Importer State of Dominican prod-

ucts, in spite of the fact that it is New York that hosts the biggest number of Dominican immigrants. For the Miami Port, the Dominican Republic is the largest source of imports from countries of the Caribbean Basin, with 21% of such exports.

This shows that New York, may be a market with a lot of potential for the products exported to the United States.

Dominican exports for the period 2001-2005 have had the following performance:

## DOMINICAN EXPORTS

Years	National exports	Free zones exports	Total exports	Free zones %
2001	794.6	4,481.6	5,276.2	84.9%
2002	847.7	4,317.3	5,165.0	83.6%
2003	1,064.0	4,406.80	5,470.8	80.6%
2004	1,250.7	4,685.20	5,935.9	78.9%
2005	1,397.9	4,734.6	6,132.5	77.2%

## MAIN EXPORTS

The Dominican Republic exports a wide variety of finished and semi-finished products. A significant part of exports takes place within the free zone system, such as garments, shoes, electrical components, medicines and foods. Traditional exports include sugar, molasses, syrup, green coffee, tobacco and cacao. The country also exports minerals such as gold, tin, silver and copper.

In the year 2001, exports were affected by the international economic recession and decreased 7%. Free zone exports went down 4.9%, while other exports dropped 17.7%. In this reduction had a big influence the reduction of ferronickel exports (38.8%) due to the drop in international prices. Coffee and tobacco exports went down 12.6%. On the contrary, cacao exports increased 63.6%, while sugar exports stayed at similar levels than the previous year.

In the following years, exports of traditional products (sugar, coffee, cacao and ferronickel) increased, due to a higher export quantity and an improvement in international prices. Likewise, exports of minor products, a group of 132 agricultural and industrial products such as steel rods, bananas, eggs, clinker, alcohol drinks, avocados, coconut cream, green beans, etc. went up considerably.

The main destination for Dominican exports are the United States, Puerto Rico, United Kingdom, The Netherlands, Canada, Haiti, Belgium and Luxembourg and South Korea. Recently destination markets have been showing a higher degree of

diversification.

In the year 2004, according to preliminary figures, free zone exports reached the amount of US\$4,416.5 million. The main products were apparels and textiles, electronic products, jewelry, pharmaceutical products, tobacco manufactures and shoes.

## EXPORT PROCEDURE

Decree 377-92 of 18 December 1992 eliminated the requirement to obtain an Export License, which was until then required to any person or company who wanted to undertake export activities.

In general, the documents required to make an export are only the following:

- Commercial Invoice
- Export Form
- Bill of Lading or Airway Bill
- Certificate of Origin
- Sanitary or Phytosanitary Certificate

In addition, there may be local procedures for some products that are regulated by the relevant competent bodies or if the destination country so requires.

The Export and Investment Center (CEI-RD) provides assistance to exporters in making export arrangements and manages existing export incentive programs.

## EXPORT PROMOTION (CEI-RD)

The Dominican Center for Export Promotion (CEDOPEX) was created in the year 1971 in order to promote competitiveness of export products and to increase and diversify export offer and destination markets. In the year 2003, this body was merged with the Office of Investment Promotion (OPI-RD) to conform the new Export and Investment Center (CEI-RD).

The Division of Export Promotion has the following functions:

- To organize commercial missions
- To assist in the organization of participations in commercial fairs
- To promote the offer and demand of products through the Trade Point
- To identify preferences and requirements in foreign markets in order to adapt national products
- To identify commercial opportunities in foreign markets
- To assist exporters to enter foreign markets
- To offer technical assistance to exporters in the promotion of their products

## LAW 84-99 ON REACTIVATION AND PROMOTION OF EXPORTS

Law 84-99 of 6 August 6 1999 on Reactivation and Promotion of Exports, seeks to eliminate the burden resulting from the payment of custom duties for materials incorporated to export products, which reduce the competitiveness of the country's exports, as a necessary measure within the process of liberalization of the Dominican economy. Presidential Decree 213-00 of 22 May 2000 provided the regulations for the application of Law 84-99, while Presidential Decree 1108-01 of November 2001 eliminated all remaining technical obstacles to the full implementation of this statute.

The CEI-RD administers the system set forth in Law 84-99, and to make use of its provisions exporters must obtain an Exporter Registration with that entity.

### THIS LEGISLATION PROVIDES THE FOLLOWING MECHANISMS TO ACHIEVE ITS OBJECTIVES:

- 1) Repayment of custom duties paid on raw materials, inputs, semi-finished products, labels, packaging and packing material, imported by the exporter himself or by third parties, provided such materials have been incorporated to export goods. Repayment may be made by check and/or by the Tax Compensation Bonds created by the law, which may be used to pay off any debt or liability owed to the Dominican State. Repayment requests will be filed with CEI-RD who, after having verified the authenticity of the documents and valuating the exporter's request, gives notice thereof to the Ministry of Finance, who then issues the respective checks and/or bonds.
- 2) Simplified compensation of custom duties, under which individual or corporate exporters are entitled to the compensation of custom duties paid in advance up to 3.0% of the FOB value of the exported products.
- 3) Temporary admission regime of foreign components of export goods, which may enter the Dominican territory without paying custom duties, provided they are re-exported within the next eighteen months. Raw materials, inputs, semi-finished products, labels, packaging, packing material, as well as parts, pieces, tools and other devices serving as complements to machinery used in the production of export goods, may enjoy the benefits of this regime. Requests shall be filed with CEI-RD, who gives notice of its decision to the Customs Office. Exporters admitted by CEI-RD to this regime must provide a bond that guarantees the payment of custom duties that would be due in the event of the goods being imported finally into the country.

# 3 PREFERENTIAL MARKET ACCESS TO THE UNITED STATES

The preferential market access rights granted to Dominican exports to the United States have been a key factor in the development of the sector, and the main tool for the growth of the Dominican textile industry and consequently of the free zones network, under which most textile companies are organized.

## OVERVIEW OF MAIN PROVISIONS

The Trade Act 1974 established the Generalized System of Preferences (GSP), which grants developing countries throughout the world, including Caribbean countries, preferential access rights with respect to a wide range of manufactured and semi-manufactured products that may therefore enter the US territory without paying custom duties.

In 1983 the Caribbean Basin Economic Recovery Act (CBRA), also known as the Caribbean Basin Initiative (CBI), allowed the nations of the region to benefit from a preferential regime far larger than that provided by the GSP, and since then most of the export products of the area have been exempted from tariff barriers when entering the US market. Under the CBI and its further expansion in 1986 (CBI II), products originating in one or more CBI countries (apart from textiles/apparels, footwear, petroleum, tuna and watches) may enter freely the US market provided that such products have been wholly obtained, produced or manufactured in one or more CBI countries, and exported directly to the United States.

In addition, CBI countries benefited from the general duty reduction provision established in tariff provision 807 of the HTSUS (Harmonized Tariff Schedule of the United States), also called “production sharing” or “offshore production” tariff, under which apparel assembled in a CBI country from US fabricated components is dutiable only for the valued added abroad, excluding the value of U.S. components. Under the so called 807A program, apparels assembled in CBI countries from fabric formed and cut to shape in the US were guaranteed access to the US market (Guaranteed Access Levels Program-GAL). Furthermore, another quota provision known as 809 guaranteed entry into the US market to apparel cut and assembled from US fabric in a CBI country that, like the Dominican Republic, has signed a bilateral agreement with the United States.

In other words, for apparels assembled in CBI countries duty reduction was limited to the value of US components, and for apparels assembled and cut in CBI countries there was no duty reduction at all, being furthermore subject to import quotas.

The Caribbean Basin Trade Partnership Agreement (CBTPA) passed by the United States Congress on 24 January 2000, enlarged the benefits granted to CBI countries by implementing the textile parity on behalf of these countries. Pursuant to this amendment, all of these, as well as other textile products made with US materials, are wholly exempted from the payment of custom duties, and may thus in the future enter freely the US market, under the conditions set forth by the legislation, which are indeed stricter than those applicable until now but which are

on the other hand compensated by the far larger benefits resulting from their compliance.

On 2nd October 2000 the President of the United States issued a proclamation for the implementation of the CBTPA, which thus provided for the amendment of the HTSUS. Pursuant thereto, a new Subchapter XX has been added to the HTSUS, which regulates the “Eligible Products for Special Tariff Treatment under the Commercial Parity Agreement between the United States and the Caribbean Basin”.

Textile products that do not comply with the rules of origin set forth in the parity legislation may still enter the US market under the 807, 807A and 809 programs.

## LAW ON TEXTILE PARITY

### a) Background

The textile and apparel sector is one of the economic milestones of the Caribbean region. For many years, and thanks to the preferential tariff treatment established by the United States on behalf of the area, textile exports to the US market showed continuing growth rates which contributed to the development of the sector and the economic growth of these countries.

In the year 1994 this situation changed drastically with the implementation of the NAFTA, which grants commercial benefits to Mexico that are much wider than those provided under the CBI, by eliminating gradually tariff barriers to Mexican textile products, while textiles originating in CBI countries continued being subject to reduced but still positive rates, as well as to import quotas.

The Dominican Republic was one of the countries that resulted more affected with the entry into force of the NAFTA. Until the year 1993 the Dominican nation ranked as sixth among the largest textile exporters to the United States and its exports showed a growth rate of more than 20% per year. After the implementation of the NAFTA the country was overtaken by Mexico, and for the year 1996 the growth rate of exports had decreased to 1.3%.

The aim of the parity legislation is to grant the countries of the region the parity with Mexico, thus allowing such nations to benefit, as regards textiles and other products, from a similar tariff treatment than the one granted to Mexico under the NAFTA, and to recover the competitive position that they had held with that country before the implementation of such agreement.

### b) Beneficiary Countries

The benefits granted to CBI countries under the CBTPA have a unilateral but not an unconditional nature. The law sets forth certain requirements that such countries have to comply with in order to make their products eligible to enjoy the preferential tariff treatment provided therein. These requirements include compliance with WTO obligations and participation in FTAA negotiations, adequate protection of intellectual property rights, recognition of worker's rights, elimina-

tion of worst forms of child labor, fulfillment of counter-narcotics certification criteria, implementation of Inter-American Convention Against Corruption and transparency in government procurement.

Thus the designation of CBI countries as beneficiary countries is not automatic. On the contrary, the President of the United States makes it for each CBI country in particular, after having verified that such country complies with the established conditions. President Bill Clinton made this designation on 2nd October 2000 in relation to all of the twenty-four CBI countries.

### c) Eligible Products

Under the CBTPA, the products listed hereafter shall be exported to the United States, free of duties, during a period that will run for eight years, from October 1st, 2000, through September 30th, 2008, or, if earlier, the date the Free Trade Agreement of the Americas (FTAA) or similar free trade agreement between the United States and each beneficiary country enters into force.

Textile products eligible for duty-free treatment are the following:

- Apparels assembled in CBI countries;
- Apparels assembled and processed in CBI countries;
- Apparels cut and assembled in CBI countries;
- Apparel articles knit to shape in CBI countries (except for socks), as well as knit apparels (except for t-shirts) cut and wholly assembled in CBI countries, up to a yearly top amount set forth in the legislation;
- T-shirts (except for underwear) produced in CBI countries, as well as knit apparels (except for t-shirts) cut and assembled in CBI countries, up to a yearly top amount set forth in the legislation;
- Brassieres cut and assembled in CBI countries, subject to a special procedure set forth in the legislation;
- Apparels made in CBI countries with fabric or yarn not available in the US, subject to designation by the competent authorities;
- Handmade and folklore products, subject to designation by the competent authorities; and
- Textile luggage assembled, or cut and assembled, in CBI countries.

Other import-sensitive articles which are, like textiles, ineligible for CBI duty-free treatment (footwear, tuna, petroleum and watch parts) are also to be dutied at Mexico-NAFTA rates (if lower than CBI rates), and thus benefit from an intermediate preferential treatment entailing a reduction of custom duties when entering the US.

### d) Rules of Origin

The products must comply with the rules of origin set forth in Chapter 4 of the NAFTA, which are somewhat stricter than those applicable under the CBI. In general, textile apparels must be obtained in a CBI country and imported directly into the United States. For these purposes, the law defines terms like cutting, assembly and wholly assembly in a CBI country.

On the other hand, apparels must be made out of materials (fabric and/or yarn for knit apparels) originating in the United States. Apparels cut and assembled in CBI countries must in addition be sewn together with US yarn. Some knit apparels may be made out of CBI fabric provided such fabric has been produced from US yarn.

The product may however contain foreign findings and trimmings (not originating in a CBI country or the US), such as thread, buttons, decorative tape, lace, zippers, labels, etc., or interlinings, as long as such findings and trimmings and/or interlinings do not exceed 25% of the total cost of the product components.

#### e) US Customs Procedure

Exporters of products eligible for preferential treatment must provide the US importer with a certificate of origin evidencing that the product has been produced in a CBI beneficiary country and that such product complies with the relevant rules of origin.

In this regard, the law sets forth that the eligibility to enjoy preferential treatment is subject to a determination made by the President of the United States in respect to each CBI country that such country has implemented, or has made substantial progress towards implementing, similar custom procedures to those established in chapter 5 of the NAFTA. This determination was made in relation to ten of the twenty-four beneficiary countries, including the Dominican Republic.

#### f) Sanctions

Textile parity has been adopted for the benefit of CBI countries, and thus applies only when the exported products comply with the applicable origin rules. Therefore transshipment, defined as the claiming of preferential treatment for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing or assembly of the article, may result in the loss or reduction of trade benefits at both individual and State level.

### THE LOME/COTONOU AGREEMENT

#### Background and Objectives

The Lome IV Convention was a non-reciprocal co-operation agreement signed between the member countries of the European Union (EU) and a group of African, Caribbean and Pacific nations (ACP countries).

Its main objective was to promote and accelerate the economic, social and cultural development of ACP countries, and to consolidate and diversify mutual relations. Apart from financial, technical and emergency aid, the convention established a preferential system of trade on behalf of ACP countries.

The need for an agreement adapted to global developments to ensure the viability and effectiveness of co-operation soon became clear, and the negotiations for the enlargement of the benefits of the Lome Convention started in 1998. In this regard, on November 1999 took place in Santo Domingo the Second Summit of the Heads of Government and State of the ACP countries, with the presence of



31 chiefs of state and the respective delegations of the member countries (71 altogether). ACP countries discussed the position to be taken before the EU to replace the Lome Convention, concluding with the “Declaration of Santo Domingo”, in which the ACP countries demanded the collaboration of the wealthy nations in order to be able to fight poverty and called for international economic co-operation and the renovation of a new international financial agreement.

On 23 June 2000 an agreement was signed in substitution of the Lome Convention, the Cotonou Agreement, which clearly defines a perspective that combines politics, trade and development. Congress ratified this agreement on July 2001.

It is based on five interdependent pillars:

1. A comprehensive political dimension;
2. Participatory approaches to ensure the involvement of civil society and economic and social players;
3. A strengthened focus on poverty reduction;
4. A new framework for economic and trade co-operation; and
5. A reform of financial co-operation.

The agreement has been concluded for twenty years, with a clause allowing for revision every five years, and a financial protocol for each five-year period.

In the agreement ACP and EU States have agreed on a process to establish new trade arrangements that will pursue trade liberalization between the parties.

The Cotonou Agreement focuses on trade to start from that basis the negotiations for the execution of economic partnership agreements (EPAs) that will promote the progressive and harmonic integration of ACP countries in the world economy.

EPAs are free trade agreements with a financial dimension of investment cooperation that, in order to be compatible with the World Trade Organization, shall comprise the whole trade and a timetable for implementation.

For these negotiations, the ACP and EU countries have grouped into blocks, and the ACP group has divided into the following six regional blocks to prepare the negotiation positions:

- 1) Central Africa;
- 2) West Africa;
- 3) East Africa;
- 4) South Africa;
- 5) Caribbean, and;
- 6) Pacific.

Our country belongs to the Caribbean block, which is further composed of Cuba and the CARICOM countries.

Inside each block, the countries have to find a common position through a negotiation process to be started in September 2005 and finished by December 2006. The negotiations of ACP countries with the EU will start then in January 2007.

## PREFERENTIAL TRADE SYSTEM

In general, all products originating in ACP countries are exempted from customs duties and quantitative restrictions when they enter the EU. The limitations to this rule result from (i) the restrictions imposed to certain products pursuant to the Common Agricultural Policy of the EU, and (ii) the quotas established to ACP countries for products like sugar and meat.

The rules of origin include basically the following provisions:

- Products obtained completely in ACP countries, such as minerals and vegetables, are considered to be originating entirely” in those countries.
- The product may have been “substantially transformed” in an ACP country. In this case the final product shall fall into a tariff category completely different than that of its non-original components.
- Non-original components cannot account for more than 15% of the product value.
- All ACP countries are considered as one territory.
- The product may be entirely obtained in the EU, in the territories or possessions of the EU, or in certain developing countries located in the nearby region of ACP countries, and then processed in an ACP country.
- Certain elements of the manufacture process deemed to be neutral (electricity, equipment, tools, etc.) do not have to originate in the ACP country.

Dominican exports to the EU have been increasing gradually under this preferential system. The main trade partners of the Dominican Republic in Europe are Spain, Germany, Italy, The Netherlands, France and the United Kingdom. The most important exports are tobacco, textiles, bananas, pineapples, coffee, rum, electronic alarms and oranges.

## 4 REGIONAL ALLIANCES

The Dominican Republic is making efforts to accelerate the commercial integration of the countries of Latin America and the Caribbean. The Government, aware that the globalization trends require that countries adapt themselves to the schemes of liberalization that will soon prevail worldwide, has decided to actively promote the commercial integration of the countries of the region. The Dominican Republic has thus become one of the drivers of this process, which implies a significant change in the country's international relations when compared to the relative isolation of the country during the previous decades.

In line with the above, in February 1997 the Executive Power created the National Commission for Commercial Negotiations with the attribution of negotiating the signature of trade agreements in a successful and profitable manner for the Dominican Republic. This Commission formed the Negotiator Team that has been carrying out the process of negotiation with the countries of the region.

The civil and business community, in a level of organization and co-operation never experienced before, has also participated actively in the negotiations. The

different economic sectors, through the Consultant Committee, have helped to identify the national priorities, and thus to determine the goals which the Negotiator Team seeks to achieve in every round of negotiations.

The negotiation policy of the Dominican Republic has been guided by a firm approach to the closest geographic region, proposing the formation of a “strategic alliance” with the countries of Central America and CARICOM (including Haiti), in the understanding that a joint block of all these nations will allow, not only to widen the market and export capacity of each country, but also to negotiate together with the big blocks of the hemisphere (NAFTA, MERCOSUR, DR-CAFTA and Andean Group) and thus have a stronger position before them.

The country has already signed a Free Trade Agreement with Central America, another similar agreement with CARICOM and a Trade Agreement with Panama. With CARICOM it shares the Forum of ACP Caribbean Countries, as members of the Cotonou Agreement (CARIFORUM).

Central America, CARICOM, the Dominican Republic and other nations belong to the Association of Caribbean States (ACS).

Furthermore, after several negotiations, in March 2005 the Dominican Republic became a member of the Free Trade Agreement signed between the United States and Central America.

Finally, the Caribbean region moves, together with the American Hemisphere, towards the Free Trade Agreement of the Americas, FTAA, that was scheduled to be concluded in the year 2005. However, the negotiations have not yet been able to lead to an agreement between the participating countries.

All these movements must be framed within the regulations of the World Trade Organization (WTO), of which the Dominican Republic is a member having signed the Marrakech Agreement on April 1994.

## FREE TRADE AGREEMENT WITH CARICOM

The Caribbean Community or CARICOM provides for political co-operation and the creation of a common market among the English speaking countries of the region, namely Barbados, Guyana, Jamaica, Trinidad & Tobago, Antigua & Barbuda, Belize, Dominica, Grenade, Monserrat, Saint Kitts & Nevis, St. Lucia, St. Vincent, The Grenadines and The Bahamas.

The requests made by the Dominican Republic to become a member of CARICOM were rejected. However, after intensive negotiations carried out from July 1997 until August 1998, the parties agreed to sign a free trade agreement. On 22 August 1998, after the conclusion of the Special Meeting of Heads of State and Government of CARIFORUM celebrated in Santo Domingo, the Free Trade Agreement between CARICOM and Dominican Republic was signed. Congress ratified this agreement on January 2000.

The entry into effect of this agreement allows more than 85% of the commerce between both markets to be free of tariffs, for an estimated 47 million consumers. The agreement contemplates the granting of free access of more than

8,000 original products of the region, with the exception of a negative list of approximately 50 items.

Apart from the progressive liberalization of the movement of goods and services, the agreement seeks to promote the active participation of private economic agents in order to widen the commercial relations between the parties, including the promotion of joint investments.

This agreement entered officially into effect on March 2002.

### FREE TRADE AGREEMENT WITH CENTRAL AMERICA

During the Extraordinary Summit of Heads of State and Government celebrated in the Dominican Republic on November 1997, the Presidents of Central America and the country decided to initiate negotiations for the signature of a free trade agreement. These negotiations ended with the signature on 16 April 1998, in the city of Santo Domingo, of the Free Trade Agreement Central America-Dominican Republic. The signatory countries were the members of the Central American Economic Integration System, formed by Costa Rica, El Salvador, Honduras, Nicaragua and Guatemala.

The treaty, which provides for the free movement of goods and services, as well as the equal treatment of investments, is compatible with WTO principles and with the creation process of the FTAA. It grants reciprocal and immediate trade liberalization to all goods, apart from a limited list of products that are subject to a process of progressive incorporation to the free trade.

This agreement opened to the Dominican Republic a potential market of close to US\$30,000 million, and more than 40 million consumers. Congress ratified this agreement on March 2000, and it has already entered into effect in relation to all countries.

### ASSOCIATION OF CARIBBEAN STATES (ACS)

The Association of Caribbean States (ACS) was created in 1992 after the Summit of Heads of Government of CARICOM. Its members come from three economic groups: CARICOM, Central America, the Group of Three (Colombia, Venezuela and Mexico), and four independent countries: Cuba, Dominican Republic, Haiti and Suriname.

The primary goals of the ACS are the adoption of programs to increase and consolidate the economic relations between its members, as well as the development of strategies that increase their comparative advantages. For such purposes the ACS seeks to establish a free trade area among its members, to provide for joint negotiation with other economic blocks and international organizations, and to develop transport and communication facilities.

### TRADE AGREEMENT WITH PANAMA

In August 2002, during the 11th Meeting of the FTAA Trade Negotiation Committee held in Santo Domingo, the governments of Dominican Republic and

Panama stated their interest to reactive and conclude the negotiations of a Trade Agreement signed in 1985.

In this regard, in October 2002 negotiations were started in Panama, where the first technical meeting of the mixed permanent commission created by both countries to negotiate the agreement was held.

In November and December 2002 further technical meetings took place to ultimate matters pending of negotiation.

The agreement was signed at a vice-ministerial meeting held on 6 February 2003, when the following documents were signed and executed:

- Application Regulations of the Trade Agreement;
- Lists of products included in the agreement, with the relevant rules of origin for each product; and
- Investment Promotion and Protection Agreement.

In November 2003 took place the exchange of diplomatic notes that enabled the entry into force of the agreement between the Dominican Republic and Panama.

### FREE TRADE AREA OF THE AMERICAS (FTAA)

As one of the 34 nations present in the American Summit celebrated in Miami on December 1994, the Dominican Republic assumed the obligation to build, latest in the year 2005, the Free Trade Area of the Americas (FTAA). Since then the country has joined and participated actively in the meetings that have taken place so far in order to discuss free trade related topics.

The negotiations for the formation of the FTAA were formally initiated in the II American Summit celebrated in Santiago de Chile on April 1998. The integration process undertaken in the region will allow the countries to prepare themselves for their insertion therein. By starting to develop intra-regional free trade the nations start to practice commercial liberalization, while they increase their negotiation power before the other blocks through the co-ordination of regional policies and extra-regional strategies. This is consistent with the trend of establishing intra-group free trade agreements as first steps towards the formation of the FTAA itself.

### FREE TRADE AGREEMENT BETWEEN THE UNITED STATES, CENTRAL AMERICA AND DOMINICAN REPUBLIC (DR-CAFTA)

The Free Trade Agreement between the Dominican Republic and the United States is one of the main achievements of the country in the field of international trade. With this agreement the Dominican Republic will be able to improve considerably the placement of materials, goods and services in the territory of its main commercial partner.

#### Background

In August 2002, the United States Congress authorized the President of the United States to execute a Free Trade Agreement with Central America. The agreement (CAFTA) was signed after nine negotiation rounds.

During the months that Central America had been negotiating the FTA, the Government of the Dominican Republic started to get close to the relevant authorities of the United States in order to achieve that the country be included in this agreement. In this manner, after having initiated talks in 2003 and several negotiation rounds, an agreement was reached in March 2004 for the signature of a FTA between the Dominican Republic and the United States.

The objectives of the agreement are the following:

- 1) To promote fair competition within the free trade area;
- 2) To significantly raise investment opportunities within the territories of the parties;
- 3) To protect and enforce in an effective and appropriate manner intellectual property rights;
- 4) To create effective procedures for the application and enforcement of the FTA so as to facilitate its joint administration and the solution of controversies; and
- 5) To provide guidelines for bilateral, regional and multilateral cooperation.

### Structure

The FTA comprises the following Chapters:

1. Initial Provisions
2. General Definitions
3. National Treatment and Market Access
4. Rules of Origin and Procedures of Origin
5. Customs Administration and Trade Promotion
6. Sanitary and Phitosanitary Measures
7. Technical Obstacles to Trade
8. Trade Protection (Safeguards, Anti-Dumping)
9. Government Contracts
10. Investment
11. Cross-border Trade in Services
12. Financial Services
13. Telecommunications
14. Electronic Commerce
15. Intellectual Property
16. Labor
17. Environment
18. Transparency
19. Administration of the Agreement and Creation of Trade Related Capacities
20. Conflict Resolution
21. Exceptions
22. Final Provisions
23. Annexes

In relation to the Chapter on Market Access, it specifies the method for the reduction of custom and other duties for both agricultural and industrial products. The agreement contains the product lists for each country, where it can be appreciated how all of each country's products will be freed from duties.

As to market access of Dominican agricultural products, duty reduction has been divided into 11 stages or “baskets”, which comprise, as applicable, immediate access (duty free), or access within 5, 10, 12 and 15 years. Furthermore, a 20-year-period has been set for sensitive goods (rice, chicken, powder milk and mozzarella cheese). In addition, in this sector certain protection mechanisms by way of quotas were provided, as well as special safeguards for some products.

In the textile sector, some advantages could be obtained regarding woven fabrics and knitted fabric. Furthermore, the subject of accumulation was dealt with, so that for woven fabrics the Dominican Republic may benefit from accumulation in relation to Mexico and Canada.

The Chapter on Rules of Origin is one of the most important of the FTA. The agreement provides the minimum transformation requirements that materials have to fulfill to become a final product of a given country.

The Chapter on Investment establishes the principle of no discrimination for investments and investors of any of the parties in relation to the nationals of the other party. Furthermore, the best treatment that a country grants to third countries will also be granted to the other party and, for the United States, the best treatment granted to any State within the Union.

In addition, the States maintain their right of regulation over investments, providing that in principle no financial damage caused to investors may be deemed as expropriation. This Chapter has two important annexes:

- Annex I, which includes reserves for discriminatory treatment provided in current legislation, and
- Annex II, which reserves the right to adopt new discriminatory provisions or contrary to the general FTA provisions.

The Chapter on Services is also an important sector that deserves particular protection, given that our economies are largely services-oriented. Here reserves could be made in areas such as distribution, maritime and air transport, free zones and audiovisual services.

Furthermore, the Dominican Republic reserved the right to put in place more restrictive or discriminatory measures in areas such as demarcation of bordering land, purchase of public companies, air services, fishing, communication, government finances, social services and minority-related decisions.

An Annex on Professional Services was also approved in this Chapter, which seeks to promote the mutual recognition of professional licenses.

In this regard, another important aspect relates to the commitments undertaken regarding Law 173, which were the following:

- 1) They only apply to relations with United States companies;
- 2) There will be no retroactive effect;
- 3) After the date of entry into force of the agreement, the parties may by mutual consent apply Law 173 to their contracts; and
- 4) The compensation will be established on a per case basis.

The Chapter on Government Contracts provides that public entities shall make

open bid procedures for all contracts specified in the agreement. The Chapter describes the manner of development of the bidding process from the start until the award of the contracts. The Chapter applies to contracts for goods and services exceeding the amount of US\$58,550,000 and to contracts for construction services for more than US\$6,725,000.

The Chapter on Intellectual Property reaffirms certain provisions already contained in our internal legal framework. The most important issues are the following:

- 1) Maintenance of the patent protection period of 20 years;
- 2) Cause of expiration of patents;
- 3) Preservation of interpretation rules adopted within the WTO; and
- 4) Partial application of provisions concerning confidential information in the process for obtaining commercialization permits for pharmaceutical products and agricultural chemicals, among other achievements.

The Chapter on Conflict Resolution provides the guidelines to be used in the event of disputes arising between the parties. It creates a similar mechanism than the WTO Dispute Resolution system.

Finally, other subjects covered in the agreement relate to sanitary and phytosanitary measures, technical obstacles to trade, telecommunications, electronic commerce, financial services, environment, labor and general provisions.

## DOMINICAN REPUBLIC AND THE WTO

As signatory to the Uruguay Round of Negotiations of the GATT and member of the World Trade Organization (WTO), the Dominican Republic is guided, in order to plan the process of economic modernization and regional integration, in the principles and guidelines adopted by the WTO in view of liberalizing world trade. The country had also a very active participation at the WTO series of ministerial meetings held in Doha in November 2001.

One of the main objectives of the reform program executed by the country is to adapt its legal and economic framework to WTO postulates, so as to ensure itself a place within the process of economic globalization that is taking place throughout the world.

This process of adaptation to WTO rules has entailed comprehensive amendments in all of the fields with influence on economic activity, such as intellectual property and custom tariffs, as well as in economic sectors such as tourism, telecommunications, financial services, etc.

## DOMINICAN REPUBLIC AND TAIWAN

The Dominican Republic and Taiwan signed a letter of intention for a Free Trade Agreement, in order to boost trade and investment between the two countries. The first talks have already started.



# MAIN INVESTMENT SECTORS

The Dominican Republic offers investment opportunities in a wide range of sectors where there is still great development potential. Free zones and tourism are currently two of the most promising sectors for foreign investors, but traditional areas like agriculture and mining are also developing.

Other sectors like construction, electricity and telecommunications have turned into expanding economic areas, while financial and insurance services are also becoming interesting as the local market diversifies.

## 1 FREE ZONES

### OVERVIEW AND PERSPECTIVES

Free zones are an option that the Dominican Republic supports and promotes with three main purposes:

- Creation of jobs.
- Generation of foreign currency.
- Transfer of technology.

The free zone system of the Dominican Republic is one of the most advanced worldwide. The country has been developing its free zone network since 1969, when less than a dozen industrial zones existed throughout the world. It ranks currently as fourth in terms of quantity of free zones, having 52 free zones with approximately 539 companies.

The first free zones were government sponsored, but today 27 are private, 22 are State owned and 3 are mixed.

During the year 2003, 11 new free zone companies were established, representing a 2.2% growth, thus reversing the negative trend of the previous year. This

growth was the result of the installation of many new companies that were attracted by the benefits resulting from the Textile Parity Law passed by the United States, which allows a greater variety of textile products to be exported duty-free to the US.

In order to increase the competitiveness of the sector against the adverse international environment of that year, several measures were adopted by presidential decree on behalf of free zone companies, such as the granting of more flexibility to working schedules, elimination of certain technical hindrances to customs clearance of imports, and the construction of new industrial parks in less economically developed regions, and the establishment of additional incentives to companies that set their operations in those areas.

The jobs in the free zones correspond to 84.7% workers, 10% technicians and 5.3% management personnel. 52.6% women and 47.4% men occupy free zone employment.

Industries generating the higher number of direct jobs are:Apparels and Textiles, Tobacco and derivatives, Electronics and Pharmaceutical Products. Free zone activities have been gradually diversifying, although textile activities still predominate.

As to the origin of investments, 47.08% of the free zone companies are owned by US investors, followed by Dominican investors who own 33.90%, and by European and Asian investors.

In relation to destination markets, 93% of free zone products are exported to the United States and Puerto Rico, followed by European countries like France, Belgium, United Kingdom, Holland and Germany.

The growth of the free zone sector reflects also in the increase of exports, as it may be appreciated in the following table for the year 2004:

Year 2004		
Total exports (MILES DE US\$)	4,416,450.60	100%
Textiles	2,076,155.20	47.0%
Electronic products	587,740.30	13.3%
Jewelry	556,279.60	12.6%
Pharmaceutical products	347,462.90	7.9%
Tobacco manufacture	324,223.90	7.3%”
Shoe manufacture	195,589.20	4.4%
Others	328,999.40	7.4%

## ADVANTAGES OF THE DOMINICAN FREE ZONE NETWORK

The advantages offered by the Dominican free zone network which have contributed to its fast development are the following:

- Attractive legal framework which exempts free zone companies from the payment of import duties, income tax and most other tax obligations.
- Preferential access rights that allow Dominican exports to enter the markets of United States and Europe without having to pay custom duties.
- Possibility of obtaining financing from local or foreign institutions.
- Facilities to freely repatriate abroad the profits in foreign currency.
- Workforce available at low cost.
- Background of political stability.

## LEGAL FRAMEWORK: LAW 8-90

### a) National Free Zone Council (CNZF)

Industrial free zones are regulated by Law 8-90 of January 15, 1990, which seeks to promote the establishment of free zones and the growth of existing ones. It created the National Free Zone Council (CNZF), which is the entity charged of regulating and supervising the sector and has, among others, the following attributions:

1. To recommend to the Executive Power the installation of free zones.
2. To approve or not the requests for granting installation permits to free zone companies.
3. To enforce all applicable laws and provisions regarding free zones. The CNZF is formed of representatives of both the public and private sectors.

### b) Definition and Types of Free Zones

Law 8-90 defines a free zone as a geographic zone of the country subject to special custom and tax controls, which provides for the installation of companies whose production is destined to foreign markets, through the granting of the necessary incentives for their development.

The creation of a free zone needs to be authorized by the Executive Power. There are three different kinds of free zones according to location:

- Industrial or services free zones, which can be located anywhere in the country;
- Border free zones, which must be located near the Haitian border and are granted additional incentives; and
- Special free zones, which due to the nature of the manufacture process of their products need to be located in particular places (i.e. close to the source of raw materials).

The permit for the installation of industrial parks has a cost of RD\$200,000.

### c) Management of Free Zones

Free zones are managed by “free zone operators”, who are charged of negotiating and contracting with the companies wishing to operate in the free zone.

Operators may sell, lease and rent buildings or facilities to the interested companies, as well as carry out promotion and marketing activities, being free to fix space and maintenance costs. Operators must have a permit issued by the CNZF and ratified by the Executive Power, and are bound to comply with certain infrastructure and maintenance requirements in the free zone.

There are also free zones belonging to the State, which are managed by the Industrial Promotion Corporation (“Corporacion de Fomento Industrial-CFI”).

#### d) Installing a Free Zone Company

Free zone companies are persons or companies which have been authorized by the CNZF to install themselves in a free zone and whose production is destined for export. Usually a Dominican company is incorporated to make the request, which can belong entirely to foreign investors. In order to obtain an installation permit the following documents must be submitted:

- Duly completed CNZF installation permit form.
- Rent contract with the respective free zone.
- Incorporation documents of the company.
- Samples of the product to be manufactured.
- Proof of solvency of the main investors.
- Certified check for the payment of newspaper publications.

The permit for the installation of a free zone company costs RD\$50,000.

#### e) Incentives

Free zone companies are exempt from the following taxes and duties:

- Income tax
- Taxes on constructions, registration or transfer of real property rights
- Taxes for incorporation of companies and increase of capital
- Municipal charges
- ITBIS (VAT)
- Consular fees
- Export or re-export taxes.

Furthermore, they are exempt from the payment of all custom duties, import taxes and related charges on:

- Raw materials, equipment, construction materials, office equipment and any other goods necessary for the construction, preparation and operation of the company.
- Materials and equipment needed for the construction of housing facilities, cafeterias, health services or others established for the benefit of workers.
- Transportation vehicles, including cargo trucks, garbage collectors, buses for workers, etc., upon approval of the CNZF

These benefits are granted for a period of fifteen years. Companies located in border free zones benefit from a longer period of twenty years, enjoying also other additional benefits such as rent subsidies, priority treatment for the export of goods limited by foreign quotas and for the assignment of development funds, etc.

#### f) Sale of Production in Local Market

Free zone companies can sell all their production in the local market, after payment of all applicable custom duties, as long as the following conditions are met:

- i. The goods or services are not produced or imported in the country, and
- ii. The goods or services have local components accounting for 25% of their value.

When the products or services are manufactured or imported in the country the free zone company can only sell up to 20% of its production in the Dominican market.

#### SPECIAL ZONE FOR BORDER DEVELOPMENT: LAW 28-01

Law 28-01 of 2001, creates a special zone for border development for industrial, agroindustrial, agricultural, metalmechanic, free zone, tourism, metal and energy companies operating at the date of passing of the law or that are created thereafter within the limits of the provinces of Pedernales, Independencia, Elias Piña, Dajabon, Montecristi, Santiago Rodriguez and Bahoruco.

It declares of national interest the promotion and protection of such companies with the aim to encourage the development of the boarder region with the neighboring country Haiti, which has the lowest levels of growth in the whole country.

The statute creates the Coordination Council of the Special Zone for Border Development to determine and execute through its Technical Bureau the policies and guidelines for putting the law into effect.

Classification requests are filed with this organ through the Executive Board of the Technical Bureau.

The projects benefiting from the preferential regime set forth in this legislation shall be entitled, subject to certain limitations according to the classification of the project, to the following types of tax incentives for a period of five years after the date of entry into force of the application regulations of the law:

- Exoneration of 100% of net taxable income of income Tax;
- Exoneration of ITBIS (VAT);
- Exoneration of custom duties and related charges;
- Exoneration of Income Tax on the part of net taxable income that persons or companies re-invest in classified industries; and
- Exoneration of 50% of transit duties and charges for use of ports and airports.

#### CYBERNETIC PARK OF SANTO DOMINGO

The Cybernetic Park of Santo Domingo is a joint project of the Government and the private sector conceived to function as an industrial park for high technology companies, with all the facilities offered by the leading technological parks worldwide. The incentives offered by this park will be larger than those granted to companies installed in industrial parks.

## 2 TOURISM

Education is an integral part of the Cybernetic Park, which includes the Technology Institute of the Americas (ITLA), a computer-training center with its own labs for technological research. The institute also participates at joint training initiatives in the education field with other public entities, such as the Ministry of Education and the Ministry of Higher Education, Science and Technology.

The Dominican Republic is currently the major tourist attraction in the Caribbean. This is due to the fact that the country, apart from having rich natural resources, a consistent tropical climate and places of historical and cultural interest, offers also highly competitive hotel prices, and all this within a background of security and political stability.

Furthermore, the Dominican Republic has important forest and scientific reserves, as well as national parks, where the authorities seek to protect the great variety of endemic flora and fauna of the island. For such reasons, ecological tourism has also been starting to develop during the last years, and the public and private sector promote visits to places of ecological interest such as Lake Enriquillo, and the Shrine of the Humpback Whales in Samana Bay.

### OVERVIEW AND PERSPECTIVES

The tourist industry started to expand in the 70's, after the Government had declared that the development of this sector was of national interest.

At the beginning clearly guided by government initiatives, the tourist sector saw private participation gradually increasing, especially in the 80's, when sources of financing became available under programs like the Lome Convention.

Today tourism is one of the backbones of the Dominican economy, contributing significantly to the creation of jobs and foreign currency. The tourism earnings represent 69% of exports of goods and services, excluding free zones.

In the year 2001, for the first time in the last two decades, tourism experienced a reduction of 4.4%, caused chiefly by external factors such as the deceleration of world economy, euro depreciation and September 11 events. This influenced the flow of visitors to the country, which fell by 6.8%. The occupation rate in hotels dropped 3.9%, while the increase in accommodation capacity fell from 4.6% in 2000 to 3.9%.

Tourism infrastructure in the Dominican Republic belongs in a 54.7% to national capital and in a 45.3% to foreign capital.

The strategic activities undertaken by the Ministry of Tourism and the private sector since the beginning of 2002 allowed the country to have greater impact on tourism generating markets, which resulted in an increase of tourist arrivals at the end of the year.

The process of recovery of the tourism industry is still going on. Despite nega-

tive factors, such as hurricanes, the increase of oil prices, dollar depreciation in relation to the euro, and others, the Dominican Republic has maintained its position as the most visited destination in the Caribbean.

The country has the largest tourist accommodation capacity in the region, having around 60,000 hotel rooms. Currently the main sources of tourism for the country are Europe and North America.

The increase in the number of visitors to the country was due to several reasons, such as the variety of the tourist offer and the quality of services. To this we may add logistic aspects such as the start of operations of new airlines, thus increasing the availability of seats.

### Promotion of Private Investment

The Government keeps on promoting the development of the country's tourist zones, and is interested to encourage private participation in the sector. For these reasons the State has been traditionally concerned with the following activities:

- (i) The construction of adequate infrastructure for the tourist industry, such as roads, ports, airports and public services.
- (ii) The development of human resources through co-operation with universities and technical institutions.
- (iii) The realization of promotional campaigns in foreign markets.
- (iv) The granting of credits and incentives to private investors.

The Tax Code recognizes that private investors wishing to participate in the tourist sector might obtain tax exemptions through the signature of special agreements with the Executive Power, upon authorization of the National Congress.

In this sense, the Government passed, in the year 2001, a new tourism promotion statute (Law 158-01 on Promotion of Tourism Development), aimed at granting incentives to tourist activity, but focusing certain areas that have not yet fully developed their potential.

It should also be noted that Law 141-97 on the Reform of Public Enterprises mandates the privatization of the hotels belonging to the Corporation for the Promotion of the Hotel Industry. As a result, national and foreign private investors can have access to the valuable assets owned by the State in this sector.

In any case, the State has already started to allow the participation of private companies in the management of its hotels, and has already leased several hotels to a French capital enterprise for a period of 35 years.

## MINISTRY OF TOURISM

### Law 84-79

According to Law 84 of 26 December 1979, the tourist sector is regulated by the Ministry of Tourism ("Secretaría de Estado de Turismo-SECTUR"), which has the following attributions:

- To plan, guide, co-ordinate, promote and evaluate tourist activities.
- To program and promote the tourist industry and the investments in the sector.
- To establish and supervise tourist zones.
- To guide the design and construction of infrastructure.
- To carry out promotional campaigns.
- To control tourist operators.
- To create national and international offices.

The Ministry of Tourism has offices for tourist promotion in the United States, Spain, France, Germany, England, Belgium, Italy, Canada, Puerto Rico, Venezuela, Argentina, Chile and Colombia. These offices carry out activities such as information services, advertisement through the media, organization of traditional festivities and participation in international fairs.

## REGULATION OF TOURIST ACTIVITIES

### Law 541-69

*General Requirements.* Tourism Organic Law No. 541 of 31 December 1969 provides that any persons or companies that offer mainly tourist services and that are considered to be a part of the national tourism organization, shall be registered with the Ministry of Tourism, being subject to its supervision.

*Hotels.* Rule 2115 on Classification and Norms for Hotels of the Ministry of Tourism contains hotel classification guidelines for the purposes of determining the tariffs they are entitled to charge for their services.

*Restaurants.* Here applies Rule 2116 on Classification and Norms for Restaurants of the Ministry of Tourism.

*Travel Agencies.* Law 541 defines these establishments as companies of a commercial nature created with the aim of providing services to tourists or travelers against remuneration.

*Gift Shops.* They are currently regulated by Decree 977-02 of 31 December 2002 on commercial free zones, which operate as shops for exhibiting and selling goods in hotels and tourist centers, being under the supervision of the Ministry of Tourism and the Customs Office.

*Casinos.* Law 351 of 1964, as amended by Law 102 of 9 February 1965 and Law 24-98 of 15 January 1998, regulates the grant of licenses for establishing casinos, declaring that this is a way to contribute to the promotion of tourism and the earning of funds for the development of the sector. Licenses are granted by the Executive Power, at the request of the interested party made to the Ministry of Finance and prior recommendation of the National Commission of Casinos.



## LAW 158-01 ON PROMOTION OF TOURISM DEVELOPMENT

Law 158-01 on “Promotion of Tourism Development for Poles of Lower Development and New Poles in Provinces and Places of Great Potential, and Creation of Official Fund for Tourism Development” was passed on 9 October 2001. By way of Decrees 1125-01 of 20 November 2001 and 74-02 of 29 January 2002 the Executive Power issued the application regulations of the law, while Law 184-02 of 23 November 2002 made certain minor amendments to ensure the proper execution of the law.

a) *Purpose.* The main purpose of the statute is to accelerate a rationalized process of development of the tourist industry in regions having great potential or enjoying excellent natural conditions for tourist development.

b) *Scope.* Article 1 of the law, as amended by Law 184-02 in order to extend beneficiary areas, lists the tourist poles, provinces and municipalities that may benefit from the established incentives, as follows:

1. Tourist Pole No. 4, Jarabacoa and Constanza.
2. Tourist Pole IV, enlarged: Barahona, Bahoruco, Independencia and Pedernales
3. Tourist Pole V, enlarged: Montecristi, Dajabon, Santiago Rodriguez and Valverde.
4. Tourist Pole VIII, enlarged, comprising the province of San Cristobal and the municipality of Palenque, the province Peravia and the province Azua de Compostela.
5. Province of Maria Trinidad Sanchez and all its municipalities.
6. Tourist Pole of the Samana province.
7. Province of Hato Mayor and its municipalities; province El Seibo and its municipalities; province of San Pedro de Macoris and its municipalities; province of Espaillat and its municipalities: Gaspar Hernandez, Higüerito, Jose Contreras, Villa Trina and Jamao al Norte; provinces of Sanchez Ramirez and Monseñor Nouel; province of Monte Plata; in the province of La Vega, the municipalities of Jarabacoa, Constanza and Guaigüí; the municipality of Luperon, as well as El Castillo y La Isabela Historica, in the province of Puerto Plata, and the Colonial Zone in Santo Domingo.
8. Province of Santiago, and its municipalities.
9. Municipality of Lagunas de Nisibon and sections El Macao, Uvero Alto and Juanillo, of La Altagracia province.

Although these are the regions of concentration of promotional efforts, it still grants certain incentives of lesser scope to the other areas of the country.

Any physical or legal person having its domicile in the country that undertakes, promotes or invests money in any of those regions in relation to any of the tourist activities mentioned below, may benefit from the incentives of the new statute.

Tourist activities benefiting from the incentives are the following: hotels, con-

vention or events centers, cruise companies, leisure, ecologic or theme parks, port and tourist infrastructure, small and medium sized companies depending on tourism, infrastructure for basic services and complementary activities.

### c) Procedures

Applications must be filed with the Council of Tourism Promotion (CONFOTUR), an organ formed of public and private sector representatives charged with the implementation of Law 158-01, and fulfill the respective requirements, which include particularly environmental studies and many other guarantees of environment protection.

The Technical Bureau for Planning and Programming is a body of the Ministry of Tourism with the function to determine the guidelines and priorities that will guide the application of the law, and to assist CONFOTUR in the processing of classification requests and the performance of its attributions in general, and to make the contacts and offer all the necessary information to investors.

### d) Benefits

The incentives granted by Law 158-01 include tax exemptions for projects and deductions for investments. The extent of tax exemptions is very wide, including 100% of income tax, construction charges, purchase of real property and custom duties for a period of ten years. Furthermore, companies and individuals may deduct up to 20% from their taxable income invested in such tourist projects.

### e) Tourism Promotion Fund

Finally, Law 158-01 also creates an Official Fund for Tourist Promotion with the purpose of granting a more effective promotion of the Dominican Republic as tourist destination in international markets, and of giving financial support to the new tourist poles established in the law.

## 3 AGRICULTURE

### OVERVIEW AND PERSPECTIVES

The Dominican Republic has large tropical forests and many agricultural areas. It has also highlands ascending to 3,000 meters that are good for growing a great variety of crops. There are no frosts and the rainfall goes from 400 to 4,000 millimeters per year with an average of 1,500 millimeters.

The country's territory is distributed as follows: 52% is mainly forest, 20% is suitable for livestock, 26% is suitable for arable farming, and the remaining 3% is for preservation.

The country is the largest Caribbean exporter of agricultural products. The main agricultural products are rice and beans, and the most important agricultural items exported are sugar, coffee, cocoa and tobacco. Since the end of the 80's other products like fruits, tubers and other vegetables are also exported in large quantities.

The agricultural products having the highest growth in the last years were rice, cacao, beans, potatoes, tobacco and coffee.

During 2002, agriculture experienced a gradual level of growth, thanks to the strengthening of support measures undertaken by the Ministry of Agriculture. All traditional export products showed increases: tobacco leaves, coffee beans, cocoa and sugar cane, after having been freed from the obligation to exchange foreign currency through the Central Bank.

It should also be noted that organic products of the Dominican Republic have become very popular in international markets, and in 2000 exports of these products increased 117.3%. The main organic products are dry coconuts, bananas, biodynamic bananas, pineapples, mangoes, lemons, green coffee, aromatic herbs, organic coconut crude oil and cacao.

After a difficult period, after 2004 the agricultural sector started to grow. This was mainly due to the dynamism of cattle, as well as forestry and fishing activities, mainly chicken production. On the contrary, farming activities went down as a result of the adverse climate conditions of the last years.

The effects of these climatic factors may be appreciated by noting that farming grew, mainly due to the increase of rice production and industrial tomatoes.

The Dominican Republic has established a firm position in the field of organic agriculture. In fact, more than 100,000 tons of organic bananas, cacao and mango have already been exported to Europe, the United States and Asia, producing earnings of more than US\$70 million. From this volume, 90,000 tons of organic bananas go to the European markets, and 10,000 to United States and Japan. The country also exports close to 8,000 tons of cacao and 400 tons of organic mangos to these markets.

Today, the country has 5,431 certified hectares, 790 producers of organic bananas, 6,742 producers of organic cacao and 899 of organic coffee. It also has 1,700 hectares of organic coconut, 545 of organic lemon, 324 of organic mango and 225 of organic avocado, ginger, aloe vera, noni and others.

Organic agriculture reduces health risks for agricultural workers and their families, and helps to create jobs and earnings in foreign currency, mainly in rural areas.

This production method may be considered as a smokeless industry that adds value to the countryside and contributes to sustainable poverty reduction.

## COMPETENT BODIES

The Government institutions that participate in this economic area are mainly the Ministry of Agriculture, the Institute for Price Stabilization (INESPRE), the Agricultural Bank, the Institute for Hydraulic Resources (INDHRI), the Center for Export and Investment (CEI-RD) and the Sugar State Council (CEA).

## INCENTIVES

It should be noted that within the framework of the GATT the Dominican Republic signed an agreement designed to promote agricultural markets through

the creation of incentives, the granting of internal aid and the development of competition in the field of exports.

The tax and customs reforms of the year 2000 established incentives for the agricultural sector, by exempting prime materials and inputs from the payment of duties and other taxes. This will help to reduce the costs of the sector and thus increase their ability to compete in international markets, and to face the upcoming external competition resulting from the entry into force of the free trade agreements signed with CARICOM and Central America.

Furthermore, in the year 2001 the Ministry of Agriculture established a Program of Reactivation of the Agricultural Sector, which includes incentives such as the distribution of crop materials, repair of roads and irrigation channels, increase in sources of financing and guarantee of sale of products.

In addition, we should note that the sector of traditional exports was freed in that year from the obligation to exchange foreign currency through the Central Bank, which was a factor that increased export costs.

In 2004 the Dominican Republic signed a Free Trade Agreement (DR-CAFTA) with Central America and the United States, which is pending Congress ratification in both countries regarding this last one. Its entry into force will certainly have important implications on the national agricultural production and its marketing abroad.

## 4 MINING

### OVERVIEW AND PERSPECTIVES

Mining is an important activity in the Dominican Republic. The main minerals found in the country are gold, silver, nickel, marble, limestone and granite. The significance of the mineral resources of the country makes this one of the most interest sectors of investment, and the Government is currently carrying out several programs to promote foreign investment in this sector.

In this regard, the Government created the Corporative Mining Unit, with the mission to follow up and serve as operational collaborator in all the mining projects in which the Dominican government is a participant, and to ensure that private investments in the mining sector are clear, credible and guaranteed, thereby providing a solid foundation for the reactivation of commercial mining activity.

Mining activities had dropped considerable at the end of the 80's, but during the 90's the sector started to recover after receiving flows of foreign capital, reaching in 1994 a growth rate of 88.2%. There are currently close to 35 mining companies in the country, which are mainly working on the extraction of marble, limestone, nickel, salt and plaster.

During the last years, there has been no gold and silver production due to the closing down of the operations of Rosario Dominicana. Indeed, gold and silver exploitation had been largely concentrated in the hands of that State owned company, which operated the "Pueblo Viejo" gold and silver mine located in the Cibao

Valley. This mine's reserves are considered to be "first class", with an estimated capacity of 403,000 ounces of gold, 2.2 million ounces of silver and 90 million pounds of zinc per year for at least 30 years.

However, due to a considerable drop in production and the low gold prices at the international markets, the public enterprise did not have the resources required to exploit them properly. Therefore, an international bidding process was carried out in order to choose an international mining company that would act as long-term operator of Pueblo Viejo. The procedure ended with the selection on June 2001 of a Canadian capital company, which committed itself to invest US\$336 million, and to start operations within 36 months after the execution of the leasing agreement with the authorities that will have a 25-years duration.

Finally, we should note that in November 2004, after ten years, the Program SYSMIN I came to an end, which produced a wide-ranging study that can serve as a platform for the geological and mining development of the Dominican Republic. Its general benefits are the following:

1. The negative evolution that the sector had at the end of the 80's and during the 90's has been reverted by promoting and widening the knowledge of the country's subsoil and of mineral resources in particular, the exploitation of certain rocks and industrial minerals, and the control of environmental impact. In this way private investment has been attracted to this sector, thus contributing to the vertical and horizontal diversification of the national economy.
2. Contributing to the knowledge of the country's subsoil and of mineral and water resources in particular, as well as seismic activities. It has also helped to make better use of certain industrial minerals by rationalizing production and the control of environmental impact.

## OBTAINING MINING CONCESSIONS

Law 146 of 1971 regulates mining activities. The entity charged of supervising the sector is the General Mining Office of the Ministry of Industry and Trade ("Secretaría de Estado de Industria y Comercio-SEIC").

Law 146 allows any national or foreign person or company to register the discovery of mineral deposits and request a concession in order to explore or exploit such deposits.

The exploration concession grants its holder the right to carry out activities above or below the earth surface in order to define the areas containing mineral deposits by using any technical and scientific methods. For such purposes he may construct buildings, install machinery, communication lines and any other equipment that his researches require.

The exploitation concession may be requested at any time during the exploration stage, and grants the right to prepare and extract all mineral substances found in the area, allowing the beneficiary to exploit, melt and use for any business purpose the extracted materials. This concession is granted for a period of 75 years.

There are certain requirements for granting concessions:

1. Concessions are limited to an area of 20,000 hectares.
2. Foreign governments cannot obtain concessions.
3. Foreign companies must fix legal domicile in the country by appointing a legal representative.

## TAXES ON MINING ACTIVITIES

Apart from the provisions of the Tax Code, the pursuance of mining activities requires the purchase of a mining business patent issued by the Ministry of Industry and Trade.

Furthermore, exports are charged with a 5% tax calculated on the FOB price of the minerals exported. This payment may be deducted from the income tax payable in the same fiscal year in which the export is made, but no refund is available if the payment exceeds the amount of income tax owed in that year.

# 5 CONSTRUCTION

## OVERVIEW AND PERSPECTIVES

Construction activities showed an interesting upturn in the last years, when public investment increased significantly with the use of the funds obtained from the sovereign bonds placement made by the Government in the international markets. Public investment in construction thus grew by 16.8%.

Private investment in construction also increased. Credit portfolio grew 27%, much more than the previous year, when it had increased only 11.25%.

During the year 2002, the activity grew 3.2%, showing an accelerated growth of 14.9% during the first half of the year, as a result of a strong expansion of public investment (83.8%) caused by the sovereign bonds placed the year before, to show then a fall of 5.4% during the second half due to the reduction of public expenses. 51.7% of public investment in construction were financed with national resources and the remaining 42.9% with external sources.

During the first semester of 2004, the same factors continued affecting the sector, that is, increase in the price of materials and high interest rates, which caused a reduction in the sale volumes of the main construction materials: cement (-10.6%), paint (-11.4%) and rod (-6.0%). Loan portfolio for construction has showed the same performance.

By the end of the year 2004, there was a clear reduction in the prices of construction inputs, but the reactivation of the activity has been still low, for some as a result of the increase of wages put recently into effect that may have neutralized the drop in the prices.

## BIDDING FOR STATE PROJECTS

Law 322 of 1981 sets forth certain requirements for foreign companies wishing to bid or participate on projects carried out by the State or any of its institutions,

establishing that such companies must, either be affiliated with a Dominican company, or be a mixed capital company belonging to both Dominican and foreign investors.

Foreign participation in the government contract shall not exceed 50%, but 70% may be accepted when for whatever reasons national participation cannot exceed 30%. Furthermore, when the project is extremely complex or sophisticated foreign companies may request to the government agency that the project be deemed outside the scope of Law 322. If the government agency contracting the project agrees to do so the foreign company would be able to have all the rights over the contract, without the need of local participation.

## 6 ELECTRICITY

### EVOLUTION OF THE SECTOR

Before the reform of the electricity sector that started in 1999, the generation, transmission and distribution of energy was in the hands of a State owned enterprise, Corporacion Dominicana de Electricidad (CDE). The inability of this company to supply the energy required by the country was one of the most serious problems that hindered the sustained development of the national economy.

Although the capacity of CDE had been gradually increased, it had yet to meet the energy demand of the different sectors, which kept growing every day as a result of the economic development experienced in the country, especially in the free zones and tourist sectors.

In order to improve its capacity CDE started in the early nineties to purchase energy from private companies. The increase in the quantities of energy purchased from private sources did not imply however an improvement in the service, since a lot of energy was lost as a result of the bad conditions of the energy distribution network.

In 1997 Law 141-97 on the Reform of Public Companies ordered the capitalization of CDE. In 1998 the Superintendence of Electricity was created to regulate the sector, and in the year 1999 took place the privatization of the generation and distribution units of the CDE, which were turned into three distribution and two generation companies that were transferred to foreign capital companies.

Energy problems were however still very serious, and the sector lacked a comprehensive regulatory framework. Finally, in the year 2001, after almost a decade of debate (the bill had been submitted to Congress in 1993), General Electricity Law 125-01 was enacted. The application regulations of the law are contained in Decree 555-02 of 19 July 2002.

Nevertheless, in the year 2003, under still unclear circumstances, the Dominican Government repurchased two of the privatized electricity companies, which took the process back to its starting point and created a number of difficulties of very different nature, with implications surpassing energy related issues.

## OVERVIEW AND PERSPECTIVES

During the year 2002, the sector grew 7.6%, backed up by a 6.7% increase in energy production, the improvement of transmission and distribution networks, the installation of sub-stations to increase voltage and the inclusion of low-income sectors in consumption measuring.

The Government is carrying out several hydroelectric projects to increase energy production, and is also giving priority to encouraging the development of alternate sources of energy.

In 1999, it signed a Wind Power Supply Agreement with a US company, which started in 2001 the construction of a project in the Northern part of the country that will generate 115,000 Kw/h, with an investment of approximately US\$160 million.

During the first semester of 2004, the growth rate of electricity and water was still negative, of -19.6%, due chiefly to the deficit in the production and supply of electricity.

In order to ensure continuity of the service, the Dominican government executed an agreement with the Venezuelan government, the Caracas Agreement, aimed at guaranteeing the supply of fuel while ensuring a financing of up to 25% of the invoice. The Dominican Congress has already ratified this agreement.

Furthermore, on 6th January 2005 the Dominican government appointed a high-level commission with the task of executing the plan outlined with the assistance of the IDB and USAID, in order to reduce substantially in the short-term the deficit of the sector and ensure its feasibility in the medium-term.

Finally, the letter of intention that the Dominican government addressed to the International Monetary Fund on 14th January 2005, plays particular attention to the electricity sector. Among the seven key elements conforming the program aimed at restoring fiscal discipline and financial stability, there is one that reads: "A plan to improve the efficiency of the energy sector in order to ensure its financial viability".

### Legal Framework: Law 125-01

Law 125-01 maintains the exclusive right of the State to regulate the sector, while recognizing the importance of the private sector in the activities of generation, distribution and commercialization of electricity, in an effort to promote the expansion of the sector and the efficiency of the service.

This statute establishes also that electricity transmission and hydroelectric generation shall always remain in public hands, and that private activities of the State in the electricity sector shall be subject to the same regulations as private companies.

a) *Objectives.* Law 125-01 regulates all phases of the production, transmission, distribution and commercialization of electricity, as well as the functions of the competent State agencies. The main objectives of the law are the following:



- To promote and guarantee the electricity supply required by the country under adequate conditions of quality, safety and continuity, with optimal use of resources and due consideration of environmental aspects.
- To promote private participation in the development of the electricity sector.
- To promote competition in the generation of electricity, fostering investment and freedom of prices.
- To regulate transmission and distribution prices based on economic criteria of efficiency and fairness.
- To ensure that electricity supply is carried out without discrimination.
- To ensure consumer protection.

b) *Public Bodies.* The institutions endowed with the attribution of monitoring the sector and seeing to the compliance of Law 125-01 are the National Energy Commission, the policy-making organ, and the Superintendence of Electricity, whose main function is to see to the compliance of the respective laws and regulations.

The law sets forth the necessary guarantees of independence and qualifications of their members in order to ensure the proper functioning of these agencies.

Furthermore, Law 125-01 provided for the transformation of Corporación Dominicana de Electricidad (CDE) into three different entities that will carry out the Government activities in the energy sector:

- Empresa de Transmisión Eléctrica Dominicana (ETED), or Dominican Electricity Transmission company, to which all electricity lines and transmission systems shall be transferred.
- Empresa de Generación Hidroeléctrica Dominicana (EGEHID), or Dominican Hydroelectric Generation Company, to which all property and management of hydroelectric generating systems will be transferred.
- Corporación Dominicana de Empresas Eléctricas Estatales (CDEEE), or Dominican Corporation of State Electricity Companies, with the mission of co-coordinating the activities of such companies, implementing public programs of rural electrification and managing energy supply contracts with private producers.

c) *Provision of Electricity Services.* The generation and distribution of electricity requires the granting of a concession. However, where the maximum power demand is inferior to the levels established in the regulations, only a permit is required.

Law 125-01 provides for provisional and definitive concessions. Definitive concessions must be granted by the Executive Branch via the National Energy Commission, and are valid for a renewable period of forty years. In the event of plurality of requests in relation to the same concession, the respective concession shall be granted by public bidding.

The law includes also provisions defining the obligation of interconnection. The use of transmission lines is subject to the payment of a transmission toll that is

fixed by the Superintendence of Electricity based on the long-term cost of the transmission system.

Before commencing operations, the Superintendence of Electricity shall verify that the installations comply with the respective conditions of quality, safety and preservation of the environment.

Law 125-01 establishes the necessary safeguards to ensure non-discrimination, continuity and lack of arbitrariness in the provision of the service for the benefit of consumers.

**d) Pricing.** The end price of electricity to consumers shall be determined freely by the market, provided there are conditions of free competition in the market, with the exemption of public service consumers.

It should be noted here that average electricity prices raised in the year 2002, going from RD\$1.88/KWH in 2001 to RD\$2.04/KWH in 2002, as a result of higher international oil prices and oil products used in generating units, as well as the elimination of Government subsidy on energy consumption.

The Superintendence of Electricity shall fix the rates applicable to public service consumers. Maximum power supply to public service consumers has been set at 2.0 megawatts for the year 2002, and shall be thereafter gradually reduced each year (1.4 Mw for 2003, 0.8 for 2004 and 0.2 for 2004).

**e) Sanctions.** Law 125-01 sets forth administrative and criminal sanctions for violations related to electricity services. The destruction of electricity installations or networks, as well as the misappropriation of electric energy, are criminal offences.

Infringement of electric companies to the provisions of the law, in particular withholding information to the authorities, monopoly practices or failure to comply with conditions of quality, safety, continuity and environment protection, may be subject to the payment of a fine of up to 10,000 times national minimum wages.

## OVERVIEW AND PERSPECTIVES

During the last years the telecommunications sector has been one of the most dynamic of the national economy, mainly as a result of the positive effects of the competitive conditions currently prevailing in the market.

After the year 2001, the sector experienced a record growth of 24.2%, mainly due to the increase in cellular phones, which raised their market participation from 32.8% in 2000 to 55.9%, chiefly as a result of the introduction of many innovative services and promotional offers caused by the increase of competition in the market. Telephone lines increased 6.8%, wireless local loop 41.10%, cellular phones 80% and Internet accounts 21.5%.

In the year 2002, telecommunications showed a 17.4% increase, with a 17.5%

# 7 TELECOMMUNICATIONS

increase in the volume of installed telephones. The mobile service continued showing more dynamism than residential and business lines.

During the year 2003 it shows a 15.2% growth due to the increase of mobile phone connections.

The sector kept this level of growth, reaching in the year 2004 a 18.3% rate, which makes it the most dynamic of the Dominican economy. In 2005, Verizon had a total of 1,234,016 lines (468,664 mobile, 754,360 wire lines and 10,992 public phones); Tricom had a total of 464,024 lines (161,411 local wire and 302,613 mobile), Centennial Dominicana had 68,000 mobile lines; France Telecom Dominicana has 215,000 users; Turitel had 768 lines; and Economitel was in process of implementation.

As a result of the strong growth of this sector, it was necessary to obtain a new area code for the Dominican Republic. In addition to the 809 area code, the country has also the 829 as a second area code. The implementation process and the required adjustments have already started.

## LEGAL FRAMEWORK: LAW 153-98

### General Telecommunications Law

On 27 May 1998 the General Law on Telecommunications 153-98 was passed, which derogated Law 118 of 1966 on Telecommunications. This legislation, which seeks to modernize the measures for the regulation of the sector and adapt them to the parameters set forth in the field by international organizations such as the World Trade Organization (WTO) and the International Telecommunications Union (ITU), has contributed to the expansion that this sector has been experiencing since the 80's.

Law 153-98 regulates the installation, maintenance and operation of telecommunication networks, as well as the provision of services and equipment related to telecommunications with the following aims:

- To ensure that the whole population has access to telecommunications services.
- To promote free competition in the telecommunications market.
- To promote the development of the sector with the view of increasing the economic growth of the country.
- To adapt national laws to the international agreements signed in the field by the country.
- To regulate the radio electrical spectrum.
- To ensure that the regulatory functions of the State are carried out effectively and impartially.

a) *The Dominican Telecommunications Institute (INDOTEL)*. Law 153-98 abolished the General Telecommunications Office, providing that the regulatory body of the sector will be the Dominican Telecommunications Institute (INDOTEL). Its Board of Directors has five members appointed by the Executive Power: a president with rank of Minister of State, an Executive Director, a representative of the

companies providing public telecommunications services, a representative of the companies providing broadcasting services, and a member who will represent the interests of consumers.

INDOTEL initiated its operations in 1999 and has since then worked actively and innovatively in order to ensure the application of Law 153-98 and to organize and promote the telecommunications market.

This entity has indeed carried an active process of construction and implementation of the legal framework required for the proper functioning of telecommunications. In this regard, in addition to the legal instruments mentioned in this section, there have been a large and varied number of resolutions, regulations and rules adopted in the last years to guarantee the efficiency of the system and improve the quality of service, within an absolutely institutional context.

*b) Telecommunication Services.* Law 153-98 applies to the following telecommunication services:

- Public services for the transport of telecommunications, such as telephone, telegraph, telex and any transfer of information between two or more points, without any change from one point to the other in the form or contents of such information. These services may be carrier services, final or teleservices and value added services.
- Broadcasting services, which may be radiobroadcasting services by sound or television, by earth waves or satellites, or cable or other broadcasting service, and are provided to the public in general. Broadcasting services are regulated by Law 153-98, as well as by the applicable laws in the fields of social communications and copyrights.

*c) Procedures.* Law 153-98 sets the principle of free provision of telecommunications services, and any company that complies with the established requirements (which include the need to be organized as a Dominican limited liability company) is thus entitled to request concessions for the provision of telecommunications services, which are granted by INDOTEL for renewable periods of five or twenty years. Concession requests must be handled pursuant to the principles of equal treatment and no-discrimination.

As to broadcasting services, the applicants must be Dominican nationals, and concessions are granted through public bidding. A license is also required, which is issued simultaneously with the concession.

There are certain telecommunication services that do not require concessions, being only subject to special registration systems. These services are maritime and aeronautic services, value added services, resale of services and private telecommunications services.

Finally, any telecommunications equipment to be connected to any network or sold in the country must have a Certificate of Ratification issued by INDOTEL after carrying out the relevant technical verifications.

INDOTEL Resolution 0007-02 of 24 January 2002 adopted the Regulation on

Concessions, Registrations and Licenses to provide Telecommunications Services in the Dominican Republic.

**d) *Rights of Concession Holders.*** Since the provision of telecommunication services is of public and social interest, concession holders are entitled to the following in order to install their networks and/or equipment:

1. To connect their equipment to public telecommunication networks.
2. To use public property.
3. To create easements on private property.
4. To interconnect their networks with other concession holders.

The owner of the network or property is bound to consent to such operations, pursuant to terms and conditions to be agreed with the concession holder. In the event of disagreement INDOTEL may intervene to set such terms and conditions. By way of Resolution No. 042-02 of 15 February 2002 INDOTEL adopted the Regulation on Interconnection for Networks of Public Telecommunications Services.

**e) *Technical Norms.*** Concession holders are bound to comply with the basic technical plans and technical norms fixed by INDOTEL. These norms must be in accordance with the international practices applied in the zone to which the country belongs, which is the World Zone Number 1 (formed by United States, Canada and a group of Caribbean islands), and with the recommendations of the international organizations to which the country belongs.

**f) *Competition Rules.*** Law 153-98 sets forth a number of rules in order to promote the free operation of the telecommunications market in conditions of effective competition.

First, the law provides that one of the purposes of the regulatory body of the sector, INDOTEL, is to “ensure the existence of a sustainable, fair and effective competition in the provision of public telecommunications services”. Furthermore, the decisions of this entity must be taken on the basis of the minimum regulation rule and the maximum operation of the market, being obliged to act in such a way that the effects of its decisions equal those of a loyal, effective and sustainable competition whenever such competition does not exist.

The law sets also the principle of free pricing, and companies may thus freely fix the tariffs they charge to their customers. INDOTEL may intervene in this field only when there are not enough conditions in the market to ensure an effective competition.

Furthermore, the law sets the principle of free negotiation between service providers wishing to sign co-operation or interconnection agreements. Such agreements must not contain provisions which are discriminatory or which distort competition.

Finally, Law 153-98 forbids unfair practices such as:

- False publicity intended to hinder or limit free competition.
- The promotion of services based on false declarations, related to disadvantages or risks of competitors' services.

- Industrial bribery, violation of industrial secrets, etc.

Restrictive practices are also prohibited, including:

- Discrimination in business relations among services providers.
- Practices that limit, hinder or distort customers' rights to have freedom of choice.
- The abuse of dominant positions in the market.
- Any activities tending to distort, or that effectively or potentially limit or distort free competition.

**g) *Customers Protection.*** The promotion of free competition in the market allows to ensure that customers have access to telecommunications services at reasonable prices, as well as to guarantee their right to freely choose the service provider that better suits them.

On the other hand, telecommunications companies are obliged to comply with the principles of continuity, generality, equality, neutrality and transparency in their relations with their customers.

Telecommunication companies are also obliged to provide certain services free of charge, such as customer service, tariff consultation service, general consultation services, receipt and treatment of complaints, and treatment of emergencies. In addition, customers may address themselves to INDOTEL in order to solve their conflicts with the telecommunications companies, who will act as arbitrator in these cases.

As mandated in Law 153-98, INDOTEL adopted on 23 March 2001 a Regulation for the Resolution of Disputes between Consumers and Providers of Public Telecommunications Services.

**h) *Radioelectrical Spectrum.*** One of the main objectives of Law 153-98 is to provide an adequate legal and technical framework for the regulation of the radio electrical spectrum in the Dominican Republic, which had been characterized for being very disorganized. INDOTEL started the process of cleansing of the radio electrical spectrum, and by July 2004 the country had 43 television channels, 136 AM radio stations and 194 FM stations, and 20 short wave stations.

The country has also 60 concession holders for cable transmission, 16 concession holders for telephone services, of which eight are currently providing services, and seven internet providers.

In this regard, Decree 518-02 of 5 July 2002 approved the National Plan for Attribution of Frequencies, while INDOTEL adopted on 20 June 2002 the Regulation on FM Broadcasting (Resolution 045-02) and Regulation on AM Broadcasting (Resolution 046-02).

**i) *Universal Service.*** Law 153-98 mandates the creation of the “Contribution to the Development of Telecommunications (CDT)”. This contribution will be made by all telecommunication companies and amounts to two percent of (i) the income received each month from the bills issued to final customers, and (ii) the income received each month from international correspondent services. The

CDT will be used, in fixed percentages to be established by INDOTEL, to contribute to the resources of that institution and to finance projects for the development of the telephone service.

j) *Sanctions.* The infringements of the provisions of Law 153-98 are deemed to be administrative faults and are classified in three types: very serious faults, serious faults and minor faults.

These faults are penalized with pecuniary sanctions calculated on the basis of a unit called Charge for Non-Compliance (“CI”), which amounts to RD\$20,000 of 1997, adjustable by inflation. The penalties are: from 30 to 200 CI for very serious faults, from 10 to 30 CI for serious faults, and from 2 to 10 CI for minor faults.

In the event of very serious faults INDOTEL may take additional measures, such as business closure, suspension of service or seizure of property.

## 8 BANKING

### OVERVIEW AND PERSPECTIVES

As a result of the good performance of the Dominican economy, the banking system has been experiencing a very strong growth during the last years, characterized by a diversification and modernization of services.

In the year 2001, monetary authorities initiated a program to strengthen banking regulation and supervision. In spite of the adverse international environment, the Dominican banking system showed in that year a highly competitive and dynamic performance, with a large number of transformations, mergers, expansion and diversification of services, mainly in the field of electronic banking.

In the year 2002, in spite of strict measures of monetary and exchange policy taken by the authorities to face the difficult situation of the exchange rate, the financial sector ended the year with a 14.9% growth in credit operations and 12.5% growth in liability operations, as well as a sustained capital growth (27.0%), adequate provisions to cover risks and higher benefits than those obtained in 2001.

Other financial indicators also showed high levels of growth: loan portfolio (15.1%), deposits (11.3%), global benefits (37.4%) and profitability of average paid-in capital (44.3%). Furthermore, at the end of the year solvency levels reached 12.0%, a rate that is above the minimum 10% solvency requirement.

Before the passing of Monetary and Financial Law 183-02, there were in Dominican Republic two parallel bank systems:

1. Specialized banking, based on several special statutes that regulated each type of bank activity, which comprised commercial banks (General Banking Law 708 of 1965), development banks (Law 292 of 1966), mortgage banks (Law 171 of 1971) and savings and loans associations (Law 5897 of 1962); and
2. Multibanking, regulated by resolutions of the Monetary Board.

After the Monetary Board had issued resolutions regulating multiple banking, most of the financial groups that then existed, as well as specialized banks,

became multiple banks, through the merger and transformation procedures set forth by the Monetary Board.

In this regard, in the year 2002 the institutional structure of the financial system continued changing, with the merger by acquisition of two multiple banks, the authorization of two new ones, the establishment of a development bank with 100% foreign capital, as well as the exit from the market of two development banks and three financial entities whose liquidation was authorized, and the transformation of two of such banks into multiple banks.

In the year 2003, the performance of the financial sector was influenced by the instability and depreciation of the exchange rate, an inflation rate of 42.7% and the implementation of a rescue plan for two multiple banks with financial difficulties. During this period multiple banks had the highest participation in the financial market with 79%, although deposit participation grew to 83%.

The assets of the financial system increased 47.9%, but those of multiple banks grew 57.7%, going from RD\$173,184.3 million in 2002 to RD\$272,136.7 million in 2003. Loan portfolio grew 26.8%. It should be noted that, due to the reduction of economic activity, loan portfolio of multiple banks grew at a lower rate than security investments.

Deposits in national and foreign currency grew 68.7%, while liabilities increased 61.7%, because of the depreciation of the peso in relation to the US dollar.

Capital return was 17.3%, lower by 27.3% to that of the year 2002. However, taking out the banks under recovery programs, this rate reaches 52.5%.

The solvency ratio of the financial system by October 2003 was 14.2%, while the reserves ratio was 9.1% by September of the same year.

By December 2002 there were 14 multiple banks, 15 development banks, one mortgage bank, 18 savings and loans associations and 72 credit entities, operating in the country. However, this situation had changed by December 2004, according to data of the Superintendence of Banks. At that date operated in the Dominican financial system 13 multiple banks, 15 development banks, one mortgage bank, 18 savings and loans associations, 51 credit entities, 22 small loan companies, 3 financial groups, 90 exchange agents and 5 public entities, for a total amount of 218 entities.

During the first semester of 2004 the rise in oil prices and the drop of economic activities affected the performance of the financial system. In this context, during this period its assets grew 16.8% and its liabilities 17.4%. Loan portfolio went up 5.3% while the expansion of investments was 48.0%, in placements of the Central Bank. Deposits grew 46.9% in foreign currency and 12.6% in Dominican pesos.

## LEGAL FRAMEWORK: LAW 183-02

### Financial and Monetary Law

The Monetary and Financial Law 183-02 passed on 26 November 2002 amended the legal regime applicable to banking activities in order to modernize it and



adapt it to current realities. It redefines the organizational structure of regulatory and supervisory bodies of the financial system, provides installation and functioning rules with the guiding notions of financial intermediation and universal banking, as well as free-market, liberalization and preventive supervision criteria. Although the regulations of the Monetary Board issued to adapt our previous legislation to the new realities had enabled the banking system to develop, it was still necessary to modify completely the legal model set out therein to grant greater legal security to its activities.

According to this legislation, banking business shall be subject to the provisions contained therein, the Monetary and Financial Regulations of the Monetary Board, as well as the Norms issued by the Central Bank and the Superintendence of Banks.

*a) Approach of Banking Business.* Following modern tendencies, Law 183-02 approaches banking business by using the notion of financial intermediation, which is defined as “the usual collection of funds from the public with the purpose of assigning them to third parties, regardless of the type or denomination of collection or assignment instruments” (Article 3).

Furthermore, it regards the banking business as a private activity subject to a regime of prior authorization by the Administration, thus dropping the model of financial supervision that was implicitly inspired on a joint administration or State franchise on the banking business, establishing instead a supervision model based on a constant follow-up of the relevant liquidity and solvency requirements.

In addition, it goes beyond the notion of regulating with the sole purpose of protecting the consumer, adopting a global vision of banking business, by considering it to be a sector of primary importance for national economy whose development has to be promoted through clear rules that enhance the competitiveness of Dominican banks and enable them to consolidate within the international context.

*b) Types of Financial Entities.* Law 183-02 abrogated the special statutes that set types of financial entities based on the type of financial activity and a system of specialized banking hardly compatible with an efficient free-market model. In this manner, it establishes the system of multitasking and eliminates the specialized institutions functioning under those laws.

From now on, the banking system shall be only composed of the following entities:

*Multiple Banks.* Which are limited liability companies authorized to collect deposits from the public that can be withdrawn upon demand, whether demand deposits or checking accounts, and to make any type of bank operations.

*Credit Entities.* Which are limited liability companies that collect money through savings and time deposits. These may be Savings and Credit Banks and Credit Corporations, depending on the applicable criteria for capital requirements and equity exposures, as established under the relevant regulations of the Monetary Board.

*Savings and Loans Associations.* Which are mutual entities without corporate structure.

*Savings and Credit Cooperatives.* Which do not have either a corporate structure and shall be subject to regulation and supervision in accordance with the relevant regulations of the Monetary Board.

Law 183-02 describes in detail in Articles 40, 42 and 43 the transactions and services that Multiple Banks, Savings and Credit Banks and Credit Corporations may respectively carry out.

c) *Foreign Banks.* Law 183-02 liberalizes banking services by granting equal treatment to foreign financial entities. It provides the guidelines to regulate the admission of such entities, setting forth the types of foreign investment participation in national financial activities, which may take the form of (i) purchase of stock in existing Multiple Banks and Credit Entities, (ii) incorporation of financial entities of a corporate nature, (iii) subsidiaries, or (iv) establishments of branches (Article 39).

Furthermore, foreign banks not having a legal seat in the country may still create representative offices within the national territory according to the regulations, although these may not undertake activities of financial intermediation.

d) *Regulatory Norms.* The legal regime grants particular attention to the description of minimum requirements of establishment and operation that enable to ensure a proper management of deposits and the adequacy of capital. Some of the rules provided for such purposes are the following.

The establishment of financial entities shall be subject to the approval of the Monetary Board, prior opinion of the Superintendence of Banks. Multiple Banks and Credit Entities shall be formed as limited liability companies, and must have a minimum paid-up capital of 90 million pesos for Multiple Banks, 18 million pesos for Savings and Credit Banks and five million pesos for Credit Corporations. The paid-up capital must be entirely paid in cash.

Regarding equity exposure of Multiple Banks, these may invest up to (i) 20% of their paid-up capital in entities providing supporting or related services, as statutorily defined, including those undertaking operations of debt-collection, factoring, leasing, credit cards, foreign exchange, stock exchange, etc., (ii) 10% of their paid-up capital in non-financial entities, but these investment may not amount to more than 10% of the paid-up capital of the receiving company, and (iii) 20% of their paid-up capital in opening branches or agencies abroad, as well as foreign financial entities.

In addition, the law lists the operations that for preventive reasons are subject to prior authorization (Article 44) or prohibited (Article 45), whether for not being related to banking business or for being a threat to the interest of depositors.

Among prohibited operations we find the following:

- To finance the purchase of stock or titles issued by related companies.
- To purchase their own stock or accept it as collateral.
- To purchase real estate that is not necessary for their operations.

- To assign their assets to stockholders under lower conditions than those prevailing in the market.
- To make investments in the capital of insurance companies, pension funds and investment funds.
- To give their complete portfolio, investments or assets as collateral.

In relation to minimum capital requirements, the statutory provisions take into account international standards inspired on the Basel Capital Accord. The law defines in Article 46 the notion of “regulatory capital” (“patrimonio técnico”), which is the basis for the capital regime and includes the following rules:

- The capital ratio shall not be lower than 10%, where the numerator is the regulatory capital and the denominator the risk-weighted assets (article 46.e).
- A part of the control of credit risk exposure results from the prohibition of transactions entailing direct or indirect financing of more than 20% of regulatory capital to a single risk person or group (Article 47.a).
- Credits granted to shareholders, managers and employees should not exceed the total amount of 50% of regulatory capital (Article 47.b).
- The total value of fixed assets belonging to the financial entity shall not exceed 100% of regulatory capital (Article 48).

Law 183-02 reaffirms the obligation to maintain liquid assets with the Central Bank under the system of reserve ratio (Article 50), which is a specified percentage of deposits, pursuant to the relevant regulations of the Monetary Board (Article 26.b).

The law provides a transition period of two years for allowing existing financial entities to adapt to the new requirements (Article 86).

*e) Bank Transparency and Consumer Protection.* Transparency rules are established in order to make easier the supervision of financial entities. Minimum requirements of internal management are provided by establishing certain operational procedures, obliging financial entities to provide specific documentation in relation to their operations (Article 51), and establishing that they shall have adequate systems for risk assessment, independent mechanisms of internal control and a clear written description of administrative policies (Article 55).

Law 183-02 creates a legal regime of accounts, financial statements and audit of accounts of financial entities (Article 54).

It also provides minimum rules for the protection of bank consumers, by imposing certain obligations of information and treatment of claims (Article 52). Moreover, since the banking business is a typical sector for mass agreements, basic principles are established in order to prevent unfair contracts (Article 53).

*f) Criteria of Bank Supervision.* The reform exchanges the model of financial supervision based on the notion of joint administration or State franchise on the banking business for a model of preventive supervision, based on a scheme of permanent follow-up of minimum liquidity and solvency requirements in order to prevent insolvency.

In this regard, the compliance with such requirements is an obligation of financial entities, without the need of prior request by the Administration (Article 59). The law provides general rules for banking supervision, setting forth that the Superintendence of Banks shall establish at the beginning of each year a general plan of supervisions to be carried out on the system (Article 57). Furthermore, the law recognizes the principle of consolidated supervision, providing that when a financial entity controls directly or indirectly entities of supporting or related services or any other entities, whether national or foreign, these shall be subject to supervision by the Superintendence of Banks on a consolidated basis (Article 58).

*g) Regularization, Dissolution and Liquidation.* The preventive approach of the law may be particularly appreciated in the system created to face financial difficulties that may arise in financial entities.

In this regard, the law creates a regularization process that starts as soon as certain deficiencies arise, such as reduction of regulatory capital, non-compliance with capital ratio, negative opinion of auditors, among others. Under this process, entities of financial intermediation must in such cases submit a Regularization Plan to the approval of the Superintendence of Banks with the necessary measures to mend the situation that caused the regularization.

The dissolution procedure is intended to protect depositors by trying to avoid the liquidation of the entity, and includes the assignment, under competitive conditions, of the deposits of the financial entity concerned to other solvent entities of the system, in exchange for the assets of such entity that have been excluded from the balance sheet to pay those liabilities. For these purposes, a Contingency Fund has been created, which shall be formed of mandatory contributions made by banking entities for a minimum yearly rate of 0.1%, payable quarterly. The resources of the fund shall guarantee deposits of the public up to RD\$500,000 per depositor. Administrative liquidation may solely be used after the dissolution procedure has been tried without success.

*h) Sanctions.* The law creates a system of administrative sanctions that may be applied in the event of non-compliance with the legal provisions. It provides clear rules for determining the existence of a violation, the types of violations and the respective sanctions, as well as the particularities of the procedure. Both the entity and its administrators, as well as related companies, may be liable to the administration and be subject to the sanctions provided in the law, which are for very serious violations fines of up to ten million pesos and withdrawal of authorization to operate as a financial entity.

Furthermore, criminal sanctions are also established for activities such as distortion of information, filing false financial statements and misappropriation of assets belonging to entities under liquidation. These violations are subject to fines of up to 2.5 million pesos and prison of three to ten years.

# 9 INSURANCE

## OVERVIEW AND PERSPECTIVES

After the year 2000, the sector increased considerably, while paid insurance premiums grew 17.1%.

Being the principal sectors: Maritime and Aircraft Insurance, Bonds, Life Insurance, Fire and Related Insurance and Motor Vehicles.

The year 2003 was particularly difficult for the insurance sector, due to the exit from the market of two of the main companies, which caused a significant restructuring of the insurance market.

Up to this date, this reorganization process has continued, while the liquidation procedures of these two companies has been moving forward.

## LEGAL FRAMEWORK: LAW 146-02

### Law on Insurance and Bonds

Law 146-02 on Insurance and Bonds was passed on 11 September 2002. This statute abrogates Law 126 of 1971 on Private Insurance, Law 400 of 1969 on Superintendence of Insurance and Law 4117 on Mandatory Insurance for Motor Vehicles, grouping all of these aspects under a single comprehensive framework.

The main objective of the reform is to regulate clearly insurance business, mainly in relation to aspects that had not been dealt with in previous laws and that are today regulated almost world-wide, in order to adapt it to international standards and provide a maximum level of protection to consumers, in the understanding that the insurance business is a significant economic activity that should be promoted in order to benefit the national economy.

a) *Superintendence of Insurance.* This is a decentralized institution under the supervision of the Ministry of Finance. It has the function to supervise the legal regime and operations of insurance and reinsurance companies, as well as intermediaries and adjusters. The main purpose of this entity is to ensure that these institutions comply with the applicable legal provisions.

b) *Coverage.* In general, insurance that covers risks in Dominican Republic must be subscribed in the country, except for insurance on surplus lines. The insurance branches where insurers and reinsurers may operate are classified as follows:

- Personal Insurance. Here we find individual life insurance, collective life insurance, accident insurance, incapacity, life annuity, health and others.
- General Insurance. These are fire insurance and related risks (earthquake, hurricane, flood, strike, explosion, theft, etc.), insurance for vessels, aircraft, transport, motor vehicles and civil, agricultural, general or technical liability, etc.
- Fidelity, performance or other bonds.

c) *Participants.* The law defines the various participants in insurance business, such as the following:

*Insurer.* Any company duly authorized to carry out exclusively operations for executing insurance and reinsurance agreements and resulting activities, either directly or through intermediaries.

*Intermediary.* Any person or company authorized to act between insurers and insured persons, whether as general agent, local agent, insurance broker, personal or general insurance agent, or to act between insurers and reinsurers.

*Insurance Adjuster.* Any person or company authorized to investigate and/or to value damages caused by events, being able to negotiate the amount of claims resulting from the execution of insurance contracts.

**d) Requirements for Establishment.** In order to operate as insurer or reinsurer, a minimum paid-in capital of 8.5 million pesos, or the equivalent of US\$500,000, is required. Foreign insurers or reinsurers must have been operating for more than five years under the laws of their country of origin, and must be provided with a certificate issued by the state body that supervises insurance companies in that jurisdiction.

The Superintendence of Insurance has to approve the drafts of policies, insurance applications, premiums, reinsurance programs and other forms to be used by the company.

Capital requirements for intermediaries and adjusters are the following:

- One million pesos, or the equivalent of US\$200,000 to operate as general agent.
- RD\$200,000, or the equivalent of US\$12,000 to operate as insurance broker.
- RD\$50,000, or the equivalent of US\$3,000 to operate as local agent, personal insurance agent, general insurance agent or adjuster.

**e) Guarantee Fund.** Insurance and reinsurance companies must constitute a special fund that will guarantee exclusively the obligations resulting from insurance, reinsurance and bond contracts, but its use shall be subject to the existence of a final judgment. The Superintendence of Insurance shall by resolution fix the minimum initial amount of this fund, taking into account the classes of insurance transacted, without exceeding the following sums:

- 1.5% for companies having net earned premiums for an amount of up to 50 million pesos.
- RD\$750,000 plus 1% of amounts exceeding 50 million pesos, for companies having net earned premiums for more than 50 million pesos and up to 100 million pesos.
- 0.5% for companies having net earned premiums for more than 100 million pesos.

Mandatory contributions to the Guarantee Fund for intermediaries and adjusters are also established.

**f) Reserves and Prohibitions.** Insurance and reinsurance companies must have the following reserves or capital surpluses: mathematical reserves, specific

reserves, provisory reserves and reserves for catastrophic risks. Specific reserves must take the form of financial instruments of local financial institutions that may be repurchased on demand. Other reserves may take the form of securities issued or backed up by the State, loans with first-rank mortgages as collateral, shares and securities of national companies operating in certain activities, real estate located in the country, loans to policy-holders with their own life insurance policies as collateral, term deposits, financial instruments that may be easily liquidated, low-risk securities transacted at the Stock Market or investments in foreign currency.

The following activities are prohibited to insurers and reinsurers:

- To serve as jointly liable agent under bail or bond agreements or other type of contracts.
- To grant loans with their own stock as collateral.
- To grant mortgage loans for more than three years that are not repayable in installments.
- To grant loans to persons residing abroad.
- To have an interest in the capital of insurance brokers, local agents and adjusters.
- To invest more than 30% of their reserves in related companies.

g) *Solvency and Liquidity*: The solvency level required for insurers and reinsurers shall be calculated in relation to premiums (for instance, 27% of earned premiums, except for health insurance and collective life insurance, that shall be 5%) and in relation to losses. Furthermore, the law defines regulatory capital (“patrimonio tecnico”) and adjusted regulatory capital, which shall be higher than the minimum solvency ratio required.

Minimum liquidity requirements are the following:

- 40% of reserves to cover current risks on earned premiums.
- 3% of reserves to cover current risks on earned premiums for health and collective life insurance.
- 100% of reserves for expected losses.
- 15% of the relation between mathematical reserves and insurance policy loans.
- 10% of minimum solvency ratio.

h) *Sanctions and Appeals*: Law 146-02 provides administrative sanctions for non-compliance with the legal obligations, which include fines of up to 50 minimum salaries, to be applied by the Superintendence of Insurance.

The decisions of the Superintendence of Insurance may be appealed with the Minister of Finance within 15 days after the date of notice. These decisions may be appealed with the Court for Tax Issues.

# BUSINESS ORGANIZATION

The investor interested to participate in the Dominican market will wish to organize its business or channel its investment in a way that adapts to the nature of his business activities or the international strategy chosen to carry them out. Dominican laws allow him to choose freely among the different forms of business organization, there being no restrictions in this regard.

## 1 THE CORPORATE VEHICLE

The most common form of business association in the country is the Limited Liability Company or corporation (*compañía por acciones*), but the Commercial Code also provides for the creation of the following types of associations:

- Civil partnership (*sociedad civil*), which is used for pursuing non-commercial activities.
- Commercial partnership (*sociedad en nombre colectivo*), whose members do not enjoy limited liability, even after transferring their interests for the debts arising before their departure from the association.
- Limited commercial partnership (*sociedad en comandita*), in which partners who do not participate in the daily management of the association enjoy limited liability.
- Limited stock partnership (*sociedad en comandita por acciones*), which is a limited commercial partnership whose capital is divided into shares.
- Company of participation (*sociedad en participacion*), which allows its members to act as a single body but has no legal existence as regards to third parties.



## COMPARATIVE ADVANTAGES OF CORPORATIONS

Like all other forms of business association, corporations have a legal personality different from that of its members. However, unlike other societies, its members enjoy a limited liability, which is almost absolute in the Dominican Republic.

Unlike other legal systems, which allow for the possibility of piercing the corporate veil in certain cases, Dominican law only allows reaching the shareholders in the event of fraud or misrepresentation, and even in this case it might be difficult to make shareholders personally liable since evidence rules for the proof of fraud are very strict. No distinction is made between contract and tort creditors, and no particular treatment is given to dealings between parents and subsidiaries. Under-capitalization is not penalized, there being no clear capitalization rules to begin with.

In addition, other forms of business association (including non profit organizations) receive the same tax treatment than corporations. This means that tax cannot be avoided by choosing a particular business structure, since any type of association, even those which are not granted legal personality, will be treated as a separate entity for tax purposes.

Furthermore, incorporation costs are minimal, there are no annual capitalization duties and capital rules are very flexible.

In view of all this, it can be concluded that business associations other than corporations provide no real advantages that may offset the disadvantage of not enjoying limited liability.

## INCORPORATION PROCESS

The Commercial Code requires a minimum number of seven shareholders for the incorporation of a company, but the additional shareholders who participate to fulfill the legal requirement may have a symbolic participation of one share in the company's capital.

The founding members sign the articles of incorporation (Estatutos Sociales), prepare the list of shareholders (Lista de Suscriptores), and declare before a Public Notary that the shares have been purchased and paid by the shareholders. After the General Incorporation Meeting has approved all these documents, the company is formally incorporated.

When all or part of the shares are paid through in-kind contributions two General Incorporation Meetings are required. In the first meeting an officer (Comisario) is appointed to value the contributed assets. This officer then makes a report to the second meeting, to be held at least five days after the report is made available to the shareholders, which approves the report and declares the company incorporated.

Finally, it should be noted that Law 03-02 on Commercial Registry abrogated the old registration and publicity formalities, such as filing copies of all incorporation documents with the courts and publishing a notice of the incorporation in a national newspaper. With this statute, incorporation documents must be filed with the Chamber of Commerce and Production of the legal seat of the compa-

ny, in order to obtain a Certificate of Commercial Registry. Furthermore, incorporation documents must be filed with the Internal Tax Office (DGII) in order to obtain the National Taxpayer Registration (RNC) of the company.

### CAPITAL RULES

Rules on corporate financial structure are very flexible, and apart from some highly regulated industries such as banking and insurance, there are no capitalization rules. No minimum capital is required and corporations may finance themselves on whatever debt-equity ratio they might desire. There are no statutory limits, and the courts are not allowed to disregard the limited liability rule under any circumstances, nor subordinate credits of shareholders to those of third parties.

On the other hand, the Commercial Code does regulate the issue of shares. There are different kinds of shares:

- i. “Nominative” shares, which carry the holder's name and whose transfer must be registered in the company books.
- ii. “Order” shares, which are transferred by endorsing the corresponding share certificate.
- iii. “Bearer” shares, which are transferred hand to hand.

In any case, a certificate must always exist, and shareholders may transfer their interest in the manner set forth for each type of share.

Furthermore, it is mandatory to fix the nominal value of shares, which cannot be lower than the legal minimum of RD\$5.00. Usually the nominal value of each share is fixed at RD\$100.00.

### CORPORATE CONTROL

Corporate control may be achieved in different ways. The most common methods are quorum and voting requirements, stock transfer restrictions and pre-emption rights.

Irrevocable proxies and shareholder pooling agreements are not commonly used, though there does not seem to be any legal obstacle. Other standard control mechanisms like voting trusts, nonvoting shares or cumulative voting rights lack suitable legal basis.

Plural vote is however allowed, there being no one-share-one-vote rule. Furthermore, it is possible to provide for different share classifications, such as the common-preferred share scheme.

### ESTABLISHMENT OF BRANCHES

Since the enactment of Law 16-95 on Foreign Investment, investors do not need to incorporate a Dominican company in order to be able to register their investment. Now any investment made by foreign companies in the country through branches may be registered, and the profits obtained therein may thus be freely repatriated in foreign currency.

The establishment of branches of foreign companies is made through the procedure for fixing legal domicile in the country, which applies both to persons and companies.

It should be noted that, although from a strictly legal standpoint this procedure is not mandatory, given that a foreign company may operate in the country without having fixed its domicile in the Dominican territory, in practical terms the fulfillment of this requirement is advisable, since it is necessary for certain administrative procedures, such as the registration of the investment.

Furthermore, in some cases foreign companies have to comply with the requirement of fixing domicile in the country. For example, in order to provide financial services in the local market foreign banks must either incorporate a Dominican company or open a branch in the country.

Finally, it should be noted that for tax purposes branches of foreign companies receive the same treatment than Dominican companies, given that the Tax Code requires that companies incorporated in the country, as well as permanent establishments of foreign companies pay the same income tax rate.

### Designation of Agents or Licensees

Foreign companies wishing to designate agents or licensees in the local market should mainly take into account the following statutes:

- Law 173 of 1966 on Protection of Importer Agents of Goods and Products, and
- Law 16-95 on Foreign Investment.

### Statutory Protection

Law 173 seeks to protect local agents from the unjust termination of their agreements by their foreign principals. This law has a wide scope of application, comprising any type of agency, representation, distribution, license, concession, franchise or other agreement relating to products manufactured abroad or in the country.

It is not even required that a formal agreement is signed, since the law applies to any type of relation between a foreign firm (“licensor”) and a local enterprise (“licensee”) by which the second ensures the promotion of the interests of the first.

The protection granted by Law 173 is not automatic: the licensee, in order to benefit from its provisions, must register the agreement with the International Department of the Central Bank within 60 days after its signature.

The provisions of Law 173 are of public order, meaning that the clauses normally established by foreign firms to keep the right of suspending or amending their agreement with the local agent, or choosing a foreign law as the applicable legislation, do not have any value if they contradict Law 173, which applies regardless of the will of the parties.

Pursuant to Article 2, even when the agreement so provides, the licensor cannot terminate the relation with the licensee, nor refuse to renew it at its date of expiration, unless a “just cause” exists. “Just cause” is defined as any non-compliance

with the essential obligations of the agreement, or any action or omission on the part of the licensee that might adversely and substantially affect the business interests of the licensor.

If the event of unjust termination, the licensee will be entitled to sue the licensor for the following compensation:

- Material losses suffered as a result of the unjust termination by the licensor;
- Investments made by the licensee; and
- Losses of eventual profits calculated on the basis of the last five years of trading.

The effect of these provisions is to prevent the licensor from offering its products or services in the Dominican market, neither directly nor through another distributor, until he terminates the relation according to Law 173.

The effectiveness of this prohibition is reinforced by the following factors:

- The right that may have the agent of blocking at customs the entry of goods coming from that company.
- The imposition of sanctions to any new agent, who might be jointly liable with the licensor for the payment of the indemnity due to the previous agent.
- The long duration of an eventual procedure before Dominican courts which, together with their tendency to favor the local party, makes litigation a risky and expensive option.

Usually foreign firms have thus no other course of action than to pay the compensation, trying to reach an agreement with the agent in order to reduce the amount of the indemnity.

Law 173 does not distinguish between exclusive and non-exclusive relations. In both cases the licensor will be bound to comply with the provisions of Law 173 vis-à-vis its single or various distributors, but in the case of nonexclusive agreements the licensor may avoid the risk of not being able to participate in the market.

In other words, the foreign company is still obliged to pay the indemnity or prove that a just cause of termination exists, but it will not have to await the outcome of the litigation or negotiations in order to continue selling the goods through its other agents.

### Implications of Law 16-95

Law 16-95 entails significant implications for foreign companies interested to distribute products or services in the Dominican market.

*Registration of foreign persons as agents.* Law 16-95 extended the scope of application of Law 173 by eliminating its Article 12. This article established that neither foreigners having resided less than four years in the country nor Dominican companies with more than 66% foreign capital could benefit from the protection granted by Law 173. Therefore now all local agents, regardless of their nationality, may register their agreements and enjoy the rights granted under Law 173.

*Registration of technology transfer agreements.* Law 16-95 allows technology transfer agreements such as licenses, franchises, know-how, technical assistance,

etc. to be registered at the Central Bank so as to enable the local licensee to pay abroad in foreign currency the royalties and commissions owed to the licensor. In order to register the agreement the prior authorization of the Central Bank is required, but there are neither restrictions as to the contents of the agreement nor limitations as to the amount of royalties or commissions that can be paid abroad.

*Capitalization of intangible contributions.* Law 16-95 allows foreign companies that make “intangible technological contributions” like trademarks, designs, franchises, etc. to the capital of locally operating companies to register such contributions as foreign investment, and thus receive freely in foreign currency the profits obtained from their exploitation in the Dominican territory.

## COMMERCIAL REGISTRY

Law 3-02 of 18 January 2002 created the obligation to obtain a Commercial Registry for any physical and legal person that carries out commercial activities in the Dominican Republic, with the aim to contribute to the formalization of business activities and enable the exchange of commercial information.

The Commercial Registry has been placed under the jurisdiction of the Chambers of Commerce and Production, which are under the supervision of the Ministry of Industry and Commerce (“Secretaria de Estado de Industria y Comercio-SEIC”).

For individuals, the Commercial Registry request must be filed within the month following the commencement of business activities or the opening of the commercial establishment. For companies, it must be filed within a month after the date of celebration of the General Incorporation Meeting.

The Commercial Registry is made with the Chamber of Commerce and Production of the place of residence of the applicant, which will issue a Certificate of Commercial Registry that serves as proof of registration vis-à-vis third parties. Commercial Registry must be renewed every two years, and notice must be given of any changes in the business or in the articles of incorporation, as well as of annual ordinary meetings.

Registration of these acts makes them enforceable to third parties, registries being public and available for any interested person.

The lack of registration entails a fine of up to three minimum monthly wages, while the lack of registration of amendments entails a fine of 50% of a minimum monthly wage.

## BANKRUPTCY LAW

The Commercial Code, following the model of the French Commercial Code of 1807, provides in its Part III (Articles 437-614) a complicated procedure to regulate bankruptcy in Dominican Republic. Law 4582 of 1956 created a conciliation procedure with the Ministry of Industry and Commerce, which is a mandatory prior requirement to filing a bankruptcy petition. Since these provisions have

become largely obsolete, today there are very few companies that make use of them to face insolvency situations.

### Overview of Procedure

The statutory provisions consider to be bankrupt any business establishment that has ceased meeting its obligations. Bankruptcy may only be declared in relation to “tradesmen”, that is, to companies or persons that carry out usually commercial activities.

The bankruptcy petition may be filed by the debtor, one or more of its creditors, and may also be commenced ex officio by the Court, provided the conciliation procedure set forth in Law 4582 of 1956 has been followed, which aims at reaching a payment agreement between the debtor and its creditors and thus prevent bankruptcy.

The bankruptcy judgment has the following effects:

- To relieve the debtor from the management of his property,
- To make all debts due,
- To make interest on unsecured debts stop accruing,
- To grant automatic stay of individual procedures undertaken by creditors, and;
- To make void certain acts and payments of the debtor made up to ten day before the date of insolvency.

The bankruptcy procedure has the purpose to liquidate the assets of the debtor for the repayment of creditors, and comprises the following stages:

- Appointment of bankruptcy judge and trustee.
- Verification of claims.
- Trying to reach a payment agreement between debtor and creditors, and
- In the absence of agreement, liquidation and distribution of assets among creditors.

When insolvency has been the result of negligence or fraud, the debtor may be condemned for simple or fraudulent bankruptcy (“bancarrota”). Simple bankruptcy is an offence subject to prison of up to one year, while fraudulent bankruptcy is a crime subject to prison of up to five years.

### Regime of Priorities

Pursuant to Article 565 of the Commercial Code, the payment of creditors must be made according to the following order of priority:

1. Judicial costs of bankruptcy procedure.
2. Alimony payments assigned to debtor.
3. Privileged creditors in the following order: (i) employees, (ii) the State, (iii) legal fees, and (iv) funerary expenses.
4. Secured creditors (beneficiaries of mortgages and liens, following the date of registration of their security interest).
5. Unsecured creditors, in proportion to their claims.

# LEGAL FRAMEWORK FOR BUSINESS ACTIVITIES

There are many legal provisions that regulate or touch the performance of business activities in the Dominican Republic. In this chapter we will examine the most relevant ones, namely: the tax regime applicable to business activities, the labour and environmental laws that companies must comply with, the mechanisms established to protect intellectual property rights, the relevant rules for undertaking business transactions such as purchase of real property and granting of securities, as well as the legal framework for electronic commerce.

## 1 TAXATION

Law 11-92 of 31 May 1992 contains the Tax Code. This Code has four sections:

1. General Principles, Procedures and Penalties
2. Income Tax
3. Tax on the Transfer of Industrialized Goods and Services (ITBIS)
4. Selective Consumption Tax.

The Internal Tax Office or "Dirección General de Impuestos Internos (DGII)", an organ of the Ministry of Finance, is responsible for the collection of taxes and the enforcement of fiscal laws. In the last years, this law suffered several important amendments.

### MAIN TAXES IN THE DOMINICAN REPUBLIC

#### Provision of Labor or Services Independently or in a Dependent Manner

During the first 10 days of each month, employers shall proceed to file and pay any taxes retained from their employees and from any personnel having ren-

dered or provided any service in an independent manner. Said payment shall correspond to taxes retained to personnel during the month immediately preceding the month when payment was made. Payment shall be made by cashier's check issued to the Internal Revenue Collector.

### Business and Manufacturing Enterprises

During the first 15 days of each month all individuals or corporations and sole owner businesses whose actual tax paying rate (the one resulting from dividing liquidated taxes during the fiscal period with the gross income for the same fiscal period) were less than or equal to 1.5% shall pay the appropriate advances on the basis of twelve equal installments resulting from applying 1.5% of such gross income as were declared during the preceding fiscal year. If the actual tax paying rate were higher than 1.5%, one twelfth of such tax as were liquidated in the preceding income-tax report shall be paid in advance on a monthly basis.

No 1.5% advance shall be paid by any individuals engaged in business or manufacture if their annual income was equal to or under RD\$5,000,000.00. This advance shall be paid by cashier's check issued to the Internal Revenue Collector.

### Tax to Salaried Employees

An income tax shall be assessed on any income accruing from any work rendered under a relationship of dependency, by practicing a profession or liberal occupation, commercial or investment operations or financial gains abroad. A Table of Retentions to individuals is provided under Article 296 of the Tax Code, therein providing for the following retentions:

Income of up to RD\$276,422.00	exempt
RD\$276,422.01 to RD\$414,632.00	15% (RD\$20,732.00)
RD\$414,632.01 to RD\$575,878.00	20% of the excess (RD\$32,249 plus RD\$20,732)
From RD\$575,878.01 to RD\$900,000.00	25% of the excess (RD\$81,031 plus RD\$52,981)
From RD\$900,000.01 onwards	30% of the excess plus RD\$134,012.00

Until March 15 of each year, taxpayers shall file separately their income tax return on taxes retained and paid during the preceding calendar year, for salaries paid to employees and to any independent personnel having performed any kind of labor or service.

The 30% maximum marginal rate provided shall be reduced annually down to 25% of assessable net income or taxable income, upon applying the following schedule:

- For the 2007 fiscal year 29%
- For the 2008 fiscal year 27%
- For the 2009 fiscal year 25%



Individuals receiving income from different sources shall file an income tax return of their income by March 31 each year. Such income tax report shall include all income accruing during the preceding calendar year.

The following shall be exempted from income tax payment:

- Income of up to RD\$276,422.00 (amount to be adjusted for inflation annually)
- The salaried employees with income not greater than the exemption aforementioned.
- Any dividends paid by a stockholding company to its shareholders either in shares or cash whenever such retention is dully executed in accordance to Article 308 of the Tax Code shall have been made.
- Interest paid to individuals or corporations by financial entities regulated by the Superintendence of Banks and the Superintendence of Securities.

### Taxes to Corporations

Corporations domiciled in the Dominican Republic shall pay thirty per cent (30%) on their taxable income for the fiscal year 2006. According to these articles the following shall be deemed as corporations:

- a) Capital associations;
- b) Public sector enterprises on their income of a business nature and other entities;
- c) Non divided estates;
- d) Partnerships
- e) Factual associations
- f) Irregular associations
- g) Any other manner of organization not expressly provided herein the purpose where of were to make a profit or gain that were not expressly declared to be exempted from this tax.

Such tax as is assessed to the above cited corporations shall be reduced annually down to 25% of net income upon applying the following schedule:

- For the 2007 fiscal year 29%
- For the 2008 fiscal year 27%
- For the 2009 fiscal year 25%

### Fiscal Losses

In the event of any losses sustained in its fiscal exercise by a corporation, same shall be deducted from any gains obtained during the fiscal periods immediately following any such losses, provided however these shall not extend over five years, according to the following rule:

In no case shall losses proceeding from other entities where a tax payer shall have carried out any process of reorganization be deducted from any current or future period., nor shall any as resulted from any non deductible expenses.

Losses may only be deducted up to 20% of their total amount during the first three periods, at the rate of 20% in each period in an independent manner (non cumulative). No losses shall be deducted during the fourth and the fifth period except under the following conditions:

*Fourth Period:* Up to 20% of any such losses, without in any case exceeding 80% of Net Assessable Income or Taxable Income for that same period.

*Fifth Period:* Up to 20% of any such losses, while in no case exceeding 70% of Net Assessable Income or Taxable Income for that same period.

Any corporations filing losses during their first fiscal period, may have any such losses offset up to 100% during the second fiscal period; if this were not possible, it may be done upon complying with the same requirements as provided in the above paragraphs.

### Tax on the Transfer of Manufactured Goods and Services (ITBIS)

During the first 20 days of each month any individuals or corporations who transferred manufactured goods or services or were importers of manufactured goods shall file and pay the tax on the Transfer of Manufactured Goods and Services (ITBIS) by cashier's check issued to the Internal Tax Collector.

Such payment shall cover the balance in favor of the General Internal Tax Revenue Office (DGII) resulting from any excess of ITBIS billed to customers in rendering goods and services to which this tax were assessed over any ITBIS advanced to suppliers in the acquisition of goods and services so as to produce income to which this tax were assessed or such values as were paid to Customs in introducing to the country any goods assessed therewith that were used in producing such goods and services as such a tax were in turn assessed.

A 10% surcharge shall be applied in case of any delay or noncompliance in paying this tax during the first month and 4% for each additional month, besides 2.58% interest for each month or fraction of a month. These considerations shall not be deductible from net assessable taxes or taxable income when filing tax returns.

If payment of any such tax became due on a holiday, same may be paid on the following business day with no surcharge or interest payment whatsoever.

The aforementioned statement must be executed even in those cases that results a balance in favor of the tax payer, or in other words, that the same has advanced more ITBIS to its suppliers than the one invoiced to its clients.

### Real Property Tax

A 1% tax is assessed on any real property designed for private dwelling or for business or manufacturing operations the value whereof including the land lot it is built on exceeded RD\$5,000,000.00. This is subject to annual adjustment for inflation.

A 1% tax of their actual value shall be assessed on non constructed urban lots without the RD\$5,000,000.00 exemption, which will therefore only apply to built lots. The only exception shall be the case when owner(s) have reached the age of 65 years, provided said property had not changed owners in the last 15 years and its owner were to own but that one single real property.

This tax shall be filed during the first 60 days of each month and shall be paid in equal installments - 50% on March 11 each year and the remainder 50% on September 11 of the same year.

## Obligations Related to the Assets Tax

An Assets Tax shall be applied to all assets appearing in a taxpayer's general balance not adjusted by inflation, after making the appropriate deductions for depreciation, amortization, provision for bad debts, investments in stock in other companies, rural properties, any property deemed as real property due to the nature of the agricultural operations thereon and any tax advances paid.

## Crediting Assets Tax Against Income Tax

Any amount liquidated respecting this tax shall be deemed to be a credit against any income tax payable during the relevant fiscal period. In the event any such liquidated amount were equal to or higher than the assets tax payable, any payment obligation shall be deemed extinguished. If after due payment thereof there was a difference payable on this amount that were higher than the relevant income tax, any such difference shall be paid in two equal installments.

## Exemptions from Assets Tax

The following shall be exempted from this tax:

- Any corporations that were income tax exempted;
- Any investments that were defined as capital intensive in the regulation issued by the Internal Revenue Office for:
  - Employing more capital than other factors of production in turning out goods and services;
  - The total value of any net fixed assets acquired (machinery, equipment, real and personal property) exceeds 50% of total assets.
- Any investments that due to the nature of the business had a period of installation, production and start up of operations longer than a year.

The above means that no assets tax shall be paid by any business that were operating under any law contemplating fiscal exemptions in the area of income tax. Such investments are regulatorily defined as capital intensive by the Internal Revenue Office or such which due to their nature, had a cycle of installation, production and start up of operations longer than a year, whether undertaken by new or already existing enterprises, may benefit from a temporary exclusion from this tax after duly proving that their assets can be rated as new or are the result of a capital intensive investment according to such criteria as are defined in the regulation.

Any taxpayers that file losses in their annual income tax return may request a temporary exemption from assets tax. Any such request shall be made at least three months before filing the appropriate income tax return.

The assets tax report shall be filed along with the income tax return of the company, 50% of any such tax to be paid at the time of filing and the remaining 50% six months later. If any extension to file the income tax return were granted, the term for complying with the statement and payment of the tax on assets shall be automatically extended.

### Zero Rate for Exporters

A zero rate shall be assessed on any goods designed for exportation. Exporters shall be entitled to a deduction of the value of such tax as would have been assessed on the purchase of any goods designed for exportation. If any balance remained in favor of exporter, such a balance shall be reimbursed to the Internal Revenue Office. The same shall apply to any Selective Consumer Tax paid by exporters, provided both ITBIS and Selective Consumer credits were reflected by said exporters in a recurrent manner during 6 months or more. To this end, an application for reimbursement or compensation shall be addressed to the Internal Revenue Office which shall have a term of two month to reply; if no reply were received during such term, exporter shall be authorized to have any such balance offset against any other tax except any tax retained to a third party. It may even be offset against a tax retained on the occasion of any dividends paid in cash.

### Retentions at the Source. Payments Abroad in General.

Thirty percent (30%) of any assessable income from a Dominican source that were paid or credited to account to any individuals that were not residing or were not domiciled in the Dominican Republic, other than interest paid or credited to account to financial agencies abroad or any dividends thereon, shall be retained and given entry by the Tax Administration as sole and final tax payment. Such a rate shall be gradually reduced down to 25% again in 2009.

### Interest Paid or Credited Abroad

Ten percent (10%) of any interest from a Dominican Source that were paid or credited on account of loans secured with credit agencies abroad shall be retained and given entry by the Tax Administration as sole and final tax payment.

### Designation of Retention Agent

Corporations and sole owner enterprises shall act as retention agents whenever paying or crediting to account any considerations to other individuals or non divided estates, as well as to other non tax exempted entities, except corporations. Such retentions as are provided herein shall be for the following percentages of gross income:

- a) 10% of any amounts paid or credited to account for any rental or lease of any kind of real or personal property, as payment on account;
- b) 10% of any fees, commissions and other remunerations or payments for the rendering of services in general by individuals other than under a relationship of dependency the provision whereof required the direct intervention of a human resource, as payment on account;
- c) 15% of any prizes or gains from any lottery, “fracatán”, lotto, lotto quiz, electronic games, bingos, horse races, betting banks, casinos and any other kind of prize offered through promotion or advertising campaigns, as final payment.
- d) 5% of any payments effected by the State or any of its agencies, therein including state enterprises and decentralized and autonomous bodies,

individuals and corporations, for the acquisition of goods and services in general that were not performed under a relationship of dependency, as payment on account;

- e) 10% for any other type of income not expressly contemplated herein, as payment on account. Any payment made hereunder shall be deemed as a payment on account and shall be assessed on the basis of a presumed net income in the following manner:
  - a) Payments to cover cargo or passenger transportation services on the basis of a presumed net income of 20% of any gross amount paid, so that any retention resulting there from shall be equal to 2% of any such amount.
  - b) Payments to cover non personal services retained. Such non personal services shall include, but shall not be limited to fumigation, cleaning, electrical and/or mechanical repairs, as well as any masonry, carpentry, painting, cabinet-making and plumbing , on the basis of a net income equal to 20% of the gross value paid, so that any retention resulting there from shall be equal to 2% of such amount.
  - c) Payments to contractors, engineers, master constructors and related occupations for any building or construction of civil works, such as highways, roads, waterworks, sewage and others, on the basis of a net income equal to 20% of the gross value paid, so a 2% retention of such amount shall result.
  - d) In the event of assignment of any personal property subject to registration, 10% on the basis of a presumed net income of 20% of the gross value of the property sold or assigned shall be assessed, so that any retention resulting there from shall be equal to 2% of said amount.
  - e) Any interest of any nature that were paid in the Dominican Republic by sole owner business and corporations in general other than regulated financial agencies shall be subject to a 10% retention, provided beneficiary were not a corporation.

### Tax on the Organization of Companies

The organization of joint stock companies, stockholding companies and corporations shall be subject to a tax of 0.5% of authorized corporate capital and shall in no case be under RD\$1,000.00. This tax shall also be applied to any factual associations and partnerships and shall be computed on the basis of such capital as were agreed in the contract or agreement where under the company was organized. The same rate shall be applied to any capital increases, in addition to the 0.5% tax and a 1.30% stamp tax.

This tax shall be paid to the Internal Revenue Office and the relevant payment receipt shall be presented to the Mercantile Registry Directorate and to any other public or private agency requiring registration of the organizational documents of the company or factual organization formed.

### Selective Consumption Tax

A Selective Consumption Tax shall be assessed on the assignment of a number of production goods both at the manufacturing level and to their importation, as well as to the rendering or provision of services. The following rate shall be applied to services:

- a) 10% to communications
- b) Specific percentages by liter of absolute alcohol;
- c) Specific percentages by cigarette pack.

This tax shall be paid by any individuals, associations or enterprises, whether local or foreign, producing or manufacturing these goods both at the final stage of the process and when their intervention took place through services rendered by third parties; by any importers, whether on their own account or on account of any third parties, of such goods as this tax were assessed to, and to any as rendered any services to which this tax were assessed.

This tax shall be paid during the first 20 days of the month following the period comprised in the tax statement. In the case of importation, it shall be paid jointly with any custom taxes or tariffs.

### Casinos

During the first 5 days of each month, casino owners shall pay any taxes for the immediately preceding month. Such a tax shall be liquidated on the basis of the number of casino tables and the number of slot machines in operation as well as the location of business.

### Duties by Taxpayers

Taxpayers are under the obligation to comply with such formal duties as are provided under the Tax Code, therein including:

- a) Enrollment in the National Taxpayers Registration (RNC by its Spanish acronym);
- b) Advise any change of address, corporate name, telephone number, business operation or any other as might alter his or her tax responsibility.
- c) Carry such accounting books and records as were required.
- d) File tax returns in consistency with such documents and information as were required and provide such clarifications as were requested;
- e) Appear before the Internal Tax Offices whenever required;
- f) Facilitate any inspections and verifications by tax officers,
- g) Advise any sale, liquidation or any other event within a term of 60 days to secure the relevant authorization from the General Internal Tax Directorate.

### Rights by Taxpayers

The main rights assisting taxpayers are the following:

- a) Right to an extension
- b) Right to payment facilities
- c) Right to exemption of advances
- d) Right to compensation

- e) Right to information on any actions
- f) Right to confidentiality
- g) Right to file different administrative and judicial remedies.

## 2 LABOUR LAWS

The Labour Code, contained in Law 16-92 of 17 June 1992 regulates the relations between companies and their employees. The Ministry of Labour sees to the compliance of these provisions, while Labour Courts have jurisdiction over labour disputes.

### WORKING CONDITIONS

#### Quota of Dominican workers

At least 80% of the workers of a company should be Dominican citizens. Supervising officers should preferably be Dominicans, but there are no restrictions at manager level. When a Dominican citizen substitutes a foreigner in an employment position the Dominican employee will be entitled to the same salary, rights and conditions as the foreign employee.

#### Working periods

The normal working week is 44 hours, with a working day of 8 hours. The usual practice is to work 40 hours from Monday to Friday and, in some companies, the remaining 4 hours on Saturday. The working week of part-time employees cannot exceed 29 hours.

#### Paid leaves of absence

Mandatory paid leaves of absence are the following: 5 days in the event of marriage, 3 days in the event of death of a close family member, and 2 days for the worker whose wife gives birth.

#### Vacations

Pursuant to Law 97-97, workers who have completed one year of employment are entitled to a paid vacation of 14 working days. This law extended the vacation period by almost a week, by declaring that it should be calculated on the basis of working days and not calendar days, as set forth in the Labour Code.

#### Sexual harassment

Labour laws forbid employers or their representatives to commit actions that may be considered as sexual harassment against an employee.

#### Maternity protection

The employer cannot terminate without just cause the work contract of a female employee during her pregnancy and up to three months after the birth. Furthermore, in order to dismiss her with just cause the employer must obtain the prior authorisation of the Ministry of Labour, among other formalities.

Otherwise the employer would have to pay an indemnity amounting to five months of salary plus the corresponding severance payments. Pregnant women may request their vacation immediately after their pre and postnatal leave, which must be paid on the basis of her normal salary, and are entitled for the next year to a leave of half a day per month in order to take the child to the paediatrician.

## WAGES

Dominican labour laws set forth a minimum wage for private sector employees, which is periodically fixed by the National Salaries Committee of the Ministry of Labour. According to Resolution 5/2004 of this body, the current monthly minimum wage is RD\$6,400 for companies with assets over four million pesos. For companies with assets between two and four million pesos the minimum salary is RD\$4,400, while for those whose assets do not reach two million pesos it is RD\$3,900.

Other minimum wages are fixed for certain sectors. This is the case of free zone companies, for which Resolution 6/2004 has fixed it in RD\$4,450 per month. For the tourist sector the minimum salary is RD\$3,030 per month.

In the event of overtime, night and holiday work, the premium to be paid by the employer over the basic wages of the employee is 35% for overtime, 15% for night work, and 100% for overtime implying an increase of more than 68 working hours per week, as well as for work on Sundays and holidays.

## Fringe Benefits

*Christmas bonus.* All employees are entitled to receive, latest on December 20, an additional month's salary.

*Participation in company profits.* Workers are entitled to receive a 10% participation in the yearly net profits of the company. The amount received by the employee may not exceed 45 days' salary for workers with less than three years in the company, and 60 days' salary for those with more.

Mining, industrial, agricultural and forest companies are exempted of this obligation during the first three years of operation, while free zone companies regardless of their capital, as well as agricultural companies having no more than one million pesos capital, are completely exempted.

*Payment of vacations.* The amount to be paid to the employee for yearly vacations depends on his seniority, being 14 days' salary if he has been in the company from one to five years, and 18 days' salary for more than five years' seniority.

## Dismissal of Employees

During the first three months of employment workers can be dismissed without the employer having to make any severance payments. Afterwards employees can be dismissed in accordance with the provisions of the Labour Code.

In the event of justified dismissal made pursuant to the causes and procedures set forth in the Labour Code, the employer does not have to pay any indemnity to the employee.



In the event of unjustified dismissal, employees are entitled to severance payments calculated as follows:

- from 3 to 6 months seniority, 6 days' salary,
- from 6 to 12 months seniority, 13 days' salary,
- from 1 to 5 years seniority, 21 days' salary for every year or fraction, and
- from 5 years seniority or more, 23 days' salary for every year or fraction.

The employer must also give prior notice of the dismissal to the employee, as follows:

- from 3 to 6 months seniority, 7 days,
- from 6 to 12 months seniority, 14 days, and
- from one year seniority or more, 28 days.

Prior notice is not necessary if the employer pays the worker the salary corresponding to such period.

None of these payments is subject to income tax. If the employer does not make the payment on time, the worker will be entitled to receive an additional day's salary for each day of delay.

### Social Security Obligations: Law 87-01

On 10 May 2001, Law 87-01 on Social Security was enacted. This statute modifies completely the social security system in the country, which was based on Law 1896 on Social Security Dominican Institute ("IDSS") and was obsolete and inefficient. Its purpose is to provide mandatory and universal coverage under non-discriminatory conditions to all Dominican nationals and foreigners residing in the country against risks of old age, disability, old age unemployment, sickness, maternity, childhood and labour risks.

The implementation of this new legal framework is a great challenge for the Government, employers, and the whole population, and it will signify a gradual process that will certainly require several years before it may be fully put into effect. The law provides a transition period of ten years for the gradual construction of the new social security system.

*a) Dominican Social Security System.* Law 87-01 creates the Dominican System of Social Security ("SDSS"), formed of a complex framework of State, mixed and private agencies, such as the National Council of Social Security (policy-making organ), Treasury of Social Security (to collect contributions, distribute and pay financial resources), Superintendence of Pensions, Superintendence of Health and Labour Risks, National Health Service, Pension Funds Administrators, Health Risks Administrators, Providers of Health Services, etc.

It regulates the functioning of all these entities, establishing the respective rights and obligations of all participants, including the State, employers and beneficiaries.

*b) Categories and Financing.* Law 87-01 sets forth three regimes for the payment of social security obligations:

- Contributive regime, which applies to workers in public bodies and private companies and shall be financed jointly by employers and workers;

- Subsidised regime, which applies to unemployed or disabled persons and shall be financed by the State; and
- Mixed regime, which applies to independent professionals, and shall be financed by the beneficiary and the State.

Under the contributive regime, coverage is provided as follows:

1. Insurance of Old Age, Disability and Survival (Pensions),
2. Health Insurance (for the worker and his family), and
3. Labour Risks Insurance.

The employer shall finance 70% of the cost of pensions and health insurance, while the worker will contribute the remaining 30%. The employer shall finance 100% of the insurance against labour risks. Furthermore, employers must pay 0.4% of salaries to contribute to the Fund of Social Solidarity established in the law.

*c) Amount of Contribution.* Pensions shall be financed with 7.5% of the worker's salary. The maximum insurable salary shall be an amount equivalent to twenty national minimum salaries. The employer shall pay 5.37% and the worker 2.13% of the above costs.

Health insurance shall be financed with 10% of the worker's salary. Here the maximum insurable salary shall be an amount equivalent to ten national minimum salaries. The employer shall pay 7% and the worker 3% of the above costs. However, Law 87-01 provides for a gradual process of five years before reaching that level of contribution, which is currently in its second year and is paid as follows: 2.13% for the employer and 5.37% for the workers, for a total of 7.5%.

Labour Risk Insurance, which covers accidents at the place of work or work-related illnesses, shall be financed with 1% of the worker's salary, plus an additional contribution ranging up to 0.6% of the salary, depending on the type of activity and level of risk at work, all of it at the employer's charge. It should be noted that the law provides for the possibility of a reduction of the applicable rates as an incentive to the improvement of safety conditions at the installations of the company.

*d) Obligations of Employers.* Employers are obliged to make the respective payments to the Treasury of Social Insurance within the first three working days of each month. They are also obliged to register workers with the SDSS, and to give notice of the salaries and their amendments. They will be liable for the damages caused to the worker and his family for the failure to comply with their legal obligations.

*e) Elimination of Double Insurance.* Before the passing of Law 87-01 employers and workers were obliged to make contributions to IDSS, but due to the deficiencies of the public system, many employers paid in addition private insurance to their employees. From November 2002 this situation will change, because one of the fundamental principles of the new social security law is the prohibition of double insurance affiliation.

# 3 ENVIRONMENTAL PROTECTION

## LAW 64-00

The legal framework that had provided for environmental protection in the Dominican Republic before the year 2000 was comprised of several special laws, presidential decrees, resolutions and administrative measures, which were often contradictory and lacked a truly scientific character. Therefore, although comprehensively regulated, natural resources were not effectively protected in the country. After the signature and ratification of several international agreements, such as the Vienna Convention (Ozone Layer Protection), the Rio Agreement (Biological Diversity) and other important agreements, one of the main challenges of the Dominican Republic was the modernisation of its policies and laws on environmental protection.

In October 1999 a bill for a General Law on Environment and Natural Resources was submitted to Congress approval, to be passed as Law 64-00 on 18 August 2000. In addition, special laws in areas such as tourism, electricity and telecommunications, pay particular attention to environmental concerns.

## PRINCIPLES AND OBJECTIVES

Law 64-00 recognises the importance of the protection, preservation and sustained use of natural resources for the well-being of humanity, underlining the need of special protection for the unique, but fragile, threatened and deteriorated, natural resources of the country, and of urgent measures to correct the deforestation and dry conditions currently prevailing throughout the national territory, and to prevent, control and repair the degradation of the environment.

Under Law 64-00 the effective protection of the environment is placed as an essential duty of the State, which must for such purposes adopt an integral policy to be executed with the participation of all institutions related to natural resources, as a way to concentrate all, until then scattered, efforts, and thus ensure the effectiveness thereof.

The State assumes the responsibility of protecting and restoring the environment, and shares it with society in general and with each individual in particular. In this manner, the law provides for the mandatory inclusion of environmental programs in all social and economic development programs.

Furthermore, the law recognises the principle of precaution by providing that “lack of scientific absolute certainty shall not be called as a reason not to adopt preventive effective measures in any activities having a negative influence on the environment”. The main objective of Law 64-00 is “to provide rules for the protection, improvement and restoration of the environment and natural resources, by ensuring the sustained development thereof”.

Law 64-00 regulates soil, water and air contamination, dangerous products, elements and substances, domestic and municipal waste, human settlements and sonic contamination. It also regulates the granting of rights by the SEMARN and/or municipal authorities for the use of natural resources, including the use of soil, water, coastal and sea resources, forests, caves and mineral resources.

## THE MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

The administration of the environment, ecosystems and natural resources is placed under the responsibility of the Ministry of Environment and Natural Resources (“Secretaría de Estado de Medio Ambiente y Recursos Naturales - SEMARN”), created by Law 64-00 for such purposes. Its main tasks are to draft, execute and supervise the application of national policies on environment and natural resources, and to ensure the preservation, protection and sustained use of natural resources, the improvement of soil, air and water contamination rules, the proper exploration and exploitation of mineral resources, the preservation of coastal and sea resources, and the establishment of general environmental rules for human settings and industries.

Existing environment-related institutions and/or attributions created by special measures, such as the Natural Resources Office of the Ministry of Agriculture and the Earth Crust Protection Office of the Ministry of Public Works, have been transferred to the SEMARN.

In this manner, environmental aspects of all economic or human activities will be, controlled by the SEMARN, which will act by way of authorisations, supervision, recommendations or consultations, in co-operation with other government, municipal and civil authorities and institutions, to ensure the comprehensive protection of natural resources in the country.

On the other hand, the National Council of Environment and Natural Resources will be an organ formed of State and civil society members with the task of programming and evaluating environmental policies and of establishing the national strategy of biodiversity preservation.

## INSTRUMENTS OF ENVIRONMENT ADMINISTRATION

Law 64-00 has a predominantly technical and scientific character. Therefore, the basic instruments for the establishment of environment policies are the studies of environmental impact evaluation and environmental reports.

In this regard, any industrial activities undertaken in the country must be provided with an environmental license, which certifies that the respective environmental impact evaluation has been made, and that the activity, work or project may be carried out under the conditions set in the environment administration program established therein.

Other instruments of environment administration are environmental planning, the national plan of territorial organisation, the national system of protected areas, the national information system on environment and natural resources, environment supervision, environmental education, scientific and technical investigation, incentives, the national fund for environment and natural resources, and the declaration of emergency areas.

## OBTAINING ENVIRONMENTAL PERMITS AND LICENSES

Environmental licenses and permits must be obtained by companies interested in executing works or projects that may affect, in any manner whatsoever, natural resources, environmental quality or the health of the population, including its psychological and moral well-being.

Resolution 05/2002 of the Ministry of Environment of 18 March 2002 creates the Regulations of Environmental Permits and Licenses, the Classification of Works, Activities and Projects, and the Procedures for Environmental Permits for Existing Establishments and for Studies of Environmental Impact.

### a) Projects Requiring Environmental Permits or Licenses

Article 41 of Law 64-00 designates the projects that have to be subject to the process of environmental impact evaluation. In general terms, there are for the purposes of the environmental administration four categories of projects.

*Category A Projects.* These are projects, works or activities with complex environmental impact, which may have regional and even national effects. They are projects of great size having a strategic nature from the economic and social standpoint. Their promoter must file an environmental license request based on an exhaustive Study of Environmental Impact.

*Category B Projects.* These have significant environmental impact, but limited to the area of the project and their zone of direct influence. Their promoter must file an environmental permit request based on a Declaration of Environmental Impact, but additional environmental studies may be required.

*Category C Projects.* These have a limited potential environmental impact that may be easily identified and corrected. Their promoter must file an environmental permit request based only on a Declaration of Environmental Impact.

*Excluded Projects.* Projects, works or activities that are not expressly mentioned in Law 64-00 and that have not been included by the regulations in any of the above-mentioned categories, do not have to follow the environmental evaluation process. They do not require any environmental permit, but their promoter may request a Certification of Exclusion to the Ministry of Environment

### b) Procedures

Requests are made in writing to the Ministry of Environment, and they have to be joined by the respective forms according to the category of the project (Form of Previous Analysis for Projects in category A and Form of Declaration of Environmental Impact for Projects in categories B and C) and by the documents required in the forms.

This first stage may end with a Declaration of Non-Significant Environmental Impact, which recommends the issuance of the environmental permit. However, when Studies of Environmental Impact or Additional Environmental Studies are

required, at the end of this phase SEMARN delivers to the promoter the terms of reference for the elaboration of such studies. Environmental studies must be made by an interdisciplinary group of specialists, whose professional qualifications will depend on the nature of the study. These consultants must be registered with SEMARN.

SEMARN will decide on the granting of the permit or license based on the recommendation made by the Evaluation Committee pursuant to the Technical Report, which verifies whether the studies filed by the promoter comply with the terms of reference, and taking into account the comments of the interested parties and the public in general, as applicable.

After the environmental license or permit has been granted, the promoter must comply with the program of environmental management set forth therein, being subject in the event of non-compliance to the sanctions provided in the law.

The terms established for the different phases of the procedure are the following:

- 1 Previous analysis and review of the Declaration of Environmental Impact, 21 days from the date of filing;
- 2 Elaboration of the required environmental studies by the promoter, not more than one year after the date of delivery of the terms of reference;
- 3 Review of the Study of Environmental Impact or Additional Environmental Studies and preparation of the Technical Report, including the stage of public consultation, 90 days after the date of filing of the studies; and
- 4 Taking of decision, 15 days after the delivery of the Technical Report.

### c) Costs

- Request of environmental permit or license: 1/3 of a monthly minimum wage.
- Request of Certificate of Exclusion: one monthly minimum wage.
- Issue of environmental license: 15 monthly minimum wages plus an amount calculated pursuant to the estimated initial investment of the project.
- Issue of environmental permit: 5 monthly minimum wages plus an amount calculated pursuant to the estimated initial investment of the project.

Furthermore, the promoter is liable for all costs resulting from studies or reports, from the execution of mitigation measures and the environmental management program, and from any required publications, notifications and public hearings.

In addition, in order to ensure that the environmental management program established in the environmental permit or license is put into effect, the promoter must provide a performance bond for a sum amounting to ten percent of the total costs of the works or investments required to comply with the program.

## SANCTIONS

Law 64-00 provides administrative and criminal sanctions for those who violate its provisions. Administrative sanctions may be applied by the SEMARN and include fines, as well as suspension or closure of operations.

Law 64-00 creates the notion of “environmental crime”, committed by any person who, knowingly or intentionally, violates its provisions and application rules.

Activities such as alteration of, or damages to, protected areas, cutting or destruction of trees in protected forests, capture or damage of endangered species, illegal disposal of toxic waste, etc., constitute environmental crimes that may be punished with fines of up to 10,000 minimum salaries and prison of up to three years, as well as obligation to repair damages, closure of establishment, withdrawal of permits, etc.

Tort liability for environmental damages arises whenever damages to the environment or to third parties are caused by the non-compliance with environmental laws. Criminal sanctions may be applied by the Court of First Instance, at the request of the Environment Attorney's Office, an agency created by the law as a department of the General Attorney's Office to represent the interests of the State and society in all procedures of environmental laws violations.

### LAW 202-04 ON PROTECTED AREAS

In the year 2004 was enacted Law 202-04 on Protected Areas, which was subject to a lot of questionings by different sectors of society. An annulment appeal was even filed with the Supreme Court of Justice against this statute on the grounds of being contrary to the Constitution. This appeal was rejected in 2005.

### INTERNATIONAL AGREEMENTS

It is also worth mentioning that the Dominican Republic is a member of several environmental conventions, agreements and protocols originating mostly within the framework of the United Nations Environment Programme.

These agreements may in one way or another have an influence in business activities:

- Basel Convention on Control of Cross-border Movements of Dangerous.
- Vienna Convention on Protection of the Ozone Layer.
- Montreal Protocol on Substances Damaging the Ozone Layer.
- United Nations Frame Convention on Climate Change.
- Kyoto Protocol of the United Nations Frame Convention on Climate Change.
- Convention of Biological Diversity.
- Cartagena Protocol on Biotechnology Safety.
- Convention on International Trade of Endangered Species.
- United Nations Convention on Fight against Desertification and Dry Conditions.
- RAMSAR Convention on Wetlands.
- Convention for Protection and Development of the Marine Resources in the Wider Caribbean Region (Cartagena Convention).
- Protocol on Sea Pollution Sources from Terrestrial Sources and Activities.
- Protocol on Specially Protected Areas and Wildlife in the in the Wider Caribbean Region (SPAW).
- Protocol on Fuel Spills.
- International Convention for the Prevention of Marine Pollution from Ships (MARPOL).

## 4 INTELLECTUAL PROPERTY PROTECTION

- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade.
- Stockholm Convention on Persistent Organic Pollutants.

The Dominican Congress has already ratified most of these international instruments, which are thus already in force.

The comprehensive reform of intellectual property protection in the Dominican Republic, which took place in the year 2000, has been a great achievement towards the modernisation of the business legal framework in the country, and a significant step towards the fulfilment of our WTO obligations. The new laws on intellectual property conform to, and have been inspired on, the WTO agreement on Trade Related Aspects of Intellectual Property (TRIPS), as well as other international treaties and organisations to which the Dominican Republic belongs. With the approval of the Free Trade Agreement between the Dominican Republic, the United States of America and several countries of Central America, the Intellectual Property legal framework of the country will be modified accordingly.

### INDUSTRIAL PROPERTY: LAW 20-00

Law 20-00 of May 8th, 2000 on Industrial Property substituted Law 4994 on Patents of Invention and Law 1450 of 1937 on Trademarks and Trade Names. Its main purpose is to provide a legal framework that contributes to the transfer and widespread of technology for the mutual benefit of producers and users of technical know-how, and that protects effectively industrial property rights, while achieving a balance between the rights and obligations of holders of industrial property rights that promotes the social, economic and technological development of the country.

Law 20-00 conforms to the TRIPS and other international agreements. It provides for instance that classifications for the purposes of registration will be made pursuant to internationally recognised classification systems: for patents and utility models applies the Strasbourg Convention of 24 March 1971, for industrial designs the Locarno Agreement of 8 October 1968, and for trademarks the Nice Agreement of 15 June 1957.

The government agency charged of granting patents and registering industrial property rights is the National Office of Industrial Property (“Oficina Nacional de Propiedad Industrial-ONAPI”).

Civil and criminal sanctions to violations of industrial property rights may be applied by judicial courts and include compensatory damages, as well as fines of ten to fifty minimum salaries and/or prison of up to two years.

Presidential Decree 599-01, which substituted Decree 408-00 of 11 August 2000, provides the application regulations of Law 20-00.



## a) Patents

Patents may be obtained to protect inventions, utility models and industrial designs.

Inventions are defined as any idea or creation of the human intellect, whether related to products or processes, capable of being applied to industry. Not patentable subject matter includes:

1. Discoveries already existing in nature, scientific theories and mathematic methods,
2. Solely aesthetic creations,
3. Presentations of information,
4. Computer programs,
5. Therapeutic, surgical or diagnostic methods for human or animal treatment,
6. Living matter and substances already existing in nature, and
7. New uses of patented products or processes.

Furthermore, inventions whose exploitation goes against public order or moral, or which may be clearly prejudicial to health, human life or the environment, may not be patented or published. The same goes for plants and animals, as well as for essentially biological processes for the production thereof. In this regard, only non-biological or microbiologic process may be patented, while vegetable inventions will be regulated by special legislation.

Inventions must be of practical industrial use: capable of being produced or used in any of the types of industry, including the service industry.

They must also be novel: be unknown in the body of existing technical knowledge, which comprises anything that has been published or made available to the public anywhere in the world, whether by written publication, oral disclosure, commercialisation, use, or any other method, before the date of the local or (when applicable) foreign patent application.

Disclosure made within one year prior to the patent application is not taken into account, provided it has been made directly or indirectly by the inventor or his/her representatives, or resulted from breach of trust or contract, or illegal acts, committed against them.

Furthermore, inventions must show an inventive step: they must not be capable of being deduced, by a person with knowledge in the technical field, or from the respective body of existing technical knowledge.

Patent applications may be filed with the National Office of Industrial Property, and must contain the following elements:

- Identification of the inventor, applicant (if different) and legal representatives;
- Proof of title over the invention;
- Name, description, one or more claims, drawings and summary of the invention; and
- Payment of respective fees.

Applications have priority over later applications regarding the same invention. The date of application is that of filing when the filed application complies with

certain basic requirements set forth in the law. An earlier application is irrelevant when an inventor has priority rights over his invention, by virtue of a patent application filed in a member country of international organisations to which the Dominican Republic belongs, or which grants reciprocity to Dominican inventors, but only for a period of one year after having filed for a patent abroad.

The National Office of Industrial Property has a 60-day term after the date of filing to determine whether the application complies with the formalities set forth in the law (“examen de forma”). In the event of non-compliance, the applicant will be asked to complete the application within a two-month period. A lack of timely response will be deemed as a waiver of the application. If the lack relates to basic requirements such as invention description or claims, the date of the application will be that of filing of the lacking information or documents.

The patent application will be published 18 months after the date of filing, and any person may file his/her grounded objections to the granting of the patent within 60 days thereafter, to which objections the applicant may respond within sixty days after receiving notice thereof.

The request will be examined (“examen de fondo”) after payment of the respective fees, which must be made within twelve months after publication. The National Office of Industrial Property will determine, based on the respective legal provisions, any international agreements, any objections that may have been filed and experts reports if necessary, whether the invention may be patented.

Patents may be granted for all, or only a part, of the requested claims. Rejections must be duly justified. Patents are published in the Bulletin of the National Office of Industrial Property, and all documents related thereto are public and may be consulted by any interested party.

Patents are granted for 20 years, and during that period the patent holder is entitled to exclusively exploit the invention protected thereby and to object to any acts of third parties that may affect his/her rights.

Law 20-00 provides for a reduction of patent fees for up to 10% of normal application and annual rates when the own inventor has filed the application or obtained the patent, and his economic situation, as verified by the National Office of Industrial Property, does not allow him to cover the complete costs to apply for, or maintain, the patent.

## b) Trademarks

Law 20-00 protects all types of trademarks, including collective marks and certification marks, providing a wide definition thereof.

Registration grants the exclusive right of use over a trademark. The period of previous use (longer than six months) determines priority for registration. Priority rights for trademarks registered abroad are also recognised. New trademarks are registered on behalf of the first person that first files for registration.

Among the signs that may not be registered, we find some prohibitions that are related to the sign itself, such as the following:

- Signs that may be used in commerce to describe the product,
- Generic or scientific denominations of the product, colours, etc.,
- Signs contrary to public order or moral,
- Signs that make ridicule of people, religions, countries or others,
- Signs that may deceive the public as to the nature or qualities of the product, etc.

Other prohibitions are related to existing rights, including the following:

- Signs similar to registered (or already in-use) trademarks for similar or related products, or similar to registered labels, commercial names or emblems,
- Signs copying, imitating or translating notorious signs, when the similarity may lead to confusion,
- Signs that affect the personality rights of third persons, or the name, image or prestige of companies or organisations,
- Signs that violate existing intellectual property rights, etc.

Registration applications may be filed with the National Office of Industrial Property, which after having verified within the following fifteen days that the request complies with the respective formalities and other requirements set forth in the law, gives notice of its decision to the applicant. If the office has decided that the trademark may be registered, it orders its publication, and third parties may object to registration within forty-five days thereafter. After the expiration of this term, the office decides on the objections and grants or rejects the request.

Registration is granted for a period of 20 years, renewable for consecutive 10-year periods. Renovation applications must provide proof of use of the trademark.

Registration grants the exclusive right of use over the trademark and entitles its holder to object to any use of the registered trademark made in any manner whatsoever by third parties, apart from usual commercial indications.

Furthermore, the trademark holder cannot object to the use of its trademark by a third party, in relation to legitimately marked products that the holder itself or a person with the holder's consent or economically related thereto, has put into commerce, whether in the country or abroad, provided that the products or their packaging or labelling has not suffered any modification, alteration or deterioration.

### c) Trade Names

Law 20-00 protects distinctive signs such as trade names, labels, emblems, slogans, appellations of origin, etc.

The exclusive right to use a trade name does not arise from registration, but from its first commercial use. Protection is granted in the absence of registration and ends with the abandonment of the name, which takes place when the name has stopped being used by its holder for more than five years. However, for commercial slogans, the right of exclusive use arises from registration.

Trade names cannot be formed of indications or signs that go against public order or moral, or that may create confusion among the public regarding the

nature, activities or any other aspect related to the company or establishment associated thereto, or to its products or services.

Registration is not mandatory, and provides for a presumption that its holder has legitimately adopted and used the trade name. The registration procedure is similar to the one established for the registration of trademarks. Registration is granted for a renewable period of ten years, but for appellations of origin registration is indefinite.

#### d) Costs

ONAPI has fixed the fees related to the recognition and exercise of industrial property rights, as mandated in Law 20-00.

### COPYRIGHT: LAW 65-00

Article 8 of the Dominican Constitution establishes as a basic human right the recognition and protection of ownership rights over scientific, artistic and literary works. Copyrights protection had been ensured by Law 32-86 on Intellectual Property Rights, which was at the time a modern legislation that complied with the mandates of the Universal Convention on Intellectual Property Rights, to which the Dominican Republic is a member. Law 32-86 granted protection to all kinds of creative work, and provided for their registration with the National Office of Copyright (ONDA), which was entitled to take any measures to ensure the protection of intellectual property rights in the Dominican Republic.

However, the protection granted by this legislation was not effective enough to ensure an adequate protection of intellectual rights, and the Dominican Republic was facing a lot of international pressure to put into force appropriate tools to fight piracy.

Furthermore, upon becoming a member of the WTO, the country had to conform its national legislation to the provisions of the TRIPS agreement.

On 21 August 2000 a new Law on Copyright No. 65-00 was passed. The main purpose of this legislation is to provide a legal and institutional framework that conforms to the TRIPS agreement, and ensures a comprehensive protection of holders of intellectual property rights in the Dominican Republic while taking into account the best national interest. Presidential Decree No. 362-01 of 14 March 2001 contains the application regulations of Law 65-00.

Furthermore, the country has ratified the following international treaties in the area:

- 1886 Bern Convention on Protection of Literary and Artistic Works
- 1952 Universal Convention on Copyright.
- 1961 Rome Convention on Protection of Performers, Producers of Phonograms and Radiobroadcasting.
- 1996 WIPO Copyright Treaty and WIPO Performance and Phonogram Treaty.

#### a) Protected Works

Law 65-00 protects any original intellectual creation, whether literary, artistic or scientific, that may be fixed, transmitted or copied by any existing or future printing,

reproduction or divulgation methods. It also protects independent creations deriving from original works, such as those resulting from adapting, translating or in any other manner transforming the original work.

Law 65-00 provides a non-limitative list of protected works, such as written works (books, prospectuses, magazines, etc.), conferences and speeches, dramatic and musical plays, works of choreography and pantomime, musical compositions, audiovisual works, drawings, paintings, architectural, sculpture, carving and other artistic works, photographs, applied arts, maps, illustrations and plastic works related to geography or other sciences, computer programs and databases.

Furthermore, Law 65-00 protects, and regulates the exercise of related or neighbouring rights, in order to fight effectively the illegal retransmission of TV programs and the unlawful reproduction of music productions that was one of the main gaps under our previous legislation. Related rights are granted to performing artists for their performances, phonogram producers for their recordings, and broadcasters (including original broadcasts by way of cable, optical fibre or other) for their radio and television programs.

Law 65-00 protects works from authors having Dominican nationality or residing in the country, or who are nationals or residents of countries belonging to the international treaties ratified by the Dominican Republic, as well as works whose first publication has been made in the country (or in a member country of ratified international treaties) or that have been published here (or in a member country of ratified international treaties) thirty days after their first publication. In the absence of international treaties, protection will still be granted to foreign works, but subject to reciprocity.

## b) Content of Copyright

Authors are the original holders of intellectual property rights over their creations. Any rights granted thereafter to other parties, by virtue of law or contract, have a derivative nature.

Authors have both moral and economic rights over their creations. Moral rights entitle authors to the following:

- To get the credit for their creation,
- To object to any changes that may affect the merit of their creation,
- Not to publish their creation or maintain it anonymous, and
- To take their creation out of circulation provided they have compensated any damages arising therefrom.

Moral rights are inherent to authors themselves. After their death, these rights (apart from the right to take the creation out of circulation) pass on to their heirs, or to the State in the absence of legal heirs.

Economic rights allow authors to exploit their creation through any existing or future means of utilisation, publication, divulgation, copying or distribution, and to grant licenses to other parties for such purposes. Means of utilisation are independent from each other, and authors may thus assign their copyrights separately

for each method of utilisation. The law regulates the different types of contracts and licenses for the transfer of copyrights.

After the death of the author his/her heirs become the holders of copyrights over his/her work for a period of fifty years.

The total or partial distribution, reproduction, publication or any other manner of utilisation of creative works without the consent of the author or copyright holder is illegal and may be subject to civil and criminal sanctions.

In order to ensure the protection of his/her rights, the author or copyright holder may, for the reproduction or divulgation of his/her work, apply or require the application of methods, systems or devices (such as coded signals) that prevent non-authorised divulgation, transmission, reproduction or modification of the work.

### c) Registration

Copyrights arise with the creation, and are independent from their material support. Therefore the registration formalities provided in Law 65-00 are not mandatory, having the sole purpose of granting more publicity and protection to the holders of intellectual rights, without affecting their existence or the exercise of the rights arising therefrom.

In this regard, the main purpose of the registry is to grant publicity to intellectual property rights and to the agreements relating thereto, and to provide guaranties of authenticity and security to holders of copyrights and related rights, and to the agreements relating thereto.

Any creative work protected by copyrights, artistic performances, phonograms and broadcasting emissions protected by related rights, as well as any agreements in respect thereto and any judgements or decisions affecting such rights, may be registered. In order to be registered, samples of the work must be deposited at the Registry. Associations for the collective management of copyrights, which are regulated in detail by Law 65-00, must also register with the ONDA.

Presidential Decree 362-01 provides the requirements to be complied with in order to register copyrights and related rights.

### d) National Copyright Office

The National Copyright Office (“Oficina Nacional de Derechos de Autor-ONDA”) is the national authority charged of ensuring the protection of copyrights, and the enforcement of the law. For these purposes, the law has granted to it ample administrative, supervisory and arbitrage attributions. Its supervisory functions are reinforced by the obligation for all importers, distributors and traders of goods, services and equipment related to intellectual property or related rights to be registered with the ONDA.

ONDA may also take any precautionary measures that may be necessary to prevent the violation of copyrights.

### e) Sanctions

Law 65-00 provides administrative, civil and criminal sanctions to the violations of copyrights, among which the affected party may choose to protect its interests.

## 5 BUSINESS TRANSACTIONS

Criminal sanctions include fines and prison of up to three years. Administrative measures may be applied by the ONDA and include warnings, fines, temporary or permanent closure of establishments, seizure of illegal copies or machinery used for their production, destruction of illegal samples and others.

### PURCHASE OF REAL ESTATE

The acquisition of real property rights by foreigners is not subject to any special condition, falling under the same legal regime applicable to Dominican nationals.

#### a) Registration System

It is always advisable to verify directly the status of the property at the Registrar's offices, whose records are open to any interested party, and even obtain a written confirmation on the result of these researches, before purchasing the property. This is usually achieved through the request of a certification on the status of the property to the Registry of Titles.

This system protects the buyer against any sale or mortgage that, although previously signed, has not yet been registered when the buyer files his contract for registration.

For these same reasons, the prompt registration of the sale is very important. In order to do so, the buyer must file at the Registry of Titles an original of the purchase agreement, which should be legalised by Public Notary, together with the Property Certificate issued on behalf of the seller, which will then be cancelled and exchanged for a new one on behalf of the buyer.

#### b) Transfer Duties

The registration of real property transfers at the corresponding Registrar of Titles requires the payment of the following taxes and duties:

1. 3% of the market value of the property; and
2. Stamps under Law 80-99, calculated as follows: market value minus 20,000, and the result/1,000 x 13 + 232.00. This value is subject to annual inflation adjustment.

Another aspect to take into account is Law 18-88 of 5 February 1988 on Tax on Luxury Houses and Urban Lots, amended by Law 288-04 on Tax Reform, which establishes an annual tax on houses and apartments whose value exceeds five million pesos amounting to 1% of the surplus of such sum. The amendment enlarges the scope of this tax by including commercial properties and urban lots that were previously excluded. However, property owners older than 65 years who have owned the property for at least 15 years and who do not have any other property are exempted from the payment of this tax. Furthermore, rural land used in agriculture, as well as equipment, machinery, generators, goods and other personal property located in the properties, is also exempted.

## COLLATERALS

The Civil Code, the Commercial Code, the Land Registration Law and other special laws regulate the granting of mortgages and liens.

### a) Mortgages

In general, any kind of real property right may be mortgaged, whether ownership, use or exploitation rights. Fixtures are deemed to be real property and as such can also be mortgaged. Mortgages on future real property are not valid, but creditors' interests extend to improvements made to the property after the mortgage is granted.

The secured obligation must be valid, and its nullity would also invalidate the mortgage. The secured obligation may however be eventual or conditional, in which case the mortgage would also be so. Furthermore, mortgages may be granted as security for future obligations, such as financial instruments like credit lines and credit cards.

For the mortgage to be valid and binding upon third parties the debtor must have a duly registered title. Persons with conditional property rights may grant mortgages under the same conditions that affect their rights.

Mortgages must be registered at the Registry of Titles of the place where the property is located by filing the mortgage agreement and the Property Certificate. The Registry makes a note of the mortgage on the Property Certificate and issues a Mortgage Certificate on behalf of the creditor. The date of registration is the date of filing, although the material issue of the certificates takes place a few weeks later.

The following taxes must be paid upon registration:

- 5/1,000 of the loan amount;
- 12% of (i);
- Internal Revenue Stamps of RD\$8.00 for the first RD\$2,000 and RD\$2.00 for every 1,000 or fraction; and
- Stamps under Law 80-99, calculated in the same manner as for real property transfers.

The registration gives the creditor priority rights over all other creditors who have not registered their security interest on the property before him. In this case the creditor will be entitled to be paid first from the proceeds of the sale of the property, with the sole exception of privileged creditors (employees, tax office, legal fees, etc.).

Any creditor with a mortgage may initiate a procedure to seize the property, being bound to comply with certain publicity and notice requirements in order to allow other creditors to join the process. All registered creditors must be notified, but whoever registered his security interest first recovers first. The creditor may, by virtue of a "persecution right" granted by the law, seize the property in the hands of third parties who may have gained title after the mortgage was registered.



## b) Liens

Liens on personal property may be non-possessory and possessory, depending on whether the debtor keeps the goods in his possession or not, but in business practice possessory liens are very rare.

*Registration of liens.* In the case of non-possessory liens certain registration systems are available in order to protect creditors against an eventual transfer or additional lien of the pledged assets by the debtor. In the absence of these mechanisms, the legal presumption that “whoever has possession of a good has title over it” will protect any third party who has acquired the property against the creditor's tries to execute the pledge.

Law 6186 of 1966 regulates non-possessory liens on consumer goods, equipment, inventories and agricultural products. The creditor may register its security interest at the Peace Court, and this registration will allow him to seize and execute the pledged assets, even when they have been transferred to third parties. Furthermore, the registration of additional pledges is forbidden, and the creditor will thus have priority over any other creditors.

Another system that can be used is the one provided by Law 483 on Conditional Sales. The parties may agree that the seller will keep the property rights over the goods until receiving full payment of the sale price, and register such agreement in the office established for these purposes. Upon non-compliance by the debtor, the creditor may as owner recover the goods from any third person.

This registry works better than the one created by Law 6186, and some creditors thus prefer to structure their transactions under this scheme. The only drawback to this mechanism is that the taxes applying to the transfer of property will have to be paid at the time of registration.

Finally, when vehicles are pledged the creditor may, in addition to any other measures, file a transfer opposition to the Vehicle Department, which will then be mentioned in the vehicle registration. There are also registration systems for ships and aircrafts, under Laws 607 and 505, respectively.

*Liens on intangible property.* Liens may be granted on intangible property like stock, securities, credits, bank accounts, contracts, etc. When an intangible is pledged the creditor is required to give notice to the debtor of the pledged obligation. These liens may also take the form of “accessory transfers”, where the debtor transfers intangibles to the creditor as a secondary method of payment. This method is mostly used with receivables.

The creditor wishing to execute a lien on intangible assets (or a possessory lien) has the choice of provoking a public sale or requesting to the court that the asset be transferred to him. In this last case the court appoints an officer to evaluate the assets, and the creditor is bound to pay any difference between the amounts owed and the value of the lien.

# 6 ELECTRONIC COMMERCE

## ELECTRONIC COMMERCE

### Background and Objectives

Law 126-02 on Electronic Commerce, Digital Documents and Signatures was passed on 4 September 2002. The application regulations of Law 126-02 were approved by Decree 335-03 of 8 April 2003, after a consultation process with the participation of international experts, and interested economic sectors.

This legislation is a part of the efforts of the Dominican Government to adapt its legal framework to the new realities and to enable the country to benefit from the wide advantages that new digital technologies offer for promoting economic activity and transacting business within a global context.

It should be noted here that Dominican Republic, aware of the importance of these processes, grants particular attention to global efforts aimed at harmonising legal frameworks in order to encourage the use of the digital vehicle and promote electronic commerce. Therefore, the country had an active participation in the World Summit of the Information Society held in the year 2004. In this regard, on January 2003 took place in the country the Regional Preparatory Conference for Latin America and the Caribbean of that event, where a common position of the countries of the region was established in respect of the topics of the summit.

The legal framework of electronic commerce acknowledges that new technologies are transforming traditional business practices by allowing trade systems to interconnect directly, and that the possibility to make business transaction by electronic means serves to promote the creation and increase of services while reducing transaction costs, thus being a key factor commercial promotion and participation in global markets. Therefore, it recognises that in order to be able to benefit from the advantages of electronic commerce and promote its growth, it is necessary to grant statutory security to such transactions by providing legal recognition of digital signatures and data messages, particularly when the volume of electronic exchange has significantly grown in the Dominican Republic.

More specifically, its objectives are the following:

- To make easier electronic commerce within and among nations.
- To validate inter parties transactions made by using new information technologies.
- To promote and support technological developments linked to electronic commerce, and to promote the use of such services and to spread their use throughout the population.

Law 126-02 is based on the model laws drafted by the United Nations Commission on International Trade Law (UNCITRAL), and regulates the notions of original, preservation, data messages and digital documents in order to provide them with legal force. The application regulations deal with the conditions of use of digital signatures, as opposed to electronic signatures, providing the requirements for the establishment of certification entities and regulating certificates of digital signature and non-registered entities.

## Scope of the Law

a) *Scope of Application.* Law 126-02 applies to any type of information contained in a digital document or data message, apart from obligations of the Dominican State under international treaties or conventions and the announcements that by virtue of law must be printed in certain products because of the risk resulting from their commercialisation, use or consumption.

### b) *Definitions*

*Electronic commerce.* Any business relation, whether contractual or not, build upon the use of one or more digital documents, data messages or any similar medium. Business relations include, without limitation, the following operations: supply or exchange of goods, services or information, distribution or representation agreements, factoring, lease or rent contracts, construction of works, consulting, engineering, license agreements, investment, financing, banking, insurance, exploitation of public services, joint ventures and other forms of industrial or commercial co-operation, and transport of passengers.

*Data messages.* The information created, sent, received, stored or communicated by electronic, optical or similar means, such as electronic data exchange, electronic mail, telegram, telex or fax.

*Electronic data exchange.* Electronic transmission from one computer to another, when the information is organised according to agreed technical rules.

*Digital signature.* Numeric value attached to a data message that, using a known mathematical procedure linked to the key of the sender and the message text, allows to establish that such value has been obtained exclusively with the key of the sender and the message text, and that the initial message has not been amended after the transmission has been made.

*Electronic signature.* Group of electronic integrated data, logically linked or associated to other electronic data used by mutual agreement as means of identification between the sender and receiver of a data message or digital document and that lacks some of the legal requirements provided for digital signatures.

*Legal Recognition.* Law 126-02 grants legal recognition to digital documents and data messages, providing that there shall not be denied legal effects, validity or force to any type of information solely on the grounds that it is in the form of a digital document or data message. Furthermore, any legal requirements of written proof, signature of documents and preservation of originals shall be deemed to be fulfilled when the requirements provided in the law for such purposes in respect of digital documents and signatures have been complied with. In addition, electronic means may be used for the execution of contracts and as evidence in legal proceedings, having the same force as private agreements.

As to digital signature, it is established that it will have the same legal force and

effects of a hand-written signature, provided it fulfils the following requirements:

- It is exclusive to the person using it;
- It is capable of being verified;
- It is under the exclusive control of the person using it; and
- It is linked to the information, digital document or message to which it is associated in such a way that if these are changed the digital signature is altered.

It should be noted that the application regulations of Law 126-02 differs between secure digital signature and electronic signature, establishing that although electronic signatures do not have the same legal force as digital signatures, since they have not been issued by authorised certification entities, they do not lack certain legal value.

The law provides several rebuttable presumptions of integrity, origin, receipt, time and place of sending of digital documents and messages.

## PROVISION OF CERTIFICATION SERVICES

### a) Entities

The application regulations of Law 126-02 provides a system of voluntary accreditation with the regulatory body for providers of certification services, regulating Certification Entities, Registry Units and Providers of Electronic Signature Services.

Certification Entities are national or foreign companies, whether public or private, as well as Chambers of Commerce and Production, with their domicile in the country, authorised by INDOTEL, which are entitled to issue certificates in relation to digital signatures of individuals, to offer and facilitate registration services and chronological records of transmission and receipt of messages, and to perform other functions related to communications based on digital signatures.

Providers of Electronic Signature Services are national or foreign companies, whether public or private, that issue digital certificates lacking the legal force of digital signatures, notwithstanding other services that they may perform.

The request for authorisation to provide services of digital certification is voluntary, and the applicant must fulfil the following requirements:

- To prove the reliability of their services in accordance with the technical norms and procedures approved by INDOTEL;
- To provide a reliable consultation service of registries of issued certificates;
- To employ qualified personnel to provide the concerned services;
- To use reliable systems and products that guarantee the security of their certification processes;
- To have a liability insurance; and
- To have the necessary technological capacity to perform certification activities.

### b) Certificates

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

- Digital signature of the Certification Entity;
- Name and electronic address of certificate holder;
- Identification of certificate holder;
- Name, electronic address and place of performance of activities of the Certification Entity and background of authorisation;
- Public key of certificate holder;
- Methods used to verify the signature of certificate holder;
- Serial number of certificate;
- Date and time of issue and expiration of certificate; and
- Identification of certification policy used for the certificate.

In order to issue certificates of secure digital signature the identity of the applicant must be duly verified, through the card of personal and electoral identity, passport or other official document.

## REGULATORY BODY

The Dominican Telecommunications Institute (INDOTEL) is the entity that supervises and controls the activities performed by certification entities. Some of its functions are the following:

- To authorise the establishment of certification entities;
- To supervise that certification entities function properly and provide efficient services and comply with the respective legal provisions;
- To make the audits mandated by law;
- To define by resolution the ideal technical requirements for the performance of activities developed by certification entities;
- To revoke or to suspend the authorisation to operate as certification entity;
- To request certification entities to supply information related to their activities;
- To impose sanctions to certification entities for non-compliance; and
- To approve internal regulations for providing certification services.

# LEGAL FRAMEWORK FOR FOREIGN PERSONS

The foreign investor whose business or activity requires him to visit, or move his residence to, the Dominican Republic, will find in this chapter information on the main laws and provisions that will regulate his entry and stay in the country, as well as his civil and family life in the Dominican territory.

## 1 ENTRY AND RESIDENCE

### ENTRY REQUIREMENTS

In general, foreign citizens must obtain a Dominican visa in order to enter the country. Visas are classified in Diplomatic, Official, Courtesy, Business, Dependents, Tourism, Residence and Student. The Foreign Service of the Dominican Republic issues these visas abroad or by the Ministry of Foreign Relations in the country.

Citizens of countries that have signed an agreement with the Dominican Republic for the exoneration of visa requirements may enter the country for a period of sixty days, upon the purchase of a “tourist card” at the arrival port for the amount of US\$20.00.

These countries are the following: Antigua & Bermuda, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Brazil, Canada, Croatia, Curacao, Czech Republic, Costa Rica, Denmark, Dominique, El Salvador, Finland, France, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, Italy, Jamaica, Luxembourg, Mexico, Monaco, Netherlands, Paraguay, Poland, Portugal, Principedom of Andorra, Northern Ireland, Norway, Russia, St. Kitts & Nevis, St. Marino, St. Vincent, St. Lucia, Slovenia, Spain, Surinam, Sweden, Switzerland, Trinidad & Tobago, Ukraine, United Kingdom, United States, Venezuela and Yugoslavia.

However, it is always advisable to confirm entry visa requirements with the closest diplomatic or consular representation of the country before traveling to the country, as country listings may be subject to change from time to time.

## OBTAINING DOMINICAN RESIDENCE

Foreigners may acquire the right to reside in the country in the following manner:

1. Obtaining a residence visa from the Dominican Consulates abroad or the Ministry of Foreign Affairs, and
2. Obtaining a provisional and then permanent residence card from the General Immigration Office.

### a) Residence visa

The applicant of a residence visa must file the following documents:

1. Letter of request
2. Duly completed Form 509-Ref.
3. Letter of guarantee from a Dominican person or company, or a foreigner residing in the country.
4. Police Record.
5. Health certificate.
6. Work contract, bank letter or other proof of funds.
7. Seven frontal photos 2" x 2" and three side photos.
8. Birth certificate.
9. Passport photocopies.
10. Certification from the General Immigration Office of the applicant's last date of entry in the country.

If the applicant wishes to obtain a residence visa for his/her spouse, the same documents must be presented in relation to the spouse, apart from those indicated in points 3 and 6. Furthermore, the applicant must file a copy of the marriage certificate. For children, it is enough to comply with the requirements 7, 8 and 9.

The procedure takes from 10 to 12 weeks. The residence visa is valid for 60 days, and within this term the applicant must file a residence request with the General Immigration Office.

### b) Residence Card

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

1. Request letter
2. Duly completed Form B-1-A.
3. Photocopies of passport and residence visa.
4. Certification of residence visa issued by the Ministry of Foreign Affairs.
5. Letter of guarantee from a Dominican citizen or resident legalized by Public Notary.
6. Six 2" x 2" photos (four frontal and two side photos).

7. Police record issued by the National Police.
8. Sworn statement of financial solvency of the applicant, confirmed by two witnesses.
9. Payment of the following amounts: RD\$1,800 for medical check, RD\$500 for application fee, RD\$250 for stamps and RD\$20.00 for the form B-1-A.

The provisional residence card may be obtained within three to four months and is valid for one year. Upon its expiration the applicant may request a permanent residence card, which is valid for renewable periods of three years. Foreigners with permanent residence in the country may obtain a personal identity card.

All documents issued abroad which are filed at the Ministry of Foreign Relations or at the Immigration Office must be legalized by the competent authorities of the country of origin and by the closest Dominican Consulate. Furthermore, a Judicial Interpreter must translate documents not written in Spanish.

### RESIDENCE PROGRAM FOR INVESTORS

The Center for Export and Investment (CEI-RD) has introduced a special program for foreign investors in order to accelerate the process of obtaining Dominican residence.

This program applies to foreign investment made in the country, by a physical or legal person, in the form of a contribution to the capital of a company established in accordance with the laws of the Dominican Republic, for an amount of at least US\$200,000.00 or its equivalent in local currency. The contribution may be made in capital, in kind, in financial instruments or technology, as established in Law 16-95 of Foreign Investment.

The beneficiaries of the program are the foreign investors and their employees (managers, technicians), as well as their families and economic dependents.

The request must be filed with the Foreign Investment Desk of the Immigration Office, which shall issue the residence permit within 45 days at the latest. The documents to be filed with the application are the following:

- a. Application Form of residence for investors, which is available free of charge at the Foreign Investment Desk of the Immigration Office;
- b. Copy of complete original passport, valid for at least three months. If the last entry is not registered in the passport, a certification of the last entry issued by the Immigration Office must be also filed;
- c. Valid entry permit (visa or tourist card);
- d. Original birth certificate;
- e. Proof of Foreign Investment Registration or registration request.
- f. Police Record issued by the competent Dominican authorities or by the authorities of the country of origin if the applicant has been for less than 30 days in the country;
- g. Receipt of payment of medical examinations issued by a physician certified by the Immigration Office;
- h. Eleven 2" x 2" photographs (seven frontal and four side) for persons older



than 18 years. Seven (five frontal and two side) for applicants between 16 and 18 years old, and five (three frontal and two side) for those less than 16 years old;

- i. If the applicant is a shareholder in the company, certified copy of Board Resolution stating his status in the company;
- j. If the applicant is a manager or technician, original work contract or letter of appointment;
- k. If the application includes the spouse and/or minor children, the following documents must be filed in addition: marriage certificate and the documents referred to in a), b), c), d), f), g) and h). For minors, requirement f) is not necessary;
- l. For applicants more than 16 years old four samples of each document must be filed (one original and three copies). Otherwise, it is sufficient to file two sets of each document;
- m. All of the documents issued abroad must be duly translated into Spanish and legalized by the respective Dominican Consulate.

## 2 ACQUIRING DOMINICAN NATIONALITY

Dominican nationality is normally acquired:

1. By being born in the Dominican territory,
2. By having a Dominican parent, or
3. Through the naturalization procedure examined hereafter.

### RESIDENCE REQUIREMENTS

Apart from other special cases provided by law, a foreign person may become a Dominican citizen after a continuous residence in the country of at least two years. This residence requirement is reduced to six months:

1. If the foreigner has fixed legal domicile in the country,
2. If the foreigner owns a business or real state in the country, or
3. If the foreigner has married a Dominican citizen.

Trips abroad of up to a year made with the intention of returning to the Dominican Republic are not considered as an interruption of continuous residence in the country.

### NATURALIZATION PROCEDURE

The naturalization request is made to the President of the Republic via the Ministry of Police and Inner Affairs, and should include the following:

1. Basis on which the nationality is requested.
2. Police record issued by the appropriate authority of the country of origin.
3. Birth certificate.
4. Explanation if the applicant has already changed its nationality.
5. Receipt of payment of taxes of RD\$10.00 at the Tax Office.

6. Five 2" x 2" photos.
7. Any other document justifying the application, such as copy of residence card showing continuous residence in the country; additional letter of guarantee signed with Public Notary by a person guaranteeing the moral and economic solvency of the applicant; copies of real property certificates, if applicable, etc.
8. Two certified letters issued by the Immigration Office of the Dominican Republic, stating that the person is resident in the country and that his/her file contains the letter of guarantee required for the residence.

The President of the Republic grants the nationality by decree, at his sole discretion. After the decree is published in the Official Gazette, the applicant must swear his loyalty to the Dominican Republic, and a mention of this oath is also published in the Official Gazette.

The naturalization procedure lasts from one to two years.

The President may revoke the nationality if the naturalized person changes his legal residence to another country within the year following the date of naturalization, or if he leaves the country for a period of ten years.

## 3 IMPORTANT ASPECTS OF DOMINICAN FAMILY LAW

### MARRIAGE

#### a) Celebration of Marriage

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

1. Original passport and a copy.
2. Letter certifying their single status issued by the appropriate authority in the country of origin and legalized by the Dominican Consulate.
3. Tourist card, residence card or personal identity card, as applicable.

The marriage ceremony is performed by the Civil Status Officer of the place of residence of any of the spouses in the presence of at least two witnesses. The Marriage Act contains the name of the spouses, a declaration that they have been united in matrimony, the date of celebration, and the signatures of the Officer, the spouses and the witnesses.

A religious marriage has the same legal effects than a civil marriage. The minister celebrating the marriage must only remit a copy of the marriage act to the Civil Status Officer within the next three days for the purpose of registration.

#### b) Property Relations of Married Couples

The Civil Code regulates property relations between married couples. The community of property system is the so called "legal regime" which applies automatically to all couples who get married in the Dominican Republic and do not expressly choose another system.

Within the community regime there are three kinds of property:

1. The common property, which belongs jointly to both spouses,
2. The husband's own property, and
3. The wife's own property.

The community is formed by all the personal property of the spouses, whether acquired before or during the marriage, as well as real property acquired during the marriage. Spouses' own property basically includes real estate acquired before the marriage, inherited property and reinvestments of own property.

Until the year 2001, the husband was entitled to manage, and dispose of, all the property, and the wife could not even dispose of her own property without his consent. This situation changed with the passing of Law 189-01 of 22 November 2001, which amended several articles of the Civil Code, granting both spouses the joint administration of common property.

The dissolution of the community, by divorce or death of one of the spouses, will entail:

- The determination of divisible assets,
- The recovery by each spouse (or their heirs) of their own property, and
- The distribution of the remaining common property between the spouses (or their heirs). This liquidation and distribution of the community may be made before Public Notary or, if the parties do not agree, in court.

Couples wishing to adopt a property regime different than the community system can choose any of the additional regimes provided by law, such as property separation, dowry regime, community reduced to earnings, universal community, etc., but they can also choose a foreign law or create their own special system.

In order to do so the spouses must, prior to the celebration of marriage, sign an agreement to that effect before a Public Notary. The Officer performing the marriage must register this agreement in the Marriage Certificate. After getting married the spouses cannot change their regime, and even if they divorce and then decide to marry each other again they have to keep the same property system they had during their first marriage.

## DIVORCE

Divorce may be:

- By mutual consent,
- For specific reason, or
- Special.

### a) Divorce by Mutual Consent

This type of divorce may only take place after two years of marriage and before 30. Furthermore, the husband should not be older than 60 years nor the wife older than 50 years.

Couples who decide to divorce need to sign an agreement before a Public Notary where they declare their intention to get divorced and provide, among other things, for the distribution of property, the custody of children and the

alimony payments. The Judge of First Instance who, after verifying that all formalities have been complied with, issues a judgment admitting the divorce, which cannot be appealed, by any of the parties must ratify this agreement. Afterwards the divorce must be registered, pronounced, and published within certain deadlines.

### b) Divorce for Specific Reason

The divorce for specific reason may be requested in the event of incompatibility, absence, adultery, criminal conviction, bodily harm, abandonment, and alcoholism or drug addiction.

The competent court is the Court of First Instance of the domicile of the defendant spouse. This court, after examining the evidence and hearing the witnesses from each party, orders the divorce on behalf of one of the spouses and decides, among other things, on the custody of children, if any, and on the alimony payments. In general, children younger than four years should remain with the mother, and older children should remain with the parent obtaining the divorce, but the court can always take into account any special circumstances.

Once the term to appeal, which is two months, has expired, certain registration, pronouncement and publication formalities must be fulfilled.

### c) Special or Quick Divorce

Special divorce applies only to foreign or Dominican couples residing abroad that decide to divorce by mutual consent. The spouses need to sign an agreement before a Public Notary or similar officer in their country of residence where, apart from declaring their intention to get divorced and providing for the distribution of property, the custody of children, and alimony payments, they give exclusive jurisdiction over the divorce to the Judge of First Instance. A Dominican Consulate must legalize this agreement.

At least one of the spouses must be present at the hearing, while the other may be represented by a duly notarized and legalized power of attorney. The judge will also require copies of the marriage certificate and the birth certificates of children, if any. If all formalities have been met the judge ratifies the agreement and admits the divorce.

The process at the court, plus the registration, pronouncement and publication of the divorce, takes from one to four weeks. Furthermore, in order to be valid abroad the following authorities must certify the divorce judgment:

- a. The Attorney General Office,
- b. The Ministry of Foreign Relations, and
- c. The embassy or consulate of the country where the divorce is to be valid.

## ADOPTION

Foreign persons that have been married for five consecutive years may adopt minors in the Dominican Republic. This term is three years for Dominican nationals. The Minors Protection Code, contained in Law 136-03, regulates adoption.

Under this statute, the National Council for Child Protection (CONANI) has the role of coordinating adoption procedures.

All adoption requests have to comply with the provisions of the International Convention on Minors Protection and other international agreements, and are handled in the child's interests.

#### a) Types of Adoption

Since the enactment of Law 136-03, Dominican legislation provides only the procedure of privileged adoption, which is irrevocable and creates for the adopted child a family relation that substitutes his family of origin.

It grants the adopted child the same legal rights than a legitimate child. The minor stops belonging to his natural family and becomes a member of the adopting person's family, with all legal consequences resulting therein, such as change of name, rights of inheritance within the adoptive family and vice versa, etc. Privileged adoption can only be granted in relation to minors who are orphans, abandoned or of unknown parents. It may be national or international, depending on whether the adoptive parents are Dominican residents or foreign persons.

#### b) Requirements for Adoption

Persons wishing to adopt a minor in the Dominican Republic must fulfill the following requirements:

- To be at least 30 years old;
- To be married for more that five years, if they are foreigners, and more than three years, if they are Dominicans;
- To be at least 15 years older than the adopted minor;
- To live together in the country with the minor for at least 30 days if the child is more than 15 years old, or 60 days if the child is less than 15;
- To show a declaration of loss of parental authority in the case of abandoned children; and
- If the adoptive parents have children older than 12 years, to present them at the court.

#### c) Adoption Procedure

The adoption request is made to CONANI, and must contain all the relevant information and documentation about the adoptive parents, such as proof of solvency, employment letter with indication of salary and time working for the company, or sworn statement with bank letter, health certificate, police record of the couple not older than three months, photographs, psychological and social studies about the couple made by the competent authorities of their country of origin, official certification of country of origin of the couple stating that the naturalization procedure of the minor will be completed, report on the feasibility of the child's integration into the adoptive family, report on their social and moral standards, marriage certificate legalized by Dominican Consulate and the Ministry of Foreign Affairs, birth certificate, etc.

After the request has been filed and the adoptive parents and child have lived together for the required period, they will be interviewed by CONANI, which will thereafter issue a Physical, Mental, Social and Moral Certification, if satisfied, which has a six-month-validity.

It should be noted that all documents filed with the adoption request must be originals. They have to be legalized by the Dominican Consulate of the country of origin of the applicants and by the Ministry of Foreign Affairs in our country. If they are not written in Spanish, an official translation in the country certified by the General Attorney's Office is required.

The adoptive parents must then file the adoption request with the Court of Minors of the place of residence of the person or entity having the custody over the minor. The Public Defensor of Minors shall render an opinion on the request within the next five days. If approved, the Judge, after reviewing the file and verifying the supporting documents, will issue the judgment within the next ten days. The adoption judgment must then be submitted to the following formalities:

1. Publication in a newspaper of nationwide circulation.
2. Notification to at least one of the adoptive parents and the biological parents.
3. Inscription at the Central Civil Registry.
4. Transcription of the judgment at the respective Civil Office after authorization of the Central Civil Registry.
5. Legalization at the General Attorney's Office, the Ministry of Foreign Affairs and the Consulate of the country of origin of the adoptive parents in order to allow the minor to leave the country, replacing the original birth certificate.

Finally, a copy of the whole file must be deposited with the General Immigration Office, and an interview must be held at this entity, which will then grant the permit allowing the child to leave the country.

Adoption files are kept in record for a period of 30 years. The only persons who may have access to these files are the adopting person, and the adoptive child upon reaching legal age.

## INHERITANCE

### a) Categories of Heirs

Different ranks of heirs are established in order to regulate the transfer of a deceased person's property. The inheritance shall be distributed equally among the living relatives belonging to the highest rank. There are six ranks of heirs:

- First: descendants (without distinctions based on sex or seniority)
- Second: parents and siblings
- Third: ascendants
- Fourth: collaterals
- Fifth: spouse
- Sixth: the State
- Quinto: cónyuge
- Sexto: el Estado

## b) Legal Reserve

Dominican laws establish a legal reserve on behalf of children and parents, under which a part of the deceased's property must be kept for them and cannot be thus donated by will or testament. The heirs entitled to such reserve may thus invalidate any donations that reduce their inheritance below the legal limit.

The legal reserve is 50% of the deceased's property if he/she leaves one child or one or both parents, 66% if he/she leaves two children, and 75% if he/she leaves three children or more.

## c) Taxes

Law 288-04 on Tax Reform introduced a significant amendment of inheritance taxes. Article 16 provides a 3% tax rate on the inheritance net value, which is a substantial change given that the previous law provided increasing rates ranging from 1% to 32%.

For donations the rate is 25% of the value of the donated property.

Article 17 of the Tax Reform abrogated Article 5 of Law 2569 on Inheritance and Donations, which established a classification in several categories of beneficiaries of property transfers by inheritance.

Statements pertaining to the payment of taxes must be made to the Internal Tax Collector of the place where the inheritance was opened (i.e. place of decease) within 30 days after the date of opening (i.e. date of decease).

Inheritances of foreign persons are subject to this tax in relation to the property located in the Dominican Republic. Furthermore, for persons residing abroad who inherit property in the country the applicable tax rate will be increased by 50%.

The liquidation and payment of taxes is necessary in order to obtain the transfer of titles, accounts and other rights of the deceased on behalf of the heirs. In addition, certain procedures must be followed that will depend on the type of asset.

# 4 FOREIGNERS UNDER DOMINICAN CRIMINAL LAW

## PRINCIPLES OF CRIMINAL LAW

The Dominican Criminal Code sets forth three types of criminal offenses depending on their seriousness: misdemeanors (“contravenciones”), felonies (“delitos”) and crimes (“crímenes”).

Penalties applicable to felonies include: deportation, temporary prison of up to two years, limitation of exercise of certain civic and family rights, and fines. Penalties applicable to crimes include: detention, two to five years of prison, 20 or 30 years of prison, and civic degradation. It should be noted that a bill has been submitted to Congress that provides for the inclusion of life sentences in Dominican criminal legislation.

Criminal courts are also entitled to condemn persons found guilty of felonies or crimes to the payment of indemnities to the victims. Furthermore, property may

be confiscated when such property is the evidence or the results of a felony or crime.

Offenses subject to special laws include:

- The issue of checks without funds, which is a felony.
- Drug-trafficking and money laundering, which are crimes (Law 50-88 on Drugs and Controlled Substances, Law 72-02 on Money Laundering and Law 19-03 on Custody Office of Confiscated Assets).
- Fiscal offences and felonies, which are sanctioned with fines, prison, confiscation of property, closing of business, prohibition of professional practice, cancellation of permits, etc. (1992 Tax Code).

## CRIMES OF DOMINICAN JURISDICTION

Dominican courts have jurisdiction to try foreigners who infringe criminal laws in the country, even when the victim is also a foreign person. On the contrary, offenses committed by foreigners abroad do not fall under the jurisdiction of Dominican courts, even when the accused is a Dominican resident or when the victim is a Dominican citizen.

Dominican courts may try crimes committed by Dominican citizens abroad when the following conditions are met:

1. The violation is punished by Dominican laws;
2. The accused has not been tried abroad;
3. Dominican authorities have received a formal complaint from the victim or the foreign government; and
4. The accused is in the country.

## EXTRADITION

Extradition provides the formal surrender of an individual by one country to another so that the person be tried or sentenced for crimes committed in that country.

The extradition of Dominican citizens is prohibited. This prohibition applies also to foreigners, which have obtained Dominican nationality before committing the crime that motivates the extradition request.

### a) Extradition Procedure

In the absence of international treaties, Dominican laws provide that the country can grant extradition according to reciprocity principles. Extradition may be active or passive.

*A) Active Extradition.* When a person against who there has been a criminal accusation and arrest orders have been issued, is found to be in a foreign country, the competent court or judge is entitled to initiate an extradition process, at the request of the Public Attorney or the parties. The Ministry of Foreign Affairs must then send the extradition request to the foreign government within two months.



**B) *Passive Extradition.*** Extradition requests made in relation to persons that are in the Dominican Republic must be sent by the Executive Power to the Supreme Court of Justice for the taking of a decision.

#### b) Extradition Treaties

The Dominican Republic has signed extradition treaties with the United States and Spain. Furthermore, the country is a member of the Inter-American Extradition Convention of 1981. Allowing for a few variations, these treaties have the following elements:

- The offense must have a certain importance and lack political motivations.
- An official request must be made through the proper channels.
- The country making the request must have jurisdiction to try the offence that motivates the request.
- The country will be obliged to deliver the accused if all conditions are met.
- The accused cannot be tried or sentenced for a crime different than that motivating the extradition.
- Extradition cannot be granted if the statute of limitations for the offence has expired, or if the accused has already been tried and served his sentence.
- If the extradition is requested to serve a sentence, the pending sentence must be at least six months.
- Extradition may be delayed for health problems of the accused, or to allow the accused to be tried and serve sentence in the country for any other crimes that he may have committed in its territory.

#### DEPORTATION

Foreigners which undertake any of the following activities in the Dominican territory may be arrested and deported to their country of origin:

- Infringement of immigration laws, such as illegal entry in the country, use of false documents, stay in the country after expiration of visa, etc.
- Subversive activities against the Dominican Government.
- Drug-trafficking.
- Conviction of a crime within five years after entering the country.
- Practice of prostitution or related activities.
- Becoming a public burden within five years after entering the country.

The officers charged of investigating these cases are the immigration inspectors, who may request arrest orders to the Immigration Director. However, the foreigner cannot be deported without having previously the chance to defend himself from the charges of which he has been accused.

# LITIGATION

## 1 LEGAL AND JUDICIAL SYSTEM

### LEGAL SYSTEM

The Dominican Republic is a civil law jurisdiction belonging to the family of Roman-Germanic Law. The Dominican legal system is based on the Napoleon Codes adopted in France at the beginning of the 19th century, which were formally incorporated into the Dominican legal system in the year 1884.

There is a Civil Code, a Civil Procedure Code, a Commercial Code, a Criminal Code and a Criminal Procedure Code. Dominican judges are greatly influenced by French judicial precedents when interpreting the provisions of such codes. Although these codes have been greatly modified through the years, many of their provisions are already obsolete, and the National Commission for Reform and Modernization of Justice has been working for several years in the elaboration of new drafts that have been subject to public consultation with different sectors of society and that should be subject to Congress in the near future.

### JUDICIAL ORGANIZATION

The Dominican judicial system is also largely based on the French judicial organization system. Its basic structure results from the Constitution (Articles 63-77), and the Judicial Power Organic Law (Law 821 of 21 November 1927 as amended). Its functioning is regulated under the Civil Procedure Code, the Criminal Procedure Code, the Law on Appeals Procedure, Law 327-98 on Judicial Career, and Law 46-97 on Budget Autonomy of the Legislative and Judicial Power

The Dominican judicial system is composed as follows:

*Peace Courts*, which are formed by one judge and may be considered as the competent courts for small cases. There is a Peace Court in each Judicial District.

*Courts of First Instance*, which are formed by one judge and have jurisdiction

over all matters non-expressly attributed by law to another court. There is a Court of First Instance in each Judicial District. These courts are divided into a Criminal Chamber and a Civil and Commercial Chamber.

*Appeals Courts*, which are formed by five judges and review the judgments rendered by the Courts of First Instance. There is an Appeals Court in every Department, each Department comprising five Judicial Districts. These courts may be divided into a Criminal Chamber and a Civil and Commercial Chamber.

*Supreme Court of Justice*, which is formed by sixteen judges and may review the judgments rendered by all other courts, but only in questions of law, without going into the facts of the case. The National Council of Magistrates appoints the judges of the Supreme Court of Justice pursuant to Law 169 of 2 August 1997. This institution has its roots in the French judicial system and seeks to increase the independence of the judicial power from the executive and legislative branches.

There are also specialized courts with jurisdiction over specific areas. These are the following:

- *Labor Tribunals and Courts*. Created by the Labor Code to solve conflicts between workers and employers.
- *Litigious-Administrative Tax Court*. It is formed of five judges and has jurisdiction over appeals filed against decisions of the public administration regarding the application of taxes.
- *Land Courts*. Created by the Land Registration Law with jurisdiction over land demarcation procedures. These are Original Land Courts (one judge) and Superior Land Courts (several judges).
- *Tribunal and Appeals Court of Minors*. Created by Law 14-94 on Minors Protection Code.

In addition, there are other non-judicial courts with jurisdiction to solve certain types of conflict. These are: the Central Electoral Board, which solves conflicts arising from elections, the Higher Administrative Court (Law 1494 of 1947), the Police Court (Law 285 of 1966, as amended) and the Military Court (Law 3489 of 1953).

## 2 JURISDICTION OF DOMINICAN COURTS

### FOREIGN ELEMENTS IN DOMINICAN COURTS

Civil and procedure laws regulate the participation of foreign elements in the procedures followed before Dominican courts.

#### Choice of Foreign Laws

As a result of the principle of contractual freedom, foreign laws may be chosen as the applicable legislation to an agreement signed in the country, as long as such laws do not contradict public order provisions, which cannot be disregarded by private agreements.

Foreign laws may thus be accepted and considered valid by Dominican courts, and the interested party must then present the proof of its contents. If such a

proof is not provided, the court will settle the dispute based on the assumption that the foreign law is identical to Dominican law.

### Requirements for Foreign Plaintiffs

Pursuant to Articles 166 and 167 of the Civil Procedure Code, foreign plaintiffs may be required by the other party to deposit a “judicatum solvi” bond as a guarantee for the payment of the judicial costs and indemnities that might result from the claim. This requirement applies to foreign persons and companies who do not have their legal residence in the country.

Since there is no legal provision limiting the amount of the bond, the Dominican defendant usually requests exorbitant amounts as a way to delay the procedure. The decision taken by the judge fixing the amount of the bond may be appealed through the usual channels, that is, first at the Appeals Court and then at the Supreme Court of Justice, and all this before the case is tried by the judge. Thus the request of this bond by the Dominican party may delay the process for years. It should be noted however that the Dominican party may validly waive the right to request the bond in the event of litigation.

Laws 20-00 of 8 May 2000 on Industrial Property and 65-00 of 21 August 2000 on Copyright have exempted foreign companies and individuals from the payment of this bond when filing claims with judicial courts related to violations of intellectual property rights.

### Filing Foreign Documents

In order to be filed at Dominican courts private documents signed abroad must comply with the following requirements:

1. Be legalized by Public Notary or similar officer in the foreign country;
2. The notary's signature must be certified by the appropriate authority in the foreign country;
3. The document must be certified by the closest Dominican Consulate; and
4. The Ministry of Foreign Relations must certify the Consul's signature and capacity in the Dominican Republic.

Official documents issued abroad must be authenticated by the appropriate diplomatic or consular agency of the country of origin, and comply with the requirements (iii) and (iv).

Documents written in a foreign language should be officially translated into Spanish by a Judicial Interpreter in the country or by a similar officer in the country of origin, in which case the signature of the translator must also fulfill the requirements (ii), (iii) and (iv).

All these requirements also apply whenever foreign documents are filed at any Government office.

### Enforcement of Foreign Judgments

Foreign judgments or awards are not enforceable in the country until a Dominican court declares that such decision is valid and enforceable in the Dominican territory.

## 3 ARBITRATION

The request to obtain this declaration or “*exequatur*” must be made to the Court of First Instance, which reviews the decision and verifies mainly:

1. That it was issued by a competent court,
2. That the decision is not subject to any further appeals or remedies in the country of origin,
3. That the defendant was allowed to exercise the right of defense, and
4. That the decision does not contradict Dominican laws or internal public order.

This process usually becomes a litigation similar to ordinary claims filed at the court, and can thus take years.

### ARBITRATION

Persons and companies may choose to avoid judicial litigation and solve their business disputes through out of court settlements, which generally provide faster and more efficient solutions than judicial courts. In the Dominican Republic it is possible to submit conflicts to arbitrators or conciliators as long as such conflicts do not refer to public order laws.

### INTERNATIONAL ARBITRATION

In October 2001, the Dominican Republic became a member of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. This convention addresses the recognition by national courts of arbitration agreements, the mandatory referral by such courts to arbitration pursuant to the agreement, the judicial enforcement and recognition of arbitration awards, and the grounds for refusal of such recognition and enforcement.

As the most important treaty in international arbitration, which has been ratified by more than 120 countries, this measure signifies a great improvement of the legal framework for foreign investment in the country.

The most meaningful effect of the convention is to simplify the enforcement of arbitral awards in the Dominican Republic. Before the ratification of the convention, foreign companies faced a major drawback when submitting their commercial disputes in the Dominican Republic to foreign or international arbitration, since such awards could not be enforced in the country unless a validation procedure was followed, which in practical terms equaled a normal litigation process with domestic judicial courts.

In this regard, the convention provides that “There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies that are imposed on the recognition or enforcement of domestic arbitral awards”, as long as the relevant authentication and translation formalities of the award have been complied with.

Refusal of enforcement by domestic courts may only arise in the following cases:

1. Nullity of arbitration agreement,
2. Infringement of the right of defense,
3. Abuse of attributions in relation to the scope of the arbitration agreement,
4. Composition of the arbitral authority or the procedure in a manner different than the agreement of the parties,
5. Arbitral award not yet final, or
6. When the subject matter of the difference may not be submitted to arbitration under Dominican laws.

Another important corollary of the ratification of the convention is the reaffirmation and reinforcement of the right to submit private disputes to arbitration. In the Dominican Republic, although this has always been a valid option of the parties under the principle of contractual freedom, the lack of specific mandatory referral provisions posed certain obstacles to the enforcement of arbitration clauses with Domestic courts. Now it is clear that Dominican courts must refer matters submitted to them to the arbitration court elected by the parties whenever there exists a valid arbitration clause and the subject matter of the case does not refer to public order laws, which as explained above, may not be submitted to arbitration.

Finally, it should also be noted that the application of the Convention has significant implications for the international recognition of local arbitral awards, which may thus be more easily enforced in other countries that are also Contracting States of the Convention.



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