

Doing Business in Dominican Republic

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The Dominican Republic has a civil law based legal system.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are only restrictions relating to (*Article 5, Foreign Investment Law No. 16-95*):

- Disposal of dangerous or radioactive toxic waste not originated in the Dominican Republic.
- Activities that are detrimental to public health and the environment.
- The manufacture of materials and equipment directly related to national security and defence, without the previous consent of the Dominican government.

3. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

There are no specific grants or incentives available to foreign investors.

However, incentives are available for specific sectors, such as tourism, for the improvement and development

of some undeveloped or newly developed areas (*Law No. 158-01*). There are also free trade zones which benefit from a total tax exemption and industry specific incentives applicable to local companies. Recently, there are also fiscal incentives applicable to foreign investors in the local cinematography business.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common form of business entity used by foreign companies is the limited liability corporation. A simpler structure, called the limited liability company, is also available but since it is a new form created by law in 2008, it is still not widely used. Foreign entities

can also operate in the Dominican Republic, by fulfilling certain registration requirements.

- **Registration formalities.** The following procedures must be followed:
 - there must be at least two shareholders;
 - the articles of incorporation or bye-laws must be signed by the founding shareholders and notarised;
 - a minimum of 10% of the authorised capital of the company must be paid and issued by the shareholders and a document specifying the amounts paid and the total shares issued by each shareholder must be executed;
 - the shareholders may decide to hold an incorporating general shareholders' meeting to appoint the first administrators and the vigilance officer, but these appointments can also be made in the bye-laws;
 - in the case of contributions in kind or when specific advantages are granted to a group of shareholders, a report from a Valuation Officer must be made and approved by all the shareholders in a general meeting;
 - the above documents must be filed at the Internal Revenue Agency (*Dirección General de Impuestos Internos*) in order to obtain a National Contributors Registry (*Registro Nacional del Contribuyente*) (RNC) number;
 - the documents must be filed at the Dominican Chamber of Commerce and Production (*Cámara de Comercio y Producción*) to obtain the company's Mercantile Registration number, upon which the company is deemed duly incorporated.
 - **Share capital.** Each shareholder has a minimum of one share. The minimum and most commonly used face value of a share is DOP\$100 (as at 1 October 2010, US\$1 was about DOP\$37).
 - **Non-cash consideration.** Shares can be issued for non-cash consideration, such as property. The transfer of property must be registered at the corresponding Title Registry Office.
 - **Rights attaching to shares.** There are no restrictions on the rights that can be attached to shares, although there is a minimum of rights granted to a shareholder, such as the right to:
 - receive information;
 - receive dividends;
 - attend and vote on general meetings; and
 - the preferential right to issue new shares from the company.
 - **Foreign shareholders.** There are no restrictions on foreign shareholders.
 - **Management structure.** Corporations have a management board, with a minimum of three members. There are no restrictions on foreign managers.
 - **Directors' liability.** Directors can be:
 - jointly liable for any fault in the company's incorporation process that results in its annulment;
 - personally responsible for any mistakes made when acting in their capacity as director, particularly in relation to the distribution of fictitious funds.
- Directors can be held civilly and/or criminally liable, depending on the infraction.
- In principle, directors and officers can be released from their managing responsibilities by a majority vote of the shareholders in a general meeting, after reviewing the report from the vigilance officer on management's performance in a specific year.
- Officers and directors cannot be released from any liability for:
- criminal acts;
 - fraud;
 - self-dealing;
 - gross negligence.
- **Parent company liability.** A parent is not liable for the acts of a subsidiary company but can be liable for the acts of a branch in civil, contractual, tax, labour or criminal law. However, Dominican law foresees the piercing of the corporate veil in cases of fraud.
- **Reporting requirements.** Companies must notify the Internal Revenue Agency and the Dominican Chamber of Commerce and Production of, among other things:
 - resolutions from the company's shareholder or board meetings;
 - increases in the company's authorised share capital;
 - changes to the company's articles of association or bye-laws;
 - changes to the company's shareholders;
 - the dissolution of the company;
 - changes of the company's domicile or registered address;
 - changes in the company's contact details.

EMPLOYEES

6. What are the main laws regulating employment relationships?

The main employment legislation is the Labor Code (*No. 16-22 of 1992*). It applies to Dominicans and foreign persons working in the Dominican Republic.

The employer and the employee are subject to the employment contract, although its provisions can never release or limit the rights under the Labor Code.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written contract of employment is not required. In the absence of a written contract, the Labor Code governs the employment relationship. However, where a contract is provided it cannot release or limit the rights under the Labor Code.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation and consultation. However, employees can enter into written agreements with the company providing them with such rights.

9. How is the termination of individual employment contracts regulated?

A dismissal is deemed to be without just cause, unless it is for one of the reasons established under Article 88 of the Labor Code, among others:

- Lack of integrity.
- Abandonment of the workplace without a just cause.
- Lack of dedication to the job.

The employer must notify the employee and the Labor Department within 48 hours of the dismissal taking place.

The minimum notice period is seven working days and the minimum severance payment is the ordinary salary for six working days (both for employees with three to six months' uninterrupted work).

Employees can be dismissed without just cause if, at the time of their dismissal, their employment rights were observed by the employer, for example:

- They were given the correct notice period.
- They received any compensation that they were entitled to.

Employees dismissed without just cause and without receiving their entitlements can file a claim against the employer for unfair dismissal and certain payments, such as severance and damages.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Employees must be made redundant in the following order (*Article 141, Labor Code*):

- Single foreign employees.
- Married foreign employees.
- Foreign employees married to a Dominican Republic citizen.
- Foreign employees who have Dominican Republic children.
- Single Dominican Republic employees.
- Married Dominican Republic employees.

The regulations for redundancies or mass layoffs have little practical application and employers usually end the contracts by the usual dismissal regulations with the approval of the Labour Authorities.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Foreign employees must obtain either a work permit or a residency. Since the residency allows the foreign employee the same rights as any Dominican resident, except for the right to vote, including the issuance of an Identification Card, it is more advisable to obtain this instead of a work permit.

The residency is provisional for the first year and then permanent, renewable every two years. The provisional and permanent residency each cost DOP\$3,800. There is an optional fee of DOP\$1,500 for an expedited service.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

A physical person or an entity residing in the Dominican Republic for more than 182 days is considered tax

resident (*Article 12, Dominican Tax Code*). However, foreign employees working in the Dominican Republic are considered tax residents from the moment they are hired.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
- Non-tax resident employees?
- Employers, in relation to their employees?

Tax resident employees

Tax resident employees must pay income tax on their gross Dominican source income to the Internal Revenue Agency according to the following scale:

- DOP\$0 to DOP\$349,326: exempt from tax.
- DOP\$349,326.01 to DOP\$523,988: 15% of the amount exceeding DOP\$349,326.01.
- DOP\$523,988.01 to DOP\$727,761: DOP\$26,199 plus 20% of the amount exceeding DOP\$523,988.01.
- DOP\$727,761.01 and above: DOP\$66,954.00 plus 25% of the amount exceeding DOP\$727,761.01.

Tax resident employees must also pay:

- 0.5% of their gross salary to the National Training Institute (*Instituto Nacional de Formación Técnico Profesional*) (INFOTEP), a technical and training institute for employees (this is not currently being enforced).
- 2.88% of their gross salary into a pension plan payment scheme.
- 2.70% of their gross salary to the health social security.

Non-tax resident employees

Non-tax resident employees must pay tax on their Dominican Republic source income at a rate of 25% of net income.

Employers

Employers must pay:

- 7.12% of the employee's gross salary into a pension plan payment scheme.
- 1.20% of the employee's gross salary into the Workers Compensation Plan.

- 1% of the company's payroll to the INFOTEP, on a monthly basis.
- 6.30% of the employee's gross salary on the health social security.
- Income tax at the rate of 25% of the company's net monthly income to the Internal Revenue Agency.
- A Complementary Retribution Tax (*Impuesto Sobre Retribuciones Complementarias*) of 25% on all other non-cash benefits that an employee receives (such as school tuition, car and property leases, and mobile phones).

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

The income of companies that are incorporated or tax resident in the Dominican Republic is taxed at 25%. A business entity is considered tax resident, in relation to Dominican source income (in the case of foreign companies either from a subsidiary or a branch), when it operates in the Dominican Republic for a period of at least six months within a year.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Companies incorporated or tax resident in the Dominican Republic must pay:

- Tax on their worldwide income: 25%.
- Tax on their assets: 1%.
- Tax on complementary compensations: 25%.
- Tax on Transfers of Industrialised Goods and Services (*Impuesto de Transferencia a los Bienes Industrializados y Servicios*) (ITBIS). This tax is levied on the transfer of industrialised goods and services at the rate of 16%. This is similar to the value added tax (VAT) in other jurisdictions.
- Consumption tax on the import and transfer of luxury items at variable rates depending on the item. Luxury items include alcohol, tobacco, jewellery, watches and rugs (*section 375, Tax Code*).

16. How are the activities of non-tax resident business vehicles taxed?

Non-tax resident companies must pay tax on their Dominican Republic source income at 25%.



17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
- Dividends received from foreign companies.
- Interest paid to foreign corporate shareholders.
- Intellectual property (IP) royalties paid to foreign corporate shareholders.

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- **Dividends paid.** Dividends paid to foreign or local corporate shareholders are subject to a withholding tax at the rate of 25%. The company that withholds the 25% can offset it against its own income tax.
 - **Dividends received.** Dividends received from foreign companies are not subject to any tax after the withholding tax at the rate of 25% has been made.
 - **Interest paid.** Interest paid to foreign approved financial institutions is subject to a withholding tax at the rate of 10%. If payments are made abroad to any other non-financial institution, the applicable withholding tax rate is 25%.
 - **IP royalties paid.** IP royalties paid to foreign corporate shareholders are treated as coming from a Dominican Republic source and are subject to tax at 25%.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

There are no restrictions on loans from foreign affiliates in accordance with Dominican Laws.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Profits from a foreign subsidiary cannot be imputed to a parent company that is tax resident in the Dominican Republic.

20. Are there any transfer pricing rules? If so, please give details.

Tax legislation only imposes the rule that when goods and services are offered within an economic group, these operations must be performed at market value.

21. How are imports and exports taxed?

Imports of goods are subject to the following taxes:

- Customs duty, which is taxed at variable rates.
- Consumption tax, which is taxed at variable rates (see *Question 15*).
- ITBIS, which is taxed at 16% (see *Question 15*).

Exports of goods are not taxed in the Dominican Republic.

22. Is there a wide network of double tax treaties? If so, please give details.

The Dominican Republic has a double tax treaty with Canada.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Law 42-08 enacted in 2008 prohibits and sanctions all practices, acts and agreements between economic agents, either tacit or express, written or verbal, which have the objective or either produce or may produce the effect of imposing unjustified barriers in a local market. It also sanctions the abuse of the dominant position by an economic agent and defines and states that all acts and behaviour in the commercial and corporate realm that are contrary to good faith and commercial ethics and which have as their objective the illegitimate deviation of consumer demand are illicit and strictly prohibited.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- Nature of right.
- How protected.
- How enforced.
- Length of protection.

Patents

- **Nature of right.** For an invention to have patent protection, it must:
 - be novel;

- involve an inventive step;
- be capable of industrial application.
- **How protected.** Patents must be registered at the Patent Department of the National Office of Industrial Property to be protected.
- **How enforced.** Patent rights are enforced through a criminal or civil action before the relevant court. A person who breaches a patent can be subject to imprisonment and fines.
- **Length of protection.** Protection lasts for a non-renewable period of 20 years from the date of filing the application.

Trade marks

- **Nature of right.** A trade mark must be distinctive and must not create confusion regarding the services and products that it represents.
- **How protected.** To be protected, trade marks must be registered at the Trade Mark Department of the National Office of Industrial Property.
- **How enforced.** Trade mark rights are enforced in the same way as patents (*see above, Patents*).
- **Length of protection.** Protection lasts for indefinitely renewable ten-year periods.

Registered designs

- **Nature of right.** A registered design must be new, meaning that it has not been disclosed or made accessible to the public anywhere in the world.
- **How protected.** Protection is achieved by the registration at the National Office of Industrial Property, where the right holder will obtain a certificate of registration.
- **How enforced.** Registered designs are enforced in the same way as patents (*see above, Patents*).
- **Length of protection.** Protection lasts for five years and is renewable for two additional five-year periods.

Copyright

- **Nature of right.** A new musical, artistic, scientific or literary creation can be protected by copyright.
- **How protected.** Copyright arises automatically on the creation of a work and there is no requirement for registration. The work can also be protected by an international treaty, such as the Berne Convention for the Protection of Literary and Artistic Works 1971, to which the Dominican Republic is a signatory.
- **How enforced.** The right holder can use the civil, criminal or administrative legal process.

- **Length of protection.** The protection lasts the right holder's lifetime and 50 years following the death of the author, when it will pass to his surviving spouse and heirs.

Confidential information

- **Nature of right.** The information must:
 - be able to be used in a productive, industrial or commercial activity;
 - be transmissible to third parties;
 - not be widely known, nor easily accessible to people normally handling such information;
 - have been the subject of reasonable measures to keep it secret by the holder of the information.
- **How protected.** It is protected by mutual agreement.
- **How enforced.** It is protected through a claim in civil law.
- **Length of protection.** Confidential information is protected for as long as it is concealed or not made public.

Commercial names

- **Nature of right.** The right over a commercial name is acquired with its first commercial use.
- **How protected.** Protection is by registration at the National Office of Industrial Property.
- **How enforced.** Commercial names are enforced in the same way as patents (*see above, Patents*).
- **Length of protection.** Protection lasts for ten years and is renewable for further ten-year periods.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
 - **Distribution.**
 - **Franchising.**
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- **Agency.** The contractual relations between the parties intervening in any agency agreement in the Dominican Republic are regulated by Law 173 of 6 April 1966, on Protection to the Importer Agents of Goods and Products, if the contracts are registered

in the Legal Department of the Central Bank of the Dominican Republic. Law 173 protects local agents from untimely termination or breach of a contract from its foreign counterpart by providing considerable compensation in these cases. However, since 1 March 2007 (when the Free Trade Agreement between Central America, United States and the Dominican Republic entered into force), Law 173 does not apply to agreements involving a party from the US, unless the contract states otherwise.

- **Distribution.** Distribution agreements are regulated in the same way as agency agreements (*see above, Agency*).
- **Franchising.** Franchising is regulated by Law No. 20-00. The contract must be in writing and be registered at the National Office of Industrial Property.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

The Electronic Commerce, Documents and Digital Signatures Law 126-02 (regulates all commercial relationships, contractual or non-contractual, using data messages or other similar methods) and Decree No. 335-03 which enacted its Regulation for Application.

Electronic commerce is also regulated by Law No. 153-98 (May 1998) and by rules and regulations set by the Dominican Institute of Telecommunications (*Instituto Dominicano de las Telecomunicaciones*) (INDOTEL).

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Norm ISO 17799 of November 2003, by the Dominican Institute of Telecommunications, sets out a list of recommendations and principles for the practice of efficient security measures by organisations. It covers issues such as:

- Setting up and maintaining an information security policy.
- Setting up a separate security committee to initiate and control the implementation and administration of information security within the organisation.
- IT communications' and operations' security.
- Software security.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

The Dominican Republic does not have specific rules on product liability. However a civil claim can be brought under the Civil Code. To succeed in a product liability claim, the claimant must prove that:

- He suffered damage.
- The damage was a result of a defective product that was manufactured by the defendant.

For non-consumption items, there are Norms issued from the General Management of Rules and Security Systems (*Direccion General de Normas y Sistemas de Calidad*) (DIGENOR), regarding product safety.

CONTRIBUTOR DETAILS



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Qualified. Dominican Republic, 1984

Areas of practice. Banking; corporate; energy; foreign investment; free trade agreements; mining; project finance; telecommunications law; tourism.

Recent transactions

- Local counsel to the biggest foreign direct investment project in the country, worth more than US\$2 billion.
- Counselling many leading international financial institutions in the project financing of major economic groups.
- Assisted numerous multinational companies in their entry process to the Dominican Market.
- Participated in the registration of the first Dominican company listed on the NYSE.
- Has been involved in the issuance of commercial papers and sovereign bonds in both the American and European markets.

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