

# Executive Summary

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## General Law on Companies and Individual Enterprises with Limited Liability in the Dominican Republic

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The New General Law on Companies and Individual Enterprises with Limited Liability No. 479-08 (herein "Law 479") was enacted on December 11, 2008 with the main goal of modernizing and updating the existing legislation on corporate matters.

Among the most relevant changes and innovations of the Law, the following are of principal importance:

1. It provides a new and improved classification of legal entities with the purpose of providing more flexibility to the current system and enabling corporate structures to better and more accurately reflect the reality of business ventures and the relationship among the partners.
2. It details, more clearly and unequivocally, principles that in corporate legal practice, to date, were followed as a result of interpretations of principles of law or of general legal rules rather than on consistent and clear legal provisions.
3. It regulates corporate procedures that, until now, were followed without a proper set of legal guidelines and were more a result of administrative regulations or internal shareholder rules.
4. It sets forth new rules that modify current practices or legal provisions, in some cases with the purposes of prohibiting certain practices and in other cases to enable previously prohibited ones.

5. It undertakes to address, in a more detailed fashion, matters that had been previously subject of very little or no regulation, such as those concerning fiduciary duties of the managers and administrators, related-party transactions, and others.
6. It introduces new penal sanctions establishing new fines and prison sentences to be imposed for violations of the Law on founding partners, directors and administrators, and upon the corporate entities themselves, thus creating the possibility of imposing penal sanctions upon them.

It is important to mention that notwithstanding reference made in Law 479 to new regulations that shall be dictated to help implement some aspects of this Law 479, existing business entities have a term of 180 days to adjust to the provisions of the Law, that is, till June 19, 2009. After this date, mercantile registration offices will not receive, for purposes of registration, renewal or inscription, any corporate documentation corresponding to entities that have not yet accomplished the process of adjusting to the new Law.

Additionally, the Law provides a term of 60 days starting from its publication within which the Commerce and Production Chambers will have to prepare an instruction regulation containing the criteria and parameters required for purposes of completing the adjustment process for all entities.

### GENERAL ASPECTS RELATING TO BUSINESS ENTITIES

By virtue of Law 479, it is understood that there is a business entity when two or more persons or entities come together and agree to commonly contribute goods and assets for the accomplishment of business transactions with the objective of jointly participating in the profits and bear the losses generated by such business. All types of commercial entities enjoy a separate legal personality from their shareholders or partners, from the moment they are registered in the Mercantile Registry. With respect to the several types of legal entities, Law 479 recognizes the following corporate structures and entrepreneurial forms of doing business:

- General Partnerships (Sociedad en Nombre Colectivo)
- Ordinary Limited Partnerships (Sociedad en Comandita Simple)
- Limited Partnerships with Shares (Sociedad en Comandita por Acciones)
- Publicly or Privately Owned Share Companies (Sociedades Anónimas Públicas o Privadas)

- Limited Liability Partnership (Sociedad en Responsabilidad Limitada)
- Individual Enterprise with Limited Liability (Empresas Individuales de Responsabilidad Limitada)

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

### **Foreign Companies**

The legal personality of foreign commercial companies is recognized by Law 479, provided they have met the requirements for such entitlement by virtue of their legislation of origin, but locally the Law provides that they have an obligation to become duly registered in the Mercantile Registry, like locally incorporated companies, as well as with the Internal Revenue Department, when executing a transaction in Dominican territory.

Law 479 recognizes the equality between foreign and local companies and, therefore, declares that foreign entities shall have no obligation to provide any kind of bond or litigation insurance when seeking judicial action in local courts.

## **TYPES OF BUSINESS ENTITIES**

### **General Partnership (Sociedad en Nombre Colectivo)**

General Partnerships are formed by 2 or more partners who are fully responsible, jointly and severally, for the obligations incurred by the entity. The names of General Partnerships must contain the last name of one or more of the general partners, followed, when not all partners' names are included, by the terms "y Compañía" ("and Company") or its abbreviation.

- **Partner Liabilities:** All partners are fully responsible against third parties, for the debts accumulated by the company in its activities and transactions. Their responsibilities, however, are subsidiary to the company's liabilities and therefore, can only be pursued after starting legal action against the company itself.
- **Capital:** Capital distribution and contributions are subject to what the partners freely agree in their partnership agreement. However, contributions from the partners cannot be represented by negotiable instruments, since Law 479 provides that the participation of the partners are not, in principle, easily transferrable to third parties. Law 479 does not provide a minimum capital requirement for this type of entities.
- **Transfer Restrictions:** The participation of the partners cannot be transferred without the unanimous consent of all other partners.
- **Management and Supervision:** Although in principle all partners are considered managers of the company, they may appoint one or more directors to manage the partnership. In the absence of provisions limiting their powers, directors can take all management related actions in the interest of the company. There is no requirement to appoint a Vigilance Officer for these types of entities,

but the general partners that do not directly intervene in the management of the partnership are entitled to receive information on the accounting registries, they have their management-related questions duly answered and to participate in appointing and revoking the directors.

- **Corporate Governance:** The law requires unanimous consent from the partners, which does not have to be granted necessarily in a general partners meeting, for (i) decisions that exceed the powers of the directors, (ii) transfers of any of the partners' participation in the entity, (iii) admission of new partners, (iv) by-laws amendments and (v) the disposition of all or most of the assets of the partnership.
- **Duration:** In principle, this type of company is dissolved by the death of one of its partners, unless the partners have agreed in the by-laws that in the event of death, the partnership shall remain with the remaining partners and with or without the heirs and surviving spouse of the deceased partner. In the last scenario, the heirs or surviving spouse become creditors of the company for the value of the participation of the deceased partner.

### **Ordinary Limited Partnership (Sociedad en Comandita Simple)**

Ordinary Limited Partnerships are formed by (i) one or more general partners who manage the company and are jointly and severally liable for all the company's debts and liabilities; and, (ii) one or more limited partners who are only liable for debts incurred by the partnership to the extent of their respective contributions. The names of these entities need to contain the names of one or more of the general partners followed by the words "y Compañía" (and company) or its abbreviation, and then the term "Sociedad en Comandita" or "S. C."

- **Capital:** There are no minimum capital requirements provided in Law 479, but the Law does require that the by-laws contain provisions relating to (i) the amount of the value of the contributions of all partners, (ii) proportion, within this amount, which corresponds to each class of partners and (iii) the participation of each partner in the profit sharing and liquidation.
- **Transfer Restrictions:** Under Law 479, the partners' participation may only be transferred with the unanimous consent of all partners, although the by-laws may state (i) that limited partners' participations are freely assignable to other partners and (ii) that partners' participations may be assigned to third parties with the consent of all general partners and the majority of limited partners.
- **Management and Supervision:** The directors are appointed by the majority of the partners, but the limited partners cannot be appointed directors, administrators or even temporary representatives of the entity, nor can they intervene in its management. The limited partners rather exercise powers of supervision and monitoring within the entity and are entitled to vote on the approval of the financial statements and the appointment and removal of managers and representatives of the company. The appointment of a Vigilance Officer is not required for ordinary limited partnerships.

- **Corporate Governance:** General meetings of partners are not required for taking decisions, and the Law does enable the partners to make decisions without the need of coming together in one place for such purposes. In this regard, the partners vote in relation to By-laws amendments, in the appointment and removal of managers and representatives of the entity, in initiating legal actions against the managers and on the approval of the financial statements.
- **Duration:** In principle, these entities are dissolved by the death of one of its partners, unless the partners have agreed in the by-laws that in the event of death, the partnership shall remain pursuant to the guidelines established by law for these purposes.

#### **Limited Partnership with Shares (*Sociedad en Comandita por Acciones*):**

Limited Partnership with Shares are formed by (i) one or more general partners who manage the company and are jointly and severally liable for all the company's debts and liabilities; and, (ii) 3 or more limited partners, who are basically shareholders and as such bear only losses in proportion to their contributions. Although Law 479 does not explicitly states it, it seems that the name of this type of company must contain the name of one or all of the fully liable partners, followed by the words "y Compañía" (and company) or its abbreviation, and by the words "Sociedad en Comandita".

- **Capital. Transfer Restrictions:** Law 479 does not provide rules or restrictions on capital related matters, or on transfer restrictions for this specific type of company. However, it states that the rules relating to Ordinary Limited Partnerships (*sociedad en comandita simple*) and Privately Owned Share Companies, that are compatible with the provisions of the Limited Partnership with Shares, shall apply.
- **Management and Supervision:** Management and supervision bodies of these companies include (i) one or more directors, (ii) a supervisory board, (iii) one or more vigilance officers and (iv) the general meeting of partners.

#### **Share Companies (*Sociedades Anónimas*):**

Share Companies are formed by two or more shareholders, with responsibility for the losses of the company limited to their respective contributions to the capital of the company. The name of these entities must contain the words "Sociedad Anónima" or "S.A." These Share Companies may be privately or publicly owned.

Publicly Owned Share Companies are those that, in order to obtain equity or debt financing, use mass media communications or publicity.

Privately owned Share Companies are those that do not seek the stock market as a source of funding or expansion of its operations.

- **Capital:** The capital of these companies are represented by shares, which are essentially negotiable. Publicly Owned Share Companies have a minimum requirement for authorized capital and nominal value of the shares, both to be determined by the Securities

Commission. On the other hand, Privately owned Share Companies have a minimum authorized capital of RD\$30,000,000.00 and a minimum value of the shares of RD\$ 100.00, as provided by Law 479, amounts which may be adjusted every three (3) years by the State Ministry of Industry and Commerce, pursuant to the CPI published by the Central Bank. Ten Percent of the authorized share capital must be subscribed and paid.

- **Transfer Restrictions:** The law does not establish any restrictions on the transfer of shares. Nonetheless, Privately owned Share Companies may have restrictions imposed on the by-laws, provided that the restriction does not completely and indefinitely prohibit the transfer of shares.

Law 479 provides a preferential right to subscription of shares awarded to the shareholders, although this right may be expressly waived.

- **Management:** These companies are managed by a Board of Directors consisting of at least three (3) members. Legal entities may not be appointed as Chairman of the Board of Directors in this type of companies.
- **Supervision:** Regarding the supervision of these companies, Law 479 provides that they shall be supervised by one or more Vigilance Officers who are appointed for three (3) financial years and have the essential mission to verify the assets and documents of the company, to monitor compliance with accounting rules and to verify the sincerity and consistency of the Board of Director's report and documents addressed to the shareholders with the annual accounts on the financial situation of the company. Vigilance Officers must be certified public accountants with at least 3 years experience in auditing companies and may not be employees of the company, among other conditions.

In addition to the above, Publicly Owned Share Companies are under the supervision of the Securities Commission, from its incorporation and organization to all acts involving by-laws amendments, public offerings, transformations and liquidations.

- **Corporate Governance:** The supreme body of the Share Companies is the general shareholders' meeting, where all of its operations and activities are approved or ratified.

#### **Limited Liability Companies (*Sociedades en Responsabilidad Limitada o S.R.L.*):**

This type of company is formed by a minimum of two (2) and a maximum of fifty (50) partners, who are not personally liable for the social debts. Their name may include the name of one or more partners and must be preceded or followed by the words "Sociedad en Responsabilidad Limitada" (limited liability company) or the initials "S.R.L."

- **Capital:** The capital of the SRL is divided into equal and indivisible parts called social cuotas, which may not be represented by negotiable instruments or have a face value of less than RD\$100.00. The minimum share capital of the SRL is RD\$100,000.00, amount which may be adjusted every three (3) years by the State Ministry of Industry and Commerce.

- **Transfer Restrictions:** The social quotas may be freely transferable by way of inheritance or in the event of liquidation of community property between spouses and freely assignable between ascendants and descendants. Similarly, the transfer of these quotas between partners is also free, unless restrictions are provided in the By-laws.

Nonetheless, the transfer of social quotas to third parties is quite restricted, requiring the consent of  $\frac{3}{4}$  of the partners, and are subject to the fulfillment of certain formalities and conditions provided by Law.

- **Management and Supervision:** The management of these companies are undertaken by one or more directors, that have to be individuals, and who are, individually, invested with the amplest powers to act on behalf of the company under any circumstances. Managers may not be appointed for periods of more than six years. It is not necessary to have a Vigilance Officer.
- **Corporate Governance:** Every partner has the right to vote and has a number of votes equivalent to their respective contributions to the company. A general meeting of partners may be held to approve all corporate transactions and operations, but they are not necessary if the partners agree to subject their decisions to simple voting procedures that include digital or other forms of casting their votes.

***Individual Enterprise with Limited Liability (Empresa Individual de Responsabilidad Limitada o E.I.R.L.):***

This is basically a limited liability entity owned by one person with a separate legal entity and the capacity of owning rights and obligations, thus forming a separate estate from the person owning the entity. Companies may not own this type of entities. Their name must include the words "Empresa Individual de Responsabilidad Ilimitada" or "E.I.R.L.". They may not include the name, last name, surnames or any other name relating to an individual person, which may not be used to identify the entity.

- **Capital:** The law does not set limits on the amounts to be contributed by the owner of the enterprise, so it can be freely set and raised by virtue of the formalities provided by law to this effect.
- **Transfer Restrictions:** The E.I.R.L. can be transferred in accordance with the conditions and formalities established by law.
- **Administration and Supervision:** The owner can designate one or more managers. A vigilance officer is not needed.

**THE CONCEPT OF UNENFORCEABILITY OF THE LEGAL PERSONALITY OF COMMERCIAL COMPANIES**

Law 479, created the concept of unenforceability of the legal personality of corporations in cases where these entities are used (i) for fraud against the law, (ii) for violating the public order or (iii) for fraud to the detriment of the rights of partners, shareholders or third parties. To

seek the unenforceability of the legal personality of a corporation, proof needs to be submitted to the effect that a specific corporation has been used as a means to achieve the above.

This new concept makes it possible for interested parties to disregard the corporate entity of a company and to seek judicial redress against shareholders and directors who have been responsible of the violation without the need to annul the company itself, in which case it will continue to exist for all other purposes.

**GENERAL PROVISIONS APPLICABLE TO THE DIRECTORS OF BUSINESS ENTITIES**

***Duties***

Law 479 provides that business entities are managed by one or more directors or managers who are responsible for overseeing the operations of the company and represent it before third parties. The most important provisions relating to directors are the following:

- Managers may delegate to third parties all or part of their powers if the by-laws so permit, but are responsible to the company by the actions undertaken by the persons who received such delegation of powers.
- The restrictions imposed on the powers of the directors, managers or representatives of a company are unenforceable against third parties. Similarly, the designations or cessation of directors, managers or representatives of a company are only effective against third parties when registered in the Mercantile Registry.
- Directors, managers and representatives of business entities must act with the loyalty and diligence of a good business man and are responsible for violations of the Law, for faults committed at the time of carrying out their management duties or for the damages that result from their personal acts or omissions with respect to the partners or others.
- Directors must guard and keep confidential all corporate information they may have access to by reason of their office and duties.
- During the incorporation process, the founding partners are jointly and fully responsible for all acts performed on behalf of the company until, after its incorporation, the new entity assumes the corresponding obligations. Also during this process the founders are responsible for the damages caused by the omissions that may exist in the by-laws or irregularities in the incorporation process.
- When a company is named director or manager of another entity, the directors will be jointly responsible with such company for the acts of the person they have designated to represent it. Similarly, the representative of the company is subject to the same conditions and obligations and incur the same civil and criminal liability as if such person were acting as administrator himself/herself.

- In Share Companies, the chairman or chief executive officer and the chief financial officer, and in other types of entities, the principal director must ensure that the financial information is reasonable. In this regard, the manager must submit a signed affidavit containing certain declarations as to the financial statements of the company.
- In Share Companies, board members are jointly accountable to shareholders and third parties for (i) the accuracy of subscriptions and payments made by the shareholders as show in the corporate documents, (ii) the existence of distributed dividends, (iii ) the correctness of the books under their charge, (iv) implementation of decisions taken at meetings and (iv) compliance with other obligations imposed by law and statutes.
- In Share Companies, the liability of directors regarding the company ceases when they discharged by the general meeting of shareholders, when waived or agreed by them, except when the liability results from (i) a violation of the law or the by-laws (ii) when there has been express opposition from shareholders representing 1 / 20 of the paid-in capital, and (iii) when the acts or facts that have given rise to the liability were not disclosed or when the issue was not included in the agenda for the meeting.
- Directors are prohibited from (i) proposing amendments to the by-laws and agree on securities issues or policies or decisions that are not in the company's best interests, but in their own personal behalf or on behalf of related parties, (ii) prevent or hinder investigations to establish responsibility or executives of the company, (iii) submit to the shareholders or lead managers, vigilance officers, auditors, executives or employees or make them submit illegal or false information, or hide vital information, (iv) engaging in illegal activities or those contrary the by-laws or social interests or use their position to gain undue advantage for themselves or for the benefit of others to the detriment of company.
- Any agreement involving the company and one of its directors or a society in which one of its directors is interested in any way, need to be subjected to prior approval of the Board of Directors.

## **CORPORATE PROCESSES**

### *Constitution*

Law 479 provides abbreviated incorporating processes for some of the types of companies recognized therein. It simplifies the number of documents and administrative steps necessary to constitute a Privately Owned Share Company.

### *Contributions in Kind*

The main requirements imposed by Law 479 in relation to contributions in kind are as follows:

- They cannot participate, by themselves or on behalf of third parties, in commercial activities that compete with the company they work for unless authorized by the partners or shareholders.
- They cannot take or retain direct or indirect interest in any company, business or deal with the company they work for, or on behalf of it, unless explicitly authorized to do so by the partners or shareholders.
- The following cannot be appointed as directors of a company: (i) natural persons who hold more than 5 mandates as directors in other entities, (ii) minors, interdicts and disabled persons, (iii) those that have been convicted of criminal offenses or of fraudulent or simple bankruptcy by final judgment, (iv) persons who have been banned from trading or doing commercial activities by judicial or administrative decision, and (v) public officials with responsibilities related to the activities of the company in question.
- No participant in the stock market may be appointed as director of a Publicly Owned Share Company.
- Directors, managers and representatives of entities that are directors themselves, their spouses, ascendants or descendants, are prohibited from (i) taking loans in cash or assets from the company, (ii) using assets, services or remedies of the company for their own benefit or of their relatives, or related persons or entities, (iii) using for their own benefit or of related parties business opportunities they are privy to by reason of their office, as long as it would damage the company.
- They must be included in the by-laws of the entity.
- They are subject to a valuation which is determined in partnership agreement or by-laws, or which may be made by an expert, depending on the type of business entity concerned.
- Only assets that may be economically valued may be contributed in kind to a business entity. Know-how, work or personal services may not be compensated by shares. For such purposes, however, Law 479 creates the concept of "ancillary compensation".
- When the assets transferred are subject to liens and encumbrances, they can only be contributed by its value minus the value of the lien involved.
- When formalized after the constitution of the entity, they must first offered by the owner to the entity, offer which is subject to review by an certified public accountant appointed for such purposes by the directors of the company. Based on the report issued, a general meeting is held to decide on the contribution and, if acceptable, approve the amended by-laws needed to reflect these new contributions.

### *Paid-in Capital Increases*

Paid-in capital increases through the subscription of shares that have not been issued from the authorized capital of a company. This is evidenced by the execution of documentation that prove that such subscription has been accomplished executed by the directors of the

company and the investing subscriber. A share subscription can also occur by (i) the compensation of its value against certain receivables, due and payable by the entity or (ii) the incorporation of reserves or profits to the capital of the company, with the consent of shareholders. For subscription of shares through contributions in kind, the company must follow the rules laid down by Law 479 and detailed in the relevant section of this summary.

#### ***Amortizations***

Amortizations are subject to the following rules:

- They must be provided by a by-laws amendment or by an extraordinary general assembly.
- They must be made by means of profits or reserves, excluding the legal reserve.
- They must be made by an equal value for each share in the same class and respecting the equality of shareholders.
- They do not necessarily imply a reduction in capital, since the shares can be kept in treasury and not cancelled.

#### ***Capital Reductions***

With regard to this issue, Law 479 provides that:

- A capital reduction can be achieved through (i) the redemption of shares or (ii) by reduction of the nominal value of the shares.
- It may be (i) voluntary, (ii) due to losses suffered by the company or (iii) a result of restructuring and market requirements.
- A reduction in the authorized capital must be done by amending the by-laws, but it may not be reduced to less than the paid-in capital.
- A reduction of the paid-in capital must be made through the celebration of an extraordinary general meeting of shareholders, which must respect the equality of all shareholders.

#### ***Mergers and Spin-offs***

Law 479 provides that one or more companies can, through merger, transfer assets to an existing company or form a new company. A merger implies (i) the dissolution, without liquidation, of the companies that disappear and the universal assignment of all their assets and liabilities to the beneficiary entities on the date of completion of the transaction, and (ii) simultaneously, the shareholders of the disappearing companies, receive shares of the beneficiary company and become shareholders therein as laid out by the merger agreement.

Through a spin-off, one or more companies can assign assets to several existing or new companies. A spin-off implies (i) the extinction of the company due to the assignment of all its assets and liabilities to one or more entities, or only the assignment of a part of the assets and liabilities of an existing company to one or more entities, and (ii) the receipt, by the shareholders of the assigning company, shares of the receiving company.

With respect to mergers and spin-offs, Law 479 also provides that:

- They can be accomplished between two different types of business entities.
- The parties involved may decide on the conditions for by-laws amendment.
- They become effective (i) in the case where a new entity is incorporated, on the date of registration in the Mercantile Registry of the new company or (ii) otherwise, with the conclusion of the last general assembly approving the transaction, unless otherwise agreed at that meeting.

#### ***Dissolution and liquidation of commercial companies***

The dissolution of a corporation is subject to the approval of the extraordinary general assembly of the organization, under the grounds provided for in Law 479 and the by-laws of the organization. The dissolution does not imply the loss of legal personality until the liquidation is complete, according to the provisions of Law 479.

#### ***Transformation of commercial companies***

Law 479 provides a mechanism by which, through the celebration of an extraordinary shareholders' meeting of the company, and subject to certain additional publicity requirements, commercial entities may transform into other types of the legal entities recognized by Law 479, without the risk of losing their legal personality and without altering their respective legal rights and obligations.

In the case of Share Companies, they may only transform into Collective Partnerships (*Sociedades en Nombre Colectivo*), Hybrid Companies (*sociedades comanditarias*) or Limited Liability Companies (*sociedades en responsabilidad limitadas*).

#### **CHANGES**

Law 479, in general, imposes the following regulatory changes:

It prohibits:

- (i) The distribution of dividends based on an asset re-evaluation until such increase in value is realized by selling or disposing of the assets.
- (ii) A Subscription of shares for a value that is less than the nominal value of the shares.
- (iii) Issuing preferred shares without voting rights for more than 50% of the share capital of privately owned Share Companies and more than 20% of publicly owned companies.
- (iv) Issuing bonds before the corporation has 2 years of existence and having provided regular reports 2 approved by its shareholders.
- (v) Holding of an investment in another company if the latter holds a fraction of the paid-in capital of the first one in excess of ten percent (10%).

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- (vi) Shares with multiple votes.
  - (vii) Shareholders' Agreements without a specified term.

It permits the following:

- (i) Shares with a value denominated in foreign currency.
- (ii) The adoption of resolutions in a document executed by the shareholders without having to hold a shareholders meeting. Similarly, the vote for these resolutions can be manifested through any electronic or digital means.
- (iii) The representation of securities issued by corporations as account entries.
- (iv) A corporation may purchase its own shares with funds arising out of profits or reserve accounts, other than the legal reserve, up to one tenth of the paid capital of the entity. These shares are held in the treasury in registered form, but will not grant rights to receive dividends or to be taken into consideration in calculating quorum for the shareholders' meetings.

Law 479 makes the following unenforceable upon third parties to the commercial company:

- (i) The domicile of the company is provided in the By-laws, in cases where the actual center of administration and management of the company is in another place.

- (ii) Nominee agreements.
- (iii) Restrictions to the powers of the manager, administrators, and representatives of a commercial entity that may be contained in the By-laws of the company or in any power of attorney or delegation documentation.
- (iv) The appointment or cessation of directors, managers or representatives of a company until they are properly registered in the Mercantile Registry.
- (v) Statutory provisions restricting the free transferability of the shares are not enforceable to the shareholders, or third parties in cases of succession, liquidation of community property between spouses or transfer to a spouse, an ascendant or descendant.

### **SANCTIONS**

Notwithstanding the sanctions that may have become applicable pursuant to other special laws, the following sanctions shall apply in case there is a violation of the provisions of Law 479: a) fines ranging from twenty (20) to one hundred and twenty (120) minimum wages in the public sector as of the date on which the sanction is imposed on a particular case and b) prison sentence ranging from one (1) to ten (10) years.



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