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Dominican Republic

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DMK Abogados

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DOMINICAN REPUBLIC

Law and Practice

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Contents

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

1. Legal System

1.1 Legal System and Judicial Order

Legal System

The Dominican Republic is a civil law jurisdiction, ruled by a codified legal system, in which the written law has predominance over precedents set by courts, according to the following order:

- the Constitution;
- international agreements signed by the Dominican Republic;
- binding decisions from the Constitutional Court (not all their decisions are binding and applicable to all cases);
- Codes (General Law);
- Laws;
- Presidential Decrees; and
- Resolutions.

National justice administration is organised on a territorial basis, with as many Judicial Departments and Judicial Districts as are created by law.

Judicial Structure

The main judicial bodies and institutions are:

- The Constitutional Court – created to guarantee the supremacy of the Constitution and the constitutional order and for the protection of all fundamental rights; contrary to the general rule, its decisions are irrevocable and constitute precedent to all third-parties, including state powers and public entities.
- The Supreme Court of Justice – the highest court for all regular judicial bodies, which is the overseer of all other institutions and jurisdictions of the judiciary, including civil, penal and real estate courts (civil courts are also in charge of commercial matters which obey a different procedure).
- Other special jurisdictions existing within the system – these jurisdictions are created by the legislature with the purpose of resolving conflicts in specific areas of practice, such as the Administrative Superior Court, Labour Court, and penal cases involving minors.

COCID-19 Pandemic

Regular activities in the judiciary were heavily affected by the COVID-19 pandemic, and a State of Emergency was declared by the Executive Power. In fact, in order to comply with social distancing restrictions, all judicial services were suspended and most of the judicial offices and courts in the country were temporarily closed.

Initial response

First, the Council of the Judiciary, the public body in charge of the administration, conduct and discipline of the judiciary of the Dominican Republic, addressed this issue via its Acts No 001-2020 and 002-2020, of 18 and 19 March 2020, respectively. The measures established by these Acts are set out below.

Suspension of the administrative and jurisdictional work of the judiciary. By virtue of this, all the courts and administrative offices were closed. Suspension of all judicial and extrajudicial procedural actions carried out by bailiffs, except those related to criminal jurisdiction within the framework of exception provided for in said acts.

Suspension of all procedural terms for all the bodies dependent on the judiciary, all terms will be resumed three business days after the State of Emergency has ceased.

Permanent courts will remain in operation for the criminal jurisdiction. Currently the hearings before these are being implemented virtually and all terms associated with criminal and penal jurisdiction remain in force and in their normal course.

Subsequent response

Subsequently, the Council of the Judiciary ruled via Act No 004-2020, of 19 May 2020, with the purpose of regulating the transition to the gradual reopening and restarting of judicial proceedings. This reopening will be done in phases.

The initial phase will consist of a partial start of certain activities through virtual means. It provides for the reopening of procedures and measures that, due to their nature, are considered urgent; the completion or proper instruction of judicial processes; and all those actions related to the protection of fundamental rights and guarantees, provided that they can be processed and substantiated in a virtual way, and that the delay entails an unjustified limitation to the rights to which the legal action is linked, avoiding serious damage to the rights of the parties.

The intermediate phase will involve a partial opening of offices with a limited number of judicial services users. In this phase, the administrative offices and courts of the judiciary will be put operating. The admission, instruction and knowledge of all processes will be resumed, through non-contact (virtual) channels.

The advanced phase will involve the opening of all offices, courts and services. During this phase, all the services provided by the judiciary will be available, maintaining physical distance and hygiene measures; the use of all venues will be resumed.

Consequences

We can expect an import shift in the way justice is carried out in the Dominican Republic. Before COVID-19 spread, long terms plan for implementing technology as a tool for justice and allowing virtual hearings existed, the current circumstances have caused those plans to be violently advanced, meaning that the Dominican Republic could, sooner rather than later, be a jurisdiction where the judiciary is capable of operating virtually.

2. Restrictions to Foreign Investments

2.1 Approval of Foreign Investments

Equal conditions for national and foreign investments are constitutionally guaranteed. Both national and foreign investments have to meet the same requirements, therefore foreign investment is not generally subject to any form of special, additional or prior authorisation.

In principle, there is no need to secure any form of special, additional, or prior authorisation from the executive branch to be able to invest, or to start a business, in the Dominican Republic.

As in any other country, there are certain regulations addressed to the control of certain activities that are deemed to be sensitive or that may represent a hazard to the environment or to public health. For example, activities that require the disposal of dangerous, radioactive or toxic waste not originating in the Dominican Republic are regulated. However, these regulations are addressed to any investment, whether foreign or domestic. Registration of foreign investment is not mandatory but can be done for data gathering purposes and general orientation before the Export and Investment Center of the Dominican Republic (CEI-RD).

2.2 Procedure and Sanctions in the Event of Non-compliance

The foreign investment regime is liberalised in the Dominican Republic and it is not subject to any form of special or additional requirements, nor does foreign investment need prior authorisation from the executive or any other public body.

2.3 Commitments Required from Foreign Investors

Specific commitments or guarantees are not required from foreign investors as such conditions would represent unequal treatment, which is unconstitutional, considering that foreign and local investors are subjects to the same legal requirements and obligations.

2.4 Right to Appeal

Since prior approval of an investment is not mandatory, appeals will generally be because the authorities have not authorised an investment due to a licence or a permit required by the law that may be rejected. Where this is the case, the investor can challenge such decisions before the body that issued the decision or in court.

There are several processes: one can either challenge the decision before the same institution that denied the permit and following the process before superior and overseer institutions or one can start a process in the Administrative Courts.

Depending on the case, there are more complex scenarios where a country-investor treaty may apply and one can file for domestic or international arbitration.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entities

The Dominican Republic acknowledges several types of corporate vehicle. The most common legal entities recognised by Dominican Law are set out below.

Limited Liability Companies (Sociedad de Responsabilidad Limitada- SRL)

These are formed by a minimum of two and a maximum of 50 partners, none of whom will be personally liable for company debts. Best used for small and medium-sized businesses or closed capital projects. Capital will be divided in equal parts, represented by nominative titles known as Social Quotas, which are non-negotiable and will be par valued at a minimum of DOP100. Social Quota transfer is regularly restricted to succession cases, unless another disposition exists in the company by-laws. Administration is undertaken by one or several managers.

Stock Companies (Sociedad Anónima-SA)

These are formed by a minimum of two shareholders, who will only be liable up to the amount equivalent to their capital contributions. They are designed by the legislature for enterprises that demand more control and a more sophisticated corporate governance scheme. Capital is represented by shares, which are negotiable securities, minimum capital is DOP30 million and at least 10% of that amount must be subscribed and paid. Share transfer is normally not restricted, unless restriction clauses are included in the company by-laws. Management is carried out by a board of directors comprised of a minimum of three members. The law requires that stock companies be supervised by account officers. Stock companies, when authorised by the Securities Superintendence, can publicly trade shares.

Simplified Stock Companies (Sociedad Anónima Simplificada-SAS)

These are formed by two or more partners whose liability with respect to the company's activities is limited to capital contributions. It can be defined as mixture of an SA and an SRL, it allows wide freedom for shareholders to internally regulate the control structure of the company in its by-laws, according to its specific needs. Capital is divided into shares, which are negotiable securities. The minimum authorised capital required is DOP3 million and at least 10% of that amount needs to be subscribed and paid. Shareholders will decide the management structure, which can rely on one director, several directors or a board. No account supervision is required.

Foreign Companies

Dominican law also allows companies duly incorporated in foreign jurisdictions to be fully recognised and registered in the country by means of established branches or subsidiaries. The Law provides that foreign companies carrying out operations that generate fiscal obligations or liabilities must be registered before the Chamber of Commerce and Production and must be registered as taxpayers in the Dominican Republic. It is important to note that once the foreign company obtains its tax identification number (RNC number), it shall comply with the all formal duties and obligations of any taxpayer before the local tax authorities.

Individual Limited Liability Enterprise (Empresa Individual de Responsabilidad Limitada- EIRL)

In addition to the corporate structures discussed above, Dominican Law also allows for an individual or entrepreneur to incorporate an individual limited liability enterprise (empresa individual de responsabilidad limitada - EIRL). This operates as a sole-owner enterprise formed by the individual's patrimony dedicated to the business developed by the EIRL, which will be considered as independent patrimony, separated from the personal patrimony of the individual. The result is that entrepreneurs limit their liability without the need to establish a corporation or company.

3.2 Incorporation Process

Once the company's tradename has been registered before the National Industrial Property Office (ONAPI) at the Ministry of Industry and Commerce and the original shareholders have celebrated the Incorporation Assembly and have executed the company by-laws, the following procedures need to be completed, in the same chronological order indicated below, in order to formally incorporate a company:

- pay the company's incorporation taxes, equivalent to 1% of the company's capital;

- register the company's incorporation documents before the Mercantile Registry adjacent to the territorially competent chamber of commerce and production, according to the company's domicile (the corresponding Mercantile Registry will issue a Mercantile Registration Certificate as well as the registered copies of the incorporation documents, which will be delivered in approximately one to three business days);
- apply to the local tax authorities (DGII) to register on the National Taxpayers Registry (RNC) in order to obtain a taxpayer ID; and
- in order for the company to start invoicing, it will need to request from the DGII the issuance of an official invoice number.

Due to the Covid-19 pandemic, and in order to minimise contagion and contact without stopping the work of registering corporate documents, all the Chambers of Commerce have established an appointment system for all incorporation and corporate document registration. Appointments are digitally scheduled through the Chamber of Commerce website for Santo Domingo. Continuity of business is thus ensured in a safe way.

Taxpayer identification numbers, necessary for business in the Dominican Republic, can now be applied for online via the DGII platform, which may take up ten days.

Incorporating a Foreign Company

If one is registering a foreign company in the Dominican Republic, the documentation that needs to be filed before the Mercantile Registry and the DGII are the following:

- certified copies of all the company's documents pursuant to the company's country of origin, duly apostilled, including:
 - (a) incorporation documents;
 - (b) documentation regarding by-law modifications or shareholders changes, if applicable; and
 - (c) documentation regarding shareholder meetings that appoint the current board of directors;
- certified copy of the Companies Register Certificate, Certificate of Incorporation or Incumbency Certificate, issued in the company's country of origin, duly apostilled;
- certificate of Good Standing – if the company was constituted more than six months prior to application and if the companies register certificate, or its equivalent, issued in the country of origin, does not specify the validity of the company, duly apostilled;
- an act by the board (or competent corporate body) indicating the company's chosen domicile for operations in this country, and which also grants jurisdiction to the corresponding Chamber of Commerce and Industry and appoints

- the legal representative of the company in the Dominican Republic, duly apostilled;
- original power of attorney granted to the administrator or agent of the company in the Dominican Republic, duly apostilled;
 - photocopies of the applicant company's administrators' or agents' personal ID:
 - (a) if Dominican – National ID Card; and
 - (b) if foreign – passport, National ID Card or other valid form of identification with photo issued in their country of origin; and
 - photocopies of the ID of the shareholders of the company and/or representatives of the companies that are shareholders of the corporation (if the corporation has companies or entities as shareholders, it is necessary to have a copy of the by-laws, duly apostilled, and documentation that appoints the representatives of the companies, duly apostilled).

Once registered, the company will have to apply to the DGII to register on the RNC in order to obtain a taxpayer ID. In order for the company to start invoicing it will need to request from the DGII the issuance of an official invoice number.

3.3 Ongoing Reporting and Disclosure Obligations

Companies incorporated in the Dominican Republic, and branches of foreign entities registered in the Dominican Republic, must file and register before the Mercantile Registry of the corresponding Chamber of Commerce and Production and the local tax authorities, the following:

- resolutions from the company's shareholder or board meetings, including financial statements and management's reports approval;
- increases or reductions in the company's capital;
- changes to the company's by-laws;
- modification in the composition of the company's shareholders;
- mergers and or acquisitions;
- the dissolution and liquidation of the company;
- changes of the company's domicile or registered address;
- changes in the company's contact details;
- changes in management structure or appointed managers;
- specific authorisations and powers of attorney; and
- any other corporate resolutions in order for them to be valid against third parties.

In addition to the above, monthly and annual reports and sworn statements are presented in pre-established formats or forms before the local tax authority for tax purposes. Annually, ultimate beneficial owner information needs to be updated, also

any changes or modifications in shareholder composition and management structure needs to be registered before the DGII.

3.4 Management Structures

Most common management structures are comprised of one or several managers or a management board for limited liability companies, the sole manager being the most common.

Stock and simplified stock companies are commonly structured under a board of directors. However, simplified stock companies' management bodies, by definition, can be quite flexible and can be structured to meet the shareholders' needs. It is not uncommon or rare to see a simplified stock company structured under a presidential figure.

Manager(s), or a board of directors, may establish a second-tier management body, such as an executive committee or executive vice-president, which will carry out specific affairs delegated to them by shareholders and first tier management.

3.5 Directors', Officers' and Shareholders' Liability

Directors have a performance duty to the shareholders and the company. Directors shall care for the business as if it were their own. Directors who undertake actions against the company's best interests or in contradiction with specific instructions or directions will be held personally liable for such actions before shareholders and the company.

It is presumed that the actions of the directors are legitimate and therefore they will be deemed as valid and will oblige the company before third parties, regardless of whether the director(or directors) acted for the benefit or detriment of the company or in a manner surpassing the scope of their authority.

Shareholder liability is limited to amounts contributed as capital. Jurisprudence allows for exceptional piercing of the corporate veil when the company is used in the pursuit of fraudulent purposes.

4. Employment Law

4.1 Nature of Applicable Regulations

Employment relationships are regulated by the Dominican Constitution, the Regulations of the International Labour Organization, the Dominican Labour Code and related laws, which set forth the minimum rights and obligations for both employees and employers.

An employer is allowed to increase, improve or to go beyond the minimum benefits and rights granted to the employee by the law, but these minimum benefits cannot be limited or

diminished by an employer, not even by an agreement with their employees, as any stipulation contrary to labour laws is null and will produce no legal effect.

Collective bargaining agreements are acknowledged by local law and their conditions will govern employment relationships.

4.2 Characteristics of Employment Contracts

Verbal employment contracts are valid, except for contracts that govern foreign employment, fixed period, specific work or service employment.

Employment contract interpretation rules are given by the Labour Code in the sense that terms and conditions will not be determined by what is written, but by how the agreement is executed by the parties, from time to time.

Employment contracts may be open-ended or of undefined term, for a fixed period or for a specific work or service. Open-ended agreements are the most common form.

Despite the fact that it is legally possible to terminate an agreement verbally, it is highly recommended to proceed with termination in writing, including a release and discharge executed by the employee for the benefit of the employer.

4.3 Working Time

The normal duration of the working day is determined in the contract, but it may not exceed eight hours per day or 44 hours per week.

The working week will end at 12pm on Saturday. However, the Ministry of Labour may order by resolution that, in response to the requirements of certain types of companies or businesses and the social and economic needs of the different regions of the country, certain establishments apply an alternative working time schedule.

If the labour being performed is considered dangerous or unhealthy working time may not exceed six hours per week or 36 hours per week. The Ministry of Labour will determine the tasks considered dangerous or unhealthy.

There are three shifts recognised by the Labour code:

- a day shift – between 7.00am and 9.00pm
- a night shift – between 9.00pm and 7.00am, and
- a mixed shift that includes periods of the day shift and night shift, as long as the night period is less than three hours, otherwise it is considered a night shift.

Every employee has the right to an uninterrupted weekly rest of 36 hours.

According to Articles 203, 204 and 205 of the Dominican Labour Code, an employer must pay employees working overtime an increase salary per hour that ranges from 35–100% over the hourly salary for the time worked in excess of the regular working Day.

Because of the COVID-19 situation and the current circumstances, many employers have chosen to reduce their working hours, or implemented home office policies. This last possibility has been positively received by employees and employers and has led to the debate in Congress of a bill to regulate home office working in the Dominican Republic.

4.4 Termination of Employment Contracts

Employment contracts may be terminated by mutual consent, voluntarily by any of the parties or by justified cause.

There is no need to present a justification for a voluntary layoff. Employers can unilaterally decide to terminate employment agreements without cause. In these cases, it is required for the employer to provide an advance notice. Late notice or no notice at all will entail a penalty equivalent to the employee's regular salary earned during the applicable minimum period for the advance notice. The company may decide to make an immediate termination and pay in lieu the previous notice.

Employers who voluntarily terminate employees who have worked for more than three months, must complete a severance payment, the rule for payment is related to the length of employment. Severance must be paid to the employee within ten days of the termination; otherwise, the employer will have to pay a penalty of one day's salary for every day of delay. The amount to be paid as severance will be determined by how long the employee has been working for the employer.

When an employment relationship is terminated for a justified cause by the employer, severance payment is freed. An employer may terminate the employee justifiably, among other, for the following reasons:

- if the employee has misled the employer, pretending to have indispensable skills or knowledge that he or she does not possess;
- for executing the commended work or service in a way that demonstrates incapacity and inefficiency;
- for a lack of probity or honesty, for acts or attempts of violence, injury or bad treatment of the employer or those for whom it is responsible, or against his or her colleagues;

- for intentionally causing material damage during the performance of the work or because of it, in buildings, works, machinery, tools, raw materials, products and other objects related to work;
- for causing serious damages, without intention, but with clear negligence or recklessness;
- for committing dishonest acts in the workplace establishment;
- for revealing the employer's manufacturing secrets or disclosing confidential matters to the detriment of the company; and
- for non-attendance for two consecutive days or two days in the same month without justified cause, or the permission of the employer or his or her representative.

4.5 Employee Representations

Employee representation rules are associated with health and safety requirements, but only for companies with more than 15 employees. Different labour-related laws and resolutions require the confirmation of a health and workplace safety committee to drive and monitor compliance in terms of workplace safety and minimal sanitary conditions. Employee representation will also be present when a collective bargaining agreement exists.

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

Employees are taxed for income tax purposes on any income received for the performance of subordinated services. Income tax is withheld and paid to the tax authorities' month by month by the employer. Employee income tax is progressive and it is calculated on the basis of the wage.

Social security contributions are shared between the employer and the employee.

5.2 Taxes Applicable to Businesses

The Dominican tax system is constructed under the territoriality principle, all income generated from Dominican sources is taxed. Legal entities and individuals that legally reside, or that perform income generating activities, in the Dominican Republic are obliged to pay income taxes on their Dominican profits.

Corporate Income Tax

Legal entities of a commercial nature are subject to the payment of taxes on their income, revenues, utilities, and benefits obtained within a fiscal period. The applicable income tax rate for legal entities domiciled in the Dominican Republic is 27% percent over their net income.

Capital Gains Tax

Income derived from the sale of capital assets is subject to income tax. The concept "capital asset" means any asset in possession of the taxpayer, whether in connection with their business or not. This concept does not include commercial inventories or assets possessed principally for sale to clients in the ordinary course of the business, depreciable assets, and accounts or promissory notes acquired in the ordinary course of the business for services rendered or derived from the sale of inventory assets or assets to be sold in the ordinary course of the business. In general, capital gains/losses should be determined by deducting, from the price at which the assets are transferred, the adjusted basis of the taxpayer on such assets. Gains arising from this operation are subject to a capital gains tax of 27%.

Income derived from the transfer of shares of DR entities should be considered as DR-sourced income and, therefore, subject to local taxation for the capital gain realised.

The Dominican tax code establishes that any capital gain obtained in connection with the direct transfer of shares of a DR entity is considered as DR source income for its shareholders and consequently subject to a 27% assessed over the difference between the transfer value and the shareholder's basis in the transferred stocks.

Income derived from the transfer of the shares of a foreign entity holding rights or goods located or exploited in the DR should also be considered as DR source income subject to capital gains tax in the DR for any gain realised at a 27% tax rate.

For determining capital gains and the applicable tax for indirect transfers of shares or assets, the DGII shall estimate the value of the transaction considering the transfer value of the shares of the entity that holds such goods or rights, and the proportional value of these in relation to the total equity of the entity whose shares are the object of the transfer.

The companies purchasing shares are designated as withholding agents for capital gains. This withholding rate is assessed at a rate of 1% of the transfer value of the shares, no matter if the seller is an individual, company or entity, from the DR or from abroad.

Please bear in mind that such withholding will be considered as an advance payment of the annual income tax in favour of the seller of the shares. This payment must be filed and paid before the DGII no later than the tenth day of the following month after the payment was made to the seller.

In the event the seller has confirmed that the transfer of shares would not generate capital gain, it is possible to request the non-applicability of the withholding before the DR Tax Authority.

DOMINICAN REPUBLIC LAW AND PRACTICE

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This request should be filed no longer than 30 days before the date that the withholding should be made.

Withholding Taxes

Withholding taxes are paid by withholding agents, meaning those subjects that – by express mandate of the tax code, a regulation or by provision of the tax authorities – make the withholding of the tax on payments made to third parties, having to declare and pay the amount withheld to the tax administration in the name of the taxpayer subject to the withholding. Applicable rates to withholdings vary, they include:

- 10% on the amounts paid or credited to the account for the rental or lease of any type of real or personal property.
- 10% on the fees, commissions and other remuneration and payments for the provision of services in general provided by individuals, not executed in a dependency relationship.
- 25% on prizes or winnings obtained in lotteries, electronic prizes from games of chance and prizes offered through promotional or advertising campaigns or any other type of unspecified bet or draw, with the character of final payment.
- 5% on payments made by the State and its dependencies, including state companies and decentralised and autonomous bodies, to individuals and legal entities, for the acquisition of goods and services in general, not executed in a dependency relationship.
- 10% on dividends paid or credited in the country, for resident taxpayers or not.
- Whoever pays or credits into an account, interest from Dominican sources to a non-resident, non-domiciled or domiciled individual, company or entity shall withhold and pay 10% of that interest.
- 27% of the amount paid or credited to non-resident individuals, companies or individuals not domiciled in the country, from local income sources.

Sales Tax

Tax on the transfer of industrialised goods and services, the Dominican Republic's equivalent to VAT, is generally applicable over the value of traded goods and services. Legal entities and individuals foreign and/or domestic are subject to paying this indirect tax. The current rate is equivalent to 18%, calculated over the price of the traded good or service. Certain services and fundamental goods – such as education, health, transport, electricity, water, etc – are exempt from this tax.

Asset Tax

Companies that do not operate in an active manner or suffer losses during a specific tax period are subject to an asset tax, an alternative to the income tax, paid only when the payable amount for income tax would be lower than the amount to be

paid for the asset tax. The current rate is 1% over the total of all taxable assets.

Real Estate Taxes

Real estate transfers, acquisitions or purchases are taxed by a real estate transfer tax, usually paid by the buyer. The current tax rate is equivalent to 3% of the purchase price or 3% of the official registered value of the property, whichever is higher. In addition to this, other title registrations are taxed, mortgages for example, pay a 2% tax of its value.

Other Tax Issues

Corporate vehicle incorporation, regardless of the type involved, is subject to the payment of an incorporation tax, equivalent to 1% the corporate capital.

Excise tax, also known as selective consumption tax, is applied over the values generated in the manufacturing and/or importation of certain luxury goods, tobacco, alcohol, TV cable, telecommunications services, and insurance. Applicable rates vary.

To mitigate the economic impact of the coronavirus, local tax authorities have extended the deadlines for the presentation and payment of tax obligations on two different occasions, as well as the selective consumption taxes on fuels and the special contribution of liquefied petroleum gas (LPG). Likewise, the collecting entity granted payment agreements in three consecutive instalments for all taxpayers of VAT and the selective consumption tax for alcohol and tobacco products.

5.3 Available Tax Credits/Incentives

The Dominican Republic has a regulatory framework to encourage local and foreign investment in some industries, such as cinema, export processing zones and tourism. This framework consists of a series of tax benefits, ranging from exemption from the payment of company incorporation and liberalisation of the tax on the transfer of industrialised goods and services for goods and services associated with the industry, to the release of income tax.

5.4 Tax Consolidation

Tax consolidation is not available in the Dominican Republic. Each company must file its own tax return form.

5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules limit the deduction of interest. The deductible portion will be lower than the result achieved by multiplying the total amount of interest amassed in the fiscal period by three times the annual average balance of equity divided by the annual average balance of all of the taxpayer's indebtedness. After applying the annual permitted interest

deduction, excess interest may be carried forward for deduction in the following three fiscal years, with the same limitation.

5.6 Transfer Pricing

Intercompany transactions in the DR are regulated by the Dominican Tax Code and other specific regulation. These regulations are applicable to resident individuals or entities that perform transactions with:

- a non-resident related party;
- a resident related party; or
- individuals or entities domiciled or located in states with preferential tax regimes or of low or null taxation (tax havens).

The concept of “related parties” according to transfer pricing (TP) regulations includes, among other situations:

- when one of the parties participates in the direct or indirect management, control or equity of the other;
- when the same individuals or entities participate directly or indirectly in the management, control or equity of the parties; and
- if one of the parties transfers more than 50% of its production to the other, and at least one of them is resident or domiciled in DR.

In accordance with TP regulations, the prices established in controlled transactions must comply with the arm’s length principle, which means that the prices established among related parties should be agreed as if they were carried among independent parties, in comparable transactions and under the same or similar circumstances. For purposes of determining the arm’s length price of the operations carried out between the related parties, one of the following TP methods shall be used:

- non-controlled comparable price method;
- resale price method;
- added-cost method;
- profit sharing method; and
- net margin of the transaction method.

Compliance

Taxpayers reached by TP regulation shall comply with the following duties:

- File an informative TP Tax Return (DIOR); the DIOR must be filed before the Tax Authority within 180 days after the closing of the fiscal period.
- Hold a TP study in order to justify the prices used in intercompany transactions.

Nonetheless, please bear in mind that taxpayers that only carry out controlled transactions locally, or whose controlled transactions do not exceed DOP10 million, are not required to hold a TP study.

5.7 Anti-evasion Rules

The Dominican Tax Code and complementary resolutions provide anti-evasion rules in connection with interest payment. A major recent shift in tax application laws came with the enactment of Law No 155-17 against Money Laundering and Terrorism Financing, which classified wilful tax evasion as a felony that generates assets or assets susceptible to money laundering. This law has consequently strengthened, in a significant manner, the sanctions and penalties associated with tax crimes.

6. Competition Law

6.1 Merger Control Notification

Mergers and acquisitions are not subject to previous notification. The Law on the Defence of Competition on the Dominican Republic does not regulate capital or market concentration. Preventive merger control rules are non-existent. Entities participating in a merger or acquisition are not required to notify the competition regulator under any circumstances.

Entities subject to a special set of regulations such as telecommunication companies, banks, insurance companies, among others, require an authorisation from their corresponding specific regulatory body before executing a merger or acquisition.

6.2 Merger Control Procedure

Mergers and acquisitions are not subject to any mechanism of completion or market control and therefore do not require previous notification.

Entities subject to a special set of regulations such as telecommunication companies, banks, insurance companies, among others, require an authorisation from their corresponding specific regulatory body before executing the merger or acquisition. Approval time varies from 30–60 days.

Certain procedures and formalities should be followed and observed in order to successfully register and complete a merger procedure according to Dominican Republic’s corporate and tax law.

6.3 Cartels

The Law on the Defence of Competition on the Dominican Republic shall apply to all economic agents in a relevant market, whether they are individuals or legal entities, whether operating under public or private law, with or without profit, national or

foreign, who carry out economic activities in Dominican territory.

Practices, actions, stipulations and agreements between economic agents are prohibited when aimed at creating unreasonable entry barriers in a relevant market, whether such agreements are express or tacit, written or verbal.

Such conduct will be sanctioned, it does not matter if the desired effects of the colluding agents executing the agreement are produced or not. The intention of creating unreasonably imposing barriers on a market is punishable in itself.

Pricing agreements, production limitation, concerted offers, market assignment, among other concerted behaviours will be considered as anti-competitive and will be sanctioned with fines of 30 up to 3,000 times the legally established minimum monthly wage for concerted practices, except for collusion in public tenders, in which case the sanction is 200 to 3,000 times the minimum wage.

6.4 Abuse of Dominant Position

Behaviour that constitute abuse of the dominant position of an economic agent in a relevant market is prohibited. This conduct is defined, in the Law on the Defence of Competition on the Dominican Republic, as that which may create unjustified barriers to market entry for third parties.

Dominant economic agents will be sanctioned if any of following conduct, among other things, is verified:

- subordinating the sale decision to the buyer refraining from buying or distributing products or services of other competing companies;
- imposing prices and other conditions of sale to resellers, without there being a commercial reason that justifies this;
- conditioning the transaction to the acquisition of another additional good or service, different or distinguishable from the principal one; or
- conditioning the transaction to the buyer refraining from contracting services, acquiring, selling or providing goods produced, distributed or marketed by a third party.

The above-described conduct will be considered as anti-competitive and will be sanctioned in the Dominican Republic if it affects Dominican markets, even when it originates abroad.

The Law on the Defence of Competition on the Dominican Republic provides fines of 30 to 3,000 times the legally established minimum monthly wage for abuse of a dominant position.

7. Intellectual Property

7.1 Patents

Patents are granted to protect rights over inventions, providing inventors with exclusive rights to exploit their creations morally and economically for a period of 20 years.

An invention is an innovative idea susceptible to industrial application. For it to be considered as a novelty or an innovation, it cannot be perceived as present or existing in the current state of the art of the relevant industry.

The National Office of Intellectual Property (ONAPI) classifies patents for inventions in accordance with the Strasbourg Agreement on International Patent Classification of 1971, as amended in 1979.

The 20 years of protection are counted from the application date and a three-years extension is possible, for up to three more years in case of delay by ONAPI in the approval process.

Patent applicants in a country that grants reciprocity to patent applicants in the Dominican Republic benefit from a priority rights for a period of 12 months to apply for registration in the Dominican Republic.

Patent infringement is sanctioned with six months to three years in prison, fines ranging from 50 to 1000 times the legally established minimum monthly wage, plus damages.

7.2 Trade Marks

A trade mark is any visible, distinctive and identifiable sign or combination of distinctive and identifiable signs that can be graphically represented. These graphical representations or illustrations are associated with products or services as a distinguishing element of such products or services from those products or services that might be similar in nature and are produced by other businesses.

Any combination of letters (regardless of the fact of such letters forming a real word, sensed phrase or simply a made-up word), names, catch phrases, slogans, numbers, figures, labels, colour combinations, and shapes, among other things, are subject to registration as trade marks.

The distinctive element is the main factor for trade marks, as no registration is granted to those marks that cannot be a differentiation factor among similar products or services, meaning that a mark that may be easily confused with others already registered, or whose registration is still pending, will not be granted. This is also the case for those marks formed by combinations

of common words, geographical references, common shapes or colours, that might be present in other trade marks.

Trade marks are classified by ONAPI in accordance with the terms and conditions set forth in the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 1957.

Trade marks can be registered electronically by completing a virtual Trademark Registration Mark available on ONAPI's website. Registration is usually a three-month process, from submission to issuance of the trade mark certificate.

Registration of marks is granted by ONAPI for renewable periods of ten years.

Infringement of a trade mark is sanctioned with six months to three years in prison and fines ranging from 50 to 1000 times the legally established minimum wage, plus damages.

7.3 Industrial Design

Patents can also be granted by ONAPI to protect industrial designs. Industrial designs are basically a new form of presentation or packaging for a product or object that gives it a singular, distinctive and unique appearance. ONAPI classifies industrial designs according to the Locarno Agreement Establishing an International Classification for Industrial Designs of 1968, as amended in 1979. Patents for industrial designs are granted for a period of five years from the application date, but can be extended for two additional periods of five years each.

The registration process requires the physical presentation of a registration request form that will be accompanied by a description, photograph or several detailed drawings of the submitted design. The form needs to set forth the applicable class or sub-class. Industrial design protection is granted by a resolution, which will normally be issued between 8–12 months after submission.

7.4 Copyright

Intellectual works of a creative nature – such as literature, art, scripts, plays, lectures, speeches, novels, sermons, musical lyrics, choreography, paintings, sculptures, drawings, illustrations, maps, designs, photographs, computer programs, and data bases, among others – are protected by the Dominican Copyright Law 65-00. Moral and economic rights are subject to the protection of this Law.

Economic rights allow authors to exploit the economic benefits of their work by means of rights of usage or exploitation of any kind, rights of reproduction, translation, adaptation, performance and broadcasting, sale of rights, etc.

Protection is enforceable for life of the author plus 70 more years, in order to assure and grant that his or her heirs and assignees have the opportunity to also exploit such benefits. At the expiration of the copyright, the work enters the public domain.

Moral rights on the other hand, entitle authors to make their work known publicly, it allows authors to associate their name with their creation or work, and to be able to protect their work against unlawful copying, defamation and any other form of ill-intended appropriation of their creative work. Moral rights are not transferable and exist indefinitely.

Copyright violations are subject to criminal and administrative sanctions, as well as damages. Criminal penalties range from three months' to three years' imprisonment and fines from 50 to 1000 times the minimum wage. Administrative penalties may include temporary or permanent business closure, confiscation of equipment, destruction of illegal reproductions, and additional fines.

7.5 Others

Utility models can also be protected by patents. Utility models are categorised as any new forms, configurations or arrangements of elements of any artifact, tool, instrument, mechanism or other object, or of any part thereof, that allows a better or different operation, use or manufacture of the object that incorporates said model, or that provides it with any form of improvement, advantage or technical effect that it had not previously showed. Patents for utility models are granted for a period of 15 years from the application date.

8. Data Protection

8.1 Applicable Regulations

The Constitution of the Dominican Republic and the Protection of Personal Data Law are the two main sources of data protection law. The first one sets forth a legal framework of fundamental rights with regards to intimacy and privacy, which can be extrapolated to the data field; the second one establishes minimal requirements, rights and limitations and prohibitions for the collection, storage, use, transfer, protection and access to personal data. The Protection of Personal Data Law regulates personal data (any numerical, alphabetical, graphic, photographic, acoustic, or other type of information concerning an identified or identifiable individual) recorded in files, public records, data banks, or other technical means of data processing, whether private or public. The object of the regulation is to impose control on data treatment, meaning collection, generation, preservation, extraction, organisation, storage, modification, transmission, access and destruction of personal data.

8.2 Geographical Scope

The Personal Data Protection Law regulates the treatment, storage, extraction, organisation, modification, elimination, preservation and transmission of that personal data which is located in Dominican territory as well as the international transfer of personal data from the Dominican Republic to countries abroad.

8.3 Role and Authority of the Data Protection Agency

The Dominican Republic does not have a centralised national data protection agency.

Notwithstanding the foregoing, certain public bodies are called to control and supervise the treatment of certain personal data and information, as specific prohibitions have been established by law for determined sectors, such as telecoms and health, where the General Health Law includes data protection limitations on the treatment on patient, personal and medical data for healthcare professionals and the same occurs for telecom companies, which are regulated by the General Telecommunications Law.

DMK Abogados is a full-service law firm that offers comprehensive advice with an emphasis on foreign investment, tourism and real estate, commercial and corporate law, contracts, mergers and acquisitions, taxation, litigation, and labour, among others. The firm employs a client-centred approach to better provide integral assistance to key projects in the Dominican Republic and offers “two steps ahead” legal and business advice in complex business transactions, aimed to protect foreign and local investors’ interests. DMK Abogados has repre-

sented major multinationals in M&A transactions, valued at more than USD80 million. Currently, the firm is advising on financial loans over USD200 million, secured with local assets and advising internationally recognised franchises in their enterprises in the Dominican Republic. DMK Abogados’ 15 attorneys offer deep and accurate answers to complex issues in a timely fashion from the firm’s four offices (headquarters in Santo Domingo and other offices in Puerto Plata, Punta Cana and Las Terrenas).

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DOMINICAN REPUBLIC LAW AND PRACTICE

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