

**LEGAL GUIDE**  
**FOR DOING BUSINESS IN THE**  
**DOMINICAN REPUBLIC**

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This Legal Guide includes the most important documents and requirements of the Dominican Laws to set up a business in the Dominican Republic. It is the result of years of experience of our firm in the legal counseling of corporations in various areas, such as: (1) Tourism; (2) Export Free Zones; (3) Banking and Financial entities; (4) Telecommunications; (5) Energy; (6) Insurance; (7) Healthcare and Social Security; (8) Sales of goods and services, as importers, distributors or local manufacturers, among others.

It is important to note that the requirements and procedures indicated herein are subject to change as provided, from time to time, by modifications on existing laws or the approval of new regulations by the Government. This version of the Legal Guide shall be updated accordingly.

Furthermore, this document includes rules to take into consideration for businesses of any kind that could be initiated in the country, especially regarding to taxation, labor liabilities as well as rules under the regulations of the Commerce Code and other special laws, such as, the Foreign Investment Law, the Industrial Property Law and the Copyright Law.

The concepts included in this Legal Guide shall not be interpreted and/or construed as formal legal advice. This document is merely a Guide to allow investors have a general idea of our regulatory framework when deciding to do business in the Dominican Republic.

On March 1<sup>st</sup> of 2007 entered into full force and effect the Free Trade Agreement between Dominican Republic and the United States, in addition to Nicaragua, Guatemala, Honduras and El Salvador (DR-CAFTA). Summarizing, the Treaty exonerates of the payment of tariffs of import between the parties of the treaty to a wide range products. In this sense, the DR-CAFTA favors the investors of these countries with a better tariff treatment towards the products exported towards the Dominican Republic. This treatment is based on the tariff lowering, stimulating at the same time the competitiveness of the producers, with aims to develop the conditions of better competition among treaty members and also with the producers of more advanced countries.

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## **CHAPTER I:** **General Rules**

In this Chapter we will refer to the General Rules applicable to all legal and physical persons doing business in the Dominican Republic, notwithstanding the focus of their business or principal activity that performed (hereinafter “the General Rules”). The General Rules mainly concern regulation for the formation of the business and the constitution of Companies (equivalent of incorporation) and, the requirements imposed by the Tax, Labor and Social Security Laws.

**1.1 CORPORATE: LEGAL FORM.** The Dominican laws do not impose a specific form of entity to conduct business: individuals or legal persons can start their operations in the country, whether national or foreign, joint ventures, associations, individual businesses, commercial companies, capital companies, etc. With no other restrictions than the ones determined by law and by the regulations concerning the activity.

The most frequent and convenient form to conduct business in the Dominican Republic is through the incorporation of commercial companies with limited liability and capital divided in shares. They can be indistinctively denominated as “Anonymous Societies” [Sociedad Anónima (S.A.)] or “Share Company” [Compañía por Acciones (C. por A.)]. The Commerce Code enacted on 1884 and amended thereafter by a few laws regulates these commercial companies. Because it is the most important business vehicle in this country, we hereby will be focused to the limited liability commercial companies.

Find below some important legal issues of this type of company in the Dominican Republic:

- The Commerce Code (hereinafter “the Code”) requires a number of at least seven shareholders; they can be national or foreign individuals or legal persons (corporations, partnerships, etc.);
- The Code does not require a minimum social capital; however it still provides that the shares have a minimum value of RD\$5.00. The Code required that at least the 10% of the company’s social capital should be paid-in. In practice, it is customary to set up companies with a capital of at least RD\$10,000.00;
- One or several Administrators/Directors appointed by the shareholders must administer the Company and are responsible for its operation; *they may delegate their duties on other officers or managers but they are liable for the acts of their trustees.* In practice, the most frequent form of administration is the Administration Council composed by two or more members. The members of the Board may or may not be shareholders of the Company, unless otherwise specified by the Company’s Bylaws.
- The Code requires the appointment of one or more Vigilance Officers, in charge of the supervision of the accounts of the company and the performance of the Board of Directors;
- The process of constitution of a company concludes with the registration at the Merchant Registry (in the Chamber of Commerce and Production); and, with the income tax authorities upon obtainment of a National Taxpayers Registry (RNC).

Foreign companies that are majority shareholders are also registered as Taxpayers and a RNC number is assigned to them;

- A company can be set up on approximately 2-3 weeks. Costs and fees vary depending on the Company's social capital based on (i) the capital and document taxes to be paid to the Government, calculated on the amount of the social capital and, (ii) the rates to be paid to the Chamber of Commerce and Production also depend on the social capital of the Company.
- If the principal shareholder of a Company or the representative of a Corporate Shareholder is a foreign individual, he must also submit the following documents:
- Certification of Incorporation of the Company by the authorized entity of the country of origin, duly legalized by the Dominican Consulate in such country.
- Copy of the document that gives power of attorney to act in the name of the Company to this person in the Dominican Republic.
- If the shareholders are individuals they must submit a copy of their passports.

**1.2. TAXES.** The Tax Code enacted on 1992, as amended, provides for a number of obligations to be fulfilled by anyone doing business in the Dominican Republic. Some interesting aspects are:

- The Code contemplates the concept of internal source of revenue, meaning that all profits generated in internal commercial activities are considered source of revenue and such enterprises are obliged to pay 25% of such incomes (even when this business is conducted by a foreign company);
- Profits are all incomes that constitute utility or benefit from said commercial activity;
- Some expenses are deductible from the payment of the income tax;
- A Sworn Declaration of Income Tax shall be filled for the Income Tax authorities within the first 120 days following the closing of the fiscal year of business and shall liquidate and pay the correspondent taxes. Companies may choose as dates for Fiscal Year closing the following provided by the Tax Code: March 31<sup>st.</sup>, June 30<sup>th.</sup>, September 30<sup>th.</sup>, December 31<sup>st.</sup>;
- Starting on 2006, all companies shall make the anticipated payment of income tax based on twelve monthly payments that are equal to 100% of the Income Tax paid the previous period. The companies that during the 2004 fiscal year paid their Income Tax in 2004 based on 1.5% of their income shall pay during 2005 an amount equal to the one paid in 2004.
- The Industrialized Goods and Services Transfer Tax (ITBIS) are imposed to the transfer and import of such industrialized goods, and, for the rendering of services (including professional services and the lease of real estate properties to be used with commercial purposes. The Tax rate is 16%, and shall be paid on the 20<sup>th</sup> day of each month. (Some goods and services are exempted from the payment of this tax);
- The tax authorities at the beginning of each year approve a Salary Retention Table. Employers have to withhold and pay to the internal revenue service a percentage of the salary of its employees. In 2008, the salaries of up to RD\$290,243.00, per year where exempt. The taxes that have to be paid is the equivalent of 15 % of the annual salaries between RD\$290,243.01 and RD\$435,364.00; 20% for the salaries between RD\$435,364.01 and RD\$604,672.00; and, 25% for annual salaries in excess of RD\$604,672.01 and up;

- There are some raw materials, as well as some industrial machineries and capital assets with a tariff rate of a 0%, which are free as well of the payment of the ITBIS. Thus in fulfillment of the Free Trade Agreement DR-CAFTA, as well as of some dispositions in some laws, with the objective of stimulating the competitiveness by giving fiscal incentives to certain companies, like those of the textile industry and companies of research and development, specifically in the area of computer science;

**1.3. LABOR.** The Dominican Republic Labor Code enacted also on 1992, was considered at that time as an important input for the protection of the employees and their rights. Actually, it is a very protective legal piece, which creates important obligations for the employers.

Some important issues, which in our opinion shall be considered when planning to start a business in the Dominican Republic, are:

- The Labor Code highly protects employees, and grants them excessive rights on their favor, such as (1) the labor contract is that which is performed, executed by factual means, not necessarily the document printed and signed. This means that, no matter what the employee signs, he may always assist himself through the Labor Courts and proof his factual relationship with the employer; (2) the rights established in the Code, cannot be waived;
- The Code mandates responsibility upon the employer to pay the salary to the Employee, as well as the additional Christmas Bonus (13<sup>th</sup> Salary) and, a Bonus coming from the enterprises benefits for the past fiscal year.
- Upon unilateral termination of the labor contract by the employer's decision, the Labor Code establishes the payment of accumulated benefits at the day of termination, including: Prenotice and Aid, based upon the time and the salary waged for the last 12 months by the employee. When the employee has committed serious faults or in general, a serious reason that justifies firing, then the employer must follow a strict procedure established to evidence such a fault before the Labor jurisdiction. In common practice, Tribunals tend to declare claims as dismissed by lack of evidence. That is one of the reasons why companies tend to (1) pay both the Benefits and the Prenotice aids or (2) establish from the beginning a legal guides to minimize legal risks at this point in order to terminate the contract with employees of such kind;
- The Labor Code provides rights for the employee to enjoy paid vacations after one year of uninterrupted labor. This vacation starts at 14 days, and for every additional year it earns an additional day, until 20 days of paid vacations;
- The Code establishes that all business shall pay an equal of 10% of its year-end benefit to its full time employees. This participation fee may not exceed 45 days of ordinary salary for those who have continuously worked up until 3 years and of 60 days to those who have worked over this time lapse. When the employee does not render services to the company for the entirety of the year, it will only benefit from the period he actually worked for. This participation bonus known as the "Bonificación" shall be paid in the next 90-120 days following the closure of its fiscal year date. Companies in agriculture, produce Industry, timber and mining, are exempted from this payment for the first three years of their commercial activity. Industrial Free Zones are totally exempted from this payment.

- A workday is the time frame, which the employee can not use freely, by means of being at the exclusive service of his employer. The duration of a normal workday may not exceed 8 hours per day or 44 hours a week. The work-week ends Saturday at 12 noon. However, at the requirements of a company's needs, special work schedules may be arranged;
- The National Minimum Wage is established by the National Salary Committee and, is adjusted to inflation on an annual basis. As of January 2004 the minimum wage for Exports Industrial Free Zones is RD\$3,237.25, (Res. 5/2003); whereas non sectorized commercial, industrial enterprises must pay a minimum RD\$7,360.00, with effectiveness from 1° of April of 2007, (Resolution 1/2007), in companies whose installations or existence or the gathering of both face or exceed the amount of RD\$4,000,000.00; RD\$5,060.00 monthly, with effectiveness from 1 of April of 2007, to those companies whose installations or existence, or the gathering of both faces or exceeds RD\$2,000,000.00 but below RD\$4,000,000.00; 4,485.00 monthly, to those companies whose installations or existence, or the gathering of both faces or exceeds RD\$2,000,000.00 but below RD\$200,000.00. Res. 4-2003 of September 22nd, 2003 establishes an especial chart concerning companies that do not reach the RD\$200,000.00 mark. (Res. 1/2007) establishes a RD\$150.00 salary for every work day of 10 hours for those landhearers working produce, this salary may be adjusted when the work day period is lower or higher than 10 hours; As of April.1st. 2007, the hotel, restaurant and fast food services which exceed the RD\$ 4,000,000.00 mark, the minimum wage will be of RD\$5,575.00. Those that exceed 2,000,000.00 but do not exceed the RD\$ 4,000,000.00 mark, minimum salary will be of RD\$4,000.00. Those that do not exceed the RD\$200,000 mark, minimum salary will be of RD\$ 3,600.00;
- The landhearers have the protections and rights for all workers established by Labor Code, the only difference is in the work day and the establishment closing, this includes vacations, resting time;
- The Landheader is identified as the person who makes habitual activities of the agricultural activity, that is to say, to seed, to harvest, among others. Lanheader is not every person working in an agricultural enterprise, but the persons dedicated to this agricultural activities.
- The landheader's working time is for 10 hours. Since the landheader has the same rights of any normal worker, their right to resting time is for 36 hours weekly. Regarding their vacations the regime is the same one established by the Labor Code, hence they have the right to 14 days of paid vacations per year.
  - As of 2007 the landheader's Minimum Wage has been established on RD\$ 150.00, this amount shall be adjusted to increase or decrease accordingly, with the work time, in the cases, the employer and the landheader, have agreed on either a longer or a shorter work time. There is a deadline of 14 days maximum, to the payment of the wage of the landhearers. This means that between payments is not allowed a time frame beyond 14 days.
  - If the employeur have worked for more than 3 months but less than 6, 6 days of salary. If the employeur have worked for more than 6 months but less than a year, 13 days of salary. If the employeur have worked for more than 1 year but less than 5 years, 21 days of salary for each year of work. If the employeur have worked for more than 5 years, 23 days of salary.
- Any part must give previous warning to the other for the termination of the work agreement, after a continuous work of 3 months but less than of 6, with a minimum of seven days of anticipation. After a continuous work that exceeds six months and he is not greater of a year,

with a minimum 14 days of anticipation. After a year of continuous work, a minimum of 28 days of anticipation. If the previous warning is not done, then part that omitted the previous warning, shall pay a work day for each day of previous warning.

- The Labor Code establishes salaries and benefits of not subject to foreclosure procedures;
- During pregnancy women enjoy of special protection. Any termination of a labor contract on behalf of the Employer during the pregnancy period and for three months thereafter is void. A woman cannot be released based on the fact that she is pregnant. A release of a female employee during her pregnancy or within the six months after the childbirth must include the payment of the employees notice, aids, and benefits waged until the date of her release, as well as a special payment of five months of ordinary salary. The Code also establishes that a female worker during her pregnancy has a right to mandatory rest during the six weeks that precede the estimated birth date and the six weeks that follow the childbirth. When the employee does not use the prenatal rest dates, such period will be added to the post-birth rest period. During lactating periods, the female employee has the right to, at her place of work, three paid rests periods during her workday of 20 minutes each, minimum, for breast-feeding her child.

**4.2. SOCIAL SECURITY.** As part of comprehensive reforms of the Healthcare and Social Security areas approved on 2001, new laws were passed: (1) Law 42-01 on Healthcare and, (2) Law 87-01 which creates the new Dominican Social Security System.

This Law is still under its first stage (introduction to the system) and some important Rules and Regulations for its application have been published, thus, imposing certain rules for the protection of several risks, such as:

- Law No. 87-01 binds employers to contribute to the financing for their employee's (including rural) protection against incapacity, risks of seniority, leaves by aging outpost, sickness, infancy and labor risks.
- Because the Law's requirements for affiliation, quotation and participation are compulsory, the sanctions established by Law 87-01 (such as correctional prison and fines), have awakened concern particularly in the commercial sector;
- Law establishes three financing regimes; one of them is the contribution regime, applicable to both public and private employees and employers, including the State as employer. Under these provisions, employers and employees make the contributions as the Law establishes:

**From September 1st, 2007:** (Gradually depending of the region)

- **Family health insurance that** includes the Basic Plan of Health, the Services of Stayment for Children, subsidy for disease and motherhood. The complementary plans that exceed the benefits of the Basic Plan of Health, will be covered by the member or the employer, and regulated by the National Counselor of Social Security.
- **Working risks insurance due to work accidents and professional disease**, as establish by law, it includes medical attention, and health and dental plan assistance; prosthesis, glasses, orthopedics equipments and the cost of their repair; subsidy, indemnity and/or pension for handicapped.

**From February 1st, 2003:**

- **Old age, disability and surviving insurance (Pensions System)** that include pension for old age, total or partial disability, unemployment because of old age and surviving pension.
- However, and basing on the gradualist principle of the National Counselor of Social Security (CNSS in Spanish), designed a calendar for implementation, and by virtue of it, the Family Health Insurance was initiated in the southwest region and therefore reach progressively the entire national territory.
- To make the implementation easier, Law itself establishes a yearly gradual increase sketch, tending to reach the total value in a period of five (5) years maximum.

Upon beginning of service and during the first year, the values will be given in the proportions described hereinafter:

<b>Benefits</b>	<b>Contribution during the first year</b>	<b>Proportion in charge of the employer</b>	<b>Proportion in charge of the employee</b>
<b>Family Health Insurance</b>	9.0 % of the valuable salary	6.67%	2.86%
<b>Old age, disability and surviving Insurance</b>	9.0% of the valuable salary	6.42%	2.58%
<b>Working risks Insurance due to work accidents and Professional disease</b>	Average 1.2% of the valuable salary	Fixed Basic Fee: 1% of standardized application to all the employers. <u>Additional Variable Fee:</u> Up to 0.6% established due to the type of activity and the risk level of each company.	0%

It is important to observe that under the provisions of the contribution regime, the **employer** is the responsible of signing up his employees. The employer will act as a retention agent and will pay the total amount to the Social Security Treasury, through the national group of banks or accredited entities, no later than the first three (3) working days of every month.

## **CHAPTER II:** **Business by Activity; Special Rules**

In addition to the General Rules summarized heretofore and applicable to all type of business, the Dominican laws provide for some Special Rules or requirements to specific business, depending on the business they are involved.

We refer to business such as Tourism, Free Zones for Export, and Banking at the beginning of this Legal Guide, since these are the ones that our Firm practices on an everyday basis.

### **2.1 TOURISM.**

**2.1.1. GENERAL ASPECTS.** Since more than three decades, the Dominican Republic began a process to develop a tourism infrastructure. Until 1992, investors in the tourism sector enjoyed of tax exemptions by Law 153 on Incentive and Tourist Development dated June 19th, 1971.

Important and famous hotel groups do business in our country attracted by the flow of tourists growing statistically each year. For instance, in our principal city, Santo Domingo, operate five stars hotels, such as Hotel El Embajador (an Occidental-Allegro Hotel), Sol Meliá Hotels, Hotel Jaragua Renaissance (Marriott), Fiesta, Coral by Hilton, Iberostar Hotels & Resorts, Intercontinental, Accor, Barceló, Fun, Sofitel, a Marriott Courtyard, among others.

In the country's beaches the all-inclusive system hotels hold a capacity higher than 50,000 rooms. Each year we are visited by more than 3.1 millions of tourists from all over the world. The tourist industry represents a 20 % of the total income of the country, according to numbers reported by the Central Bank of the Dominican Republic. Tourism also constitutes an important source of income and employment for Dominicans.

**2.1.2. TAX INCENTIVES.** The Tax Code enacted on 1992 repealed Law 153 on Incentives for Tourism leaving this sector lacking of fiscal exemptions. Nevertheless on 2001 Law 158-01 on Incentive to Tourist Development was enacted giving many important incentives to benefit companies that carry out tourist activities under the provisions of Article 3 (Hotel facilities, resorts, tourist service companies, construction and/or operation of tourist infrastructure, such as, restaurants, golf camps, sport installations, and any other that may be classified as an establishment belonging to tourist activities and others).

This law later was modified by the Law 184-02.

The Law and its modifications, benefits many localities and provinces, such as: La Altagracia, María Trinidad Sánchez, Hato Mayor, El Seibo, San Pedro de Macorís, Espaillat, Sánchez Ramírez, Monseñor Novel, Monte plata, as well as the Colonial Zone in Santo Domingo, Santiago and its Municipalities.

Article 4 establishes that the incentives are the 100% of the exemption of the payment of the following taxes:

- Income taxes;
- Construction Licenses Taxes, including land purchasing taxes (exempted of the 4% and the 12% for transferring the property);
- Import Taxes and ITBIS for the importation of equipments, materials and chattels needed for the first fit out and beginning of operations of the tourist facility.

On the other hand, it is necessary to clarify that Law neither exempts these companies of the payment of ITBIS for the services that they offer, nor the payment of the Consumer Tax, nor the operation licenses tax. The Regulation establishes the procedure to obtain the Classification. To obtain the Classification of the Company it is necessary to deposit the dossier at the Ministry of Tourism to be submitted to the decision of the organization created for the application of Law 158-01, named "Board to Promote Tourism" (CONFOTUR in Spanish).

The benefits of the Law and its amendments, also extend on the national and municipal taxes by constitution of societies, by increase of capital of societies already constituted, the national and municipal taxes by transferences on rights real estate. As well as of the rates and rights by the preparation of the studies, consultancies and supervision and the construction of works to execute the tourist project, being this last exemption applicable to the contractors in charge of the execution of works.

Also on the taxes of import and other taxes, such as rates, rights, surcharges, including the Industrialized Goods and Services Transfer Tax (ITBIS) that will be applicable on the machineries, equipment, materials and personal property that is necessary for the construction and the first equipment and putting in operation of the tourist installation.

On the other hand, it is opportune to clarify that the Law does not exonerate these companies of the payment of the ITBIS by the services they render, neither it exonerates them of the selective tax to the consumption, nor of the tax by obtaining of the operation licenses, among others.

In order to obtain the Classification, it is necessary to deposit the file in the Secretary of State of Tourism to be put under the decision of the organism created for the application of the denominated Law CONFOTUR.

The Technical Office will evaluate the requests and will put under its conclusions and recommendations.

The documents to deposit are in summary a request accompanied by: a study of environmental impact approved by the Secretary of Environment State and Natural Resources; an architectonic first draft and preliminary details of engineering of the project, preliminarily approved by the organisms of urban planning and competent policemen. In addition, the Regulation indicates that a description of the promotional being or investor must be included, analysis of economic and financial factibility, banking and commercial plans of trade and promotion, references of promotional being or investor and others specifically anticipated in Article 12 of the Regulation of application of this new Law.

The Law indicates that before initiating the construction and, once the construction authorization is obtained, the infrastructure projects must present/display a guarantee or banking guarantee to cover expenses of environmental recovery. Nevertheless, it does not indicate the amount of this guarantee being able to be the same object of a regulation on the part of environment the natural authorities and resources.

**2.1.3. LABOR.** Pursuant to Resolution Number 2, of November 26<sup>th</sup> 2007, the National Minimum Salary of employees who render services at hotel facilities, such as: casinos, restaurants, bars, coffee shops, cafeterias, night clubs, pizza places, fast food restaurants, ice cream parlors, and any other non-specified gastronomical facilities is as follows:

- RD\$5,575.00 monthly, as from March 1<sup>st</sup>, 2003, for employees who render services in this type of companies, whose facilities or properties, or both elements, exceed the amount of RD\$4,000,000.00;
- RD\$4,000.00 monthly, as from March 1<sup>st</sup>, 2003 for employees who render services in this type of companies, whose facilities or properties, or both elements, exceed the amount of RD\$2,000,000.00 and up to RD\$4,000,000.00;
- RD\$3,600.00 monthly, as from March 1<sup>st</sup>, 2003, for employees who render services in this type of companies, whose facilities or properties, or both elements, exceed the amount of RD\$2,000,000.00.

**2.1.4. BUSINESS IN TOURISM.** The main business tourism are: hotels or lodging facilities, bars, discotheques and entertainment places; tourist transportation companies; travel agencies and tours operators and, in general, companies that provide services related to Hotels, such as, sports services, tour guides, gift shops, and others.

The government entity which regulates the tourist publicity and its control and supervision is the Ministry of Tourism. This Ministry holds and publishes registers of the organization; people and business related to tourism; applies administrative sanctions thereof and, in general, is responsible of the regulation and development of the tourist industry in the Dominican Republic.

**HOTELS LICENSES AND PERMITS.** To develop and to operate a Hotel Project in the Dominican Republic, it is necessary to obtain different licenses and permits from the Ministry of Tourism, and at any other municipal and environmental government authorities.

The Ministry has a department in charge of evaluation and determination of the feasibility of tourist projects. To carry out with this duty, the promoters of tourist projects are subject to special requirements, especially the ones related to environmental impact.

Hotels and any lodging facilities need to obtain an authorization or license to operate, This License may be obtain at the Ministry of Tourism, upon submission of documents and payment of rates, which may vary depending on the classification granted to each hotel. For example: Five Stars Hotels, Four Stars Hotels, Three Stars Hotels, Two Stars Hotels, One Star Hotels.

The authorities set up these rates from time to time. A renewal fee is payable every year, which varies depending on its classification, services and infrastructure.

The Ministry also establishes other categories of lodging facilities that without having the qualities to be classified as a star hotel, as the ones located in tourist zones are under the regulations of the Ministry and pay all rates mentioned in Attachment 2 (Hotel Rates) herein. Under this classification we can find: motels, apartments, guesthouses or boarding houses, family residences, housing development, and so on.

The Ministry of Tourism requires that any hotel and any tourist business shall fulfill and execute every rule and regulation established by authorities for infrastructure, facilities and operation.

**2.1.5. TOURISTIC SERVICES.** Presidential Decrees numbers 812-03 (Jeep Safari), 813-03 (Hotel Facilities) and 818-03 (Gift Shops) issued on 2003 regulate tourist activities offering a better security and clarity when starting such business.

These Decrees outline the requirements to obtain necessary licenses or authorizations to perform tourist activities, fix rates and regulate the relation between different entities that act in such activities and the government authorities, that is, the Ministry of Tourism.

**CASINOS.** One of the most important business within hotels are the Casinos. This business is authorized by a license granted by the Ministry of Finance to “First Class Hotels”. The owner of the Hotel is also the owner of the casino but shall enter into a management agreement with a third party called the “Responsible Administrator” who shall be responsible to carry out the rules imposed by laws and authorities and, is also responsible for the payment of main taxes and rates imposed to Casinos by game tables, etc., fixed from time to time by financial authorities of the country.

### **3. FREE ZONES FOR EXPORT.**

Law 8-90 approved on 1990 promotes and develops the Establishment of New Free Zones and the Growth of Existing Ones. Since its approval, this strong business has developed, becoming one of our most important sources of foreign investment and employment generator. 53 Industrial Parks operate within the territory of Dominican Republic with more than 520 enterprises dedicated to different export services mainly in the manufacture of goods.

According to the Annual Report of the Central Bank of Dominican Republic, the Industrial Free Zones generate incomes of over RD\$95.3 million pesos of the National GDP with an estimated increase of 5.8% in 2003, and generate more than 170,000 job positions with an expectation of positive increase in 2004 of 12,000 new job positions, with a 70% from the textile manufacturing industry.

This strong industry is supervised and controlled by a government body named; National Board of Industrial Free Zones for Export, this entity supervises, controls and promotes Industrial Free Zones. It is also responsible for evaluating and issuing licenses to operate business under the provisions of Law 8-90: Park Operators, developing and supporting infrastructures and;

Business, developing under a lease contract agreement or purchasing areas in such parks to operate Export business.

The National Board of Industrial Free Zones for Export is an organization represented by the Dominican Government (public sector) and by representatives of the private sector. The Board is an organization that reviews and approves applications of licenses to install and regulate relations between Operators and Business located at Industrial Free Zones. Among the multiple functions of the Board are, to approve the sale or transfer of licenses to operate, to sell assets or equipments of business at Industrial Free Zones, meaning the removal from the facilities, and to watch that every required regulation under the provisions of Law are executed.

Any investor must know these following facts about Law 8-90:

- **Definition of Industrial Free Zones:** Law defines an Industrial Free Zone as “*a geographical area of the country, under special customs and tax controls, as set forth in this Law, in which enterprises will be licensed to devote their production of goods or services to foreign markets through the granting of incentives to stimulate their development*”.
- **Article 3 indicates,** “*Industrial Free Zones will be areas properly limited by gates or restricted railings, therefore, the comings and goings of people and vehicles must be done exclusively by guarded doors and supervised by the staff of Customs General Office*”.

Under the provisions hereinbefore, any area could become an Industrial Free Zone, if it has the necessary infrastructure for the implementation of customs and tax controls, and it dedicates its services to foreign markets.

### **3.1. INDUSTRIAL FREE ZONES OPERATORS.**

The Law defines “Industrial Free Zones Operators” as:

*“... individuals or companies who have been granted operation licenses for Industrial Free Zones, by Decrees of the Executive Power, upon recommendation of the National Board of Industrial Free Zones, and their main activities are, to purchase and/or lease lands, to develop its infrastructures, to sell or rent buildings or to give resources to established business or potential business and to carry out publicity and marketing activities to attract whether national or foreign companies”.*

The Industrial Free Zones Operators are promoters and organizers of projects for installation of such Zones and they are the general administrators as well.

They must fulfill some requirements under the provisions of Law, regarding to infrastructure or to the physical place where the Free Zone operates, although we understand that some of them apply to Industrial Free Zones themselves and not to the services rendered by them.

In practice, the National Board of Industrial Free Zones, by internal resolutions, has determined some administrative requirements, such as the following one: Industrial Free Zones must be

located in a land of at least 30,000 square meters, without prejudice to other internal resolutions approved by the Board in favor of the applicants.

**3.2. INDUSTRIAL FREE ZONES.** Save as aforesaid, business established at Industrial Free Zones assign their production to foreign markets. Most of these businesses are dedicated exclusively to the manufacturing area, that is, to elaborate, transform and to produce goods for the foreign market.

In the last few years, many licenses and permits have been granted to business operating as Industrial Free Zones, which render their services to the foreign market. Although most Industrial Free Zones or Industrial Parks are located in the outskirts of cities or in towns, due to the big extensions of land they require to operate, an extension of the Industrial Park of Itabo (with its main facilities in San Cristóbal) was authorized to open and operate at Lope de Vega Avenue, of this City of Santo Domingo.

Most Industrial Free Zones, which render their services to the foreign market, are located at this Industrial Park, at a five-floor building. These business do not require big land extensions, therefore, they open in this building to render services which we define as of technological support and not of industrial or of manufacture like the ones located at Industrial Parks. In this Building, there are businesses that render services of marketing, reservations, hotel and resorts sales, telecommunication publicity services, technological equipment sales, etc.

Which means that, in a few meters and with a small group of employees, with the technological support of computers and communication devices, they render marketing and publicity services for foreign markets, therefore, they classify pursuant to Law as Foreign Service Lenders.

Another important Park created under the provisions of a Decree from the Executive Power, is the Cyber Park of Santo Domingo, with an innovative concept of business installation dedicated to the investigation and development of technological projects for exportation, as well as training of young professionals in different areas of state of the art technology, it represents a great incentive to the investor, since it guarantees optimum facility conditions and a highly specialized labor in the area.

**3.3. TAX AND CUSTOMS REGIME. BENEFITS.** The most noticeable benefit from obtaining a license or permit for establishment as an Industrial Free Zone or as a Service Operator is the Tributary and Customs consideration, that we can define as a 100% tax exemptions of taxes, such as:

- a) Income taxes;
- b) Constitution of Commercial Societies Tax or Capital Increase Tax;
- c) Importation Tax, customs duties, custom rights and any related burdens that affect raw materials, equipments, construction materials, office equipments, etc., for the purpose of building, fitting out and operating at Industrial Free Zones;
- d) Transfer of Industrialized Goods and Services Tax (“ITBIS” in Spanish), with a 12% of invoiced services;
- e) Consular charges on importations consigned to Free Zone Operators or Enterprises;

**3.4. LABOR REGIME.** Business installed within an Industrial Free Zone must execute every law, rule and provision established by the Dominican Labor Code and by any other labor

resolutions; by the Dominican Social Security System; the Workers Bank; and by the National Institute of Technical and Professional Training (INFOTEP).

Therefore, business that operate as Industrial Free Zones do not have any special treatment or any special labor regime, except for the fact that the National Committee of Salaries adopts special minimum salaries rates applicable to workers of Industrial Free Zones (specially workers of Manufacture Free Zones).

By Resolution 6/2004 the National Committee of Wages has established the minimum wage in this sector in monthly RD\$4,450.00 with effectiveness as of April 4 of 2005. It is possible to indicate, that since some free zones have not been developed and on the contrary they have decreased in his activity, which happens for many reasons, lack of investment on the part of the investors, transferring of the investments and the capitals to developed zones more, among others, reason why in Resolution 6/2006 of the National Committee of Wages it creates a special scale for the wages of the workers of these free zones.

**3.5. EXCHANGE RATE REGIME.** Business established in Industrial Free Zones for Export are bounded to exchange through the Central Bank of the Dominican Republic, to the average changing rate of the day, the amount of foreign currency necessary to cover their local expenses and services, such as: installation expenses, salaries and wages, raw materials and, in general, any product obtained in Dominican territory, insurance, income tax withholdings on salaries of employees, telephone services, rent or acquisition of land and parks, electrical energy services and, any expenses generated locally, on a monthly basis.

- **National priority the sectors pertaining to the textile chain, preparation and accessory; skins, manufacture of footwear of leather manufacture.**

In the 2007 by Law 56-07 the textile industry and of preparation of accessories and footwear is granted a special fiscal treatment, similar to the treatment granted to the free zones. Given the recent tendency to subscribe agreements whose purpose is to release the tariffs of the import, but as the necessity exists to preserve the existing uses and to support the generation of new uses, as well as to stimulate and to protect the competitiveness in the market, reason why it is necessary to improve the levels of competitiveness of the national companies, it has been granted to the a special treatment to the national companies of the textile industry. The main aspect of this treatment is the Exemption of the payment of the ITBIS by the import and/or buys in the local market of raw materials, machineries, equipment and services established in the Third Article of law 56-07, with its exceptions.

In order to obtain this special treatment the company must have an authorization of the National Council of Free Zones of Export. The World-wide Organization of Commerce extended until the 2015 incentives to the Free Zones reason why, the operative regime by six years more of the date has been extended than it was anticipated for his aim in the 2009, these benefits come dices in the fiscal incentives for their installation and the exoneration from the payment of the Tax On the Rent. The sector free zones operates in the country under Law 8-90, which guarantees protection to him under the customs and fiscal regime and therefore the 100% of exemption of the payment of the ISR, the payment of taxes on the construction, contracts of loans, registry of crossing of real estate, commercial societies, taxes of import, tariff and other burdens that affect the insumos and raw materials, among others. 40% of the production of free zones are of textile manufacture, dice the advance reached in the diversification process that

includes sectors like the footwear and products of skin, cigarettes, jewels, products medical, and electronic. Previously the textile line got to mean 56% of the production of free zones.

#### **4. FINANCIAL SECTOR**

Upon enactment of the Financial and Monetary Law (Law 183-92) on December 2002, the old regulations for banking and financial sectors were revoked; it tries to improve areas of control and supervision of the banking sector and to provide to its administrative structures the necessary powers for optimum operation.

The main purpose of Law is to establish a proper regulatory regime for the Financial and Monetary System of the Dominican Republic assigning its control to the Financial and Monetary Administration. This new system strives to maintain stabilized prices, which is the indispensable support for the national economical development. As well as to achieve the liquidity, reliability, and management conditions that any financial intermediary entity must always fulfill.

Pursuant to Law, financial intermediation is any activity of regular captivation of public funds of any kind or denomination, for the purpose of assigning it to third parties.

This Code introduces important amendments regarding to Legal Regime of Currency when establishing that any debts will be paid with the currency agreed by the parts and in the absence of an agreement, with the national currency. This provision allows making contracts and establishing liabilities in foreign currencies mainly, in U S Dollars, which is the currency of most common use in our commercial practice.

The private financial intermediary entities with open practice and with ratified, recognized and regulated status are, Multiple Services Banks, Credit Entities such as Bank of Savings and Credits and Credit Corporations (Stock Entities), as well as non-stock entities, such as Associations of Savings and Loans and Cooperatives of Savings and Loans.

Currently there are important Multiple Services Bank operating in the country, such as: Reserve Bank of the Dominican Republic (Banco de Reservas de la República Dominicana in Spanish), autonomous government institution with its principal offices in Santo Domingo and branches almost in every city of the country; the Scotiabank, private institution with foreign capital, founded on November 1<sup>st</sup>, 1920 and with offices and agencies nationwide, currently going through a considerable process of capital consolidation and national expansion; the Citibank, N. A., also a private institution with foreign capital and founded on May 3<sup>rd</sup>, 1962 with offices in Santo Domingo and Santiago; the Dominican Popular Bank (Banco Popular Dominicano in Spanish), private institution with private mixed capital (national and foreign), founded on August 23<sup>rd</sup>, 1963, currently the first banking institution of its nature in the country with offices nationwide; BHD Bank, S.A., private institution with private capital, founded on May 16<sup>th</sup>, 1986 and with main offices in Santo Domingo and branches in almost every city in the country; Mercantil Bank, private entity with foreign private capital, founded on December 12<sup>th</sup>, 1984 with main offices in Santo Domingo and branches and agencies in many cities of the country. Other important entities are the Banprogreso S.A. (Banco del Progreso Dominicano in Spanish), The Santa Cruz Bank S.A, the Leon Bank of Multiples Services S.A., currently in

process of capital consolidation and national expansion, The Industrial Development Bank (Banco de Desarrollo Industrial in Spanish) and the Vimenca Bank S.A., Banco Comercial Santiago, S.A., among others. Another financial intermediary entities are The Agriculture Bank of the Dominican Republic (Banco Agrícola de la República Dominicana, in Spanish) an autonomous institution, created in 1965 which function is to give credit facilities for the progress and diversification of agriculture production and to be the financial instrument of the agrarian politics of the State. There is also a Savings Box for workers and “Monte de Piedad”, autonomous entity of the State created to grant chattel mortgage loans with pawn house like regime and direct loans without dispossess of chattels of its clients. Also, the Institute of Credit and Cooperative Savings created by Law to promote, advice and to coordinate the corporative activity in the Dominican Republic and to finance cooperative societies organized and recognized under the provisions of Law.

The National Bank of Housing (BNV) and the Associations of Savings and loans form the Dominican System of Savings and Loans for Housing. These entities prior to the enactment of the Monetary and Financial Code functioned as private non-profit institutions, under the provisions of special laws, which main purpose is to promote the creation of savings for the granting of loans currency for purposes of construction, acquisition and improvement of housing. These institutions have a mutual character and deposits received by the clients form its capital. It is a very important source of financial aid for housing acquisition.

Law also regulates Exchange Agents and Foreign Currency Remission places, which are the entities in charge of buying and selling foreign currency and of receiving and sending foreign currency to and from other countries. These entities were not regulated by any special law, but were under the provisions of Resolutions of the Monetary Board and under the supervision of the Bank Administration Council (Superintendencia de Bancos in Spanish).

This important Law is currently under the process of regulation by a Decree, meaning, the elaboration of the proposals of applying rules that will facilitate its practical application.

## **CHAPTER III:** **Other Business Law**

**3.1 TELECOMMUNICATIONS.** In the Dominican Republic important foreign companies operate with a private capital in the telecommunication area, including both Service Lenders as Verizon, Tricom, France Telecom (Orange), All American Cable and Radio (Centennial) and companies for the development of equipments and technology as Motorola, Samsung, etc.

These companies dedicated to the emission or transmission of sound signals to the direct reception of the public (sound diffusion) and to the television diffusion (satellite TV or cable) represent not only an important source of income but they place the Dominican Republic among the group of countries with the most advanced telecommunications systems of the area.

Law 153-98, enacted on May 1998, creates the Dominican Institute of Telecommunications (INDOTEL in Spanish) as the telecommunications regulator organ with decentralized state nature and with functional, jurisdictional and financial autonomy, with its own patrimony and juridical personality.

In this group of companies we also find the ones dedicated to sell cellular phones its accessories and parts.

**3.2. ELECTRICAL POWER.** Prior to the enactment of Law on Government Public Enterprises Reform, the generation, transmission, distribution of electrical energy sale was under the administration of the Dominican Electricity Corporation, state company that signed energy sale contracts with private generators, in some cases, and in other cases, built and installed its own hydroelectric plants or thermal generators of electricity.

Along with the privatization of the sector, came the General Electricity Law (Law 125-01) and generation, transmission, distribution and sale of energy to the population were separated as a result of the sale of 50% of such sector to Private Companies or Business. Upon such transaction, the Dominican Corporation of State Electrical Companies (CDEEE in Spanish) was founded, with the responsibility of representing interests of the State with the new shareholders, as well as the administration of the Hydroelectric Generators, as the exclusive property of the Dominican State.

The regulation, supervision and control of this public service is responsibility of the Electricity Administration Council (Superintendencia de Electricidad, in Spanish) State Organization, in charge as well, of supervising the management of the new companies created by Law, the proper operation of the National Electric Sector, and to act as an intermediary in any dispute or reclamation by any user with the Electricity Distributing Companies.

Currently the Dominican State controls the 100% of North and South Distributor Companies, provisionally, prior to a new public bidding, under the provisions of Law.

The Law 57-07 of Incentive to Renewable Energy establishes some fiscal benefits to this sector benefits we have:

**Exemption of taxes.** The National Energy Commission (CNE) will recommend the exemption of all type of taxes of import to the equipment, machineries and accessories necessary to operate, the exemption will be of the 100% of these taxes. This incentive also includes the import of the transformation equipment, transmission and interconnection of electrical energy to the Interconnected System or National Electrical System Interconnected or SENI. For the projects based on renewable sources, that fulfill this law. The equipment and materials within this chapter also benefit from exemptions of the payment of the ITBIS and of all the taxes on final sale.

- **Exemption of the Tax on the Rent.** From the beginning of their operations are freed by a period of ten years (10), and with Maximmun of up until year 2020,
- **Reduction of taxes to the external financing.** The tax by concept of payment of interests by external financing is reduced to 5%
- **Certificates and/or bonds by reduction of polluting emissions.** The certificates or bonds by reduction of emissions (carbon kidnapping) exchangeable according to the call “Agreement of Kyoto” and that can be derived from the renewable projects of energy, will belong to the proprietors of these projects for commercial benefit of such.

**3.3. COMPUTER SYSTEMS AND EQUIPMENTS.** In the country the most important equipments (hardware) and systems (software) of the most prestigious international companies are both imported and exported, as well as images and documents reproduction equipments. Mostly with locally authorized representatives and distributors, such as: Xerox, Microsoft, Hewlett Packard, Unisys, Oracle, Cannon, among others.

As of 1999, import of equipments, computers, parts and accessories are exempted of import taxes and of schedule customs duties, therefore, it is not only a profit business, but these incentives have led the organization structures of both private and state companies to the process of modernization.

At the present time this it is a sector that could be greatly benefitted, by the exponential increase of the search of technological solutions in our country, this comes in hand with the great growth that experiences the sector of the telecommunications. Many companies and entities including the own Dominican State, are making great efforts and invest more money with the intention of automating and digitizing their operations, this is so important that the Law 392-07 On Competitiveness and Industrial Innovation recognizes the innovation like a process that leads to the improvement of the productivity in the industrial processes, products and services. For that reason the companies welcomed in this Law will be free of the obligation to retain the Tax on the Rent corresponding to the physical people or legal foreigners who offer professional services related to projects of product development, processes of production, research and development of technology, formation of personnel, innovation, investigation, qualification and protection of the environment, as well as all type of consulting services and/or technical consultant's office. All company that is dedicated to the development of industrial

prototypes or of technological applications for the industry, the projects of efficient use and saving of energy, projects of development, production and investigation of renewable energies, Facilities or processes destined to the reduction of polluting emissions in the atmosphere, among others, can be benefited by this disposition.

**3.4. LICENSING. FRANCHISING. TECHNOLOGY TRANSFER.** Since the enactment of Law on Foreign Investment of 1978, the most prestigious international franchises of fast food, clothing, wardrobes, furniture and many other sectors of commercial activity have established in the Dominican Republic. Law 16-95 on Foreign Investment enacted on November 20<sup>th</sup> 1995 and its application statements annulled some restrictions imposed by the revoked Law of 1978 regarding to activity areas and limits of division of utilities.

Some of these international brand names and franchises are: in the hotel sector, Marriot Courtyard, Sol Meliá and Occidental; in the fast food sector, Mc Donald's, Burguer King, Wendy's, Pizza Hut, Basking Robbins; in clothing and accessories, Gas, Sasch, Mango, Zara, Benetton, Levi's, etc.

**3.5. REAL STATE COMPANIES.** Currently a law project is under process of consideration, this Law will regulate sale transactions and real state property transfers, as well as their register. This is an important legal instrument that will fill an empty space in such an important sector, not only in joint business but also in personal transactions; otherwise it would be only regulated by trade practice, which is characteristic of this area. Real State Companies operate under the provisions of our Constitution regarding to freedom of company, business or industry and only some fiscal regulations are applicable to them.

On the real estate businesses it is important to treat the relative thing to the condominiums, since in the last years the Dominican Republic, has become an important destiny for the investment in real estate, and there has been a vertiginous growth in the construction of apartments and towers. Nevertheless, given its great yield, and in addition to the security granted to the investments in this sector, it has been the sector of apartments for living purposes the branch of the sector that has seen more development. Because of that the development and the implementation of the regimes of condominiums have become of great importance since it establishes the rules of coexistence.

To the aims to establish a regime of condominiums it is needed to go to the Real Estate Record Office with following documents:

1. Instance (original and four copies).
2. Duplicate of the Certificate of Title (Written down Certainty is not admitted, is precise the defining).
3. Regulation of the condominium.
4. Declaration of condominium subscribed by the proprietor of the building (it must contain all the details).
5. Construction Plans (approved by the Public Work Secretariat and the corresponding City council).
6. The payment of the corresponding taxes (seals and receipts).

These documents are deposited in the Corresponding Registry of Titles and this organization will come then to study these documents, then issue the resolution approving the constitution of the condominium.

**3.6. ARTS AND COPYRIGHTS.** The Constitution of Dominican Republic (Art. 8, Num. 14) establishes exclusive property protection on time space and procedure pursuant to Law, to inventions and discoveries, scientific, artistic and literary productions. For these matters, during many years copyrights in Dominican Republic were under the provisions of Law 32-86 of July 4<sup>th</sup> 1986 and on July 21<sup>st</sup> 2000, Law 65-00 was enacted according to modern international regulations on copyrights.

Law 65-00 protects any author of literary or artistic work, scientific work with literary or artistic character, including any creation of this nature in such areas; As well as, common rights of interpreters or performers, phonogram producers and broadcasting organisms.

Law protects authors, co-authors either Dominican or legal residents of the Dominican Republic; works published for the first time in the Dominican Republic or during the following thirty days of its first publication; work of citizens or legal residents of any signatory country of any current or future International Treaties with the Dominican Republic; works published for the first time or during the following thirty days of its first publication in any of these signatory countries; interpretations or artistic performing, phonographic productions and broadcasting transmissions.

Also protects Patrimonial Rights of Authors in the understanding that only authors have the right of free disposal of their work and exclusive rights to authorize or to prohibit reproductions, modifications, changes and, in general, any action on their work. As well as, protection to moral rights and the perpetual copyright, this is inalienable, imprescriptible and nonrelinquishable.

**3.7. IMPORT BUSINESS.** One of the most powerful businesses in the country is the Import of merchandise and products. This sector was involved in many negotiations in order to create a Law to protect their rights. Among the participants there were local agents of manufacturers of motor vehicles and spare parts, equipments, clothes, shoes, food, etc. Law 173 on Protection of Import Agents of Merchandise and Products (hereafter “Law 173”) was approved, in essence, to provide a proper protection to people dedicated to promote and sale goods and merchandise manufactured by foreign companies. However, its character is not balanced but based on protectionism, and it is demonstrated on its own *Preamble Section* or exposition of motives of Law 173:

*“CONSIDERING: that the Dominican State can not remain indifferent to the increasing number of cases where foreign individuals or legal persons, without any just cause and without taking into consideration the legitimate interests of concessionaries or agents, eliminate them as soon as they have created a favorable business market in the Dominican Republic;*

*CONSIDERING: that it is necessary to have a proper protection of any individual or legal person dedicated in the Dominican Republic to promote and negotiate import, distribution, sale, rent or any other operation form of foreign or national merchandises*

*or products, acting as agents, or under any other position against any damages caused by unfair resolution of business relations, by the unilateral decision of persons or entities or whose interest they represent, and in order to guarantee complete and equal indemnity of any loss that they may have suffered, as well as any obtained legitimate benefits they may be deprived of....”*

Law 173 is highly protectionist. Nevertheless the big efforts to obtain a modern and updated law, it has not been possible to apply the proposed amendments. The last attempt of amendment process (started in 2002) captured the attention of every Law Firm specialized in this subject. The Central Bank of Dominican Republic formally requested legal opinions and sponsored a legal debate on this Law. In addition, many business associations organized summits, workshops and seminars on this matter, and the amendments to it were dismissed.

Therefore, regardless the efforts to modernize or balance this protectionist Law, it still maintains with all its strong effects. We will explain the importance of this Law, its effects and the reasons of its protecting nature.

Mainly, Law orders the payment of strong indemnities on unilateral ending of business relations by foreign companies. The reason of charging these high amounts is to prevent that an agent or local firm dedicating time and effort introducing products to the country invests in publicity an once the product is established in the Dominican Market, the foreign firm terminates its relations with it and starts business with a different agent or in joint business with a third party.

- Protections. Law protects Grantees or the person, whose interest is being represented, against: (i) destitution; (ii) Substitution; (iii) Unilateral termination; (iv) refusal to renovate **without just cause**.

- The protection way is the one establishing the right granted to any local agent to claim for a fair indemnity from harm and damages by means of the aforementioned actions by the grantor. Fair Cause must be proved in court.

- **Solidarity.** Law holds joint responsibility to anyone associated with “the responsible of the destitution or substitution of the Concessionary; renewal or ending of the Concession Contract or the refusal to renew such contract, by unilateral decision of the Grantor and without fair cause, will be jointly responsible of payment of indemnity. It establishes as well that, will be jointly responsible the individual or legal person, national or foreign who acquires by any means the rights on merchandises, products or services of the Grantor and the person replacing the Concessionary in the name of the new acquirer.

**3.8. STOCK EXCHANGE MARKET.** Although Law on Stock Exchange Market was enacted on 2000, since the late 1980’s a group of private businessmen promoted a project named Stock Exchange Market of Santo Domingo, Inc. This entity was the first one in charge of promoting and developing investment in the Stock Market in the Dominican Republic, protected in those days, by Private Commerce Laws and by the freedom of company principle. Its activities were supported and regulated by the Stock Market itself by means of its Bylaws and internal functioning rules; it supervised and controlled activities of financial mediation of negotiable stocks. Therefore, Stock Stalls started business (most of them were property of commercial banks) and Stock Agents who not only believed in the project but, did, during the

next years, incredible efforts supporting the creation and development of trust necessary to conduct business in the Stock Market.

In 2000, Law 19-00 on Stock Market was finally enacted, after a consensus and debate of more than 10 years upon the first proposal or Law Draft. This Law regulates the Stock Market, which covers offer and demand of capital, credit, debt, and products values.

This Law arises in a moment that the number of investors in Stock Market was increasing in the Dominican Republic, as a result of many private initiatives, being regulated now by the government entity created for these matters, the Securities Council. It is necessary to emphasize that with the creation of the Securities Council, the Dominican Financial System, one of the most solvent, solids and profitable of the Region, by means of recognition of many international organisms, it consolidates and strengthens even more, establishing solid bases that would increase the degree of trust of both institutional and individual investors.

Law 19-00 on Stock Exchange Markets in the Dominican Republic has as its main objective the promotion and protection of investments in public offer of stocks, shares, titles, drafts, bonus, certificates or their equals, in both Dominican pesos and in any other foreign currencies.

The Securities Superintendency is the governmental regulatory entity, with autonomy and its own budget and patrimony, which regulates activities of the Stock Market. The person who administrates and manages the Institution is the Superintendent, appointed by the President of the Republic for a two (2) years period, selected from the three candidates presented by the National Council of Values, and at the same time approved by the Monetary Board. As the main responsibilities of the Securities Council, we can mention the following:

- a) To execute and to regulate the fulfillment of Law 19-00 and its complementary regulations.
- b) Require and manage the flow of information and documents of the Market, also to control the use of privileged information.
- c) Decide over irregular transactions.
- d) Decide over the suspension and cancellations of operations and licenses granted, among other responsibilities.

It is important to emphasize that, any time a party affected by a decision from the Council, disagrees with it; this party can start a Reconsideration Process at the Council itself within the next ten (10) days following the notification of such decision.

**3.8.1. ABOUT THE STOCK MARKET.** Article 43 of Law 19-00 defines Stock Market as “Self regulated institutions whose objective is to provide the necessary services to subscribed Stock Stalls for them to efficiently perform the transactions of values in a continuous and organized way, as well as to perform any other value mediation activities, pursuant to Law herein”. The main requirement for the constitution of a Stock Market is to have a minimum Subscribed and Paid Capital of RD\$15 million Pesos, plus a Legal Reserve of a 20% of such amount, also as minimum.

Among the functions of the Stock Market, we can mention the following:

- a) To provide spaces, equipments and systems allowing an effective exchange of offer and demand of securities.
- b) To provide the necessary information and of general interest to the public about the transactions made by the Stock Market.
- c) To benefit from any available resources in computer and telecommunications to facilitate the development of transactions of the Stock Market, among others.

The Stock Market of the Dominican Republic has exclusive attributions such as:

- a) To authorize the subscription of Stock Brokers and the subscription of securities previously authorized by the Securities Council to be deposited in the Stock Market.
- b) To suspend securities transactions by define periods and to demand guarantees to Stock Stalls.
- c) To arrange special Agreements with other Markets or similar Institutions, upon authorization of the Securities Council, among others.

**3.8.2. THE STOCK OF PRODUCTS.** Article 55 of Law 19-00, defines Products Stock as “Self-regulate institutions, whose exclusive object is to provide to their members the necessary services for them to efficiently perform the commercialization of products for the land and cattle, industrial land and miner sectors, including the consumables that those sectors may need, as well as product representative titles, future contracts and product derivatives, favoring free concurrence, competition and the transparency of the Market.

Like the Stock Market, the Stock of Products will be established as Companies, pursuant to the Commerce Code and its complements, unless the part about the Subscribed and Paid Capital, it must be of a minimum of RD\$5 million Dominican pesos, plus a legal minimum reserve of 20%.

Among the main functions and attributions of the Stock of Products, we can mention the following:

- a) To maintain the functioning of a stock of products properly organized, which would offer to users and to the general public, adequate guarantee of security, honesty and correction, as well as, information on valuated products in the same, their producers, their intermediaries stock operations, including valuation;
- b) To establish an adequate regime to their operations, defining requirements, conditions, types and registers of every operation performed in the Stock, including the form of liquidation and compensation.
- c) To promote private arbitration as a swift and propitious way of solution to conflicts that might arise between members, or between them and third parties.
- d) To sponsor studies and investigations in benefit of those who perform operations in the Stock, in order to achieve improvement of the Stock Market;
- e) To cancel the inscription of products, titles and contracts which do not offer guarantee and security, among other functions and attributions;

In conclusion, Law 19-00 is the instrument that consolidates the Dominican Stock Market, and which locates it at the top of the Stock Legislation of the entire American Continent, giving security to both national and foreign investments carried out in the country and regulating their daily activities with proper regulations and measures, locating the Dominican Republic above its American colleagues in this matter.

## **CHAPTER IV: Dispute Resolution**

**4.1. DOMINICAN JUDICIAL ORGANIZATION.** The Judicial Branch of the Dominican Republic is represented by the Supreme Court of Justice and by the rest of the Courts serving justice throughout the country. The Supreme Court of Justices possesses administrative and budget independence and is composed by 16 Judges designated by the National Justice Council.

National courts can be categorized in two groups: common rights courts, such as First Instance Courts and Appeal Courts; and the exceptional or extraordinary courts, such as Peace Courts, Land Courts and Confiscation Courts, created by Law 5924 of 1962. Exceptional or extraordinary courts may only be acquainted with matters expressly attributed to them by Law, whereas common rights courts may have acquaintance of any matters not expressly attributed by Law to an exceptional or extraordinary court.

The aforementioned, constitute the ordinary description (classic or traditional) of the Judicial Branch of the country, nevertheless, the effectiveness of the System, like in most countries of the hemisphere is somewhat discussed, statistics show that an average time frame to obtain a definite verdict is of over six years in the best of cases.

In the particular case of Dominican Republic, the interests of solving this situation have been revealed with the introduction of important amendments to the existing Legislation, such as, Laws 834 and 845 of 1978, which partially gather the French amendments, which originated the enactment of the Civil Procedure Code of 1975. Pleas for exceptions, legal measures of non-admission and annulment of process experienced noticeable amendments. These amendments made the elimination of certain formalistic procedures possible, which only endured the process through time. Regardless of these improvements, delays in the judicial process continue. Without any doubts, from the commercial point of view, these delays may result in considerable losses throughout the legal process, therefore the need of alternate means to solve such disputes.

The aforementioned and the international development of the Arbitration Procedure in the last 10 years, has turn this Procedure in a solid resource for conflict solution in the Dominican Republic. The Arbitration Procedure is becoming crucial when formalizing a commercial and/or economical operation somewhat important. The Alternate Dispute Resolution (ADR) implies diverse techniques and points of view in order to achieve a proper solution of conflicts with common consent avoiding cost, delays and any other situations as a result of more traditional processes.

The recent ratification of the New York Convention in our country, has paved the way for development of International Arbitration Procedures. This is so far the most important piece of international regulation of its nature; it regulates the acknowledgment of arbitration clauses by local jurisdictions, the mandatory remand to arbitral courts, as well as the execution and judicial acknowledgement of award of an arbitrator.

In order to explain the guidelines that rule Arbitration Procedure in the Dominican Republic we will refer to Arbitration under the provisions of the Civil Procedure Code; and we will continue with Arbitration Procedure pursuant to Law 50-87 on Commerce and Production Chamber, which is a swifter system as we will confirm hereafter.

**4.2. ARBITRATION PROCEDURES.** Book III, of Civil Procedure Code of the Dominican Republic is dedicated to Arbitration. Article 1003, modified by Law 845 of 1978, defines Arbitration Act as the contract subscribed by two or more persons who confer, upon one or more Arbitrators, the mission of hearing a process and to decide over the matters discussed through an award. This definition establishes the essential condition for arbitration: the presence of an unsolved dispute. According to this system, upon court proceedings process, the arbitrators proceed to dictate an award. In format, the arbitral award is analog to that dictated by an ordinary court, although it is not pronounced in public audience. Regarding to its effects, according to Article 1020, an arbitral award may be executable once ratified administratively by the First Instance Court of the jurisdiction where it was pronounced. Article 1021 establishes that these awards may not be executable prior to obtaining authorization of the President of the Court. The hearings concerning the execution of the arbitral award will be of competence of the President of the Tribunal that issued the recognition to the award. This is one of the most noticeable differences between the system established by Law 50-87 and the aforementioned.

**4.2.1. ARBITRATION ACCORDING TO LAW 50-87 ON COMMERCE CHAMBERS.**

The Council for Conciliation and Arbitration of the Chamber of Commerce and Production of Santo Domingo, Inc., is an arbitral and conciliation organism created under the provisions of Articles 15 to 17 of Law 50-87 of July 4<sup>th</sup> 1987, with the object of providing a pacific solution to any controversies that may arise among two or more members of the Chamber or between one of its members and an individual or legal person not a member of the Chamber.

The most motivating feature of this system is that arbitral awards arising from arbitrators are immediately executable, without the need of any authorization from a court. This fact only, makes it a more viable way in comparison to that described in the Civil Procedure Code.

Parties deciding to submit their differences to institutional arbitration regulated by this Law bound themselves without delays to a decision or finding of an arbitrator. Recognizing that submission of such cause to arbitration procedures implies a formal waiver of any legal resource that they may legally resign to.

Decisions or finding proceeding of an arbitrator are executable, of immediate execution and pronounced in only and final hearing. Also, arbitration procedures brought upon this arbitral court are confidential among the parties involved and all meetings are held behind closed doors.

The Convention of New York for the Execution of Sentences of Arbitration, approved by Resolution 178-01, recognizes the validity and the execution of arbitration lauds emitted in a foreign country, whenever this country is signatory of this convention. It is an instrument of great importance, since it allows the parts to dissolve their conflicts, without the necessity to go to a court, reason why the decision becomes more expeditious. But in addition to that it allows to execute sentences by arbitration that have been emitted, the advantage of this is that it allows to the parts a greater freedom at the time of choosing the place in which the conflicts will be solved.

So that the dispositions of the convention are applicable but an agreement is necessary, in which the parts are committed to put under arbitration all the differences or certain differences that have arisen or can arise among them with respect to a certain legal relation, contractual or noncontractual, concerning a subject that can be solved by arbitration. In this case the expression “agreement” denotes a compromisory clause in similar to a contract or commitment, signed by the parts or established in an exchange of letters or telegrams.

The requirements that must reunited by sentences of arbitration to be feasible, are:

- a) The original copy of the sentence or a copy of that original one that reunites the conditions required for its authenticity;
- b) Original of the agreement that contains the compromisory clause or a copy that reunites the conditions required for its authenticity.

In case that that sentence or that agreement were not in an official language of the country in which the sentence is invoked, the part that requests the recognition and the execution, will have to present/display a translation to that language of these documents. The translation will have to be certified by an official translator or a sworn translator, or by a diplomatic or consular agent.

## **CHAPTER V** **Legal Residence**

The Dominican Republic offers many facilities to foreigners who seek to establish themselves in the Dominican Republic, provisionally or permanently. Prior to requesting a Definitive Residence Permit in the Dominican Republic, the applicant must go through the processes of a Residence Visa and of a Provisional Residence Permit. For those cases of foreign investors, direct or not, with a capital of over US\$200,000.00, they may directly apply for an Investment Residence Permit. There is also a procedure to obtain Visa by Labor reasons; it is advisable to obtain this sort of document when an employee or director of a foreign company is assigned for a specific period of time.

**5.1. RESIDENCE VISA.** This visa allows its bearer to legally stay in the Dominican Republic for a period of sixty (60) days. It is issued by the State Ministry of Foreign Affairs and is subject to fees and taxes that the Ministry discretionally finds fit and may vary from time to time.

**5.2. PROVISIONAL RESIDENCE PERMIT.** Any foreigner planning to stay in the Dominican territory for more than sixty (60) days period allowed by the Residence Visa must apply for the Provisional Residence Permit at the National Migration Office. This Permit is valid for a period of time of one (1) year and is reviewed by the State Ministry of Internal Affairs and Police.

**5.3. DEFINITIVE RESIDENCE PERMIT.** When a foreigner bearer of a Provisional Residence Permit wishes to establish in the Dominican Republic for a period of time greater than the one (1) year permitted by the Provisional Residence Permit Card, must apply for the Definitive Residence Permit. Once the State Ministry of Internal Affairs and Police review this request, the National Migration Office proceeds to the issuance of the Definitive Residence Permit Card that may be renewed by its bearer as many times necessary.

**5.4. INVESTMENT RESIDENCE PERMIT.** As a way to promote foreign investments in the Dominican Republic, local authorities have designed this “fast track” permit for foreign investors or his employees obtaining Residence Permits by reason of investment in the Dominican Republic.

Once the State Ministry of Foreign Affairs reviews the documents, the National Migration Office proceeds to issue the Investment Residence Permit Card in a period no longer than 2 months.

