



DOMINICAN REPUBLIC

Secretariat of State of Foreign Affairs

Foreigner's Guide to the Dominican Republic

PELLERANO & HERRERA
LAW FIRM

Edited by:
Pellerano & Herrera

Lay-out:
Omar A. Matos

Printing:
Amigo del Hogar

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The Secretariat of State of Foreign Affairs in the Dominican Republic is pleased to provide this guide containing information about the laws and regulations relevant to foreigners visiting, working or living in the Dominican Republic.

The Secretariat of State of Foreign Affairs wishes to acknowledge the Law Firm of Pellerano & Herrera for its assistance in the preparation of the guide.



Secretariat of State of Foreign Affairs

Avenida Independencia No. 752
Santo Domingo, República Dominicana
Tel.: (809) 535-6280
Fax: (809) 532-0600

PELLERANO & HERRERA
ATTORNEYS AT LAW

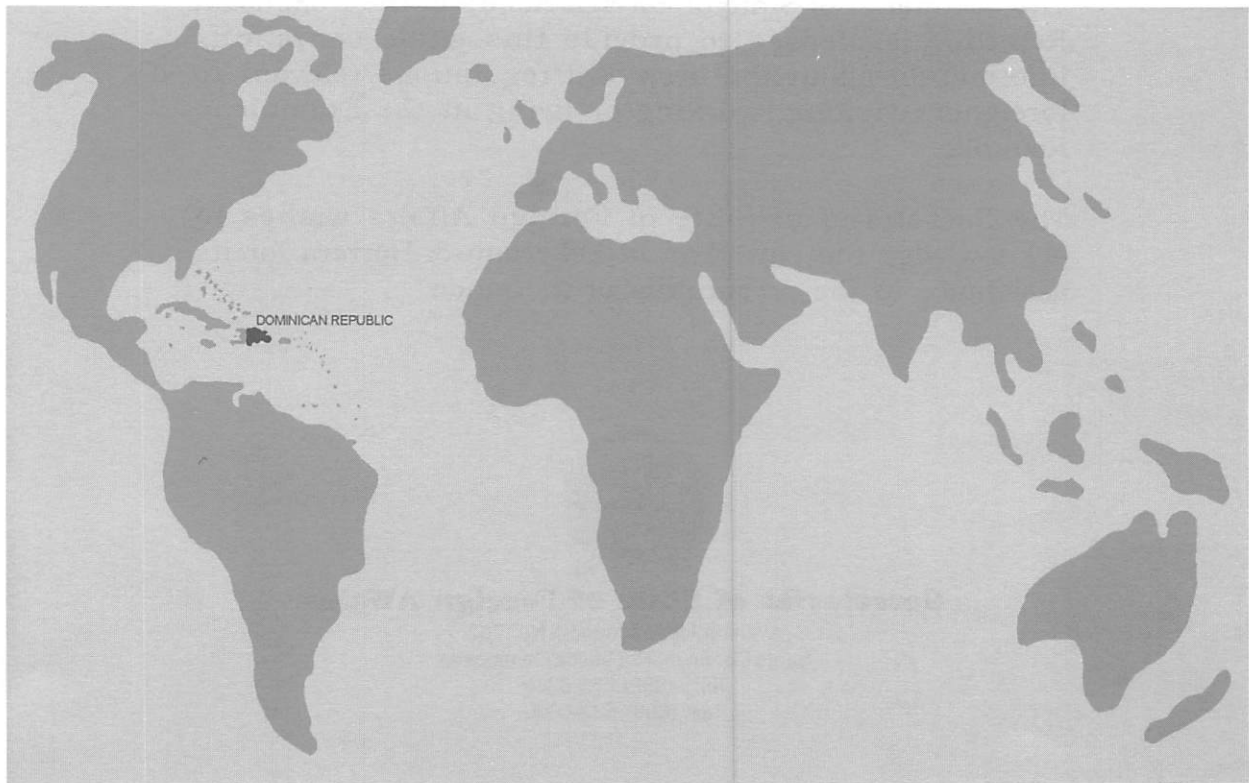
Av. John F. Kennedy No. 10, piso 4
Santo Domingo, República Dominicana
P.O. Box 20682
Tel. (809) 541-5200
Fax (809) 567-0773

SANTIAGO
Av. Estrella Sahdalá
Edificio Haché, piso 2
Santiago, R.D.
Tel.: (809) 241-0140
Fax: (809) 241-0225

AZUA
Calle /Duarte esq. 19 de Marzo
Edificio Banco Popular, piso 2
Azua, R.D.
Tel.: (809) 521-2178
Fax: (809) 521-2281

International Mailing Address
EPSA-303
P.O. Box 52-4121
Miami, FL 33152-4121
United States of America

ph@phlaw.com
www.phlaw.com



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THE DOMINICAN REPUBLIC:

GENERAL INFORMATION

GEOGRAPHY

The Dominican Republic occupies two thirds of the island of Hispaniola. Its geographical location -between Cuba and Puerto Rico -has turned it into one of the main tourist attractions in the Caribbean and an ideal place for investment and commercial exchange. It is politically divided into a National District that includes the capital of the Dominican Republic, Santo Domingo de Guzmán, and 29 provinces. The provinces are subdivided into counties.

The territory of the Dominican Republic is fertile, humid, and mountainous. Close to 80% of the country is covered by a great chain of mountains that extends in a north-south direction and among which Pico Duarte (3.175 m) is the highest mountain in the country and in the Antilles. The coastline of the Dominican Republic (approximately 1.633 km long) is irregular due to numerous bays that form natural ports, among which The Bay of Calderas, in the south, and The Bay of Samana, in the northeast, stand out the most.

CLIMATE

The predominating climate in the island is semitropical. In the lowlands the temperatures rise above 73°F during the whole year. During the summer, the temperatures fluctuate between 80°F and 91°F. The highlands are considerably colder.

The main natural resources in the Dominican Republic are agricultural. The fertile soil of the valleys is very appropriate for growing crops and many of the slopes of the mountains are covered

by forests. The country also has valuable deposits of nickel, gold and silver.

POPULATION

About 7.8 million people live in the Dominican Republic. Of those, 60.5% live in urban areas and the remaining 39.5% reside in the countryside. The population growth rate for the period 1990-1995 was 1.9% per year.

The majority of the population of the Dominican Republic descends from a blend between Indians, Spaniards and Africans.

LANGUAGE AND RELIGION

Spanish is the official language of the country. The major part of the population is Catholic although a small community of Protestants exists.

ECONOMY

In general terms, the Dominican economy is recovering from a period of economic stagnation in the past decade. This recovery process has been led by policy measures implemented by the government and the Central Bank including an economic modernization program, stricter fiscal discipline, and aggressive efforts to attract foreign investment.

The Dominican Republic is in a growth cycle accompanied by relatively low rates of inflation. According to the Dominican Central Bank's statistics available for the period through March 1996, the Gross Domestic Product (GDP) is growing at over 5% a year, while inflation is running at 5% per year. The

first six months of 1996 saw continued declines in inflation rates and small increases in reserves. The country's deficit is only 1.5% of the GDP, which places the Dominican Republic among the top Latin American countries.

The principal growth sectors of the economy during 1995 and the first half of 1996 were communications (with 19.2% annual growth), hotels (with a 16.6% growth), mining (with 9.4%), commerce (with 8.6%) and construction (with 5.7%). The so-called traditional exports (e.g., traditional crops such as sugar cane, coffee, cocoa and tobacco) continued at high levels with the help of favorable trends in world market prices for export commodities.

The Dominican Central Bank states that the economy is growing at 5.7% during the first half of 1996. There was strong growth in the tourism, mining and telecommunications sectors, with agriculture and domestic manufacturing having somewhat poorer results. Some analysts now talk of a duality in the Dominican economic growth: those sectors relatively open to foreign investment and with close ties to international markets have been growing rapidly, while domestically oriented sectors have had slower growth.

INTERNATIONAL TRADE

The United States is the leading trade partner of the Dominican Republic. The country also has significant trade relations with all countries in Latin America, especially with Venezuela and Mexico. In addition, the Dominican Republic's economic relations with Europe have increased considerably as a result of the Lomé agreement, among other factors.

COMMUNICATIONS

The Dominican Republic has over 90 radio stations and approximately 1,180,000 radio receivers. The country also has several television stations and close to 656,000 television sets. Thirteen newspapers are published daily, with a total circulation of 270,000. The telephone networks and the mobile communication systems are among the most advanced and efficient in the Caribbean.

WORK FORCE

In the beginnings of the 1990s, the active population in the Dominican Republic was over 2.3 million workers. It has been estimated that 49% of these are dedicated to agriculture, 18% to industry and 33% to services.

POLITICAL SYSTEM

Under the Constitution of 1994, the Dominican Republic has a representative democratic government divided into three independent branches: executive, legislative, and judicial. The system of government is defined in the Constitution as being democratic, republican and presidential.

The executive power is exercised by the President of the Republic, who is head of the State and the government, the Public Administration, the Military Forces, and a Cabinet of Ministers appointed by him. The President is elected by direct vote for a period of four years.

The legislative power is vested in a bicameral Congress, formed by the Senate and the Chamber of Deputies. Members of both Chambers are elected by direct vote for a term of four years. There are actually 30 senators, each representing one of the 29 provinces and

the National District, where the capital is located, and 145 deputies, each representing 50,000 inhabitants, plus a fraction exceeding 25,000, of every province and the National District.

LEGAL SYSTEM

The law of the Dominican Republic is mainly based on the Napoleonic Codes, introduced to the island during the Haitian occupation in 1822. The codes were formally adopted in 1884 as part of the national legal system. In addition, the Dominican legal system is also influenced by other systems, such as the common law.

In addition, there are other specialized courts which handle administrative, labor, traffic, and land registration matters.

In the Dominican Republic, judges pronounce the verdict since there are no juries in the courts. Judges are appointed by a newly created institution, the National Council of Magistrates. This new institution has its roots in the French judicial system and seeks to increase the independence of the judicial branch from the executive and legislative powers.

JUDICIAL SYSTEM

The Dominican judicial system is largely based on the French judicial organization system. It is composed of the following courts:

- ◆ Peace Courts, which are presided over by one judge and handle minor and special cases determined by law;
- ◆ The Courts of First Instance, presided over, by one judge and which handle all the cases not expressly attributed by law to another court. There is a Court of First Instance in each Judicial District;
- ◆ The Appeals Courts, which are presided over by five judges and review the judgments rendered by the Courts of First Instance, including the facts of the case. There is an Appeals Court in each Department, each Department comprising five Judicial Districts; and
- ◆ The Supreme Court of Justice, formed by nine judges, which is the highest court and may review all the decisions rendered by all the other courts, but only as to their legality.

RIGHTS OF FOREIGNERS IN THE DOMINICAN REPUBLIC

Under the Constitution of the Dominican Republic, the main purpose of the government is to protect human rights and the general well being of the population, while maintaining a system of individual freedom and social justice compatible with public order.

Toward that end, the constitution recognizes certain rights for the country's citizens — and for citizens of other countries who are in the Dominican Republic — such as:

- a. the inviolability of life;
- b. individual safety;
- c. the inviolability of the home, which means among other things that the police may search no home except as specifically permitted by law and after following the procedures prescribed by law;
- d. the right to travel, subject to limited restrictions such as those contained in the health, police, and immigration laws;
- e. freedom of action, including the freedom generally to be free from being required to take any actions that the law does not require and from being prohibited from taking any actions that the law does not prohibit;
- f. freedom of speech, to the extent that people are permitted to freely express their thoughts in writing or otherwise without the need for prior government approval;
- g. freedom to associate for any economic, social, cultural, or other purpose except as may be prohibited by reason of national security or for reasons relating to the public order;
- h. freedom of religion;
- i. the right to privacy, including with respect to correspondence, private documents, and telephonic, telegraphic, and cablegram communications;
- j. freedom to work, including the freedom to organize labor unions and a right to strike under certain conditions;
- k. freedom of enterprise, commerce, and industry, although monopolies are only allowed for the benefit of the state or government institutions;
- l. protection of private property, which may not be taken away by the government from any person except in cases of social interest and justified public utility — not political purposes — and on payment of fair value as determined by a court of competent jurisdiction;
- m. the protection for a fixed period of time of rights in inventions, discoveries, and scientific, artistic, and literary productions;
- n. the protection of the family for the purpose of strengthening its moral, religious, and cultural life, including:
 - (i) protection of pregnant women;
 - (ii) the adoption of health and hygiene measures to limit infant mortality and promote the healthy growth and development of children;
 - (iii) encouragement of home ownership and family savings through the establishment of credit unions, consumer unions, and distribution and production cooperatives; and

- (iv) full legal rights for married women, including the right to own property.
 - o. freedom of education and elimination of illiteracy, including a mandatory primary education provided at no cost by the government for all inhabitants of the Dominican Republic and higher education provided by vocational, trade, artistic, economic, craft, and agricultural schools;
 - p. encouragement of a social security system for the elderly and a social assistance program consisting of clothing, food, health care, and housing for the poor to the extent possible; and
 - q. prisoners' rights, to the extent that:
 - (i) physical punishment for debts not arising from a violation of criminal laws is prohibited;
 - (ii) no one can be taken to prison or have his or her freedom taken without a written order of a competent judicial officer, except in case of a crime detected in the act;
 - (iii) any person imprisoned without just cause or in breach of legal formalities, or in circumstances not provided by the law, shall be set free upon appropriate request;
 - (iv) a person deprived of his or her freedom must be presented before a competent judicial authority within 48 hours of the detention or be freed;
 - (v) a person may not be transferred from one prison to any other place without a written order from a competent judicial authority;
 - (vi) double jeopardy is prohibited;
 - (vii) a person may not be required to testify against himself or herself; and
 - (viii) there is a right to a public trial except in instances where prejudicial publicity may result.
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ENTRANCE, VISIT AND PERMANENT RESIDENT REQUIREMENTS

GAINING RESIDENCE IN THE DOMINICAN REPUBLIC

Foreigners may gain the right to reside in the Dominican Republic by acquiring a residence visa from the Foreign Relations Ministry and a temporary or permanent residence card from the Immigration Department.

VISA CLASSIFICATIONS

THE DOMINICAN REPUBLIC RECOGNIZES DIFFERENT KINDS OF VISAS			
Classification	Symbol	Application	Term
Diplomatic	DM	Multiple entries	60 days
Official	OM	Multiple entries	1 year
Courtesy	CM	Multiple entries	1 year
	CS	One Entry	60 days
	CM	Multiple entries	60 days
Business	NS	Simple business (1 entry)	60 days
	NM	Multiple business (multiple entries)	1 year
Dependents	DPM	Multiple entries	60 days
	DPM	Multiple entries	1 year
Tourism	TS	One entry	60 days
Residence	RS	One entry	60 days
Student	E	Multiple entries	1 year

These visas are issued by the Foreign Service of the Dominican Republic or by the Foreign Relations Ministry.

Certain people are not required to have visas, such as citizens of countries with which the Dominican Republic has an agreement for the exemption of visa requirements, so long as the purpose of the trip is authorized in those agreements. In this case, these foreign citizens will be permitted to enter Dominican territory for a period of 60 days with only the purchase of a "Tourist Card". Tourist Cards may be acquired for

the amount of US\$10.00 in the embarking airport or in the Dominican airport through which the foreigner arrives.

Visas are issued in passports or travel documents acknowledged by the appropriate authorities of the Dominican Republic to those who comply with the applicable conditions that are necessary to be admitted to the Dominican Republic.

Visa authorizations shall be open for 60 days from the date indicated in the visa.

The issuance of a visa in the Dominican Republic is subject to the payment of appropriate consular fees in the following cases:

- a. business visa;
- b. dependent visa;
- c. tourism visa;
- d. residence visa; and
- e. student visa.

For visas granted by the country's Foreign Relations Ministry, the fees published in national newspapers are to be applied. Citizens of countries that have certain agreements with the Dominican Republic may be exempt from these fees.

Visas may be canceled at any time by the Foreign Relations Ministry, without prior notice.

RESIDENCE VISA

The Dominican Republic's Foreign Relations Ministry typically requires that

a person seeking a residence visa submit the following:

- a. a letter of request addressed to the Chief Officer of the Foreign Relations Ministry duly signed by a representative of a company incorporated or domiciled in the Dominican Republic by which the applicant is employed or by the applicant and/or a Dominican citizen or foreigner with legal residence in the country and legalized before a Notary Public; this request must contain the applicant's name, nationality, and place of residence, and the activity to which the applicant is or will be dedicated in the country;
- b. Form 509-Ref., duly completed and signed by the applicant, to be submitted with the other documents at the Foreign Relations Ministry;
- c. a certificate of "Good Behavior" from the applicant's country of residence duly notarized at the nearest Dominican Consulate. If the applicant has been in the Dominican Republic for more than 60 days, the certificate may be obtained from the National Police. It is important to note that this last document is only valid for 30 days from the date of issue;
- d. a medical certificate from the applicant's country of residence that is duly notarized at the nearest Dominican Consulate. If the applicant has been in the Dominican Republic for more than 60 days, the certificate may be issued by a Dominican physician, on a special form of the Internal Revenue Office, and notarized before the Department of Public Health;
- e. a fully executed employment contract with a company incorporated or domiciled in the Dominican Republic or a letter certifying that the applicant is employed by the company and the position of such employment, or, if no such contract exists, a letter issued by a Dominican bank or financial institution certifying the economic solvency of the applicant or a letter signed by a Dominican citizen or company becoming responsible for his or her family and financial situation in the country;
- f. three frontal 2" x 2" photos;
- g. a photocopy of the applicant's birth certificate duly certified by the appropriate authorities of the applicant's country of birth and notarized by the closest Dominican Consulate;
- h. two photocopies of the applicant's complete passport; and,
- i. a certification issued by the Immigration Department stating the applicant's last date of entry to the Dominican Republic.

If an applicant also seeks a visa for a spouse, the following documents also must be submitted:

- a. a certified copy of the parties' marriage certificate, certified by the appropriate governmental authorities of the country of issue and notarized by the Dominican Consulate;
- b. a certificate of "Good-Behavior" for the spouse (similar to the one provided by the applicant);
- c. Form 509-Ref.;
- d. a certified copy of the spouse's birth certificate (similar to the one provided by the applicant);
- e. medical certificate (similar to the one provided by the applicant);
- f. two photocopies of the spouse's complete passport;

- g. certification issued by the Immigration Department (similar to the one provided by the applicant); and,

- h. three frontal 2" x 2" photos;

If an applicant seeks visas for underage children, the following documents also must be submitted:

- a. copies of each child's birth certificate, certified by the authorities of the country of birth and notarized by the Dominican Consulate closest to the place of issue;
- b. two photocopies of each child's complete passport; and,
- c. three frontal 2" x 2" photos.

TEMPORARY AND PERMANENT RESIDENCE CARD

To obtain a provisional residence card or a permanent residence card, an applicant must submit the following:

- a. copy of the applicant's birth certificate certified by the appropriate authorities of the country of origin and notarized in the nearest Dominican Consulate;
- b. a letter of warranty duly notarized and addressed to the Immigration Department, similar to the one needed to request a residence visa for the applicant and his or her family;
- c. six 2" x 2" photos (four frontal photos and two to the side);
- d. a residence card certification issued by the Foreign Relations Ministry;
- e. a certificate of good-behavior, issued by the National Police;
- f. a medical certificate issued by a physician authorized by the Immigration Department.

This document is valid for 60 days from its date of issue; and

- g. a photocopy of the applicant's passport and the residence visa given to the applicant by the Foreign Relations Ministry.

To obtain a permanent residence card, an applicant also must submit:

- a. an affidavit, notarized before a notary public, of two persons, Dominican citizens or foreigners with legal residence in the country, stating that they personally know the applicant and warranting that the conduct of the applicant comports with Dominican laws;
- b. a letter of warranty, duly notarized, addressed to the Director of the Immigration Department similar to the one required for the residence visa in favor of the applicant and his or her family by company incorporated or domiciled in the country or by a Dominican citizen or legal resident;
- c. the original and three copies of the applicant's provisional residence card;
- d. copies of the residence visa issued by the Foreign Relations Ministry;
- e. six 2" x 2" photos (4 frontal photos and 2 to the side); and
- f. medical certificate issued by a doctor authorized by the Immigration Department.

All documents that are in a language other than Spanish must be translated into Spanish by a judicial interpreter from the Dominican Republic.

The procedure to obtain a residence visa usually takes about 10 to 12 weeks, while an applicant may obtain a provisional residence card two months after obtaining a visa. An applicant may obtain a permanent residence card, which is valid for a renewable three year

period, at the expiration of a temporary residence card.

OBTAINING DOMINICAN NATIONALITY

Under the Constitution of the Dominican Republic, there are a number of ways a person may become a citizen of the Dominican Republic. A person:

- a. born in the Dominican Republic is a Dominican citizen;
- b. whose father or mother are Dominicans may be able to opt for Dominican nationality;
- c. who was a Dominican national as a result of prior Dominican constitutions or laws is a Dominican national; and
- d. may become a Dominican national by naturalization.

There are a variety of circumstances under which a foreigner may become a naturalized Dominican citizen. A person may be naturalized if he or she has:

- a. resided in the country for at least six months after having obtained legal domicile in the country;
- b. resided continually in the country for at least two years;
- c. resided continually in the country for at least six months, if he or she has formed a business or owns real estate in the country;
- d. resided at least six months in the country and has married a Dominican citizen;
- e. farmed land in the country and obtained authorization from the country's President;
- f. served in the Dominican Armed Forces;

- g. participated in the Dominican Republic's agricultural colonies; or
- h. obtained special concessions from the President, which normally are granted to foreigners who have served the Dominican Republic with merit.

It is important to note that under the Dominican Republic's naturalization law, residence interruptions resulting from trips abroad of no more than one year in duration, with an intention to return, are counted as residence in the country. Likewise, residence interruptions resulting from a mission or duties given by the Dominican Republic are counted as residence in the country.

NATURALIZATION PROCEDURE

To begin the process of requesting Dominican nationality, an applicant must send a letter of request via the State Secretariat of Interior and Police to the President of the Republic that contains the basis on which the applicant is requesting Dominican nationality. In addition, the applicant must submit:

- a. a non-delinquency certificate issued by the appropriate authority in the applicant's country of birth;
- b. a birth certificate (translated by a judicial interpreter if it is not in Spanish) and notarized by the Dominican Consulate of the applicant's country of birth;
- c. an explanation if the applicant's nationality at the time of application is not the country of the applicant's birth;
- d. receipt of a tax payment of RD\$10.00;
- e. five 2" x 2" photographs of the applicant; and
- f. any other documents on which the applicant bases his or her request, such as:

- i. a photocopy of the applicant's residence card showing that the applicant has resided without interruption in the Dominican Republic for two years;
- ii. two certified letters from the Dominican Republic's Immigration Department stating that the applicant resides in the country and the applicant's file contains the warranty letter needed to grant residence according to the law;
- iii. an additional warranty letter signed before a notary public by the person who assumes responsibility for the moral and economic status of the applicant; and
- iv. in the case of a person applying for naturalization on the basis of owning Dominican real estate, a copy of the certificate of title of that property.

The granting of Dominican nationality is a discretionary power of the President of the Republic, who, when he decides to grant it, issues a decree in that regard. The President also can revoke the nationality of any naturalized person who (i) during the first year after having been naturalized changes his or her domicile to another country, or (ii) has left the Dominican Republic without returning for 10 years. The successful applicant must pay the fees associated with publishing the decree in which the President grants the application.

When such a decree is published in the Official Gazette, the applicant shall swear his or her loyalty to the Dominican Republic. The official who takes the oath shall provide the applicant with a certified copy of the same bearing a sealed photograph of the naturalized person. Said oath shall also be published in the Official Gazette, publication of which is also subject to the payment of the publication costs by the naturalized person.

It is important to emphasize that the Dominican Constitution recognizes the principle of dual nationality.

EMPLOYMENT CONTRACTS OF FOREIGNERS IN THE DOMINICAN REPUBLIC

The Dominican Republic, unlike many countries, does not have a "work permit." Instead, a foreigner who wants to work in the Dominican Republic must obtain a residence visa or a provisional or permanent residence card justifying his or her stay based on an employment contract with a company domiciled in the country.

It is important to emphasize that:

- a. every foreigner bearing a provisional or residence visa or card is allowed to work in the Dominican Republic; and
- b. every foreigner who has an employment contract with a company domiciled in the country is allowed to apply for a residence visa and thereafter for a provisional and permanent residence card based on such employment contract.

It is equally important to mention that the Dominican Labor Code provides that 80% of a Dominican company's employees must be Dominicans and that the salaries received by Dominican workers of a company must equal at least 80% of the value of the salaries paid to all personnel. This requirement, however, excludes general managers and employees with managerial or administrative positions; technical employees (provided that, in the judgment of the Labor Department, there are no unemployed Dominicans with skills who could replace them); and workers in family businesses. Married foreigners and foreigners who have children with Dominicans and who have three or five years, respectively, of uninterrupted residence in the country are also excluded.

LABOR CONDITIONS

WORK HOURS

In the Dominican Republic the regular work week is 44 hours with a normal work day of 8 hours. Usually work is from Monday to Friday although some commercial establishments work Saturdays. In the case of dangerous or unhealthy jobs declared as such by the competent authorities, the work week cannot exceed 36 hours and 6 daily hours. However, the daily work schedule can be freely determined in an agreement between an employee and employer.

Furthermore, employees have a right to an uninterrupted weekly rest of at least 36 hours which can begin at any time during the week in accordance with the parties' agreement. If the employee works during the weekly resting period, he or she may opt between receiving an ordinary salary raised 100% or enjoying a compensatory rest period the following week. There are 12 national holidays in the Dominican Republic for which employees have a right to a paid rest, except when the holiday coincides with the weekly rest period of the employee.

WAGES

Dominican law provides for a minimum wage for employees in the private sector periodically established by the National Wage Council. An employer cannot offer a salary below this minimum wage standard but can always offer more.

When employees work extra hours, they gain a right to a 35% increase in

their basic salary for the hours in excess that they worked up to 68 hours a week. In excess of 68 hours, employees are entitled to a 100% increase in their basic pay. For evening work, a worker shall be entitled to an additional 15% increase over the basic salary offered during the day.

In addition to basic salary, employees are entitled to other benefits such as the following:

- a. a Christmas bonus which is an additional monthly salary given to the employee every year during Christmas holidays;
- b. participation in the yearly benefits of the company that equals at least 10% of the company's yearly net profits distributed among the personnel; and
- c. compensation for annual vacations to which employees with more than a year in the company are entitled.

Finally, employees have a right to paid leaves of absence in cases of marriage (5 days), death of a family member (3 days), and childbirth of a spouse (2 days). Pregnant women are entitled to a 12 week of pre- and post-natal leave.

TERMINATION OF THE EMPLOYMENT CONTRACT

During the first three months of work, employees can be dismissed without being entitled to termination benefits. Dismissal is the unilateral termination of the contract by the employer. When the employer demonstrates a just cause for the dismissal, it is called justified dismissal; otherwise, the dismissal is unjustified.

If an employee is dismissed, after the aforementioned three month period, the company will have to pay termination benefits. The amount the employee is

entitled to for unjustified dismissal will not exceed the amount of six months of salary, which will be paid on the date of the dismissal. This payment is exempted from income tax payments.

In case of a justified dismissal, the employee is entitled to certain benefits calculated according to the duration of the employment and this amount also will be exempted from income tax.

For additional information on the general rules regulating employment in the Dominican Republic, please consult the "Executive Summary of the Labor Code," prepared by (and obtainable from) Pellerano & Herrera.

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A FOREIGNER'S FAMILY

MARRIAGE

Dominican law recognizes two kinds of consensual marriages: civil (contracted in accordance with the civil law) and religious (celebrated according to the standards of the Canon Law).

CIVIL MARRIAGE

Marriage is a contract between a man and a woman who have freely agreed to marry and have the capacity to do so. In order to get married in the Dominican Republic, a man and woman must meet the following conditions:

- a. the parties must express their free will to marry. Any required consent must be in writing, duly notarized, unless the person required to give this consent does so while attending the marriage;
- b. those younger than 18 years old may get married only with the consent of their parents; and
- c. a man younger than 16 and a woman younger than 15 may not get married, although the Judge of the First Instance may grant an exception for significant reasons.

No person may be married before a prior marriage is dissolved. A divorced woman cannot get married until 10 months after her divorce has become final, unless her intended husband is the same person she has divorced.

Foreigners who wish to get married in the Dominican Republic must present only:

- a. their original passport and a copy;

- b. a letter from the embassy of their country of birth attesting to the fact that they are not married; and
- c. a tourist card, residence card or personal identity card, if available.

A civil marriage is publicly celebrated before an Officer of the Civil State. Dominican law establishes some publicity requirements prior to the marriage consisting of the publication of notices of the marriage. Nonetheless, the Officer of the Civil State can excuse the parties, at the moment of celebrating the marriage and for significant reasons, from complying with the aforementioned requirements; the Officer must only write in the Marriage Act that this excuse was granted.

Once these requirements have been met, the Official of the Civil State of the domicile of one of the parties will celebrate the marriage in the presence of the parties and the witnesses. During the marriage celebration, the Officer will ask the parties and the witnesses to declare if any marriage contract has or not been celebrated between them, and if so, indicating the date of the same and the notary public who carried out the celebration.

The Marriage Act contains the names and last names of the spouses, their consent, a declaration they have been united in matrimony and the date of the celebration and the signatures of the Officer, the spouses and the witnesses. After the celebration the marriage is registered in the corresponding civil registries.

The civil marriage is dissolved by death of one of the spouses or by divorce.

CANONICAL MARRIAGE

A religious marriage has the same legal effects as a civil marriage. In a religious marriage, the parish priest transmits a copy of the act of the celebration to the authorized Officer of the Civil State within three days following the solemnization of the marriage, so that it may be registered. Even if a civil marriage has taken place before the canonical marriage, the parish priest must still send a copy of the act to the Official of the Civil State to be registered.

MATRIMONIAL REGULATIONS IN THE DOMINICAN REPUBLIC

In principle, every marriage between persons domiciled in the Dominican Republic is presumed to be under the legal community system. Therefore, any other marriage system must be previously agreed to by the parties and approved by the Officer of the Civil State.

Dominican law establishes and defines a number of marriage systems and at the same time it offers freedom to the parties to either choose between the existing systems, amend one, or create a new system on their own, always respecting the legal principles provided by law.

COMMUNITY SYSTEMS

Community systems, in general, are distinguished by the presence of three essential features:

- a. the existence of three types of properties: (i) common property; (ii) property owned by the wife; and (iii) property owned by the husband;
- b. the power of the husband over the administration of the estate, which cannot be ignored or restrained

through any clause or matrimonial agreement; and

- c. the existence of certain guarantees for the woman against bad administration of the husband, such as judicial separation of property, benefit of emolument, legal mortgage over real estate property of the husband and, finally, the benefit of renunciation of the community.

The common property is composed of two kinds of property: ordinary property that usually becomes part of the community according to the rules of the Civil Code, and reserved property, that is, property resulting from the personal work of the woman.

The reserved property, even though it may have been acquired as a result of the personal work of the woman and of the savings that arise from it, is not inherent property of the woman; rather, it is common property that due to its origin is administered by the woman. It is important to note that the reserved property does not only exist in the system of legal community, but also is part of all of the other matrimonial systems.

Community systems include a system of community property and earnings, a system of community reduced to the earnings, and a system of universal community.

The Civil Code provides that the system of community of property and earnings, also called "legal community," governs all marriages that have not previously agreed on a marriage system. Within this system, movable property and its earnings, and real estate property acquired during the marriage, are common property.

In addition to the system of legal community, the most common of all the systems established by the Civil Code is the system of community reduced to the

earnings under which the composition of the common property varies. Under this system the respective debts of the spouses, present and future, and their respective movable property, present and future, are excluded from the common property.

Finally, in the universal community system, all properties, present and future, are common property. The spouses can equally agree under this system that only their present or future property will be common property.

It is possible for the spouses to agree on excluding the community system and pick their own system. Nonetheless, it is important to state that although the parties can agree on a clause that will exclude the community system from their marriage system, it will not automatically grant the wife rights to administer her property or to receive its earnings. This property is considered as awarded to the husband in order to meet the expenses of the marriage. It is possible to include in this clause an authorization for the wife to receive annually, with only need of a receipt, a part of her earnings for her personal living expenses and needs.

SYSTEMS OF SEPARATION OF PROPERTY

This system does not provide for common property but property owned by each one of the spouses and over which each one has administration, disposition and enjoyment rights. Notwithstanding the aforesaid, the wife does not have the right to dispose of her properties without the consent of the husband or a judicial authorization.

This system creates a community of life that requires the spouses to contribute to the maintenance of their home. Furthermore, as a consequence of

this *de facto* community, movable goods individually owned by each of the spouses are intertwined in reality and must be liquidated in the event the marriage is dissolved.

A wife's property can be subjected to claims of creditors for her debts arising before and during her marriage; as well as debts related to the maintenance of a marital home incurred by either spouse, in case of the insolvency of the other party. The husband, for his part, will respond for his debts arising before or during the marriage and for the debts contracted by the wife when acting as a representative of the marriage.

A variation of the separation of property system is the dowry system. The dowry system is a system of separation in which the woman, instead of contributing some or all of her income to the couple's obligations, hands over some or all of her property to her husband, who has the administration and the enjoyment of it. The wife possesses, in addition to the dowry property, property that is not affected by home-related obligations, also called "paraphernalia." This type of property is enjoyed by the wife but cannot be disposed of without the consent of the husband or judicial authorization.

LIQUIDATION OF PROPERTY BY DISSOLUTION OF MARRIAGE

The property consequences of the dissolution of a marriage are governed by the different kinds of marriage systems.

DISSOLUTION OF THE COMMUNITY SYSTEM

The death of one of the spouses has the effect of dissolving the community and opening the succession of the deceased, at the same moment of the death. In this case, it is necessary to proceed with two different liquidation

procedures: the liquidation of the common property and the liquidation of the estate of the deceased spouse.

In case of divorce, the community is dissolved at the time the divorce judgment is registered in the books of the Civil State Office. At that moment, the woman has a right to waive the community and recover her own property or to accept the community property, proceeding to its partition and liquidation.

Liquidation of community property requires two steps. First, there is the formation of divisible assets, and second the partition which can be agreed to by the parties in an amicable manner or in court and consists of the distribution of the assets and the liabilities between the spouses. Once the parties have recovered their assets from the common estate, the remaining property is divided between them.

DISSOLUTION OF THE SEPARATION SYSTEMS

Separation systems require a liquidation, despite the absence of any common property. This is because when a wife leaves the administration of her assets to her husband, he must restore them and he could become her creditor or debtor. Moreover, as a married couple, their property becomes intertwined and must therefore be liquidated.

DIVORCE

Among the different effects produced by divorce are:

- a. spouses that remarry each other may only do so under the same system that governed their prior marriage; and
- b. the divorced woman cannot get married again until 10 months after

the divorce is finalized, unless her new husband is the same man she divorced.

There are two kinds of divorce in the Dominican Republic: ordinary divorce and special divorce.

ORDINARY DIVORCE

An ordinary divorce is granted for specific reasons stated in the divorce law, including:

- a. mutual consent;
- b. incompatibility;
- c. absence of either spouse dictated by a court;
- d. adultery;
- e. criminal conviction of one of the spouses;
- f. great harm caused by one spouse to the other;
- g. abandonment of the home; and
- h. alcoholism or drug addiction.

DIVORCE BY MUTUAL CONSENT

A divorce by mutual consent may take place only after two years of marriage and before 30 years of marriage and is not permitted when the husband is 60 years of age or older and the wife is 50 years of age or older.

To divorce by mutual consent, the spouses are obliged, through an authentic separation agreement executed before a notary public, to:

- a. make a formal inventory of their property;
- b. agree which one is going to be in charge of taking care of their children, both during the divorce and after the divorce is granted; and

- c. agree where the wife is going to live during the divorce and the amount of alimony to be paid by the husband.

Once these formalities are met, the spouses, whether personally or represented by a proxy, with the separation agreement, copy of the marriage certificate, and copy of the birth certificates of their children shall appear before the First Instance Judge of their domicile, explain their wish to get divorced by mutual consent, and request the admission of the divorce. The judge will make sure that all the legal formalities have been met and will accept the request, setting a date for a hearing and granting the divorce after eight days from the date of the hearing.

In this divorce procedure the judge has to assent to the stipulations of the separation agreement agreed to by the parties, which may be amended only by the mutual consent of the spouses on the day of the hearing.

One or both of the spouses are obliged to register at the Civil State Office and the Custodian of Mortgages the order granting the divorce and have it pronounced before any Officer of the Civil State of the same jurisdiction of the court that heard the case, which shall be done in no less than eight days after the divorce was granted. Eight days afterwards the order of divorce shall be published in a newspaper of national circulation and an issue of the newspaper must be deposited at the Office of the Court. This publication is the responsibility of both parties and a divorce is void if publication does not take place. The order granting the divorce is not appealable.

DIVORCE FOR OTHER REASONS

Every divorce demand for a reason other than mutual consent shall be filed

before the First Instance Court of the Judicial District where the defendant resides. If the defendant does not have a known residence in the country, it shall be done before the court where the plaintiff resides.

The plaintiff shall summon the defendant to appear at a hearing, which shall take place on the date and time indicated in the summons and where the parties shall present the documents and witnesses that support their claims. The hearing shall take place even if the defendant does not appear and once it is over, the court shall order that the case be sent to the Office of a Government Attorney for an opinion after which the judge will decide whether to grant the divorce, pronouncing the judgment publicly.

Every divorce judgment for a reason other than mutual consent shall order which one of the spouses shall stay in charge of the children but the judge may have to assent to the stipulations of the separation agreement, if there was one. If there is no such agreement, the judge shall order the following:

- a. except in limited circumstances, all children up to four years of age shall stay under the care of the mother;
- b. children older than four years shall stay with the spouse that obtained the divorce, unless the court, either at the request of the other spouse, another member of the family, or the Office of the Government Attorney, for the benefit of the children orders that custody of all or some of the children be granted to either the other spouse or a third person.

When the divorce is requested because one of the spouses has been convicted of a crime, the other spouse

need only present the court with the judgment condemning the defendant spouse to prison, duly certified where it is stated that said judgment is not able to be changed by any of the ordinary legal ways.

Every order granting a divorce for reasons other than mutual consent may be appealed for two months after the date it is notified.

Once the term to appeal has expired and once the judgment has been registered in the corresponding Civil Registrar Office and Keep of Mortgages, the party who has obtained the divorce judgment will notify the other party and appear before any Officer of the Civil Status to hear the divorce pronouncement. Furthermore, a publication of the judgment must appear in a newspaper of national circulation, within eight days of the pronouncement.

SPECIAL DIVORCE

The special divorce is effective only for foreigners or Dominican citizens not resident in the Dominican Republic, divorcing by mutual consent.

Just as in an ordinary divorce, and due to the fact that the spouses are getting divorced by mutual consent, the law requires that the parties reach a formal separation agreement relating to the division of their common property, the custody of the children born in the marriage (if any), and the alimony payments that the husband has to pay to the wife during the divorce proceeding and to the children after the divorce and until they reach the legal age, among other matters. This agreement shall be signed before a notary public of the jurisdiction of the domicile of the spouses and duly certified before the Dominican Consulate closest to that domicile, so that it is valid under Dominican laws. It

must expressly grant jurisdiction to a First Instance Judge.

The spouses shall be able to get a special divorce by mutual consent if at least one of the spouses personally appears at the hearing with the other represented by a special power of attorney. The appearing spouse shall present to the court an identity card, such as a passport, identity card, social security card, or driver's license.

The court shall require a copy of the marriage certificate and copies of the birth certificates of the children born in the marriage, if any, duly legalized and translated into Spanish if they were in any other language.

Once the divorce has been authorized, the judge shall set a hearing during a term of three days for the spouses to appear in court. Once the hearing is over, the court shall order the Office of the Government Attorney to give its opinion within three days and the judge shall proclaim the divorce in the following three days. In general, the procedure takes from eight to ten days, depending on the volume of work of the court, for the judgment to be ordered and then registered in the corresponding Civil State and Mortgage Registrar Bureau.

Once the judgment has been registered, the divorce shall be proclaimed by any Officer of the Civil State of the Jurisdiction of the court that heard the case. For such purpose it would be necessary to present a certified copy of the judgment, previously registered at the Civil Registrar Office, and the dispositions of said judgment shall be published in a newspaper of national circulation.

It is important to note that for said judgment to be valid abroad it shall be certified in the Office of the Attorney

General of the Dominican Republic as well as in the Foreign Relations Ministry and the embassy or consulate of the country where the divorce is to be valid.

RULES RELATING TO MINORS

This section discusses the acknowledgment of minors by the father, alimony obligations of the parents, adoption of minors, and the issue of trips abroad.

ACKNOWLEDGMENT

Regarding the determination of paternity of a minor with Dominican nationality, the procedure starts with a suit brought by the mother for the acknowledgment of the minor child. The mother shall be able to bring such a suit from the moment the child is born until the child reaches the legal age. The competent court is the Court for Boys, Girls and Adolescents.

However, the law contains a number of restrictions regarding the judicial acknowledgment of paternity. The law only allows a suit of this kind in the following cases:

- a. in case of rape, if the date coincides with the date of conception;
- b. in cases of seduction done by abusing authority, marriage promises, or fraudulent maneuvers;
- c. if it has been a notorious concubinage between the mother and supposed father;
- d. if there is a written confession of paternity; or
- e. if there is a series of facts that allow the establishment of paternity between the father and the child.

The acknowledgment of incestuous children is prohibited, unless the good faith of the father can be proven.

Likewise, acknowledgment is not permitted if, during the period of conception, the mother has had sexual relations with more than one individual, has evidenced dissolute behavior, or if the supposed father has been physically unable to procreate.

Dominican law prohibits the possibility of obtaining judicial acknowledgment of paternity by providing that "the investigation of the paternity is prohibited" except in the case of a claim for compliance with alimony payments of the putative father.

THE ALIMONY OBLIGATION

Dominican law provides that the parents of a minor have the obligation of providing the child with the necessary means for survival, shelter, clothing, medical assistance, education, and recreation. When the father or the mother have not complied with this obligation, a judicial procedure is considered to be initiated for violation of the law after a request is made by any of the parents or the representative of the child before a public defender, government attorney, competent judge or police officer, or when these officials start the procedure on their own initiative.

Upon request by the parent or representative of the child, a social worker has eight days to examine the social and family situation of the people involved and to deliver a report that proposes a settlement of the alimony payments obligation. If the parties do not agree in conciliation on a settlement, or if the parent fails to appear to conciliation, the alimony payment shall be provisionally determined.

The second step begins with a request from the representative of the minor or the Defender of the Boys, Girls

and Adolescents to determine the alimony payments before the Court of Boys, Girls and Adolescents or the Office of Justice of the Peace of the domicile of the minor. In this case if the defaulting father does not agree with the report and the provisional obligation previously determined, a date for a new hearing shall be set. The judge, after hearing the parties, issues a ruling at that hearing or within six days.

The judge can order the violating parent to make alimony payments and can send a father to prison for up to two years in the event he fails to meet his obligations. However, the prison sentence can be temporarily suspended until, and if, the father fails to comply with his alimony obligations.

Furthermore, in the event there is no compliance with the judgment within ten days of its issuance, the plaintiff may ask the court to seize and auction the father's property in the amount needed to obtain the required payments or to incarcerate the father for not complying with the order.

TRIPS OF MINORS ABROAD

Dominican law provides that no child or adolescent may travel abroad except with his or her father, mother, or other responsible person. When a minor travels with people who are not his parents, it is necessary to present an authorization duly legalized by a notary public. In the absence of the parents, the responsible person shall provide a sworn declaration showing custody of the child.

When there is a disagreement between the parents or legal representatives of the child regarding authorization to travel, an appropriate court shall be able to grant authorization of those children to leave the country.

As a practical matter, the previously described authorization has not been needed. However, it must be noted that it is a requirement of the law and that at any time such authorization may be required by the government authorities.

ADOPTION IN THE DOMINICAN REPUBLIC

Adoption is a legal institution that attributes the condition of son or daughter to an adopted person granting him or her the same rights and duties, including inheritance rights, as a biological child. Adoption will normally extinguish all family ties except matrimonial impediments. Adoption rules are intended to protect minors and the process is followed under the direct control of the State and under a special jurisdiction called the Court of Boys, Girls and Adolescents.

Dominican law recognizes three kinds of adoptions: privileged adoption, simple adoption, and international adoption. All adoptions in one family must be the same kind, according to the law.

PRIVILEGED ADOPTION

A privileged adoption is irrevocable and grants the adopted child an affiliation with the adoptive parents. The adopted child stops belonging to his natural family and any relation with its members is extinguished, as well as its legal effects, except for a marriage impediment between the adopted child and his natural family. Through this type of adoption, the adopted child has in the family of the adopting person the same rights and duties as a biological child.

However, privileged adoption can only be granted in favor of those boys, girls, or adolescents who are orphans, abandoned

or with unknown parents, or who have been deprived of a father or mother.

Once a privileged adoption is granted, the acknowledgment of the adopted child by his blood parents will not be allowed and the adopted child may not file any paternity action except for an action to prove a marriage impediment.

SIMPLE ADOPTION

The simple adoption does not create a family relation between the adopted child and the adopting family, with the exception of the express effects provided by law. The rights and duties of the natural parents are not extinguished by a simple adoption, except those of the "*patria potestad*," which are transferred to the adopting person.

Contrary to the privileged adoption, the simple adoption is revocable, under certain circumstances:

- a. if the adopted child or the adopting parent has incurred some indignity as provided by law;
- b. by agreement between the parties, with judicial intervention, when the adopted person is 18 years old; or
- c. by wish of the adopted person, expressed to a judge or in a public writing, when the legal age is reached.

Revocation of a simple adoption extinguishes all effects of the adoption, except the marriage impediments. On the other hand, a simple adoption does not impede the acknowledgment of the adopted person by his natural parents or the exercise of a paternity action.

INTERNATIONAL ADOPTION

An adoption is considered international when the adopting persons

and the adopted child are of different nationalities or reside in different states.

In cases of adoptions of Dominicans by foreign nationals, the law of the country where the adopting parents reside is the one in charge of regulating the conditions of the adopting person, the consent of the spouse of the adopting person, and the other conditions that the adopted persons must fulfill to obtain the adoption. Dominican law, on the other hand, regulates the conditions of the adopted child, the age, the consent of the parents or of the legal representative of the minor, the proceeds and formalities that constitute the adoption, and the authorization of the minor to leave the country.

REQUIREMENTS AND PROCEDURE FOR ADOPTION

The requirements for a foreigner to adopt a boy, girl, or adolescent in the Dominican Republic are the following:

- a) to be older than 25 years old;
- b) to constitute a couple of a man and a woman with at least five (5) years of marriage without interruption;
- c) to live together with the adopted child within the Dominican Republic for at least 30 days, if the adopted child is older than 15 years, and 60 days, if the child is younger than 15 years;
- d) to be 15 years older than the adopted child;
- e) to have the parent's authorization or, in the case of deceased parents or when their whereabouts are unknown, to have the consent of the legal representative of the minor. In the case of orphans, the necessary consent shall come from the Judge of Minor;

- f) if the adopting family has children older than 12 years of age, it must bring them to the court.

The procedure for a privileged adoption, international or domestic, is initiated by filing a request addressed to the Public Health and Social Assistance Ministry -in case of minors with deceased parents or when their whereabouts are unknown- or before the Rector Entity on the Protection of Boys, Girls and Adolescents -in case of parent's authorization or the consent of the legal representative of the minor-, where the couple expresses its desire to be awarded the care of a minor, who they have already selected or whom they let the Ministry pick for them. In both cases, said request shall contain the following documents:

- a. letter of request addressed to the Public Health and Social Assistance Ministry -in case of minors with deceased parents or when their whereabouts are unknown- or before the Rector Entity on the Protection of Boys, Girls and Adolescents -in case of parent's authorization or the consent of the legal representative of the minor- where the couple expresses its desire to be awarded the care of a minor, who they have already selected or whom they let the Ministry pick for them;
- b. letter issued by a bank where the solvency of the couple is attested;
- c. letter issued by the employers of the adopters attesting to their working arrangements (in case both work);
- d. health certificates issued by an authorized medical doctor;
- e. certificates of good behavior, issued by the competent authority of the place of residence of the adopting parents;
- f. two photographs, 2" x 2", of the adopters. Likewise, in case of parent's authorization or the consent of the legal representative of the minor, pictures of the adopters parents with the minor and the biological parents, all together, shall be filed;
- g. certificate from an institution with a social, civic and/or religious character stating the moral standards and behavior as a couple;
- h. duly certified copy of the Marriage Certificate;
- i. copy of their Passports;
- j. birth certificates of both the adopting parents and the minor, duly legalized before a competent authority;
- k. a complete inform of the Psychological and Social Research to the adopters, executed by a competent public entity on the protection of Minors in the country of origin or residence of the adopting couple;
- l. certificate or a document from an authorized official institution from the country of residence of the adopters, by means of which this institution compromise itself to follow up the adopted child until its nationalization in the country of residence of the adopters; and,
- m. act of consent of adoption, duly legalized and certified before the Attorney General or, otherwise, if the minor is under the guard of the State, a Declaration stating the Loss of Authority of the father and the mother.

It is necessary that all documentation be certified before the nearest Dominican Consulate from the place of signature of said documents. If the necessary documentation is not in Spanish, it must be translated and certified by the Attorney General and the Secretary of State of Foreign Relations.

It is important to mention that according to Dominican law, a stage where the adopters live with the child must proceed all adoption. The term required for this trial period is a minimum of thirty (30) days for the adoption of minors older than fifteen (15) years old; and, a minimum of sixty (60) days for the adoption of minors under fifteen (15) years old.

When the judgment is issued, a certified copy of the same will have to be:

1. certified at (i) the Civil Registrars Office; (ii) the Attorney General's Office; and, (iii) the Foreign Relations Ministry;
2. published in a national newspaper;
3. filed before the General Electoral Council for the necessary approvals; and,
4. registered, after being approved, in the Civil State Office for its inscription in the child's birth certificate.

All the documents and administrative or jurisdictional actions inherent to the adoption process are kept for 30 years. Copies of these papers may only be issued by direct request from the adopting persons or the adopted child, once he or she reaches legal age. Nevertheless the adopting persons are free to decide when the adopted minor should know his or her origin and the character of their family relation.

LEGAL EFFECTS OF THE ADOPTION

As described above, the adopter and the adopted child acquire by adoption the rights and obligations of legitimate father or mother and son or daughter. The legal effects of this relationship are described below.

CIVIL RELATIONSHIP

The civil relationship established as a consequence of the adoption is solely limited to the adopters and adoptee. If the adopters have children, they are considered sisters or brothers of the adoptee. Likewise, the adoptive children of a person shall be considered sisters and brothers among themselves.

LAST NAMES

The adoptee shall have the last names of the adopters. This may be modified only when:

- a. the adoptee is less than three years old;
- b. a judge finds justified reasons for it to be changed; or
- c. the interested party reaches an age at which he or she expresses his intent.

INHERITANCE

Among the rights the adoptee acquires as consequence of the adoption are the right of inheritance. Dominican law establishes that the succession right be reciprocal between the adoptee and his descendants, the adopter, his ascendant, descendants, and relatives up to the fourth degree, except for exceptional situations described in Dominican law.

SUCCESSIONS AND DONATIONS IN THE DOMINICAN REPUBLIC

According to the law, the sons and daughters of a deceased person as well the ascendants and collaterals, have a right to inherit. Among the descendants no distinctions based on sex or seniority are made for the purposes of inheritance.

The order for succession in the Dominican Republic is the following:

- First: descendants
- Second: parents and siblings
- Third: ascendants
- Fourth: other collaterals
- Fifth: spouse; and,
- Sixth: the State

Dominican law also provides a legal reserve for the sons and daughters of the deceased as well as of the parents, that is, a portion of the estate of the aforesaid which cannot be disposed of by testament. When the deceased leaves one son or one or both parents the legal reserve will constitute 50% of the total assets of the deceased, if he or she leaves two sons or daughters, it will be 66% of the estate, and if there are three, 75%.

There is tax established by law for successions in the Dominican Republic, which are detailed below. Once the corresponding declarations have been made for tax purposes, and only in case real estate property is included in the estate, the heirs will initiate a procedure before the Land Court of the Dominican Republic in order for it to establish who are the heirs of the deceased and the land portion that pertains to each one.

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THE TAX OFFICE AND FOREIGNERS

We will now detail the principal taxes provided by law in the Dominican Republic.

INCOME TAX

Any natural or legal person, resident or domiciled in the Dominican Republic, regardless of nationality, is required to pay tax on income from Dominican sources, and from sources outside the Dominican Republic derived from investments and financial profits.

Those not residing or domiciled in the Dominican Republic are also subject to tax on their income from Dominican sources. On the other hand, individuals who begin to reside in the Dominican Republic will only have to pay taxes on their income from foreign sources starting on their third year of residence in the country.

TAXABLE INCOME

According to the Fiscal Code, all benefits or utilities rendered by an activity or a property are considered income. In this sense, taxable income is defined as income adjusted by the fiscal cost of the goods that have been sold and reduced by the permitted deductions of the Code.

Foreign exporters obtaining income from abroad for the simple introduction of their goods into Dominican territory will not be subject to tax for that income, which will be considered as foreign source income for the tax purposes.

DEDUCTIONS

The following are permitted deductions, which basically consist of expenses incurred for the obtainment and protection of income:

- a. interest on certain debts and expenses;
- b. taxes assessed on goods that produce taxable income except income tax and its surcharges and fines as well as taxes on successions and donations and its surcharges and fines and other taxes and surcharges incurred in the construction, maintenance and conservation of capital goods;
- c. premiums on insurance policies that cover risks on goods that produce taxable income;
- d. extraordinary damages that, due to acts of God, or third party felonies, affect the goods that produce taxable income;
- e. amortization for depletion of tangible goods at a rate of 5%, 25% or 15% except in cases of accelerated depreciation;
- f. expenses for the exhaustion of mineral deposits;
- g. amortization of intangible goods, including patents and franchising agreements;
- h. losses resulting from bad debts in justifiable quantities;
- i. research and development expenses incurred with the consent of the Fiscal Administration;
- j. certain losses suffered by companies during their fiscal years which will be deducted from its profits generated that same year and up to three years after the loss was experienced by the company;
- k. charitable donations (including to educational and religious institutions) up to 5% of taxable income; and

1. contributions to pensions and retirements plans, up to 5% of taxable income.

The majority of collateral benefits granted to employees of a company are not deductible from gross income as well as salaries given without the execution of a real service to the company, losses for illicit operations, expenses without receipts, remunerations to persons or entities working from abroad, and utilities used for corporate reserves or capital increases. Furthermore, regarding collateral benefits, companies who grant them have the obligation not to retain the tax from the employee but to pay the tax itself directly to the Fiscal Administration.

Self-employed individual taxpayers who pursue other activities different from their main business activity are allowed to deduct, from the gross income derived from these activities, conservation and acquisition expenses proven to be necessary.

Finally, individuals residing in the Dominican Republic, who have 80% or more of their gross income coming from business or professional activities and not exceeding the amount of RD\$100,000.00 annually, are eligible for a global deduction of 30% from their gross income, in order to determine their net income subject to tax.

TAX RATE

a. Natural persons

Individuals domiciled or resident in the Dominican Republic are required to pay a tax on their annual net taxable income in the following amounts:

- i. income from RD\$97,800.01 to RD\$162,996.00 : 15%;
- ii. income from RD\$162,996.01 to RD\$244,488.00 : 20%; and

- iii. RD\$244,488.01 and above: 25%.

b. Juridical Persons

The Fiscal Code considers juridical persons, for the purposes of this tax, to be stock companies, public enterprises, undivided successions from the third year after the death of the deceased, associations of persons, *de facto* corporations, irregular companies, and any other business organization with the function of obtaining profits and utilities, not declared exempt from taxes by the Code.

According to this definition, juridical persons domiciled in the Dominican Republic must pay 25% of their net income. The same rate must be paid by Dominican companies owned by foreigners on the net income they earn from Dominican sources.

FISCAL YEAR

Individual taxpayers must use a fiscal year beginning on January 1st and concluding on December 31st. Businesses may choose fiscal years ending on March 31st, June 30th, or September 30th.

WITHHOLDING

Withholding is an obligation generated when a person or entity pays or credits to the account of a third person taxable income. This obligation is basically to withhold the following rates depending on the nature of the payment or account credit and to pay directly to the Fiscal Administration on the other person's account as a unique and definite payment, as follows:

- a) payments or account credits of taxable income of Dominican sources to persons not residing in the Dominican Republic will generate an

obligation of withholding 25% of the income. Interest paid to foreign financial institutions is exempted from this payment and so are dividends and taxable income to permanent establishments of foreign persons;

- b) payments or account credits for interest from Dominican sources generated by loans with foreign institutions will generate an obligation of withholding 15% of that interest;
- c) payments or account credits for dividends from Dominican sources to persons or companies domiciled in the country or abroad will generate an obligation of withholding 25% of those dividends;
- d) payments or account credits of taxable income that the employer makes to the employee generates an obligation of withholding the tax rate applicable for individuals.

Equally, private or public entities that perform commercial activities as well as professionals, commissionists, consignees, and auctionists must act as withholding agents of a definite and unique payment when they pay or credit to the account of individuals or undivided successions and other entities not exempt from taxes, except legally incorporated companies, the following rates:

- a. 20% over the sums paid or accredited for lease or rent of any type of property, movable or real estate;
- b. 10% over fees, commissions and remunerations paid for the rendering of services in a subordination relationship;
- c. 15% over lottery prices;
- d. 2% over the value of transfer of movable property; and

- e. 10% for any type of income not expressly detailed in the law. Nonetheless, dividends and interest are expressly excluded from withholding.

INFLATION ADJUSTMENTS

The executive branch can periodically order an inflation adjustment, based on the Consumer Price Index of the Central Bank. The adjustment ordered for any fiscal year is applied to the following:

- a. the tax rates established for individuals;
- b. any other quantity expressed in Dominican pesos;
- c. the net participation in business capital or a capital asset not related to an enterprise, within the limits established by law;
- d. the transfer to the next fiscal year of the net losses of a company for operations and the dividends accounts;
- e. credits for taxes paid abroad; and
- f. other items affecting the determination of the taxable basis or the payment of the income tax.

TAX ON THE TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES (ITBIS)

ITBIS assesses a tax on (i) the transfer or importation of industrialized goods, (ii) the rendering of services such as telephone, cable, telex, cable television or close circuit, pagers, radios, telephones, and the like, (iii) the rendering of services at bars, restaurants, discos, cafeterias, and similar establishments, (iv) the rendering of services at hotels, motels, and similar establishments, (v) the leasing of movable goods, including vehicles and equipment, and (vi) florist services.

TAXABLE BASIS

In the case of the transfer of goods, the taxable basis for the ITBIS is the net price of the transfer plus the additional charges added by the seller such as: transportation, packing, freight, and interest due to financing, less bonuses and discounts granted. In other cases, the taxable basis is the total amount indicated in the invoices corresponding to the services rendered.

In case of imports, the taxable basis is the result of adding the defined value of the product to the application of the customs duties plus import taxes.

Persons or entities whose activity is the transfer of industrialized goods; individuals who render taxable services; and importers of taxable goods are required to pay this tax. Persons who perform purely commercial activities and have an average monthly income equal to or less than RD\$50,000 or who perform activities not purely commercial and have an average monthly income equal to or less than RD\$30,000 are exempted from paying this tax.

TAX RATE

This tax shall be paid with a rate of 8% of the taxable basis and is paid on a monthly basis.

EXEMPTIONS

The tax code contains a list of local and imported products exempted from ITBIS. Most of the products included in the list are agricultural products and food that requires little or no processing.

Other products of strategic value also are exempted from ITBIS, such as paper used for printing newspapers and books, oil and derivatives, fertilizers, seeds, pesticides, containers, and machinery

and equipment used for public, agricultural, and free zones sectors.

SELECTIVE CONSUMPTION TAX

The selective consumption tax applies to the transfer of specific goods of national production at the manufacturing level and to the importation and the offering or renting of certain services. This tax applies to products derived from alcohol, tobacco, automobiles, long distance calls, airline tickets, hotel rooms and insurance premiums, as well as certain other goods, such as: jewelry, gold and silver articles, yachts, and certain household appliances.

The rates applicable to the taxable goods varies from 5% to 80% depending on the article, where the most highly taxed items are some vehicles and luxury items with a rate of 10% to 80% , and the less taxed items are hotel rooms and utility vehicles with a rate of 5%. The fiscal period of this tax is a calendar month.

TAXES ON SUCCESSIONS AND DONATIONS IN THE DOMINICAN REPUBLIC

Dominican law establishes taxes on successions and donations that must be paid by the heirs and beneficiaries of the transferred property.

TAXABLE BASIS

All transmissions of movable goods and real estate property by cause of death are subject to this tax. The taxable basis is the following:

- a. all movable goods and real estate properties located within Dominican territory; and
- b. all real estate of a deceased person who resided in the Dominican

Republic immediately before his or her death or was a Dominican citizen.

Likewise, any assignment of properties performed by an act of donation while a person is still alive is subject to the payment of a tax equal to the tax established for successions. Such tax will be charged to the recipients and will be determined over the value of the properties donated.

DEDUCTIONS

In the Dominican Republic, the following deductions are made on inherited property before transfer taxes are payable:

- a. debts charged to the deceased that are evidenced in public or private writing;
- b. taxes or rights whose payment have been left pending by the deceased;
- c. expenses of the last illness pending payment at the moment of the deceased's death;
- d. the amount of mortuary and funeral expenses;
- e. certain mortgage credits;
- f. the outstanding amounts to workers due to severance payment in the event of death of the employer; and
- g. expenses of settlement of stamps and inventory.

TAX RATE

The payment of Tax on Successions and Donations is in accordance with the following table:

The first category corresponds to relatives of the deceased in direct lineage that is, descendants and ascendants; the second corresponds to collaterals in second order; the third to collaterals of third order; and the forth,

ASSIGNMENT RDS	1st Cat	2nd Cat	3rd Cat	4th Cat
RD\$500 to RD\$2,000	1%	3%	6%	8%
RD\$2,000 to RD\$5,000	2%	4%	7%	10%
RD\$5,000 to RD\$10,000	3%	5%	8%	12%
RD\$10,000 to RD\$20,000	4%	6%	10%	14%
RD\$20,000 to RD\$40,000	5%	7%	12%	15%
RD\$40,000 to RD\$60,000	6%	8%	13%	17%
RD\$60,000 to RD\$80,000	7%	12%	18%	22%
RD\$80,000 to RD\$100,000	8%	12%	18%	22%
RD\$100,000 to RD\$125,000	9%	14%	20%	24%
RD\$125,000 to RD\$150,000	10%	14%	21%	25%
RD\$150,000 to RD\$200,000	11%	15%	22%	26%
RD\$200,000 to RD\$300,000	12%	16%	23%	28%
RD\$300,000 to RD\$400,000	13%	17%	24%	29%
RD\$400,000 to RD\$500,000	15%	19%	25%	30%
RD\$500,000 and above	17%	21%	27%	32%

to other collaterals and people who are not relatives of the deceased.

When the beneficiaries of the assignments reside abroad they shall pay 50% more of the rate they would have paid had they resided in the Dominican Republic.

Statements for tax purposes on successions shall be made to the Internal Revenue Collector of the place in which the succession has been opened, within 30 days of the date of opening of the succession; those statements regarding taxes on donations shall be made to the Internal Revenue Collector of the place where the donation was performed, within 10 days.

POST-TRANSFER DUTIES

To duly register any transfer of real estate and to execute the assignment of the property from the seller to the buyer, it is necessary to pay certain duties and to purchase revenue stamps from the Internal Revenue collector; such duties, which generally are payable by the buyer, are calculated in the following manner:

- a. first, a duty of 4% of the value of the property, or the amount of such sale;
- b. second, a duty of 12% of the value resulting from the calculation of the

first duty, that is, 12% of the 4% of the total amount of such sale;

- c. in certain cases, an additional amount of 2% over the total amount of the value of the property is paid to the account of the seller, relating to capital profits; and
- d. certain "*ad valorem*" stamps in an amount calculated according to the following formula: value of the property/1,000 x 2.

Among the permitted exemptions to the import tax are the temporary import regime and the import of merchandise for free zone enterprises. Finally, agricultural products and live stock products, such as pesticides, herbicides, and insecticides, as well as products considered necessary to satisfy basic social needs, such as medicine and raw materials, are exempted from import taxes.

IMPORT TAXES

The Dominican Republic is a member of the World Trade Organization and signatory of its multilateral agreements and, therefore, has acquired the obligation of eliminating barriers to trade and to rationalize its customs system.

Presently, taxes and duties on imports to the Dominican Republic are *ad valorem* taxes, that is, taxes determined in relation to the value of the imported goods on which they are imposed. These taxes are paid in Dominican pesos and calculated according to their value in dollars CIF (cost, insurance & freight) translated into pesos at the official rate of exchange at the moment in which the merchandise is introduced into Dominican territory. Its structure is based on the Nomenclature of Designation and Classification of the Harmonized System.

Import taxes are applied to all goods and all international trade of the Dominican Republic. Even though the maximum rate that the country can charge on imports is 40% according to the GATT, the present rate varies from 3% to 35% depending on the nature of the imported goods. It is important to mention that the ITBIS and the selective consumption taxes are added to this import tax to the appropriate products.

FOREIGNERS AND REAL ESTATE

FOREIGNERS AND REAL ESTATE RIGHTS

ACQUISITION OF REAL ESTATE PROPERTY

The acquisition by foreigners of real estate rights in the Dominican Republic is not subject to any special requirement. The regime imposed to foreigners is thus the same applied to national buyers.

The document pertaining the acquisition and/or transfer of real estate rights, shall be filed before the corresponding Register of Titles to the location of the real estate, after the payment of the taxes established by the Law and specified in the section "The Tax Office and Foreigners" of this Legal Guide.

The Registrar of Titles shall, within 15 days after the filing of the documents pertaining the transfer, submit a copy of the same to the Secretariat of State of Interior and Police for its filing in an Official Record that should be kept of each foreign owned real estate in the Dominican Republic.

LEASE OF REAL ESTATE

The law relating to the lease of real estate is the same for both Dominicans and foreigners.

A lease may be either written or oral. A written lease may result from the exchange of correspondence between the parties or their assignees. Nevertheless, even though a written instrument is not required for the validity of a lease, a writing is of great importance to prove its existence.

There is another important requirement for the validity of a lease: a

price agreed on between the parties. The failure of the parties to agree to a price generally voids the lease. However, a lease that does not provide the amount that the lessee shall pay to the lessor may be enforceable if the amount is determinable after the lease is signed.

Such amount may be payable by the lessee in commodities, products or properties of any nature, although as a practical matter that rarely occurs. Likewise, a lease may include a clause allowing the amount payable by the lessee to automatically increase in conjunction with the standard of living, so long as such increases do not exceed the limits established by law.

The amount payable under a lease may be paid in hours, days, months, semesters, or years and at the termination of the time periods the lessee will be obligated to pay the lease price.

A lessor is obligated to turn over the leased property to the lessee in perfect condition, subject to the parties' agreement.

The owner of leased property also is required to guarantee that the tenant's right to enjoy the property will not be disturbed during the term of the lease. This guarantee includes, among other things, a guarantee that others will not enter a leased house without the lessee's permission and that signs and posters may not be placed at a house's entrance without the lessee's consent. The lessor is also obligated to make all necessary repairs during the lease to maintain the leased property in good repair.

Dominican law also imposes certain obligations on a lessee. A lessee has the

obligation to make the payments to the lessor provided by the lease. The lessor may collect the payment at the domicile of the lessee or any other place established in the contract by mutual election of the contracting parties. When the lease is executed by more than one lessee, each of them is jointly bound to make all payments under the lease. In addition, leases typically require the lessee to pay costs associated with public services, water, electricity, telephone, etc.

A lessee must use leased property for the purposes described in the lease, and not for any immoral purpose. In the event the lessee breaches this provision of the lease, the lessor may request that the lease be rescinded.

The lessee also is responsible for maintaining the leased property in good condition. Once a lease expires, the lessee is obligated to leave the property and return it to the owner or lessor.

If the parties agree not to terminate a lease at its stated expiration date, the lease continues for a term equal to the original one, under the same conditions.

The reasons a lease may be terminated are:

- a. the stated expiration date;
- b. loss or destruction by Act of God of the leased property;
- c. non-compliance of the obligations of the parties; and
- d. mutual consent of the parties.

Once a lease is terminated, the parties' obligations end and the lessee is required to return the property to the lessor.

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EXCHANGE CONTROL AND FOREIGN INVESTMENT

BANKING SYSTEM

The central governmental institutions in the Dominican banking system are the Central Bank of the Dominican Republic, the Monetary Council and the Superintendent of Banks.

The Central Bank is the entity in charge of promoting and maintaining the monetary, exchange and credit conditions favorable to the stability and development of the national economy. It is also in charge of regulating the monetary and banking system of the nation. Furthermore, the Central Bank is in charge of issuing the Dominican legal currency and maintaining its stability, not only nationally but also at an international level.

The Monetary Council is the superior entity of the Central Bank and is in charge of determining the monetary, credit and exchange policies of the nation. It is then the Central Bank's responsibility to carry out such policies. The Monetary Council fulfills its functions by regulating the financial entities established in the country. Consequently, the major part of the regulations concerning the exchange markets, official and private, the exchange rate, the issuance of credit cards, opening of accounts, and other banking operations have been issued by the Monetary Council. Nonetheless, a bill for a Monetary and Financial Code that will unify and organize all these regulations is presently being considered by the National Congress.

Finally, the Superintendent of Banks is the entity in charge of supervising and executing the legal system established for the banks in the country.

Currently, two different banking systems coexist in the Dominican Republic: the specialized bank, in which commercial banks, development banks, mortgage banks and savings and loans institutions operate, and multiple services banks. This last system was created in 1992 and since then a great number of commercial banks have made the transition to become multibanks. The banks and financial institutions regulated by the Monetary Council have the power to receive resources from the public and the commercial banks and the multibanks can open accounts in dollars in favor of their clients.

FOREIGN INVESTMENT SYSTEM

There are two basic concepts underlying foreign investment in the Dominican Republic. The first is the recognition by the State of the need to promote foreign investment for the economic growth and the social development of the country. The second is that both foreign and national investors must have similar rights and duties.

Foreign investment can take the form of capital contributions in freely convertible currency duly exchanged through authorized local banks as well as in-kind contributions to the capital of a company, such as industrial plants, machinery, equipment, spare parts and pieces, real estate, intangible and technological contributions. Finally, foreign investment can be directed to financial instruments that the Monetary Council of the Central Bank determines may qualify as foreign investments, with the exception of instruments resulting from a debt conversion program.

The execution of agreements of transfer of technology such as license of

technology agreements, technical assistance, technical services, and basic and detailed engineering contracts are also expressly permitted among nationals, foreign individuals and corporations.

Regarding the destination of foreign investment, the law allows that the same be channeled through investments in the capital of a corporation, in real estate properties in the country and in the acquisition of financial assets.

Within 90 days of the placement of an investment, all investors need to register their investment in the Central Bank of the Dominican Republic, by the deposit of the following documents:

- a. request for registration containing all information regarding the capital invested and the area where the investment has been made;
- b. evidence proving that capital contributions made in freely convertible currency or in-kind contributions have entered the country; and
- c. documents of incorporation of the company or the authorization for the operation of branches by means of establishing legal domicile in the country.

Once these requirements have been fulfilled, the Central Bank will immediately issue in favor of the investor a Certificate of Registration of Direct Foreign Investment.

Investments in the following areas or activities are forbidden:

- a. disposal of hazardous, toxic or radioactive waste not generated in the country;
- b. activities that affect public health and the environment; and

- c. production of material and equipment directly related to the national defense, although such activity may be allowed upon approval by the executive branch.

Foreign investors have the right to remit abroad in freely convertible currency, and without the need for previous authorization by the Central Bank, the total amount of the capital invested as well as the total amount of the dividends declared during each fiscal year up to the net profits generated during such period prior to liquidation of the income tax, including capital gains obtained and reflected in the books of the company according to generally accepted accounting principles. Foreign investors can also repatriate, under the same conditions, the obligations resulting from the technical services agreements where fees are established for the transfer of technology and agreements for the local production of foreign brands, where Christmas bonuses are included, as long as such agreements, amounts and payment procedures have been previously approved by the Central Bank.

EXCHANGE REGULATIONS

According to the law, the monetary unit in the Dominican Republic is the Dominican Peso. Although under the Monetary Law still in force in the country the Dominican Peso originally had the same value as the U.S. Dollar, economic reality overcame the provisions of the law many years ago. In fact, the Monetary Council has dictated a number of resolutions that constitute the present exchange system enforced by the authorities.

As a consequence of the dispositions contained in the Monetary Council, two foreign exchange markets operate in a parallel manner: an official market where certain exporters must change

their foreign currency, exclusively in the Central Bank, at the fixed exchange rate established by the authorities; and a private market, with a floating exchange rate determined by the market, where the majority of entities can buy and sell foreign currency with the commercial banks.



ACCESS OF FOREIGNERS TO DOMINICAN COURTS

THE BOND REQUIREMENT

Before bringing or intervening in a lawsuit in any Dominican court, foreigners may be required to post a bond for the costs and damages that may arise, in the event posting of such a bond is requested by the defendant. Foreigners who own property of a sufficient value in the Dominican Republic (as determined by a judge) may be exempted from the obligation to post bond. No bond may be required of a foreigner who is named a defendant in a suit.

The amount of the bond may change during the course of a proceeding; for example, it may increase if the costs it is intended to guarantee exceed the amount of the posted bond. If a court does not order otherwise, bond is required to be posted for a term of three years.

A person who is ordered to post a bond has one month in which to appeal the terms of the order, although the underlying legal proceedings may not continue while such an appeal is pending.

As a practical matter, these kinds of bonds are typically paid by (i) making a deposit with a governmental entity in the required amount or (ii) presenting a guarantor, domiciled within the jurisdiction of the court that sets the bond, who possesses sufficient capital to meet the bonded obligations.

FILING DOCUMENTS FROM ABROAD IN DOMINICAN COURTS

Non-Dominican documents may be introduced into evidence in Dominican courts. There are, however, different

requirements for private foreign documents and for official documents issued by foreign governments.

PRIVATE DOCUMENTS

Before documents prepared by private parties outside of the Dominican Republic may be introduced into evidence in Dominican courts, the following conditions must be met:

- a. the document must be notarized, in the presence of the persons signing the document, by a competent notary public or by a public officer or official who exercises, in the country where the document is signed, the functions of certifying signatures;
- b. the notarization must be certified by the Department of Justice or by the legal authority competent to certify the signature of the notary public;
- c. the document must be further certified by the Dominican Consul assigned in the country where the document has been signed and duly legalized; and
- d. the consul's signature and capacities must be attested to in the Dominican Republic by the Consular Department of the Secretariat of State of Foreign Affairs.

Alternatively, parties may sign a document in the presence of the Dominican Consul assigned to their country and then bring the document to the Consular Department in the Dominican Republic.

PUBLIC DOCUMENTS

Under Dominican law, court decisions, government rulings, rogatory

letters and other public documents may be introduced into Dominican courts as long as they are duly authenticated by the appropriate diplomatic or consular agent under the laws of the country from which the documents originated and certified by the Dominican Consul and the Consular Department of the Secretariat of State of Foreign Affairs.

ENFORCEMENT OF FOREIGN JUDGMENTS IN THE DOMINICAN REPUBLIC

For a judgment issued by a foreign court to be enforceable by Dominican authorities, it must be validated by Dominican courts through an "*exequatur*."

Currently, there is no existing administrative procedure established for the purposes of providing a foreign judgment with an *exequatur*. Under the procedure in use, a Dominican court must review the judgment and determine if:

- a. it was issued by a competent court;
- b. it had the authority of the matter judged;
- c. the defendant was permitted to exercise the right of defense; and
- d. it was not against any Dominican law or internal public order of the country.

If it decides to approve the judgment, the court will enter an order that the foreign judgment is enforceable in the Dominican Republic.

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FOREIGNERS AND DOMINICAN CRIMINAL LAW

DEFINITION AND CLASSIFICATION OF CRIMINAL INFRACTIONS

An infraction is a violation of the criminal law that implies, as a consequence, the application of a punishment. Depending on its seriousness, Dominican criminal law classifies infractions into three different categories: contraventions that are minor infractions; felonies that are more serious; and crimes, which are the most serious infractions and are sanctioned with the most serious punishments.

Correctional punishments applied to felonies include deportation, temporary confinement to a prison, limitations for a certain period of the ability to exercise certain civic, civil, and family rights, and a fine.

Penalties for crimes include 20 or 30 years of prison; detention; and prison of two to five years. Another penalty is civic degradation.

In addition to all of these penalties, a court may require the person convicted of a crime to pay restitution or damages to any victims.

Finally, there are certain penalties that are applicable to crimes and felonies, such as surveillance by the high security police of the convicted person, fine and confiscation of the convicted person's property when it is evidence of the crime or materials used in or proceeds of the crime.

Courts have discretion to increase or decrease certain of the applicable penalties depending on the particular circumstances of a case.

PRINCIPAL INFRACTIONS

INFRACTIONS RELATING TO THE ISSUANCE OF CHECKS

Regarding checks, Dominican legislation establishes the principal infractions with their respective sanctions, which are the following:

- a. issuance of a check without the place of issuance or the date, with an inaccurate date, or for payment by a third party different from a bank, which is sanctioned with a fine of 1 to 25 Dominican pesos; and
- b. issuance of a check against insufficient funds shall be penalized as a swindle and subjects the drawer to a six month to two year prison term and a fine not lower than the amount of the check.

To be convicted of this last crime requires:

- a. the issuance of a check;
- b. an insufficiency of funds against which the check may be drawn; and
- c. knowledge of the drawer of the insufficiency at the time of the issuance of the check or the drawer's failure within two days to rectify the insufficiency upon being notified of same.

MONEY DERIVED FROM DRUG TRAFFICKING AND MONEY LAUNDERING

Dominican law sanctions with the maximum penalties and fines the following conduct:

- a. illegal drug trafficking, which the law considers an international crime and is sanctioned by 5 to 30 years in

prison and a fine of RD\$250,000 to 1,000,000;

- b. the manufacturing, distribution, or possession of material or equipment used or to be used in the production or illegal manufacture of illegal drugs and controlled substances which is sanctioned by 6 months to 20 years in prison and diverse fines depending on the seriousness of the infraction; and
- c. the acquisition, possession, transfer, or laundering of money or any other valuable, as well as the profits from or used in illegal drug trafficking, sanctioned with 2 to 5 years in prison and a fine.

FOREST CRIMES

Dominican law creates certain forest zones in which removal, cutting, burning, and planting are not permitted. A person who violates this provision will be subject to a fine from RD\$25 to 200 pesos and one to six months imprisonment.

The law also forbids creating forest fires or bonfires in pine tree forests. A violation may result in a six month to two year prison term.

Destroying Dominican cocoa trees also is forbidden, and is penalized with a fine of RD\$100 to 2,000 pesos or a prison term of three months to two years. The same penalty may be imposed on any person who destroys more cocoa trees than authorized or who does not re-plant cocoa trees as required.

The law also forbids the extraction of gum, bark, roots, essences, or any other sub-product from forests as well as the making of any incisions, cuts, handling, or practices that could in any manner damage the life of the trees. A violation of this provision of law may be penalized with a fine of from RD\$10 to 100 pesos or

prison from 10 days to three months, or both.

TRAFFIC INFRINGEMENTS

The most common infractions under the Dominican motor vehicle law are passing a red light, driving without a license or with an expired license, driving a vehicle without license plates, speeding, and driving while intoxicated. These infractions can subject a person to a fine or prison, or both.

In certain instances, a driver who causes an accident resulting in injuries may be penalized by a prison sentence and fine, depending on the seriousness of the injuries and the time that the injured person will be unable to work. The Public Ministry also must immediately seize and suspend the license of the person who caused such an accident.

In the event an automobile accident results in the death of a person, the driver causing the accident may be sentenced to prison.

In the event that the person causing an accident does not stop to help an injured person, the person causing the accident may be found guilty of abandoning the victim, unless that person's own physical condition does not allow the person to do so. The crime of abandoning the victim may be penalized with a prison term of no less than six months and no longer than two years, in addition to the other penalties applicable by law. Also, the court will order the suspension of the driver's license of the person causing the accident for at least one year, or its cancellation.

FISCAL CRIMES

Under Dominican law, the following are considered to be tax felonies:

- a. tax fraud;
- b. the sale of goods subject to tax without complying with the tax law; and
- c. the forgery of or improper use of public papers and stamp duties.

Finally, Dominican law establishes the following as tax offenses:

- a. tax evasions that do not constitute fraud;
- b. demurrage;
- c. non-fulfillment of the duties by taxpayers and responsible third parties;
- d. non-fulfillment of the duties by tax administration employees and officials; and
- e. non-fulfillment of the duties of public officials not related to the Tax Administration.

The penalties applicable to violation of tax laws include prison and fines; confiscation of the goods in or used to commit the violation; closing of the establishment; suspension and dismissal of the public duties; annulment of professional practice; loss of any privileges, franchises, or incentives; and cancellation of any licenses, permissions, or registration in public office.

Aggravating and attenuating circumstances, to be taken into account, for the application of the sanctions are the following: i.- repetition of an offense; ii.- whether the violator is a public official; iii.- the education and culture level as well as the knowledge the person had or should have had of the violation; iv.- the importance of the fiscal damage and the characteristics of the infraction; v.- the conduct of the violator during the investigation phase; and vi.- the degree of fault and intention of the violator.

When dealing with corporations, undivided successions, and other collective entities or in the case of incapacitated persons, the prison sentence shall be executed against the representatives.

NEW AMENDMENTS TO DOMINICAN CRIMINAL LAW

In January 1997, the National Congress enacted a new law which amended the Criminal Code, the Criminal Procedural Code, and the Code for the Protection of Minors establishing new and more severe sanctions for rape, torture and sexual abuse to minors and women and sanctioning them with 10 to 30 years in prison.

In addition, domestic violence is defined and sanctioned with a 1 to 5 years prison sentence and 10 years if it is accompanied by other aggravating circumstances.

Finally, there is now the possibility that a court of law may issue a restraining order in favor of the victim of violence. Also, a court can now order mandatory assistance and therapeutic programs or family orientation seminars for the aggressor. Other crimes are also punished more severely, such as kidnapping, mistreatment of minors and hiding of minors.

Every type of discrimination is also punished by this new law. Discrimination based on origin, age, sex, family status, handicaps, customs, political opinions, labor union memberships, occupation, race or religion is expressly punished when it results in a harm to the discriminated person. A voluntary transgression against the private life of a person is also punished by this law.

CRIMINAL JUDICIAL ORGANIZATION

There are four phases of the Dominican criminal justice system.

The first phase is the investigation; the judicial police are in charge of the investigation and consist of the Attorney General of the Republic and the Attorney General of each Court of Appeal; the High Authority Officials of the judicial police, who are the district attorney and the instruction judge in their pertaining jurisdiction; and the assistants' attorney general in each jurisdiction, who are the inspector, police officers, and other minor officials.

The second phase of the criminal justice system relates to the prosecution and indictment of the accused by the Public Ministry Office. The Public Ministry Office also is named as Inspector of the Justice of Peace, District Attorney in the Court of First Instance, Attorney General of the Court in all Courts of Appeal, and Attorney General of the Republic at the Supreme Court of Justice. The jurisdiction of Public Ministry officials depends on the court to which they pertain.

The third phase is the instruction jurisdiction where evidence is gathered regarding certain serious and complex infractions, and where it is decided if it is acceptable to present the accused before the courts. In the Dominican judicial system, the preparatory instruction only takes place in matters of a criminal nature.

There are two degrees of instruction jurisdiction: the first takes place before the instruction judge, who may reopen or conclude the instruction when considered appropriate. The second jurisdiction degree is the qualification chamber (an entity formed of various judges that knows of the appeals against

the decisions of the instruction judges). Neither the instruction judge nor the qualification chamber determine whether or not an accused is guilty, but only whether the facts alleged constitute an infraction.

Finally, the fourth phase is the judgment jurisdiction in charge of deciding on the actions presented before it. There is a judgment jurisdiction of common right, which is competent to judge the accused of having committed certain infractions, and the exception jurisdiction, which is limited to the hearing and judgment of certain other infractions. Within the jurisdiction of common right are found the Courts of First Instance and the Appeals Courts, competent of knowing all infractions not expressly under the jurisdiction of another court.

Within special courts are the Justice of the Peace, Military and Police Court, Juvenile Court, and the Special Justice of the Peace for Traffic Violations.

The Supreme Court of Justice is not part of any of the aforementioned categories. It does not constitute a third degree of jurisdiction because it is limited in criminal cases to determining whether the formalities prescribed have been observed and whether the law on which a criminal judgment was based was correctly applied. It also stipulates on constitutionality claims against laws; in cases of criminal procedures against the President and Vice President of the Republic, Secretaries of State, Dominican diplomats, Justices of the Appeals Courts, etc.

COMPETENCE OF DOMINICAN COURTS

It is important to note that when an infraction has been committed on Dominican territory, notwithstanding the

fact that the accused or the victim, or both, are foreigners, the Dominican Republic may assert jurisdiction to prosecute the accused. When an infraction is committed by a foreigner outside Dominican territory, according to Dominican law, Dominican authorities and jurisdictions may not prosecute the accused, because the country's social order was not altered, even though the accused resides in the Dominican Republic or the victim is Dominican.

In the event of crimes and misdemeanors committed by Dominicans abroad, Dominican courts are competent to try the accused so long as the following conditions are met:

- a. the infraction is punishable by Dominican laws;
- b. the accused has not been tried abroad;
- c. Dominican authorities have received a complaint from the aggravated party or a formal complaint from the authorities of the country where the offense was committed; and
- d. the accused is in the Republic.

RIGHTS OF THE ACCUSED

According to the Dominican Constitution and international conventions on human rights signed and ratified by the Dominican Republic, an accused enjoys fundamental rights, such as:

- a. the right to avoid being compelled to testify against himself or herself;
- b. the right to a defense, including the right to be informed, as soon as possible, about the nature of the charges and the reasons for the accusation; the right to present a defense and constitute a defense; the right to present all the elements of evidence to substantiate a defense;

the right to be considered innocent until a final sentence against the accused is made with the force and effects of a final judgment; and the right to equal treatment under the law;

- c. the right to a competent and impartial judge, including the right to be informed in advance of the judge who shall decide the case;
- d. the right to a public trial, subject to exceptions established by law;
- e. the right to an oral trial, although there is no direct examination in the Dominican Republic as there is in other countries;
- f. the right to be tried in a reasonable period of time (or to be released); and
- g. the right not to be judged twice for the same actions.

EXTRADITION

Extradition provides the formal surrender of an individual by one country to another country to be tried or sanctioned.

Matters related to extradition generally are governed by bilateral international conventions. Although these agreements can vary, some common elements of extradition that arise from them are:

- a. the offense being considered should be of a certain importance and non-political in nature;
- b. there should be a pertinent request from one country to another that is transmitted through competent channels;
- c. the country making the request should have jurisdiction to try the

offense that originated the request for extradition;

- d. the obligation to surrender the accused shall take place if an extradition agreement exists;
- e. the accused can not be tried or sentenced for any other offense different from the one for which the extradition was granted;
- f. extradition cannot be granted if the statute of limitations for the criminal action has expired, either in the requesting or requested state; and
- g. if the extradition is requested to serve a sentence, the portion of the sentence pending may not be less than six months.

WHO MAY REQUEST EXTRADITION

Under Dominican law, even in the absence of treaties, extradition may be requested or granted by the Dominican Republic according to reciprocity principles between countries.

EXTRADITION PROCEEDING

Under Dominican law, the country's executive branch is competent to ask for and grant extradition, once the proceedings indicated below are completed.

If requested by the Dominican Republic, the proceeding is as follows:

The district attorney, through the Attorney General of the Dominican Republic, shall submit to the Foreign Relations Ministry a request containing the identity of the person whose extradition is sought and the facts that constitute the infraction.

When the Foreign Relations Ministry receives the request, it shall transmit it to the Ambassador in Charge of Judicial Affairs, so the ambassador can verify if

the treaties in effect authorize the extradition and if it fulfills and has complied with the requirements established by law.

The Ambassador in Charge of Judicial Affairs, after performing the verification, shall return the request to the Foreign Relations Secretary together with his report and opinion. The Secretary shall submit the file with his recommendations to the executive branch, which will adopt its final decision.

If the executive branch favorably receives the extradition request, it shall return the request to the Secretary of State of Foreign Relations, who shall formulate the request through the Diplomatic Representative of the Dominican Republic accredited in the required country.

EXTRADITION REQUEST ADDRESSED TO THE DOMINICAN STATE

In the event a country addresses an extradition request to the Dominican Republic, the request is handled through diplomatic channels and through the diplomat accredited before the Dominican government. The Secretary of State of Foreign Relations will refer such a request to the Ambassador in Charge of Judicial Affairs, who shall verify the regularity of the request and who may return it to the diplomatic agent in the event the request needs to be completed.

Once the request is completed, the Ambassador shall return it to the Secretary of State of Foreign Relations, who shall transmit it to the Attorney General of the Republic, to examine any questions of law. In the event of any doubt, this official may request additional information through the Secretary of State of Foreign Relations.

Once in possession of the request, the Attorney General, after verifying the necessary information, shall summon the accused through the Bailiff Office, for the purpose of being interrogated and to hear the accused, before formulating a decision. The accused when he or she appears before said official can be accompanied by an attorney.

If the individual whose extradition is being requested alleges to have Dominican nationality or to have acquired it by naturalization before committing the act subject to the request of extradition, or alleges any other circumstance that prohibits the granting of the extradition, the Attorney General shall verify the accuracy and origin of said allegations and shall pronounce his decision as to each one of them.

The Attorney General shall interrogate the accused and will ask the accused if he or she consents or not to being handed over to the authorities of the requesting country, without completing the other formalities for extradition. In the event the response is affirmative, the Attorney General of the Republic shall send his report and opinion to the Foreign Affairs Office and shall dispose of the provisional arrest of the accused. If the accused does not refuse to be handed over, the Attorney General of the Republic shall return the request to the Secretariat of State of Foreign Relations, who shall refer it to the Ambassador in Charge of Judicial Affairs, so the Ambassador may verify if all the legal formalities exist, and then return to said Secretary of State the request together with his or her opinion.

The Secretary of State of Foreign Relations then shall transmit the request to the executive branch, along with a recommendation, for the final decision. The executive branch shall communicate its decision to the

Secretariat of State of Foreign Relations, and this office shall communicate the decision, by the means and through the pertinent channels, to the requesting state.

It is important to stress that the executive branch, when agreeing to an extradition, may specify in the decree the express disposition limiting the effects of the extradition, so that the requesting state agrees not to judge the extradited for any act other than the one that motivated the extradition.

From the moment the accused is handed over, all the expenses shall be borne by the requesting state, notwithstanding it shall not pay any sum for the services rendered by Dominican authorities.

If the extradition is refused, a new request for the same offense shall not be admitted, unless the refusal is caused by errors in the form the request was filed by the requesting state. In this event, the reason for the refusal shall be indicated to the requesting state, so it may renew the request.

EXTRADITION TREATY WITH THE UNITED STATES OF AMERICA

The Dominican Republic finalized an Extradition Treaty with the United States of America on June 19, 1909.

This treaty establishes that both the Dominican Republic and the United States agree to hand over to justice when requested by one to the other all the individuals accused or convicted for the offenses specified by the agreement committed within the jurisdiction of one of the contracting parties, provided there is evidence of guilt.

This treaty contemplates the extradition of persons accused or convicted of any of 22 offenses, among them: voluntary manslaughter, rape,

embezzlement, robbery, and kidnapping. In addition to these offenses, subsequent agreements between the two countries have added new crimes to the list, such as drug trafficking.

The treaty establishes that no crime or offense of a political nature, or related to the same, can be a cause for extradition, and that neither country is obliged to hand over any of its own citizens.

In the event of multiple requests, the treaty establishes that "the accused shall be handed over giving priority to the Government whose request was first received."

The treaty also establishes that requests shall be made by the diplomatic agents of the contracting parties, who shall have the competence to request and obtain a preventive arrest warrant or order against the person whose extradition is requested. In the event the extradition is requested to serve a sentence, the requesting state shall present an authentic copy of the sentence of the court that pronounced the same.

Finally, the countries agreed in the treaty that whenever a claim is filed by any of the contracting parties for the arrest, detention, or extradition of fugitives, judicial officials or representatives of the Attorney General's Office of the country to which the extradition request is made shall assist the officials from the government requesting the extradition before the pertinent judges, by all the legal means available to them, without the right to claim any kind of remuneration for rendered services.

INTERAMERICAN CONVENTION OF 1981 ON EXTRADITION

The 1981 Interamerican Convention on Extradition is composed of 35 articles and a preamble, which reaffirms the main purpose of the document: the perfecting of international cooperation in judicial-criminal matters, the battle against crime, and the strengthening of justice in Interamerican relations.

The countries that are parties to this convention are required to hand over to the other states the persons requested by justice to try them, as well as ones who have been tried, persons found guilty, and persons sentenced to serve a penalty involving a jail sentence of at least two years with at least six months remaining to be served.

This convention also states that extradition shall not take place if the accused has served his sentence or if he has been pardoned or granted amnesty, if the time to prosecute the act has expired, or if from the circumstances of the process one can infer that the prosecution is based on racial, religious, or national prejudices. Likewise, the convention contemplates that a requested country may deny extradition for political offenses and related acts.

The convention establishes that a country may not refuse a request for extradition on the basis of the nationality of the requested person, unless the laws of the country receiving the request expressly establish the contrary. Likewise, the convention assures that in the event the person whose extradition is sought could be sentenced to death or life imprisonment in the requesting country, the person shall not be sentenced to such, and if the person already has been sentenced, such sentence shall not be executed. This principle is based on modern criminal

law principles aimed at the rehabilitation of criminals and the rejection of the death penalty.

For an extradition to be allowed, the crime that motivates the extradition must have been committed in the territory of the requesting state or the state must have jurisdiction to evaluate the offense. The state that is requested may refuse the extradition when it is competent, according to its own legislation, to evaluate the case.

An aspect of remarkable progress in the convention relates to the transportation of the extradited person through the territory of a third state. The convention provides for a simple procedure for international cooperation by allowing the presentation of the copy of the resolution granting the extradition.

For urgent cases, the United States may request, by any of the ways provided in the convention or by other means of communication, the provisional arrest of the person whose extradition is being requested and the retention of evidence related to the offense.

EXTRADITION TREATY AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE DOMINICAN REPUBLIC AND SPAIN

The governments of the Dominican Republic and Spain have undertaken to hand over the individuals against whom a criminal process has been initiated or who are required for the execution of a penalty involving a judicially-imposed prison sentence (of at least two years, with at least six months remaining) as a consequence of a punitive act committed in the state filing the request or in territory over which it has jurisdiction. Extradition may not take place for political offenses or offenses that punish

an individual for his or her race, religion, nationality, or political beliefs.

In addition, extradition shall not be granted when, among other things, the individual has been tried by the authorities of the country that is being requested for the same acts that led to the request, when the time in which to prosecute the criminal action has expired or when the acts that led to the request are sanctioned with the death penalty. The country to which the request is directed may refuse extradition when, according to its own laws, the matter belongs in its courts.

Regarding the procedure to file the request, the treaty establishes that along with the request, the following must be presented: an explanation of the actions for which the extradition is requested; the original or an authentic copy of the sentence; an order of apprehension; warrant for imprisonment or any other judicial ruling from which the existence of the offense can be inferred; the text of the legal dispositions related to the offense; and the information to establish the nationality and the identity of the requested individual. These documents must be duly authenticated in the form prescribed by the laws of the country making the request.

If the extradition is requested by one of the parties concurrently with other states, for the same act or for a different one, the requested party shall decide which request to honor, taking into consideration the circumstances and specifically the existence of other treaties that oblige the requested party, the relative seriousness, the place of the offenses, the dates of request, the nationality of the individual and the possibility of a subsequent extradition.

The requested party shall communicate to the requesting party through the diplomatic channels its

decision to the extradition request. Any partial or complete refusal shall be explained.

If the extradition is granted, the parties shall agree on handing over the accused, which shall take place within 60 days from the date the requesting party received the response to the request.

The requested party may, after deciding on the request for extradition, delay handing over the accused so the accused can be tried or, if the accused already has been sentenced, so the accused may serve in its territory a sentence imposed for an act different than the one for which the extradition is granted. In the same manner, the handing over of the accused can be deferred for health reasons of the accused, if the transfer could endanger his or her life or deteriorate his or her condition.

The expenses incurred for the extradition in the territory of the requested party shall be paid by that party, except for the expenses for transportation, which shall be borne by the requesting party.

THE DEPORTATION OF FOREIGNERS

Dominican law establishes that the following foreigners will be arrested and deported under the order of the Secretary of State of Interior and Police or by another governmental authority designated for such purposes:

a.- those who enter the country by means of false or deceitful declarations; those who, in filing a request, make believe they are someone else or evade the immigration law by assuming another name; those who enter the country at any time or place not designated by

the immigration authorities or evade the exam or the inspection of the authorities by means of intentionally false or confusing representations or voluntarily hide a material act or who enter without the inspection and admission of the immigration authorities;

- b.- those who enter the Dominican Republic not being legally admissible at the moment of their entrance;
- c.- those who associate in activities inclined to subvert the Dominican Government or who engage in drug trafficking in violation of law;
- d.- those who are found guilty of a crime, punishable with prison, committed within five years after their entrance;
- e.- those who practice prostitution, were tenants in a house of prostitution or were connected to a house of prostitution;
- f.- those who become a public burden within five years after their entrance, due to incapacity or indigence, and who will probably continue being such a public burden;
- g.- those who remain in the Dominican Republic in violation of any limitation or condition under which they were admitted as immigrants;
- h.- those who, after the expiration of their residence visa, remain in the country without obtaining provisional or definite residence or without requesting renewal of their residence visa once it expires, as well as those who entered the country outside the legal forms prescribed in the law; and
- i.- those who obtain, accept or use any immigration document with knowledge of its falseness.

The Immigration Inspectors or authorities who act as such are required to perform a complete investigation

concerning any foreigner, every time that accurate reports exist or any reason leads them to believe that such foreigner is in the country in violation of law. If they conclude from the investigation that the foreigner should be deported, the Immigration Inspector will request that the General Director of Immigration issue an arrest order. The request for the arrest order should express the facts and indicate the specific reasons for which the foreigner should be deported. If the arrest order is issued, the Immigration Inspector will call the foreigner to be heard on the charges expressed in the arrest order.

No foreigner will be deported without being informed of the specific charges that motivate the deportation, and without being given the chance to rebut such charges.

THE PENITENTIARY SYSTEM AND THE RIGHTS OF THE IMPRISONED

The Dominican Republic's penitentiary system has about two dozen jails spread throughout the country. About 13,000 people currently are in prison.

The law protects prisoners in a variety of ways, including by providing that the object of a prison sentence is the social protection and rehabilitation of the prisoner, so that he or she can be reintegrated into society with the will and capacity to respect the law. The prison system must use, depending on the characteristics of each case, the educational and assistance facilities it has available.

There may be no discrimination against prisoners based on race, color, religion, nationality, social class, or political opinion of the inmate.

Inmates 21 years old and younger are segregated from older inmates and

inmates who have committed a violent or sexual crime are segregated from other inmates. Female prisoners are segregated from male prisoners and are taken care of by female security personnel.

Inmates also are entitled to an adequate diet, in quantity and quality, to remain in good health. Alcoholic beverages are absolutely prohibited in jails.

Relatives are required to be notified when an inmate is taken in or transferred, or when the inmate leaves the jail.

Finally, the law provides that jails shall be under the security and control of specialized and qualified personnel, capable of performing the social mission imposed by the law.



SECRETARIAT OF STATE OF FOREIGN AFFAIRS

Avenida Independencia No. 752
Santo Domingo, República Dominicana
Tel.: (809) 535-6280
Fax: (809) 532-0600

PELLERANO & HERRERA ATTORNEYS AT LAW

Av. John F. Kennedy No. 10, piso 4
Santo Domingo, República Dominicana
P.O. Box 20682
Tel. (809) 541-5200
Fax (809) 567-0773

SANTIAGO
Av. Estrella Sahdalá
Edificio Haché, piso 2
Santiago, R.D.
Tel.: (809) 241-0140
Fax: (809) 241-0225

AZUA
Calle Duarte esq. 19 de Marzo
Edificio Banco Popular, piso 2
Azua, R.D.
Tel.: (809) 521-2178
Fax: (809) 521-2281

International Mailing Address
EPSA-303
P.O. Box 52-4121
Miami, FL 33152-4121
United States of America

E-mail: ph@phlaw.com
www.phlaw.com