

Doing Business in the Dominican Republic



EUROPEAN COMMERCE CHAMBERS
FEDERATION OF THE DOMINICAN REPUBLIC

PELLERANO & HERRERA
ATTORNEYS AT LAW

Edited by:
Pellerano & Herrera

Lay-out:
Omar Matos

Printing:
Amigo del Hogar

The content of this guide is not intended to constitute legal advice on specific matters. Readers should consult legal counsel for advice. All rights reserved®. May 2001. Printed in Dominican Republic.

For an updated version of this guide, visit our website at <http://www.phlaw.com>

FOREWORD

The Federation of European-Dominican Chambers of Commerce is pleased to present both companies and individuals interested in investing in the Dominican Republic with this business guide.

This publication contains useful information for investors and other businessmen who wish to start operating in this country either as a corporate entity, a branch or on a personal basis.

The Federation of European-Dominican Chambers of Commerce wishes to acknowledge the assistance it has received in preparing this publication from its co-sponsors, the legal practice of Pellerano & Herrera.

PELLERANO & HERRERA ATTORNEYS AT LAW

Av. John F. Kennedy No.10
Santo Domingo, República Dominicana
Apartado Postal 20682
Tel. (809) 541-5200
Fax (809) 567-0773

Calle Paseo Oeste
La Rosaleda, Edif. Bionuclear
1er. Piso, Santiago
República Dominicana
Tel.: (809) 580-1725
Fax : (809) 582-2170

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

CPS-1340
P.O. Box 149020
Coral Gables, FL 33114-9020
United States of America

www.phlaw.com
ph@phlaw.com



CONTENTS

I. CULTURAL, POLITICAL AND ECONOMIC BACKGROUND

1.1 General information	7
1.1.1 Geography	7
1.1.2 Historical overview	7
1.1.3 Population and demography	8
1.1.4 Workforce and infrastructure	8
1.1.5 Current political and economic situation	9
1.1.6 Legal holidays	9
1.2 Political system	9
1.2.1 Executive Branch	10
1.2.2 Legislative Branch	10
1.2.3 Judicial Branch	10
1.2.4 Municipal Branch	10
1.3 Economy	10
1.3.1 Economic evolution and perspectives	11
1.3.2 Growth of Gross Domestic Product	12
1.3.3 Inflation	12
1.3.4 Unemployment rate	12
1.3.5 Economic structure	12
External economy	12
Domestic economy	13
1.3.6 Balance of Payments	13
1.3.7 Foreign direct investment (FDI)	13
1.3.8 External public debt	14
1.3.9 Exchange rate	14
1.3.10 Public finance	14
1.4 Process of legal modernization and regional integration	15

II. FINANCIAL FRAMEWORK FOR INVESTMENT

2.1 Monetary and banking system	17
2.1.1 Currency and exchange	17
2.1.2 Banking structure	17
2.2 Local and foreign loans	18
2.3 International sources of financing and insurance	18
2.4 The Dominican Republic Stock Market: Law 19-00	19
2.4.1 Definitions	19
2.4.2 Market actors	20
2.4.3 Regulatory bodies	21
2.4.4 Requirements for public offers	21
2.4.5 Insider trading	22
2.4.6 Sanctions	22
2.4.7 Tax exemptions	22
2.4.8 Challenges of the regulation	22
2.5 Legal regime of foreign investment: Law 16-95	22
2.5.1 Background to Law 16-95	22
2.5.2 Equal treatment of foreign investment	23
2.5.3 Definition of foreign investment	23
2.5.4 Registration procedure at the Central Bank	24
2.5.5 Free repatriation of dividends and capital	24
2.5.6 Non-registered investments	24

III. INTERNATIONAL TRADE

3.1 Imports	25
3.1.1 Custom duties	25
3.1.2 Import documents	26

3.2. Exports	26
3.2.1 Main exports	26
3.2.2 Dominican Center for Export Promotion (CEDOPEX)	27
3.2.3 Law 84-99 on Reactivation and Promotion of Exports	27
3.3 Preferential market access to the United States	27
3.3.1 Overview of main provisions	27
3.3.2 Law on Textile Parity	28
Beneficiary countries	29
Eligible products	29
Rules of origin	29
US customs procedure	30
Perspectives for the Dominican Republic	30
3.4. The Lome/Cotonou Agreement	30
3.5 Regional alliances	31
3.5.1 Free Trade Agreement with CARICOM	32
3.5.2 Free Trade Agreement with Central America	32
3.5.3 The Association of Caribbean States (ACS)	33
3.5.4 The Free Trade Area of the Americas (FTAA)	33
3.6 Dominican Republic and the WTO	33

IV. MAIN INVESTMENT SECTORS

4.1 Industrial Free Zones	35
4.1.1 Advantages of the Dominican free zone system	35
4.1.2 The National Free Zone Council (CNZF)	36
4.1.3 Definition and types of free zones	36
4.1.4 Management of free zones	36
4.1.5 Installing a free zone company	36
4.1.6 Incentives to free zone companies	36
4.1.7 Sale of production in the local market	37
4.2 Tourism	37
4.2.1 Development and overview of the sector	38
4.2.2 Promotion of private investment in tourism	38
4.2.3 The Ministry of Tourism	38
4.2.4 Regulation of tourist activities	39
4.2.5 Labor and tax issues	39
4.2.5 Casinos and games of chance	39
4.2.6 Approval of tourist projects	39
4.3 Agriculture	39
4.4 Mining	40
4.4.1 Obtaining mining concessions	40
4.4.2 Taxes on mining activities	41
4.5 Construction	41
4.5.1 Private construction projects	41
4.5.2 Public investment in construction	41
4.5.3 Foreign participation in government projects	41
4.6 Electricity	42
4.7 Telecommunications	42
4.7.1 The Dominican Telecommunications Institute (INDOTEL)	43
4.7.2 Telecommunication services	43
4.7.3 Obtaining concessions, licenses and/or certification of equipment	43
4.7.4 Rights of concession holders	44
4.7.5 Technical norms	44
4.7.6 Competition rules	44
4.7.7 Customers protection	44
4.7.8 Radio electrical spectrum	45
4.7.9 Universal service	45
4.7.10 Sanctions	45
4.8 Banking	45

4.8.1 Legal reform	46
4.8.2 Types of banking institutions	46
4.8.3 Liberalization of banking services	46
4.9 Insurance	46
4.10 Public Companies	47
4.10.1 Companies to be reformed	47
4.10.2 Commission for the Reform of Public Companies	47
4.10.3 Capitalization process	47
4.10.4 Overview of reform process	48

V. FORMS OF BUSINESS ORGANIZATION

5.1 The corporate vehicle	49
5.1.1 Comparative advantages of corporations	49
5.1.2 Incorporation process	50
5.1.3 Capital rules	50
5.1.4 Corporate control	50
5.2 Mergers and acquisitions	50
5.3 Establishment of branches	51
5.4 Designation of agents or licensees	51
5.4.1 Statutory protection of agents or licensees	51
Registration of agreements	52
Public order of Law 173	52
Just cause	52
Unjust termination	52
Exclusive vs. nonexclusive relations	52
5.4.2 Implications of Law 16-95 on Foreign Investment	52
Registration of foreign persons as agents	53
Registration of technology transfer agreements	53
Capitalization of intangible contributions	53

VI. LEGAL FRAMEWORK FOR BUSINESS ACTIVITIES

6.1 Taxation	55
6.1.1 Tax reform	55
Tax compensation	55
Discounts	55
Advance payments	55
Fiscal amnesty	56
Simplified Tax Estimation System	56
6.1.2 Income Tax	56
Tax rate for companies	56
Tax rate for individuals	56
Payments abroad	56
Income from business activities	56
6.1.3 Tax on the Transfer of Industrialized Goods and Services (ITBIS)	57
6.1.4 Selective Consumption Tax	57
6.2 Labor laws	
6.2.1 Working conditions	57
6.2.3 Wages	58
6.2.3 Fringe benefits	58
6.2.4 Dismissal of employees	58
6.3 Environmental protection: Law 64-00	59
6.3.1 Principles and objectives	59
6.3.2 The Ministry of Environment and Natural Resources (SEMARN)	60
6.3.3 Instruments of environment administration	60
6.3.4 Sanctions	60
6.4 Intellectual property protection	61
6.4.1 Industrial property: Law 20-00	61
Patents	61
Trademarks	63

Trade names	63
6.4.2 Copyrights: Law 65-00	64
Protected works	64
Content of copyrights	64
Registration of copyrights	65
National Office of Copyright	65
Sanctions	65
6.5 Purchase of real estate	66
6.5.1 Registration system	66
6.5.2 Transfer duties	66
6.6 Securities	66
6.6.1 Mortgages	66
6.6.2 Liens	67
Registration of liens	67
Liens on intangible property	67

VII. LEGAL FRAMEWORK FOR FOREIGN PERSONS

7.1 Entry and residence	69
7.1.1. Entry requirements	69
7.1.2 Obtaining Dominican residence	69
Residence visa	69
Residence card	70
Legalization and translation of documents	70
7.2 Acquiring Dominican nationality	70
7.2.1 Residence requirements	70
7.2.2 Naturalization procedure	70
7.3 Important aspects of Dominican family law	71
7.3.1 Marriage	71
7.3.2 Property relations of married couples	71
7.3.3 Divorce	71
Divorce by mutual consent	72
Divorce for specific reason	72
Special divorce	72
7.3.4 Adoption	72
Types of adoption	72
Requirements for adoption	73
Adoption procedure	73
Information on the adoption	73
Legal reserve	74
Taxes	74
Transfer of titles	74
7.4 Foreigners under Dominican criminal law	74
7.4.1 Crimes of Dominican jurisdiction	75
7.4.2 Extradition	75
Extradition procedure	75
Extradition treaties	75
7.4.3 Deportation	76

VIII. LITIGATION

8.1 Legal and judicial system	77
8.2 Jurisdiction of Dominican courts	77
8.3 Foreign elements in Dominican courts	78
8.3.1 Choice of foreign laws	78
8.3.2 Requirements for foreign plaintiffs	78
8.3.3 Filing foreign documents	78
8.3.4 Enforcement of foreign judgments	79
8.4 Arbitration	79
8.4.1 Local arbitration	79
8.4.2 International arbitration	79

I. CULTURAL, POLITICAL AND ECONOMIC BACKGROUND

The Dominican Republic is a country that offers multiple opportunities for business and investment. Its strategic geographic position, which allows an easy access to the markets of the United States, Latin America and the Caribbean, its growing economy, which is supported by an ongoing process of modernization, and reinforced by aggressive efforts to promote trade liberalization and economic integration, together with the prevailing environment of political stability and democratic consolidation, have turned the Dominican Republic into an ideal option for companies and individuals of any nationality who wish to expand their investments.

1.1 General information

1.1.1 Geography

The Dominican Republic is located in the Caribbean, between Cuba and Puerto Rico. It shares with Haiti the island of Santo Domingo, occupying its eastern two thirds. With an extension of 48,442 square kilometers, the country is, after Cuba, the second largest country in the Antilles. This strategic geographic position has turned it into the main tourist destination of the region and into an ideal place for business and trade.

The climate is semitropical, with an average yearly temperature of 26°C (78°F). The air humidity goes from 65% to 80%, and there are two main rainy seasons: from May to July, and from October to November.

The Dominican Republic has a great geographic diversity, having extensive beaches of white sand, fertile valleys with exuberant vegetation, desert zones with dune formations, mighty mountain chains where Pico Duarte, the highest peak in the Caribbean, is found

(3,175 meters), as well as many natural parks and scientific reserves which are under protection. The lowest point in the Caribbean, which is Lake Enriquillo (144 meters below sea level), can also be found in the country.

The capital of the Dominican Republic is Santo Domingo. Other important cities are Santiago de los Caballeros, San Pedro de Macoris, La Romana, Puerto Plata and Barahona.

1.1.2 Historical overview

When the Spaniards arrived on December 5, 1492, the island was inhabited by a group of Arauco Indians called "Tainos", but this population vanished in a relatively short time after the discovery, as a result of all the hard physical work they were forced to carry out.

Named by its Spanish settlers "Hispaniola", the island became the basis for the expansion of the Spanish empire into the new world, and the main expeditions to the other American and Caribbean territories started from its shores. The city of Santo Domingo (originally named "La Isabela") was founded in 1496, and soon became the seat of the first cathedral, the first hospital and the first university of America.

The island felt the conflicts between the European nations for the new lands, staying as a Spanish colony until 1697, when its western third was transferred to France under the Ryswick Treaty. With the Basle Treaty in 1795 the whole island became a French possession.

In 1804 the western part of the island gained its independence, becoming Haiti. The eastern part stayed under French domination until 1808, when it became a Spanish colony again.

Only a year after gaining its independence from Spain in 1821, the eastern part of the island was occupied by Haiti. This occupation ended on February 27, 1844 with the proclamation of the National Independence. In 1861 the country was again annexed to Spain, and recovered finally its independence in 1865 through the Restoring Movement.

From 1882 to 1889 the country was under the dictatorship of Ulises Hereaux.

In 1916 the United States army occupied the country in order to ensure the payment of the public debt, remaining for a period of eight years. In 1930 the dictator Rafael Leonidas Trujillo gained power, which he kept firmly for thirty years until his assassination in 1961.

Afterwards the country went through moments of political instability characterized by a succession of short lasting governments. In the year 1965 there were serious civil disturbances, which caused a military intervention of the United States. This occupation ended with the general elections of 1966.

At that time started the process of democratic consolidation and development of the national economic structures, which has contributed to the current political and economic stability of the country. Since then nine democratic elections have been held, alternating in power the three main political parties: Partido Reformista Social Cristiano (PRSC), in 1966, 1970, 1974, 1986, 1990 and 1994 (Joaquín Balaguer), Partido de la Liberación Dominicana (PLD) in 1996 (Leonel Fernández Reyna), and Partido Revolucionario Dominicano (PRD), in 1978 (Antonio Guzmán), 1982 (Salvador Jorge Blanco) and 2000 (Hipólito Mejía, who will be the President of the Republic until the year 2004).

1.1.3 Population and demography

The Dominican Republic has approximately 8.4 million inhabitants. As a result of the strong urbanization process experienced by the country in the last years, more than two thirds of the population lives in the urban centers of the main cities of the nation. The capital city of Santo Domingo alone has a population of more than three million inhabitants.

Most of the Dominican population is the result of a mestization process between the Indian, European and African races. Spanish is the official language, and most of the population is catholic, but there is also an important protestant community.

The unemployment rate ranges between 15% and 20% of the economically active population, while the inequality of income distribution is reflected in the fact that the wealthiest 20% of the population participates with 57.2% of the total amount of earnings, and the poorest 20% accounts for only 4.4% thereof.

TABLE No 1

DOMINICAN REPUBLIC SOCIAL INDICATORS 1999

Population	8.4 million
Inhabitants per Km2	167.6
Population growth rate	1.8%
Life expectancy	71 years
Source:	Database World Development Indicators, World Bank

1.1.4 Workforce and infrastructure

The country has a diverse workforce ranging from university graduates at manager level to technicians and workers with basic skills. The economically active population is estimated to be around 2.3 million, of which 49% are dedicated to agriculture, 33% to services and 18% to the industry.

Apart from electricity, infrastructure is highly developed, and transport facilities, both at a local and international level, are very good. The domestic road network is one of the best in the region, and the maritime and air services include the main cargo lines and airlines worldwide. The three main airports receive cargo and passengers directly from North and South America, as well as from Europe. The country has also many important seaports, such as the Haina Port, which is located west of Santo Domingo and is one of the most modern in the Caribbean.

The telecommunications system is one of the most advanced and efficient, not only within the Caribbean but also worldwide.

The supply of energy continues to be far below the growing demand of the local population and industry, and all sectors suffer from electricity shortcuts. Most companies and many private homes have small generators that supply the energy they lack. Considered to be the main obstacle to the sustained development of the national economy, the situation is expected to improve upon the passing of the General Electricity Bill, which will cause the sector to be completely restructured and enable it to have access to significant international financing.

1.1.5 Current political and economic situation

The Dominican Republic is currently going through an important transition process that is both political and economic, and the results of the last presidential elections held in May 2000 reflect the growing democratic maturity of the nation. The traditional political leadership that had ruled the country since the beginning of the democratization process in the sixties is being replaced by a younger generation of leaders who are trying to achieve an economically feasible project comprising global competition, public sector responsibility and decentralization.

While this process takes place, the country is experiencing the highest economic growth rates in Latin America, as a result of the permanent macroeconomic stability and the gradual increase of private sector participation. All poverty indicators have likewise improved.

The growth experienced by the Dominican economy during the year 2000 captured the attention of the international community, being praised by institutions such as the International Monetary Fund and the Economic Commission for Latin America and the Caribbean, which in its preliminary report for said year confirmed that the Dominican Republic showed the highest growth rate of all Latin American and Caribbean countries, and that this was the fifth consecutive year that the country had been breaking its annual growth record.

However, as it is also the case of other Latin countries, despite a high economic growth, the inequality of income distribution has not changed very much, and approximately 25% of the Dominican population still lives in poverty. Persistent concentrations of poverty in rural and urban areas, and mainly among the frontier with Haiti, which show illiteracy and child mortality rates higher than the national average rates, point more and more towards the need of public intervention for the finding of adequate solutions to this situation. That is why the new government programs are increasingly focusing on social reforms, so as to allow the whole population to participate at, and benefit from, the strong economic development experienced by the country.

1.1.6 Legal holidays

The Dominican Republic celebrates the following holidays, which are declared by law as non working days for religious, patriotic or other reasons:

- January 1: New Year
- January 6: Epiphany*
- January 21: Virgin Altagracia
- January 26: Birthday of Duarte (Father of the Nation)
- February 27: National Independence
- variable: Eastern Friday
- May 1: Labor Day*
- variable: Corpus Christi
- August 16: Restoration of Independence
- September 24: Virgin Mercedes
- November 6: Constitution Day*
- December 25: Christmas Day

Pursuant to Law 139-97, when the holidays marked with (*) fall on a Tuesday or Wednesday the non working day shall be the previous Monday, or the following Monday when they fall on a Thursday or Friday.

1.2 Political system

The Constitution of the Dominican Republic defines the government system as being democratic,

republican and presidential. The exercise of power is divided among three independent branches: executive, legislative and judicial.

1.2.1 Executive Branch

The Executive Power is exercised by the President of the Republic, who is elected through direct vote, together with the Vice-president, for periods of four years, but without possibility of reelection for consecutive periods since the last amendment to the Constitution in 1994. Also since 1994, a majority vote of at least 50% plus one is required for presidential election, and if none of the candidates obtains such majority, a second poll will take place at which the population will decide between the two candidates that had the best results during the first poll.

Since August 2000 the President of the Republic is Mr. Hipolito Mejia, and the Vice-president is Mrs. Milagros Ortiz Bosch, of Partido de la Revolucion Dominicana (PRD). Due to the results of the poll held in May 2000, which gave President Mejia and Vice-president Ortiz Bosch a victory that was very short of reaching the required 50%, the opposition waived a second poll, and they were proclaimed winners of the 2000 election. The next presidential elections will take place in May 2004.

The President is the Head of State, Government and Public Administration, as well as the Commander in Chief of the Armed Forces, and is assisted by a cabinet of ministers ("Secretarios de Estado") designated by him.

1.2.2 Legislative Branch

The Legislative Power is invested in the National Congress, composed by two chambers: the Senate, composed of thirty members, and the Chamber of Deputies, which at the moment is composed of one hundred forty-eight members. The Dominican Republic is politically divided into thirty provinces and the National District, where the capital is located, and each is entitled to elect one senator, and one deputy for every 50,000 inhabitants plus fraction exceeding 25,000.

The members of both chambers are elected through direct majority vote for periods of four years. There is no proportional election system, and congress members are thus elected directly by each province. Since 1994 legislative elections take place separately from presidential elections.

Since the last elections in 1998, congressional representation of the different political parties is distributed as follows: at the Senate, twenty three senators for Partido Revolucionario Dominicano (PRD), four senators for Partido de la Liberacion Dominicana (PLD), two senators for Partido Reformista Social Cristiano (PRSC), and one senator for Union Democratica (UD); at the Chamber of Deputies, eighty-one deputies for PRD, fifty deputies for PLD and seventeen deputies for PRSC.

The next legislative elections will take place in the year 2002.

1.2.3 Judicial Branch

The Judicial Power is headed by the Supreme Court of Justice, which apart from working as an appeals court for all judgments rendered by judicial courts, supervises all judges in the Dominican territory. It is formed of nine judges designated by the National Council of Magistrates, an institution created by the Constitutional reform of 1994 to ensure the independence of the judicial branch.

1.2.4 Municipal Branch

Each of the thirty provinces and the National District have a Governor designated by the Executive Branch, and a Mayor and two Municipal Advisors elected through direct vote. Municipal authorities have jurisdiction to regulate and decide over local urban issues.

1.3 Economy

The current stage of recovery and stabilization of the economy of the Dominican Republic follows the difficult period experienced between 1987 and 1990, when fiscal deficit, a monetary policy that had no relation to macroeconomic realities, the flight of capitals,

and distrust over official economic policy, resulted in a strong inflation crisis that caused a general economic, financial and social crisis.

In 1991, the authorities resorted to the International Monetary Fund, reaching an "Economic Solidarity Pact" with that institution in order to achieve the following goals:

- Sustained economic growth
- Reduction of inflation
- Increase in savings
- Control of prices and salaries
- Renegotiation of external debt
- Increase of exports
- Incentives to foreign investment
- Privatization of non profitable public enterprises, and
- Reduction of tax evasion

The results of this program could soon be seen, through the reduction of inflation and the improvement of the other macroeconomic indicators (fiscal deficit, exchange rate, interest rate, balance of payments, etc.) that could consolidate as a result of the sustained GDP growth.

The growth experienced by the Dominican Republic in the last years shows the substantial economic improvement of the country, whose GDP expansion rate during the period 1991-1995 amounted to 5.0% and, between 1995 and 1999, reached an outstanding 7.18%. Furthermore, it should be noted that the growth registered during the nineties placed the Dominican Republic among the best performing Latin economies. However, in terms of per capita income the country is placed among the poorest Latin countries.

1.3.1 Economic evolution and perspectives

After the adjustment process initiated at the beginning of the nineties, the growth perspectives for the Dominican Republic are still strong. Since 1992, the average annual growth has been higher than 6%, and higher than 8% for the last three years. These numbers

place the Dominican Republic as the fastest growing economy in Latin America. The perspectives for the year 2001

Free trade zones and sectors like tourism, telecommunications and construction, have been the main sources of economic development, with yearly growth rates higher than 10%.

Free Trade Zones and Tourism have developed independently from the general commercial environment of the country. Special legislation has protected the rights of foreign investors, particular tax structure has granted a fair treatment for new local and foreign participants, and a competitive environment has favored innovation.

On the other hand, traditional industry and agriculture have kept on working within a framework of strong State intervention and minimum competition, which produces few incentives to improve the efficiency of State monopolies in key sectors like the oil and electricity industries.

As to the external sector, the increase of the trade balance deficit has been largely compensated by tourism earnings that now exceed US\$4 billion per year, and by the growth of free trade zones that host more than 400 companies, employ around 200,000 people and export close to one billion dollars per year.

In 1999 foreign direct investment grew more than 90% and the current account deficit reached 3.0% of GDP. As to fiscal aspects, the deficit of the central government for the year 1999 was 0.4% of GDP. The strong growth rate of fiscal earnings has consolidated at approximately 12.5%. The highest public investment that during the last two years has increased yearly by 30% has been financed with internal debt of commercial banks.

In spite of the progress achieved in macroeconomic administration, social indicators are still low. After years of badly distributed public expenses, social indicators have stayed low when compared with other countries at similar stage of development. The provision of public services remains a difficult task due to the excessive centralization that has characterized the State since the times of Trujillo and Balaguer.

In May 2000 a new government, with a program to increase social expenses in order to reduce poverty, was elected. The government has the challenge to effectively apply this program, to maintain fiscal discipline, and to continue with the solid political and economic reforms that have launched the integration of the country into the global economy.

1.3.2 Growth of Gross Domestic Product

The Dominican economy experienced an impressive evolution during the year 2000, reaching a GDP growth of 7.8%, which represents the highest growth rate in the region and one of the highest in the world, thus maintaining the dynamic trend experienced throughout the nineties. Preliminary figures estimate that in 2001 GDP will grow at a 6.1% rate, as a result of the United States and world economic deceleration. However, the Dominican growth rate is still expected to be the highest in the region.

Average annual GDP growth for the period 1996-2000 was 7.9%, resulting from a significant gross domestic investment and an accelerated rhythm of exports of goods and services. The good performance of the Dominican economy has been mainly influenced by the dynamism showed by activities open to external competition, such as hotels, bars and restaurants and communications. Other activities that have also experienced significant growth are mining, transport, commerce, manufacture and electricity and water, which together account for more than 50% of GDP.

In the year 2000, the most dynamic sectors in terms of growth rates were communications (15.7%), hotels, bars and restaurants (15.7%), transport (11.9%), electricity and water (11.9%), mining (9.2%), manufacture (9.0%) and commerce (8.4%). However, as to their influence in the overall economy, in terms of contribution to GDP growth, manufacture accounted for 19.5% of GDP increase, commerce for 14.1%, hotels, bars and restaurants for 12.9%, transport for 10.7%, communications for 10.1% and construction for 9.0%.

1.3.3 Inflation

The inflation rate reached its highest level (14.3%) in the year 1994. After a number of measures adopted by the Monetary Board of the Central Bank, inflation

was gradually reduced, reaching 9.2% in 1995, only 3.8% in 1996 and 8.3% in 1997. The average Inflation rate has been maintained at one-digit levels, with an average of 6.5% for the period 1996-2000. Inflation accumulated for the year 2000 was 5.1%.

1.3.4 Unemployment rate

As a result of the impressive GDP growth, unemployment levels went down from 16.6% in 1996 to 13.6% in 1999. Estimations show that the economic dynamism of the year 1998 created approximately 200,000 new jobs.

1.3.5 Economic structure

The Dominican economy shows two clearly different economic profiles: on the one hand, the external economy, whose main growth factors have been tourism and industrial free zones, and on the other hand, the domestic economy, whose main growth factors have been communications, tourism (hotels, bars and restaurants) electricity, construction, commerce and transport.

External economy

Tourism earnings have grown from US\$ 1.8 billion in 1996 to US\$2.9 billion in 2000. Industrial free zone exports have expanded from US\$3.1 billion in 1996 to US\$4.7 billion in 2000.

Commercial exchange (import-export), together with tourism earnings and the foreign currency sector, accounted for 100% of current GDP, which shows a high level of internationalization and dependency from external sources to finance internal consumption and national productive activities.

The risks associated with the external vulnerability of the country are mainly related to the potential loss of tourism and free zone foreign currency earnings, as this sectors have close ties to external demand, and could be strongly affected by an unexpected recession of the United States economy and the subsequent reduction of the flow of foreign currency and the demand of goods and services exported by the country.

Domestic economy

Communications, construction, tourism (hotels, bars and restaurants), electricity, commerce and transport accounted for 69% of total GDP growth for the period 1996-2000. These sectors had a 37% GDP participation and accounted for 38% of employment sources.

During recent years an opposite relation has developed between the most economic dynamic sectors and employment: the higher the sector grows, the less it contributes to GDP and employment.

National imports however have been gradually growing, and by 1999 accounted for 66% of all imports. In relation to GDP, national imports have increased from 27% in 1996 to 31% in 1999. While national exports show an average negative rate of - 0.4% for the period 1996-99 [-13% in 1998 and -2% in 1999], national imports grew at a 14.2% rate during the same period. These figures show an opposite trend of increasing national imports and decreasing exports; a reducing capacity of the domestic economy to generate foreign currency; and a significant financing of imports and domestic purchases by the external economy. The result is a high and increasing deficit of the trade balance.

Another important character of the national economic structure is the rapid transformation towards a services-oriented economy, a process normally associated with industrialized countries. In developed economies des-industrialization processes are mainly the result of an increase of manufacture productivity, which is higher than that of services, while in the Dominican economy productivity increase is more closely related to the services sector, and specially those that are more exposed to open markets and competition.

1.3.6 Balance of Payments

The unequal growth of the Dominican economy poses additional challenges to the national economic administration. Commercial deficit has been increasing progressively, from 11.5% of GDP (US\$ 1.5 Billion) in 1996, to 17.3% (US\$ 3 billion) in 1999. For the year 2000, a US\$ 3.4 billion deficit (17.7% of GDP) has been estimated. The same goes for the current account deficit,

which has grown from -1.8% of GDP in 1996 to 2.9% in 1999.

Tourism earnings and family foreign currency transfers have reduced the impact of the trade balance deficit, while increasing flows of foreign capital have financed the current account deficit. However, the reduction of these deficits remains one of the main economic challenges of the authorities.

Furthermore, the relation between gross reserves and monetary offer is relatively low and has been decreasing from 17% in 1995 to 15.2% in 1999. This indicator shows particularly the vulnerability of the economy to external changes, when considering the key role played by the external sector in the generation of foreign currency and the backing up of growth. International gross reserves, that have gradually increased, from US\$ 512 million in 1996 to US\$ 877 million in 1999, represent however only one month of imports of each of the last four years. International net reserves have improved significantly, from US\$ 145 million in 1996 to US\$ 478 million in 1999.

The balance of payments registered a positive balance in the service account of approximately US\$ 1.2 billion in 1997 and 1998, which increased to US\$ 1.5 billion in 1999, mainly driven by tourism earnings. This balance is expected to increase to US\$ 1.9 billion in 2000. Family transfers have become an important source of foreign currency, and have rapidly grown from US\$ 914 million in 1996 to US\$ 1.5 billion in 1999, and to an estimated US\$ 1.7 billion in the year 2000. Increases in family transfers are mainly due to the strong growth of the United States economy, where most of Dominican emigrants work.

1.3.7 Foreign direct investment (FDI)

Net capital flows have increased from US\$ 200 million in 1996 to US\$ 684 million in 1999, as a result of growing amount of foreign direct investment, that reduced the impact of the current account deficit and allowed the growth of international reserves.

In 1998 FDI flows reached US\$ 691 million, an increase of US\$ 270 million in relation to the year before. In 1999 foreign investment reached the record amount of US\$ 1.4 billion, as a result of the investments related to the privatization process, which represents a 99%

increase in relation to 1998. For the year 2000, since the privatization rhythm has slowed down, FDI is estimated to reach US\$ 850 million, which is still a significant high amount that confirms the growing trend of FDI flows into the economy.

During the last years FDI has been mainly directed to industrial sectors like free zones, as well as tourism. However, the privatization process attracted foreign investment to the energy, airport, sugar and domestic manufacture sectors. According to Central Bank data, during last the six years industrialists from Canada, the United States and Spain, have contributed 84% of the direct foreign investment made in the Dominican Republic.

1.3.8 External public debt

Total public debt was reduced from US\$ 3,796 million in 1996 to US\$ 3,550 million in 1999. External debt went down from 70% of GDP in 1999 to 20% in 1999, and the regularization of outstanding payments has also been achieved. For the year 2000 an increase of external debt to US\$ 3,800 million (20% of GDP) is expected. Regularization of periodic payments has also been achieved.

Debt reduction has caused the economy to become less dependant from foreign interest rates. Approximately 48% of public external debt is bilateral (mainly from the Paris Club), 32% is multilateral, 17% is from commercial banks and 2.5% from suppliers and others.

This debt and payment structure should allow the country to have access to international capital markets in the event of external short-term chocks.

1.3.9 Exchange rate

The exchange rate has enjoyed a relative stability, showing nominal depreciation rates of 1.3% in 1996 and 3.6% in 1997, from 13.78 to 14.27 pesos per US dollar. In 1998 the exchange rate suffered a depreciation of 7%, reaching an average rate of 15.27 pesos per dollar. This was the result of the high demand of foreign currency shown during that year, which was caused by

the congressional May elections and the increase of imports after the Hurricane Georges.

During the first quarter of 1999 there were pressures towards the increasing of the exchange rate as a result of the season renewal of companies inventories and the increase of food, medicine and construction material imports related with the impact of Hurricane Georges. After the Central Bank had injected dollars into the exchange market, the exchange rate became stable during the second semester of 1999. The average rate for 1999 was 16.03 pesos per US\$ dollar, representing a nominal depreciation of 5% in relation to 1998. For the year 2000 the average exchange rate was RD\$16.30 per US\$ dollar, for a depreciation of approximately 2.2%.

1.3.10 Public finance

The fiscal balance of the central government has ranged between -0.1% and -0.5% of GDP during the period 1996-1999. The consolidated balance of the public sector increased from -1.8% in 1996 to -2.2% in 1998. This increase was due to reconstruction expenses that became necessary after the passing of Hurricane Georges. Tax administration has significantly improved, showing increases in tax income of 32% in 1997 and 15% in 1998, as a result of measures adopted at the end of 1996 for the improvement of tax collection. Fiscal charges accounted in 1997 for 14.7% of GDP and for 15% in 1998. The proportion of current expenses in relation to total expenses has however increased, from 50% in 1997 to 67% in 1998.

Taxes on goods and services account for a little more than half of tax income, followed by taxes on external trade which account for less than one third, and income taxes which account for one fourth thereof. The dependency on external trade taxes has been decreasing, as the importance of consumption taxes grows.

TABLE No. 2
DOMINICAN REPUBLIC
ECONOMIC INDICATORS 1998-2000

	1998	1999	2000
Gross Domestic Product (in RD\$ million)	241,910.00	278,939.00	322,866.0
Real Gross Domestic Product (in RD\$ million of 1970)	5,712.90	6,188.20	6,632.7
GDP Growth Rate	7.3	8.0	7.8
Real GDP per capita (RD\$)	696.7	743.7	N/A
Inflation Rate	7.82	5.1	9.2
Official Exchange Rate at December	15.48	15.92	16.53
Private Market Exchange Rate at Dec.	15.82	16.02	16.63
Simple Average Credit Interest Rate	26.85	26.15	27.62
Simple Average Liability Interest Rate	16.51	15.60	17.23
Unemployment Rate	14.7	13.8	13.9
Fiscal Income (in RD\$ million)	38,566.00	43,483.90	51,271.4
Government Expenditure (in RD\$ million)	37,487.10	45,164.60	48,202.5
Trade Balance (in US\$ million)	-4,016.30	-4,507.40	-3,741.8
Current Account (in US\$ million)	-338.4	-499.8	-1,026.5
Gross International Reserves (in US\$ million)	658.9	881.3	818.2
External Debt (in US\$ million)	3,536.90	3,635.90	3,675.5

Sources: Central Bank of the Dominican Republic

1.4 Process of legal modernization and regional integration

The Dominican Republic has not been left untouched by the globalization, and since the year 1991 has been involved in a reform process oriented towards the modernization of the legal and economic framework under which businesses operate in the country, with the view of adapting its economy to the new competitive standards, accelerating its insertion within global and regional economic groups, and promoting the flow of foreign capital.

New tax, labor and customs code were adopted, but the turning legal point for the liberalization of the Dominican economy was undoubtedly the passing of Law 16-95 on Foreign Investment, which eliminated all

restrictions to foreign investment, and marked the beginning of many other significant reforms.

The Dominican Republic was behind schedule in implementing some important reforms, but during the last two years the legislative train has accelerated and many areas have been subject to comprehensive or partial reforms that have enhanced the competitiveness of the Dominican economy, and provided the institutional basis for its development. One of the main concerns has been the conformation of our legal standards to the mandates of the World Trade Organization, as provided in the text of most of the new laws themselves.

The main comprehensive reforms carried out during the last two years include a telecommunications law, a stock market law, an industrial property law, a copyrights law, a law for export promotion, an environmental law and a tax and customs reform.

The most important bills still pending in Congress are the bill for a new Monetary and Financial Code, which among other things opens up completely the banking sector to foreign investment, a bill for a Market Regulation Code, which seeks to ensure free competition in the market, and the protection of consumers rights, and the bill for a General Electricity Law.

The liberalization trend has not however been the sole concern and, especially in the last two years, social reform has also had an important place in the legislative agenda, which has been involved in the discussion and passing of laws in the fields of education, civil rights protection and health. In this regard, one of the most important pending reforms is the bill for a social security law, that would modernize and enlarge the social security system in the country, which is currently being debated at Congress and being subject to consultations on the part of the interested sectors.

On the other hand, the Dominican Republic has been making efforts to widen its trade relations with, and join the different economic groups of the region, having become one of the most dynamic and innovative countries within the process of regional integration in the area. These efforts have already produced concrete results, mainly noticeable in the signature of free trade agreements with Central America and CARICOM, which had already been ratified by Congress.

This process of economic modernization and gradual integration to global markets, combined with the human and natural resources of the country, and with the investment opportunities offered by most of the productive sectors, make the Dominican Republic a place of interest throughout the world.

II. FINANCIAL FRAMEWORK FOR INVESTMENT

2.1 Monetary and banking system

The Central Bank of the Dominican Republic is charged of regulating the monetary and banking system of the country. As such, it has the responsibility of issuing the national currency, as well as promoting and maintaining monetary exchange and credit conditions that favor the development and stability of the national economy. In all these fields the Central Bank has the faculty of issuing binding “resolutions” through its higher organ, the Monetary Board.

2.1.1 Currency and exchange

The national currency is the Dominican peso and, though under the Monetary Law still in force the peso has the same value of the US dollar, the economic realities have long ago overcome these provisions.

Pursuant to the resolutions of the Monetary Board, two exchange markets operate simultaneously in the country:

- (i) a “private” market, where most economic sectors are free to buy or sell foreign currency through the commercial banks and exchange agents authorized by the Superintendence of Banks; and
- (ii) an “official” market, where only non free zone exporters and the oil industry are still required to exchange foreign currency through the Central Bank.

The exchange rate in the private market varies around the official rate. As of September 2000, the average exchange rates in the banking and non-bank sectors were RD\$16.23 and RD\$16.21 to the dollar, respectively.

It should be noted that this system would be amended with the adoption of the bill for a Monetary and Financial Code currently being discussed by Congress, since the project provides that the exchange rate of the national currency against foreign ones will be set freely by the market. Furthermore, it establishes that the exchange system of the country will be based on the free conversion of the peso against foreign currencies, and that it is a duty of the Central Bank to ensure it.

2.1.2 Banking structure

In the Dominican Republic there are currently two banking systems: (i) the system of specialized banking, which includes commercial banks (General Bank Law 708 of 1965), development banks (Law 292 of 1966), mortgage banks (Law 171 of 1971) and savings & loans associations (Law 5897 of 1962); and (ii) the system of multibanking, regulated through resolutions issued by the Monetary Board of the Central Bank, under which a financial institution may carry out all types of bank operations.

Before the adoption of the multibanking system, many financial groups formed by specialized banks operated in the country. Most of these groups have already become “multibanks” through the merger process established by the Monetary Board.

The Government bodies that participate in the Dominican financial system are the following:

- (i) the Monetary Board of the Central Bank, which has the power to regulate, through binding resolutions, all financial institutions

and bank operations like account openings, interest rates, credit card issues, etc.;

- (ii) the Superintendence of Banks, which is the institution charged of supervising and controlling the execution of bank laws; and
- (iii) Banco de Reservas de la Republica Dominicana, a commercial bank belonging to the State, the largest in the country, that operates under the same rules as the other banks and is likewise subject to supervision.

2.2 Local and foreign loans

Financial institutions grant generally short or medium term loans, with periods of one to five years, but the financing of constructions and projects with government funding can be long term, with periods of ten to twenty years.

Law 312 of 1919 sets a mandatory interest rate of 12% per year. However, the Monetary Board allows banks to charge "commissions" whose rates depend on the prevailing market conditions. Most loan agreements contain a clause that allows the bank to increase automatically the commission rate when the Monetary Board has provided for its amendment. The average interest-commission rate charged by commercial banks for January-September 2000 was 28.1%.

It should be noted that the bill for a Monetary and Financial Code provides for the abolition of Law 312, setting forth that the interest rates of the banking system shall be freely fixed by the market.

On the other hand, pursuant to the Monetary Law, all loans given in the country have to be expressed in Dominican pesos. Otherwise the agreement would be void. However, if the debt can be interpreted in Dominican pesos the debtor will remain liable to pay back the loan, but according to the official exchange rate which is most favorable to him between that prevailing at the date of the agreement and that prevailing at the date of payment.

These rules do not apply to international loans that comply with the requirements set forth by the Law

on International Transfer of Funds and the applicable resolutions of the Monetary Board, which are not subject to any exchange restrictions. The foreign creditor needs only to register the loan at the Central Bank, and the debtor will then be able to pay in foreign currency obtained through the private exchange market any amounts due under the agreement. Since 1994, when the need of prior approval from the Central Bank was eliminated, this registration is a mere formality for statistical purposes.

Under the Tax Code, interests on international loans were subject to a 15% withholding tax, payable by the local debtor. Law 146-00 on Tax Reform reduced this rate to 5%.

2.3. International sources of financing and insurance

At an international level, the Dominican Republic benefits from different programs for project financing, and for investment insurance against exchange and political risks, both of which contribute to make the country an attractive and safe place for the placement of investments.

Since the Dominican Republic belongs to a number of international organizations, the investor who decides to carry out a project in the country could benefit from the facilities for project financing and investment guarantee that are available under different international schemes.

International organizations such as the World Bank and the Inter American Development Bank grant credit facilities under good conditions for the realization of projects in sectors considered to be important for the development of the national economy. Private projects in areas like agriculture, tourism and industry benefit from these programs.

Furthermore, there are also sources of financing available through the European Investment Bank (EIB). This is an institution of the European Union that, under the framework of the Lome/Cotonou Convention, offers long-term and low-interest loans for the financing of projects in ACP countries. The EIB grants loans to the Dominican Republic mainly in the following sectors:

industry, tourism, mining and energy, as well as transport and telecommunications when the project is related to one of the mentioned sectors.

EIB loans are generally used for the application of the National and Regional Indicative Programs set forth by the Lome Convention, which are prepared jointly by each ACP country and the EU every five years, and contain, among other information, an indication of the economic areas that should benefit from the financial support and the projects to be executed for such purposes. These funds are channeled through the European Development Fund Office of the Government. Under the first financial protocol of the recently approved Cotonou Agreement, which substitutes and enlarges the benefits of the Lome Convention, a substantial amount of financial resources will be made available to ACP countries: more than 25 billion euros over the next seven years.

The Overseas Private Investment Corporation (OPIC), a government agency of the United States, is also active in the country with financing facilities and investment insurance programs against certain risks.

Furthermore, the Dominican Republic is a member of the Multilateral Investment Guarantee Agreement (MIGA), an agency of the World Bank established in the year 1988 to promote the flow of capitals to its developing member countries. The MIGA grants guarantees to cover the risks of impossibility of exchange into foreign currency, expropriation, non-compliance of contract by the government and civil disturbance or war.

2.4. The Dominican Republic Stock Market: Law 19-00

Law 19-00 on Stocks Market was passed on May 8, 2000, with the purpose of providing a general framework to regulate public offers, issuances and issuers of securities, in order to promote the development of an organized, efficient and transparent financial market in the Dominican Republic.

This law responds to the needs of the local stock market that started to develop, very slowly at first, under Law 3553 of 1953, which allowed the creation of

the National Stock Exchange and the National Commission of Securities, and more rapidly at the end of the eighties, under Presidential Decree No. 554-89, that created the Stock Market of the Dominican Republic (BVRD) as a non-for-profit self-regulated institution, which started to operate in 1991. Despite the limitations resulting from the lack of adequate legislation, transactions at the BVRD had been growing, if not significantly, at least steadily during the last decade. Volumes negotiated at the BVRD went from RD\$3,492.9 million in 1999 to RD\$4,041.7 million in 2000.

With the passing of Law 19-00, which fills in the legislative gaps that were limiting the expansion of financial markets in the country, the Dominican stock market can be expected to acquire significant value, for both local and foreign companies, as soon as this new law has been put into effect.

Law 19-00 applies to public offers of securities, both in national and foreign currency, issuers, product markets, as well as any physical or legal person that participates at the stock markets. For these purposes, stock markets comprise the offer and demand of securities backed up by capital, credit, debt or products. It includes also derivatives, both of securities and products.

2.4.1 Definitions

Law 19-00 provides a modern and comprehensive framework to the public offer of securities in the Dominican Republic, as it can be appreciated in the following definitions contained therein:

- Security ("valor"): interest or group of interests of essentially economic nature that may be negotiated at the stock exchange, including stock, bonds, obligations, letters, merchandise titles and other instruments resulting from the titling process. It also includes future contracts and purchase-sale options on securities and products, as well as titles of any other nature.
- Primary market: operations for the first placement of securities, by means of which their issuers obtain the financing for their activities.

- Secondary market: operations for the transfer of securities that have been already placed through the primary market, with the aim of providing liquidity to their holders.
- Public offer of securities: that which is addressed to the public in general, or to specific sectors thereof by any of the means of massive communication, to buy, sale or negotiate securities of any nature at the stock market. Offers that do not fulfill these conditions will be deemed as private and as such will not be subject to the provisions of Law 19-00.
- Privileged information: having knowledge of activities, facts or events capable of having an influence on the price of publicly offered securities, as long as such information has not been made public.

2.4.2 Market actors

- Law 19-00 regulates the main economic agents that will participate at the Dominican stock market as follows:
- Stock exchanges (“Bolsas de valores”): they are self-regulated institutions that provide duly registered brokers with the services they require to carry out security transactions and to act as intermediaries in such transactions. Law 19-00 provides regulations on how the capital of these institutions shall be invested.
- Product stock exchanges (“Bolsas de productos”): they are self-regulated institutions that provide their members the services they require to carry out commercialization activities of products originated at, or destined to, agriculture, agro industrial and mining sectors, as well as titles representing merchandise, future and derivative contracts on merchandise, and shall favor free competition and transparency in the market.

- Brokers (“Intermediarios de valores”): these are national or foreign companies or individuals whose main activity is to act as intermediaries in transactions involving publicly offered securities. Stock brokers (“puestos de bolsa”) are those who operate both in and outside the stock exchange, while stock agents (“agentes de valores”) operate only outside the stock market. Brokers are liable for their transactions at the stock exchange and are obliged to provide guarantees to ensure the fulfillment of these obligations.
- Compensation chambers (“Camaras de compensacion”): they have the sole purpose of being the counterpart of all purchase and sale operations of future contracts, options and other titles or similar obligations authorized by the Securities Supervisory Office. They shall also manage, control and liquidate operations, open positions, current accounts, margins and available surplus made or kept by clients or brokers in the stock market.
- Central deposit of securities (“Deposito centralizado de valores”): stock exchanges and other companies may act as central deposit of securities, understood as the group of services provided by market actors with the aim of keeping in custody, assigning, compensating and liquidating securities negotiated in cash. The owner of deposited securities shall be deemed to be that which is registered as such at the deposit. Deposits are responsible for the authenticity, existence, value and conservation of deposited securities.
- Risk qualifiers (“Calificadoras de riesgo”): they are charged of evaluating and qualifying the risk of securities offered to the public, on the basis of the issuer's solvency and liquidity, the nature of the title and the probability of non-payment, among others.

- Funds (“Instituciones de inversion colectiva”): Law 19-00 creates both mutual and closed funds (“Fondos mutuos o abiertos” and “Fondos de inversion cerrados”), which until then did not exist in the Dominican Republic. Mutual funds are defined as a changing patrimony formed of contributions made by physical or legal persons for their investment in publicly offered securities, which are managed by an administration company at the members risk. Contributions or fund installments (“cuotas del fondo”) may be repurchased at any time, which is not the case in the closed funds.
- Titling companies (“Titularizadoras”): Titling activities (defined as the placing of property with the purpose of backing up the interests granted to the holders of the securities issued on the basis of such property, the transfer of assets to such property and the issue of the respective securities) may be executed by authorized institutions or by companies that carry out exclusively this kind of activities.

2.4.3 Regulatory bodies

The supervision and regulation of the Dominican stock market is granted to the Superintendence of Securities (“Superintendencia de Valores”) and the National Securities Commission (“Comision Nacional de Valores”).

The Superintendence of Securities will promote, regulate and supervise the stock market, ensuring the compliance of the law, and being entitled to apply administrative sanctions and fines, and to exercise legal actions. It is an independent organ, with its own legal personality and patrimony, and will relate to the State through the Monetary Board. It will be partly financed by contributions charged on the commissions made by brokers, as well as annual contributions of administration and titling companies. This office will authorize the entry of, and supervise, all actors in the market, as well as the placing of public offers of securities, and will maintain a Stock Market Registry, with all public information related to the securities offered, and the institutions participating, at the market.

The National Securities Commission will propose the candidates for the appointment of the superintendent and the intendent of the Superintendence of Securities, and will serve as an appeals institution for the decisions of the supervisory office, as well as arbitrator in the conflicts arising between market participants. It will be formed of seven members: one Central Bank officer appointed by the Monetary Board, an officer appointed by the Ministry of Finance, the superintendent of securities and four private sector members appointed by the Executive Power for periods of two years, two from a pool of three candidates proposed by the stock exchange and stock brokers associations, and two from a pool of three candidates proposed by the product stock exchange associations.

2.4.4 Requirements for public offers

The Superintendence of Securities must previously authorize any public offers of securities in the market, after having verified that the offer complies with the relevant legal requirements, which depend on the nationality and time of operation of the issuer.

Among the documents required for local companies we find economic and financial information of at least the last three years of operation, legal information, and description of securities, with risk classification when applicable. Companies with less than three years of operation may still offer their securities in the market, but only during special sessions to be regulated accordingly.

Intermediaries offering foreign securities in the market shall present the respective registration certificate issued by the market regulatory body of the country of origin of the issuer. Furthermore, foreign legal persons wishing to participate at the Dominican primary market shall fix legal domicile in the country. Securities in foreign currency may be placed in the market provided they have been previously registered with the Securities Supervisory Office.

Securities or titles issued by the Dominican government or any of its organs may be placed at the market without their having to be previously authorized by the regulatory body. This also goes for multilateral

organizations to which the Dominican Republic belongs, as well as foreign governments or central banks, subject to reciprocity, the presentation of its country-risk classification, and the proof of the authenticity of the offered titles.

Offers may be placed after the information related to the securities and their issuers has been registered at the Stock Market Registry, at the request of the interested party.

2.4.5 Insider trading

Law 19-00 prohibits insider trading providing that persons who have access to privileged information shall abstain to execute operations, for their own or others benefit, with any securities whose price may be influenced by such information, for as long as such information has not been made public.

The superintendence of securities has the task of ensuring the integrity of the market by finding out and preventing the illegal use of privileged information. Law 19-00 provides a list of persons considered to have access to privileged information.

2.4.6 Sanctions

Law 19-00 provides administrative and criminal sanctions in the event of non-compliance with its regulations. Administrative sanctions are applied by the regulatory body and may include fines and the closing down of business. The Court of First Instance may apply criminal sanctions. In general, violations to the law may be punished with fines of up to five million pesos and prison of up to two years. Certain more serious violations established in the law may be punished with fines of up to ten million pesos and prison of up to ten years.

2.4.7 Tax exemptions

Stock market transactions have been exempted from all taxes. Earnings on securities placed on the stock market have also been exempted from income tax, as well as payments made abroad to foreign institutions that have invested in the Dominican stock market.

2.4.8 Challenges of the regulation

The effectiveness of Law 19-00 will largely depend on the regulations adopted for its implementation. The authorities are currently involved in the process of drafting the respective application regulations, as well as preparing the creation of the Superintendence of Securities and the presentation to the Executive Power of the candidates for the National Securities Commission.

The main challenges of the regulation will be to provide clearer definitions and standards for the supervisory attributions of the regulatory body, particularly in the field of privileged information, to regulate purchases and acquisitions at the stock market, to norm the contractual relations among the different market actors, and to establish a transitional process for institutions operating under the all laws that have to start complying with the new, much stricter, requirements of Law 19-00.

2.5 Legal regime of foreign investment: Law 16-95

Currently foreign investment is regulated by Law 16-95 on Foreign Investment, adopted on November 20, 1995, and the regulation for its application contained in Presidential Decree 380-96, later amended by Presidential Decree 163-97.

The adoption of these legal provisions was one of the most important steps taken within the process of liberalization of the national economy. By recognizing that foreign investment contributes to the economic growth and social development of the country, and thus creating an attractive legal framework for foreign investors, this legislation provides one of the main tools to promote the flow of capitals to the country, and to adapt the national economy to the current trend of global markets.

2.5.1 Background to Law 16-95

In general, Law 251 of 1964 regulates all international transfers of funds made to and from the Dominican Republic. This law establishes that the Central Bank is obliged to sell the foreign currency

requested by any persons in order to pay their obligations abroad. Such payments include interests, profits, and dividends on foreign investment, as well as the repatriation of the capital invested.

Law 861 of 1978, now abolished by Law 16-95, provided the rules and conditions that foreign investors had to comply with in order to be able to request the fulfillment of this obligation to the Central Bank. In other words, only foreign investors that complied with certain requirements were entitled, prior approval of the Central Bank, to buy through that same institution the foreign currency needed to remit abroad a portion of the capital invested and of the dividends obtained from the investment.

The Central Bank needed sometimes years to approve the repatriation and make the foreign currency available to the investor. Furthermore, the surplus above the percentage allowed for the repatriation of profits and capital, as well as the investments that did not fulfill the requirements of the law, did not have the right to this process, all of which presented a serious restraint to the repatriation of funds.

Law 16-95 allows on the contrary almost any type of foreign investor, without the need of prior approval from the Central Bank, to buy through the commercial banks the foreign currency needed to remit abroad all the capital invested and the dividends obtained from the investment.

These provisions imply a substantial amendment of the regime applicable to foreign investments that led to a significant increase in the amount of foreign investment being channeled to the country.

2.5.2 Equal treatment of foreign investment

Law 16-95 sets the principle of equal treatment between national and foreign investments, securing them the same legal protection, without any discrimination. This principle is first expressed in the elimination, for the purposes of the law, of all prohibitions and restrictions established before to foreign investment in many economic sectors, such as public service enterprises, mining, banking, insurance, transport, etc.

In line with this principle, Law 16-95 abolished Article 12 of Law 173 of 1966 on the Protection of Agents and Licensees, thus allowing foreign persons and companies to register under such law as agents or representatives of foreign firms, and benefit from the protection granted to the local agent in the event of unjust termination of its agreement by the foreign company. Before only persons or companies that complied with certain nationality or residence requirements had the right to receive the protection granted by Law 173.

Nevertheless, the principle of equal treatment has certain exceptions. Some result from the restrictions existing under the special laws that regulate each sector, which were not abolished by Law 16-95 and are thus still in force. An example of this situation is the Insurance Law, which requires that at least 51% of national insurance companies belong to Dominican shareholders.

However, this concept has guided legal amendments already approved or in process, such as the elimination of the requirements for the purchase of real property by foreigners, and the opening up of the banking sector to foreign capital established in the Bill for a Monetary and Financial Code.

Furthermore, other restrictions result from Law 16-95 itself, which sets forth certain areas where foreign investment is prohibited:

- Disposal of toxic or radioactive waste non generated in the country.
- Activities that affect public health and the environment.
- Production of equipment and materials directly related to national defense, unless the approval of the President of the Republic has been obtained.

2.5.3 Definition of foreign investment

The foreign investment that can benefit from the provisions of Law 16-95 is largely defined as "any contribution coming from abroad, belonging to foreign

persons or companies, or to Dominican persons residing abroad, to the capital of a company operating locally”.

According to Article 2 foreign investment can take the form of: (i) capital contributions, (ii) in-kind contributions, (iii) intangible technological contributions, such as trademarks, product models, industrial procedures, technical assistance and others, and (iv) financial instruments issued and traded abroad that have been authorized by the Monetary Board. Under the previous law only capital and in-kind contributions were allowed.

Pursuant to Article 3 the foreign investment can be destined to: (i) the capital of any type of business association, including branches of foreign companies, (ii) the purchase of real property, and (iii) the acquisition of shares or other financial instruments authorized by the Monetary Board. The previous law allowed only limited liability companies incorporated in the Dominican Republic to be the target of the foreign investment.

Finally, as to the sector where the investment is made, all previous restrictions, which prohibited foreign investment in certain areas and limited it in others, were abolished. Therefore foreign investors may participate in any sector of the national economy, without any limitation outside those provided in the special laws that regulate each sector, and the minor restrictions set forth in Law 16-95 itself.

As it can be appreciated, the wide definition of foreign investment, which allows almost every investment to enjoy the benefits of the law, was an important innovation that has promoted the channeling of different forms of investment to the country.

2.5.4 Registration procedure at the Central Bank

The procedure that required Central Bank authorization was exchanged for a simple notification procedure with statistical purposes. Now it is enough for the foreign investor to notify its investment to the Central Bank within 90 days after its placement in the country in order to obtain automatically a Certificate of Foreign Investment Registration. This notice is made through the presentation of the following documents:

- (i) registration request with indication of the amount and area of investment;
- (ii) proof evidencing the placement of the investment in the country; and
- (iii) corporate documents of the company receiving the contribution or the authorization to establish legal domicile if it is a branch.

The investor may also register the reinvestment of profits, as well as the new investments, that is, the investment of profits made in a company other than that which produced them.

2.5.5 Free repatriation of dividends and capital

The investor provided with a Certificate of Foreign Investment has the right to remit abroad in foreign currency, through the private exchange market:

- (i) all the capital invested and all capital gains, and
- (ii) all dividends declared each fiscal year, after payment of the income tax.

Within the next 60 days the investor must send to the Central Bank the following documents:

- (i) the annual declaration of dividends duly certified by a Certified Public Accountant; and
- (ii) the receipt evidencing the payment of taxes.

2.5.6 Non-registered investments

The lack of registration of foreign investments at the Central Bank does not affect in any way the validity of such investments. However the investor will have difficulty to freely repatriate its funds abroad, since without a Certificate of Foreign Investment he will not be able to go to the commercial banks in order to buy the foreign currency necessary to remit abroad the dividends obtained or the capital invested.

III. INTERNATIONAL TRADE

International trade plays a key role in the Dominican economy. Imported components are estimated to account for 60% of the value of the goods consumed in the local market, while exports have increased considerably in the last years mainly through the development of free zones.

The preferential export rights enjoyed by the Dominican nation to enter the United States and European markets, as well as the process of regional integration undertaken by the Dominican Republic, have largely contributed to the development of the external sector and offer a wide range of export opportunities.

3.1 Imports

The country imports products from all over the world, but close to 40% comes from the United States. The most usual imports include gas, oil, wheat, Soya beans, etc. Many raw materials are imported for assembly and then re-exported. These products include textiles, shoes, medical equipment, etc.

3.1.1 Custom duties

The Customs Code, contained in Law 14-93 of August 28, 1993, harmonized customs tariffs, adopting the internationally recognized Harmonized System of Codification and Designation of Goods. The wide variety of categories and rates that previously existed was in this way eliminated, and only six tariffs were established. These amendments simplified considerably the procedure for the calculation and collection of custom duties.

However, these amendments were still far behind the requirements of the GATT and this situation,

together with the fact that custom authorities use very discretionary valuation methods, resulted in the country having the highest custom duties of the region.

That is the reason why a customs duties reform was passed by way of Law 146-00 of December 27, 2000, which sets new duty rates of 0.3%, 8%, 14% and 20%, thus reducing the top 35% existing before. Furthermore, duty exemptions for strategic economic sectors have been maintained and reinforced.

On the other hand, Law 146-00 (as amended by Law 12-01 of 17 January 2001) provides for the application of Article VII of the GATT as method of valuation of merchandises from July 2001 on, date on which the Dominican Republic is committed to start applying these rules. The Customs Office is currently executing the necessary measures to ensure that the GATT rules for the valuation of merchandises are put into effect at that date.

Custom duties are calculated and paid in Dominican pesos. The conversion into pesos of the value of the goods is made according to the official exchange rate applicable at the time of payment.

In addition to custom duties, the importer has to pay (i) the selective consumption tax charged on certain products, which ranges from 10% to 80%, calculated on the CIF price of the good plus custom duties, and (ii) the tax on the transfer of industrialized goods and services (ITBIS), which accounts for 12% of the CIF price of the product plus duties and (i).

Apart from free zones, there are very few exonerations to the payment of import taxes. These are limited to some basic products, agricultural products like insecticides and herbicides, articles to be used by international organizations or the diplomatic corps,

articles to be used for religious worship and samples for exhibition at international fairs.

3.1.2 Import documents

In some cases, such as for chemical and pharmaceutical products, import licenses are required. Furthermore, certain permits are required for the import of agricultural products. Some of these products, like rice, sugar, corn, onions, garlic and chicken parts, are subject to import quotas.

A consular invoice that approves the transaction must accompany all imports. The cost of this invoice depends on the value of the goods imported into the country and may be obtained at the Dominican consulate closest to the port of loading. Generally considered by exporters to the Dominican Republic as an unnecessary hindrance to trade, the possibility of its elimination and substitution by a fixed value stamp is being considered by Congress.

3.2. Exports

The preferential rights that the Dominican Republic enjoys in order to export its products to the

United States and Europe, together with the progress of trade liberalization with its neighbors of Latin America and the Caribbean, make exports an attractive sector with good perspectives of growth. Furthermore, legal measures are being taken in order to increase the competition of the sector.

3.2.1 Main exports

National and free zone exports have been a very important sector for the Dominican Republic. Traditional exports include sugar, molasses, syrup, green coffee, tobacco and cacao. However, free zones are the main source of exports such as garments, shoes, electrical components, medicines and foods. The country also exports minerals such as gold, tin, silver and copper.

During the year 2000 exports increased by 14.3%. Traditional exports suffered a reduction of 18.75%, as a result of low international prices, while non-traditional exports increased by 10.10%. Mineral exports increased by 33.83% mainly as a result of the increasing international demand of ferronickel and limestone.

TABLE N°3
DOMINICAN REPUBLIC
EXPORTS PER SECTOR 2000

SECTOR	FOB VALUE IN US\$
<i>Total</i>	<i>719,177,053.25</i>
Traditional Products	135,199,748.22
Mineral Products	224,849,320.85
Agricultural Products	105,455,992.23
Agro industrial Products	79,932,265.60
Industrial Products	143,898,870.40
Handmade Products	1,675,381.45
Re-exported Products	28,165,174.50

Source: CEDOPEX

3.2.2 Dominican Center for Export Promotion (CEDOPEX)

CEDOPEX was created on 1971 to promote the improvement of the international competitiveness of exportable goods, and to increase and diversify their offer and target markets, through a number of services addressed to export productive sectors. CEDOPEX offers services to promote Dominican exports in international markets, to provide information on those markets and to grant assistance, advice and know-how to the export sector.

3.2.3 Law 84-99 on Reactivation and Promotion of Exports

Law 84-99 of August 6, 1999 on Reactivation and Promotion of Exports, seeks to eliminate the burden resulting from the payment of custom duties for materials incorporated to export products, which reduce the competitiveness of the country's exports, as a necessary measure within the process of liberalization of the Dominican economy. Presidential Decree 213-00 of May 22, 2000 provided the regulation for the application of Law 84-99.

This legislation provides modern methods to achieve its objectives, which are the following:

- (i) Repayment of custom duties paid on raw materials, inputs, semi-finished products, labels, packaging and packing material, imported by the exporter himself or by third parties, provided such materials have been incorporated to export goods. Repayment may be made by check and/or by the Tax Compensation Bonds created by the law, which may be used to pay off any debt or liability owed to the Dominican State. Repayment requests will be filed with CEDOPEX who, after having verified the authenticity of the documents and valuating the exporter's request, gives notice thereof to the Ministry of Finance, who then issues the respective checks and/or bonds.
- (ii) Simplified compensation of custom duties, under which individual or corporate exporters are entitled to the compensation of custom

duties paid in advance up to 3.0% of the FOB value of the exported products.

- (iii) Temporary Admission Regime of foreign components of export goods, which may enter the Dominican territory without paying custom duties, provided they are re-exported within the next eighteen months. Raw materials, inputs, semi-finished products, labels, packaging, packing material, as well as parts, pieces, tools and other devices serving as complements to machinery used in the production of export goods, may enjoy the benefits of this regime. Requests shall be filed with CEDOPEX, who gives notice of its decision to the Customs Office. Exporters admitted by CEDOPEX to this regime must provide a bond that guarantees the payment of custom duties that would be due in the event of the goods being imported finally into the country.

3.3 Preferential market access to the United States

The preferential market access rights granted to Dominican exports to the United States have been a key factor in the development of the sector, and the main tool for the growth of the Dominican textile industry and consequently of the free zones network, under which most textile companies are organized.

3.3.1 Overview of main provisions

The Trade Act 1974 established the Generalized System of Preferences (GSP), which grants developing countries throughout the world, including Caribbean countries, preferential access rights with respect to a wide range of manufactured and semi-manufactured products that may therefore enter the US territory without paying custom duties.

In 1983 the Caribbean Basin Economic Recovery Act (CBRA), also known as the Caribbean Basin Initiative (CBI), allowed the nations of the region to benefit from a preferential regime far larger than that provided by the GSP, and since then most of the export products of the area have been exempted from tariff

barriers when entering the US market. Under the CBI and its further expansion in 1986 (CBI II), products originating in one or more CBI countries (apart from textiles/apparels, footwear, petroleum, tuna and watches) may enter freely the US market provided that such products have been wholly obtained, produced or manufactured in one or more CBI countries, and exported directly to the United States.

In addition, CBI countries benefited from the general duty reduction provision established in tariff provision 807 of the HTSUS (Harmonized Tariff Schedule of the United States), also called "production sharing" or "offshore production" tariff, under which apparel assembled in a CBI country from US fabricated components is dutiable only for the valued added abroad, excluding the value of U.S. components. Under the so called 807A program, apparels assembled in CBI countries from fabric formed and cut to shape in the US were guaranteed access to the US market (Guaranteed Access Levels Program-GAL). Furthermore, another quota provision known as 809 guaranteed entry into the US market to apparels cut and assembled from US fabric in a CBI country that, like the Dominican Republic, has signed a bilateral agreement with the United States.

In other words, for apparels assembled in CBI countries duty reduction was limited to the value of US components, and for apparels assembled and cut in CBI countries there was no duty reduction at all, being furthermore subject to import quotas.

The Caribbean Basin Trade Partnership Agreement (CBTPA) passed by the United States Congress on January 24, 2000, enlarged the benefits granted to CBI countries by implementing the textile parity on behalf of these countries. Pursuant to this amendment, all of these, as well as other textile products made with US materials, are wholly exempted from the payment of custom duties, and may thus in the future enter freely the US market, under the conditions set forth by the legislation, which are indeed stricter than those applicable until now but which are on the other hand compensated by the far larger benefits resulting from their compliance.

On October 2nd, 2000 the President of the United States issued a proclamation for the implementation of

the CBTPA, which thus provided for the amendment of the HTSUS. Pursuant thereto, a new Subchapter XX has been added to the HTSUS, which regulates the "Eligible Products for Special Tariff Treatment under the Commercial Parity Agreement between the United States and the Caribbean Basin".

Textile products that do not comply with the rules of origin set forth in the parity legislation may still enter the US market under the 807, 807A and 809 programs.

3.3.2 Law on Textile Parity

The textile and apparel sector is one of the economic milestones of the Caribbean region. For many years, and thanks to the preferential tariff treatment established by the United States on behalf of the area, textile exports to the US market showed continuing growth rates which contributed to the development of the sector and the economic growth of these countries.

In the year 1994 this situation changed drastically with the implementation of the NAFTA, which grants commercial benefits to Mexico that are much wider than those provided under the CBI, by eliminating gradually tariff barriers to Mexican textile products, while textiles originating in CBI countries continued being subject to reduced but still positive rates, as well as to import quotas.

The Dominican Republic was one of the countries that resulted more affected with the entry into force of the NAFTA. Until the year 1993 the Dominican nation ranked as sixth among the largest textile exporters to the United States and its exports showed a growth rate of more than 20% per year. After the implementation of the NAFTA the country was overtaken by Mexico, and for the year 1996 the growth rate of exports had decreased to 1.3%.

The aim of the parity legislation is to grant the countries of the region the parity with Mexico, thus allowing such nations to benefit, as regards textiles and other products, from a similar tariff treatment than the one granted to Mexico under the NAFTA, and to recover the competitive position that they had held with that country before the implementation of such agreement.

Beneficiary countries

The benefits granted to CBI countries under the CBTPA have a unilateral but not an unconditional nature. The law sets forth certain requirements that such countries have to comply with in order to make their products eligible to enjoy the preferential tariff treatment provided therein. These requirements include compliance with WTO obligations and participation in FTAA negotiations, adequate protection of intellectual property rights, recognition of worker/s rights, elimination of worst forms of child labor, fulfillment of counter-narcotics certification criteria, implementation of Inter-American Convention Against Corruption and transparency in government procurement.

Thus the designation of CBI countries as beneficiary countries is not automatic. On the contrary, the President of the United States makes it for each CBI country in particular, after having verified that such country complies with the established conditions. President Bill Clinton made this designation on October 2nd in relation to all of the twenty-four CBI countries.

Eligible products

Under the new legislation, the products listed hereafter shall be exported to the United States, free of duties, during a period that will run for eight years, from October 1st, 2000, through September 30th, 2008, or, if earlier, the date the Free Trade Agreement of the Americas (FTAA) or similar free trade agreement between the United States and each beneficiary country enters into force.

Textile products eligible for duty-free treatment are the following:

- Apparels assembled in CBI countries;
- Apparels assembled and processed in CBI countries;
- Apparels cut and assembled in CBI countries;
- Apparel articles knit to shape in CBI countries (except for socks), as well as knit apparels (except for t-shirts) cut and wholly assembled in CBI countries, up to a yearly top amount set forth in the legislation;

- T-shirts (except for underwear) produced in CBI countries, as well as knit apparels (except for t-shirts) cut and assembled in CBI countries, up to a yearly top amount set forth in the legislation;
- Brassieres cut and assembled in CBI countries, subject to a special procedure set forth in the legislation;
- Apparels made in CBI countries with fabric or yarn not available in the US, subject to designation by the competent authorities;
- Handmade and folklore products, subject to designation by the competent authorities; and
- Textile luggage assembled, or cut and assembled, in CBI countries.

Other import-sensitive articles which are, like textiles, ineligible for CBI duty-free treatment (footwear, tuna, petroleum and watch parts) are also to be dutied at Mexico-NAFTA rates (if lower than CBI rates), and thus benefit from an intermediate preferential treatment entailing a reduction of custom duties when entering the US.

Rules of origin

The products must comply with the rules of origin set forth in Chapter 4 of the NAFTA, which are somewhat stricter than those applicable under the CBI. In general, textile apparels must be obtained in a CBI country and imported directly into the United States. For these purposes, the law defines terms like cutting, assembly and wholly assembly in a CBI country.

On the other hand, apparels must be made out of materials (fabric and/or yarn for knit apparels) originating in the United States. Apparels cut and assembled in CBI countries must in addition be sewn together with US yarn. Some knit apparels may be made out of CBI fabric provided such fabric has been produced from US yarn.

The product may however contain foreign findings and trimmings (not originating in a CBI country or the US), such as thread, buttons, decorative tape, lace, zippers, labels, etc., or interlinings, as long as such findings and trimmings and/or interlinings do not exceed 25% of the total cost of the product components.

US customs procedure

Exporters of products eligible for preferential treatment must provide the US importer with a certificate of origin evidencing that the product has been produced in a CBI beneficiary country and that such product complies with the relevant rules of origin.

In this regard, the law sets forth that the eligibility to enjoy preferential treatment is subject to a determination made by the President of the United States in respect to each CBI country that such country has implemented, or has made substantial progress towards implementing, similar custom procedures to those established in chapter 5 of the NAFTA. This determination was made in relation to ten of the twenty-four beneficiary countries, including the Dominican Republic.

Textile parity has been adopted for the benefit of CBI countries, and thus applies only when the exported products comply with the applicable origin rules. Therefore transshipment, defined as the claiming of preferential treatment for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing or assembly of the article, may result in the loss or reduction of trade benefits at both individual and State level.

Perspectives for the Dominican Republic

As it can be appreciated, the treatment of textile exports coming from CBI countries to the US has been thus deeply modified in order to benefit a large series of products that previously had to pay duties when entering the US market, being exempted from payment, not only the assembly in CBI countries, but also the operations of cutting and additional processing in such countries, and being furthermore allowed in some cases that apparels be made out of materials produced, or partially originating, in countries other than the US.

In terms of volume of exports and production capacity, the Dominican Republic is perhaps the country that will obtain greater advantage from the textile parity, whose implementation is expected to increase the growth of the sector by 20% to 30%. However, some challenges still remain to enable national and foreign investors to benefit as much as possible

from the extension of preferential treatment provided in the new law, including the ongoing compliance by the authorities with the requirements established therein, as well as the creation of new industrial parks and the execution of a number of administrative measures with the aim of increasing the competitiveness of the beneficiary sectors.

3.4. The Lome/Cotonou Agreement

The Lome IV Convention was a non-reciprocal cooperation agreement signed between the member countries of the European Union (EU) and a group of African, Caribbean and Pacific nations (ACP countries).

Its main objective was to promote and accelerate the economic, social and cultural development of ACP countries, and to consolidate and diversify mutual relations. Apart from financial, technical and emergency aid, the convention established a preferential system of trade on behalf of ACP countries.

Negotiations for the enlargement of the benefits of the Lome Convention started in 1998, and on September of that year the new ACP-EU Partnership Agreement was signed in Benin.

The need for an agreement adapted to global developments to ensure the viability and effectiveness of cooperation soon became clear, and on June 23, 2000 an agreement was signed in substitution of the Lome Convention, the Cotonou Agreement, which clearly defines a perspective that combines politics, trade and development.

It is based on five interdependent pillars: (i) a comprehensive political dimension; (ii) participatory approaches to ensure the involvement of civil society and economic and social players; (iii) a strengthened focus on poverty reduction; (iv) a new framework for economic and trade cooperation; and (v) a reform of financial cooperation.

The agreement has been concluded for twenty years, with a clause allowing for revision every five years, and a financial protocol for each five-year period.

In the agreement ACP and EU States have agreed on a process to establish new trade arrangements that

will pursue trade liberalization between the parties. The present trading arrangements would be maintained during a preparatory period of negotiations that will lead, on January 2008 at the latest, to the execution of economic partnership agreements.

In general, all products originating in ACP countries are exempted from customs duties and quantitative restrictions when they enter the EU. The limitations to this rule result from (i) the restrictions imposed to certain products pursuant to the Common Agricultural Policy of the EU, and (ii) the quotas established to ACP countries for products like sugar and meat.

The rules of origin include basically the following provisions:

- Products obtained completely in ACP countries, such as minerals and vegetables, are considered to be “originating entirely” in those countries.
- The product may have been “substantially transformed” in an ACP country. In this case the final product shall fall into a tariff category completely different than that of its non-original components.
- Non-original components cannot account for more than 15% of the product value.
- All ACP countries are considered as one territory.
- The product may be entirely obtained in the EU, in the territories or possessions of the EU, or in certain developing countries located in the nearby region of ACP countries, and then processed in an ACP country.
- Certain elements of the manufacture process deemed to be neutral (electricity, equipment, tools, etc.) do not have to originate in the ACP country.

The Dominican Republic has largely benefited from the provisions of the Lome Convention. Dominican

exports to the EU have been increasing gradually under this preferential system. The main trade partners of the Dominican Republic in Europe are Spain, Germany, Italy, The Netherlands, France and the United Kingdom. The most important exports are tobacco, textiles, bananas, pineapples, coffee, rum, electronic alarms and oranges.

In this regard, the country was chosen by the Center for the Development of Enterprise (CDE), an ACP-EU institution financed by the European Development Fund to support ACP companies and partnerships between ACP-EU contractors in the fields of industry, agriculture, construction, tourism, telecommunications, transport and others, to be the seat of its first regional office in the Caribbean. This decision was taken on the basis of the fact that approximately 40% of the CDE's portfolio for the region has been invested in the Dominican Republic.

Furthermore, on November 1999 took place in Santo Domingo the Second Summit of the Heads of Government and State of the ACP countries, with the presence of 31 chiefs of state and the respective delegations of the members countries (71 altogether). ACP countries discussed the position to be taken before the EU to replace the Lome Convention, concluding with the “Declaration of Santo Domingo”, in which the ACP countries demanded the collaboration of the wealthy nations in order to be able to fight poverty and called for international economic cooperation and the renovation of a new international financial agreement.

3.5 Regional alliances

The Dominican Republic is making efforts to accelerate the commercial integration of the countries of Latin America and the Caribbean. The Government, aware that the globalization trends require that countries adapt themselves to the schemes of liberalization that will soon prevail worldwide, has decided to actively promote the commercial integration of the countries of the region. The Dominican Republic has thus become one of the drivers of this process, which implies a significant change in the country's international relations when compared to the relative isolation of the country during the last decades.

In line with the above, in February 1997 the Executive Power created by Presidential Decree the National Commission for Commercial Negotiations with the attribution of negotiating the signature of trade agreements in a successful and profitable manner for the Dominican Republic. This Commission formed the Negotiator Team that has been carrying out the process of negotiation with the countries of the region.

The civil and business community, in a level of organization and cooperation never experienced before, has also participated actively in the negotiations. The different economic sectors, through the Consultant Committee created by the same presidential decree, have helped to identify the national priorities, and thus to determine the goals which the Negotiator Team seeks to achieve in every round of negotiations. Members of the Consultant Committee have even taken part in the rounds of negotiations together with the official delegation.

The negotiation policy of the Dominican Republic has been guided by a firm approach to the closest geographic region, proposing the formation of a "strategic alliance" with the countries of Central America and CARICOM (including Haiti), in the understanding that a joint block of all these nations will allow, not only to widen the market and export capacity of each country, but also to negotiate together with the big blocks of the hemisphere (NAFTA, MERCOSUR and Andean Group) and thus have a stronger position before them.

The country has already signed a Free Trade Agreement with Central America and another similar agreement with CARICOM. With this last block it shares the Forum of ACP Caribbean Countries, as members of the Lome IV Convention (CARIFORUM). Central America, CARICOM, the Dominican Republic and other nations belong to the Association of Caribbean States (ACS). Furthermore, the country moves, together with the American Hemisphere, towards the Free Trade Agreement of the Americas, FTAA, that should be reached in the year 2005.

All these movements must be framed within the regulations of the World Trade Organization (WTO), of which the Dominican Republic is a member having signed the Marrakech Agreement on April, 1994.

3.5.1 Free Trade Agreement with CARICOM

The Caribbean Community or CARICOM provides for political cooperation and the creation of a common market among the English speaking countries of the region, namely Barbados, Guyana, Jamaica, Trinidad & Tobago, Antigua & Barbuda, Belize, Dominica, Grenade, Monserrat, Saint Kitts & Nevis, St. Lucia, St. Vincent, The Grenadines and The Bahamas.

The requests made by the Dominican Republic to become a member of CARICOM were rejected. However, after intensive negotiations carried out from July 1997 until August 1998, the parties agreed to sign a free trade agreement. On August 22, 1998, after the conclusion of the Special Meeting of Heads of State and Government of CARIFORUM celebrated in Santo Domingo, the Free Trade Agreement between CARICOM and Dominican Republic was signed. Congress ratified this agreement on January 2000.

The entry into effect of this agreement allows more than 85% of the commerce between both markets to be free of tariffs, for an estimated 47 million consumers. The agreement contemplates the granting of free access of more than 8,000 original products of the region, with the exception of a negative list of approximately 50 items

Apart from the progressive liberalization of the movement of goods and services, the agreement seeks to promote the active participation of private economic agents in order to enlarge the commercial relations between the parties, including the promotion of joint investments.

3.5.2 Free Trade Agreement with Central America

During the Extraordinary Summit of Heads of State and Government celebrated in the Dominican Republic on November 1997, the Presidents of Central America and the country decided to initiate negotiations for the signature of a free trade agreement. These negotiations ended with the signature on April 16, 1998, in the city of Santo Domingo, of the Free Trade Agreement Central America-Dominican Republic. The signatory countries were the members of the Central American Economic Integration System, formed by Costa Rica, El Salvador, Honduras, Nicaragua and Guatemala.

Congress ratified this agreement on March 2000, but its application in relation to Costa Rica and Nicaragua was conditioned to the renegotiation of the respective protocols signed with those two countries, which some national sectors consider to be damaging to the economy and violating of WTO principles.

The treaty, which provides for the free movement of goods and services, as well as the equal treatment of investments, is compatible with WTO principles and with the creation process of the FTAA. It grants reciprocal and immediate trade liberalization to all goods, apart from a limited list of products that are subject to a process of progressive incorporation to the free trade.

This agreement opens to the Dominican Republic a potential market of close to US\$30,000 million, and more than 40 million consumers.

3.5.3 The Association of Caribbean States (ACS)

The Association of Caribbean States (ACS) was created in 1992 after the Summit of Heads of Government of CARICOM. Its members come from three economic groups: CARICOM, Central America, the Group of Three (Colombia, Venezuela and Mexico), and four independent countries: Cuba, Dominican Republic, Haiti and Suriname.

On April 1999 the country was the host of the Summit of Heads of State of the ACS, which was an important step towards the signing of the Free Trade Agreement with CARICOM.

The primary goals of the ACS are the adoption of programs to increase and consolidate the economic relations between its members, as well as the development of strategies that increase their comparative advantages. For such purposes the ACS seeks to establish a free trade area among its members, to provide for joint negotiation with other economic blocks and international organizations, and to develop transport and communication facilities.

3.5.4 The Free Trade Area of the Americas (FTAA)

As one of the 34 nations present in the American Summit celebrated in Miami on December 1994, the

Dominican Republic assumed the obligation to build, latest in the year 2005, the Free Trade Area of the Americas (FTAA). Since then the country has joined and participated actively in the four meetings which have taken place so far in order to discuss free trade related topics: Denver, Colorado, United States (1995); Cartagena, Colombia (1996); Belo Horizonte, Brazil (1997); and San Jose, Costa Rica (1998).

The negotiations for the formation of the FTAA were formally initiated in the II American Summit celebrated in Santiago de Chile on April 1998. The integration process undertaken in the region will allow the countries to prepare themselves for their insertion therein. By starting to develop intra-regional free trade the nations start to practice commercial liberalization, while they increase their negotiation power before the other blocks through the coordination of regional policies and extra-regional strategies. This is consistent with the trend of establishing intra-group free trade agreements as first steps towards the formation of the FTAA itself.

3.6 Dominican Republic and the WTO

As signatory to the Uruguay Round of Negotiations of the GATT and member of the World Trade Organization (WTO), the Dominican Republic is guided, in order to plan the process of economic modernization and regional integration which is carrying out the country, in the principles and guidelines adopted by the WTO in view of liberalizing world trade.

One of the main objectives of the reform program executed by the country is to adapt its legal and economic framework to WTO postulates, so as to ensure itself a place within the process of economic globalization that is taking place throughout the world.

This process of adaptation to WTO rules has entailed comprehensive amendments in fields such as intellectual property and custom tariffs, as well as in economic sectors such as tourism and telecommunications. The main reforms still pending for the compliance with WTO obligations are related to market regulation and banking liberalization.

IV. MAIN INVESTMENT SECTORS

The Dominican Republic offers investment opportunities in a wide range of sectors where there is still great development potential. Free zones and tourism are currently two of the most promising sectors for foreign investors, but traditional areas like agriculture and mining are also developing.

Other sectors like construction, electricity and telecommunications have turned into expanding economic areas, while financial and insurance services are also becoming interesting as the local market diversifies. Furthermore, the recently established possibility of investing in public enterprises has opened the door to a large variety of business opportunities.

4.1 Industrial Free Zones

Industrial free zones are regulated by Law 8-90 of January 15, 1990, which seeks to promote the establishment of free zones and the growth of existing ones.

The free zone system of the Dominican Republic is one of the most advanced worldwide. The country has been developing its free zone network since 1969, when less than a dozen industrial zones existed throughout the world. It ranks currently as fourth in terms of quantity of free zones, having more than 50 free zones with approximately 500 companies, employing over 206,000 workers.

The first free zones were government sponsored, but today 34 are private and 17 are government owned.

During the year 2000 the sector experienced a growth of 8.0%, thus reverting the trend of the year before, when it had dropped close to -2.5%. This growth was the result of the installation of many new companies

that were attracted by the benefits resulting from the Textile Parity Law passed by the United States, which allows a greater variety of textile products to be exported duty-free to the US.

Free zone exports reached in the year 1999 the amount of US\$4,331.5 million, and US\$4,770.6 million in 2000, for an increase of 10.1%.

Free zone activities have been diversifying, but textile activities still predominate. Other products manufactured in free zones are: tobacco, shoes, electrical components, hospital supplies, furs, data processing, etc. Almost half of the companies are owned by US investors, followed by Dominican investors who own 30% of the free trade zone companies, and by European and Asian investors. Most of the goods produced in free zones are exported to the United States and Puerto Rico, followed by European countries like France, Belgium, United Kingdom, Holland and Germany.

4.1.1 Advantages of the Dominican free zone system

The advantages offered by the Dominican free zone network which have contributed to its fast development are the following:

- Attractive legal framework which exempts free zone companies from the payment of import duties, income tax and most other tax obligations.
- Preferential access rights which allow Dominican exports to enter the markets of United States and Europe without having to pay custom duties.

- Possibility of obtaining financing from local or foreign institutions.
- Facilities to freely repatriate abroad the profits in foreign currency.
- Workforce available at low cost.
- Background of political stability.

4.1.2 The National Free Zone Council (CNZF)

Law 8-90 created the National Free Zone Council (CNZF), which is the entity charged of regulating and supervising the sector and has, among others, the following attributions: (i) to recommend to the Executive Power the installation of free zones, (ii) to approve or not the requests for the granting of installation permits to free zone companies, and (iii) to enforce all applicable laws and provisions regarding free zones. The CNZF is formed of representatives of both the public and private sectors.

4.1.3 Definition and types of free zones

Law 8-90 defines a free zone as a geographic zone of the country subject to special custom and tax controls, which provides for the installation of companies whose production is destined to foreign markets, through the granting of the necessary incentives for their development.

The creation of a free zone needs to be authorized by the Executive Power. There are three different kinds of free zones according to location.

- (i) industrial or services free zones, which can be located anywhere in the country;
- (ii) border free zones, which must be located near the Haitian border and are granted additional incentives; and
- (iii) special free zones, which due to the nature of the manufacture process of their products need to be located in particular places (i.e. close to the source of raw materials).

4.1.4 Management of free zones

Free zones are managed by "free zone operators", who are charged of negotiating and contracting with the companies wishing to operate in the free zone.

Operators may sell, lease and rent buildings or facilities to the interested companies, as well as carry out promotion and marketing activities, being free to fix space and maintenance costs. Operators must have a permit issued by the CNZF and ratified by the Executive Power, and are bound to comply with certain infrastructure and maintenance requirements in the free zone.

There are also free zones belonging to the State, which are managed by the Industrial Promotion Corporation.

4.1.5 Installing a free zone company

Free zone companies are persons or companies which have been authorized by the CNZF to install themselves in a free zone and whose production is destined for export. Usually a Dominican company is incorporated to make the request, which can belong entirely to foreign investors. In order to obtain an installation permit the following documents must be submitted:

1. CNZF installation permit form duly completed.
2. Rent contract with the corresponding free zone.
3. Incorporation documents of the company.
4. Samples of the product to be manufactured.
5. Proof of solvency of the main investors.
6. Certified check for the payment of newspaper publications.

4.1.6 Incentives to free zone companies

Free zone companies are exempt from the following taxes and duties:

1. Income tax.
2. Taxes on constructions, registration or transfer of real property rights.
3. Taxes for incorporation of companies and increase of capital.
4. Municipal charges.
5. ITBIS.
6. Consular fees.
7. Export or re-export taxes.

Furthermore, they are exempt from the payment of all custom duties, import taxes and related charges on:

- Raw materials, equipment, construction materials, office equipment and any other goods necessary for the construction, preparation and operation of the company.
- Materials and equipment needed for the construction of housing facilities, cafeterias, health services or others established for the benefit of workers.
- Transportation vehicles, including cargo trucks, garbage collectors, buses for workers, etc., upon approval of the CNZF.

These benefits are granted for a period of fifteen years. Companies located in border free zones benefit from a longer period of twenty years, enjoying also other additional benefits such as rent subsidies, priority treatment for the export of goods limited by foreign quotas and for the assignment of development funds, etc.

4.1.7 Sale of production in the local market

Free zone companies can sell all their production in the local market, after payment of all applicable custom duties, as long as (i) the goods or services are not produced or imported in the country, and (ii) the goods or services have local components accounting for 25% of their value.

When the products or services are manufactured or imported in the country the free zone company can only sell up to 20% of its production in the Dominican market.

4.2 Tourism

The Dominican Republic is currently the major tourist attraction in the Caribbean. This is due to the fact that the country, apart from having rich natural resources, a consistent tropical climate and places of historical and cultural interest, offers also highly competitive hotel prices, and all this within a background of security and political stability.

The following regions have been declared as priority areas for tourist development:

- Southern Region (Barahona, Independencia and Pedernales).
- Caribbean Coast from Santo Domingo to La Romana.
- Puerto Plata or Amber Coast.
- Northwestern Region (Montecristi, Dajabon, Santiago Rodriguez, and Valverde).
- Macao-Bavaro.
- Constanza and Jarabacoa.
- Samana.
- Peravia.

The country has the largest tourist accommodation capacity in the region, having close to 51,000 hotel rooms. Currently the main source of tourism for the country is Europe. In the year 2000 European visitors accounted for 53.5% of all tourists coming to the Dominican Republic, followed by North America (United States and Canada), with 36.7% and South America, with 7.2%, while Central American, Caribbean and other countries accounted for the remaining 2.6%.

Furthermore, the Dominican Republic has important forest and scientific reserves, as well as national parks, where the authorities seek to protect the great variety of endemic flora and fauna of the island. For such reasons, ecological tourism has also been starting to develop during the last years, and the public and private sector promote visits to places of ecological interest such as Lake Enriquillo and the Shrine of the Humpback Whales in Samana Bay

4.2.1 Development and overview of the sector

The tourist industry started to expand in the 70's, after the Government had declared that the development of this sector was of national interest. At the beginning clearly guided by government initiatives, the tourist sector saw private participation gradually increasing, especially in the 80's, when sources of financing became available under programs like the Lome Convention.

Today tourism is one of the backbones of the Dominican economy, contributing significantly to the creation of jobs and foreign currency. Furthermore, the hotel industry keeps on developing and, with a growth rate of 15.7% in 2000, a significant increase in the accommodation capacity and a wide diversification of tourist offers, a hotel occupation rate of 70.2%, and a net average profit of 15.5% of the earnings, offers a great potential to the investors interested in this sector.

Other indicators of the expansion of the tourist sectors are the increases shown on the collection of tourist-related taxes such as room tax (16.4%), tourist cards (16.6%) and ITBIS (1.2%).

4.2.2 Promotion of private investment in tourism

The Government keeps on promoting the development of the country's tourist zones, and is interested to encourage private participation in the sector. For these reasons the State has been traditionally concerned with (i) the construction of the adequate infrastructure for the tourist industry, such as roads, ports, airports and public services, (ii) the development of human resources through cooperation with universities and technical institutions, (iii) the realization of promotional campaigns in foreign markets, and (iii) the granting of credits and incentives to private investors.

Law 153 of 1971 on Promotion and Incentive of Tourist Development was in force until the adoption of the new Tax Code in 1992. This legislation granted tax incentives to national and foreign investors who participated in the tourist sector. The law was abolished, but the Tax Code itself recognizes that private investors wishing to participate in the tourist sector may obtain

tax exemptions through the signature of special agreements with the Executive Power, upon authorization of the National Congress.

Furthermore, Law 141-97 on the Reform of Public Enterprises mandates the privatization of the hotels belonging to the Corporation for the Promotion of the Hotel Industry. As a result, national and foreign private investors can have access to the valuable assets owned by the State in this sector.

In any case, the State has already started to allow the participation of private companies in the management of its hotels, and recently leased three hotels to a French capital enterprise for a period of 35 years.

Finally, on September 1997 the State and the private sector signed a document where they agree to join their efforts in order to promote and market the country abroad, thus agreeing to participate together in certain national and international fairs.

4.2.3 The Ministry of Tourism

The tourist sector is regulated by the Ministry of Tourism, which has the following attributions:

- To plan, guide, coordinate, promote and evaluate tourist activities.
- To program and promote the tourist industry and the investments in the sector.
- To establish and supervise tourist zones.
- To guide the design and construction of infrastructure.
- To carry out promotional campaigns.
- To control tourist operators.
- To create national and international offices.

The Ministry of Tourism has offices for tourist promotion in the United States, Spain, France, Germany, England, Belgium, Italy, Canada, Puerto Rico, Venezuela, Argentina, Chile and Colombia. These offices carry out activities such as information services, advertisement through the media, organization of traditional festivities and participation in international fairs.

4.2.4 Regulation of tourist activities

The following are the most important measures adopted by the Ministry of Tourism in order to regulate the sector:

- Rule 2115 on Classification and Norms for Hotels
- Rule 2116 on Classification and Norms for Restaurants
- Rule 2117 on Car Rentals
- Rule 2122 on Travel Agencies
- Rule 2123 on Gift Shops

4.2.5 Labor and tax issues

In addition to the general rules on labor and tax matters, the companies wishing to invest in the tourist sector will have to take into account the following provisions:

- The ITBIS (12% VAT) applies to hotels, bars and restaurants.
- Under Law 250 of 1984 hotels, bars and restaurants must keep 1% of the payroll for the Social Security Fund on behalf of the employees.
- Under Law 5432 of 1960 hotels, bars and restaurants must pay mandatory tips to some of their employees.

4.2.5 Casinos and games of chance

Law 351 of 1964 declares that the granting of licenses for the installation of game rooms or casinos is a way of contributing to the promotion of tourism and the earning of funds for the development of the sector. This law establishes the procedures and requirements for the granting of licenses, and places these businesses under the supervision of the Ministry of Tourism.

Law 96 of 1988 expanded the game capacity of casinos by allowing the installation of coin machines. However their use is prohibited to Dominican citizens.

Pursuant to Decree 3326 of 1978, bets in casinos must be made and paid in dollars, and the amounts thus collected must be exchanged through the Central Bank.

4.2.6 Approval of tourist projects

The Planning and Programming Office of the Ministry of Tourism is the entity charged of evaluating and approving architectonic and urban projects for tourist development. The authorization process comprises the following stages: (i) previous information, in order to assess whether the project can be carried out or not; (ii) preliminary consultation, in order to obtain a non-objection letter; (iii) presentation of a Preliminary Plan; and (iv) approval of the final project.

In some tourist zones the project will also require the approval of a certain organization, such as the Department for Project Development and Financing (DEFINPRO), which supervises the projects carried out in the Northern Coast.

4.3 Agriculture

The Dominican Republic has large tropical forests and many agricultural areas. It has also highlands ascending to 3,000 meters that are good for growing a great variety of crops. There are no frosts and the rainfall goes from 400 to 4,000 millimeters per year with an average of 1,500 millimeter.

The country's territory is distributed as follows: 52% is mainly forest, 20% is suitable for livestock, 26% is suitable for arable farming, and the remaining 3% is for preservation.

The country is the largest Caribbean exporter of agricultural products. The main agricultural products are rice and beans, and the most important agricultural items exported are sugar, coffee, cocoa and tobacco. Since the end of the 80's other products like fruits, tubers and other vegetables are also exported in large quantities.

In the year 2000 the agricultural, livestock and fishing sector showed a growth of 5.0%. Livestock

showed a significant 8.6% increase, while agriculture grew only by 2.4% and fishing had a -4.5% decrease. Most produced agricultural items were rice (4.8% increase), sugar cane (1.4%), coffee (9.7%), cacao (51.6%), as well as other products of daily consumption such as green beans (16.9%), plantains (44.1%), sweet oranges (81.8%) and tomatoes (1.8%).

The main agricultural exports in the year 2000 were avocado, organic bananas, melons, eggs, fresh bananas, yautias, pumpkins, dry coconuts, organic cacao, plantains, and sweet potatoes.

It should be noted that the organic products of the Dominican Republic have become very popular in international markets, and that in 2000 exports of these products increased by 117.3%. The main organic products are dry coconuts, bananas, biodynamic bananas, pineapples, mangos, lemons, green coffee, aromatic herbs, organic coconut crude oil and cacao.

The Government institutions that participate in this economic area are mainly the Ministry of Agriculture, the Institute for Price Stabilization (INESPRE), the Agricultural Bank, the Institute for Hydraulic Resources (INDHRI), the Dominican Center for Export Promotion (CEDOPEX) and the Sugar State Council (CEA).

It should be noted that within the framework of the GATT the Dominican Republic signed an agreement designed to promote agricultural markets through the creation of incentives, the granting of internal aid and the development of competition in the field of exports.

The recently adopted tax and customs reforms have established incentives for the agricultural sector, by exempting prime materials and inputs from the payment of duties and other taxes. This will help to reduce the costs of the sector and thus increase their ability to compete in international markets, and to face the upcoming external competition resulting from the entry into force of the free trade agreements signed with CARICOM and Central America.

4.4 Mining

Mining is an important activity in the Dominican Republic. The main minerals found in the country are

gold, silver, nickel, marble, limestone and granite. The significance of the mineral resources of the country makes this one of the most interest sectors of investment, and the Government is currently carrying out several programs to promote foreign investment in this sector.

In this regard, the Government created recently the Corporative Mining Unit, with the mission to follow up and serve as operational collaborator in all the mining projects in which the Dominican government is a participant, and to ensure that private investments in the mining sector are clear, credible and guaranteed, thereby providing a solid foundation for the reactivation of commercial mining activity.

Mining activities dropped considerably at the end of the 80's, but during the 90's the sector started to recover after receiving flows of foreign capital, reaching in 1994 a growth rate of 88.2%. There are currently close to 35 mining companies in the country, which are mainly working on the extraction of marble and limestone. The Canadian capital company Falconbridge Dominicana, which operates a mine and a melting plant, mostly carries out the exploitation of nickel.

In 2000 aggregate value of mining activities grew by 9.2%. Nickel production increased by 13.8%, as a result of higher international market prices, marble production increased by 50.3%, while salt and plaster production grew by 35.4%. There was no gold and silver production due to the closing down of the operations of Rosario Dominicana.

Indeed, gold and silver exploitation has been largely concentrated in the hands of the State owned company Rosario Dominicana S.A., which operates the "Pueblo Viejo" gold and silver mine located in the Cibao Valley. This mine's reserves are considered to be "world class", but the public enterprise does not have the resources required to exploit them properly. Therefore an international bidding process is currently being carried out in order to choose an international mining company that would act as long-term operator of Pueblo Viejo.

Law 146 of 1971 regulates mining activities. The entity charged of supervising the sector is the General Mining Office of the Ministry of Industry and Trade.

4.4.1 Obtaining mining concessions

Law 146 allows any national or foreign person or company to register the discovery of mineral deposits and request a concession in order to explore or exploit such deposits.

The exploration concession grants its holder the right to carry out activities above or below the earth surface in order to define the areas containing mineral deposits by using any technical and scientific methods. For such purposes he may construct buildings, install machinery, communication lines and any other equipment that his researches require.

The exploitation concession may be requested at any time during the exploration stage, and grants the right to prepare and extract all mineral substances found in the area, allowing the beneficiary to exploit, melt and use for any business purpose the extracted materials. This concession is granted for a period of 75 years.

There are certain requirements for granting concessions: (i) concessions are limited to an area of 20,000 hectares; (ii) foreign governments cannot obtain concessions; and (iii) foreign companies must fix legal domicile in the country by appointing a legal representative.

4.4.2 Taxes on mining activities

Apart from the provisions of the Tax Code, the pursuance of mining activities requires the purchase of a mining business patent issued by the Ministry of Industry and Trade.

Furthermore, exports are charged with a 5% tax calculated on the FOB price of the minerals exported. This payment may be deducted from the income tax payable in the same fiscal year in which the export is made, but no refund is available if the payment exceeds the amount of income tax owed in that year.

4.5 Construction

Construction activities showed an increase of only 5.2% during 2000, thus experiencing a strong slow down when compared to the 17.7% growth shown by the sector in the previous year.

The sales of the main construction components have thus also significantly decelerated when compared to 1999: 10.5% growth for cement, 6.0% growth for rod, and -10.2% growth for paint.

The main factors for this deceleration have been the reduction in Government investment in construction (-3.2%), as well as the reduction of bank financing resulting from the high interest rates prevailing during the last year. Credit portfolio for construction increased only by 11.2%, much less than the previous year, when it had increased 31.5%.

4.5.1 Private construction projects

The expansion of the construction sector is largely due to the increase of private investment, which has compensated the reduction of public investments in the area. This growth of private projects has been partly encouraged by the increase of resources being channeled to the sector by specialized financial institutions such as Savings & Loans Associations and Mortgage Banks.

The Ministry of Public Works and Communications (SEOPC) must approve construction projects carried out by private persons or companies.

4.5.2 Public investment in construction

Public investment in construction was RD\$4,224.9 million for the period January-September 1997. These funds were used for the construction of industrial spaces in free zones, servicing buildings, housing complexes, hydraulic and sanitary works, renovation of schools and hospitals, and reparation of communication lines. Furthermore, the Government continued with the execution of important projects related to the expansion of highways and the construction of dams.

4.5.3 Foreign participation in government projects

Law 322 of 1981 sets forth certain requirements for foreign companies wishing to bid or participate on projects carried out by the State or any of its institutions, establishing that such companies must,

either be affiliated with a Dominican company, or be a mixed capital company belonging to both Dominican and foreign investors.

Foreign participation in the government contract shall not exceed 50%, but 70% may be accepted when for whatever reasons national participation cannot exceed 30%. Furthermore, when the project is extremely complex or sophisticated foreign companies may request to the government agency that the project be deemed outside the scope of Law 322. If the government agency contracting the project agrees to do so the foreign company would be able to have all the rights over the contract, without the need of local participation.

4.6 Electricity

The generation, transmission and distribution of energy had always been in the hands of a State owned enterprise, Corporacion Dominicana de Electricidad (CDE). The inability of this company to supply the energy required by the country was one of the most serious problems that hindered the sustained development of the national economy.

Although the capacity of CDE had gradually increased in the last years, it had yet to meet the energy demand of the different sectors, which kept growing every day as a result of the economic development experienced in the country, especially in the free zones and tourist sectors.

In order to improve its capacity CDE started in the early nineties to purchase energy from private companies. The increase in the quantities of energy purchased from private sources did not imply however an improvement in the service, since a lot of energy was lost as a result of the bad conditions of the energy distribution network.

In 1997 Law 141-97 on the Reform of Public Companies ordered the capitalization of CDE. In the year 1999 took place the privatization of the generation and distribution units of the CDE, which were turned into three distribution and two generation companies that were transferred to foreign capital companies.

However, energy problems are still very serious. The approval of the General Electricity Law by Congress is still pending. The law would regulate the operations of distribution companies and the power generators. It would also create a new enterprise, the CDEEE or Corporacion Dominicana de Empresa Electrica Estatal, which will encompass the government's 50% share in the distributors and generators, plus the hydroelectric and electricity transmission operations.

The World Bank and the Inter American Development Bank have committed themselves to support the development of the energy industry by granting loans to the country of up to US\$300 million after the passing of this legislation.

4.7 Telecommunications

During the last years the telecommunications sector has been one of the most dynamic of the national economy, mainly as a result of the positive effects of the competitive conditions currently prevailing in the market.

In 1998 the sector experienced a record growth of 20.4%, the highest among all productive sectors. In the year 2000 its growth was close to 14%, and accounted for 10.15% of the Gross Domestic Product's growth.

Two new telecommunication companies started operations in that year, which are Centennial and France Telecom (Orange). Furthermore, telephone residential lines grew by 46.4%, while business lines grew by 123.6%, wireless local loop increased by 117.3%, analogue cellular phones grew by 34.1%, while PCS cellular phones grew by 324.1%.

On May 27, 1998 the General Law on Telecommunications No. 153-98 was passed, which derogates Law 118 of 1966 on Telecommunications. This new legislation, which seeks to modernize the measures for the regulation of the sector and adapt them to the parameters set forth in the field by international organizations such as the World Trade Organization (WTO) and the International Telecommunications Union (ITU), has contributed to the expansion that this sector has been experiencing since the 80's.

Law 153-98 regulates the installation, maintenance and operation of telecommunication networks, as well as the provision of services and equipment related to telecommunications in order to (i) ensure that the whole population has access to telecommunications services, (ii) promote free competition in the telecommunications market, (iii) promote the development of the sector with the view of increasing the economic growth of the country, (iv) adapt national laws to the international agreements signed in the field by the country, (v) regulate the radio electrical spectrum, and (vi) ensure that the regulatory functions of the State are carried out effectively and impartially.

4.7.1 The Dominican Telecommunications Institute (INDOTEL)

Law 153-98 abolished the General Telecommunications Office, providing that the regulatory body of the sector will be the Dominican Telecommunications Institute (INDOTEL). Its Board of Directors has five members appointed by the Executive Power: a president with rank of Minister of State, an Executive Director, a representative of the companies providing public telecommunications services, a representative of the companies providing broadcasting services, and a member freely chosen who will represent the interests of consumers.

INDOTEL initiated its operations in 1999 and has since then worked actively and innovatively in order to ensure the application of Law 153-98 and to organize and promote the telecommunications market.

As mandated by Law 153-98, INDOTEL has drafted regulations on Concessions and Licenses, Use of Radio electrical Spectrum, National Plan of Attribution of Frequencies, Interconnection and Customers and Providers Claims, which will be subject to public consultations before their approval, expected to take place in 2001.

4.7.2 Telecommunication services

Law 153-98 applies to the following telecommunication services:

- (i) Public services for the transport of telecommunications, such as telephone,

telegraph, telex and any transfer of information between two or more points, without any change from one point to the other in the form or contents of such information. These services may be carrier services, final or teleservices and value added services.

- (ii) Broadcasting services, which may be radiobroadcasting services by sound or television, by earth waves or satellites, or cable or other broadcasting service, and are provided to the public in general. Broadcasting services are regulated by Law 153-98, as well as by the applicable laws in the fields of social communications and copyrights.

4.7.3 Obtaining concessions, licenses and/or certification of equipment

Law 153-98 sets the principle of free provision of telecommunications services, and thus any company that complies with the established requirements (which include the need to be organized as a Dominican limited liability company) is entitled to request concessions for the provision of telecommunications services, which are granted by INDOTEL for renewable periods of five or twenty years. Concession requests must be handled pursuant to the principles of equal treatment and no-discrimination.

As to broadcasting services, the applicants must be Dominican nationals, and concessions are granted through public bidding. A license is also required, which is issued simultaneously with the concession.

There are certain telecommunication services that do not require concessions, being only subject to special registration systems. These services are maritime and aeronautic services, value added services, resale of services and private telecommunications services.

Finally, any telecommunications equipment to be connected to any network or sold in the country must have a Certificate of Ratification issued by INDOTEL after carrying out the relevant technical verifications.

4.7.4 Rights of concession holders

Since the provision of telecommunication services is of public and social interest, concession holders are entitled to the following in order to install their networks and/or equipment: (i) to connect their equipment to public telecommunication networks, (ii) to use public property, (iii) to create easements on private property, and (iv) to interconnect their networks with other concession holders.

The owner of the network or property is bound to consent to such operations, pursuant to terms and conditions to be agreed with the concession holder. In the event of disagreement INDOTEL may intervene to set such terms and conditions.

4.7.5 Technical norms

Concession holders are bound to comply with the basic technical plans and technical norms fixed by INDOTEL. These norms must be in accordance with the international practices applied in the zone to which the country belongs, which is the World Zone Number 1 (formed by United States, Canada and a group of Caribbean islands), and with the recommendations of the international organizations to which the country belongs.

4.7.6 Competition rules

Law 153-98 sets forth a number of rules in order to promote the free operation of the telecommunications market in conditions of effective competition.

First, the law provides that one of the purposes of the regulatory body of the sector, INDOTEL, is to "ensure the existence of a sustainable, fair and effective competition in the provision of public telecommunications services". Furthermore, the decisions of this entity must be taken on the basis of the minimum regulation rule and the maximum operation of the market, being obliged to act in such a way that the effects of its decisions equal those of a loyal, effective and sustainable competition whenever such competition does not exist.

The law sets also the principle of free pricing, and companies may thus freely fix the tariffs they charge to their customers. INDOTEL may intervene in this field only when there are not enough conditions in the market to ensure an effective competition.

Furthermore, the law sets the principle of free negotiation between service providers wishing to sign cooperation or interconnection agreements. Such agreements must not contain provisions which are discriminatory or which distort competition.

Finally, Law 153-98 forbids unfair practices such as: (i) false publicity intended to hinder or limit free competition, (ii) the promotion of services based on false declarations, related to disadvantages or risks of competitors' services, and (iii) industrial bribery, violation of industrial secrets, etc.

Restrictive practices are also prohibited, including: (i) discrimination in business relations among services providers, (ii) practices which limit, hinder or distort customers' rights to have freedom of choice, (iii) the abuse of dominant positions in the market, and (iv) any activities tending to distort, or that effectively or potentially limit or distort free competition.

4.7.7 Customers protection

The promotion of free competition in the market allows to ensure that customers have access to telecommunications services at reasonable prices, as well as to guarantee their right to freely choose the service provider that better suits them.

On the other hand, telecommunications companies are obliged to comply with the principles of continuity, generality, equality, neutrality and transparency in their relations with their customers.

Telecommunication companies are also obliged to provide certain services free of charge, such as customer service, tariff consultation service, general consultation services, receipt and treatment of complaints, and treatment of emergencies. In addition, customers may address themselves to INDOTEL in order to solve their conflicts with the

telecommunications companies, who will act as arbitrator in these cases.

Finally, INDOTEL is obliged to issue the relevant regulations for each type of service that deal with the relations between the concession holders of such services and the customers, in order to protect the rights of the latter.

4.7.8 Radio electrical spectrum

One of the main objectives of Law 153-98 is to provide an adequate legal and technical framework for the regulation of the radio electrical spectrum in the Dominican Republic, which has been characterized for being very disorganized. INDOTEL has started the process of cleansing of the radio electrical spectrum, and only in the year 2000 revoked close to 110 illegal licenses. The country has currently 7 VHF channels, 39 UHF channels, 20 short wave frequencies, 136 AM radio stations and 194 FM stations.

4.7.9 Universal service

Law 153-98 mandates the creation of the "Contribution to the Development of Telecommunications (CDT)". This contribution will be made by all telecommunication companies and amounts to two percent of (i) the income received each month from the bills issued to final customers, and (ii) the income received each month from international correspondent services. The CDT will be used, in fixed percentages to be established by INDOTEL, to contribute to the resources of that institution and to finance projects for the development of the telephone service.

In the year 2000 teledensity grew from 9.9% to 16.4%, but this is still a low level when compared to other countries of the region. That is why INDOTEL is in the process of establishing a program for the installment of lines in rural areas to be partly financed by the CDT. This project will be assigned through international bidding.

4.7.10 Sanctions

The violations to the provisions of Law 153-98 are deemed to be administrative faults and are classified in

three types: very serious faults, serious faults and minor faults.

These faults are penalized with pecuniary sanctions calculated on the basis of a unit called Charge for Non-Compliance ("CI"), which amounts to RD\$20,000 of 1997, adjustable by inflation. The penalties are: from 30 to 200 CI for very serious faults, from 10 to 30 CI for serious faults, and from 2 to 10 CI for minor faults.

In the event of very serious faults INDOTEL may take additional measures, such as business closure, suspension of service or seizure of property.

4.8 Banking

As a result of the good performance of the Dominican economy, the banking system has been experiencing a very strong growth during the last years. For the period 1996-1998, deposits increased to an average rate of 22% and liabilities by 27%. In 1999 deposits grew by 22.5% and liabilities by 21.2%.

Monetary authorities have strengthened banking regulation and supervision. As a result, total financial sector assets and liabilities grew at a slower rate during the period January-September 2000, but the capitalization process grew steadily, at a rate that was double than that of the same prior-year period.

As of September 30, 2000 total assets of the financial system as a whole were by 16.07% above the December 1999 level. Liabilities grew by 15.50% while deposits by 16.46%. Financial system equity rose by 18.97 over December of last year, and reported earnings by 45.04%.

The solvency level of the financial system reached 12.5% as of December 1999, higher than the 10% required by established norms. Credit risk was 4.27% and loan provisions grew by 2.61%. The profitability ratio of financial system paid-in capital was 32.4%, higher by 4.3 percentage points than the same prior-year period.

4.8.1 Legal reform

The National Congress has been debating for several legislative terms a Bill for a Monetary and Financial Code that will regulate the monetary, exchange and banking system of the country.

The bill contains modern and innovative measures to regulate the banking system in the Dominican Republic, including provisions on the different banking institutions, their internal management and operation, banking operations, prudential norms, capital and reserve requirements, solvency indexes, loans, purchase of fixed assets, depositors protection, corrective measures, involuntary liquidation, penalties, etc.

4.8.2 Types of banking institutions

The referred bill establishes the following types of banking institutions:

- (i) Multiple Services Banks, which may carry out all kinds of banking operations.
- (ii) Savings and Credit Banks, which may carry out all banking operations except opening current accounts, international operations and intermediation in foreign currency.
- (iii) Savings and Loans Associations for Housing, which were created by Law 5897 of 1962.
- (iv) Credit Corporations, which may receive deposits from the public and carry out minor credit operations.
- (v) Financial Groups, which are formed by banking institutions established in the country or abroad with the purpose of promoting jointly their services under identical or similar denominations.

4.8.3 Liberalization of banking services

The bill for a Monetary and Financial Code seeks to liberalize the financial system, thus promoting the flow of foreign capitals to the banking sector.

Therefore the bill eliminates all the restrictions, allowing foreign capital banks to operate in the country, either through the incorporation of a Dominican company wholly owned by foreign investors, or through the opening of a branch. These banks may carry out banking activities or be simply agents for the supply of information or the placement of funds.

These provisions are consistent with the new foreign investment law, which abolished the restrictions that previously existed for foreign investments in the banking sector.

The adoption of this law will offer foreign financial institutions the opportunity to freely participate in a market which keeps on growing, specially after the expansion and diversification of banking services throughout the country.

4.9 Insurance

In the year 2000 the insurance sector experienced a record growth of 22.43%. All insurance and reinsurance activities are regulated by Law 126 of 1971 on Private Insurance, amended by Law 280 of 1975. Pursuant to Law 126 of 1971 the Superintendence of Insurance, an institution of the Ministry of Finance, supervises insurance companies.

In general, insurance companies authorized by the Superintendence of Insurance may issue any type of insurance, guarantee or bond that cover risks in the Dominican Republic. Under the Monetary Law, all insurance policies issued in the country must be expressed and paid in Dominican pesos.

In order to operate as a national insurer or reinsurer the applicant must be organized as a limited liability company. This company must have a capital of at least RD\$500,000, though the increase of this limit to five million pesos is expected in the near future. Furthermore, at least 51% of its shares with voting rights must belong to Dominican citizens, in the form of nominative shares, and most of its advisors, directors and executives have to reside in the Dominican territory.

In order to operate as a foreign insurer or reinsurer the applicant must have been organized and operating for more than five years in its country of origin.

The applicant must keep a certain amount of capital in cash in the Dominican Republic, which cannot be less than one million pesos. Furthermore, in order to be able to start operating insurers and reinsurers must deposit a bond, which is fixed in the amount of RD\$150,000 to operate with all types of insurance.

4.10 Public Companies

Law 141-97 on the Reform of Public Companies was adopted on June 24, 1997. This legislation seeks to improve the efficiency of public enterprises and the quality of services they provide to the public by opening up such enterprises to private investment, and sets forth the necessary measures to regulate and give transparency to the participation process of the private sector in the property and management of public enterprises.

Law 141-97 provides the general framework under which the partial privatization process of public companies will take place, and will thus offer interesting investment opportunities.

4.10.1 Companies to be reformed

- (i) Corporacion Dominicana de Empresas Estatales (CORDE), which is the holding company for a number of enterprises dedicated to different business activities (mining, agriculture, industry, etc.).
- (ii) Corporacion Dominicana de Electricidad (CDE), which has a monopoly over the generation, transmission and distribution of energy in the country.
- (iii) The hotels belonging to the Corporation for the Promotion of the Hotel Industry (Corporacion de Fomento a la Industria Hotelera).
- (iv) Consejo Estatal del Azucar (CEA), which controls a large part of the sugar production in the Dominican Republic.

4.10.2 Commission for the Reform of Public Companies

The Commission for the Reform of Public Companies is the entity charged of managing and conducting the reform process. The Commission has ministry rank, and operates under direct supervision of the Executive Power. This institution has already started to take the relevant measures in order to initiate the reform of different public companies.

4.10.3 Capitalization process

Law 141-97 sets forth a capitalization process of public companies which comprises the following steps:

- (i) valuation of the enterprise, by one or more audit firms hired through international public bidding;
- (ii) transformation of the enterprise into a limited liability company;
- (iii) contribution, by the President of the Republic, of the assets and/or interests of the State to the capital of the newly created company;
- (iv) authorization of the capitalization through presidential decree; and
- (v) increase of the company's capital through contributions from private investors.

National and/or foreign investors shall be selected through public international bidding pursuant to criteria fixed in advance. Selection criteria will take into account factors such as job creation, total value of production, tax contributions, construction or reparation of infrastructure, impact on the environment, levels of technology transfer, etc.

Private participation cannot exceed 50% of the company's capital. This restriction is due to limitations established in the Dominican Constitution, which require Congress approval for transfers amounting to more than 50% of the State's interests in public companies.

However, the private investors will have control over the management of the company. This will be ensured through the signature of a management contract with the Government.

If the capitalization process does not fulfill the purposes of the law, the President may authorize the use of other reform methods, such as the granting of concessions, the transfer of shares or the sale of assets. It should be noted that pursuant to Article 55 of the Constitution Congress must approve the sale of assets or shares.

The choice of any of these methods shall be announced in a public event transmitted directly through radio and television in the presence of Public Notaries, observers, the media and the company's employees.

4.10.4 Overview of reform process

One of the main challenges for the modernization of the State was the privatization of public companies, necessary as a result of the bad performance experienced by these enterprises, some of which were still however valuable assets that could be improved with fresh capital and modern management. Under the legal framework provided by this legislation, the country has been able to transfer successfully to the private sector, many public assets that had become a burden to the administration.

This process has mainly included:

- (i) the leasing for a 25 year period to Cementos Nacionales and Marmotech of the Mines of Salt and Plaster, and the National Marble

company, as well as the capitalization of Molinos Dominicanos (flour mills) that were awarded to Malla-Ram;

- (ii) the generation and distribution of energy: the generation units of the CDE (Itabo and Haina) were transferred to Seaboard Corporation and New Caribbean Consortium, while the distribution companies were transferred to Union Fenosa (North and West distribution units) and AES (South distribution unit); and
- (iii) the leasing of the ten sugar mills belonging to Consejo Estatal del Azucar (CEA).

It should be pointed out that this process has not been limited to Law 141-97, and that also outside the scope of this legislation the Government has been transferring the administration of its agencies to private hands. An example of this is the contract for the modernization, expansion and administration of the public airports (AILA, Gregorio Luperon, Maria Montez and Arroyo Barril) that was awarded to Consorcio Aeropuertos Dominicanos Siglo XXI (AERODOM).

As it can be appreciated, the adoption of Law 141-97 was an important step towards the liberalization and modernization of the national economy, since the reform process carried out by virtue of that legislation, although subject to a lot of controversy, technical obstacles and, even in some cases, litigation, has helped to alleviate the charge that public companies are for the Government, and has resulted in the country receiving large amounts of foreign investment that surpassed in the year 1999, when the main capitalization processes took place, the record amount of 1.3 billion dollars.

V. FORMS OF BUSINESS ORGANIZATION

The investor interested to participate in the Dominican market will wish to organize its business or channel its investment in a way that adapts to the nature of his business activities or the international strategy chosen to carry them out. Dominican laws allow him to choose freely among the different forms of business organization, there being no restrictions in this regard.

5.1 The corporate vehicle

The most common form of business association in the country is the limited liability company or corporation (*compañía por acciones*), but the Commercial Code also provides for the creation of the following types of associations:

- (i) Civil partnership (*sociedad civil*), which is used for pursuing noncommercial activities.
- (ii) Commercial partnership (*sociedad en nombre colectivo*), whose members do not enjoy limited liability, even after transferring their interests for the debts arising before their departure from the association.
- (iii) Limited commercial partnership (*sociedad en comandita*), in which partners who do not participate in the daily management of the association enjoy limited liability.
- (iv) Limited stock partnership (*sociedad en comandita por acciones*), which is a limited commercial partnership whose capital is divided into shares.
- (v) Company of participation (*sociedad en participacion*), which allows its members to

act as a single body but has no legal existence as regards to third parties.

5.1.1 Comparative advantages of corporations

Like all other forms of business association, corporations have a legal personality different from that of its members. However, unlike other societies, its members enjoy a limited liability, which is almost absolute in the Dominican Republic.

Unlike other legal systems, which allow for the possibility of piercing the corporate veil in certain cases, Dominican law only allows to reach the shareholders in the event of fraud or misrepresentation, and even in this case it might be difficult to make shareholders personally liable since evidence rules for the proof of fraud are very strict. No distinction is made between contract and tort creditors, and no particular treatment is given to dealings between parents and subsidiaries. Under-capitalization is not penalized, there being no clear capitalization rules to begin with.

In addition, other forms of business association (including non profit organizations) receive the same tax treatment than corporations. This means that tax cannot be avoided by choosing a particular business structure, since any type of association, even those which are not granted legal personality, will be treated as a separate entity for tax purposes.

Furthermore, incorporation costs are minimal, there are no annual capitalization duties and capital rules are very flexible.

In view of all this, it can be concluded that business associations other than corporations provide

no real advantages that may offset the disadvantage of not enjoying limited liability.

5.1.2 Incorporation process

The Commercial Code requires a minimum number of seven shareholders for the incorporation of a company, but the additional shareholders who participate to fulfill the legal requirement may have a symbolic participation of one share in the company's capital.

The founding members sign the articles of incorporation (Estatutos Sociales), prepare the list of shareholders (Lista de Suscriptores), and declare before a Public Notary that the shares have been purchased and paid by the shareholders. After the General Incorporation Meeting has approved all these documents, the company is formally incorporated.

When all or part of the shares are paid through in-kind contributions two General Incorporation Meetings are required. In the first meeting an officer (Comisario) is appointed to value the contributed assets. This officer then makes a report to the second meeting, to be held at least five days after the report is made available to the shareholders, which approves the report and declares the company incorporated.

Some registration and publicity formalities have to be complied with, namely filing copies of all incorporation documents at the Peace Court and the Court of First Instance of the legal seat of the company, and publishing a notice of the incorporation in a national newspaper.

5.1.3 Capital rules

Rules on corporate financial structure are very flexible, but they will certainly become more restrictive as an active capital market develops.

Apart from some highly regulated industries such as banking and insurance, there are no capitalization rules. No minimum capital is required and corporations may finance themselves on whatever debt-equity ratio they might desire. There are no statutory limits, and the courts are not allowed to disregard the limited

liability rule under any circumstances, nor subordinate credits of shareholders to those of third parties.

On the other hand, the Commercial Code does regulate the issue of shares. There are different kinds of shares: (i) "nominative" shares, which carry the holder's name and whose transfer must be registered in the company books; (ii) "order" shares, which are transferred by endorsing the corresponding share certificate; and (iii) "bearer" shares, which are transferred hand to hand.

In any case, a certificate must always exist, and shareholders may transfer their interest in the manner set forth for each type of share. These provisions are expected to disappear as the stock exchange increases in volume.

Furthermore, it is mandatory to fix the nominal value of shares, which cannot be lower than the legal minimum of RD\$5.00. Usually the nominal value of each share is fixed at RD\$100.00.

5.1.4 Corporate control

Corporate control may be achieved in different ways. The most common methods are quorum and voting requirements, stock transfer restrictions and preemption rights.

Irrevocable proxies and shareholder pooling agreements are not commonly used, though there does not seem to be any legal obstacle. Other standard control mechanisms like voting trusts, nonvoting shares or cumulative voting rights lack suitable legal basis.

Plural vote is however allowed, there being no one-share-one-vote rule. Furthermore, it is possible to provide for different share classifications, such as the common-preferred share scheme.

5.2 Mergers and acquisitions

Except for financial institutions, there are no legal provisions regarding mergers and acquisitions, and the procedures normally used to carry them out have developed from practical experiences. Furthermore,

since there are no specific laws to regulate competition or dominant positions in the market, no legal provision prohibits or restricts mergers or acquisitions in the Dominican Republic.

The Tax Code deals with mergers, establishing that in all instances of corporate reorganization the credits and liabilities of the absorbed company are transferred to the surviving company, there being thus no capital loss or gain as a result of the merger.

The merger process comprises usually the following stages:

- (i) signature of a merger agreement between the companies;
- (ii) ratification of the agreement by the general shareholder meeting of each company;
- (iii) valuation of the assets of the absorbed company;
- (iv) final approval of the merger by the shareholders of the absorbing company after examination of the valuation; and
- (v) legal dissolution of the absorbed company through the procedure established in the Commercial Code, since the company does not disappear automatically with the merger.

Acquisitions take the form of transfer of stock, pursuant to the provisions set forth in the Commercial Code for each type of share. The shareholder meeting usually ratifies the operation, although law does not mandate this requirement.

5.3 Establishment of branches

Law 16-95 on Foreign Investment abolished the only disincentives to the establishment of branches, since foreign investors do not need anymore to incorporate a Dominican company in order to be able to register their investment at the Central Bank. Now any investment made by foreign companies in the country through branches may be registered, and the

profits obtained therein may thus be freely repatriated in foreign currency.

The establishment of branches of foreign companies is made through the procedure for fixing legal domicile in the country, which applies both to persons and companies.

It should be noted that, although from a strictly legal standpoint this procedure is not mandatory, since a foreign company may operate in the country without having fixed its domicile in the Dominican territory, in practical terms the fulfillment of this requirement is advisable, since it is necessary for certain administrative procedures, such as the registration of the investment at the Central Bank.

Furthermore, in some cases foreign companies have to comply with the requirement of fixing domicile in the country. For example, in order to provide financial services in the local market foreign banks must either incorporate a Dominican company or open a branch in the country.

Finally, it should be noted that for tax purposes branches of foreign companies receive the same treatment than Dominican companies, since the Tax Code requires that companies incorporated in the country, as well as permanent establishments of foreign companies pay the same income tax rate.

5.4 Designation of agents or licensees

Foreign companies wishing to designate agents or licensees in the local market should mainly take into account the following statutes: Law 173 of 1966 on Protection of Importer Agents of Goods and Products, and Law 16-95 on Foreign Investment.

5.4.1 Statutory protection of agents or licensees

Law 173 seeks to protect local agents from the unjust termination of their agreements by their foreign principals. This law has a wide scope of application, comprising any type of agency, representation, distribution, license, concession, franchise or other agreement relating to products manufactured abroad or in the country.

It is not even required that a formal agreement is signed, since the law applies to any type of relation between a foreign firm ("licenser") and a local enterprise ("licensee") by which the second ensures the promotion of the interests of the first.

Registration of agreements

The protection granted by Law 173 is not automatic: the licensee, in order to benefit from its provisions, must register his agreement at the International Department of the Central Bank within 60 days after its signature.

Public order of Law 173

The provisions of Law 173 are of public order, meaning that the clauses normally established by foreign firms to keep the right of suspending or amending their agreement with the local agent, or choosing a foreign law as the applicable legislation, do not have any value if they contradict Law 173, which applies regardless of the will of the parties.

Just cause

Pursuant to Article 2, even when the agreement so provides, the licenser cannot terminate the relation with the licensee, nor refuse to renew it at its date of expiration, unless a "just cause" exists. "Just cause" is defined as any noncompliance with the essential obligations of the agreement, or any action or omission on the part of the licensee that might adversely and substantially affect the business interests of the licenser.

Unjust termination

If the licenser terminates the agreement without a "just cause" the licensee will be entitled to sue the licenser for the following compensation:

- (i) material losses suffered as a result of the unjust termination by the licenser;
- (ii) investments made by the licensee; and

- (iii) losses of eventual profits calculated on the basis of the last five years of trading.

The effect of these provisions is to prevent the licenser from offering its products or services in the Dominican market, neither directly nor through another distributor, until he terminates the relation according to Law 173.

The effectiveness of this prohibition is reinforced: (i) by the right which may have the agent of blocking at customs the entry of goods coming from that company; (ii) by the imposition of sanctions to any new agent, who might be jointly liable with the licenser for the payment of the indemnity due to the previous agent, and (iii) by the long duration of an eventual procedure before Dominican courts which, together with their tendency to favor the local party, makes litigation a risky and expensive option.

Thus usually foreign firms have no other course of action than to pay the compensation, trying to reach an agreement with the agent in order to reduce the amount of the indemnity.

Exclusive vs. nonexclusive relations

Law 173 does not distinguish between exclusive and nonexclusive relations. In both cases the licenser will be bound to comply with the provisions of Law 173 vis-à-vis its single or various distributors, but in the case of nonexclusive agreements the licenser may avoid the risk of not being able to participate in the market. In other words, the foreign company is still obliged to pay the indemnity or prove that a just cause of termination exists, but it will not have to await the outcome of the litigation or negotiations in order to continue selling the goods through its other agents.

5.4.2 Implications of Law 16-95 on Foreign Investment

The amendments introduced by Law 16-95 carry significant implications for foreign companies interested to distribute products or services in the Dominican market.

Registration of foreign persons as agents

Law 16-95 extended the scope of application of Law 173 by eliminating its Article 12. This article established that neither foreigners having resided less than four years in the country nor Dominican companies with more than 66% foreign capital could benefit from the protection granted by Law 173. Therefore now all local agents, regardless of their nationality, may register their agreements and enjoy the rights granted under Law 173.

This amendment implies as well an incentive for the foreign company to carry out itself the distribution of its products in the local market, since in that way the company could prevent the application of Law 173.

Registration of technology transfer agreements

Law 16-95 allows technology transfer agreements such as licenses, franchises, know-how, technical

assistance, etc. to be registered at the Central Bank so as to enable the local licensee to pay abroad in foreign currency the royalties and commissions owed to the licensor.

In order to register the agreement the prior authorization of the Central Bank is required, but there are neither restrictions as to the contents of the agreement nor limitations as to the amount of royalties or commissions that can be paid abroad.

Capitalization of intangible contributions

Law 16-95 allows foreign companies that make “intangible technological contributions” like trademarks, designs, franchises, etc. to the capital of locally operating companies to register such contributions as foreign investment, and thus receive freely in foreign currency the profits obtained from their exploitation in the Dominican territory.

VI. LEGAL FRAMEWORK FOR BUSINESS ACTIVITIES

In this chapter we will examine the most relevant legal provisions affecting the pursuance of business activities in the Dominican Republic, namely: the tax regime applicable to business activities, the labor and environmental laws that companies must comply with, the mechanisms established to protect intellectual property rights, and the rules that need to be taken into account for the purchase of real property and the granting of securities.

6.1 Taxation

Law 11-92 of May 31, 1992 contains the Tax Code. This Code has four sections: (1) General Principles, Proceedings and Penalties, (2) Income Tax, (3) Tax on the Transfer of Industrialized Goods and Services (ITBIS), and (4) Selective Consumption Tax.

The “Dirección General de Impuestos Internos (DGII)”, an organ of the Ministry of Finance, is responsible for the collection of taxes and the enforcement of fiscal laws.

6.1.1 Tax reform

In the year 2000 some important amendments have been introduced to the fiscal system in order to (i) ensure an adequate level of tax income for the performance of effective government action, eliminate fiscal deficit, reduce poverty and improve the equitable distribution of income, and (ii) modify tax figures and institutions to reduce tax evasion.

This tax reform was effected by way of Law 146-00 of 27 December 2000 on Tax Reform, Law 11-01 of 17 January 2001 on Fiscal Amnesty, Law 12-01 of 17 January 2001, which amended certain aspects of Law 146-00, as well as Presidential Decrees Nos. 1199-

00 of 13 November 2000 on Simplified Tax Estimation System, 195-01 and 196-01 of 8 February 2001, on the application of the new income tax and ITBIS provisions.

The main figures introduced by this reform to improve the collection of taxes by the administration are the following:

Tax compensation

The tax administration may, without, or at, the request of the tax payer, set off tax liabilities against credits for taxes, interests or fines paid in excess, provided such liabilities and credits have arisen after January 1st, 2001.

Discounts

Any taxpayer who pays immediately the taxes notified by the tax administration may benefit from a discount of up to 40% of accrued charges.

Advance payments

Companies shall make a 1.5% advance payment on the gross income tax owed for the current year, payable monthly on the basis of gross monthly income. Agricultural and livestock companies are exempted from these payments, as well as companies with average annual earnings of less than six million pesos.

Companies that the previous year had an effective tax rate higher than 1.5% of gross income shall pay every month one twelfth of taxes paid for that period. When the tax liquidated for the respective period does not exceed the 1.5% paid in advance, such payments shall become final. When companies have made payments lower than 1.5% of gross income, they shall

pay at the appropriate time the remaining amounts, and when advance payments result higher than gross income and higher than liquidated tax, the difference will be a credit for the company that may be set off with the income tax and advances to be paid during the next three fiscal years.

Fiscal amnesty

Law 11-01 introduced the possibility for companies and individuals to benefit from a fiscal amnesty for the payment of taxes (income tax, ITBIS and Selective Consumption Taxes) owed for the last three years.

Companies may free themselves from the examination of the last three years, which under Law 11-92 may carry out the tax administration to ensure the collection of taxes effectively owed for that period, upon payment of 1% of gross income obtained during the year 1999. 30% thereof shall be paid 90 days after the passing of Law 11-01, 30% before 30 June 2001, and 40% before 15 December 2001.

Companies that do not avail themselves of this amnesty may be subject to the payment of a fine if the examination carried out by the tax administration shows a difference higher than 25% between the amount paid, and the one that should have been paid, to the administration.

General Norm 2-01 issued on 19 February 2001 by the DGII provides the necessary rules for the application of the fiscal amnesty.

Simplified Tax Estimation System

Companies or business people with income of less than RD\$6 million a year may apply to benefit from a simplified tax estimation system, which seeks to make tax declaration, assessment and payment procedures easier to small tax payers. Under this regime, companies need to pay a monthly tax on income generated in the country, amounting to 0.75% for those making RD\$0 to RD\$2 million a year, 1% for those making RD\$2 to RD\$4 million a year, 1.12% for those making RD\$4 to RD\$6 million. Payments are to be made every three months.

6.1.2 Income Tax

Dominican citizens and residents must pay taxes on the income they generate in the country and on income originating abroad. Foreigners must only pay taxes on income of Dominican origin but, after the third year of residence, also on income of foreign source.

Any person or entity that pays taxable income has the duty to withhold the respective tax amount and pay it to the administration. These withholding agents are liable to the tax office for the payment of the corresponding taxes.

Tax rate for companies

The income tax rate for legal persons is currently 25% on the taxable income of each fiscal year. This tax must be withheld at a corporate level from the dividends paid by the company. The remaining balance is not subject to any other tax, whether it is paid to persons or companies.

Tax rate for individuals

Individuals benefit from an exemption for income of up to RD\$120,000 per year. Above this amount the tax rate increases in proportion to the income, as follows: 15% for income from RD\$120,000.01 to RD\$200,000.00, 20% for income from RD\$200,000.01 to RD\$300,000.00, and 25% for income exceeding RD\$300,000.01 per year. The employer must withhold this tax from the salary paid to the employee. These amounts are subject to inflation adjustments made by the President of the Republic to make, based on the Consumer Price Index of the Central Bank.

Payments abroad

A 25% rate applies to all payments made abroad. This rate does not apply to interests owed to foreign financial institutions, which are taxed with a lower rate of 5%. In all cases, the Dominican party is obliged to withhold the tax and pay it to the administration.

Income from business activities

A 10% tax rate applies to income obtained in the course of business activities, such as fees, commissions,

etc., which has to be withheld by the person or company making the payment. A higher rate of 20% applies to income obtained from the lease of property, 15% to income obtained from lottery games, 1.5% to payments made by State agencies for independent services, and 10% to any other income.

6.1.3 Tax on the Transfer of Industrialized Goods and Services (ITBIS)

ITBIS applies to (i) the transfer of industrialized goods, calculated on the net transfer price plus accessory services, (ii) the import of industrialized goods, calculated on the CIF value of the goods plus custom duties, and (iii) the provision and lease of services, calculated on the value of service excluding mandatory tips.

The tax reform increased the ITBIS rate from 8% to 12%. Advertising services are taxed with a lower rate of 6%.

A wide range of agricultural and livestock products have been exempted from the payment of ITBIS, such as living animals, meat, fishes for reproduction, milk products, plants to cultivate, vegetables and fruits for public consumption, coffee, corns, milled products, sugar, cacao, etc. Also, fuel and energy, books and magazines, as well as personal computers and accessories.

Services excluded are education, culture, health, financial (excluding insurance), pension plans, ground transportation, electricity, water and garbage collection, rent of houses, and personal care.

6.1.4 Selective Consumption Tax

This tax applies to the transfer of certain goods manufactured in the country, to the import of certain products and to the provision of certain services. Examples of these goods and services are alcohol and tobacco derivatives, vehicles, jewelry, certain home appliances, hotel rooms, etc.

The tax rate ranges from 5% to 80%. This tax is payable monthly.

Law 146-00 established a selective tax to vehicles, tourist vehicles and any other vehicles used for human transport (apart from public transport), as follows:

<u>CIF Value (US\$)</u>	<u>Rate</u>
0 to 10,000	0%
10,000 to 12,000	15%
12,001 to 14,000	30%
14,001 to 20,000	45%
20,001 to 32,00	60%
32,000 and more	80%

6.2 Labor laws

The Labor Code, contained in Law 16-92 of 17 June 1992 regulates the relations between companies and their employees.

6.2.1 Working conditions

- (i) Quota of Dominican workers. At least 80% of the workers of a company should be Dominican citizens. Supervising officers should preferably be Dominicans, but there are no restrictions at manager level. When a Dominican citizen substitutes a foreigner in an employment position the Dominican employee will be entitled to the same salary, rights and conditions as the foreign employee.
- (ii) Working periods. The normal working week is 44 hours, with a working day of 8 hours. The usual practice is to work 40 hours from Monday to Friday and, in some companies, the remaining 4 hours on Saturday. The working week of part-time employees cannot exceed 29 hours.
- (iii) Paid leaves of absence. 5 days in the event of marriage, 3 days in the event of death of a close family member, and 2 days for the worker whose wife gives birth.
- (iv) Vacations. Pursuant to Law 97-97, workers who have completed one year of employment are entitled to a paid vacation of 14 working days. This law extended the vacation period

by almost a week, by declaring that it should be calculated on the basis of working days and not calendar days, as set forth in the Labor Code.

- (v) Sexual harassment. Labor laws forbid employers or their representatives to commit actions that may be considered as sexual harassment against an employee.
- (vi) Maternity protection. The employer cannot terminate without just cause the work contract of a female employee during her pregnancy and up to three months after the birth. Furthermore, in order to dismiss her with just cause the employer must obtain the prior authorization of the Ministry of Labor, among other formalities. Otherwise the employer would have to pay an indemnity amounting to 5 months of salary plus the corresponding severance payments.

Pregnant women may request their vacation immediately after their pre and postnatal leave, which must be paid on the basis of her normal salary, and are entitled for the next year to a leave of half a day per month in order to take the child to the pediatrician.

6.2.3 Wages

- (i) Minimum wage. Dominican labor laws set forth a minimum wage for private sector employees, which is periodically fixed by the National Salaries Committee. The current monthly minimum wage is RD\$3,416 for companies with assets over RD\$500,000. Other minimum wages are fixed for certain sectors. This is the case of free zone companies (RD\$2,490 per month) and the tourist sector (RD\$3,030 for companies with assets over RD\$500,000).
- (ii) Overtime, night and holiday work. In this cases the premium to be paid by the employer over the basic wages of the employee is 35% for overtime, 15% for night work, and 100% for overtime implying an increase of more than

68 working hours per week, as well as for work on Sundays and holidays.

6.2.3 Fringe benefits

Legally mandated fringe benefits amount to approximately 35% of the basic wages of the employee, but most firms estimate that the amount of fringe benefits usually paid by them amounts to 45% of the salary.

- (i) Christmas bonus. All employees are entitled to receive, latest on December 20, an additional month's salary.
- (ii) Participation in company profits. Workers are entitled to receive a 10% participation in the yearly net profits of the company. The amount received by the employee may not exceed 45 days' salary for workers with less than three years in the company, and 60 days' salary for those with more.

Mining, industrial, agricultural and forest companies are exempted of this obligation during the first three years of operation, while free zone companies regardless of their capital, as well as agricultural companies having no more than one million pesos capital, are completely exempted.

(iii) Payment of vacations. The amount to be paid to the employee for yearly vacations depends on his seniority, being 14 days' salary if he has been in the company from 1 to 5 years, and 18 days' salary for more than 5 years' seniority.

6.2.4 Dismissal of employees

During the first three months of employment workers can be dismissed without the employer having to make any severance payments. Afterwards employees can be dismissed in accordance with the provisions of the Labor Code.

In the event of justified dismissal made pursuant to the causes and procedures set forth in the Labor Code, the employer does not have to pay any indemnity to the employee.

In the event of unjustified dismissal, employees are entitled to severance payments calculated as follows:

- from 3 to 6 months seniority, 6 days' salary
- from 6 to 12 months seniority, 13 days' salary
- from 1 to 5 years seniority, 21 days' salary for every year or fraction
- from 5 years seniority or more, 23 days' salary for every year or fraction

The employer must also give prior notice of the dismissal to the employee, as follows:

- from 3 to 6 months seniority, 7 days
- from 6 to 12 months seniority, 14 days
- from 1 year seniority or more, 28 days

Prior notice is not necessary if the employer pays the worker the salary corresponding to such period.

None of these payments is subject to income tax. If the employer does not make the payment on time, the worker will be entitled to receive an additional day's salary for each day of delay.

6.3 Environmental protection: Law 64-00

The legal framework that had provided for environmental protection in the Dominican Republic before the year 2000 was comprised of several special laws, presidential decrees, resolutions and administrative measures, which were often contradictory and lacked a truly scientific character. Therefore, although comprehensively regulated, natural resources were not effectively protected in the country.

After the signature and ratification of several international agreements, such as the Vienna Convention (Ozone Layer Protection), the Rio Agreement (Biological Diversity) and other important agreements, one of the main challenges of the Dominican Republic was the modernization of its policies and laws on environmental protection.

In October 1999 a bill for a General Law on Environment and Natural Resources was submitted to Congress approval, to be passed as Law 64-00 on August 18, 2000.

6.3.1 Principles and objectives

Law 64-00 recognizes the importance of the protection, preservation and sustained use of natural resources for the well-being of humanity, underlining the need of special protection for the unique, but fragile, threatened and deteriorated, natural resources of the country, and of urgent measures to correct the deforestation and dry conditions currently prevailing throughout the national territory, and to prevent, control and repair the degradation of the environment.

Under Law 64-00 the effective protection of the environment is placed as an essential duty of the State, which must for such purposes adopt an integral policy to be executed with the participation of all institutions related to natural resources, as a way to concentrate all, until then scattered, efforts, and thus ensure the effectiveness thereof.

The State assumes the responsibility of protecting and restoring the environment, and shares it with society in general and with each individual in particular. In this manner, the law provides for the mandatory inclusion of environmental programs in all social and economic development programs.

Furthermore, the law recognizes the principle of precaution by providing that "lack of scientific absolute certainty shall not be called as a reason not to adopt preventive effective measures in any activities having a negative influence on the environment".

The main objective of Law 64-00 is "to provide rules for the protection, improvement and restoration of the environment and natural resources, by ensuring the sustained development thereof".

Law 64-00 regulates soil, water and air contamination, dangerous products, elements and substances, domestic and municipal waste, human settlements and sonic contamination. It also regulates the granting of rights by the SEMARN and/or municipal

authorities for the use of natural resources, including the use of soil, water, coastal and sea resources, forests, caves and mineral resources.

6.3.2 The Ministry of Environment and Natural Resources (SEMARN)

The administration of the environment, ecosystems and natural resources is placed under the responsibility of the Ministry of Environment and Natural Resources ("SEMARN"), created by Law 64-00 for such purposes. Its main tasks are to draft, execute and supervise the application of national policies on environment and natural resources, and to ensure the preservation, protection and sustained use of natural resources, the improvement of soil, air and water contamination rules, the proper exploration and exploitation of mineral resources, the preservation of coastal and sea resources, and the establishment of general environmental rules for human settlements and industries.

Existing environment-related institutions and/or attributions created by special measures, such as the Natural Resources Office of the Ministry of Agriculture and the Earth Crust Protection Office of the Ministry of Public Works, have been transferred to the SEMARN.

In this manner, environmental aspects of all economic or human activities will be, controlled by the SEMARN, which will act by way of authorizations, supervision, recommendations or consultations, in cooperation with other government, municipal and civil authorities and institutions, to ensure the comprehensive protection of natural resources in the country.

On the other hand, the National Council of Environment and Natural Resources will be an organ formed of State and civil society members with the task of programming and evaluating environmental policies and of establishing the national strategy of biodiversity preservation.

6.3.3 Instruments of environment administration

Law 64-00 has a predominantly technical and scientific character. Therefore, the basic instruments

for the establishment of environment policies are the studies of environmental impact evaluation and environmental reports.

In this regard, any industrial activities undertaken in the country must be provided with an environmental license, which certifies that the respective environmental impact evaluation has been made, and that the activity, work or project may be carried out under the conditions set in the environment administration program established therein.

Other instruments of environment administration are environmental planning, the national plan of territorial organization, the national system of protected areas, the national information system on environment and natural resources, environment supervision, environmental education, scientific and technical investigation, incentives, the national fund for environment and natural resources, and the declaration of emergency areas.

6.3.4 Sanctions

Law 64-00 provides administrative and criminal sanctions for those who violate its provisions. Administrative sanctions may be applied by the SEMARN and include fines, as well as suspension or closure of operations.

Law 64-00 creates the notion of "environmental crime", committed by any person who, knowingly or intentionally, violates its provisions and application rules. Activities such as alteration of, or damages to, protected areas, cutting or destruction of trees in protected forests, capture or damage of endangered species, illegal disposal of toxic waste, etc., constitute environmental crimes that may be punished with fines of up to 10,000 minimum salaries and prison of up to three years, as well as obligation to repair damages, closure of establishment, withdrawal of permits, etc.

Tort liability for environmental damages arises whenever damages to the environment or to third parties are caused by the non-compliance with environmental laws.

Criminal sanctions may be applied by the Court of First Instance, at the request of the Environment

Attorney's Office, an agency created by the law as a department of the General Attorney's Office to represent the interests of the State and society in all procedures of environmental laws violations.

Achieving the full execution of Law 64-00 will be a great task for the authorities, which have already started the implementation process of this legislation. The SEMARN was created shortly after the passing of the law, and has carried out important activities to adapt standards to the provisions of the law. Still pending is the adoption of the respective application regulations, as well as of special laws in the fields of biological diversity and fishing.

6.4 Intellectual property protection

The comprehensive reform of intellectual property protection in the Dominican Republic, which took place in the year 2000, has been a great achievement towards the modernization of the business legal framework in the country, and a significant step towards the fulfillment of our WTO obligations. The new laws on intellectual property conform to, and have been inspired on, the WTO agreement on Trade Related Aspects of Intellectual Property (TRIPS), as well as other international treaties and organizations to which the Dominican Republic belongs.

6.4.1 Industrial property: Law 20-00

Law 20-00 of May 8th, 2000 on Industrial Property substituted Law 4994 on Patents of Invention and Law 1450 of 1937 on Trademarks and Trade Names. Its main purpose is to provide a legal framework that contributes to the transfer and widespread of technology for the mutual benefit of producers and users of technical know-how, and that protects effectively industrial property rights, while achieving a balance between the rights and obligations of holders of industrial property rights that promotes the social, economic and technological development of the country.

Law 20-00 conforms to the TRIPS and other international agreements. It provides for instance that classifications for the purposes of registration will be made pursuant to internationally recognized classification systems: for patents and utility models

applies the Strasbourg Convention of 24 March 1971, for industrial designs the Locarno Agreement of 8 October 1968, and for trademarks the Nice Agreement of 15 June 1957.

The government agency charged of granting patents and registering industrial property rights is the National Office of Industrial Property.

Civil and criminal sanctions to violations of industrial property rights may be applied by judicial courts and include compensatory damages, as well as fines of ten to fifty minimum salaries and/or prison of up to two years.

Presidential Decree 408-00 of 11 August 2000 provided the application regulations of Law 20-00.

Patents

Patents may be obtained to protect inventions, utility models and industrial designs.

Inventions are defined as any idea or creation of the human intellect, whether related to products or processes, capable of being applied to industry. Not patentable subject matter includes: (i) discoveries already existing in nature, scientific theories and mathematic methods, (ii) solely aesthetic creations, (iii) presentations of information, (iv) computer programs, (v) therapeutic, surgical or diagnostic methods for human or animal treatment, (vi) living matter and substances already existing in nature, and (vii) new uses of patented products or processes.

The combination or modification of known inventions or products may only be patented when the result obtained from such new combination prevents each part from working separately, or when their qualities or functions have been modified to achieve new industrial results that are not obvious to technicians in the field.

Furthermore, inventions whose exploitation goes against public order or moral, or which may be clearly prejudicial to health, human life or the environment, may not be patented or published. The same goes for plants and animals, as well as for essentially biological

processes for the production thereof. In this regard, only non-biological or microbiological process may be patented, while vegetable inventions will be regulated by special legislation.

Inventions must be of practical industrial use: capable of being produced or used in any of the types of industry, including the service industry.

They must also be novel: be unknown in the body of existing technical knowledge, which comprises anything that has been published or made available to the public anywhere in the world, whether by written publication, oral disclosure, commercialisation, use, or any other method, before the date of the local or (when applicable) foreign patent application.

Disclosure made within one year prior to the patent application is not taken into account, provided it has been made directly or indirectly by the inventor or his/her representatives, or resulted from breach of trust or contract, or illegal acts, committed against them.

Furthermore, inventions must show an inventive step: they must not be capable of being deduced, by a person with knowledge in the technical field, or from the respective body of existing technical knowledge.

Patent applications may be filed with the National Office of Industrial Property, and must contain the following elements:

- (i) identification of the inventor, applicant (if different) and legal representatives, as well as proof of title over the invention;
- (ii) name, description, one or more claims, drawings and summary of the invention; and
- (iii) payment of respective fees.

Applications have priority over later applications regarding the same invention. The date of application is that of filing when the filed application complies with certain basic requirements set forth in the law. An earlier application is irrelevant when an inventor has priority rights over his invention, by virtue of a patent application filed in a member country of international

organizations to which the Dominican Republic belongs, or which grants reciprocity to Dominican inventors, but only for a period of one year after having filed for a patent abroad.

The National Office of Industrial Property has a sixty-day term after the date of filing to determine whether the application complies with the formalities set forth in the law ("examen de forma"). In the event of non-compliance, the applicant will be asked to complete the application within a two-month period. A lack of timely response will be deemed as a waiver of the application. If the lack relates to basic requirements such as invention description or claims, the date of the application will be that of filing of the lacking information or documents.

The patent application will be published eighteen months after the date of filing, and any person may file his/her grounded objections to the granting of the patent within sixty days thereafter, to which objections the applicant may respond within sixty days after receiving notice thereof.

The request will be examined ("examen de fondo") after payment of the respective fees, which must be made within twelve months after publication. The National Office of Industrial Property will determine, based on the respective legal provisions, any international agreements, any objections that may have been filed and experts reports if necessary, whether the invention may be patented.

Patents may be granted for all, or only a part, of the requested claims. Rejections must be duly justified. Patents are published in the Bulletin of the National Office of Industrial Property, and all documents related thereto are public and may be consulted by any interested party.

Patents are granted for twenty years, and during that period the patent holder is entitled to exclusively exploit the invention protected thereby and to object to any acts of third parties that may affect his/her rights.

Law 20-00 provides for a reduction of patent fees for down to 10% of normal application and annual rates when the own inventor has filed the application or obtained the patent, and his economic situation, as

verified by the National Office of Industrial Property, does not allow him to cover the complete costs to apply for, or maintain, the patent.

Trademarks

Law 20-00 protects all types of trademarks, including collective marks and certification marks, providing a wide definition thereof.

Registration grants the exclusive right of use over a trademark. The period of previous use (longer than six months) determines priority for registration. Priority rights for trademarks registered abroad are also recognized. New trademarks are registered on behalf of the first person that first files for registration.

Among the signs that may not be registered, we find some prohibitions that are related to the sign itself, such as (i) signs that may be used in commerce to describe the product, (ii) generic or scientific denominations of the product, colours, etc., (iii) signs contrary to public order or moral, (iv) signs that make ridicule of people, religions, countries or others, (v) signs that may deceive the public as to the nature or qualities of the product, etc.

Other prohibitions are related to existing rights, including (i) signs similar to registered (or already in-use) trademarks for similar or related products, or similar to registered labels, commercial names or emblems, (ii) signs copying, imitating or translating notorious signs, when the similarity may lead to confusion, (iii) signs that affect the personality rights of third persons, or the name, image or prestige of companies or organisations, (iv) signs that violate existing intellectual property rights, etc.

Registration applications may be filed with the National Office of Industrial Property, which after having verified within the following fifteen days that the request complies with the respective formalities and other requirements set forth in the law, gives notice of its decision to the applicant. If the office has decided that the trademark may be registered, it orders its publication, and third parties may object to registration within forty-five days thereafter. After the expiration of

this term, the office decides on the objections and grants or rejects the request.

Registration is granted for a period of twenty years, renewable for consecutive ten-year periods. Renovation applications must provide proof of use of the trademark.

Registration grants the exclusive right of use over the trademark and entitles its holder to object to any use of the registered trademark made in any manner whatsoever by third parties, apart from usual commercial indications.

Furthermore, the trademark holder cannot object to the use of its trademark by a third party, in relation to legitimately marked products that the holder itself or a person with the holder's consent or economically related thereto, has put into commerce, whether in the country or abroad, provided that the products or their packaging or labelling has not suffered any modification, alteration or deterioration.

Trade names

Law 20-00 protects distinctive signs such as trade names, labels, emblems, slogans, appellations of origin, etc.

The exclusive right to use a trade name does not arise from registration, but from its first commercial use. Protection is granted in the absence of registration and ends with the abandonment of the name, which takes place when the name has stopped being used by its holder for more than five years. However, for commercial slogans, the right of exclusive use arises from registration.

Trade names cannot be formed of indications or signs that go against public order or moral, or that may create confusion among the public regarding the nature, activities or any other aspect related to the company or establishment associated thereto, or to its products or services.

Registration is not mandatory, and provides for a presumption that its holder has legitimately adopted and used the trade name. The registration procedure is

similar to the one established for the registration of trademarks. Registration is granted for a renewable period of ten years, but for appellations of origin registration is indefinite.

6.4.2 Copyrights: Law 65-00

Article 8 of the Dominican Constitution establishes as a basic human right the recognition and protection of ownership rights over scientific, artistic and literary works. Copyrights protection had been ensured by Law 32-86 on Intellectual Property Rights, which was at the time a modern legislation that complied with the mandates of the Universal Convention on Intellectual Property Rights, to which the Dominican Republic is a member. Law 32-86 granted protection to all kinds of creative work, and provided for their registration with the National Office of Copyright (ONDA), which was entitled to take any measures to ensure the protection of intellectual property rights in the Dominican Republic.

However, the protection granted by this legislation was not effective enough to ensure an adequate protection of intellectual rights, and the Dominican Republic was facing a lot of international pressure to put into force appropriate tools to fight piracy.

Furthermore, upon becoming a member of the WTO, the country had to conform its national legislation to the provisions of the TRIPS agreement.

On 21 August 2000 a new Law on Copyright No. 65-00 was passed. The main purpose of this legislation is to provide a legal and institutional framework that conforms to the TRIPS agreement, and ensures a comprehensive protection of holders of intellectual property rights in the Dominican Republic while taking into account the best national interest. Presidential Decree No. 362-01 of 14 March 2001 contains the application regulation of Law 65-00.

Protected works

Law 65-00 protects any original intellectual creation, whether literary, artistic or scientific, that may be fixed, transmitted or copied by any existing or future printing, reproduction or divulgation methods. It also

protects independent creations deriving from original works, such as those resulting from adapting, translating or in any other manner transforming the original work.

Law 65-00 provides a non-limitative list of protected works, such as written works (books, prospects, magazines, etc.), conferences and speeches, dramatic and musical plays, works of choreography and pantomime, musical compositions, audiovisual works, drawings paintings, architectural, sculpture, carving and other artistic works, photographs, applied arts, maps, illustrations and plastic works related to geography or other sciences, computer programs and databases.

Furthermore, Law 65-00 protects, and regulates the exercise of, rights related to intellectual property rights ("related rights"), in order to fight effectively the illegal retransmission of TV programs and the unlawful reproduction of music productions that was one of the main gaps under our previous legislation. Related rights are granted to performing artists for their performances, phonogram producers for their recordings, and broadcasters (including original broadcasts by way of cable, optical fiber or other) for their radio and television programs.

Law 65-00 protects works from authors having Dominican nationality or residing in the country, or who are nationals or residents of countries belonging to the international treaties ratified by the Dominican Republic, as well as works whose first publication has been made in the country (or in a member country of ratified international treaties) or that have been published here (or in a member country of ratified international treaties) thirty days after their first publication. In the absence of international treaties, protection will still be granted to foreign works, but subject to reciprocity.

Content of copyrights

Authors are the original holders of intellectual property rights over their creations. Any rights granted thereafter to other parties, by virtue of law or contract, have a derivative nature.

Authors have both moral and economic rights over their creations. Moral rights allow authors (i) to get the credit for their creation, (ii) to object to any changes that may affect the merit of their creation, (iii) not to publish their creation or maintain it anonymous, and (iv) to take their creation out of circulation provided they have compensated any damages arising therefrom.

Moral rights are inherent to authors themselves. After their death, these rights (apart from the right to take the creation out of circulation) pass on to their heirs, or to the State in the absence of legal heirs.

Economic rights allow authors to exploit their creation through any existing or future means of utilization, publication, divulgation, copying or distribution, and to grant licenses to other parties for such purposes. Means of utilization are independent from each other, and authors may thus assign their copyrights separately for each method of utilization. The law regulates the different types of contracts and licenses for the transfer of copyrights.

After the death of the author his/her heirs become the holders of copyrights over his/her work for a period of fifty years.

The total or partial distribution, reproduction, publication or any other manner of utilization of creative works without the consent of the author or copyright holder is illegal and may be subject to civil and criminal sanctions.

In order to ensure the protection of his/her rights, the author or copyright holder may, for the reproduction or divulgation of his/her work, apply or require the application of methods, systems or devices (such as coded signals) that prevent non-authorized divulgation, transmission, reproduction or modification of the work.

Registration of copyrights

Intellectual rights arise with the creation, and are independent from their material support. Therefore the registration formalities provided in Law 65-00 are not mandatory, having the sole purpose of granting more publicity and protection to the holders of intellectual rights, without affecting their existence or the exercise of the rights arising therefrom.

In this regard, the main purpose of the registry is to grant publicity to intellectual property rights and to the agreements relating thereto, and to provide guaranties of authenticity and security to holders of copyrights and related rights, and to the agreements relating thereto.

Any creative work protected by copyrights, artistic performances, phonograms and broadcasting emissions protected by related rights, as well as any agreements in respect thereto and any judgments or decisions affecting such rights, may be registered. In order to be registered, samples of the work must be deposited at the Registry.

Associations for the collective management of copyrights, which are regulated in detail by Law 65-00, must also register with the ONDA.

Presidential Decree 362-01 provides the requirements to be complied with in order to register copyrights and related rights.

National Office of Copyright

The "Oficina Nacional de Derechos de Autor (ONDA)" is the national authority charged of ensuring the protection of copyrights, and the enforcement of the law. For these purposes, the law has granted to it ample administrative, supervisory and arbitral attributions.

Its supervisory functions are reinforced by the obligation for all importers, distributors and traders of goods, services and equipment related to intellectual property or related rights to be registered with the ONDA.

ONDA may also take any precautionary measures that may be necessary to prevent the violation of copyrights.

Sanctions

Law 65-00 provides administrative, civil and criminal sanctions to the violations of copyrights, among which the affected party may choose to protect its interests.

Criminal sanctions include fines and prison of up to three years. Administrative measures may be applied by the ONDA and include warnings, fines, temporary or permanent closure of establishments, seizure of illegal copies or machinery used for their production, destruction of illegal samples and others.

6.5 Purchase of real estate

The acquisition of real property rights by foreigners is not subject to any special condition, falling under the same legal regime applicable to Dominican nationals.

6.5.1 Registration system

Law 1542 of 1947 on Land Registration establishes the Torrens system of real property registration. Real property rights registered under this system are deemed to be known by, and thus binding upon, third parties.

Therefore, the presentation by the seller of a Property Certificate issued on his behalf by the corresponding Registry of Titles should in principle be enough to prove that the seller is entitled to transfer the ownership rights of the property. Any mortgages or charges would also be mentioned in the certificate.

However, it is always advisable to verify directly the status of the property at the Registrar's offices, whose records are open to any interested party, and even obtain a written confirmation on the result of these researches, before purchasing the property. This is usually achieved through the request of a certification on the status of the property to the Registry of Titles.

This system protects the buyer against any sale or mortgage that, although previously signed, has not yet been registered when the buyer files his contract for registration.

For these same reasons, the prompt registration of the sale is very important. In order to do so, the buyer must file at the Registry of Titles an original of the purchase agreement, which should be legalized by Public Notary, together with the Property Certificate issued on behalf of the seller, which will then be cancelled and exchanged for a new one on behalf of the buyer.

6.5.2 Transfer duties

The registration of real property transfers at the corresponding Registrar of Titles requires the payment of the following taxes and duties:

- (i) 4% of the purchase price;
- (ii) 12% of (i);
- (iii) in some cases, 2% of the purchase price on the seller's account; and
- (iv) stamps for purchase price/1,000 x 2.

6.6 Securities

The Civil Code, the Commercial Code, the Land Registration Law and other special laws regulate the granting of mortgages and liens.

6.6.1 Mortgages

In general, any kind of real property right may be mortgaged, whether ownership, use or exploitation rights. Fixtures are deemed to be real property and as such can also be mortgaged. Mortgages on future real property are not valid, but creditors' interests extend to improvements made to the property after the mortgage is granted.

The secured obligation must be valid, and its nullity would also invalidate the mortgage. The secured obligation may however be eventual or conditional, in which case the mortgage would also be so. Furthermore, mortgages may be granted as security for future obligations, such as financial instruments like credit lines and credit cards.

For the mortgage to be valid and binding upon third parties the debtor must have a duly registered title. Persons with conditional property rights may grant mortgages under the same conditions that affect their rights.

Mortgages must be registered at the Registry of Titles of the place where the property is located by filing the mortgage agreement and the Property

Certificate. The Registry makes a note of the mortgage on the Property Certificate and issues a Mortgage Certificate on behalf of the creditor. The date of registration is the date of filing, although the material issue of the certificates takes place a few weeks later.

The following taxes must be paid upon registration:

- (i) 5/1,000 of the loan amount;
- (ii) 12% of (i);
- (iii) Internal Revenue Stamps of RD\$8.00 for the first RD\$2,000 and RD\$2.00 for every 1,000 or fraction; and
- (iv) Land Court Stamps from RD\$1.00 to RD\$5.00.

The registration gives the creditor priority rights over all other creditors who have not registered their security interest on the property before him. In this case the creditor will be entitled to be paid first from the proceeds of the sale of the property, with the sole exception of privileged creditors (employees, tax office, legal fees, etc.).

Any creditor with a mortgage may initiate a procedure to seize the property, being bound to comply with certain publicity and notice requirements in order to allow other creditors to join the process. All registered creditors must be notified, but whoever registered his security interest first recovers first. The creditor may, by virtue of a "persecution right" granted by the law, seize the property in the hands of third parties who may have gained title after the mortgage was registered.

6.6.2 Liens

Liens on personal property may be non-possessory and possessory, depending on whether the debtor keeps the goods in his possession or not, but in business practice possessory liens are very rare.

Registration of liens

In the case of non-possessory liens certain registration systems are available in order to protect creditors against an eventual transfer or additional lien

of the pledged assets by the debtor. In the absence of these mechanisms, the legal presumption that "whoever has possession of a good has title over it" will protect any third party who has acquired the property against the creditor's tries to execute the pledge.

Law 6186 of 1966 regulates non-possessory liens on consumer goods, equipment, inventories and agricultural products. The creditor may register its security interest at the Peace Court, and this registration will allow him to seize and execute the pledged assets, even when they have been transferred to third parties. Furthermore, the registration of additional pledges is forbidden, and the creditor will thus have priority over any other creditors.

Another system that can be used is the one provided by Law 483 on Conditional Sales. The parties may agree that the seller will keep the property rights over the goods until receiving full payment of the sale price, and register such agreement in the office established for these purposes. Upon noncompliance by the debtor, the creditor may as owner recover the goods from any third person.

This registry works better than the one created by Law 6186, and some creditors thus prefer to structure their transactions under this scheme. The only drawback to this mechanism is that the taxes applying to the transfer of property will have to be paid at the moment of registration.

Finally, when vehicles are pledged the creditor may, in addition to any other measures, file a transfer opposition to the Vehicle Department, which will then be mentioned in the vehicle registration. There are also registration systems for ships and aircrafts, under Laws 607 and 505, respectively.

Liens on intangible property

Liens may be granted on intangible property like stock, securities, credits, bank accounts, contracts, etc. When an intangible is pledged the creditor is required to give notice to the debtor of the pledged obligation. These liens may also take the form of "accessory transfers", where the debtor transfers intangibles to the creditor as a secondary method of payment. This method is mostly used with receivables.

The creditor wishing to execute a lien on intangible assets (or a possessory lien) has the choice of provoking a public sale or requesting to the court that the asset be transferred to him. In this last case the court appoints an officer to evaluate the assets, and the creditor is bound to pay any difference between the amounts owed and the value of the lien.

VII. LEGAL FRAMEWORK FOR FOREIGN PERSONS

The foreign investor whose business or activity requires him to visit, or move his residence to, the Dominican Republic, will find in this chapter information on the main laws and provisions that will regulate his entry and stay in the country, as well as his civil and family life in the Dominican territory.

7.1 Entry and residence

7.1.1. Entry requirements

In general, foreign citizens must obtain a Dominican visa in order to enter the country. Visas are classified in Diplomatic, Official, Courtesy, Business, Dependants, Tourism, Residence and Student. The Foreign Service of the Dominican Republic issues these visas abroad or by the Ministry of Foreign Relations in the country.

Citizens of countries that have signed an agreement with the Dominican Republic for the exoneration of visa requirements may enter the country for a period of 60 days, upon the purchase of a "tourist card" at the arrival port for the amount of US\$10.00.

7.1.2 Obtaining Dominican residence

Foreigners may acquire the right to reside in the country through (i) obtaining a residence visa at the Dominican Consulates abroad or at the Ministry of Foreign Relations in the country, and (ii) obtaining a provisional and then permanent residence card at the General Immigration Office.

Residence visa

The applicant of a residence visa must file the following documents:

1. Letter of request
2. Duly completed Form 509-Ref.
3. Letter of guarantee from a Dominican person or company, or a foreigner residing in the country.
4. Police Record.
5. Health certificate.
6. Work contract, bank letter or other proof of funds.
7. Seven frontal photos 2" x 2" and three side photos.
8. Copy of birth certificate.
9. Passport photocopies.
10. Certification from the General Immigration Office of the applicant's last date of entry in the country.

If the applicant wishes to obtain a residence visa for his/her spouse, the same documents must be presented in relation to the spouse, apart from those indicated in points 2 and 5. Furthermore, the applicant must file a copy of the marriage certificate. For children, it is enough to comply with the requirements 6, 7 and 8.

The procedure takes from 10 to 12 weeks. The residence visa is valid for 60 days, and within this term the applicant must file a residence request before the General Immigration Office.

Residence card

The request for a provisional residence must be joined by the following documents:

- Request letter
- Duly completed Form B-1-A.
- Photocopies of passport and residence visa.
- Certification of residence visa issued by the Ministry of Foreign Affairs.
- Letter of guarantee from a Dominican citizen or resident legalized by Public Notary.
- Six 2" x 2" photos (four frontal and two side photos).
- Police record issued by the National Police.

The provisional residence card may be obtained within two months and is valid for one year. Upon its expiration the applicant may request a permanent residence card, which is valid for renewable periods of three years. Foreigners with permanent residence in the country may obtain a personal identity card.

Legalization and translation of documents

All documents issued abroad which are filed at the Ministry of Foreign Relations or at the Immigration Office must be legalized by the competent authorities of the country of origin and by the closest Dominican Consulate. Furthermore, a Judicial Interpreter must translate documents not written in Spanish.

7.2 Acquiring Dominican nationality

Dominican nationality is normally acquired: (i) by being born in the Dominican territory, (ii) by having a Dominican parent, or (iii) through the naturalization procedure examined hereafter.

7.2.1 Residence requirements

Apart from other special cases provided by law, a foreign person may become a Dominican citizen after a continuous residence in the country of at least two years. These residence requirement is reduced to six months (i) if the foreigner has fixed legal domicile in the country, (ii) if the foreigner owns a business or real

state in the country, or (iii) if the foreigner has married a Dominican citizen.

Trips abroad of up to a year made with the intention of returning to the Dominican Republic are not considered as an interruption of continuous residence in the country.

7.2.2 Naturalization procedure

The naturalization request is made to the President of the Republic via the Ministry of Police and Inner Affairs, and should include the following:

1. Basis on which the nationality is requested.
2. Police record issued by the appropriate authority of the country of origin.
3. Birth certificate.
4. Explanation if the applicant has already changed its nationality.
5. Five 2" x 2" photos.
6. Any other document supporting the request, such as copies of the residence card, guarantee letter, copies of Property Certificate, etc.

The President of the Republic grants the nationality by decree, at his sole discretion. After the decree is published in the Official Gazette, the applicant must swear his loyalty to the Dominican Republic, and a mention of this oath is also published in the Official Gazette.

The naturalization procedure lasts from one to two years.

The President may revoke the nationality if the naturalized person changes his legal residence to another country within the year following the date of naturalization, or if he leaves the country for a period of ten years.

7.3 Important aspects of Dominican family law

7.3.1 Marriage

Foreigners intending to marry in the Dominican Republic must present the following documents:

1. Original passport and a copy.
2. Letter certifying their single status issued by the appropriate authority in the country of origin and legalized by the Dominican Consulate.
3. Tourist card, residence card or personal identity card, as applicable.

The marriage ceremony is performed by the Civil Status Officer of the place of residence of any of the spouses in the presence of at least two witnesses. The Marriage Act contains the name of the spouses, a declaration that they have been united in matrimony, the date of celebration, and the signatures of the Officer, the spouses and the witnesses.

A religious marriage has the same legal effects than a civil marriage. The minister celebrating the marriage must only remit a copy of the marriage act to the Civil Status Officer within the next three days for the purpose of registration.

7.3.2 Property relations of married couples

The Civil Code regulates property relations between married couples. The community of property system is the so called "legal regime" which applies automatically to all couples who get married in the Dominican Republic and do not expressly choose another system.

Within the community regime there are three kinds of property: (i) the common property, which belongs jointly to both spouses, (ii) the husband's own property, and (iii) the wife's own property.

The community is formed by all the personal property of the spouses, whether acquired before or

during the marriage, as well as real property acquired during the marriage. Spouses' own property basically includes real estate acquired before the marriage, inherited property and reinvestments of own property.

The husband is entitled to manage, and dispose of, all the property, and the wife cannot even dispose of her own property without his consent. The wife has only the right of administration, not of disposition, over the assets obtained from her personal work, which are part of the community but are considered to be the wife's "reserved property".

Certain mechanisms, in practice rarely applied, are established in order to protect the wife against the bad management of the husband, such as judicial separation of property, legal mortgage over the husband's real property, renunciation of the community, etc.

The dissolution of the community, by divorce or death of one of the spouses, will imply: (i) the determination of divisible assets, (ii) the recovery by each spouse (or their heirs) of their own property, and (iii) the distribution of the remaining common property between the spouses (or their heirs). This liquidation and distribution of the community may be made before Public Notary or, if the parties do not agree, in court.

Couples wishing to adopt a property regime different than the community system can choose any of the additional regimes provided by law, such as property separation, dowry regime, community reduced to earnings, universal community, etc., but they can also choose a foreign law or create their own special system.

In order to do so the spouses must, prior to the celebration of marriage, sign an agreement to that effect before a Public Notary. The Officer performing the marriage must register this agreement in the Marriage Act. After getting married the spouses cannot change their regime, and even if they divorce and then decide to marry each other again they have to keep the same property system they had during their first marriage.

7.3.3 Divorce

Divorce may be: (i) by mutual consent, (ii) for specific reason, or (iii) special.

Divorce by mutual consent

This type of divorce may only take place after two years of marriage and before thirty. Furthermore, the husband should not be older than 60 years nor the wife older than 50 years.

Couples who decide to divorce need to sign an agreement before a Public Notary where they declare their intention to get divorced and provide, among other things, for the distribution of property, the custody of children and the alimony payments. The Judge of First Instance who, after verifying that all formalities have been complied with, issues a judgment admitting the divorce, which cannot be appealed, by any of the parties must ratify this agreement. Afterwards the divorce must be registered, pronounced, and published within certain deadlines.

Divorce for specific reason

The divorce for specific reason may be requested in the event of incompatibility, absence, adultery, criminal conviction, bodily harm, abandonment, and alcoholism or drug addiction.

The competent court is the Court of First Instance of the domicile of the defendant spouse. This court, after examining the evidence and hearing the witnesses from each party, orders the divorce on behalf of one of the spouses and decides, among other things, on the custody of children, if any, and on the alimony payments. In general, children younger than four years should remain with the mother, and older children should remain with the parent obtaining the divorce, but the court can always take into account any special circumstances.

Once the term to appeal, which is two months, has expired, certain registration, pronouncement and publication formalities must be fulfilled.

Special divorce

Special divorce applies only to foreign or Dominican couples residing abroad that decide to divorce by mutual consent. The spouses need to sign an agreement before a Public Notary or similar officer

in their country of residence where, apart from declaring their intention to get divorced and providing for the distribution of property, the custody of children, and alimony payments, they give exclusive jurisdiction over the divorce to the Judge of First Instance. A Dominican Consulate must legalize this agreement.

At least one of the spouses must be present at the hearing, while the other may be represented by a duly notarized and legalized power of attorney. The judge will also require copies of the marriage certificate and the birth certificates of children, if any. If all formalities have been met the judge ratifies the agreement and admits the divorce.

The process at the court, plus the registration, pronouncement and publication of the divorce, takes from one to four weeks. Furthermore, in order to be valid abroad the divorce judgment must be certified by (i) the Attorney General Office, (ii) the Ministry of Foreign Relations, and (iii) the embassy or consulate of the country where the divorce is to be valid.

7.3.4 Adoption

Foreign persons may adopt minors in the Dominican Republic, under the same conditions as Dominican nationals. Adoption is regulated by Law 14-94, which contains the Code for the Protection of Minors, and its regulation application Decree 59-95.

Under this legislation, the Regulatory Body of the Protection System of Minors is charged of coordinating adoption procedures. Under Resolution 1-99, the Technical Board of this organ handles all adoption requests.

All adoption requests have to comply with the provisions of the International Convention on Minors Protection and other international measures, and are handled in the child's interests.

Types of adoption

- (i) Simple adoption. This modality does not create a family relation between the adoptive child and the adopting family, transferring only the rights of "patria potestad" (parental

authority) to the adopting person. Simple adoption may be revoked in certain cases (i.e. by agreement between the parties or by wish of the adoptive person upon reaching legal age).

- (ii) **Privileged adoption.** This adoption is irrevocable and grants the adopted person the same legal rights than a legitimate child. The minor stops belonging to his natural family and becomes a member of the adopting person's family, with all legal consequences resulting therein, such as change of name, rights of inheritance within the adoptive family and vice versa, etc. Privileged adoption can only be granted in relation to minors who are orphans, abandoned or of unknown parents.

Requirements for adoption

Persons wishing to adopt a minor in the Dominican Republic must fulfill the following requirements:

- (i) to be at least 25 years old;
- (ii) to belong to a man and woman couple who have lived together for more than five years;
- (iii) to be at least 15 years older than the adopted minor;
- (iv) to have the consent of the parents or legal representatives of the minor, or the Judge of Minors if the child is an orphan;
- (v) to live together in the country with the minor for at least 30 days if the child is more than 15 years old, or 60 days if the child is less than 15;
- (vi) to show a declaration of loss of parental authority in the case of abandoned children; and
- (vii) if the adoptive parents have children older than 12 years, to present them at the court.

Adoption procedure

The adoption request is made to the Director of the Regulatory Body of the Minors Protection System, and must contain all the relevant information and documentation about the adoptive parents, such as proof of solvency, employer's letter, health certificate, certificate of good behavior, joint photograph of adoptive parents, child and biological parents, psychological and social studies about the couple made by the competent authorities of their country of origin, official certification of country of origin of the couple stating that the nationalization procedure of the minor will be completed, report on the feasibility of the child's integration into the adoptive family, report on their social and moral standards, marriage certificate, birth certificate, etc.

After the request has been filed and the adoptive parents and child have lived together for the required period, they will be interviewed by the regulatory body, which will thereafter issue a Physical, Mental, Social and Moral Certification, when applicable.

The adoption has to be declared by the Court of Minors at the request of the Protector of Minors, after this office has decided favorably on the adoption request made by the adoptive parents.

In order to be valid in the country and abroad, the judgment declaring the adoption shall be:

- (i) certified by the Civil Registration Office, the Attorney General Office and the Ministry of Foreign Relations;
- (ii) published in a newspaper of nationwide circulation;
- (iii) filed at the Central Electoral Board; and
- (iv) filed at the appropriate Civil Status Office in order to be registered in substitution of the birth certificate of the minor.

Information on the adoption

Adoption files are kept in record for a period of 30 years. The only persons who may have access to

these files are the adopting person, and the adoptive child upon reaching legal age.

7.3.5 Inheritance

Different ranks of heirs are established in order to regulate the transfer of a deceased person's property. The inheritance shall be distributed equally among the living relatives belonging to the highest rank. There are six ranks of heirs:

- *First:* descendants (without distinctions based on sex or seniority)
- *Second:* parents and siblings
- *Third:* ascendants
- *Fourth:* collaterals
- *Fifth:* spouse
- *Sixth:* the State

Legal reserve

Dominican laws establish a legal reserve on behalf of children and parents, under which a part of the deceased's property must be kept for them and cannot be thus donated by will or testament. The heirs entitled to such reserve may thus invalidate any donations that reduce their inheritance below the legal limit.

The legal reserve is 50% of the deceased's property if he/she leaves one child or one or both parents, 66% if he/she leaves two children, and 75% if he/she leaves three children or more.

Taxes

The taxes to be paid for the inheritance range from 1% to 32%, depending on the rank of heirs who receive it and the amounts inherited. For example, in an inheritance having a value of more than RD\$500,000, direct descendants or ascendants would pay a tax rate of 17% of such value, second rank collaterals would pay 21%, third rank collaterals would pay 27%, and

other collaterals, as well as heirs not related to the deceased (like beneficiaries of donations), would pay 32%.

Statements pertaining to the payment of taxes must be made to the Internal Revenue Collector of the place where the inheritance was opened (i.e. place of decease) within thirty days after the date of opening (i.e. date of decease).

Inheritances of foreign persons are subject to this tax in relation to the property located in the Dominican Republic. Furthermore, for persons residing abroad who inherit property in the country the applicable tax rate will be increased by 50%.

Transfer of titles

The liquidation and payment of taxes is necessary in order to obtain the transfer of titles, accounts and other rights of the deceased on behalf of the heirs. In addition, certain procedures must be followed that will depend on the type of asset.

For example, in the case of real property, a process of heir determination must be filed at the Higher Land Court in order to obtain the issue of new property certificates on behalf of the heirs. Furthermore, the transfer of bank accounts requires, among other things, the presentation of a notary statement signed by several persons who declare that the applicants are the rightful heirs of the deceased.

7.4 Foreigners under Dominican criminal law

The Dominican Criminal Code sets forth three types of criminal violations depending on their seriousness: misdemeanors ("contravenciones"), felonies ("delitos") and crimes ("crimenes").

Penalties applicable to felonies include: deportation, temporary prison of up to two years, limitation of exercise of certain civic and family rights, and fines. Penalties applicable to crimes include: detention, 2 to 5 years of prison, 20 or 30 years of prison, and civic degradation.

Criminal courts are also entitled to condemn persons found guilty of felonies or crimes to the payment of indemnities to the victims. Furthermore, property may be confiscated when such property is the evidence or the results of a felony or crime.

Violations subject to special laws include: (i) the issue of checks without funds, which is a felony, (ii) drug trafficking and money laundering, which are crimes, (iii) forest felonies like illegal removal or destruction of trees, forest fires, etc., and (iv) fiscal offenses and felonies, which are sanctioned with fines, prison, confiscation of property, closing of business, prohibition of professional practice, cancellation of permits, etc.

7.4.1 Crimes of Dominican jurisdiction

Dominican courts have jurisdiction to try foreigners who violate criminal laws in the country, even when the victim is also a foreign person. On the contrary, violations committed by foreigners abroad do not fall under the jurisdiction of Dominican courts, even when the accused is a Dominican resident or when the victim is a Dominican citizen.

Dominican courts may try crimes committed by Dominican citizens abroad when the following conditions are met:

- (i) the violation is punished by Dominican laws;
- (ii) the accused has not been tried abroad;
- (iii) Dominican authorities have received a formal complaint from the victim or the foreign government; and
- (iv) the accused is in the country.

7.4.2 Extradition

Extradition provides the formal surrender of an individual by one country to another so that the person be tried or sentenced for crimes committed in that country.

The extradition of Dominican citizens is prohibited. This prohibition applies also to foreigners, which have obtained Dominican nationality before committing the crime that motivates the extradition request.

Extradition procedure

In the absence of international treaties, Dominican laws provide that the country according to reciprocity principles between nations can grant extradition. The President of the Republic is charged of deciding whether to accept or not an extradition request made by a foreign government.

The request is made through diplomatic channels to the Ministry of Foreign Relations who, after reviewing it sends it to the General Attorney Office. This office should carry out all relevant investigations and question the person being requested for extradition, before making a decision. The decision of the General Attorney is forwarded to the Ministry of Foreign Relations who then sends the file with a recommendation to the executive power.

The final decision taken by the President is communicated to the requesting State via the Ministry of Foreign Relations.

Extradition treaties

The Dominican Republic has signed extradition treaties with the United States and Spain. Furthermore, the country is a member of the Inter-American Extradition Convention of 1981. Allowing for a few variations, these treaties have the following elements:

- The offense must have a certain importance and lack political motivations.
- An official request must be made through the proper channels.
- The country making the request must have jurisdiction to try the offense that motivates the request.
- The country will be obliged to surrender the accused if all conditions are met.

- The accused cannot be tried or sentenced for a crime different than that which motivated the extradition.
- Extradition cannot be granted if the statute of limitations for the offense has expired, or if the accused has already been tried and served his sentence.
- If the extradition is requested to serve a sentence, the pending sentence must be at least six months.
- Extradition may be delayed for health problems of the accused, or to allow the accused to be tried and serve sentence in the country for any other crimes that he may have committed in its territory.

7.4.3 Deportation

Foreigners which undertake any of the following activities in the Dominican territory may be arrested and deported to their country of origin:

- Violation of immigration laws, such as illegal entry in the country, use of false documents, stay in the country after expiration of visa, etc.
- Subversive activities against the Dominican Government.
- Drug trafficking.
- Conviction of a crime within five years after entering the country.
- Practice of prostitution or related activities.
- Becoming a public burden within five years after entering the country.

The officers charged of investigating these cases are the immigration inspectors, who may request arrest orders to the Immigration Director. However, the foreigner cannot be deported without having previously the chance to defend himself from the charges of which he is accused.

VIII. LITIGATION

8.1 Legal and judicial system

The Dominican Republic is a civil law jurisdiction based on the Napoleonic Codes adopted in France at the beginning of the nineteenth century, which were formally incorporated into the Dominican legal system in the year 1884.

There is a Civil Code, a Civil Procedure Code, a Commercial Code, a Criminal Code and a Criminal Procedure Code. Dominican judges are greatly influenced by French judicial precedents when interpreting the provisions of such codes.

The Dominican judicial system is also largely based on the French judicial organization system. It is composed as follows:

- (i) Peace Courts, which are formed by one judge and may be considered as the competent courts for small cases. There is a Peace Court in each Judicial District.
- (ii) Courts of First Instance, which are formed by one judge and have jurisdiction over all cases non-expressly attributed by law to another court. There is a Court of First Instance in each Judicial District. These courts are divided into a Criminal Chamber and a Civil and Commercial Chamber. Depending on the size of the district, these chambers may be in turn subdivided into various chambers with their own territorial jurisdiction. This is the case of the Court of First Instance of the National District, which is divided into five Civil and Commercial Chambers and ten Criminal Chambers, each having jurisdiction over a county ("circumscription").

- (iii) Appeals Courts, which are formed by five judges and review the judgments rendered by the Courts of First Instance. There is an Appeals Court in every Department, each Department comprising five Judicial Districts. These courts may be divided into a Criminal Chamber and a Civil and Commercial Chamber.

- (iv) Supreme Court of Justice, which is formed by sixteen judges and may review the judgments rendered by all other courts, but only in questions of law, without going into the facts of the case.

In addition, there are other specialized courts such as Labor Courts, Administrative Courts and Land Courts.

In the Dominican Republic there are no juries and it is thus the judge who decides the case and pronounces the judgment. Since 1994 judges are appointed by 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 power from the executive and legislative branches.

8.2 Jurisdiction of Dominican courts

The Dominican Republic follows the Calvo doctrine, under which Dominican courts have jurisdiction over all disputes arising from events taking place totally or partially in the Dominican territory. Nevertheless, courts recognize that, as a result of the principle of contractual freedom, the parties may choose to submit their disputes to foreign courts or international arbitrators.

However, important restrictions to this freedom result from the fact that disputes falling under the scope of laws or provisions considered to be of public order, such as Law 173 on the protection of local agents of foreign companies, cannot be submitted to foreign jurisdictions, since Dominican courts have exclusive jurisdiction over them.

Furthermore, the fact that the notion of public order is not clearly defined makes it sometimes difficult to differ the matters that can be submitted to a foreign or international forum from those which have to be settled by Dominican courts.

Finally, pursuant to Law 1494 of 1947, all disputes arising from special agreements signed between the State and foreign investors must be submitted to Administrative Courts, which have exclusive jurisdiction over all claims where the public administration is involved.

8.3 Foreign elements in Dominican courts

Civil and procedure laws regulate the participation of foreign elements in the procedures followed before Dominican courts.

8.3.1 Choice of foreign laws

As a result of the principle of contractual freedom, foreign laws may be chosen as the applicable legislation to an agreement signed in the country, as long as such laws do not contradict public order provisions, which cannot be disregarded by private agreements.

Foreign laws may thus be accepted and considered valid by Dominican courts, and the interested party must then present the proof of its contents. If such a proof is not provided, the court will settle the dispute based on the assumption that the foreign law is identical to Dominican law.

8.3.2 Requirements for foreign plaintiffs

Pursuant to Articles 166 and 167 of the Civil Procedure Code, foreign plaintiffs may be required by the other party to deposit a "judicatum solvi" bond as a guarantee for the payment of the judicial costs and indemnities that might result from the claim.

This requirement applies to foreign persons and companies who do not have their legal residence in the country. Since there is no legal provision limiting the amount of the bond, the Dominican defendant usually requests exorbitant amounts as a way to delay the procedure. The decision taken by the judge fixing the amount of the bond may be appealed through the usual channels, that is, first at the Appeals Court and then at the Supreme Court of Justice, and all this before the case is tried by the judge. Thus the request of this bond by the Dominican party may delay the process for years.

It should be noted that the Dominican party may validly waive the right to request the bond in the event of litigation.

Laws 20-00 of 8 May 2000 on Industrial Property and 65-00 of 21 August 2000 on Copyright have exempted foreign companies and individuals from the payment of this bond when filing claims with judicial courts related to violations of intellectual property rights.

8.3.3 Filing foreign documents

In order to be filed at Dominican courts private documents signed abroad must comply with the following requirements:

- (i) be legalized by Public Notary or similar officer in the foreign country;
- (ii) the notary's signature must be certified by the appropriate authority in the foreign country;
- (iii) the document must be certified by the closest Dominican Consulate;
- (iv) the Consul's signature and capacity must be certified in the Dominican Republic by the Ministry of Foreign Relations.

Official documents issued abroad must be authenticated by the appropriate diplomatic or consular agency of the country of origin, and comply with the requirements (iii) and (iv).

Documents written in a foreign language should be officially translated into Spanish by a Judicial Interpreter in the country or by a similar officer in the country of origin, in which case the signature of the translator must also fulfill the requirements (ii), (iii) and (iv).

All these requirements also apply whenever foreign documents are filed at any Government office.

8.3.4 Enforcement of foreign judgments

Foreign judgments or awards are not enforceable in the country until a Dominican court declares that such decision is valid and enforceable in the Dominican territory.

The request to obtain this declaration or “*exequatur*” must be made to the Court of First Instance, which reviews the decision and verifies mainly: (i) that it was issued by a competent court, (ii) that the decision is not subject to any further appeals or remedies in the country of origin, (iii) that the defendant was allowed to exercise the right of defense, and (iv) that the decision does not contradict Dominican laws or internal public order.

This process usually becomes a litigation similar to ordinary claims filed at the court, and can thus take years.

8.4 Arbitration

Persons and companies may choose to avoid judicial litigation and solve their business disputes through out of court settlements, which generally provide faster and more efficient solutions than judicial courts. In the Dominican Republic it is possible to submit conflicts to arbitrators or conciliators as long as such conflicts do not refer to public order laws.

8.4.1 Local arbitration

Procedure laws set forth an arbitration mechanism for business disputes under the jurisdiction of the Civil

and Commercial Chamber of the Court of First Instance. However, this system offers no significant advantages in relation to normal judicial procedures. Much more convenient is the arbitration system created by Law 50-87 on Chambers of Trade and Production.

In application of this legislation, which allows Chambers of Trade and Production to set up arbitration councils in their respective jurisdiction, the Chamber of Trade and Industry of the National District created an Arbitration and Conciliation Council (ACC), which can act as arbitrator for the solution of disputes arising between individuals and/or companies. Its arbitration regulation was largely inspired in that of the International Chamber of Commerce (ICC) and has been working effectively for the last ten years.

Pursuant to Law 50-87 ACC decisions are definite and enforceable, not being subject to any appeal before judicial courts. This system has thus been widely used by the national business community, since it offers more guarantees for quick and fair dispute resolutions than the courts.

8.4.2 International arbitration

In the Dominican Republic the parties to an agreement may grant jurisdiction to international arbitration or conciliation courts for the solution of conflicts arising between them. However, apart from Law 50-87, Dominican laws do not recognize the enforceability of out of court settlements. Furthermore, the country is not a member of any international convention on arbitration or conciliation.

Therefore, the awards obtained from international arbitrators could have a limited effect in the country, since such decisions cannot be enforced in the Dominican territory unless an authorization in that regard is obtained from Dominican courts, through the “*exequatur*” procedure mentioned before.

PELLERANO & HERRERA
ATTORNEYS AT LAW

Av. John F. Kennedy No.10
Santo Domingo, República Dominicana
Apartado Postal 20682
Tel. (809) 541-5200
Fax (809) 567-0773

Calle Paseo Oeste
La Rosaleda, Edif. Bionuclear
1er. Piso, Santiago
República Dominicana
Tel.: (809) 580-1725
Fax : (809) 582-2170

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

CPS-1340
P.O. Box 149020
Coral Gables, FL 33114-9020
United States of America

www.phlaw.com
ph@phlaw.com