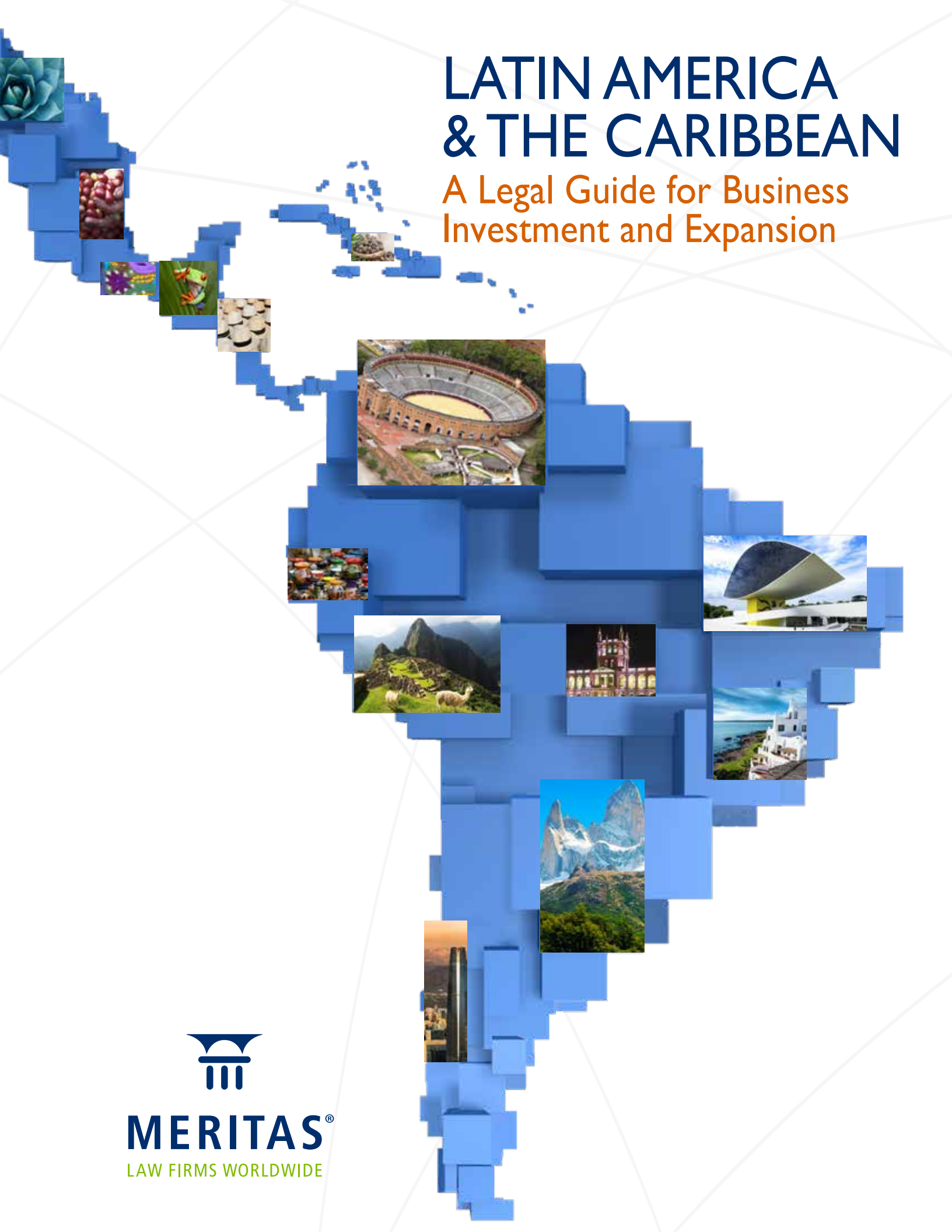


LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business
Investment and Expansion



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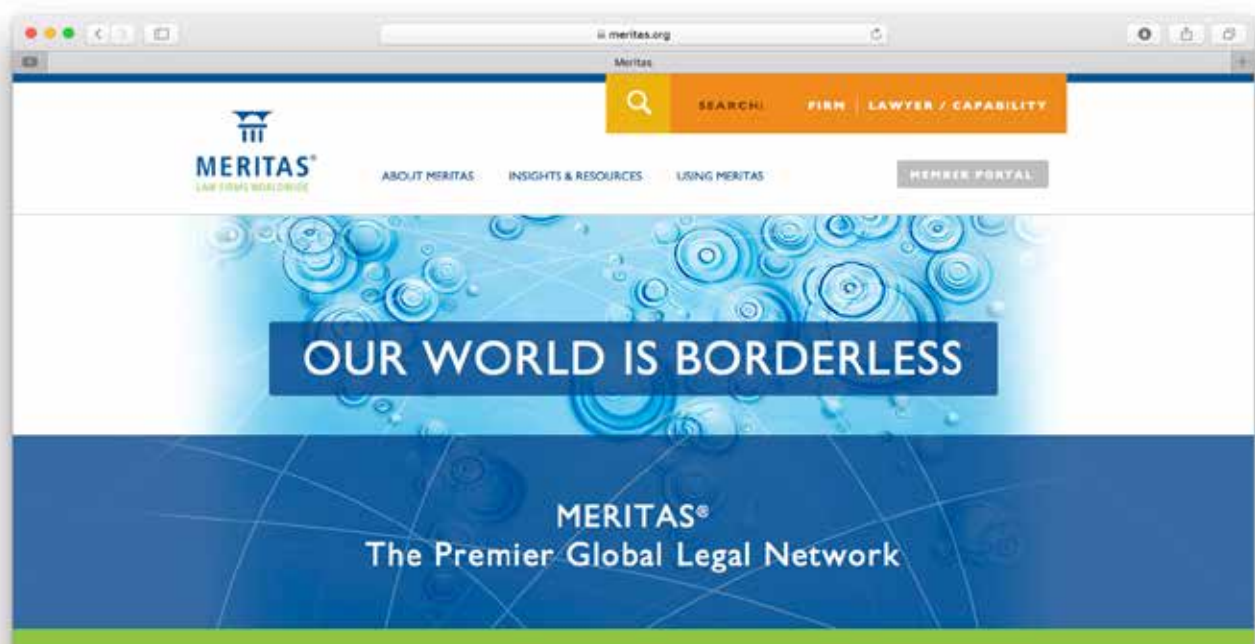
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DOMINICAN REPUBLIC

FIRM PROFILE: **RUSSIN, VECCHI & HEREDIA BONETTI**

RVHB is the office in the Dominican Republic of Russin & Vecchi, an international law firm with presence in Asia, Europe, North America and the Caribbean.

RVHB is committed to excellence and value-added services that the firm provides as well as the innovation and improvement of the legal framework for business in the Dominican Republic, standing by the rule of law.

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1. What role does the government of the Dominican Republic play in approving and regulating foreign direct investment?

The Dominican Republic offers outstanding advantages to foreign and national investors. The significant incentives and facilities offered by the Dominican State complement the many inherent factors that make this Caribbean country an attractive target for investments.

The Foreign Investment Law N° 16-95 of 1995 and its Ruling of Application N° 380-96 grant foreign investors exactly the same rights as domestic investors, eliminating any discrimination to the foreign investment, which is highly encouraged by our government. The most important achievement provided by Law No. 16-95 is the opening of sectors of economic activity that were previously defended or restricted for the registration of foreign investments and consequently few sectors require approval.

Investment in the Dominican Republic generally has significant guarantees against political risks, inconvertibility and expropriation, granted by institutions such as the Overseas Private Investment Corporation (OPIC), the United States of America agency that provides financing and insurance for major international projects and the Multilateral Investment Guarantee Agency (MIGA), a World Bank agency. The Center of Export and Foreign Investment of the Dominican Republic (CEI-RD), created by Law 98-03 of

the year 2003, is the official agency of the Dominican Government for the promotion and development of the Dominican exports and attracting foreign investment to the country, in order to contribute to the competitive insertion of the Dominican Republic in international markets.

2. Can foreign investors conduct business in Dominican Republic without a local partner? If so, how does the Dominican Republic government regulate commercial joint ventures between foreign investors and local firms?

Yes, foreign investors can conduct business in the country without a local partner, and in general, the Government does not intervene with joint ventures between foreign investors and local firms, except in the construction works ordered by the Dominican State.

The Law 322 of 1981 establishes that in order for a foreign company or individual to participate in a public procurement process for construction of works ordered by the Dominican State, it requires the association with a national or mixed capital company, according to the case. The mandatory participation of the national company will be between 30 and 50% in the contract with the Dominican State.

On the other hand, different types of legal vehicles have traditionally existed in the Dominican Republic to organize business. While there are several corporate forms in the Dominican Republic, the most used corporate vehicles are:

Limited Liability Company – LLC (Sociedad de Responsabilidad Limitada, S.R.L.): An LLC can be formed with a minimum of two partners and a maximum of 50. To date, its corporate capital has to be at least DOP\$100,000 (equal to USD2,100 approx.), and is divided in quotas of at least DOP\$100 that are represented in nonnegotiable titles, and the partners' liability is limited to the value of their contribution. The tax for incorporating commercial entities is 1% of their corporate capital.

Individual Entity of Limited Liability (Empresa Individual de Responsabilidad Limitada (E.I.R.L.): An Individual Entity of Limited Liability, as indicated by its name, can only be incorporated by one individual and its commercial name chosen freely. There is no minimum or maximum for its capital and the entity can be transferred. The entity is run by a manager who can be the owner or any other individual appointed by the owner.

Joint Stock Company (Sociedades Anónimas, S.A.): For its incorporation, a minimum of two shareholders is required, and there is no maximum. To date, the authorized capital requirement is at least DOP\$30,000,000.00 (equal to USD640,000 approx.) from which at least 1/10 must be paid-in, and its shares, which are freely negotiable, must have a nominal value of at least DOP\$1.00.

Simplified Joint Stock Company (Sociedad Anónima Simplificada, SAS): It is incorporated with the participation of two or more shareholders, and there is no maximum of shareholders that can be part of it. The minimum authorized capital has to be of at least DOP\$3,000,000.00 (equal to USD\$6,300 approx.) from which at least one tenth must be paid-in. The value of its shares is established by the bylaws, and they can only be nominative.

3. What laws influence the relationship between local agents and distributors and foreign companies?

There are two main laws that influence the relationship between local agents and distributors and foreign companies, Law 173-66 and DR CAFTA. The purpose of Law 173-66 of 1966, on the Protection of Importer Agents of Merchandise and Products, is the protection of natural or legal persons acting as concessionaires, engaged in promoting and/or managing the importation, distribution, sale, rental or any other form of exploitation of goods or products from abroad or when they are manufactured in the country, against the damages that may result from the resolution without just cause of the relations by virtue of which they carry out such activities. This is a public order law whose provisions may not be superseded by private contract.

After an agent or distributor is appointed, the foreign supplier may have very little flexibility in terminating the agent or distributor, even in the face of marginal performance. The law shall regulate the contractual relations between the parties provided that such contracts are duly registered in the Central Bank of Dominican Republic in accordance with the procedure established in said law. The protection under Law No. 173 consists of the imposition of substantial sanctions for termination of agencies or distributorships made without just cause. Law No. 173 makes no distinctions between agents or distributors. They are referred to as concessionaires. Termination without just cause may result in a compensation requirement as outlined by Article 3 of Law 173-66 that includes gross profits of the local concessionaire for the last 5 years, amongst other elements for compensation.

It should be noted that under the Free Trade Agreement signed with the United States in 2004 (DR-CAFTA), the Dominican Republic undertook, in the context of its relations with the United States, that the contracting parties are entitled to be regulated by Law 173-66 or by the civil laws of the Dominican Republic; which allows them the possibility of opting for the application of this law. Consequently, in case the contracting parties wish to be subject to the provisions of Law 173-66, they must expressly consent to it in the distribution agreement they subscribe to.

4. How does the Dominican Republic government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Mergers and acquisitions are not subject to merger control, solely to the previous authorization from the local income tax agency, according to the Dominican Tax Code. The Dominican Republic does not have a specific text that regulates in a general and detailed way the control over mergers and acquisitions, insofar as corporate general rules from Dominican General Companies Law that outlines the corporate requirements for a merger between Dominican companies. We also have some other laws that touch this point directly or indirectly for regulated sectors of the economy, among these texts we have A) Law 125-01 of Electricity; B) Law 153-98 on Telecommunications; C) Monetary and Financial Law No. 183-02; D) Law 146-02 on Insurance and Bonding; E) Renewable Energy Law No. 57-07; that require the previous authorization from the competent regulator in said sectors.

It should be noted that we also have in effect Antitrust Law (Law No. 42-08), that creates *Pro-Competencia*, as the antitrust local authority that may, on an ex-officio basis or by request of a legitimate interested party, begin an

investigation and procedure to determine whether a merger or transaction is in accordance with the antitrust regulations or not. In the event of wrongdoings, *Pro-Competencia* may issue fines ranging from 30 to 3,000 minimum wages in cases of antitrust violations. Law No. 42-08 was promulgated in the year 2008, and was very recently put into force with the appointment of the executive director in January 2017.

5. How do labor statutes regulate the treatment of local employees and expatriate workers?

In the Dominican Republic, the labor relationships are governed by the Dominican Labor Code, the implementing regulation and related laws. This Code is from 1992, so in practice many times shows inconsistencies with current labor practice and is a little outdated. It is very protective and beneficial to the employee.

The employer and the employee are subject to the employment contract, although its provisions can never supersede the rights under the Labor Code. A written contract of employment is not required. In the absence of a written contract, the Labor Code governs the employment relationship. However, when parties decide to execute employment contracts in writing, the Labor Code requires two originals to be filed at the local Labor Department. The rights included in the contract can only improve minimum rights under the Labor

Code since all employees rights are of public order and shall not be renounced or waived by the employees.

Dominican labor laws are territorial in nature, i.e., any work carried out in Dominican territory will be subject to the provisions of the Labor Code, regardless of the nationality or residence of the parties involved.

Wages are freely negotiated between the employer and the employee but cannot be less than the legally/ established minimum wage for each industry. Salaries must be paid in cash (or bank deposit) and the interval between payments cannot exceed one month.

The Dominican Labor Code confers certain rights to workers after working uninterruptedly for a time of three months, including:

- A Christmas bonus
- A profit-sharing bonus
- Paid vacation leave
- Severance and other benefits proportional to job tenure in the event of unjustified dismissal (the Code defines just cause in detail) 14 weeks of paid maternity leave; and between 2 and 5 days in cases of marriage, childbirth by wife or companion and death of a spouse, child, parent or grandparent.
- The right to associate into unions to defend their interests, and special protection for employees engaged in forming a labor union.
- The right to strike by unions. Strikes can only involve the peaceful interruption of the work carried out by the employees.

These rights are well known to the labor force and claims against employers are common. Labor Courts tend to favor the workers. Therefore, employers must be careful to adhere to the detailed provisions of the Code.

Concerning expatriate workers it must be noted that at least 80% of a company's work force must be Dominican. Likewise, no less than 80% of the payroll, with the exception of salaries for technical or executive positions, must correspond to wages earned by Dominicans. These rules do not apply to employees carrying out executive or managerial duties, or occupying technical positions not available in the country, as well as for foreign individuals with a Dominican spouse or children, subject to approvals of the Labor Ministry.

The law requires a labor contract to be filed with the Ministry of Labor before hiring foreigners to work in the country in order to determine if the contract is justified, i.e., if local personnel could not perform the work. This is a prerequisite for a labor visa or residency. As a rule, contracts for technicians or management personnel are routinely approved.

Companies wishing to relocate their employees to the Dominican Republic are required to obtain a temporary residency for work purposes or a short-stay permit, depending on the time period the employee will be working in the Dominican Republic. A temporary residency is issued for a one-year period, renewable. Short-stay permits are granted for period from two to eleven months.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The official currency of the Dominican Republic is the Dominican Peso (DOP). There are no exchange controls in the country. Foreign currency operations are carried out under free market conditions and convertibility. Interest rates for transactions denominated in domestic or foreign currency are freely determined among market agents. The Dominican Republic guarantees full convertibility and rights of repatriation of 100% of a foreign investor's dividends, after the payment of the corresponding applicable taxes.

7. What types of taxes, duties, and levies should a foreign investor in the Dominican Republic expect to encounter?

The principal types of taxes, duties, and levies are the followings:

INCOME TAX

The Dominican Republic has a taxation system that is mainly territorial. As a result individuals and legal entities, nationals and/or foreigners, are subject to tax payment of their income originated from Dominican source.

All individuals whose annual income amounts to DOP\$409,281.01 or more will be subject to the payment of income tax at a rate of 15% to 25%, depending on the amount of their income. This amount is annually adjusted by inflation.

A fixed rate of 27% is applied to legal entities domiciled in the country, no matter if they are local or foreign, in accordance to the tax reform enacted in November 2012.

Additionally, individuals and legal entities, nationals and/or foreigners, that are residents in the Dominican Republic are subject to tax payment from their income from investments and financial earnings generated abroad. For foreign individuals this is triggered after the third year of residence in the Dominican Republic.

DIVIDENDS

A dividend is all distribution in cash made by a legal entity to its shareholders or partners, but does not include the distribution made in shares or quotas in favor of its shareholder or partner. The Dividends from Dominican source disbursed to individuals or corporations are taxed at a rate of 10% and are subject to withholding.

TAX ON TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES – VAT TAX

The tax on transfer of Industrialized Goods and Services (Impuesto sobre Transferencia de Bienes Industrializados y Servicios, ITBIS) or

valued-added tax is levied on:

- The transfer of industrialized goods that have been submitted to some type of transformation process (industrialization), including imports;
- The import of industrialized goods; and
- The provision of services and leases.

Individuals as well as legal entities that perform one of the activities enumerated above are subject to the payment of said tax, which rate is currently 18%.

TAX ON ASSETS

Commercial entities must annually pay a 1% tax on all their assets, unless income tax is greater, i.e. only one (income tax or asset tax) is paid. Said payment can be made in two quotas, six months apart from one another, the first payment being due at the same date as the income tax.

8. How comprehensive are the intellectual property laws of the Dominican Republic, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The Dominican Republic recognizes and protects the right to the exclusive property of scientific, literary, artistic works, inventions, trademarks and other productions of the human intellect. This right has constitutional rank. The Industrial Property Law, N° 20-00 of May 8, 2000, as amended, and Law N° 65-00 on Copyright, of 21 August 2000, represent a considerable legal and institutional progress and

compliance with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of Marrakech 1995. These laws promote the effective protection of intellectual rights, contribute with the dissemination and transfer of technology, socio-economic and scientific benefits and the development of literary and artistic heritage of the country.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Arbitration is the preferred conflict resolution forum because of its confidentiality and efficient processes. Although the Dominican Republic has an adequate judicial system, judges may not have particular technical skills and experience on the subject at hand for a favorable result. Additionally, the court's resolution of a conflict usually takes much longer than arbitration.

Additionally, the use of arbitration to settle conflicts that arise in commercial activities keeps growing. Due to this, the Law of Commercial Arbitration, N° 489-08 was enacted. This law overrules the articles of the Civil Procedure Code that previously reigned on the matter.

This law is applied to all arbitration that takes place in the Dominican Republic, whether parties are nationals or internationals.

Some subjects are not able to be arbitrated, including real estate matters, family, and public order matters.

10. What advice can you provide for how best to negotiate or conduct business in the Dominican Republic?

The Dominican Republic has a system of government which governs the freedom of enterprise, free competition, circulation of foreign currencies, and where there is a general regulatory system that governs business, both nationally and internationally.

Although there are special laws for each commercial activity, it is advisable when doing business in the Dominican Republic to be advised and consult with a good law firm, which is characterized by an exercise that assures its nonparticipation in an act of corruption and that has dominion in the area for which the service is requested.

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