

GETTING THE
DEAL THROUGH 

Construction 2016

Contributing editors

Robert S Peckar and Michael S Zicherman
Peckar & Abramson PC

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2015
No photocopying without a CLA licence.
First published 2008
9th edition
ISSN 1755-6953

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of July 2015, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Introduction	4	Netherlands	85
Robert S Peckar and Michael S Zicherman Peckar & Abramson PC		Leendert C van den Berg, Erik Gierman and Joost Haest Severijn Hulshof advocaten	
Brazil	5	New Zealand	90
Júlio César Bueno Pinheiro Neto Advogados		Margaret A Helen Macfarlane, Christina Bryant, Nick Gillies and Michael O'Brien Hesketh Henry	
Canada	14	Qatar	97
Bruce Reynolds, Sharon Vogel and Yvan Houle Borden Ladner Gervais LLP		Marcus Boeglin, Matthias Scherer, Marie-Anne Roberty-Jabbour, Sam Moss and Tabara Sy Lalive in Qatar LLC	
China	21	Russia	103
Helena H C Chen and Dongfeng Zhao Pinsent Masons LLP		Elena Gavrilina, Yuri Savvin and Anton Alekseev Egorov Puginsky Afanasiev & Partners	
Dominican Republic	28	South Africa	109
Laura Troncoso Ariza and Maireni Silvestre Ramírez OMG		Tania Siciliano Fasken Martineau	
Finland	34	Sweden	115
Aimo Halonen Mäkitalo Rantanen & Co Ltd		Jacob Hamilton, Richard Sahlberg and Per Vestman Foyen Advokatfirma KB	
France	39	Switzerland	120
Isabelle Smith Monnerville and Jean-Olivier d'Oria Smith d'Oria		Michael E Schneider, Matthias Scherer, Bernd Ehle and Sam Moss Lalive	
Germany	47	Taiwan	125
Jörg Gardemann Buse Heberer Fromm Rechtsanwälte Steuerberater PartG mbB		Helena H C Chen Pinsent Masons LLP	
Ghana	52	Turkey	131
David Ofosu-Dorte, Isabel Boaten and Ferdinand Adadzi AB & David		Ziya Akıncı and Cemile Demir Gökyayla Akıncı Law Office	
India	56	Ukraine	137
Sunil Seth and Vasanth Rajasekaran Seth Dua & Associates		Timur Bondaryev, Svitlana Teush and Natalia Klochun Arzinger	
Indonesia	62	United Arab Emirates	144
Mutiara Rengganis and Donny Fadilah Bahar & Partners		Sachin Kerur, William Marshall, Charmaine Khan and Charlotte Leggett Pinsent Masons LLP	
Italy	67	United Kingdom	150
Marco Padovan, Roberto Panetta, Fabiola Viccei, Michele Bonomini and Francesca Politi Studio Legale Padovan		Stacy Sinclair Fenwick Elliott LLP	
Lithuania	75	United States	158
Jovitas Elzbergas Motieka & Audzevičius		Robert S Peckar and Michael S Zicherman Peckar & Abramson PC	
Mexico	81		
Roberto Hernández García and Adrián Roberto Villagómez Alemán COMAD SC			

Dominican Republic

Laura Troncoso Ariza and Mairení Silvestre Ramírez

OMG

Foreign pursuit of the local market

1 If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before taking such a step?

The key concerns a foreign designer or contractor should consider are the following:

- whether to incorporate a Dominican Republic company or establish a branch or a subsidiary of a foreign company;
- the tax effects on individuals and entities with regard to revenue generated in the Dominican Republic, as well as tax on assets, transfer of assets and deductibility of expenses, among others;
- the possibility of associating with a local architect, engineer or partner for approval of structure plans by authorities and interaction with public agencies;
- the requirement of association with a local partner in order to participate in projects that involve public agencies according to Law 322-81 that regulates the participation of foreign nationals in public bidding and tendering; and
- the necessity of validating their professional title in order to carry out their profession in the Dominican Republic according to Law 6200-63 with regard to architectural, engineering and surveying professions.

Licensing procedures

2 Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

Law 111-42 states that all professions that require a qualification from a university, whether foreign or local, must obtain an exequatur in order to practise their profession in the Dominican Republic. In particular, architects and engineers are required to have an exequatur as well as being registered with the Dominican College of Engineers, Architects and Surveyors (CODIA). In addition to this, Law 322-81, which regulates the participation of foreign nationals in public bidding and tendering, corroborates the aforementioned and provides that the consequences of practising without the proper qualifications or validations, or both, are suspension of the practice and a fine of up to US\$250.

Competition

3 Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

There is no advantage provided to domestic contractors, but it must be taken into account that, when contracting with public agencies, there is a requirement of association with a local partner as set out in question 1.

Bribery

4 If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

In this scenario, the contract will not be enforceable as it would be declared null and void as the consent of the parties was not properly obtained as established by the Civil Code. Bribe-givers and bribe-takers are subject

to a penalty of imprisonment for between three and 10 years and a fine amounting to double the benefits received, as stipulated by Law 448-06 regulating transactional bribery. Even though facilitation payments are not specifically prohibited under local law, these types of infractions are prohibited in the following two conventions to which the Dominican Republic is a signatory: the United Nations Convention on Corruption and the Inter-American Convention on Corruption.

Political contributions

5 Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

Certain Dominican entities and business people make political contributions. At present, the law does prohibit certain political contributions, but does not establish restrictions in this sense. However, there are no key vehicles available for direct contributions to political candidates. In addition, Law 340-06, which regulates public agencies' participation in bidding and tendering, does not include political contributions as a cause of incapacity or ineligibility to participate in such bidding.

Other international legal considerations

6 Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

It should be noted that, for a foreign company or individual to participate in a tendering or bidding process, or any other form of adjudication, or to be hired to execute any work or labour by the Dominican government or by any autonomous institutions, municipalities or companies in which the Dominican government appears as a shareholder, such a foreign company or individual must be associated with a local partner, as stipulated in Law 322-81 that regulates the participation of foreign nationals in public bidding and tendering, and Law 340-06 that regulates public agencies' participation in bidding and tendering. Pursuant to the Labour Code, foreign contractors must also comply with legal requirements regarding the minimum amount of local labour to be employed on a particular construction project (see question 15).

It is important to note that Decree No. 408-10 dated 12 August 2010, the Dominican Tax Code and Company Act No. 479-08 dated 11 December 2008 regulate consortia as special figures with a particular legal status. Foreign contractors are allowed to operate fiscally and contractually under a consortium without necessarily creating a joint venture with a local counterpart and thus becoming prominent figures allowing the management of liabilities between the parties.

Construction contracts

7 What standard-contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

No particular standard contract has been commonly used for construction and design in the Dominican Republic. Nevertheless, international players have encouraged the use of standard form contracts in the country in both

private and public construction projects. The most commonly used are the standard forms produced by the International Federation of Consulting Engineers (FIDIC). Also, International Chambers of Commerce (ICC) model turnkey contracts and the American Institute of Architects (AIA) contracts are in general use.

There is no restriction on the language to be used in construction contracts. However, in the case of litigation before a Dominican court, or if the document should be filed with a public institution, a Spanish translation by a judicial translator must be provided.

The parties are free to choose the applicable law and dispute resolution forum because there are no restrictions on the choice of law and the venue for dispute resolution. In addition, local arbitration allows foreign languages.

Foreign arbitral awards benefit from the New York Arbitration Convention of 1958, which has been enforceable in the Dominican Republic since 10 July 2002 (see question 29).

Payment methods

8 How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

The method of payment and the frequency of payments are chosen freely between the parties, as there is no standard payment frequency or payment method. Payments can be made by cheque, electronic transfer locally and abroad and cash.

Contractual matrix of international projects

9 What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

In the Dominican Republic there is no typical contractual matrix for a major project. However, current practices are that when contracting occurs between private parties, a construction management agreement is used, applying any of the typical existing payment methods such as lump sum, cost-plus-fee or unit-price. In addition, private parties use FIDIC (International Federation of Consulting Engineers) and AIA models for both contractors and architects. Generally, all these contracts are turnkey or design-build.

However, the scope of services agreed between the parties must observe the civil and commercial regulations, particularly articles 1787 et seq of the Civil Code that regulate lump sum construction agreements.

When contracting occurs with a governmental agency through the granting of a concession, a recurrent adopted format has been BOOT (build, own, operate and transfer).

PPP and PFI

10 Is there a formal statutory and regulatory framework for PPP and PFI contracts?

At present, there is no formal statutory or regulatory framework for PPP and PFI. However, several bills that regulate PPP are in discussion in Congress but, as within the 2014 legislature, none of them have passed.

It is important to mention that Law 340-06 modified by Law 449-06 (further regulated by Decree 543-12) is the existing framework for government procurement related to goods, works, services and state concessions. This Law applies to all contracts in which the Dominican government, autonomous institutions, municipalities or companies where the Dominican government is a shareholder contract with a private investor for the design and construction of infrastructure and related services.

Regardless of the lack of legal framework, there have been various private-public partnerships implemented through concessions granted by the Dominican government, such as the construction of Autopistas del NordEste, a highway in the north-eastern part of the country, which was the first highway concession carried out through an international bidding process. Also, a construction concession was awarded to a group of local and foreign investors for the highway called Boulevard Turístico del Atlántico in the northern part of the country. In some of these cases, the concession resulted in an early termination, in one case (a concession for the maintenance, operation and construction of the San Pedro de Macorís-La Romana highway with CODACSA) as a result of non-compliance by the Dominican government to the agreement that had, as a consequence, the issuance of an arbitral award committing the Dominican government to a large amount of compensation. In another case, early termination was

requested by the Dominican government that resulted in the payment of a termination fee (the operation of various tolls in the northern part of the country with DOVICON).

Joint ventures

11 Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Dominican regulation does not have any special restrictions in this regard. Contracts between private parties can be freely negotiated within the limits and restrictions contemplated under applicable laws, so members of consortia can allocate the responsibilities among themselves. For this reason, responsibilities and how they are allocated among members should be stipulated clearly in the contract, along with the level of responsibility of the consortium members, which will depend on the way it is structured, whether as a Dominican company, a foreign company with a branch or permanent establishment or a limited liability partnership, among others. As indicated in question 6, under Dominican law consortia are a special case with a particular legal status. In the case of their tax obligations, Decree No. 408-10 states that the consortia must comply with tax obligations and formal duties established in the Tax Code in respect of common activities, works and performances, and not individually.

Further, article 4.1 of the General Rules and Procedures of Building Plans, Decree No. 576-06, establishes the responsibilities incumbent on those involved in a construction project in the event of damage caused to third parties subject to the terms listed there, and provides that, if the cause of the damage cannot be linked directly to one of the involved agents, then all agents will be jointly liable, including the promoter.

Tort claims and indemnity

12 Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

In our civil law system, the general principle is that every person is responsible for any injury they have caused and is liable to the reparation for the injury, not only by their intentional act, but also by their negligent conduct or by their recklessness (articles 1382 and 1383 of the Civil Code).

Articles 1146 et seq of the Civil Code provide that this liability arises when one party does not fulfil any of the obligations in the contract or required by law, or when the execution is inefficient or defective and results in a detriment to the creditor, except in cases of force majeure or acts of God. The damages to which the creditor is entitled, pursuant to article 1149 of the Civil Code, include similar amounts to the losses suffered and profits pursuant to the amounts established in the contract evidence, which must be proven to the court.

If one of the parties does not comply with the obligations set forth in the contract, the other party may invoke the non adimpleti contractus defence and thereby withhold its own performance. The contracting party invoking this exception does so at its risk and danger and judges can determine whether the non-performance justifies its position as invoked (Judgment No. 17 issued by the Supreme Court of Justice of the Dominican Republic in March 2005; Judicial Bulletin No. 1,192).

Liability to third parties

13 Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

In general, a contract or agreement between several parties cannot affect a third party who was not a party thereto. The legal effects of it would be limited, therefore, to the rights and obligations of the parties who conducted it (articles 1134 and 1165 of the Civil Code).

However, a third party may pursue a claim against either the contractor, due to defects in the construction of the building, or the owner, due to negligent acts or omission with regard to the building, jointly or individually, in accordance with articles 1382 et seq and article 1792 of the Civil Code. In fact, any harm suffered by a third party deriving from contact with the building triggers a general tort liability. The third party entitled to the claim must have been directly harmed by the property where a clear and indisputable causality link must be established. All kinds of accidents

would trigger the liability, regardless of whether they are the consequence of a construction defect or any other cause. The statute of limitation for this tort liability is 20 years (see question 30 for limitation periods, particularly, article 2270 of the Civil Code).

Insurance

14 To what extent do available insurance products afford a contractor coverage for damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards? Does the local law limit contractors' liability for damages?

Local law does not establish any parameters with regard to limiting contractors' liability for damages. The Regulation of the Supervision of Construction Works, created by Decree 670-10, establishes the types of insurance that must be set in place when initiating and completing the construction; however, there is no limit as to any amount.

In particular, article 5 of this regulation also includes the types of insurance that must be obtained, such as:

- damages to the assets of third parties caused by acts or omissions of the contractor;
- death or injury caused by acts or omissions of the contractor to a third party authorised to be in the work area or any third party that is located or passing by the work area;
- damages suffered by the construction or the materials during the construction; and
- any other type of insurance that is agreed upon between the parties.

On the other hand, all major Dominican insurance companies offer all these types of insurance policies:

- damage to the property of third parties (such as damage to adjacent buildings);
- injury to workers or third parties;
- delay damages (including liquidated damages); and
- damages due to environmental hazards (eg, run-off of toxic liquids to adjacent land).

It is customary for the coverage for these types of insurance products to be calculated by taking into account the budgeted costs of the construction minus the cost of design and earth moving.

Labour requirements

15 Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

In accordance with the Labour Code, at least 80 per cent of the total number of employees of a company should comprise Dominicans. When the number of workers in a company is less than 10, the Labour Code establishes special percentage rules. Foreign nationals who work exclusively in the management or administration of a company and technical workers, if there are no existing unemployed Dominicans with skills to replace them, are not counted in the 80 per cent.

Regarding management positions, Law 322-81, which regulates the participation of foreign nationals in public bidding and tendering, and Law 340-06, which regulates the participation in bidding and tendering of public agencies, state that, for a foreign company or individual to participate in a tendering or bidding process or any other form of adjudication, or to be hired by the Dominican government or by any autonomous institutions, municipalities or companies in which the Dominican government appears as a shareholder to execute any work or labour, the participation of Dominicans in management positions must be no less than 50 per cent. In the case of association with a foreign company or a foreign national, foreign hiring for executive positions shall not exceed 50 per cent.

Local labour law

16 If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

If the employee was hired for a particular job or service or for a specified time, then upon completion of that job or service, or once the specified time expires, the contract is automatically terminated without responsibility to the contractor, as stated by the Labour Code. However, according

to Law 5235-59 that regulates the payment of Christmas salary, if the hiring extends for more than six months, then a proportion of the Christmas salary must be paid, and if the hiring extends for more than one year the employee must be allowed to take vacations or they must be paid, as referred to in the Labour Code.

It should be noted that the type of hiring of the employee, whether fixed-term, part-time or indefinite, will have different consequences. Each must be analysed individually.

Close of operations

17 If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

There are no legal obstacles applicable to a foreign national when closing its operations. However, if a local company was incorporated or a foreign company was used with a registered branch in the Dominican Republic for the operations, they must be liquidated in accordance with dispositions of the Company Act No. 479-08 and its recent modifications and General Rule 05-2009 as issued by the tax authorities.

Payment rights

18 How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

In order to secure payments from an owner, various guarantees may be granted, such as mortgage on the land, pledges on assets of the owner (from shares to machinery to other moveable assets), letters of credit guaranteeing disbursements and personal guarantees, and performance bonds.

In transactions between foreign contractors and government agencies, letters of credit are commonly used.

Contracting with government entities

19 Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Dominican legislation does not include sovereign immunity as a defence to a contractor's claim for payment.

Statutory payment protection

20 Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

There are no special laws that provide protection for unpaid contractors. In the event of bankruptcy or insolvency, or both (as regulated by the Code of Commerce and Law 4582-56), of the company that gears the project, all unpaid, unsecured contractors will fall into place with all other unsecured creditors and will have to await the finalisation of the liquidation procedure in order to determine if there are sufficient assets to satisfy their outstanding claims.

If the unpaid creditor has a guarantee in place then it can proceed with the execution immediately. The existence of a bankruptcy or liquidation procedure does not impede secured creditors from executing their guarantees.

Force majeure and acts of God

21 Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

A contractor may allege force majeure and acts of God as a defence in order to excuse the compliance of its contractual obligations. However, it is important that the parties define these acts in the agreement to be entered into in order to avoid any possible interpretations as to what constitutes force majeure or an act of God. If the hiring party demonstrates that the contractor was negligent or incurred recklessness, the main principle may be contested. Note that the Supreme Court, applying the Civil Code, has ratified the existence of this principle, indicating that the burden of proof is upon the contractor (see question 12).

In particular, Law 340-06, which regulates the hiring of contractors by public agencies, provides that the suspension of the contract entered into with the government due to force majeure or acts of God is included. In

addition, this law recommends that these acts be defined in the statement of conditions.

Courts and tribunals

22 Are there any specialised tribunals that are dedicated to resolving construction disputes?

There are no specialised tribunals. All cases involving construction disputes are tried in the ordinary tribunals.

Dispute review boards

23 Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

DRBs are not commonly used in construction contracts in the Dominican Republic.

Mediation

24 Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Current practice is that the parties increasingly agree to resort to arbitration when entering into contracts with foreign entities. These types of clauses require mediation prior to the initiation of the arbitration proceedings, more specifically in connection with construction contracts.

In the Dominican Republic, the Chamber of Commerce has created the Center of Alternative Dispute Resolution, which has its own regulations and rules regarding the mediation procedures to be carried out by the parties. The Center of Alternative Dispute Resolution has a list of pre-approved mediators that must be used by the parties.

Confidentiality in mediation

25 Are statements made in mediation confidential?

Mediation proceedings are regulated by the agreement entered into by the parties, usually subject to very strict confidentiality. However, the Mediation and Conciliation Regulation, adopted by the Center of Alternative Dispute Resolution described in question 24, indicates that the parties, including the mediator, are bound by confidentiality and a party may not use the documents marked as relevant in another proceeding.

Arbitration of private disputes

26 What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Construction contracts entered into between Dominican parties typically use local courts. There is a growing tendency towards arbitration, especially when foreign entities are involved. In addition, construction contracts entered into with a foreign party regularly use arbitration as the applicable forum.

Governing law and arbitration providers

27 If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

When foreign contractors are involved, the customary international arbitration providers chosen are typically ICC and AAA, with a certain preference towards ICC rather than AAA. As to the applicable law, parties usually choose New York law or Florida law.

Dispute resolution with government entities

28 May government agencies participate in private arbitration and be bound by the arbitrators' award?

Government agencies, when contracting with private parties, generally accept private international arbitration in construction contracts and agree to be bound by the award.

Arbitral award

29 Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

In accordance with article 122 of Law 834-78, which repeals article 546 of the Civil Procedure Code, a final judgment rendered by a foreign or international tribunal must be validated via an exequatur for it to be enforceable in the Dominican Republic. Notwithstanding this, foreign arbitral awards benefit from the New York Arbitration Convention of 1958. The recognition of an arbitral award is obtained by means of a legal procedure that must be initiated before the Civil and Commercial Chamber of the Court of First Instance of the National District (paragraph 6 of article 9 of Arbitration Law 489-08). However, where one of the situations listed in article V of the New York Arbitration Convention of 1958 is verified by the tribunal, the recognition will not be granted (Third Chamber of the Civil and Commerce Court of the First Judicial District of Santo Domingo, Judgment No. 00388-2009, 26 May 2009).

Limitation periods

30 Are there any statutory limitation periods within which law suits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

There is a five-year statute of limitations with regard to the guarantee owed by architects and contractors for the case of major works (article 2270 of the Civil Code). However, there is a two-year statute of limitations in order to commence a lawsuit when the obligation arises from a contract (article 2273, first paragraph).

International environmental law

31 Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

The Dominican Republic is not party to the Stockholm Declaration of 1972, but is a signatory of the United Nations Conference on Environment and Development (UNCED), held in Rio in 1992, also known as the Rio Conference 1992. As a result, the Constitution of the Dominican Republic and the General Law on Environment and Natural Resources, No. 64-00, have adopted the principles and commitments of the Rio Conference 1992 and others established in the international environmental agreements that the Dominican Republic has ratified.

Local environmental responsibility

32 What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

The Dominican Republic has an extensive environmental legal framework affecting construction projects, the most important being the General Law on Environment and Natural Resources No. 64-00 that is complemented by other legal instruments and technical rules approved by the Ministry of Environment and Nature Resources. This law is applicable to construction activities and provides the basis for liabilities, use and management of natural resources and environmental protection, as well as obligations on developers and contractors in order to perform their construction activities.

The environmental sanctioning procedure is established in Resolution No. 18/2007 of the Ministry of Environment and Nature Resources. Non-compliance with the environmental rules can result in an array of potential liabilities. Those responsible may be subject to criminal, civil and administrative penalties such as fines, closure or suspension of activities, confiscation, suspension or cancellation of environmental authorisation, and imprisonment, among others, and may also be obligated to pay compensation for the damages caused.

International treaties

33 Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define ‘investment’?

The list of investments agreements for the promotion and protection of investments of a foreign entity signed by the Dominican Republic are as follows:

Country	Signing date	Entry into force
Spain	16 March 1995	7 October 1996
France	14 January 1999	30 October 2002
Taiwan	5 November 1999	27 November 2001
Chile	28 November 2000	8 May 2002
Ecuador	26 June 1998	4 November 2006 (denounced on 1 February 2008. In force until 2013)
Argentina	16 March 2001	-
Switzerland	27 January 2004	12 March 2006
Morocco	23 May 2002	4 January 2007
Panama	6 February 2003	18 September 2006
Finland	27 November 2001	21 April 2007
Netherlands	30 March 2006	29 August 2007
Italy	12 June 2006	18 July 2007
South Korea	30 June 2006	21 May 2008

Additionally, the Dominican Republic is a signatory of the following foreign trade agreements containing provisions on investment:

Country/regional block	Signing date	Entry into force
CARICOM	22 August 1998	28 January 2001
CACM Central America	16 April 1998	28 March 2001
DR-CAFTA	5 August 2004	1 March 2007
Cariforo – EU	15 October 2008	29 December 2008

According to the model agreement of agreements for the promotion and protection of investments of a foreign entity in the Dominican Republic prepared by the economic department of the Ministry of Foreign Affairs and other public institutions, ‘investment’ is defined as any kind of property or rights related to it, provided it is carried out in accordance with the laws and regulations of the contracting party in whose territory it was made. It includes in particular, but not exclusively:

- moveable and immoveable property rights on the property, as well as all other rights such as easements, mortgages, usufruct and liens;
- shares, debentures and any other type of financial participation in companies;
- credit rights or any other performance having economic value;

- intellectual property rights, including copyrights, industrial property rights such as patents, technical processes, brands or trademarks, trade names, industrial designs, know-how and goodwill;
- concessions granted by law by an administrative act or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources (any change in the way assets are reinvested shall not affect their character as investments, provided that such modification is made in accordance with the legislation of the contracting party in whose territory the investment was made); and
- investment income, referring to income derived from an investment or linked to it, including profits, dividends, interest, capital gains, royalties, fees and rents in kind.

Tax treaties

34 Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

So far, the Dominican Republic has entered into the following taxation treaties:

- an agreement between the Dominican Republic and Canada for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income and heritage, signed on 6 August 1976 and ratified on 23 September 1977;
- an agreement between the government of the Dominican Republic and the government of the United States of America for tax information exchange, signed on 7 August 1989, published in Official Gazette No. 9,768 on 30 September 1989; and
- an agreement between the Dominican Republic and Spain to avoid double taxation and prevent fiscal evasion in respect of income taxes, signed on 16 November 2011, pending ratification by the National Congress.

Currency controls

35 Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

There are no currency controls that make it difficult or impossible to change operating funds or profits from one currency to another. The Monetary and Financial Law of the Dominican Republic No. 183 sets forth a free convertibility system.

Removal of profits and investment

36 Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

Since the enactment of Law 16-95 on Foreign Investment, there are no restrictions on foreign investment in the Dominican Republic. This law established the principle of equal treatment between domestic and foreign



Laura Troncoso Ariza
Mairení Silvestre Ramírez

l.troncoso@omg.com.do
m.silvestre@omg.com.do

Pedro Henríquez Ureña 150
 Torre Diandy XIX, 10th and 11th floors
 Santo Domingo 10106
 Dominican Republic

Tel: +1 809 381 0505
 Fax: +1 809 381 0606
 www.omg.com.do

investment, eliminating most of the prohibitions and restrictions that previously existed.

In accordance with this law, after complying with the mere formality of registration with the Central Bank of the Dominican Republic, foreign investors can repatriate monies abroad at any time, in freely convertible currencies and without prior authorisation, including the total amount of capital invested and the dividends declared during each fiscal year, up to the amount of the net current period upon payment of income tax,

including capital gains realised and recorded in the books of the company in accordance with generally accepted accounting principles. Within 60 days, the foreign investor must notify the Export and Investment Center of the Dominican Republic (CEI-RD), who shall forward to the Central Bank of the Dominican Republic the statement of profit contained in the fiscal year, duly certified by a public accountant, specifying the percentage of such income that was subject to referral and the documentary proof of the balance of tax commitments.

Getting the Deal Through

Acquisition Finance	Distribution & Agency	Labour & Employment	Public Procurement
Advertising & Marketing	Domains & Domain Names	Licensing	Real Estate
Air Transport	Dominance	Life Sciences	Restructuring & Insolvency
Anti-Corruption Regulation	e-Commerce	Mediation	Right of Publicity
Anti-Money Laundering	Electricity Regulation	Merger Control	Securities Finance
Arbitration	Enforcement of Foreign Judgments	Mergers & Acquisitions	Securities Litigation
Asset Recovery	Environment	Mining	Ship Finance
Aviation Finance & Leasing	Executive Compensation & Employee Benefits	Oil Regulation	Shipbuilding
Banking Regulation	Foreign Investment Review	Outsourcing	Shipping
Cartel Regulation	Franchise	Patents	State Aid
Climate Regulation	Fund Management	Pensions & Retirement Plans	Structured Finance & Securitisation
Construction	Gas Regulation	Pharmaceutical Antitrust	Tax Controversy
Copyright	Government Investigations	Private Antitrust Litigation	Tax on Inbound Investment
Corporate Governance	Insurance & Reinsurance	Private Client	Telecoms & Media
Corporate Immigration	Insurance Litigation	Private Equity	Trade & Customs
Cybersecurity	Intellectual Property & Antitrust	Product Liability	Trademarks
Data Protection & Privacy	Investment Treaty Arbitration	Product Recall	Transfer Pricing
Debt Capital Markets	Islamic Finance & Markets	Project Finance	Vertical Agreements
Dispute Resolution		Public-Private Partnerships	

Also available digitally



Online

www.gettingthedealthrough.com



iPad app

Available on iTunes



Construction
ISSN 1755-6953



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law