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Dominican Republic: Law and Practice
Giselle Pérez Reyes and María Virginia Ditrén
Guzmán Ariza



DOMINICAN REPUBLIC

Law and Practice

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Contents

1. Regulatory Framework and Law p.5

1.1 Environmental Protection Policies, Principles and Laws p.5

2. Enforcement Authorities and Mechanisms p.5

2.1 Regulatory Authorities p.5

2.2 Co-operation p.6

3. Environmental Protections p.6

3.1 Protection of Environmental Assets p.6

3.2 Breaching Protections p.7

4. Environmental Incidents and Permits p.7

4.1 Investigative and Access Powers p.7

4.2 Environmental Permits/Approvals p.8

4.3 Regulators' Approach to Policy and Enforcement p.8

4.4 Transferring Permits/Approvals p.9

4.5 Consequences of Breaching Permits/Approvals p.9

5. Environmental Liability p.10

5.1 Key Types of Liability p.10

5.2 Disclosure p.10

6. Environmental Incidents and Damage p.10

6.1 Liability for Historical Environmental Incidents or Damage p.10

6.2 Reporting Requirements p.10

6.3 Types of Liability and Key Defences p.11

7. Corporate Liability p.11

7.1 Liability for Environmental Damage or Breaches of Environmental Law p.11

7.2 Environmental Taxes p.11

7.3 Incentives, Exemptions and Penalties p.11

7.4 Shareholder or Parent Company Liability p.12

7.5 ESG Requirements p.12

7.6 Environmental Audits p.12

8. Personal Liability p.13

8.1 Directors and Other Officers p.13

8.2 Insuring Against Liability p.13

9. Insurance p.13

9.1 Environmental Insurance p.13

10. Lender Liability p.14

10.1 Financial Institutions/Lender Liability p.14

10.2 Lender Protection p.14

11. Civil Liability p.14

11.1 Civil Claims p.14

11.2 Exemplary or Punitive Damages p.15

11.3 Class or Group Actions p.15

11.4 Landmark Cases p.15

12. Contractual Agreements p.15

12.1 Transferring or Apportioning Liability p.15

12.2 Environmental Insurance p.16

13. Contaminated Land p.16

13.1 Key Laws Governing Contaminated Land p.16

13.2 Clearing Contaminated Land p.16

13.3 Determining Liability p.17

13.4 Proceedings Against Polluters p.17

13.5 Investigating Environmental Accidents p.18

14. Climate Change and Emissions Trading p.18

14.1 Key Policies, Principles and Laws p.18

14.2 Targets to Reduce Greenhouse Gas Emissions p.19

15. Asbestos and Polychlorinated Biphenyls (PCBs) p.19

15.1 Key Policies, Principles and Laws Relating to Asbestos and PCBs p.19

16. Waste p.19

16.1 Key Laws and Regulatory Controls p.19

16.2 Retention of Environmental Liability p.19

16.3 Requirements to Design, Take Back, Recover, Recycle or Dispose of Goods p.19

16.4 Rights and Obligations Applicable to Waste Operators p.20

17. Environmental Disclosure and Information p.20

17.1 Self-Reporting Requirements p.20

17.2 Public Environmental Information p.20

17.3 Corporate Disclosure Requirement p.21

17.4 Green Finance p.21

18. Transactions p.21

18.1 Environmental Due Diligence p.21

18.2 Disclosure of Environmental Information p.21

18.3 Key Issues in Environmental Due Diligence p.22

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Guzmán Ariza advises clients on all legal issues and provisions of the Dominican environmental law that seeks to regulate business activities to protect public health and the environment. The firm's environmental practice is best known for its work on the environmental aspects of real estate and tourism projects, although its team has successfully worked on environmental matters for the hospitality industry, construction industry and even the entertainment industry. **Guzmán Ariza** routinely advises hotel developers, assisting with land and asset transactions as well as obtaining construction permits. The

environmental team at the firm is highly experienced in issues relating to sustainability, environmental impact, compliance, permits, and environmental litigation and disputes, as well as in technical and legal feasibility studies such as environmental impact assessments (EIAs) and environmental impact statements (EISs), environmental reports, environmental compliance records and minimum impact certifications. Partner **Giselle Pérez Reyes** and senior counsel **María Virginia Ditrén** together constitute an unparalleled team of savvy lawyers in this important practice area.

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ATTORNEYS AT LAW

1. Regulatory Framework and Law

1.1 Environmental Protection Policies, Principles and Laws

Environmental Protection: Key Laws

Environmental protection in the Dominican Republic is governed by a robust legal framework composed of several key laws that ensure the conservation and sustainable use of natural resources. The General Law on Environment and Natural Resources (Law No 64-00) provides the foundation for environmental management, focusing on the protection of biodiversity and promoting sustainable development. Similarly, Law No 202-04 on Protected Areas emphasises the creation and preservation of protected areas, such as national parks, to conserve sensitive ecosystems, while Decree No 571-09 regulates permissible activities within these zones to prevent degradation.

In addition, the Law on Integral Waste Management and Co-processing of Solid Waste (Law No 225-20) addresses solid waste management, encouraging recycling and establishing safety protocols for the disposal of hazardous waste. Water conservation is guided by Law No 5852, which ensures watershed management and pollution control. Other notable regulations

include Law No 146-71 on Mining, which mandates environmental standards in mining operations, and Law No 147-00 on Climate Change, which implements policies to mitigate climate change impacts and promote sustainability. The Municipal Law (Law No 176-07) empowers local authorities to regulate environmental matters such as land use and waste management at the municipal level.

2. Enforcement Authorities and Mechanisms

2.1 Regulatory Authorities Regulatory Authorities on Environmental Matters

The Dominican Republic's environmental policy and enforcement are overseen by various regulatory authorities, each playing a distinct role in protecting natural resources and ensuring compliance with environmental laws. The Ministry of Environment and Natural Resources serves as the primary authority, and is responsible for implementing environmental policies, issuing permits and overseeing the sustainable management of resources. Additionally, the National Council for Climate Change and Clean Development Mechanism co-ordinates the country's

climate policies, working towards alignment with international agreements and reducing greenhouse gas emissions.

Other key bodies include the National Environmental Protection Service (SENPA), a specialised enforcement agency under the Ministry of Environment tasked with combating environmental crimes like deforestation and illegal resource exploitation. The National Institute of Water Resources (INDRHI) manages water resources, ensuring sustainable supply for urban, rural and agricultural use, while the General Directorate of Mining (DGM) ensures that mining activities adhere to environmental regulations.

At the local level, municipal environmental units are responsible for enforcing environmental regulations, particularly in areas like solid waste management, land use and pollution control. These units ensure that environmental policies are implemented effectively across municipalities, complementing the national regulatory framework.

2.2 Co-operation

In the Dominican Republic, there are several ways to foster collaboration with regulatory authorities on environmental matters. These mechanisms help ensure smooth communication, compliance and co-operation.

- **Environmental impact assessments (EIAs):** For projects that could impact the environment, businesses must work closely with the Ministry of Environment and Natural Resources by submitting an EIA. This ensures environmental concerns are addressed from the start, and authorities can provide guidance and approval.
- **Environmental permits and licences:** Companies need to apply for permits to operate,

which requires regular interaction with regulatory authorities to ensure they meet legal and environmental standards.

- **Public consultations:** For certain projects, the law requires public consultations. These allow the local community, environmental groups and authorities to have a say, ensuring transparency and addressing concerns early on.
- **Monitoring and reporting:** Businesses are usually required to provide regular updates and reports to the authorities. This keeps everyone informed about the ongoing environmental impact and ensures prompt responses if adjustments are needed.
- **Corporate social responsibility (CSR) and voluntary agreements:** Many companies choose to go beyond legal requirements by working with regulators on voluntary initiatives aimed at promoting sustainability. These agreements encourage co-operation and reflect the company's commitment to the environment.

3. Environmental Protections

3.1 Protection of Environmental Assets

The Dominican Republic works to protect its environmental heritage through various measures.

- **Air quality protection:** The General Law on Environment and Natural Resources (Law No 64-00) mandates air quality monitoring and management. The Air Quality Standards (Resolution No 01-2005) set limits for pollutants like particulate matter (PM), sulphur dioxide (SO₂) and nitric oxide (NO_x). The National Environmental Protection Strategy promotes clean energy and emission reduction. The country is also part of international agreements like the Convention on Long-Range Transboundary Air Pollution (CLRTAP).

- Water resources management: Law No 64-00 emphasises sustainable water use and conservation. The Regulation on the Use and Conservation of Water Resources (Decree No 193-01) sets guidelines for water use and quality. The National Water Quality Monitoring Program assesses water quality to protect public health and ecosystems. The country is a signatory to agreements like the United Nations Convention to Combat Desertification (UNCCD) and the Ramsar Convention.
- Soil conservation and land use: Law No 64-00 addresses soil erosion and promotes sustainable land use. The Land Use Planning Law (Law No 1-12) integrates EIAs in land use decisions. The Dominican Republic is part of international agreements like the UNCCD.
- Flora and fauna protection: Law No 64-00 protects wildlife and plant species, with Decree No 123-02 establishing protected areas. The country is committed to biodiversity conservation through conventions like the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Ramsar and the Convention on the Conservation of Migratory Species of Wild Animals (CMS).
- Safeguarding natural habitats and landscapes: Protected areas are regulated by the Protected Areas Law (Law No 202-04) and the Biodiversity Law (Law No 100-13). These laws ensure ecosystem preservation and sustainable use of biological resources.
- Marine ecosystem conservation: Law No 64-00 and the Marine Protected Areas Law (Law No 202-04) protect marine habitats. The Biodiversity Law (Law No 100-13) promotes sustainable marine resource use. The country is part of agreements like the CBD, the United Nations Convention on the Law of the Sea (UNCLOS) and Ramsar.

- Addressing climate change: The National Development Strategy (*Estrategia Nacional de Desarrollo* (END)) 2030 and the Climate Change Law (Law No 1-12) focus on climate resilience and reducing greenhouse gas emissions. Public participation and stakeholder engagement are emphasised in climate-related decision-making.

3.2 Breaching Protections

Breaching environmental protections can result in various legal and administrative consequences aimed at ensuring compliance and safeguarding natural resources. These consequences include substantial fines and penalties, which vary depending on the severity of the violation. Authorities may suspend or revoke permits and licences, halting operations until compliance is achieved. Offenders might be required to restore damaged ecosystems or rehabilitate polluted sites. In severe cases, criminal charges can be pursued, leading to imprisonment or other sanctions. Affected parties may seek compensation through civil lawsuits, and entities with past violations may face increased regulatory scrutiny. Additionally, breaching environmental protections can cause significant reputational damage, affecting relationships with stakeholders, customers and the community.

4. Environmental Incidents and Permits

4.1 Investigative and Access Powers

Environmental protection and enforcement are supported by several key institutions, including SENPA, the Línea Verde and the Specialized Prosecutor's Office for Environmental Matters.

- SENPA is responsible for monitoring compliance with environmental regulations,

conducting inspections and enforcing laws related to environmental protection. It has the authority to enter properties, gather evidence and take enforcement actions against violators, such as issuing fines and suspending permits.

- Línea Verde serves as a public reporting hotline that allows citizens to report environmental violations, such as pollution incidents and illegal activities. This initiative encourages public participation in environmental protection and facilitates timely responses from regulatory authorities, including SENPA.
- The Specialized Prosecutor's Office for Environmental Matters operates under the Attorney General's Office and focuses on prosecuting environmental crimes. It investigates alleged violations, collaborates with regulatory bodies to gather evidence and seeks penalties against offenders. This office plays a critical role in enforcing environmental laws, promoting compliance and raising public awareness about the importance of protecting natural resources.

4.2 Environmental Permits/Approvals

Article 40 of Law 64-00 (General Law on Environment and Natural Resources) mandates that any activity potentially affecting the environment, such as construction, industrial activities, natural resource extraction, waste management and tourism development, requires an environmental permit.

To obtain an environmental permit, applicants must submit a detailed application to the Ministry of Environment and Natural Resources, including information about the project, its potential environmental impacts and management plans. For projects with significant environmental impacts, an EIA is required to evaluate and mitigate potential negative effects.

The Ministry reviews the application and EIA, considering public and stakeholder feedback to ensure comprehensive evaluation. If the application meets all requirements, the Ministry issues an environmental permit with specific conditions and requirements for the project's implementation.

If an applicant disagrees with the Ministry's decision, they can appeal by submitting a written appeal within a specified timeframe. The Ministry will conduct an administrative review, considering any new evidence or arguments. If unresolved, the applicant can pursue judicial recourse by filing a lawsuit for further review.

Public participation is encouraged throughout the permitting process, allowing community members to voice concerns and engage in discussions about the project's environmental impacts.

4.3 Regulators' Approach to Policy and Enforcement

The regulators' approach to environmental policy and enforcement emphasises sustainability, compliance and public participation.

Regulators prioritise preventive measures to avert environmental harm before it occurs, conducting EIAs for projects that may significantly affect the environment. The regulatory framework is anchored in laws such as Law 64-00 (General Law on Environment and Natural Resources) and sector-specific regulations, establishing clear guidelines for environmental protection and pollution control.

Regulatory authorities, including the Ministry of Environment and SENPA, actively monitor compliance with environmental regulations through regular inspections. Violations can lead to fines,

suspension of permits or other enforcement actions.

Public involvement is encouraged in the decision-making process through community consultations and public comment periods, fostering transparency and accountability. There is also collaboration among various government agencies, local governments, non-governmental organisations (NGOs) and international bodies to address environmental challenges effectively.

Education and capacity-building initiatives are emphasised, providing training and resources to businesses, communities and the public to promote understanding of environmental laws and best practices. When violations occur, regulators impose penalties and corrective measures to deter future non-compliance, ranging from monetary fines to stricter oversight of operations.

4.4 Transferring Permits/Approvals

Environmental permits and approvals can be transferred in the Dominican Republic, subject to certain conditions and regulatory processes.

Environmental permits are generally transferable, but this depends on the regulations set by the Ministry of Environment and Natural Resources. This transferability applies to permits for activities like construction, industrial operations and natural resource extraction.

The permit holder must seek approval from the Ministry of Environment before transferring the permit to another party. This ensures the new holder meets all necessary qualifications and can comply with environmental regulations. The regulatory authority may also evaluate the compliance history of both the current and prospective permit holders. If the current holder has a history of violations, the transfer may be denied.

The transfer process involves submitting a formal application to the Ministry of Environment detailing the new permit holder and the reasons for the transfer. The Ministry will review the application, assessing the new holder's qualifications and capacity to manage environmental responsibilities. If approved, the Ministry will issue a formal transfer approval, making the new permit holder responsible for adhering to all conditions of the original permit.

Transfers can be made to individuals, companies or entities capable of complying with the environmental regulations and conditions stipulated in the permit. This includes new owners, partners or operators responsible for the activities covered by the permit.

4.5 Consequences of Breaching Permits/Approvals

Breaching an environmental approval or permit can lead to legal and practical consequences. Legally, violators may face fines, suspension or revocation of permits, civil liability for damages and even criminal penalties. Practically, violations can disrupt operations, cause financial losses, increase scrutiny, damage reputations and lead to public opposition.

Key types of liability include administrative sanctions, civil compensation, criminal penalties, strict liability for hazardous activities, joint and several liability for multiple parties and obligations to restore damaged environments. Compliance with regulations is crucial to avoid these consequences and protect the environment.

5. Environmental Liability

5.1 Key Types of Liability

In the Dominican Republic, key types of liability for environmental damage or law breaches include:

- civil liability – compensation for damage and court-ordered environmental remediation;
- criminal liability – fines, imprisonment and criminal prosecution for serious violations;
- administrative sanctions – fines, permit suspension or revocation, and business closures by regulatory authorities; and
- joint and several liability – multiple parties can be held responsible for the full extent of the environmental harm.

5.2 Disclosure

In the Dominican Republic, environmental issues must be disclosed during the permitting process and whenever significant environmental impacts are identified. This disclosure is typically required when applying for environmental permits and conducting EIAs, and during regular reporting to regulatory authorities.

Environmental issues must be disclosed in a detailed and transparent manner, including information about potential impacts, mitigation measures and compliance with environmental regulations. This ensures that all stakeholders, including regulatory authorities and the public, are informed about the environmental aspects of a project or activity.

The consequences for non-disclosure or incomplete disclosure of environmental issues can be severe. These may include fines and penalties for failing to provide accurate and complete information. Authorities may also suspend or revoke permits and licences, halting operations

until full disclosure is made. In cases of significant non-disclosure, criminal charges may be pursued, leading to further legal consequences. Additionally, non-disclosure can result in reputational damage and loss of trust from stakeholders and the community.

6. Environmental Incidents and Damage

6.1 Liability for Historical Environmental Incidents or Damage

In the Dominican Republic, current or purchasing operators and landowners can be held liable for historical environmental damage. This liability includes the responsibility for remediation and restoration of contaminated sites, even if they were not responsible for the original damage. Conducting thorough environmental due diligence (EDD) before acquiring property or businesses is crucial to identify and manage potential liabilities.

6.2 Reporting Requirements

In the Dominican Republic, environmental reporting requirements include:

- EIAs – required for projects with significant environmental impacts;
- regular monitoring reports – businesses must report on emissions, waste management and compliance;
- incident reporting – prompt reporting of environmental incidents like spills; and
- annual environmental reports – required for certain sectors to summarise environmental management and compliance.

These reports ensure transparency and regulatory compliance.

6.3 Types of Liability and Key Defences

In the Dominican Republic, liability for environmental incidents or damage can be civil or administrative/regulatory. Civil liability includes compensation claims for damages to the environment or third parties, strict liability for hazardous activities, and joint and several liability where any responsible party can be held liable for the full amount of damages. Administrative/regulatory liability involves sanctions such as fines, permit suspension or revocation, criminal charges for severe violations and restoration obligations to repair damaged environments.

Defences and limits to liability include demonstrating due diligence, citing natural disasters or unforeseen events (acts of God) and attributing damage to unrelated third parties. Statutory limits may cap compensation amounts and set timeframes for claims. Compliance with regulations and having environmental liability insurance can also help limit liability.

7. Corporate Liability

7.1 Liability for Environmental Damage or Breaches of Environmental Law

Corporate entities can be held liable for environmental damage or breaches of environmental law under several rules. The General Law on Environment and Natural Resources (Law No 64-00) allows for administrative sanctions, including fines and permit revocations. Companies can also face criminal charges for severe violations, leading to fines and imprisonment for responsible individuals. Civil liability enables affected parties to seek compensation for damages. Under strict liability, companies are responsible for environmental harm regardless of fault, especially with hazardous activities. Joint and several liability ensures that a company can

be held fully accountable if multiple parties are involved in causing damage. These rules ensure corporate accountability and encourage compliance with environmental regulations.

7.2 Environmental Taxes

In the Dominican Republic, key environmental taxes include:

- environmental fees for permits and licences under Law No 64-00, required for projects impacting the environment;
- tax on hazardous waste, applied to companies generating such waste to ensure proper management;
- selective consumption tax (*impuesto selectivo al consumo* (ISC)) on fuels, with higher taxes on polluting fuels to reduce emissions;
- higher import taxes on vehicles with larger engines, while electric and hybrid vehicles enjoy tax reductions;
- solid waste management tax imposed by municipalities for waste collection and treatment; and
- tax incentives for renewable energy projects under Law No 57-07, encouraging sustainable practices.

7.3 Incentives, Exemptions and Penalties

Incentives and exemptions for “good” environmental citizenship include benefits such as tax exemptions for renewable energy projects under Law No 57-07, which reduce income tax, import duties and VAT. Additionally, the CONFO-TUR (*Consejo de Fomento Turístico*) programme grants tax exemptions to tourism projects that meet environmental standards, encouraging sustainable practices. Companies demonstrating good environmental practices can also receive certifications and awards, enhancing their reputation. Moreover, reduced taxes are applied to electric vehicles and clean technologies.

On the other hand, there are penalties for “bad” environmental citizenship. Law No 64-00 establishes fines and sanctions for those who violate environmental laws, encompassing illegal deforestation, pollution and non-compliance with regulations. Violators may face financial penalties, permit revocations or even criminal charges in severe cases.

7.4 Shareholder or Parent Company Liability

Shareholders or a parent company can be liable for environmental damage or breaches of environmental law in the Dominican Republic under certain circumstances.

Direct liability applies when they are directly involved in activities leading to environmental harm, such as overseeing operations that violate regulations. Corporate veil piercing allows courts to hold parent companies accountable if they misuse the corporation to commit fraud or evade obligations.

Law No 64-00 extends environmental responsibilities to shareholders and parent companies in positions of authority. Joint and several liability means that multiple parties, including parent companies and subsidiaries, can be collectively held responsible for damages.

Regulatory agencies can take action against shareholders or parent companies for non-compliance or complicity in violations. Additionally, parent companies may face liability through contractual obligations if they provide guarantees related to environmental compliance.

In summary, while direct liability usually falls on the responsible entity, shareholders and parent companies can also be held accountable,

particularly if they are directly involved or have control.

7.5 ESG Requirements

Environmental, social and governance (ESG) requirements are established primarily through Law No 64-00, which governs the management and protection of natural resources. This law mandates EIAs for projects that may significantly affect the environment, alongside various regulations addressing waste management, air and water quality, and biodiversity conservation. Companies must engage with local communities and conduct social impact assessments to evaluate the potential social consequences of their activities, ensuring that community needs are considered.

Monitoring and enforcement of these ESG requirements involves government agencies conducting inspections, reviewing compliance reports and evaluating environmental performance. Companies are required to submit reports on their environmental impact, and violations can result in fines, penalties or legal action. The Ministry of Environment oversees enforcement and can revoke permits for non-compliance. Public participation is encouraged through consultations during the EIA process, enhancing transparency and accountability in environmental decision-making.

7.6 Environmental Audits

Yes, companies in the Dominican Republic are subject to environmental audit requirements, particularly for those in sectors with significant environmental impacts. The primary legislation, Law No 64-00, mandates EIAs for projects that may affect natural resources. Additionally, companies may be required to conduct periodic environmental audits to ensure compliance with environmental regulations and standards. These

audits help assess the effectiveness of environmental management systems and identify areas for improvement.

8. Personal Liability

8.1 Directors and Other Officers

Directors and officers can be held personally liable for environmental damage or breaches of environmental law committed by their companies under certain circumstances. This is particularly relevant when it can be demonstrated that these individuals acted with negligence, malice or gross misconduct. Law No 64-00 on the Environment and Natural Resources specifies that those responsible for management or control of a legal entity can be held accountable if their actions directly contribute to environmental harm.

The penalties for such liabilities can vary significantly based on the severity of the breach. Possible sanctions include administrative fines, the obligation to pay remediation costs and even criminal charges in cases of egregious misconduct. In addition, the court may impose civil penalties, including damages to compensate affected parties. This framework aims to ensure accountability at all levels of corporate management and encourages compliance with environmental laws to protect public health and the environment.

8.2 Insuring Against Liability

In the Dominican Republic, directors and officers can potentially obtain insurance to cover liabilities arising from environmental damage or breaches of environmental law. This type of insurance is often included under directors' and officers' (D&O) liability insurance, which protects corporate executives from personal losses if they

are sued for alleged wrongful acts while managing a company. Such policies typically cover legal fees, settlements and other related costs, although they may have limitations regarding environmental claims, especially if negligence or intentional misconduct is involved.

However, it is important to note that many insurance policies may exclude coverage for certain types of environmental liabilities, particularly those related to pollution or regulatory violations. Companies often need to seek specialised environmental liability insurance to adequately cover these risks. Additionally, the legal framework surrounding corporate liability and insurance in the Dominican Republic emphasises compliance with environmental laws, which may influence the availability and terms of such insurance.

9. Insurance

9.1 Environmental Insurance

There is no compulsory element to environmental insurance in the Dominican Republic, meaning businesses are not required by law to obtain insurance for contamination or nuisance. However, in some specific sectors or under certain contractual agreements, obtaining environmental insurance might be strongly recommended or even required by private stakeholders or financial institutions to mitigate risks.

Certain environmental risks may be uninsurable, especially those resulting from wilful misconduct, gross negligence or non-compliance with existing environmental regulations. Additionally, long-term, gradual pollution may not always be covered, depending on the terms of the policy.

10. Lender Liability

10.1 Financial Institutions/Lender Liability

Financial institutions can incur environmental liability in various situations that reflects their direct or indirect involvement in activities generating environmental impacts. A clear example is the financing of polluting projects. If an institution grants a loan for a project that does not comply with environmental regulations, such as the construction of an industrial plant without the required EIA, it may be held liable if the project causes pollution or environmental damage. The liability arises from the failure to implement contractual clauses conditioning the loan on compliance with environmental standards, demonstrating a lack of diligence in the preliminary evaluation of the project.

Another way in which financial institutions may be liable is when they lease assets that are subsequently used in activities causing environmental harm. For instance, if an institution leases a vehicle or machinery that is then employed in activities resulting in pollution or environmental degradation, the institution could be held jointly liable. This particularly applies if the institution did not take the necessary precautions to ensure that the use of such assets complied with applicable environmental regulations, indicating a failure in their duty of care.

Additionally, during the term of a loan, if the financial institution does not adequately and systematically monitor the project it finances, it may incur liability if environmental damage occurs. A lack of inspections, failure to verify regulatory compliance or omission of periodic environmental reporting requirements could be considered a breach of its duty of oversight and

control, especially if such actions could have prevented the damage.

Finally, when financial institutions act as trustees, they have an obligation to manage trust assets in a way that minimises any potential environmental impact. If the institution fails to exercise due diligence and environmental damage arises from activities related to the assets under its administration, it may be held liable. Environmental regulations require these entities not only to supervise but also to take preventive actions to ensure that the assets under their control do not contribute to environmental degradation, as any omission in this regard exposes them to joint liability.

10.2 Lender Protection

In the Dominican Republic, lenders protect themselves from environmental liability through EDD, ensuring compliance with laws; environmental warranties and indemnity clauses in loan agreements, holding borrowers responsible for any environmental damages; requiring environmental liability insurance; securing collateral or mortgages on property; and sometimes using *fideicomiso* (trust) structures to isolate assets from potential environmental risks. These measures help lenders mitigate financial and legal exposure to environmental issues.

11. Civil Liability

11.1 Civil Claims

According to the General Law on Environment and Natural Resources (Law No 64-00, dated 18 August 2000), civil claims for damages arising from harm to the environment or natural resources may be brought whenever an individual or legal entity causes damage. Such entities will be held objectively liable in civil matters for the con-

sequences of their actions. In these cases, the party responsible for the damage will be legally obligated to repair it materially, bearing the corresponding costs whenever possible. Additionally, they must provide compensation in accordance with the law, thus ensuring adequate reparation for the affected parties.

11.2 Exemplary or Punitive Damages

In the Dominican Republic, courts do not award punitive or exemplary damages, as the legal system focuses on compensatory damages to cover harm suffered. In environmental matters, under Law No 64-00, individuals or entities can be held liable for environmental damage and required to pay compensatory damages. Severe cases involving gross negligence or intentional harm may result in higher compensation, but not punitive damages. Additionally, criminal penalties, such as fines or imprisonment, can be imposed for serious environmental violations.

11.3 Class or Group Actions

Class or group actions are possible for environmental-related civil claims in the Dominican Republic. Under the Civil Code and relevant laws, individuals or groups affected by environmental damage can collectively file lawsuits. This is particularly relevant for cases involving widespread environmental harm, such as pollution or degradation of natural resources.

11.4 Landmark Cases

There have been several landmark cases in the Dominican Republic related to environmental issues. Here are a few notable examples.

- **Carmen A de la Cruz v The State:** This case involved a group of residents from the community of Haina who sued the government, and a private company, for environmental damage caused by industrial activities. The

Supreme Court of the Dominican Republic ruled in favour of the plaintiffs, recognising the right to a healthy environment and ordering measures to mitigate the pollution affecting the community. *Sentencia núm SCJ-SS-23-0347, Exp 001-022-2022-RECA-01675* (Supreme Court of the Dominican Republic, 31 March 2023).

- **Grupo Estrella v Ministry of Environment:** In this case, a construction company challenged the Ministry of Environment's decision to revoke its environmental permit due to non-compliance with regulations. The court upheld the Ministry's decision, emphasising the importance of strict adherence to environmental laws and the government's role in protecting natural resources.
- **The Haina River Pollution Case:** This case involved severe pollution of the Haina River, attributed to industrial discharges. The court ruled that the responsible companies must take remedial actions and compensate affected communities, setting a precedent for holding polluters accountable for environmental damage.
- **EIAs:** Various cases have also established the importance of conducting thorough EIAs before project approvals. Courts have annulled permits when EIAs were found to be inadequate, reinforcing the legal requirement for comprehensive assessments to protect the environment.

12. Contractual Agreements

12.1 Transferring or Apportioning Liability

In the Dominican Republic, indemnities and contractual agreements can be used to transfer or apportion liability for incidental damage or breaches of law between private parties, such as

buyers and sellers. These contracts may include indemnity clauses that specify liability allocation and can limit or exclude certain types of damages. However, legal restrictions apply, preventing the transfer of liability for gross negligence, willful misconduct or violations of mandatory laws, particularly in cases involving environmental damage.

While private agreements can guide liability between parties, they do not have a binding effect on regulators. Regulatory authorities retain the power to enforce environmental laws and impose penalties regardless of any contractual arrangements. Thus, while such agreements are useful for managing liability among private entities, they do not influence the regulator's obligations to ensure compliance with environmental standards and protect public interests.

12.2 Environmental Insurance

The most common forms of coverage include pollution liability insurance, which addresses third-party claims for bodily injury and property damage resulting from pollution incidents, and environmental impairment liability (EIL), which offers broader protection for various environmental risks. Site-specific coverage is also tailored for particular properties or projects, reflecting their unique environmental challenges.

This type of insurance typically covers risks such as clean-up costs for environmental contamination, legal liabilities from third-party claims and potential business interruption losses due to environmental incidents. While the uptake of environmental insurance may be limited by factors such as cost and complexity, it provides essential protection for businesses engaged in high-risk activities, helping them mitigate the financial repercussions associated with environmental incidents.

13. Contaminated Land

13.1 Key Laws Governing Contaminated Land

The key laws governing contaminated land primarily include Law No 64-00 on the Environment and Natural Resources and Decree No 2-2003, which establishes the framework for environmental management and protection. These laws outline the responsibilities of landowners and operators in preventing and addressing land contamination. They require entities to conduct environmental assessments and implement remediation plans when contamination is identified, ensuring that any hazardous substances are managed appropriately to protect public health and the environment.

Regulatory authorities, such as the Ministry of Environment and Natural Resources, take a proactive approach to remediation requirements by enforcing compliance with environmental standards and monitoring contaminated sites. When contamination is detected, authorities may mandate specific remedial actions, including site assessments, clean-up procedures and ongoing monitoring, to ensure that contaminated land is restored to safe and usable conditions. The government emphasises collaboration with affected communities and stakeholders throughout the remediation process, aiming for transparency and effective communication to address environmental concerns.

13.2 Clearing Contaminated Land

In the Dominican Republic, Law No 64-00 clearly establishes responsibilities regarding environmental contamination. According to Article 76, the consequences of environmental disasters caused by negligence are the exclusive responsibility of the individuals or entities that caused them. These individuals or entities are obligat-

ed to restore or repair the damaged areas or resources, whenever possible, and must also face criminal and civil liability for the damages caused.

Environmental responsibility in this context is non-delegable, meaning it cannot be transferred to another person or entity; in legal terms, this is known as environmental liabilities. The law ensures that the party responsible for the damage is the one who directly caused it, regardless of any attempt to transfer this responsibility to a third party. This provision aims to ensure that those engaged in activities with potential environmental impact are fully aware of the consequences of their actions and take on the legal obligations that arise from them.

Additionally, this approach is part of Dominican public law to ensure that environmental protection remains a top priority, holding companies or individuals accountable for any negligent or harmful actions towards the environment. The goal is not only to sanction but also to promote effective prevention and restoration of environmental damages.

13.3 Determining Liability

Dominican legislation recognises civil, criminal and administrative liability for those whose actions or omissions cause damage to the environment. In accordance with environmental laws and the polluter pays principle, anyone who causes damage (loss, reduction or deterioration) to the environment, natural resources or any of its components is held liable.

When a licence or authorisation holder inflicts damage on the environment, the process to determine the liability for the damage caused would depend on the terms' limits or compliance framework set by the authorisation; therefore,

if the authorities determine non-compliance to such terms, they could penalise the holder. On the other hand, if the polluter does not hold an environmental licence or authorisation, any interested or affected party has the right to sue the polluters for the damage caused. In this case, the judge could request input from an expert witness to assess the amount of damage involved in the infringement.

13.4 Proceedings Against Polluters

In the Dominican Republic, the locus standi requirements for bringing proceedings against polluters, landowners or occupiers affected by contamination are outlined in the legal framework that regulates environmental protection, specifically Law No 64-00, the General Law on Environment and Natural Resources. According to this law, both individuals and communities directly affected by environmental contamination have the right to initiate legal action. Affected parties must demonstrate that they have suffered, or are at risk of suffering, harm due to pollution or environmental damage caused by the defendants.

Additionally, environmental NGOs legally registered in the country also have standing to bring proceedings in the public interest. These organisations do not need to prove direct harm but must establish that their purpose aligns with environmental protection and that the issue at hand falls within their scope of interest.

Public authorities, such as the Ministry of Environment and Natural Resources (*Ministerio de Medio Ambiente y Recursos Naturales*), have the authority to take legal action against those responsible for environmental damage, regardless of whether direct harm to a specific individual is proven. The law further permits class actions or collective claims when a group of indi-

viduals is affected by the same environmental issue. In such cases, a representative or an NGO may bring the lawsuit on behalf of the affected group.

In all cases, the claimant must present sufficient evidence linking the pollution or environmental damage to the activities of the polluter, landowner, or occupier. This evidence is crucial in demonstrating the legal basis for seeking redress or remediation.

13.5 Investigating Environmental Accidents

In the Dominican Republic, the process of investigating environmental accidents begins when either the affected party or community reports the incident to the environmental authorities, or when a team of technicians from the Ministry of Environment and Natural Resources identifies and alerts the authorities of the contamination. Regardless of the source of the report, the primary responsibility falls on the party responsible for the damage. They must officially inform the authorities of the incident and submit a compensation plan aimed at remediating the environmental harm caused.

Once a report is made, the Ministry conducts an investigation to assess the extent and nature of the damage. This process involves collecting evidence, such as samples of soil, water or air, and determining whether the contamination violates environmental regulations under Law No 64-00, the General Law on Environment and Natural Resources. If a violation is confirmed, the Ministry may impose fines and require the responsible party to implement corrective measures.

In response to a report, an administrative sanctioning process may also be initiated. This pro-

cess is independent and not limited to civil or criminal proceedings. The administrative process allows authorities to impose penalties, such as fines or suspension of activities, directly within the administrative framework, ensuring that immediate and appropriate actions are taken to mitigate environmental harm. The responsible party is also expected to propose and execute a remediation plan approved by the Ministry, outlining specific steps to restore the environment to its original condition or minimise the damage as much as possible. Non-compliance or failure to properly inform the authorities may result in additional penalties or legal action against the polluter.

14. Climate Change and Emissions Trading

14.1 Key Policies, Principles and Laws

Key policies include the National Climate Change Policy (2015), the National Development Strategy 2030 and the Plan for an Economic Development Compatible with Climate Change (Plan DECCC). These policies integrate climate adaptation and mitigation strategies across various sectors, promoting resilience and sustainable development.

The main laws are the General Law on Environment and Natural Resources (Law No 64-00), which provides the legal framework for environmental protection, including climate change measures; Law No 225-20 on Integral Management and Co-processing of Solid Waste, which includes provisions to reduce greenhouse gas emissions; and the National Plan for Climate Change Adaptation 2015-2030, which outlines specific actions to adapt to climate change impacts in sectors like agriculture, energy, waste and health.

14.2 Targets to Reduce Greenhouse Gas Emissions

The Dominican Republic has set several policy and legal targets to reduce greenhouse gas emissions. The country aims to reduce its greenhouse gas emissions by 27% below business-as-usual (BAU) levels by 2030. This target includes a 20% reduction conditional on external financial support and an additional 7% reduction unconditionally financed through national efforts.

Additionally, the Dominican Republic has signed agreements, including one with the World Bank's Forest Carbon Partnership Facility (FCPF), to curb carbon emissions and reduce deforestation. This agreement aims to reduce forest-related carbon emissions by 5 million tons by 2025. The country has also integrated climate adaptation and mitigation strategies into its National Development Strategy 2030 and other national policies.

15. Asbestos and Polychlorinated Biphenyls (PCBs)

15.1 Key Policies, Principles and Laws Relating to Asbestos and PCBs

For asbestos, the General Law on Environment and Natural Resources (Law No 64-00) and specific regulations mandate safe handling, removal and disposal. Occupational safety standards ensure worker protection. For polychlorinated biphenyls (PCBs), Law No 225-20 on Integral Management and Co-processing of Solid Waste and specific guidelines outline procedures for safe identification, handling, storage and disposal. These measures aim to mitigate the harmful effects of these hazardous substances.

16. Waste

16.1 Key Laws and Regulatory Controls

The key law governing waste management is the General Law on Integral Management and Co-processing of Solid Waste (Law No 225-20). This law establishes the legal framework for preventing waste generation and ensuring its proper management. It includes provisions for waste classification, responsibilities of waste generators and the principles of extended producer responsibility (EPR) for certain products like batteries, electronics and packaging.

Additionally, the Policy for the Integral Management of Municipal Solid Waste, issued by the Ministry of Environment in 2014, provides guidelines for managing municipal solid waste. This policy emphasises waste reduction, separation at the source, and the promotion of recycling and recovery of materials.

16.2 Retention of Environmental Liability

A producer or consignor of waste can retain liability after disposal by a third party if they fail to comply with regulations or have specific contractual obligations, or if the waste is hazardous. Liability can also arise from negligence or misconduct by the third party, or if the producer fails to verify proper disposal. These measures ensure accountability and promote responsible waste management practices.

16.3 Requirements to Design, Take Back, Recover, Recycle or Dispose of Goods

Producers of goods can be required to design, take back, recover, recycle or dispose of their products once they become waste under various circumstances, often governed by EPR policies. These policies shift the responsibility for the entire life cycle of a product to the produc-

ers. Key circumstances include legislation and regulations, such as the Waste Electrical and Electronic Equipment (WEEE) Directive in the EU, which mandates the recycling of electronic waste. Products with significant environmental impacts, like batteries and electronics, are also subject to EPR to ensure proper management and recycling.

Additionally, market and consumer demand for sustainable products can drive producers to adopt EPR practices voluntarily. Companies may implement take-back programmes to enhance their brand image and meet customer expectations. CSR initiatives also play a role, as many companies adopt EPR to demonstrate their commitment to sustainability and environmental stewardship. By implementing EPR, producers are incentivised to design products that are easier to recycle, use fewer hazardous materials and have a longer lifespan, ultimately reducing the environmental impact of their products.

16.4 Rights and Obligations Applicable to Waste Operators

Waste operators are governed by Law No 225-20 on Integral Management and Co-processing of Solid Waste. They have the right to access information on waste management policies and receive technical and logistical support from authorities. Their obligations include reducing waste generation, separating waste at the source, and ensuring proper handling and disposal. Compliance with environmental standards and financing waste management operations are also required.

Breaching these obligations can lead to severe consequences, such as substantial fines, suspension of permits and mandatory restoration of damaged ecosystems. Severe violations may result in criminal charges, including imprison-

ment. Affected parties can seek compensation through civil lawsuits, and entities with past violations may face increased regulatory scrutiny. Additionally, non-compliance can cause significant reputational damage, affecting relationships with stakeholders and the community.

17. Environmental Disclosure and Information

17.1 Self-Reporting Requirements

Companies and individuals must promptly notify the Ministry of Environment and Natural Resources of any environmental incidents, such as spills, leaks or other forms of contamination. This requirement ensures that appropriate measures can be taken to mitigate environmental harm and address any potential risks to public health and safety. Failure to report such incidents can result in fines, sanctions and increased scrutiny from regulatory bodies.

17.2 Public Environmental Information

In the Dominican Republic, the public can obtain environmental information from public authorities through formal requests and public participation processes. The General Law on Environment and Natural Resources (Law No 64-00) requires authorities like the Ministry of Environment to disclose information on hazardous materials, EIAs and regulatory compliance. Public consultations during the permitting process also provide access to relevant information.

Public authorities include government entities responsible for environmental management, such as national ministries and local government units. Additionally, the government transparency portal and the Office of Access to Public Information (OAI) facilitate public access to information, promoting transparency and accountability.

17.3 Corporate Disclosure Requirement

In the Dominican Republic, corporations are not generally required to disclose environmental information in their annual reports. However, under the country's securities market law and regulations, corporate entities issuing debt or equity instruments may be required to disclose environmental information. This ensures transparency and informs investors about potential environmental risks and liabilities associated with the company.

17.4 Green Finance

Green Bonds in the Dominican Republic: Caribbean Green Financing Frameworks

In the Dominican Republic, green finance arrangements include initiatives like green bonds and the development of a national green taxonomy. The country has issued sovereign green bonds to finance projects aimed at reducing greenhouse gas emissions and promoting sustainable development. The International Finance Corporation (IFC) has also supported the creation of the Caribbean Green Financing Frameworks to engage the financial sector and other stakeholders in green financing.

The primary authorities responsible for monitoring and enforcing these arrangements are the Ministry of Environment and Natural Resources and the Superintendency of the Securities Market (*Superintendencia del Mercado de Valores de la República Dominicana* (SIMV)). These bodies ensure compliance with environmental standards and oversee the implementation of green finance initiatives.

18. Transactions

18.1 Environmental Due Diligence

EDD is typically conducted on mergers and acquisitions (M&A), finance and property transactions in the Dominican Republic. This process helps identify any environmental liabilities and ensures compliance with environmental regulations. For a purchaser of shares or assets, typical EDD might include evaluating the property for contamination or other environmental issues through environmental site assessments (ESAs), reviewing environmental permits and compliance to ensure all necessary permits are in place, investigating historical environmental liabilities to identify past contamination, ensuring required EIAs are completed and approved, examining regulatory records for past violations or ongoing enforcement actions, and conducting interviews and inspections to identify potential environmental risks. This thorough due diligence helps purchasers make informed decisions and manage potential environmental risks associated with the transaction.

18.2 Disclosure of Environmental Information

In the Dominican Republic, a seller is generally required to disclose any known environmental information to a purchaser. This includes details about any existing environmental liabilities, such as contamination, compliance with environmental regulations and any ongoing or past environmental assessments or permits. Full disclosure helps ensure that the purchaser is aware of any potential environmental risks or obligations associated with the property or business, facilitating informed decision-making and compliance with legal requirements. This practice is crucial for avoiding future disputes and ensuring transparency in the transaction process.

18.3 Key Issues in Environmental Due Diligence

In the Dominican Republic, common environmental legal issues in transactions often include ensuring thorough EDD to identify existing liabilities such as contamination or regulatory non-compliance. Navigating the transfer of environmental permits and approvals to new owners or operators is also crucial. Verifying compliance with all relevant environmental laws and regulations is essential to avoid future legal complications. Addressing potential liabilities for historical contamination that may affect new owners or operators is another key concern. Additionally, ensuring that any required EIAs are completed and approved for ongoing or planned projects is critical to maintaining regulatory compliance and avoiding delays. These issues are vital to manage and mitigate legal and financial risks in property and business transactions.

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