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Real Estate 2022

Dominican Republic: Law & Practice

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DOMINICAN REPUBLIC

Law and Practice

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1. GENERAL

1.1 Main Sources of Law

For the first 100 years or so from becoming independent in 1844, the Dominican Republic had a legal system based on French law, specifically on the Napoleonic Codes – civil, civil procedure, commercial, criminal and criminal procedure – under a constitution based on the US model, with three branches of government: a strong presidency, a legislature and a judiciary with the power to strike down acts of the other branches found to be unconstitutional.

Since the first half of the 20th century, however, there has been a move away from the French model, with the adoption of many statutes and codes inspired by other legal systems. Examples include:

- the Land Registry Law of 1920, founded on the Torrens system of Australian origin;
- the Labour Code of the 1950s and 1992, modelled on South American codes;
- the new Code of Criminal Procedure of 2002, based on the same adversarial principles that govern US criminal litigation;
- the new arbitration statute of 2008, taken from the model arbitration code prepared by the United Nations; and
- the new bankruptcy and insolvency statute of 2015, influenced greatly by US bankruptcy law.

The Constitution of the Dominican Republic lays out the fundamental framework for the organisation and the operation of the Dominican government and its institutions, and recognises an impressive list of civil rights for all individuals, Dominicans and non-Dominicans, including an equal protection clause for non-Dominican citizens and investors. Article 25 of the Constitution expressly states that foreign nationals are entitled to the same rights and duties in the

Dominican Republic as Dominican nationals, except, understandably, for the right to take part in political activities. Article 221 of the Constitution sets forth that the government will ensure equal treatment under the law for local and foreign investments.

Individuals and entities, domestic and foreign, have a quick and inexpensive remedy for the protection of their constitutionally protected rights: the writ of amparo, which is granted by all courts and is subject to an appeal to the Constitutional Court.

Cases in Dominican courts are decided by judges, not by juries. Judges rule based on the texts of the Constitution and existing statutes, the precedents of the Constitutional Court (which are binding) and the precedents of other courts (which are not binding). They do not rule in equity, as in some common law countries, but the principle of good faith is recognised by statutory law and grants the courts some discretion. Punitive damages are not awarded in injury cases – just compensatory damages.

Regarding evidence, parol evidence is admissible in criminal, labour and commercial matters, and, under certain circumstances, in civil and real estate matters.

Finally, real estate laws are national in scope and application.

1.2 Main Market Trends and Deals

The main trends in the real estate market in the Dominican Republic continue to be the development of important projects in the tourism sector, as well as new projects for the cruise sector after the success story of the Amber Cove project in Puerto Plata.

Many well-known international developers have continued with multiple projects, some of which

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are already operational, in the areas of Punta Cana, Bani, Miches, Puerto Plata, Santo Domingo and the southwest provinces of Pedernales, Barahona and Peravia – Bani.

Of note in the past 12 months can be mentioned Club Med's Miches Playa Esmeralda hotel, a five-star, 400-room hotel just built in a 93-acre beachfront property in Miches, Dominican Republic, the first major hospitality project in the Miches area, destined to become the next Punta Cana in terms of tourism development in the Dominican Republic. The firm assisted Club Med in the acquisition, permits and tax exemption matters under the country's Tourism Incentive Tax Law (CONFOTUR).

1.3 Impact of Disruptive Technologies

Disruptive technologies have transformed every step of the real estate value chain, providing massive opportunities for the industry. The technologies with the highest rate of adoption include augmented reality (AR), drones and artificial intelligence (AI), along with instant communication channels and social media, big data and the 5G network.

So far, the fastest adoption has been in AR and drones for surveying properties and neighbourhoods and for providing virtual tours, and, obviously, due to the fast-paced nature of the business, instant communication tools and social media.

There is still room for improvement in the way big data is being used by the industry, but this will likely change as AI-powered customer relationship management and listings become more prevalent.

There are a lot of expectations of the 5G network, to which the President has given high priority, which will influence real estate development, from the way existing structures are used,

to the way new ones will be integrated to the internet of things. Smart buildings have been the standard for new constructions in the country for some time now.

The outlook is that as blockchain technology becomes more mainstream, it will permeate to the industry, for it has been touted as a far more secure and transparent way to conduct transactions.

1.4 Proposals for Reform

On the legislative front, the much-anticipated new statute on real estate evictions, Law 396-2019, has been in force since October 2019. This law regulates a formerly relaxed practice in real estate evictions and at the same time brings added security to the protection of real estate rights against unlawful eviction processes.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

Dominican real estate law recognises the following interests in real estate:

- absolute ownership;
- usufruct;
- easements;
- betterments;
- leases;
- condominium regimes; and
- privileges and mortgages.

It does not recognise co-operative ownership arrangements or other occupancy interests.

2.2 Laws Applicable to Transfer of Title

Registration rules are established by the General Director of the Registries of Title and are applicable nationwide. The Dominican Civil Code states that buyers pay all the fees, expenses and taxes

required for conveyances, unless agreed otherwise by the parties.

2.3 Effecting Lawful and Proper Transfer of Title

The legal requirements for recording conveyances are the following:

- deed of sale (sales contract), authenticated by a Dominican notary;
- certificate of title, issued to the owner by the Registry of Title – a completely different document from the deed of sale, which serves as the only proof of ownership;
- certification showing that the seller is up to date with its property taxes;
- a receipt attesting to the payment of the real estate transfer taxes (currently 3% of the government-appraised value of the property); the buyer is exempt from this tax in some cases (eg, first purchases in certain tourism projects and low-cost housing acquired with a bank loan);
- a copy of the identity card or passport of the parties, or tax card if a legal entity (non-resident foreigners need to provide an additional identity card from their country of origin in addition to their passports); and
- a copy of evidence of purchase price or mortgage payment through a non-cash method, for operations involving more than DOP1 million.

Registration rules are established by the General Director of the Registries of Title and are applicable nationwide. The Dominican Civil Code states that buyers pay all the fees, expenses and taxes required for conveyances, unless agreed otherwise by the parties.

2.4 Real Estate Due Diligence

The typical real estate due diligence overseen by the buyer's attorney regarding title consists of the following:

- obtaining a certification from the Registry of Title stating the legal status of the property;
- obtaining a certified report from an independent surveyor confirming that the official survey coincides with the property and that there are no overlapping surveys;
- obtaining a certificate from the Internal Revenue stating that the property tax, if any, has been paid;
- confirming that the property to be purchased may be used for the purposes sought by the buyer;
- investigating whether a third party is occupying the property;
- investigating the property's environmental status; and
- ensuring that the seller, especially if a corporation, has the authority to sell and can convey clear title.

As noted above, under the Torrens system, there is no need to conduct a chain-of-title search. Title insurance is available but is not used frequently for various reasons – especially limited protection and costs – even though the indemnity fund set forth by the Real Estate Registration Law has not functioned properly.

The Real Estate Registration Law establishes that whoever registers first has priority over those who register after. Registration is deemed to be complete on the date the application is submitted for registration provided that the application is approved, not on the date the Registry of Title issues the corresponding certificate. Priority among different interested parties can be contractually reordered.

2.5 Typical Representations and Warranties

Warranties typically specify that:

- the property is registered to the seller and is of the dimensions mentioned on the title;

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- there are no overlapping parcels;
- there are no liens, mortgages or third-party registered rights;
- the conveyance will not be affected by any tax liabilities;
- the seller will have to provide any documentation and sign any additional set of documents required for the final conveyance of the title to take place; and
- all liabilities, including utility bills and contractors' fees, are paid up to the date of closing.

The warranties are provided both in relation to the property and to the shares of the holding entity being purchased, if that is the case.

2.6 Important Areas of Law for Investors

Any investor who wishes to participate in the real estate market of the Dominican Republic should consider the impact on their investments of tax law, real estate law, environmental legislation and administrative law for licences, planning and the registration of the title of ownership before making a purchase.

2.7 Soil Pollution or Environmental Contamination

Issues of environmental clean-ups in real estate transactions are still very rare in the Dominican Republic. So far, this has been a problem only in the mining sector. Therefore, there are no general covenants in use. Of course, the parties to a contract are free to insert mutually agreed terms regarding long-term environmental liability and indemnity issues.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

All planning and land use matters are handled by municipalities, the Ministry of Tourism (in tourist areas) and the Ministry of Environment and Natural Resources. The municipalities and the Ministry of Tourism establish the general

rules regarding use (eg, residential, commercial, industrial, mixed, density, maximum height). Any construction or development that may affect the environment must also be approved by the Ministry of Environment and Natural Resources.

2.9 Condemnation, Expropriation or Compulsory Purchase

The Constitution and Law 344 of 1943 establish the legal regime for the government's compulsory purchase or condemnation of real estate. The Dominican Constitution states that: "No person shall be deprived of his or her property, except on justified grounds of public utility or social interest, for which a person shall be paid a fair value before expropriation, as determined by the mutual consent of the parties or by the judgment of a court of competent jurisdiction, pursuant to the law. In case of the declaration of a State of Emergency or Defence, compensation may not be paid before the expropriation."

Law 344 establishes the specific procedure that the government must follow in any case of expropriation. Because the provisions of this law are of public order, allocations cannot be modified by contractual arrangements between the parties.

2.10 Taxes Applicable to a Transaction

A conveyance tax must be paid before registering the purchase of real estate. The conveyance tax amounts to 3% of the price of sale or the market value of the property as determined by the tax authorities, whichever is higher.

A 1% annual tax is assessed on real estate property owned by individuals, based on the cumulative value of the properties owned by the same individual, as appraised by the government authorities. Properties are valued without taking into account any furniture or equipment to be found in them. For built lots, the 1% is calculated only for values exceeding approximately

USD150,000. For unbuilt lots, the 1% tax is calculated on the actual appraised value without the USD150,000 exemption. Individuals pay this tax every year on or before March 11th, or in two equal instalments: 50% on or before March 11th, and the remaining 50% on or before September 11th. This threshold is adjusted annually for inflation.

The following properties are exempt from the property tax:

- built properties valued at USD150,000 or less;
- farms; and
- houses inhabited by owners who are at least 65 years old and have no other property in their name.

Properties held in the name of a corporation or other entities are not, at present, subject to a property tax per se; however, a 1% tax is levied on company assets, including real estate.

There are also different tax treatments with regard to leasing to individuals or to corporate entities: leases to entities are subject to value-added tax and leases by individual landlords are subject to a 10% withholding tax that is credited toward the landlord's annual income tax.

2.11 Legal Restrictions on Foreign Investors

There are no restrictions on foreign individuals or entities owning or leasing real estate in the Dominican Republic. The process for purchasing or leasing real estate for foreigners is exactly the same as for Dominicans; there are no national defence or security limitations. Foreign individuals and entities, and Dominicans, must register locally with the tax authorities before registering purchases of real estate. Individuals must submit their application directly at the Internal Revenue office, while entities must first register at the Chamber of Commerce and obtain a mercantile

registry certificate, before applying for their tax number. These are mere formal requirements that can be easily fulfilled.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

In general, Dominican law does not distinguish between commercial and residential properties; the same rules apply for both. However, regarding ownership, properties held by commercial entities are taxed differently from those owned by individuals.

Financing sources are mixed, depending on the type of investment. For example, major infrastructure financing is obtained through foreign banks and financial institutions, while real estate developments in the tourism sector have been more dependent on local banks, most of which have entire departments catering to the real estate-tourism industry.

There are major financial institutions, publicly traded funds and private investors with interests in the country, as it is the largest recipient of foreign direct investment (FDI) in the region.

3.2 Typical Security Created by Commercial Investors

Mortgages (financing from third parties) and privileges (seller's financing) are the customary security interests. Both grant the lender a registered right on the property (collateral) that can be enforced in the event of default through a foreclosure process, not an automatic defeasible conveyance in the event of default.

In both cases (mortgages and privileges), in the event of default, the enforcement is made through a foreclosure process before the competent civil and commercial court of first instance.

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Dominican trust law offers the possibility of setting up real estate security trusts.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

A foreign lender does not need specific authorisation to do business in the Dominican Republic. To register a mortgage in its favour, the foreign lender should obtain a local tax number. Once this tax number has been obtained, the lender is no longer subject to the general withholding taxes established for payments sent abroad (28% in general, or 10% for interest paid to foreign financial institutions). The lender will be taxed as a permanent establishment, under the same conditions as a Dominican entity.

Regarding required documents and registration taxes, the same rules that apply for local lenders apply to foreign lenders, as follows.

Mortgages are created by contract between the owner and the lender, or by a tripartite agreement between the seller, the buyer and the lending institution. The contract is authenticated by a Dominican notary and then registered at the Registry of Title after payment of the 2% mortgage tax.

The registration of a security interest is perfected by filing the documentation at the Registry of Title in the jurisdiction where the property is located. The documents required for the filing of a mortgage are:

- a mortgage contract;
- an original of the certificate of title of the borrower;
- a mortgage tax receipt; and
- certification attesting to the payment of property taxes.

Mortgages and underlying credits can be transferred without paying additional taxes.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

The Civil Code states that buyers pay all the fees, expenses and taxes required for conveyances unless agreed otherwise by the parties. Each party covers their own attorney's fees.

3.5 Legal Requirements before an Entity Can Give Valid Security

There are no mandatory legal rules or requirements that must be complied with before an entity can give valid security over its real estate assets, except for those imposed on financial entities by the Financial and Monetary Code.

3.6 Formalities when a Borrower Is in Default

The remedies against a debtor in default are enforced through a specific judicial procedure at the first-instance court. It is a three-step procedure, usually based on monetary default: the creditor notifies a specific notice of payment to the debtor; when the notice expires without payment being fulfilled by the debtor, then the creditor files an embargo at the Registry of Title to completely block any further registrations on the property, and then initiates the court procedure for the foreclosure, which ends in a public auction sale of the foreclosed property. All the rules regarding the foreclosure are of public order. Foreclosure can only be judicial; non-judicial foreclosure is prohibited by law. Defaults other than monetary defaults are possible (unauthorised distribution of dividends, unauthorised changes in the corporate structure, etc) if properly established in the loan documents or mortgage act and proven by the creditor.

The usual time for an ordinary foreclosure is around six to twelve months. Financial institutions benefit from an expedited procedure that takes around three to six months. In any case, dilatory procedures can be initiated by the debt-

or or by any other party with a registered right on the property.

Law 189-11 introduced trusts and collateral agent structures for mortgage securities as an alternative to standard mortgage-foreclosure processes, providing better protection of collateral and including an expedited foreclosure procedure, now available to all types of creditors after a 2017 court ruling.

Aside from the mentioned judicial foreclosure process, there are no other legal avenues available to enforce a loan against a defaulting debtor.

3.7 Subordinating Existing Debt to Newly Created Debt

Banks usually require a first-rank mortgage and will not accept subordination to an existing collateralised debt. Most credit agreements forbid the debtor from entering into additional agreements without express authorisation from the lender; if they do, the new debt will be registered as a second-rank mortgage with second priority after the initial registered lender.

3.8 Lenders' Liability under Environmental Laws

There is no lender's liability in the Dominican Republic with respect to environmental laws.

3.9 Effects of a Borrower Becoming Insolvent

Under Law 141-15, foreclosure or sequestration processes pursued by creditors affecting more than 50% of a commercial debtor's assets, among other conditions, can trigger a bankruptcy and restructuring process.

Aside from exceptions for certain regulated industries, such as banks and stock exchange-related entities, as well as government-owned entities, the law is applicable to any Dominican

or foreign entity or commercial individual person with a permanent establishment in the country.

All of the following processes against the debtor will be deemed as automatically stayed or prohibited once the court approves the bankruptcy petition:

- all legal, administrative, tax or arbitration claims or lawsuits, including foreclosure and sequestration processes;
- computation of liquidated damages clauses and contractual or judicial penalties;
- disposition of a debtor's assets, including the filing of a non-registered deed of sale, unless otherwise authorised by the law; and
- payment against debts originated prior to the restructuring request.

These processes will remain stayed during the restructuring plan's execution, thereby prohibiting any asset seizure actions by the creditors. The stay will be lifted if the restructuring plan fails and the court authorises the debtor's asset liquidation.

During the restructuring's conciliation and negotiation stage, all creditors, including secured ones (registered securities, mortgages and pledges, etc), that wish to have voting rights assigned to them for the execution of the restructuring plan must formally register their credits before the Bankruptcy Court, prior to the court-appointed mediator's submittal of their final report to the court.

3.10 Consequences of LIBOR Index Expiry

So far, LIBOR uncertainty has created no noticeable change in the pricing dynamics of real estate properties. In addition, it could be an even smaller issue for commercial real estate compared to other types of credit, given the prevalence of fixed-rate funding.

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The authors trust that regulators and policymakers are working to make sure that the transition towards a new base rate for valuing floating rate debt is as seamless as possible.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The main law governing zoning in the country is Law 975/44, dated 29 June 1944, regarding urbanisation and public adornment.

Furthermore, Law 64-00, dated 25 July 2000, the General Environmental and Natural Resources Law, also sets forth a series of provisions regarding zoning in determined regions of the national territory, and also includes a series of limitations with regard to the use of lands declared as national parks, as well as protected areas.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

In the Dominican Republic, methods of construction are regulated primarily by the Ministry of Public Works and the Ministry of Environment and Natural Resources, as they must comply with environmental regulations and construction must not harm the environment.

Exceptions apply in some areas designated as protected spaces, such as the Colonial Zone, where design, construction and appearance must be pre-approved by the Ministry of Tourism.

4.3 Regulatory Authorities

All land use matters are handled by municipalities, the Ministry of Tourism (in tourist areas) and the Ministry of Environment and Natural

Resources. The municipalities and the Ministry of Tourism establish the general rules regarding use (eg, residential, commercial, industrial, mixed, density and maximum height). Any construction or development that may affect the environment must also be approved by the Ministry of Environment and Natural Resources.

4.4 Obtaining Entitlements to Develop a New Project

In order to develop a new project, approval and permits must be obtained from the following governmental agencies.

- City hall – land use clearance is locally processed. At the same time the plans are submitted to the local city hall for evaluation and clearance, an environmental authorisation is submitted.
- Ministry of Environment and Natural Resources – the environmental impact of the project is evaluated. This process includes a public hearing, allowing for third parties to participate and object to the request.
- Ministry of Tourism – for projects being developed in tourism areas, the requests and documentations are submitted to the Ministry's Department of Planning for evaluation.
- National Water System – is in charge of evaluation and approval of the hydraulic and sanitary design plans.
- Ministry of Public Works – once the plans are approved by the previous entities, the Ministry of Public Works issues a building permit.

4.5 Right of Appeal against an Authority's Decision

If the application for permission or authorisation has been denied by any of the institutions involved in the process, the applicant has the right to appeal to the same institution where it was denied. If the reconsideration is again denied, an administrative appeal should be sub-

mitted to the immediately superior government authority.

The applicant can also have the case evaluated directly by an administrative court judge by submitting its claim to the administrative court, bypassing the hierarchical appeal previously mentioned.

4.6 Agreements with Local or Governmental Authorities

Agreements are usually signed with the corresponding city council so that the taxes collected from the developer are used for social improvement projects.

Optional agreements can also be arranged with the Ministry of Environment and Natural Resources, by signing an environmental management plan, which is compulsory for projects developed in protected areas.

Large developments in the infrastructure industry can now enter into development agreements with the government through the recently enacted Public Private Partnerships Law No 47-20 (20 February 2020).

4.7 Enforcement of Restrictions on Development and Designated Use

Restrictions are enforced on development and designated use by employing sanctions designated by the state.

These sanctions include fines and penalties, closing of operations, and/or removal of licences and permissions. New regulations on environmental licences and permissions include provisions on prison sentences for violations.

The government also uses tax regulations to enforce restrictions.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

The most common entity used by foreign investors is a local limited liability company (LLC). Some, preoccupied by the complexities of reporting a foreign entity to the tax authorities in their home jurisdiction, prefer to register their domestic entity in the Dominican Republic. Finally, high-income individuals with complex estate planning in place use the structures existing in their estate plan to acquire Dominican assets.

There are no restrictions regarding the structure or legal form of a foreign entity. If it is duly incorporated and recognised in the jurisdiction where it was formed, an entity can do business in the Dominican Republic upon registration at the Chamber of Commerce and Internal Revenue. However, trusts as they are known in most common law jurisdictions are not recognised as legal entities and cannot, therefore, directly hold property in the Dominican Republic.

As for Dominican entities, Dominican company law allows different types of commercial companies (individually owned enterprises, LLCs) and corporations (regular or simplified stock corporations), all of which provide limited liability for their owners or shareholders. There are other investment entities recognised under the law, such as business partnerships, limited partnerships and per share limited partnerships, but they are seldom used because they do not offer full liability shields to their members and are subject to the same tax treatment as the other entities. Also, Law 189-11 introduced, in 2011, local fiduciary vehicles as a holding option.

Local law does not recognise the concept of pass-through entities. Any entity, local or foreign, is taxed as an entity, regardless of its legal structure, except real estate assets held through

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a closed-end investment fund approved by the Dominican Republic Security and Exchange Superintendence. These funds are considered fiscally neutral investment vehicles and, as such, are not subject to income tax; their shareholders or beneficiaries, however, will pay income tax on income received from the funds.

5.2 Main Features of the Constitution of Each Type of Entity

LLCs must have no fewer than two shareholders and no more than 50. To form an LLC, the law currently requires, as a minimum, that each shareholder holds a share with a value of no less than DOP100 each. Shares in an LLC are non-negotiable by default. Share transfers to third parties who are not current shareholders must be approved by 75% of the votes of the company, except in certain cases, and if the transfer is rejected, the shares in question must be purchased or redeemed by the other shareholders or the company.

Management of an LLC is in the hands of one or several managers or a board of managers. Managers must be natural persons, not other companies. Unless otherwise stipulated in the by-laws, no inspection officer is required to oversee management.

5.3 Minimum Capital Requirement

To form an LLC in the Dominican Republic, the law currently requires, as a minimum, that each shareholder holds a share with a value of no less than DOP100 each. After the introduction of Law 68-19, there are no established minimum capital amounts required, aside from the one previously stated, but in practice, LLCs are usually formed with a minimum contribution from shareholders of DOP100,000, paid in full, and divided into shares with a par value of at least DOP100 each.

5.4 Applicable Governance Requirements

LLCs are governed by the provisions of their by-laws. The authority over day-to-day activities falls on the managers or board of directors and shareholders are the maximum authority regarding issues relating to the dissolution process, the modification of by-laws, sales of the company's assets, and transformation of the company, among others.

Corporations incorporated with the purpose of acquiring or acting as holding companies for real estate properties are not required to obtain licences, authorisations or government permits.

5.5 Annual Entity Maintenance and Accounting Compliance

All foreign and local entities are taxed equally regardless of structure: a flat 28% on net corporate profits and 10% tax on dividends or profits sent abroad.

The Dominican Tax Code has a general anti-tax avoidance provision ("substance over form" principle) and specific rules for the sale of shares of foreign entities that own assets in the Dominican Republic.

All companies registered in the Dominican Republic, regardless of whether they are local or foreign entities, including those with no income or operations, must file income tax returns with the Dominican Republic's Tax Office every year. Aside from the penalties on overdue taxes, which amount to 11.1% for the first month and 5.1% for each additional month, entities that do not comply with the filings and subsequent payments of both income and asset taxes run the risk of having the Tax Office begin a lien registration process against the entity's properties.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Leases are the most common arrangements that Dominican law recognises for a person, company or other organisation to occupy and use real estate for a limited period of time without buying it outright.

6.2 Types of Commercial Leases

Dominican law only considers leases in general terms.

6.3 Regulation of Rents or Lease Terms

Rents or lease terms are freely negotiable for the most part as general contract law applies to them. Provisions are, however, limited by various statutes that protect tenants. For example, if there is no escalating clause for rent in the lease, the landlord cannot raise it unilaterally without undertaking a lengthy administrative procedure. Also, evictions cannot happen unless a judicial eviction process is undertaken, regardless of what has been contractually agreed.

Key lease provisions include:

- a lease term;
- tacit renewal clauses;
- ownership of betterments made by the tenant during the lease;
- default clauses and waiver of certain tenant-friendly statutory provisions not of public order;
- a clear distinction between minor and major repairs and which party will be responsible for covering these; and
- specific use of the property during the lease term (type of business or family residency).

6.4 Typical Terms of a Lease

There is no typical lease term or restrictions on such a term. Tenants of business premises do not have security of occupation or rights to renew the lease.

The law clearly assigns minor maintenance repairs to tenants, while major structural repairs are covered by landlords; all of which can be modified contractually between the parties.

The rent is commonly paid monthly; however, the parties are free to agree otherwise.

6.5 Rent Variation

Leases commonly provide for periodic rent increases.

6.6 Determination of New Rent

There is no legal rent level protection. Rent can be increased as long as it has been agreed contractually, otherwise it is not permitted.

6.7 Payment of VAT

Rent payments to individuals but not to companies are subject to a 10% withholding at source. All rents are subject to 18% VAT.

6.8 Costs Payable by a Tenant at the Start of a Lease

At the start of the lease agreement, the tenant pays a security deposit, usually equivalent to two months' rent, to guarantee the fulfilment of its obligations. This amount is to be returned by the landlord once the property is received at the end or termination of the lease.

The landlord has the obligation to deposit this money, with a copy of the lease agreement and other documentation, at the Agricultural Bank. Legal fees and other applicable fees are usually paid by each party.

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6.9 Payment of Maintenance and Repair

The expenses of maintenance and repairs of common areas, especially in commercial buildings and shopping centres, are paid by each of the tenants and are usually established as part of the agreed rent.

For residential spaces, the costs arising from common areas maintenance are covered by each tenant, by payment of a maintenance fee, usually on a monthly basis, either to the building administrator or to the landlord, if agreed as part of the rent.

6.10 Payment of Utilities and Telecommunications

Utilities such as electricity, cable TV, water and telecommunications are solely covered by the tenant. Expenses related to common areas of a condominium are usually covered proportionally and distributed between tenants as part of the monthly maintenance fee.

6.11 Insurance Issues

There is no legal obligation to obtain insurance for real estate subject to lease; this will depend on the terms and conditions agreed between the parties. Rental insurance is not commonly used.

6.12 Restrictions on the Use of Real Estate

The parties can agree on the uses of the rented property. There is no regulation and/or law that imposes further restrictions. On occasions, municipal regulations can restrict the use of real estate property for exclusively housing purposes, depending on the zone in which the property is located.

6.13 Tenant's Ability to Alter and Improve Real Estate

Lease contracts usually include provisions allowing tenants to waive their rights to claim any ownership to property improvements (bet-

terments) and that they will all remain attached to the property and their ownership transferred to the landlord on termination of the lease.

6.14 Specific Regulations

In general, Dominican law does not distinguish between commercial and residential properties; the same rules apply for both. However, properties held by commercial entities are taxed differently from those owned by individuals.

Leases to entities are subject to value-added tax and leases for residential purposes are subject to a 10% withholding tax that is credited towards the landlord's annual income tax.

6.15 Effect of the Tenant's Insolvency

Insolvency can be included as a default clause allowing the landlord to terminate the lease. This said, under Law 141-15, if the tenants initiate an insolvency process, they cannot be evicted from the property during the process, nor can the property suffer any type of seizure. The owner is then assigned by a judge a position in the range of creditors.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

The most common form of security the landlord holds against the tenant in the event of failure to meet its obligations is the deposit made by the tenant in advance of the commencement of the lease. The provision of a third-party guarantor can also be agreed between the parties, and/or that failure to comply with any of the obligations agreed upon shall result in the termination of the agreement.

6.17 Right to Occupy after Termination or Expiry of a Lease

Upon termination of the lease agreement, the tenant should leave the property and return it to the landlord in the same condition as it was origi-

nally received. If the tenant does not vacate the property upon expiry, and the landlord does not object to the tenant's occupancy and continues to receive the rent payment without complaint, the lease agreement is considered effectively renewed but as an oral lease, not a written one, to which different rules apply in terms of eviction prior notice.

6.18 Right to Assign a Leasehold Interest

Most leases provide that any subletting or assignment is subject to obtaining the landlord's prior consent. Landlords do not have to provide a reason for an assignment or a sublease. Where there is a legal reorganisation or transfer/sale of the tenant, there are no effects as long as the tenant remains the same legal entity.

6.19 Right to Terminate a Lease

The circumstances in which leases are usually terminated by the landlord and/or the tenant are:

- reaching of the term of the agreement without renewal;
- by the initiation of an eviction proceeding by the landowner in the event that the tenant fails to comply with payment obligations;
- mutual consent among the parties;
- the destruction of the leased property;
- in the event the tenant uses the property for a different function than agreed upon in the lease agreement, and only in the event that such situation negatively affects the landowner;
- in the event that the tenant subleases the property in whole or part if the lease agreement expressly prohibited subleasing;
- if the tenant performs modifications to the property; and
- renewal or extension of the lease period must be mutually agreed upon by the parties.

Usually, termination terms provide that the non-compliant party is forced to pay a penalty for the early termination. Furthermore, compensation for termination must be contractually agreed upon by the parties.

6.20 Registration Requirements

At the start of the lease agreement, the tenant pays a security deposit, usually equivalent to two months' rent, to guarantee the fulfilment of its obligations. This amount is to be returned by the landlord once the property is received at the end or termination of the lease.

The landlord has the obligation to deposit this money, with a copy of the lease agreement and other documentation, at the Agricultural Bank. Legal fees and other applicable fees are usually paid by each party.

6.21 Forced Eviction

Tenants can sue landlords for the specific performance of any obligation assumed by the landlord in the lease and damages. The landlord, likewise, can sue for specific performance and damages, as well as for eviction; remedies available to landlords do not differ depending on whether the nature of the lease is commercial or residential.

The customary procedure to evict a defaulting tenant is to sue in court. The process is very time-consuming for two reasons:

- before suing, the landlord is required in many cases to go through an administrative procedure that usually grants the tenant grace periods of six months or more; and
- eviction orders by lower courts are subject to appeals to two higher courts, which lengthens the process to three or more years if the tenant retains the services of a savvy lawyer; evictions cannot enforce while appeals are pending.

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General contract law applies to the lease but is limited by various statutes that protect the tenants. For example, if there is no escalating clause for rent in a lease, the landlord cannot raise it unilaterally without undertaking a lengthy administrative procedure.

6.22 Termination by a Third Party

No third parties are allowed to initiate the termination process of a lease agreement. However, the government can initiate an expropriation process against the property, by following the due process.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

The most commonly used structures are:

- the fixed price system, which gives the owner of the project a comprehensive idea of the final cost of the project, establishing a fixed fee for the construction process; and
- the construction management system, in which the project owner pays the contractor just a construction fee and the owner covers the cost of construction materials and labour.

7.2 Assigning Responsibility for the Design and Construction of a Project

The parties are free to establish the conditions that govern their relationship, allowing any scheme to be developed for assigning responsibility for the design and construction of a project, but with the caveat that plans must be executed by a licensed architect or engineer.

7.3 Management of Construction Risk

Construction risk is usually managed contractually through provisions and the establishment of penalties agreed in the event of delays, per-

formance bonds and insurance cover, among others.

The Dominican Civil Code establishes a warranty on structural and hidden damages in a property, enforceable against architects and contractors for up to ten years. In practice, this timeframe is usually limited by the parties.

7.4 Management of Schedule-Related Risk

These types of risks are managed contractually through provisions and the establishment of penalties in the event of delays; it is also common to ask for a performance bond from the contractor issued in favour of the owner and/or developer.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

Owners or developers often require the contractor performing the work to provide security in the form of monetary compensation through available financial tools, in case they are not able to deliver the work on time or to meet the quality standards for which they have been paid.

These risks are usually managed contractually by means of warranties, indemnity provisions, retention provisions, penalties agreed in the event of delays, performance bonds and insurance cover, among others.

In addition, the Dominican Civil Code establishes a warranty covering structural and hidden damages in a property that is enforceable against architects and contractors for a period of up to ten years.

7.6 Liens or Encumbrances in the Event of Non-payment

According to Article 2103 of the Dominican Civil Code, architects and builders are able to register court-ordered liens in the event of non-

payment after the construction in question has been delivered to the owner. Additionally, under Dominican law, contractors and/or designers are not permitted to register any liens or encumbrances in property from non-payment, but can sue the owner for breach of contract, and if the debt is recognised by the court, then they may proceed to register the lien or encumbrance in the property. For an owner to remove the lien or encumbrance, they must provide evidence of successful completion of the obligation to the land registry.

7.7 Requirements before Use or Inhabitation

In the Dominican Republic, a site certificate issued by the parties or by an independent engineer is usually required, certifying that the project has been finished and is ready to be delivered and inhabited.

8. TAX

8.1 VAT

There is no VAT or equivalent tax liability applicable to the sale or purchase of real estate.

8.2 Mitigation of Tax Liability

Other than the exemptions mentioned above and the option of purchasing the shares of the holding company, there is no way of avoiding the payment of the 3% title transfer tax. Large institutional holders are advised to seek the advice of expert real estate law and tax professionals to mitigate other tax liabilities.

8.3 Municipal Taxes

There are no municipal occupation taxes. All planning and land use matters are, however, handled by the municipalities, and a land use tax is levied on developers or owners planning new construction projects.

8.4 Income Tax Withholding for Foreign Investors

The basic tax withholdings in the Dominican Republic are as follows:

- withholding for interest paid abroad – 10%;
- withholding for payments abroad – 27%; and
- dividends – 10%.

8.5 Tax Benefits

There are no tax benefits from owning real estate in the Dominican Republic. Corporations may be compensated on the property's depreciation in accordance with the Dominican Tax Code and exemptions may apply depending on the type of real estate, the activities developed in the property and its location, among others.

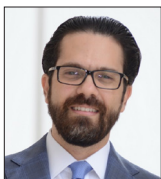
DOMINICAN REPUBLIC LAW AND PRACTICE

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Guzmán Ariza Abogados is a top-ranked Dominican law firm, very well known for its real estate and tourism practice. Guzmán Ariza's real estate practice, headed by Mr Fabio Guzmán Ariza and Mr Alfredo Guzmán Saladín, is renowned for its skill, experience and geographical reach. Real estate lawyers work as a cohesive team with other disciplines – including tax, incentives, permits, financing, environment and litigation – to ensure that all issues that could impact a transaction are properly and thoroughly addressed. The firm has eight offices,

strategically located in the capital city of Santo Domingo and in the most important tourist and business destinations in the country, including Punta Cana – Bávaro, Sosúa – Puerto Plata, Las Terrenas – Samaná, La Romana, Casa de Campo and Cabrera. The firm's knowledge, commitment and responsiveness to clients, along with its cost-effective strategies, have earned it the reputation in the international business community of being a trusted and respected law firm that delivers results.

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