AN OVERVIEW OF DOMINICAN COMPANY LAW

by

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Company Law ("Ley de Sociedades") #479-08, effective Dec. 11, 2008, as amended by Law #31-11 of Feb. 11, 2011, governs company formation in the Dominican Republic. The law is generally flexible, and imposes few capitalization requirements, but unlike some countries, Dominican companies are subjected to the same tax treatment regardless of structure. Selecting the proper structure requires a knowledgeable attorney and consideration of the amount of the capital investment, company management, transferability of shares, and reporting formalities, among other factors.

COMPANY STRUCTURES AND CHARACTERISTICS

Four structures are used most often in the Dominican Republic. In these four structures, an individual member's liability is limited to no more than the amount of that member's contribution to the company. In other words, if a company fails, a member stands to lose only his or her investment. None of the members, individually or collectively, are liable for the debt obligations of the company. Furthermore, the limited liability protection afforded to members of these structures is strictly observed under the law, except in the case of fraud or misrepresentation

1. The Corporation ("Sociedad Anónima", abbreviated as "S.A.")

Ideal for large businesses and the only structure that can raise capital through a public stock offering. The business name is subject to local availability.

Structure: Minimum of two stockholders, no maximum; minimum authorized capital investment of 30 million Dominican pesos (approx. US$800,000); minimum paid-up capital investment of 3 million Dominican pesos (approx. US$80,000); management is by a Board of Directors comprising at least three members ("Consejo de Administración"). A management supervisor ("Comisario de Cuentas") is required.

Stock: Nominal, endorsable or "to the bearer". Transfer of stock is essentially free except for restrictions in the by-laws. In the case of a stockholder's death or divorce, the heirs and/or spouse of the stockholder will become the stockholders of the company despite restrictions in the by-laws.

2. The Simplified Corporation (Sociedad Anónima Simplificada, abbreviated as "S.A.S.")

Best for medium to large-sized businesses. Capital may not be raised through a public offering except through debt instruments. The business name is subject to local availability.

Structure: Minimum of two stockholders, no maximum; minimum authorized capital investment of 3 million Dominican pesos (approx. US$80,000); minimum paid-up capital investment of 300,000 Dominican pesos (approx. US$8,000); management is by an individual or a board as established in the by-laws. A management supervisor is not required.

Stock: Nominal only; Transfer of stock is essentially free except for restrictions in the by-laws. Restricting transfer of stock to heirs or spouse of a stockholder is possible.

3. The Limited Liability Company (Sociedad de Responsabilidad Limitada, abbreviated as "S.R.L.")

Best for small to medium-sized businesses and large, family-owned businesses. Capital may not be raised through a public offering. The business name is subject to local availability.

Structure: Minimum of two shareholders, maximum of 50; spouses may be sole shareholders; minimum capital investment of 100,000 Dominican pesos (approx. US$2,700) paid in full. Management is by one or more individuals or a board of individuals as established in the by-laws. Management cannot be by another company. No management supervisor is required, except in special circumstances.

Shares: No stock is issued. Transfer of shares is essentially restricted, and requires 50 to 75% of the votes of the shareholders for approval. Restricting transfer of shares to heirs or spouse of a shareholder is possible.

4. The Individually Owned Company with Limited Liability (Empresa Individual de Responsabilidad Limitada, abbreviated as "E.I.R.L.")

Good for individually owned businesses. Capital may not be raised through a public offering. The business name is subject to local availability.

Structure: Maximum of one stockholder who must be the owner and an individual, not a company; no minimum capital investment is required; management is by the owner, or an owner-appointed "manager". No management supervisor is required.

Stock: No stock issued. Transfer of the business signifies the sale of the business.

5. Less Frequently Used Business Structures

Other business structures are recognized under the law, but are seldom used because they offer no shield to their members for the liability of a company's debt and are subject to the same tax treatment as other companies. These are:

a. Business Partnership ("Sociedad en Nombre Colectivo")
b. Limited Partnership ("Sociedad en Comandita Simple")
c. Special Limited Partnership ("Sociedad en Comandita por Acciones")
d. Joint Ventures ("Sociedades en Participación")

COMPANY FORMATION PROCESS

Company formation is best managed by a local attorney, and carefully monitored by you. If your attorney does not guide you in selecting the best company structure for your needs by explaining the advantages and disadvantages of the various options, change your attorney. Make your selection only after you are well-informed.

Formation should be customized to fit the needs of company members. Note that a member need not be a Dominican citizen or resident to form a Dominican company, except in very special circumstances. As a member, you will be required to provide certain particulars such as your full name, nationality, occupation, marital status, and address, and where applicable, a copy of your passport, "cédula" (Dominican identification), and/or driver's license. The process involves five basic steps.

1. Register the company name

Clearing a company name can be time consuming as most commonly selected names are already in use by others. Therefore, if time is important and the company name is not immediately critical, you have some options. Many law firms retain shelf companies that are ready to go and available for purchase at a premium price. However, if cost is a factor, you can still expedite the registration process by selecting a "numbered" company (e.g., 12345 S.R.L.), and opting to change the name later. This two-step process will incur extra costs, but will expedite the registration process with the advantage that you will establish a legally recognized company more quickly.

2. Prepare and sign company documents

The documents required will depend on the particular structure selected, but will include at a minimum the articles of incorporation and by-laws ("estatutos").

3. Pay the organization tax

Be forewarned that Dominican company organization taxes are higher than those imposed on American companies. This particular tax amounts to 1% of the *authorized* capital for S.A. and S.A.S. structures, and *paid-in* capital for S.R.L. and E.I.R.L. structures.

4. Record the company documents with the Business Registry (Registro Mercantil)

The moment company documents are recorded at the Business Registry, the company is deemed to legally exist. Recordation fees are calculated on the basis of the company's *authorized* capital for S.A. and S.A.S. structures, and *paid-in* capital for S.R.L. and E.I.R.L. structures.

5. Register the company with the Bureau of Internal Taxes ("Dirección General de Impuestos Internos", abbreviated as "DGII")

The newly formed company and each individual member, whether foreign or domestic, must obtain a tax number by registering with the DGII. The company tax number ("número de registro nacional de contribuyentes") permits the company to open a bank account, acquire real estate, and operate generally within the country.

COMPANY TAXES

Dominican companies pay the same taxes at the same rates regardless of the company structure. The four major taxable areas are:

1. Income Tax

Rate: A flat 25% on net annual income.

Payable: Monthly or quarterly in advanced installments based on the previous year's earnings.

Calculated: Based on income derived from Dominican sources independent of taxpayer's domicile, and income originating in foreign financial investments. Interest on debt is tax deductible.

Reported: Annually and filed with the DGII even if the company had no income or business activity. For companies operating on a calendar year, returns must be filed on or before April 30th. For companies operating on a fiscal year, tax returns must be filed within 120 days from legally precribed year-end dates. Returns must be accompanied by financial statements audited by a Certified Public Accountant.

2. Tax on Assets ("Impuesto sobre Activos")

Rate: 1% of a company's taxable assets.

Payable: One installment. If the amount due exceeds the amount of income tax due, payments may be made in two installments.

Calculated: Based on taxable assets. Designed as an inducement to comply with the income tax requirement, this tax is a minimum tax, and is deducted from the amount due on a company's income tax return.

Reported: Annually with the income tax return.

3. Value-Added Tax ("Impuesto a la Transferencia de Bienes Industrializados y Servicios", abbreviated as "ITBIS")

Rate: 16% on most company transactions, including imports but excluding exports.

Payable: Monthly.

Calculated: adjusted value of company transactions. As a value-added tax, the company pays to the government every month the difference between (a) the tax collected by adding the ITBIS to every product or service sold to another business in the supply chain or to a consumer and (b) the ITBIS tax paid in purchasing a product or service from another business or individual.

4. Withholding Tax

Companies must withhold and pay the required taxes on stockholder dividends (25%), employee payroll, and payment to individuals.

Income taxes withheld from shareholders are deducted from the income tax owed by the company.

REPORTING FORMALITIES

Every Dominican company must comply with the following reporting formalities:

1. Annually, hold a general members' meeting to review the company's operation for the previous year. Minutes of the meeting must be recorded with the Business Registry.

2. Every two years, renew the company registration with the Business Register.

3. For a minimum of ten years, retain company books and correspondence.