

THE DOMINICAN CORPORATION

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Introduction

The most common business entity in the Dominican Republic is the corporation, locally called “Sociedad Anónima” (S.A.) or “Compañía por Acciones” (C. por A.). As corporations in other countries, Dominican corporations are legal persons which exist independently of its shareholders. Likewise, the liability of the shareholders is limited to the amount of their contribution to the corporation.

The Dominican Commercial Code provides for the existence of other business entities such as partnerships (“sociedad en nombre colectivo”), limited partnerships (“sociedades en comandita”) and joint ventures (“sociedades en participación”). These structures, however, are seldom used because they are subject to the same tax treatment as corporations while lacking its limited liability component.

The Incorporation Process

The Dominican Commercial Code requires a minimum of seven shareholders to incorporate. Most Dominican corporations meet this requirement by including nominee shareholders holding a symbolic share each in the company. Nominees are generally provided by the law firm doing the incorporation. To protect the real shareholders, the attorney in charge of the incorporation should always obtain from the nominee shareholders a signed document stating that they have no rights over "their" shares in the corporation and assigning them to the true owners. As an additional precaution, nominee shares should be issued to the bearer and held physically by the real shareholders.

Shareholders do not need to be Dominican citizens or residents except in very special cases. Foreign shareholders are required to obtain a tax number before being allowed to register their holdings.

Before proceeding with the incorporation, the following information should be provided by the client to the incorporating attorney:

- (1) Possible names and domicile of the corporation.
- (2) Particulars of the shareholders (full name, nationality, occupation, marital status, address, and passport numbers or cédulas).

(3) Authorized capital of the corporation. The authorized capital is the amount considered necessary and sufficient to fulfill the corporate object. It is based on this amount that the incorporation taxes are calculated. A corporation must have at least 10% of the authorized capital paid-up before starting operations.

(4) Corporate object.

(5) Management structure.

(6) Types of shares to be issued. Shares may be “nominative” – transfers are registered in the corporate books which must be signed by the parties; “to the order,” which may be transferred by simply endorsing the stock certificate; or “bearer” shares which are transferred by the physical delivery of the stock certificate.

The incorporation process itself is more involved, time-consuming and expensive than in the United States. The required steps are the following:

(1) Application to register the name of the corporation and obtaining approval thereof.

(2) Preparation and signing of the Articles of Incorporation (“Estatutos Sociales”).

(3) Preparation and signing of the List of Shareholders and Their Capital Contributions (“Lista de Suscriptores y Estado de los Pagos”).

(4) Payment of incorporation taxes and stamps. Incorporation expenses amount to approximately 2% of authorized capital (0.5% for the incorporation tax, 1.3% for the stamp tax, and the rest for sundry expenses such as registration of the corporate name, registration at the Mercantile Registry, printing of stock certificates, seal, etc.)

(5) Declaration before a Notary Public that the shares have been subscribed and paid for by the shareholders (“Compulsa Notarial”). There is no requirement to actually deposit the capital payments in a bank or with the Notary.

(6) General Shareholders’ Meeting to approve steps (2), (3) and (5) and to elect the corporate directors and/or officers and the “comisario”. The *comisario*’s duties consist essentially of monitoring management and rendering a report to the shareholders in connection with corporate operations before the general annual meeting. Most *comisarios* are accounting firms.

(7) Issuance of stock certificates to the shareholders. Shareholders should insist on receiving their stock certificates or obtain a receipt from their attorney stating that the certificates are held in custody for them.

(8) Registration of the corporation at the Mercantile Registry (“Registro Mercantil”).

(9) Registration of the corporation with the tax authorities and obtaining of a tax number (“Registro Nacional de Contribuyentes” or “RNC”).

A corporation will not be able to open a bank account or acquire real estate until a tax number (“RNC”) is obtained.

To save time, many law firms keep in stock shelf corporations, already formed ready to be transferred to the client.

Taxes

Dominican corporations are subject to the following taxes:

(1) Income Tax. The income tax rate for Dominican corporations is a flat 25% on net income. Interest on debt is tax deductible. Law #557-95 temporarily raised the tax rate to 30% for the year 2006, 29% for 2007 and 27% for 2008. In 2009, the tax rate will revert to 25%.

For corporations whose fiscal year coincides with the calendar year, annual tax returns must be filed on or before April 30, even in the case of companies which have no income or business activity. Filings are done at the offices of the Bureau of Internal Taxes (“Dirección General de Impuestos Internos”). For corporations with an authorized capital of RD\$50,000 pesos or more, the tax filing must be accompanied by corporate financial statements audited by a Certified Public Accountant.

(2) Tax on Assets. Corporations must pay an annual 1% tax on their assets (“Impuesto sobre Activos”). This tax functions as a kind of minimum tax since amounts paid are deducted from the amount due for corporate income tax.

(3) Value-Added Tax (“Impuesto a la Transferencia de Bienes Industrializados y Servicios - ITBIS”). Most corporate transactions are subject to a 16% valued-added tax (“ITBIS”).

Corporations must also act as withholding agents for dividends, payroll and other taxes.

Legal Requirements

Every existing Dominican corporation must comply with the following mandatory requirements:

(1) A general shareholders' meeting must be held every year to review the operation of the corporation during the previous year. The minutes of this meeting must be recorded at the Mercantile Registry within 30 days.

(2) After incorporation, a general shareholders' meeting must be held within six months of the subscription of shares of the authorized capital.

(3) The registration of the corporation at the Mercantile Registry must be renewed every two years.

(4) Corporate books and correspondence must be kept for a minimum of ten years.

(5) A minimum of 5% of corporate profits available for distribution must be set aside and placed into a so-called legal reserve fund (“fondo de reserva legal”). This requirement will no longer apply when the reserve fund reaches 10% of the authorized capital.

Corporate Control

Corporate control is usually achieved through quorum and voting requirements, stock transfer restrictions and preemption rights.

Plural voting, whereby certain shares have more voting rights, is allowed. Nonvoting shares, voting trusts and cumulative voting rights, however, do not exist. Irrevocable proxies and shareholder pooling agreements are very seldom used and their legal effectiveness is tenuous.

Dissolution

The dissolution of a Dominican corporation involves the following:

- (1) An extraordinary shareholders' meeting approving the dissolution and electing one or several liquidators to sell the corporate assets, pay the outstanding debts and distribute any remainder among the shareholders.
- (2) Distribution of remaining assets, if any, among the shareholders.
- (3) An extraordinary shareholders' meeting approving the distribution of assets, if any, and giving discharge to the liquidator(s).
- (4) Recording the minutes of the shareholders' meetings at the Mercantile Registry.
- (5) Petition to tax authorities advising them of the dissolution of the corporation and requesting the cancellation of the corporate tax number.