

# Executive Summary

## Law on Dominican Social Security System

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### A. INTRODUCTION

### B. GENERAL PRINCIPLES

#### 1. Purpose of the Law; Rules and Principles Regulating the Social Security System:

The purpose of the new Social Security Law is to organize a Dominican Social Security Scheme (“DSSS” hereinafter) within the framework of the Constitution of the Dominican Republic with a view at regulating the system and establishing the mutual rights and duties of the State and its citizens as to funding the protection of the people against the risks of old age, disability, unemployment due to advanced age, survival, illness, childbearing, childhood and labor risks. The DSSS shall include all public, private and mixed agencies dealing with social security concerns either principally or in a complementary manner, besides all physical and human resources and the rules and procedures regulating same.

Such Social Security Scheme is regulated by the new Social Security Law, by such laws in force as provide for pension and retirement funds, medical insurance for the benefit of specific sectors or groups, and by such norms as complement the Social Security Law, therein including such regulations as are to be decreed by the National Social Security Council and the Social Security Treasury to be passed by the Executive Power, as well as any resolutions by the Superintendence of Pensions and the Superintendence of Labor Health and Risks.

The DSSS is to be regulated by the following principles:

- a) **Universality:** The DSSS shall cover all Dominicans and residents in this country, without discrimination as to health, gender, social, political or financial status.
- b) **Enforceability:** Membership, contribution and participation shall be mandatory for all citizens and institutions;

- c) **Integrity:** All persons without distinction shall be entitled to sufficient coverage so as to guarantee their enjoying life and an adequate exercise of productive powers and capacity;
- d) **Unity:** Social Security benefits shall be coordinated so as to make up a coherent whole commensurately with the level of national development;
- e) **Equity:** The DSSS shall effectively guarantee access to services to all beneficiaries of the system, particularly such as live and/or work in remote or marginal areas;
- f) **Solidarity:** Based on a contribution proportionate to the level of income and access to health services and labor risks, without taking into account the amount of any individual contribution; and cemented on the right to a minimum pension guaranteed by the State;
- g) **Free Choice:** Members shall have the right to choose any credited manager or provider of services, and to change to another one if convenient
- h) **Plurality:** Services may be provided by public, private or mixed Health Risks Managers ( Administradoras de Riesgos de Salud - ARS, by their Spanish acronym); Health Services Providers ( Proveedoras de Servicios sde Salud - PSS) and Pension Fund Administrators ( Administradoras de Fondos de Pensiones - AFP) under the conduction of the State and in abeyance with all other Social Security Principles:
- i) **Separation of Functions:** The functions of conduction, financing, planning, tapping and allocating DSSS resources shall be performed exclusively by the State and shall be exercised with institutional autonomy respecting the administration of risks and the provision of services.
- j) **Flexibility:** As of such coverage as is contemplated by the law, members may opt for other complementary health and pension plans, in accordance with their possibilities and needs while covering any additional cost involved.
- k) **Participation:** All social and institutional sectors involved in the DSSS shall be entitled to be taken into account and to take part in any decisions of their concern.
- l) **Gradualness:** Social Security shall be developed progressively and consistently up until covering the entire population upon providing quality, timely and satisfactory services; and

- m) Financial Equilibrium: Based on the relationship between guaranteed benefits and amount of funding; in order to ensure due sustainability of the Dominican Social Security System.

## **2. Rights and Duties by Members**

According to the terms of the Law, DSSS beneficiaries shall have the right to be assisted by the Directorate of Information and Defense of Members (DIDA by its Spanish acronym) in all such services as were necessary for their production to be effective. Such assistance includes information on their rights, duties, amicable and legal resorts and instances, filing claims and complaints, case representation and follow up, among others.

Under the provisions of the Pension Regulation, the DIDA and its staff are to maintain in strict confidentiality and reserve all such information and documents as came to their knowledge in the exercise of their functions, a confidential obligation which shall be exclusively waived by the Superintendence or whenever required by a Judiciary authority after a court order rendered there for.

This same Regulation further provides that the role of orientation and defense of the DIDA respecting the pension system, shall include among others:

- a) Advise members as to their rights and duties;
- b) Attend and settle any consultations by members;
- c) Receive any claims and complaints by members, and have them duly filed and followed up to their final solution;
- d) Render free orientation and legal assistance services to members in any disagreements between these and the AFPs or any other Pension Plans that were submitted to its competence within the area of their attributions, or any as were filed by members before common courts of law or the Superintendence;
- e) Promote the plan;
- f) Carry out studies on the quality and timeliness of the services by AFPs and divulge their results in order to contribute objectively to any decisions to be taken by members;

Each member shall be free to select such Pension Fund Administrator (AFP) as shall manage his or her individual account, and such Health Services Administrator (ARS) and/ or Health Services Provider (PSS) as were deemed more convenient. No AFP, ARS and/or PSS may reject or cancel any member's affiliation due to age, gender, social, health or labor status.

## **3. Beneficiaries, Benefits and Membership.**

All Dominican citizens and legal residents of the national territory are entitled to membership in the DSSS, including the right to health care and disease prevention services besides health protection, recovery and rehabilitation and the preservation of the environment without any discrimination whatever, besides the right to benefit from any old age, disability, survival and labor risk insurance plans in force.

Additionally, the DSSS shall include the following funding schemes under the provisions of the Law:

- a) A contributive plan that shall include all public and private employees earning a salary and their employers, to be funded by employees and their employers, including the State in its role as employer;
- b) A subsidized plan, to protect self-employed workers earning an unstable income below the national minimum salary, as well as the unemployed, incapacitated and indigent, to be fundamentally funded by the Dominican State; and
- c) A Subsidized Contributive Plan to protect independent professionals and technicians earning an average income equal to or higher than the national minimum salary, to be funded out of workers' contributions and a State subsidy to make up for the absence of an employer.

The DSSS is based on a single system of enrollment, contribution, benefit plan and services rendered. Consequently, such population as is currently enrolled in the Dominican social security system and all as are currently enrolled in medical retainer ("iguales médicas") and health insurance plans shall be included in the DSSS such as these are currently existing so as to eliminate the likelihood of duplication of coverage or contribution. There shall be similarly one single provisional register that will include the beneficiaries of all existing pension funds and plans.

## **4. Funding, Contribution and Subsidies**

Respecting the DSSS Contributive Scheme, it is provided under the law that this shall be funded out of compulsory contributions and participation by members and employers; out of any profits, interest and income accruing from Solidarity Fund Reserves; out of such fines as were assessed for any incompliance with the Law or any complementary rules thereof; out of the realization of any assets and profits accruing from any property; and out of any donations, devises, bequeaths, subsidies and adjudications made in its favor.

In order to make the DSSS funding viable, it has been provided that any increase in contributions by employers and employees' shall be implemented gradually during a maximum term of five (5) years, by progressive annual increases.

Additionally, the new Social Security Law provides for the obligation by employers to contribute seventy percent (70%) of the cost of the Contributive Plan to fund both the Old Age, Disability and Survival Insurance and the Family Health Insurance, while employees shall on their part contribute the remaining thirty (30) percent. The cost of the Labor Risks Insurance shall be covered one hundred percent (100%) by employers. Additionally, employers are to contribute zero point four percent (0.4%) of contributable salaries to cover the Social Solidarity Fund of the assistance plan.

All participations and contributions to Social Security as well as any investment reserves and yields as resulted from members' pension funds shall be exempted from any tax or direct or indirect assessment.

Additionally, it has been provided that all pensions the monthly amount whereof were less than five (5) national minimum salaries shall be similarly exempted. However, any gains and profits by Pension Fund Administrators (AFPs), PSSs and Health Risks Administrators (ARS) shall be subject to taxation.

Payments by employers to the DSSS shall be made during the first three (3) working days each month. For employees, the contributable salary shall be such as defined in Article 192 of the Labor Code. For self-employed workers, basic contribution shall be the national minimum salary multiplied by a factor related to the average level of income by each social segment within the scheme. For contribution, tax exemption and sanction purposes, the national minimum salary shall be deemed to be equal to the simple average of legal minimum salaries for the private sector as fixed by the National Wage Committee of the Secretariat of State for Labor.

In this respect, the Treasury Regulation provides that any new recruiting, dismissals, wage variations, absences and incapacities as reported in an employer's payroll shall be considered a new development ("novedades"). Any such new development shall be reported to the TSS so as to proceed to have the data base updated and allow due inclusion of the appropriate participations and contributions.

Employers shall be further responsible for having any new events duly advised to the TSS: these shall be reported in a timely manner so as to maintain an updated record thereof, the following terms of time to be met in any such reporting:

- a) Both new recruiting and dismissals shall be reported by employers by the next business day following the date of any such event;
- b) Any other developments shall be reported within a term of five (5) business days as of the effective date thereof, provided, however the last business day of the calendar month when any such change happened shall not be exceeded.

Within another order of ideas, enrollment is the process by virtue of which the TSS records information on employers payroll on the basis of reference data given, including information on the general identity both of employer and employee. During this phase, employees' payrolls are initially recorded and a social security number (SSN) is assigned to each citizen bearing a Personal Identity Card. This includes the proper identification of all of the employers and employees in the Dominican Republic, in order to secure full and correct information on the contributive sector making up the Dominican Social Security System. This process shall be carried out one single time, to be initially loaded to the Social Security Treasury database. Subsequently, any updating to the data base shall be referred to the report of any payroll changes or new employers registrations; all of this as provided in the Regulation of the Social Security Treasury.

As to funding the Subsidized and the Subsidized Contributive Plans, the law provides that the former shall be funded out of contributions by the Dominican State, according to Article 8 of the Constitution of the Republic: Funds for the Subsidized Contributive Plan shall come from two sources. A contribution by beneficiaries and a subsidy to be

contributed by the Dominican State to make up for the absence of a formal employer. The amount of such a subsidy shall be inversely proportional to the actual income of each self-employed worker. Contributions by self-employed workers shall be computed on the basis of a multiple of the national minimum salary.

## **5. Conduction, Regulation and Administration**

The DSSS is organized on the basis of the specialization and separation of functions. The conduction, regulation, funding and supervision thereof shall be the exclusively task of the

State and shall be unalienable, while the functions of risk administration and the rendering of services shall be carried out by public, private and mixed organizations duly authorized by the competent public agency. In this respect, the DSSS shall include the following entities:

- a) The National Social Security Council (NSSC), an autonomous public agency that will act as superior body of the system in charge of leading and conducting the DSSS; in such a capacity it shall be responsible for setting up policies, regulating the operation of the system and the institutions therein, guaranteeing full coverage extension, defending beneficiaries and seeing to the proper institutional development, adequacy of programs and financial equilibrium of the system;
- b) The Social Security Treasury, responsible for collecting, distributing and paying DSSS's financial resources and administering a single system of information. In order to ensure social solidarity, prevent any adverse selection, control costs and guarantee credibility and efficacy, it shall count with the technological support and managerial capabilities of a specialized organization equipped with the most advanced electronic systems and means.
- c) The Directorate of Information and Members' Defense (DIDA), a public agency providing orientation, information and defense to members, responsible for promoting the DSSS and informing members on their rights and duties; receiving claims and complaints, besides giving them course and following them up to their final settlement; providing assistance to members as to any amicable and contentious resorts, in the event of refusal of benefits; carrying out studies on the quality and timing of services by AFPs, the National Health Insurance (NHI) and ARSs, and having results published in order to contribute in an objective fashion to members' decision making; besides supervising the operation of the DSSS from the point of view of users.
- d) The Superintendence of Pensions, an autonomous public agency supervising the area.
- e) The Superintendence of Labor Health and Risks, an autonomous public agency supervising the area.
- f) The National Health Insurance (NHI) an autonomous entity;
- g) Pension Fund Administrators (AFP) to have a public, private or mixed character.

- h) Health Risks Administrators (ARS), to include profit or non profit entities having a public, private or mixed character;
- i) Health Services Providers (PSS), to include profit or non profit entities having a public, private or mixed character;
- j) Any other profit or non profit entities having a public, private or mixed character and complementary social security functions as main purpose.

## **6. Collection, Provision and Supervision**

The Social Security Treasury shall be in charge of the collection, distribution and payment system, subject to approval by the National Social Security Council and the assistance of an inter-institutional commission of experts. The system shall be provided with a unified, simple and functional computer software to facilitate employers computation and distribution of contributions among the three (3) DSSS insurance agencies. Employers shall effect payment within the first three working days of each month through a national network of banks or duly credited organizations. The Treasury shall further identify any defaulting employers as well as any evasion or elusion and shall then proceed in accordance with the rules and procedures in force. The collection and payment system shall enter into effect within a term not to exceed one (1) year as of the enactment of this law.

It has been provided that any items corresponding to “personal account” and “member’s life insurance” and “AFP’s commission” of the Old Age, Disability and Survival Insurance shall be transferred from the Treasury to the AFPs within a term not to exceed two (2) business days. The AFPs shall have the appropriate resources posted in the personal account for each member and shall have any such funds immediately invested as provided in this law and any complementary rules thereof. In the same manner and within the same term, the Treasury shall have the “Social Solidarity Fund” item further transferred to the specialized account of the public AFP, and the “Operations by the Superintendence” item transferred to the Superintendence of Pensions in such proportions as are provided in the same law.

According to the provisions of Article 11 of the Law there shall be one Sole Membership and Contribution Plan within the Dominican Social Security Scheme. This Plan shall be called, as provided in Article 28 of the Law, Single Information Plan (SUIR by its Spanish acronym) The treasury shall be in charge of the SUIR and the process of collection, distribution and payment.

Such as it is provided in Article 28 of the Law, in complying with such functions as it is entrusted with by the Law, the following functions related to the Pension Plan are to be performed by the Treasury:

- a) Managing the SUIR insofar as preparing a listing of employers and of the members of the three funding systems;
- b) Enrollment in and assignment of a Provisional Registration Number
- c) Issuing payment notices to employers;
- d) *Collecting and processing any new developments (novedades)*

- e) Distributing and allocating resources within the plan
- f) Collecting funds, detecting any delays, evasions or elusions and indicting any violators while collecting the appropriate fines and surcharges;

Within this same order of ideas, a National Financial Network has been established under the Treasury Regulation as a set of banking organizations or funding entities authorized by the Currency Board and certified by the Social Security Treasury, the EPBD, the Superintendence of Banks and other supervising agencies with authority in such issues as fell under the functions of each such agency, to take part in the process of collection under the plan.

Such multiple service or similar banks and other entities as were authorized to become a part of the National Funding Network for the receipt of contributions by members, shall comply with such requirements as were established by the TSS, the EPBD, the Superintendence of Banks and other supervising organizations, in all such aspects as fell under the functions of each such agency, such as it is provided in Articles 77 and 78 of the Pension Regulation.

It is important to point out that liquidation shall be understood to mean the procedure whereunder a Liquidator Bank is directed by the TSS to make the appropriate payments to any final designees — ARS, AFP, SIPEN, SISALRIL, SNS, IDSS. The Treasury Regulation provides that the TSS is to have an account with the liquidator bank where contributions paid by members at the different authorized banks and organizations shall be concentrated. Said concentrating account shall include in turn a set of specialized accounts according to the destination to be given to funds. The liquidator bank shall be responsible for realizing, upon instructions by the TSS, all credits and payments to the DSSS receiving entities.

Concentrating Accounts shall be opened by the TSS at the Liquidating Bank therein to deposit all such funds as were collected through the Authorized Collecting Entities. These contributions may be separated according to their nature in Dominican pesos or foreign currency. The following accounts shall be also opened: 1) Old Age, Disability and Survival Account; 2) Solidarity Fund Account; 3) Family Health Insurance Account, and 4) Labor Risks Account.

Additionally, the risk administration and services provision functions shall be carried out by specialized public, private or mixed organizations. The pension fund administration shall be responsible for the entities known as State Pension Fund, Autonomous and Decentralized Institutions Pension Fund, Pension Fund Administrators (AFPs), while the Administration of Risks and Provision of Health Services and Labor Risks shall be under the National Health Insurance and Administrators of Health Risks (ARSS) and Health Services Providers (PSSs).

A call center has been established under the Treasury Regulation for all telephone calls made to the Social Security Treasury to receive employers’ payroll contributions and reporting any changes. This center shall be connected to the System database so as have information updated on line. The Treasury shall be empowered to hire third parties to perform these services.

The National Health Insurance shall include all employees in public agencies, autonomous or decentralized institutions and their family members at the time the new law entered into effect, except for any as were under any Insurance contract until the expiration thereof and any as had self-management insurance or could have it secured during the next three (3) years as of the enactment of the Law. It shall also be in charge of all informal workers in the Contributive-Subsidized System, the beneficiaries of the Subsidized System — to be cared for by the Secretariat of State of Public Health and Welfare (SESPAS) — besides such private sector employees as shall select it.

Health Risk Administrators will on their part be in charge of all such workers in the non subsidized formal or informal private sector as shall select them.

Respecting collection, evasion is defined by the Treasury Regulation as any conscious and deliberate effort to unduly retain any contribution payments while being aware that a legal rule in force is been breached.

## 7. Period of Transition

A period of transition not to exceed ten (10) years as of the enactment of the Law is being contemplated in order to develop such conceptual awareness as shall be necessary to further the construction of a new social security system; planning and implementing the transformation of the old Social Security System into a Dominican Social Security System, while guaranteeing due continuity and steadfast improvement of services, reorganizing public and private member organizations to adapt their models and services to the principles of social security; enrolling the population in a gradual and progressive manner so as to adapt the process to the financial possibilities of the public, worker and employer sectors; and carrying out such socio-economic studies as are contemplated under the law .

An interdisciplinary and inter-institutional Transition Technical Committee is being contemplated as an obligation by the National Social Security Council (NSSC); such a committee shall include highly qualified technicians and professionals in their respective areas to provide assistance to the Dominican Social Security Institute (DSSI) and the Secretariat of State for Public Health and Social Welfare (SESPAS, by its Spanish acronym) in developing their full managing and service providing capabilities in the areas of labor health and risks. Such a Committee shall further assist the Instituto de Auxilios y Viviendas (The Aid and Housing Institute – INAVI, by its Spanish acronym) in reformulating its functions within the Dominican Social Security System while assisting the National Health Insurance and all other ARSs and PSSs, AFPs and existing pension resources (cajas) and funds in reorganizing their functions. Such a committee shall also implement a social security human resources training program to meet such public and private needs as shall be faced by such professional, technical and administrative personnel as shall be required under the new system.

## C. OLDAGE, DISABILITY AND SURVIVAL INSURANCE

### 1. Purpose

The purpose of the pension plan is to make up for any income reduction due to old age, demise, disability, advanced age unemployment and

survival. The structure of the system will permit to open individual personal accounts for members, on the basis of social solidarity in favor of workers and the lower income population. However, additional contributions shall be allocated by the system to secure complementary benefits.

It should be pointed out that according to the Treasury Regulation above referred to, the classification of contributions to the pension system shall be as follows: voluntary and special contributions in addition to mandatory contributions under the law shall be processed in accordance with their condition: As to such functions as are attributed to the TSS both under Law 87-01 and in the remaining articles in this regulation, such as provided in such concession agreements as are contemplated under the law, these shall be delegated on the PRISS and the EPBD.

- a. Regular Voluntary Contributions: shall be such as were made periodically as payroll discounts to a member and/or on account of an employer so as to secure a higher or a complementary benefit respecting such as were provided by the law. These cases shall be reported as an absolute value, independently by employer and shall be fully deposited in the employee's CCI.
- b. Special Voluntary Contributions: shall be such as were made occasionally through any organizations member of the National Financial Network, voluntarily and directly by a member and/or employer, the full amount whereof shall be applied to the CCI.
- c. Contributions on account of retroactive salary increases: In these cases the employee's regular salary plus any retroactive increase shall be taken into account, the highest mandatory contribution to be then applied to the result.

### 2. Pensions under the Contributive Plan.

The assistance system entails the compulsory affiliation by every salaried employee and his employer, without distinction as to type of work performed, amount of work or change of AFP. The decision to apply for membership in any one given AFP shall be up to the employee and it shall be the employee who shall be under the obligation to report the details on his affiliation within a term of 90 days as of the enactment of the Law. If an employee had more than one (1) employer, said employee shall choose to be affiliated to any one of them and shall inform the others so they shall proceed to have the funds remitted to the relevant account. Dominican citizens residing abroad shall be entitled to become members of this provisional system.

Such members as met the following conditions shall remain in the distribution system:

- a) Public sector and autonomous and decentralized institution workers, except for any as desired to be included in the individual capitalization system contemplated under this law; and
- b) All such retired and pensioned State, IDSS, Social Security Institute, Armed Forces and Police (ISSFAPOL) and private sector employees as were currently enjoying an old age, disability or survival pension under laws 1896 and 379, or under any particular law.

All such public and private employees located in the Dominican Republic or abroad will be mandatorily included in such pension system as is established hereunder, save for such exceptions as above stated respecting such workers as shall remain under the former social security system, or the distribution system.

Respecting foreigners, the Treasury Regulation provides that diplomatic mission payrolls and any others as were paid in foreign currency to any personnel that qualified for membership in the DSSS shall be converted into local currency (RD\$) computed at the official dollar (US\$) rate of exchange of the Central Bank of the Dominican Republic. For the purposes of computing DSSS contributions, such value as were assigned by the Central Bank to such a rate on the date of the appropriate Payment Notice shall remain constant.

Any pension funds enacted before the Law and currently in force must comply with certain requirements in order to continue operating, among others (i) that contributions be not under such as are provided by the law; (ii) that proportions of personal accounts be accumulated in members' exclusive individual accounts; (iii) that on being invested, any such pension funds shall have a minimum actual yield; (iv) in addition to such benefits as are provided in the law, a life and fitness insurance shall have been included, among others.

A database processing enterprise is contemplated under the Treasury Regulation to operate under contract by PRISS after a concession granted by the Treasury in order to manage the SUIR to process information, and to carry out the collection and classification of payments. This shall be a single database from the viewpoint of the norm and decentralized from the operational viewpoint that will include all such confidential information as were gathered by TSS to arrange and organize the files of all members of the DSSS members for the adequate compliance with such obligations as it is entrusted with. Operation of the database shall be a responsibility shared by the TSS and the EPBD, according to such agreement on the distribution of functions as was signed by PRISS and TSS on 5.11.02.

Existing pension plans may become AFPs, provided, however, the appropriate financial and assessment studies were made, and that the whole process were approved by the Superintendence of Pensions. Within a term not to exceed 4 years as of the enactment of the Law, all pension and retirement funds operating under the law in a complementary fashion may become AFPs under the provisions of the law and its complementary regulations.

All such time as shall have accrued and all such rights as shall have been acquired by each citizen under their respective pension plans shall be preserved under the system.

New members, regardless of their age, shall be paid a pension in proportion to any contribution made, plus any interest and gains accrued during their working life.

Dominican citizens residing abroad shall be paid a pension in proportion to the amount of any contributions plus interest and gains in the same currency in which their contributions were made and shall be entitled to have any such pension periodically updated according to the

consumer price index. Members over 45 years of age who due to their limited time contributing did not reach a minimum pension shall be paid at the time of retirement one single lump payment in the amount of their personal account plus any accrued interest.

Such rights as had been acquired by members enrolled in 2 or more pension plans shall be preserved.

#### BENEFITS UNDER THE CONTRIBUTIVE PLAN

The following benefits shall be granted under the assistance plan: (i) old age pension; (ii) total or partial disability pension; (iii) advanced age unemployment pension; and (iv) survivorship annuity.

##### *Old Age Pension*

Old age pension includes the protection of beneficiary and his or her surviving family. Members shall be entitled to receive an old age pension on reaching the age of 60 and having contributed for a minimum of 360 months. Or on reaching the age of 55 and having accumulated a fund that will allow beneficiary to enjoy a pension in excess of 50% of the minimum retirement pension.

The right to a pension due to total disability is acquired if a member were afflicted by a chronic illness or injury of whatever origin. Any disability reducing a member's productive capacity by two thirds shall be deemed as total, while partial disability shall be any as reduced a member's capacity by half or two thirds; or after having exhausted the right to non professional illness or occupational risks as provided by the law.

##### *Total or Partial Disability Pension*

Total Disability Pension shall be equal to 60% of the basic salary and 30% in case of partial disability provided, however, such a member economic production capacity were not affected. In both cases any such pension shall be computed on the basis of the average contributable salary as indexed for the last 3 years. In the event of demise of a member, any pension benefits shall revert to his or her survivors under such conditions and limits as are provided in Article 51. Member's contribution to old age, disability and survivorship pensions shall be discounted by employer from the employee's pension, and shall be deposited in said member's personal account. Said benefits shall be subject to revision and updating every 3 years.

##### *Technical Commission on Disability and National and Regional Medical Commission.*

There shall be a technical commission on disability in charge of establishing the rules, criteria and parameters to be applied in assessing and qualifying the degree of disability.

Regional Health Commissions shall determine the degree of disability under such rules for assessing and qualifying the degree of disability as were established by the Superintendence of Pensions and the National Social Security Council.

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### *Old Age Unemployment Pension*

Members shall be entitled to a minimum pension in case of unemployment due to old age when any such member were deprived from a paid job, were over 57 years of age and had contributed for a minimum of 300 months.

### *Survivorship Fund*

In the event of demise of the active member a survivor pension equal to at least 60% of the contributable salary for the last 3 years or fraction thereof adjusted under the Consumer Price Index (CPI) shall be paid to beneficiaries. The surviving spouse under 50 years of age shall receive a pension during 60 months or on its default, any minor children to the age of 18. The surviving spouse over 50 years but under 55 years of age shall be entitled to 72 months' pension, while the surviving spouse over 55 years of age shall be entitled to a pension for life. This survivorship annuity shall be funded by the amount accrued on the personal account of member plus the contribution by the survivorship fund. These benefits shall be subject to revision every 5 years.

### *Minimum Pension under the Contributive Plan*

Minimum pension under the Contributive Plan shall be equal to 100% of the lowest minimum salary. The Superintendence of Pensions shall determine the manner in which the Social Solidarity Fund shall contribute any complementary resources. Such minimum pension shall not apply to the beneficiaries of old age funds and shall not include any cases of disability and survival.

### *Kinds of Pensions*

At the time of retirement a member may select one of the following options:

- a) A pension under the planned retirement scheme – keeping his or her funds in the AFP, in which case ownership of said funds shall be maintained by the members who shall assume the risks of longevity and future return.
- b) A pension under the guise of a life annuity, in which case the balance in his individual account is transferred to an insurance company and member loses ownership thereof, in exchange for any such company assuming the risks of longevity and return, and guaranteeing any life annuity as agreed.

### *Cost and Funding the Contributive Plan*

Old age, disability and survivorship annuities under the Contributive Plan shall be funded out of a total contribution of 10% of contributable salary, to be allocated in certain proportions to the personal account, the Life Insurance coverage, the Social Solidarity Fund and the AFP commission, among others.

### *Maximum and Minimum Limits of Contributable Salary*

The Law provides for a maximum contributable salary equal to 20 national minimum salaries. On the other hand, the minimum contributable salary shall be equal to one minimum salary of the legal salary corresponding to the sector where member were employed.

### *Incompatibility of Pension and Payment Compensation in case of Retirement*

The right to an old age, disability and survivorship pension under the Contributive Plan shall release employer from such compensation as is provided under the Labor Code, Law 16-92 in case of retirement.

### *Member's Personal Account*

Deposits in each member's personal account are a retirement pension of his exclusive ownership which shall be invested by any AFP as were selected, under the conditions and

limits as are provided under the Law and the complementary rules thereof. Neither the fund or any interest thereon may be subject to attachment or retention and may only be withdrawn when member shall comply with the requirements for withdrawal in the manner provided by the law and the complementary rules thereof.

### *Social Solidarity Fund*

A Social Solidarity Fund is provided under the law in favor of lower-income members over 65 years of age who had contributed during at least 300 months under any of the pension plans in force and whose personal account did not have sufficient funds for coverage. In any such case, said fund shall contribute such amount as were required to complete the minimum pension.

### *Employer's Solidarity Contribution*

The Social Solidarity Fund shall be funded by a solidarity contribution equal to 0.4% of total contributable salary to be paid exclusively by the employer.

## PENSIONS UNDER THE SUBSIDIZED PLAN

### *Beneficiaries of Solidarity Pensions*

Beneficiaries of solidarity pensions shall be the disabled, unemployed and indigent population according to a general policy tending to lower the levels of poverty: These shall include: (i) individuals of any age afflicted by a severe disability; (ii) individuals over 60 years of age lacking sufficient resources to meet their essential needs; and (iii) unemployed unmarried mothers of minor children lacking sufficient resources to meet their essential needs and guarantee their education.

### *Benefits under the Subsidized Plan*

The Old Age, Disability and Survivorship Insurance under the Subsidized Plan shall include old age and disability benefits, whether total or partial, and survivorship annuity.

*Distribution of Pension Checks*

Under the provisions of the Law, provincial development boards are entrusted by the Secretariat of State for Finance with delivering pension checks each month to beneficiaries in their respective jurisdictions. Said provincial development councils shall proceed in turn to their distribution to the different municipalities following such procedures as were provided under complementary rules. This process shall be monitored by the Superintendence of Pensions and shall be regularly reported to the National Social Security Council.

**PENSIONS UNDER THE SUBSIDIZED  
CONTRIBUTIVE PLAN**

*Benefits*

The Old Age, Disability and Survivorship Insurance under the Subsidized Plan shall include old age and disability benefits, whether total or partial, and survivorship annuity.

*Old Age Pension*

A member shall be entitled to an old age pension if over 60 years of age, provided at least a minimum pension shall be guaranteed by any funds accumulated in beneficiary's personal account.

*Minimum Pension Under the Subsidized Contributive Plan*

The minimum pension under the Subsidized Contributive Plan shall amount to 70% of the minimum private salary, to be indexed according to any increase in the private minimum salary. A minimum pension shall be guaranteed by the Dominican State to any self-employed workers who while complying with such requirements as are provided under this law and any complementary rules thereof, had not accumulated the necessary amount to reach the required limit in their personal accounts.

*Survivorship Annuity*

In the event of demise of a member of the Subsidized Contributive Plan, the following individuals shall continue as beneficiaries: (ii) the surviving spouse, or on his or her default, his

or her live-in partner, provided however neither one of them had had any impediment to their getting married; (ii) their unmarried biological children, whether legitimate or illegitimate and any adoptive children under 18 years of age, or any unmarried children over 18 and under 21 who presented proof of having attended a regular course of studies during the six months preceding the death of the member; and (iii) any disabled children regardless of their age, according to the Pension regulation. This right shall be forfeited as of the time any of the above conditions should change or be extinguished.

**SOCIAL SERVICES FOR THE AGING**

*Special Programs for Aging Adults*

The Dominican State is entrusted under the law with strengthening the National Council for the Aged by developing special services meant the enhancing the value of the contribution by the aged, developing their abilities and experience and furthering their continued training and entertainment as well as the enjoyment of their retirement years.

**PENSION FUND ADMINISTRATORS**

*Pension Fund Administrators (AFPs)*

Pension Fund Administrators (AFPs) are financial societies organized under local laws with the sole purpose of managing the personal accounts of members and making the right investment of pension funds; besides granting and administering benefits under the assistance plan, while strictly abiding by the principles of social security and the provisions herein and any complementary rules hereof. AFPs may be either public, private or mixed and shall have at least one office or agency at the national level to provide services to the public and attend to any claims. Additionally, other offices or agencies may be set up using the infrastructure of other organizations within the financial and commercial sector, while opening operative offices or agencies abroad to render services to Dominican citizens residing elsewhere, provided same were to operate as AFP-dependent organizations and were juridically different from any lessee entity.

Under the Pension Regulation, AFPs are authorized to open branches within the national territory. Representation agencies may be further opened abroad with the authorization of the Superintendence of Pensions to render services to Dominican citizens residing elsewhere, such as it is provided under Article 80 of the Law.

In order to be given authorization to start operations, AFPs shall present the Superintendence the following:

- a) Corporate by-laws and all other organizational documents.
- b) Final listing of shareholders, members and replacements of the Board of Directors or Directors of the AFP, including banking and credit references.
- c) General information and professional profile on the President, Vice-Presidents and executives at the managerial level.
- d) Sworn statement before a Notary Public as to any incompatibilities or conflicts of interest as defined by the Law, according to such terms as were indicated in the form provided by the Superintendence there for.
- e) (An account?) opened under the name of the AFP which in no case shall be under the minimum capital required under Article 82 of the Law.
- f) Number of branches and points of sale including their geographical location at the start of operations and a first-year projection. It

shall also be stated whether the premises where the agency or branch operates is owned, leased or lent, and whether the premises are shared with any other entity within the financial sector, while specifying which.

- g) System of commissions charged for any optional services as provided in letter (b) of Article 86 of the Law.
- h) A training plan for promotion agents
- i) Certification by a system auditing firm as to compliance with the requirements under Article 20 hereof.
- j) Policy of investments under the legal limits provided.

The Pension Regulation further indicates such advertising material as AFP's shall make available to the public, therein including information to workers respecting such services as are provided. All such material shall be supervised by the Superintendence to ensure compliance with all such provisions as were decreed under Resolutions. The Superintendence shall see to it that such advertising as were published by AFPs and the use of all such promotion were exclusively addressed to give information and did not induce to any error or confusion on their institutional reality or on the purposes and foundations of the System, all in abeyance of such Resolutions as were issued by the Superintendence from time to time.

A certified attestation by the appropriate banking organization to the effect that the subscribed and paid in capital has been deposited in an account.

#### *Organization of a Public AFP*

Under the provisions of the Law at least one public AFP shall be set up by the Dominican State, to be managed under appropriate administrative criteria. Such APF shall manage the pension funds of such members as were to select it and shall additionally manage such Social Solidarity Fund as were established under the Law.

#### *AFP's Minimum Capital*

Under the provisions of the law, AFPs shall have a minimum subscribed and paid in cash capital of RD\$10,000,000.00. Such a capital shall be indexed annually in order to maintain its real value and shall be increased by 10% for each 5,000 members in excess of 10,000. If its capital were below such minimum as is provided under the law, a term not to exceed 90 days shall be given by the Superintendence of Pensions to complete such a limit, and shall be subject to permanent supervision during such 90 day term. In the event such a requirement were not complied with, the authorization to operate as AFP shall be cancelled.

#### *Independent Assets and Accounting*

Under the provisions of the Law, such assets as were held by the Pension Fund shall be owned exclusively by members, shall not be subject to attachment and shall be independent and distinct from the assets of AFPs, which shall be compelled to keep separate accountings:

one on personal accounts, pension funds and investments, and the other on its own assets and operations. The Superintendence is authorized under the law to carry out all such supervisions and auditing as were considered necessary to ensure strict compliance with the law.

#### *Basic Records and Information*

The Superintendence of Pension shall determine such information as shall be kept by AFPs and such record file as shall be maintained respecting its own operations, any as were made with related individuals and with such pension funds as they managed. Prior to any operation with a financial instrument, the AFP shall duly record whether this is done in its own name or on account of the pension fund. The pension regulation shall establish the appropriate internal control mechanisms as well as the system of information and filing to record the origin, destination and date of each operation.

#### *Liability for Damages to the Pension Fund*

AFP's may carry out any operations, enter into any legal covenants, grant extensions and renewals and enter into any other commitments with a view at protecting the solvency, liquidity and profitability of any financial instruments acquired. They may also take part with a right to vote and be heard in any creditors meetings or in any other kind of proceeding open to bidding, except if debtor were a person connected to the concerned AFP in which case any such AFP may be heard but shall not be entitled to vote. AFP's shall be accountable out of their own assets for any damages to the pension fund resulting from any incompliance with any of their obligations, and shall be compelled to indemnify any pension fund under their administration for any direct damages as were caused by any such AFP, or any of its directors, dependents or persons under its service, as a result of any action or omission in any operations referred to hereunder and in any complementary rules. Such directors or executives as had taken part in any such actions shall be jointly liable there for. The Superintendence of Pensions may file on account of the pension fund all such legal actions as were considered appropriate to secure any such damage compensation as were payable under any such obligation.

According to the Pension Regulation, the basic financial statements of each Pension Fund, therein including the Solidarity Fund in the case of the public AFP, shall be: The Balance Sheet, Statement of Changes in Assets and Notes to Financial Statements, which shall be the only statements valid for inclusion in the annual report and newspaper publication or for any other type of diffusion whether locally or abroad.

#### *Commissions by AFP's*

The only items where for AFP's shall be entitled to collect or receive income from its members and their employers shall be the following:

- a) a monthly personal fund management fee, which shall be independent from the results of any investments and shall not exceed zero point five percent (0.5%) of the contributable monthly salary;

- b) A complementary annual fee applicable to the administrative fund of up to thirty percent (30%) of any profits realized in excess of the rate of interest of certificates of deposit by commercial banks. The formula for placing any such profits shall be defined by the Superintendence of Pensions;
- c) Collection of optional services expressly requested by members;
- d) Interest charged to employers for any delays in delivering the management fee.

#### *AFP's Directors*

No executive of any commercial banks, stock exchanges, investment funds, mutual funds or security brokers may be appointed AFP Directors.

#### *Obligations by Directors of Pension Fund Administrators (AFP)*

AFP Directors shall decide in all cases involving conflict of interests, including the following: (i) AFP's policies and voting in the election of directors of societies the stock whereof shall have been purchased out of pension fund resources; (ii) such internal control mechanisms as were set by AFP's to prevent any actions that will affect compliance with the rules provided herein; (iii) proposals for hiring external auditors; (iv) appointment of AFP's proxies for the investment of Pension Fund resources abroad; (v) general pension fund investment policies, (vi) policies on operations out of pension fund resources with individuals related to any AFP.

#### *Operations Forbidden to AFP's.*

It shall be forbidden by the law for any AFP directors, their comptrollers, managers, administrators and in general, any person who by reason of his or her position or function had

to take decisions or had access to information on AFP's investments to divulge any AFP confidential information, use any such information against any AFP, discuss any decisions and operations by AFPs beyond the requirements prescribed by the law to the Superintendence, involve the AFP in any operations that will prejudice maintaining such minimum assets as are required under the law, among others.

#### *Operations Forbidden Without Express Authorization*

No society, enterprise, person or organization which had not complied with the provisions and requirements hereunder in accordance with the rules and procedures of the Superintendence of Pensions may represent itself as an AFP. In any such case, the Superintendence of Pensions shall order the immediate suspension of its operations, without prejudice of assessing such legal sanctions as were appropriate. Any breach to the provisions herein shall be fined by the Superintendence of Pensions for the benefit of the Social Solidarity Fund in an amount to be determined in the complementary rules hereto. In the event of repeated offences any such fine shall be doubled, without prejudice of any commensurate civil and/or criminal liability.

Any merger by two or more AFPs shall comply with the provisions of the Code of Commerce, shall be authorized by the Superintendence of Pensions and shall comply with the requirements of the Law and the complementary rules thereof. Additionally, any such merger shall advertised in two newspapers having nation-wide circulation within a term of five days as of the relevant authorization. Such publication shall state the amount of such fees as shall be charged by the resulting AFP. No AFP merger may cause any decrease in its assets or those of the Pension Fund.

#### *Bankruptcy of an AFP*

In the event of bankruptcy of an AFP, the Superintendence of Pensions shall intervene to guarantee its members that any such AFP shall be incorporated to another AFP within a term of 30 days. Alternatively, the Superintendence of Pensions may have any balances in members' personal accounts proportionately assigned to other existing AFPs within a term not to exceed 10 days. All other accounts in the Pension Funds, including the reserve for fluctuation of returns, shall be similarly assigned to other existing AFPs in the same manner and in the same proportion.

### INVESTMENT OF PENSION FUNDS

#### *Pension Funds*

Pension funds shall exclusively belong to members and shall include all compulsory, voluntary and special contributions, as well as any returns thereof. This shall be an independent patrimony, different from the assets of the Pension Fund Administrators (AFP), which shall have no power or authority to dispose thereof, save in such form and manner as were expressly provided herein. Such fund shall not be subject to attachment and the accounts therein may not be subject to retention or frozen under any court order. AFPs shall maintain current accounts exclusively designated for the management of the pension fund. These accounts shall be separate and different from AFP accounts. Contributions by members, as well as the proceeds of any investments and any other manner of income in favor of members shall be recorded in each member's personal account and deposited in the pension fund. AFPs may only draw funds against said accounts for the acquisition of financial titles and instruments in favor of Pension Funds and to pay benefits, or to make assignments and transfers in such specific cases as were provided by the law. The rules, procedures and form of these operations shall be provided in the pension regulation and shall be supervised by the Superintendence of Pensions.

#### *Investment in AFPs*

AFP's shall have the resources in the pension fund invested in order to attain actual returns that will augment members' individual accounts within such norms and limits as are provided herein and in any complementary rules hereto. Actual returns shall be understood any as resulted from deducting from the nominal rate of return the rate of inflation for the relevant period. Any destination given to the Pension Funds other than such as is specifically indicated herein shall be deemed illegal for all consequences thereof. Within such limits as are established

for the investment of pension funds, AFPs shall give priority under equal conditions as to returns and risks, to placing resources in such operations as will have an optimum impact on employment generation, housing construction and the promotion of manufacturing and agricultural operations, among others.

#### *Forbidden and Restricted Areas of Investment*

No investment shall be made by Pension Fund Administrators (AFPs) in any securities requiring AFP funds being pledged or encumbered. Neither shall funds be invested in shares in AFPs, insurance and risks assessing organizations. Investments in companies belonging to AFP owners and executives shall be limited to five percent (5.0%) of total portfolio, provided the provisions of Articles 99 and 101 hereof shall be abided by. No financial instruments may be settled by AFPs out of pension fund resources at prices that will prejudice returns in comparison to existing market levels at the time any such operation were effected. In case of any breach hereto, any difference resulting shall be returned to the pension fund by the relevant AFP under such procedures as are provided herein and in the complementary rules hereto. No AFP shall sell any titles in its own portfolio to the Pension Fund, nor shall any AFP purchase from any Pension Fund any titles held in any such Pension Fund's own portfolio.

#### *Risk Rating and Limits of Investment*

The Risk Rating Commission shall determine the actual degree of risk involved in each type of financial instrument thus to proceed to diversify investments among generic types while setting the maximum investment limits by type of instrument.

Article 86 of The Pension Regulation provides that Risk Rating and Investment Limit Commissions (the Rating Commission hereinafter) shall have the following functions:

- a) Set specific risk rating and approval procedures regarding such instruments as may be acquired by the Pension Funds in the formal national market;
- b) Assign a risk category to any such debt instruments as are included in Art. 97 of the Law that were marketed in the national market; and approve or reject any instruments representing capital.
- c) Establish minimum risk categories for financial instruments representing debt titles that may be purchased out of Pension Fund resources.
- d) Identify acknowledged risk rating organizations, both national and international, the ratings whereof shall be admitted for the purposes of eligibility of such financial instruments as are included in Article 97 of the Law.
- e) Establish the equivalences between ratings of titles of indebtedness as assessed by acknowledged international and local rating organizations.

- f) Establish the risk categories of such financial instruments representative of titles of indebtedness as may be acquired out of Pension Fund resources.
- g) Establish the procedures for approving such titles as are mentioned in letter e) of Art. 97 of the Law.
- h) Fix maximum investment limits by type of instrument.
- i) Any other functions determined under complementary rules.

#### *Management of Several Investment Portfolios*

AFPs may operate several investment portfolios having each a different make up as to financial instruments according to different degrees of risks and actual return, without prejudice of the provision of Article 103. AFPs shall give detailed information on any such make up to the Superintendence of Pensions as well as on the investment in each portfolio at such time intervals as were determined. Members shall be given information thereon, particularly as to risks and return, and shall further have the right to decide annually in which of the portfolios managed by the AFP they desire to place the whole of his or her individual account.

#### *Custody of AFPs Investments*

To safeguard the interests of members, financial titles and instruments whether physical, electronic or otherwise, in an amount equal to at least ninety-five percent (95%) of the value invested in the Pension Fund, shall at all times be kept under the custody of the Central Bank of the Dominican Republic, under such conditions as were established by said bank. AFP's shall inform the Superintendence of any purchase or sale of financial titles, whether physical, electronic or otherwise within a term not to exceed one business day, while the Superintendence shall in turn advise daily the Central Bank on the value of the portfolio each AFP has under its custody, as well as the makeup thereof.

#### *Reserve and Use of Fluctuation of Returns*

The reserve for fluctuation of returns shall be made up out of any excess in actual returns during the last twelve (12) months in a Pension Fund respecting the weighed average actual return by all Pension Funds during the last 12 months, less two percentage points. Such a reserve shall be computed monthly.

## SUPERINTENDENCE OF PENSIONS

#### *The Superintendence of Pensions*

The Superintendence of Pensions shall be an autonomous state agency having juridical personality and its own assets to fully carry out on behalf and representation of the Dominican State the function of seeing to the strict compliance herewith and any complementary rules hereto within the area of its authority, while protecting the interests of members and monitoring the financial solvency of Pension Fund Administrators (AFPs) besides contributing to strengthen the Dominican assistance plan. It shall be empowered to hire, to act as plaintiff and defendant

and shall be under the fiscal control of the General Comptroller of the Republic and/or the Chamber of Accounts only insofar as reviewing its income and expenses. It shall be presided over by the Superintendent of Pensions, who shall be in charge of seeing to the proper operation thereof according to such powers as such an officer is granted under the law, as well as any other related powers.

## VIOLATIONS AND SANCTIONS

### *General Principles and Rules*

Any in compliance resulting from any action or omission hereto as well as any behaviors subject to sanction herein contemplated shall be deemed as a breach of the obligations provided herein and the complementary rules hereto. Each individual breach hereunder shall be managed independently even though having a common origin. Employers and AFPs shall be responsible for any violations by their dependents in the exercise of their functions. Any sanctions hereunder shall expire in five years as of the commission of the relevant breach, and prosecution under the law to have any such sanction applied shall expire in five years as of the relevant court decree or resolution.

### *Authority to Apply Sanctions*

The Superintendence of Pensions shall be fully empowered to adjudge any breach hereunder and to apply such sanctions as are provided under the law and any complementary rules thereof.

### *Right to Appeal*

Employers and AFPs shall have the right to appeal before the National Social Security Council any decisions as to sanctions or fines assessed by the Superintendence of Pensions, while this shall in no way imply any suspension thereof.

It is appropriate to point out here that all pension plans in force as of the time the new social security law entered into effect may continue in operation provided however they shall comply with each and every one of the requirements under the new law.

## **D. FAMILY HEALTH INSURANCE**

### **1. Purpose, Rights and Coverage**

The established purpose of the Family Health Insurance (“SFS” hereinafter); under the new Social Security Law shall be the overall protection of the physical and mental health of members and their families; such insurance is also aimed at attaining universal coverage irrespective of age, gender, social, labor or territorial status, while guaranteeing due access thereto by the most vulnerable groups of society and seeing to the financial equilibrium of the plan through a rationalization of the costs of benefits and the administration of the plan. Such purposes further include the promotion of health, the prevention and treatment of diseases, the rehabilitation of the sick, pregnancy, childbirth and their aftermath. It shall not include any treatment deriving from transit accidents, occupational accidents or

professional diseases, which are covered by Law 4117 on Motor Vehicle Compulsory Insurance and the Labor Risk Insurance established under the new Social Security Law. The costs of medical care deriving from any transit accidents shall be borne by the relevant motor vehicle compulsory insurance or on its default, by the person causing the accident.

The Regulation of the Family Health Plan and the Basic Health Plan provide that benefits from the Family Health Plan shall include a number of actions, interventions, procedures, supplies and checkups that are provided under the Dominican Social Security System in order to maintain or recover health and avoid any impairment to production capabilities deriving from any temporary disability due to illness or childbirth. Beneficiaries of the Family Health Plan include five different sets having access thereto depending on their participation in the System — Contributive Participant Beneficiary, Subsidized Contributive Participant Beneficiary,

Subsidized Beneficiary affiliated to the Dominican Social Security System or transient beneficiary of traditional services under the National Health System, the latter category up until the entire universe of citizens compelled thereto shall have been enrolled under any of such plans or systems as have been contemplated.

Additionally, it has been provided that Health Risk/National Health Insurance administrators shall be responsible for performing such functions as they have been assigned under the law, and particularly that of promoting affiliation by the people of the Dominican Republic to the Dominican Social Security System within their geographical area of influence whether under the Contributive Plan, the Subsidized Contributive or Subsidized Plan, while guaranteeing free choice by users under the terms of Law 87-01. All information as were gathered regarding affiliation by workers or heads of family and their dependents, on any changes (novedades) on disbursements on account of benefits paid and related statistics shall be then forwarded to the Patronato de Recaudo e Informática de la Seguridad Social – PRISS (Organization for Social Security Data Collection).

A review and regulation of the development and operation of a National Accident Fund has been further included within the authority of the National Social Security Council.

The Dominican Social Security System (DSSS) shall guarantee free selection by families of a Health Risk Administrator (ARS), the National Health Insurance (SNS) and/or PSS of their choice, under such conditions and forms as are provided under the law and the complementary rules thereof. Such selection as were made by the entitled member shall be valid for all of his or her dependents. After the expiration of such period of transition as is referred to under Article 33 of the Law, each member shall remain free to select any ARS and/or PSS of his or her choice, as well as to change to another ARS whenever services rendered did not fulfill his or her needs. Changes may be made by members once a year, after 30 days’ prior notice. This process shall be regulated by the Superintendence of Health and Labor Risks, while providing for a term of time for any changes in ARS, SNS and/or PSS and seeing to the development and preservation of an atmosphere of controlled competition that will encourage the provision of quality, timely and satisfactory services to members.

As actions designed to prevent any monopolistic practices or lack of equilibrium, the inclusion of clear and accurate complementary mechanisms and procedures is delegated on the National Social Security Council under the law, therein including:

Obstructing the selection of risks as well as preventing any discrimination due to age, gender, social status or geographical location;

Preventing and avoiding any monopolistic practices both in the administration of health risks and in rendering health services; and

Protecting the practice by health professionals under such rules and procedures as are established under the General Health Law and Law No. 6097 of November 13, 1972 on the organization of the Hospital Medical Corps, as amended.

Additionally and so to prohibit the concentration of ownership and control, Article 122 of the Social Security Law provides that ARS shall not own, or hold stock or have any financial interest directly or indirectly in any PSS. Similarly, PSSs shall not own, or hold stock or have any financial interest directly or indirectly in ARSs.

However, the above provision shall not apply to any ARS as had operated as PSSs owners or shareholders during the last 12 months before the enactment of the law or to any PSS owning or holding shares in ARSs. Any operation implying a change of ownership or control in any of these enterprises shall lead to automatically forfeiting any acquired rights so far acknowledged as a contemplated by the law in this respect.

## 2. Beneficiary and Benefits

According to the Social Security Law, SFS beneficiaries of the Contributive Plan shall be the following:

- The Affiliated Member
- Any pensioned individuals under the Contributive Plan, regardless of age or health condition;
- Any disabled children regardless of their age, who depended from the member or pension beneficiary; and
- Complementarily, any other family members dependent on the affiliated member or pension beneficiary, provided any such member paid his or her coverage cost.

Transitorily, any member who did not have a paying job shall be entitled to health services. In any such case, an assessment of his or her condition shall be requested in order to determine under which one of the health plans he or she shall qualify. The right to health benefits in kind — albeit without any cash benefits — shall be granted to any such member and his or her dependents for a term of sixty (60) days.

Moreover, the following has been established as beneficiaries of the SFS Subsidized Plan under the law:

- The unemployed, both urban and rural, and their families.

- The disabled, urban and rural, provided they were not economically dependent from a father or guardian who were affiliated to another plan and were entitled to coverage under such other plan;
- The destitute, both urban and rural, as well as their families, under such joint forms as were provided by the Executive Power after a proposal by the National Social Security Council. Such criteria and indicators as shall determine which population will classify under the Subsidized Plan shall also be established by the National Social Security Council.

In cases of national emergency and/or during health campaigns or other special programs addressed at preventing diseases and disabilities, the above beneficiaries shall render community services to the public health sector or the municipalities in environmental health, reforestation and inoculation tasks.

Lastly, respecting the Subsidized Contributive Plan, SFS beneficiaries shall be the following:

- Professionals and technicians working independently, and their family members;
- Self-employed individuals, both urban and rural, and their families;
- Domestic servants, and their families; and
- Pension and retirement beneficiaries under the Subsidized Contributive Plan.

As to such benefits as shall be covered by SFS, two (2) types of benefits are contemplated under the Law – in kind and in cash.

The following benefits in kind are covered by the SFS under the Contributive, Subsidized and Subsidized Contributive Plan:

**Basic Health Plan:** To include health promotion and preventive medical services, primary health care, specialized attention and complex treatments referred by primary attention units, diagnostic aids both biomedical and radiological, preventive dental and pediatric care, physiotherapy and rehabilitation when prescribed by a specialist, and complementary benefits such as apparatus, medical prostheses and technical assistance to the disabled, according with such listing of benefits as were determined by the National Social Security Council.

**Child Care Centers:** This service is to be provided under the DSSS to employees' children from ages forty-five (45) days to five (5) years, under the care of specialized personnel and under the supervision of the Superintendence of Health and Labor Risks. Additionally, child care centers may be funded, set up and managed by public and private entities so as to complement and strengthen these social services. Appropriate meals according to the age and health of each child shall be provided, besides mother-child health services, pre-school education, psycho-social development and recreational activities. These shall be funded by SFSs, out of such resources as were provided to the Dominican State by private organizations, out of donations by enterprises, organizations, foundations, and trusteeships, both local and foreign, and by other nations and international organizations. Lastly, a National Child Care Center Council (CONDEI) with authority,

among others, to develop policies, rules and procedures for the implementation, design, construction and/or adaptation, equipment and operation of child care centers and their supervision has been organized under the law.

In order to lower costs, it has been provided that any service not included in the Basic Health Plan exceeding coverage thereof shall be covered by each member or his or her employer and shall be regulated by the National Social Security Council.

Cash benefits are being contemplated for the Contributive Plan only:

- **Subsidy in Case of Illness.** Members shall be entitled to a cash subsidy in case of temporary inability to work. It shall be granted as of the fourth day of inability up to a limit of twenty-six (26) weeks, provided any such employee had contributed for at least eight (8) months during the twelve-month (12) period immediately preceding any such disability, and shall amount to sixty (60%) percent of the contributable salary for the last six months when receiving ambulatory aid, and forty (40%) percent if hospitalization were required;
- **Childbearing Subsidy:** Female members shall be paid a childbearing subsidy equal to three months contributable salary. In order to be entitled to this benefit, a member shall have contributed for at least eight (8) months during the twelve month (12) period prior giving birth and should not have done any paid work during said period. This benefit shall exempt the enterprise from the obligation to pay a full salary as provided in Article 239 of the Labor Code. The children under one year of age of any member employee earning a contributable salary under three (3) national minimum salaries shall be entitled to a feeding subsidy for a term of twelve (12) months.

We believe it appropriate to point out that under the Labor Code it is provided that the childbearing subsidy is to be paid in equal proportions, that is to say, 50% to be covered by the employer and the remaining 50% to be covered by social security.

#### *Costs and Funding*

The SFS of the Contributive Plan is based on a simple distribution financial scheme based on a total contribution equal to ten percent (10%) of contributable salary: Three percent (3%) to be paid by employees and seven percent (7%) by employers, distributed as follows:

- Nine point forty-three percent (9.43%) for personal health care;
- Zero point ten percent (0.10%) for child care centers
- Zero point forty percent (0.40%) for subsidies
- Zero point zero seven percent (0.07%) for operations by the Superintendence of Health and Labor Risks.

However, during the first five years as of the date the SFS of the Contributive Plan shall enter into effect, costs and contributions shall be as follows:

<b>Items</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Total	9.0%	9.5%	10.0%	10.0%	10.0%
Personal Health Care	8.53%	9.03%	9.43%	9.43%	9.43%
Children Care Centers	0.10%	0.10%	0.10%	0.10%	0.10%
Subsidies	0.30%	0.30%	0.40%	0.40%	0.40%
Operations by the Superintendence	0.07%	0.07%	0.07%	0.07%	0.07%
<b>Distribution of Contribution</b>					
Employees	2.7%	2.85%	3.0%	3.0%	3.0%
Employers	6.3%	6.65%	7.0%	7.0%	7.0%

According to Article 41 of the Law any duplicate insurance contributions shall be eliminated as of its enactment .A member may only be enrolled and receive services in one single ARS or SNS. In this sense, the system shall provided for one sole membership in the Dominican Social Security System (DSSS), a membership that shall only be awarded by the National Social Security Council and shall have jurisdiction and validness in the entire national territory. A social security identification to replace any other previously existing identification for all legal purposes shall be delivered by the National Social Security Council within a term not to exceed twenty-four (24) hours as of the SFS entering into effect.

Respecting the Subsidized Plan, this shall be funded out of contributions by the Dominican State to be charged to the Public Expenditures Law. The amount thereof shall be determined on the basis of the number of the people assisted and the per capita cost of the basic health plan.

Concerning minimum contribution periods, it is provided under the Regulation on Family Health Insurance and the Basic Health Plan that in order to have access to treatment for any illness or under any procedure that were defined by the National Social Security Council as of high cost and complexity, minimum terms of membership under the plan may be required which shall in no case be in excess of 12 continuous or 18 discontinuous months.

In this same sense, upon termination of the employer-employee relationship or the appropriate contribution plan, an employee and his family shall enjoy the benefits of the Basic Health Plan for a term of sixty (60) days as of the date of termination, provided, however, any such employee shall have been a member of an ARS/SNS for a minimum of six months before the date of any such termination. Up until a new membership shall have been acquired, such per capita as corresponded to the 60 day period above stated shall be paid by the Social Security Treasury to the ARS/SNS.

Exceptions to the above minimum contribution period are provided under the same Regulation, in the sense that any actions, interventions and procedures designed for the promotion and enhancement of health or the prevention of illness at the first level of attention, therein including treatment during the entire pregnancy, childbirth, puerperium, as well as the initial stabilization treatment of patients in cases of emergency shall be immediately attended to with no waiting period.

However, care at childbirth and any complications thereof shall not be subject to any minimum periods of contribution. However, to be entitled to financial aid in case of childbearing a member shall be required to have contributed for a minimum period of eight (8) months during the twelve (12) months period preceding childbirth, and not to have worked for a salary during her license. On the other hand, when contribution to the plan were suspended for a term of six (6) or more continuous months, any accumulated seniority shall be recovered after having contributed to the last affiliation for six (6) months.

On the other hand, a maximum contributable salary equivalent to ten (10) minimum salaries has been established. Any workers rendering services to two or more employers and/or receiving an income from independent occupations shall have any such income declared for the purposes of computing his or her contributable salary.

Enrollment of employees, notification of their current salaries or any salary changes and the obligation to retain contributions and have contributions forwarded to the Social Security Treasury within such term as is provided by the law and any complementary regulations have been established as obligations to be met by employers. Without prejudice of other sanctions as may be applied, a public or private employer shall be liable for any damages that were caused to a member or his or her family if due to such an employer's failure in his or her obligation to have any such employee enrolled, notify his or her actual salary or any changes thereto or forward the appropriate contributions to the competent authority, any such member were prevented from receiving health benefits or the amount of the subsidy such a member were entitled to were reduced. The manager of the relevant enterprise or director of the concerned institution shall be also deemed personally liable in any such case.

Lastly, in funding the subsidized contributive plan, the new Social Security Law contemplates the obligation by the National Social Security Council to determine after due review thereof the distribution of the per capita cost of the Basic Health Plan between workers and the Dominican State, taking into account the actual contributive capacity of the various segments of self-employed workers, as well as the possibilities of the Dominican State. Such contribution percentages and their distribution shall be determined by Executive Power decree within a term of six (6) months.

After the conclusion of the period of transition and so as to guarantee actual access to health services to the most vulnerable population, a monthly allocation shall be delivered by the Social Security Treasury to each ARS and SNS on the basis of multiplying the covered local population by the cost of the basic health plan to be charged to the "Personal Health Care" item.

#### 4. Risks Administrators and National Health Insurance

Health Risk Administrators (ARSs) and the National Health Insurance (SNS) are defined under the Law as public, private or mixed, decentralized organizations having their own assets and legal capacity, authorized by the Superintendence of Health and Labor Risks to assume and manage the risk of providing the Basic Health Plan to a given number of beneficiaries for a per capita payment previously determined by the National Social Security Council. Health Risk Administrators shall fulfill the following functions:

- Assume the risk of guaranteeing a quality, timely and satisfactory coverage to beneficiaries.
- Rationalize the cost of services upon achieving adequate levels of productivity and efficiency;
- Coordinate the PSS network to maximize its decision-making capabilities
- Retain and regularly pay the PSSs; and
- Render periodical reports to the Superintendence of Health and Labor Risks.

The Regulation on the Family Health Insurance and the Basic Health Plan provide on their part such obligations as shall be assumed by ARSs to wit: to guarantee a quality, timely and satisfactory coverage to beneficiaries upon rationalizing the costs of the Basic Health Plan with adequate levels of productivity and efficacy in consistency with the goals and aims of the National Plan as contained in the Basic Health Plan and including such provisions as were decreed by the SISALRIL there for.

Respecting the organization of ARSs and SNSs, the Law provides for the following entities to be organized as such:

- The Dominican Institute of Social Insurance (IDSS) which is duly provided with an independent, decentralized administration;
- Any autonomous public agencies, whether profit or non profit, that were organized to administer health risks;
- Municipal, provincial or regional bodies organized to administer health risks;
- Any private entities that were set up to administer health risks;
- Any entities as were organized by health professionals to administer health risks as cooperatives or under any other kind of organization, whether profit or non profit;
- Any entities that were organized by Self-managed Health Insurance concerns;
- Any other kind of agency engaged in the administration of health risks provided the requirements herein and other complementary rules were duly complied with.

As a transitory provision it has been decided to acknowledge and include all such medical retainers (*iguales médicas*), health insurances and self-managed insurances, whether profit or non profit, as were registered with the Secretariat of State for Industry and Commerce on the date of the enactment of the law. These may continue to operate as ARSs without having to fulfill all prescribed requirements during the first two (2) years the law were in effect, during which term all such requirements shall be completed and the appropriate authorization by the Superintendence of Health and Labor Risks shall be duly applied for.

Such minimum conditions as shall be required to be duly credited as an ARSs or SNSs, without prejudice of any other conditions as may be provided under complementary rules, shall include:

- Have legal capacity as provided under the laws of the Dominican territory;
- Have an administrative and financial organization capable of managing health risks under conditions of efficiency, competitiveness and financial solvency;
- Organize an integral network of services at the local level provided with subrogated units that will adequately cover all benefits under the Basic Health Plan;
- Be provided with a guarantee insurance against any special health contingencies and against any claims my members, proportionately to the number of beneficiaries, the minimum amount whereof shall be established by the Superintendence of Health and Labor Risks;
- Have a managerial information and registry of services system compatible with the sole system of information , and sufficient capacity to issue regular reports and statistics;
- Have acknowledged technical capacity to supervise any affiliated PSSs as to quality, timeliness and satisfaction of services retained within the framework of the law and any complementary rules thereof.
- Submit periodical proof of minimum levels of technical-financial solvency as provided by the Superintendence of Health and Labor Risks;
- Have a minimum cash paid in operational capital proportionately to the number of beneficiaries, to be determined, reviewed and indexed by the Superintendence of Health and Labor Risks;
- Comply with any other requirements by the National Social Security Council and/or the Superintendence of Health and Labor Risks.

SNSs and other entities interested in operating as ARSs shall apply for formal authorization to the Superintendence of Health and Labor Risks. The Superintendence shall within a term of four (4) months as of formal receipt of each application, assess each such request and decide thereon while documenting any such decision in writing and have it advised to any interested parties. If after a term of four (4) months no official

notice were received as to any decision the same shall be deemed automatically approved.

Additionally, the authorization by the Superintendence of Health and Labor Risks shall be required both from ARSs and SNSs for any of the following:

- Their dissolution or liquidation;
- Merger with another organization;
- Sale of assets or property;
- Reduction of capital and/or installed capacity; and
- Amendments to the by-laws;

Whenever any SNS or ARS, whether public, private or mixed were in a technical, financial or administrative situation that did not guarantee the adequate operation thereof, or incurred in any grave offences that might prejudice the interests of members and/or affect social security policies or the general aims of the DSSS, the Superintendence of Health and Labor Risks may proceed to an intervention while adopting such corrective remedies as were required in each specific case.

Respecting the SNS, it is designated under the new Social Security Law as the public assurer responsible for managing the health risks of such members as are indicated in Paragraph I of Article 31 of the Law, with the following functions:

- Guaranteeing quality, timely and satisfactory services to members;
- Managing health risks in an efficient, fair and effective manner;
- Organizing a national network of providers of health services under decentralization criteria;
- Retaining and paying health service providers in the manner and under the conditions prescribed by the law and by other ARSs;
- Rendering periodic reports to the National Social Security Council and the Superintendence of Health and Labor Risks on the management of resources thus to guarantee their efficient and transparent use;
- All other functions ascribed to ARSs as above stated.

The Regulation on Family Health Insurance and the Basic Health Plan provide for such as have been called Complementary Services which are defined as such actions, procedures and interventions as are not included in the Basic Health Plan or which are provided under different or additional conditions as to rooming, comfort, technology or any other features of attention rendered and paid directly by Health Services Providers (PSS).

Such Complementary Health Services shall be provided directly by such Health Service Provider as were selected by beneficiary.

It is important to point out that no Complementary Plans may be offered or provided by any enterprise, entity or individual to any one that were

not already covered under the Basic Health Plan. Were any omission of this requirement for whatever cause to be determined, such sanctions as are provided by the law shall be applied as appropriate. It shall be the responsibility of the entity providing any complementary plans to verify that such individuals as are enrolled have been included in the Dominican Social Security System (DSSS).

## 5. Providers of Health Services

Health Services Providers (PSSs) shall be duly licensed individuals or public, private or mixed decentralized entities having their own assets and legal capacity and engaged in the provision of ambulatory, diagnostic, hospital and surgical services, under an authorization by the Secretariat of State of Public Health and Social Welfare (SESPAS by its Spanish acronym) or under the General Health Law. The following may be organized as PSSs under the Dominican Social Security Plan:

- State health services providers duly licensed by SESPAS under the General Health Law;
- Autonomous public agencies rendering health services;
- Mixed health services organizations owned by the State and managed by representatives of the civil society, provided, however, they were independently managed and had been duly licensed by SESPAS;
- Trusteeships and Non Governmental Organizations (NGOs) rendering health services.
- Private organizations providers of health services;
- Local health service organizations created under the laws of the Dominican territory to provide services at the municipal or provincial level;
- Duly licensed professionals within the health sector, under such conditions as are provided under the General Health Law; and
- Any service agencies, provided such requirements to operate as a health service provider under the General Health Law were duly met.

Requirements to operate as a Health Service Provider shall be established by SESPAS under the General Health Law and any complementary rules thereof. SESPAS shall be additionally in charge of regulating their operations and to proceed to their supervision.

## 6. Transformation and Development of the Dominican Social Security Institute (IDSS) and the Secretariat of State for Public Health and Social Welfare (SESPAS).

Under the terms of the legal capacity, assets, public and three-fold nature of the Social Security Law the current Dominican Institute of Social Security (IDSS) shall be preserved, and shall become an entity for the administration of risks and provision of health services and labor risks, while being divested of any conduction, regulating and funding functions, which shall be under the exclusive responsibility of the State through the National Social Security Council.

During a term of five (5) years as of the enactment of the law, all private employees and their families who sixty (60) days prior to the law entering into effect were exclusively affiliated to the social security plan, shall remain under the IDSS. And during a period of two (2) years, all public or autonomous and decentralized institution employees shall continue to be covered under any retainers or private insurance plans they had been enrolled in for at least sixty (60) days before the law entered into effect, provided they should so desire.

Additionally, any as were enrolled as a consequence of the elimination of the exclusion limit and/or the inclusion of new social segments shall have an immediate option to enroll in any of the existing public or private ARSs. Any enterprises and employees as were enrolled for the first time will enjoy a similar consideration.

So as to strengthen the public health network and attain adequate levels of quality, satisfaction, timeliness, efficiency and productivity during the transitional period, reforms shall be implemented by SESPAS and IDSS therein including, among others, remodeling and refurbishing health facilities and constructing and providing with the required equipment all such care centers as were located in areas having the largest unfulfilled demand for services. The functions of risk administration and health services provision shall be further separated as well as any management connections between SESPAS and/or IDSS and the managerial, professional, technical and administrative personnel of health organizations, while providing financial, material and moral incentives to attain the desired goals as to population coverage and results attained as to quality, timeliness and satisfaction.

Lastly, and in order to guarantee a normal operation and transformation of the IDSS into an efficient, productive and sustainable organization, a monthly subsidy shall be delivered by the Dominican State in the event of any operational deficits. Such a subsidy shall proceed from the national budget, shall have a temporary and decreasing character and shall disappear at the conclusion of the period of transition. In no case shall any such resources proceed from the Dominican Social Security Scheme (DSSS).

## 7. Retaining and Payment System

The following payments have been established under the Social Security Law:

**Per Capita Payment:** A fixed monthly fee shall be paid by the social security treasury to SNSs and to all ARSs, both public and private for each individual covered by the administration and service rendering units under the basic health plan. The amount thereof shall be determined by the National Social Security Council using actuarial computations, shall be subject to annual revision and shall be reviewed bi-annually in special cases. Without prejudice of the above stated, whenever the necessary conditions were to develop, differential rates may be set by such a Council according to individual risks by beneficiaries;

**Payment to health service professionals and providers:** The SNS and ARSs shall pay their professional fees to all health personnel and other services providers within a term never to exceed ten (10) calendar days as of the appropriate payment to the ARSs, provided same shall

have been claimed under such conditions and following such limits and procedures as were provided in the complementary rules there for.

As to the different manners of managerial organization, it has been provided under the law that the Superintendence of Health and Labor Risks shall regulate such minimum conditions as shall be included in the contracts between ARSs or the SNS and PSSs there for encouraging any risk sharing schemes that will further mutually satisfactory relationships.

The Superintendence of Health and Labor Risks shall additionally further and regulate the hiring of professionals, technicians and administrative staff, on the basis of the following:

Salary earned plus incentives for the attainment of goals, levels of quality, results and performance within any established institutional standards;

Professional fees plus incentives for the attainment of goals, levels of quality, results and performance within any established institutional standards;

Minimum professional fees shall be fixed and reviewed annually by a national Professional Fee Committee including seven (7) members as follows: Two governmental representatives, one

SNS representative; and one from private ARSs; two health professionals from the relevant specialized area and one representative of members. Resolutions by said committee shall be subject to approval by the National Social Security Council which shall set up complementary rules on its makeup and operation.

## **8. The Superintendence of Health and Labor Risks**

A Superintendence of Health and Labor Risks has been organized under the new Social Security Law as a state autonomous entity having its legal personality and its own assets which shall exercise on behalf and representation of the Dominican State the functions of seeing to the strict compliance with the law and any complementary rules thereof, protecting the interests of members, monitoring the financial solvency of the SNS and ARSs, supervising the timely payment to said administrators and from these to the PSSs and contributing to strengthen the National Health System. This body shall be authorized to execute contracts, and to act in court as plaintiff or defendant and shall be under the fiscal control of the office of the General Comptroller of the Republic and/or the Chamber of Accounts, only insofar as reviewing its income and expenses. A superintendent to be appointed by the Executive Power from three candidates presented by the National Social Security Council, shall head the Superintendence of Health and Labor Risks, such functions to be exercised for a period of four (4) years.

The relevant Regulation provides that the Labor Risks Insurance is addressed to attaining the amplest coverage for workers in the event of any occupational accidents and/or diseases such as:

a) Providing coverage in the event of loss of regular income by worker;

b) Secure the gradual implementation of the security and health plan at the worksite; and

c) Reduce any causes for differences between employers and employees.

An additional purpose and end of this regulation is that of complementing such aspects of the law as are indicated therein while clarifying the contests thereof whenever these were confusing; this on proceeding to point to and regulate the following issues:

1. General overview of Labor Risks Insurance;
2. Application of Labor Risks Insurance
3. Evaluation of incapacities by occupational accidents or professional illnesses or occupational diseases;
4. Occupational accidents and professional diseases; and health and security inspections at worksites by the Secretariat of State for Labor,
5. Gathering statistics on occupational accidents and professional diseases with preventive purposes;
6. Applying sanctions to any enterprises or employees in case of incompliance with the provisions of the law hereunder;
7. Providing financial incentives to enterprises on the implementation and performance of safety management and occupational health programs.

The Superintendence of Health and Labor Risks shall have the following functions:

- Supervise a due application of the Law, the Health and Labor Risks Regulation and any resolutions by the National Social Security Council concerning ARSs and the Superintendence itself;
- Authorize the operation of the SNS and ARSs; and maintain an updated record thereof.
- Propose the cost of the basic health plan and its components to the National Social Security Council; proceed to a periodic review thereof and recommend any updating as to amount and contents;
- Supervise, control and assess the operation of the SNS and ARSs; exercise fiscal control as to their financial solvency and accounts; on the makeup, maintenance, operation and application of the reserve fund and minimum capital requirements;
- Demand ARSs and SNS forwarding information on benefits and other services rendered at such times as were deemed appropriate.
- Proceed to the review of books, accounts, files, documents, accounting, collections and physical inventory of ARSs, the SNS and any PSSs as were retained by the former;
- Assess fines and sanctions to ARSs and the SNS after explanatory resolutions whenever these failed to comply with any provisions in the law and any complementary rules thereof.

- Cancel the authorization and proceed to the liquidation of SNS and any ARSs in such cases as were provided by the law and in any complementary rules thereof;
- Act as amicable arbiter in any disagreements between ARSs or the SNS and PSSs, whether these were corporations or health professionals and settle in the last instance such price and rates as shall be charged for services within the basic health plan;
- Supervise the Social Security Treasury and the Social Security Trusteeship for Collection and Computation (PRISS) as to the distribution of contributions to the Family Health Plan and the Labor Risk Insurance within such limits, distribution and rules as were provided by the Law and any complementary rules thereof;
- Propose to the CNSS the regulation of any aspects on Family Health Insurance and Labor Risks Insurance that were not included; and
- Submit to the consideration of the CNSS any necessary initiatives addressed at guaranteeing the development and financial equilibrium of the plan, the quality of benefits and satisfaction by users, the financial solvency of the SNS and ARSs and a free choice by members.
- Any employee who gave false or incomplete information on his or her dependents that caused or may cause any such employee being granted any undue services and/or financial benefits;
- The SNS or any ARSs unduly delaying any benefits contemplated by the law and the complementary rules thereof to any or several beneficiaries. Any repeated violation in this respect shall result in the cancellation by the Superintendence of Health and Labor Risks of the authorization to operate as such.
- The SNS or any ARSs failing to report to the Superintendence of Health and Labor Risks any information provided under the law or any complementary rules thereof within such terms and conditions as are provided under the regulations;
- The SNS or any ARSs delaying payment to any subrogated providers while having received the relevant payment on time;
- Any PSSs as were the accomplice or author of any false diagnoses or medico-surgical procedures, or which caused or may cause undue financial benefits to be extended;
- Any ARSs, the SNS and/or any PSSs discriminating against any member by reason of age, gender, social status or any other reason that injured his or her human condition under the Constitution of the Republic, the Social Security Law and any relevant rules; and
- Any ARSs, the SNS and/or any PSSs failing to pay or delaying payment of any professional fees within such terms and procedures as are provided by the law and under any complementary rules thereof.

## 9. Violations and Sanctions

Under the new Social Security Law any incompliance whether by action or omission with any of the obligations prescribed therein or in any complementary rules thereof as well as any sanctionable behavior contemplated thereunder shall be considered a violation. Each violation shall be managed independently even if having a common origin. Employers and ARSs shall be responsible for any violations by their employees in exercising their functions. The authority to apply a sanction shall expire three (3) years after the commission of the guilty action, while the legal action to have the relevant sanction applied shall prescribe five (5) years after any court decision or resolution.

According to the terms of the law, the following shall be subject to a prison penalty and other sanctions:

- Any employer omitting or failing to enroll one or several employees within such terms as are provided by the Law and the complementary rules thereof; or who failed to provide true and full information or failed to inform in a timely fashion any changes or any new developments (novedades) regarding contributions in the company.
- Any employer who failed to pay any contributions within such terms as are provided by the Law and the complementary rules thereof, or who were the author or accomplice in any false enrollments or statements that caused or may cause any undue benefits to be paid.
- Any individual or corporation that altered any documents or any credentials issued by the CNSS so as to cause the enjoyment of undue benefits;

Any public or private employer committing any of the above offences shall pay a five percent (5%) monthly cumulative surcharge of the sum involved in any undue retention. If the SNS or any of the ARSs committed any of the violations contemplated under the Law or any complementary rules thereof a fine not under fifty (50) times or over two hundred (200) times the national minimum salary shall be assessed. Any repeated violation or repetition of any offence shall be considered an aggravating circumstance, in which case the sanction assessed shall be fifty percent (50%) higher. Any as committed any grave offence could be subject to civic degradation and to a thirty (30) day to one (1) year correctional prison term. The gravity of the violation shall be determined by the CNSS in each case as well as the amount of any penalty assessed, within the above stated limits. Collection of any compulsory contributions as well as any commissions on account of any surcharge, fine and interests payable by any employer shall have such priority privileges as are provided under the Civil Code and the Code of Commerce. The sum of any such surcharges shall accrue to the subsidy account.

Additionally, whenever any of the violations described in letters (h), (i) or (j) above were committed by a PSSs and no settlement as contemplated in Article 178 f the Law were reached, a fine not under 50 times or over 200 times the national minimum salary shall be assessed, upon commission of any such violation being determined by a regular court of law.

Moreover, if an ARS failed to make the appropriate payment to any professional and/or to a PSS, a cumulative five percent (5%) surcharge for any month or fraction thereof shall be assessed for the benefit of the affected party.

The Superintendence for Health and Labor Risks shall have full authority to determine violations and assess the relevant sanctions as provided by the law and any complementary rules thereof. Employers, ARSs, the SNS and PSSs shall have the right to appeal before the CNSS any decisions on sanctions and fines by the Superintendence of Health and Labor Risks, provided, however, this shall in no case imply any suspension thereof.

## **E. LABOR RISKS INSURANCE**

### **1. Purposes and Policies**

According to the terms of the new Social Security Law, the purpose of the Labor Risks Insurance is that of preventing and covering any damages by occupational accidents and/or professional diseases. It shall include any bodily injury and any morbid state suffered by an employee on the occasion or as a consequence of any work performed on account of others. This shall include treatment for occupational accidents during working hours and/or on the way to or from the worksite. The Secretariat of State for Labor has been entrusted by the Law with defining a national policy on the prevention of occupational accidents and professional diseases, taking into consideration the safety of employees, the financial possibilities of each employer and the predominant educational and cultural factors. Employer enterprises and entities shall be under the obligation to implement such basic preventive actions as were determined by the Secretariat of State for Labor and/or de Safety and Health Committee, the Superintendence of Health and Labor Risks being authorized to assess such sanctions as were provided under the law.

### **2. Beneficiaries and Benefits**

The following beneficiaries are included under the Occupational Risks Insurance:

- The Affiliated Member
- In the event of survivorship pensions, the spouse of a member or pensioned individual or on his or her default, his or her partner with whom he or she had been living for three (3) years before enrollment, or if there were any children, provided, however, neither one of them had had any impediment to their getting married;
- Any children under 18 years of age
- Any children up to 21 year of age who were students; and
- Any disabled children, regardless of their age, depending on the member or pension beneficiary;

Risks covered by the Labor Risk Insurance are the following:

- Any bodily injury and any morbid state by an employee or apprentice sustained on the occasion or as a consequence of any work performed.
- Any injury sustained by an employee during working hours and in the workplace, except if the contrary were proved.
- Any occupational accidents connected to or deriving from any tasks entrusted to an employee, even if these were different from those within the professional category of any such employee;
- Any accidents occurring in a salvage operation as well as other accidents of a similar nature, whenever these were connected to the work performed;
- Any transit accidents on the route and during regular working hours; and
- Any diseases the direct cause whereof where the profession or job performed by an individual resulting in disability or death.

Any labor risks having their origin in the state of inebriation of an employee or on his or her being under the effects of any psychotropic, narcotic or mind-altering drug, save if under medical prescription shall be excluded from the consideration of labor risks; or when these were the result of an employee's intentional action or it were perpetrated in connivance with another individual or the employer; in the event of force majeure alien to the job; in case of transit accident outside the route or outside regular working hours; and whenever any damage sustained were the result of fraud or reckless neglect by the accidented employee.

As to such benefits as are guaranteed under the Labor Risks Insurance, the following are contemplated under the law:

- Medical and dental attention;
- Prostheses, eyeglasses and orthopedic devices and their repair;
- Subsidy in case of temporary disability, whenever the labor risk led to any temporary incapacity to work as provided under the Labor Code;
- Indemnity due to disability:

### **DISABILITY PENSION**

For the purposes of computing pensions and indemnities under the Labor Risks Insurance the base salary shall be the average of such remunerations as were subject to contribution during the six month period preceding the accident and/or professional illness. If contributions did not cover the entirety of said period, the median of such months as contributed shall be computed. The relevant indemnities shall be established under complementary rules.

### **3. Funding, Cost and Contributable Salary**

The Labor Risks Insurance shall be funded out of an average contribution of one point two percent (1.2%) of contributable salary to

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be paid exclusively by employers. Total contribution by employers shall have two components:

A one percent (1%) fixed basic contribution to be uniformly assessed to all employers; and

An additional variable portion of up to zero point six percent (0.6%) according to the nature of the operations and the risks involved in each enterprise. In both such cases, said percentages shall be assessed on the amount of any contributable salary.

The possibility of a reduction in the additional contribution rate is contemplated by the law as an incentive for performance to such enterprises or organizations which showed to have implemented prevention actions leading to decrease the actual risk of occupational accidents and diseases. Accidents on the way to work shall not be taken into account to compute the degree of risk by enterprises and employer organizations. The degree of risk and the relevant additional contribution shall be determined under complementary rules.

Additionally, the financial scheme of the occupational risk insurance shall be distributive and a financial reserve not under two point zero percent (2.0%) or over five point zero percent (5.0 %) of such contributions as were assigned to cover special contingencies shall be guaranteed.

The law provides as obligations by employers that of enrolling his or her employees, notifying their actual salaries or any changes thereto and forwarding the appropriate contributions to the competent organization within such term as were provided by the law. The National Social Security Council shall be the agency responsible for the administrative collection of all contributions, surcharges, fines and interests that were unduly retained by employers. After exhausting the administrative channels with no result, to such coercion procedures

as are provided under Dominican laws may be applied. Without prejudice of other sanctions applicable, employers shall be responsible for any damages to an employee whenever as a result of any non-compliance with any of the obligations above stated, such benefits as are contemplated under the Occupational Risk Insurance could not be provided to said employee or whenever the subsidy any such employee was entitled to be paid were reduced on account of any such non-compliance.

Furthermore, the owner of any work, enterprise or task shall be deemed to be liable in a subsidiary fashion for any enrollment or contribution obligation affecting his contractors respecting any workers. Contractors shall be affected by a similar liability respecting any sub-contractors.

Any employer who were to unduly retain any mandatory contributions by one or several employees under any such employer's dependency shall pay a monthly five percent (5%) surcharge while any such undue retention were to last. In addition to the above sanctions, any delay and/or incomplete payment shall be a cause for a criminal action by the Superintendence of Health and Labor Risks.

Lastly, the right to claim such benefits as are provided under the Occupational Risks Insurance shall expire in five (5) years, as of the day following the day when the event giving right to the relevant benefit shall have happened. Such prescription is interrupted by such ordinary causes as are provided under the Civil Code and by submission of the relevant administrative dossier or appropriate administrative claim in such manner as shall be provided under complementary rules.

Finally, to have a better idea of the economic impact by the new social security law both respecting employees and employers, the following is a comparative chart of costs under the new law vs. former laws Nos. 1896 and No. 385, this latter one complemented by Decree No. 76-99.

# COMPARACION ENTRE LEYES 1896, 385, DEC. 76/99 Y LEY 87-01 DE SEGURIDAD SOCIAL

<b>COMPARACION ENTRE LA NUEVA LEY DE SEG. SOC. # 87-01 Y LAS LEYES 1896 Y 385 A SER SUSTITUIDAS</b>						
<b>PARA EL PLAN DE PENSIONES</b>		<b>LIMITE MÁXIMO PARA COTIZAR</b>				
		<u>Hasta 20 salarios mínimos</u>				
	Segundo año	Tercer año	Cuarto año	Quinto año	Primer año	
Aporte del empleado	2.13%		2.28%	2.58%	2.88%	1.98%
Aporte del empleador	5.37%		5.72%	6.42%	7.12%	5.02%
<b>PARA EL SEGURO MÉDICO</b>		<b>LIMITE MÁXIMO PARA COTIZAR</b>				
		<u>Hasta 10 salarios mínimos</u>				
Aporte del empleado	2.85%		3.00%	3.00%	3.00%	2.70%
Aporte del empleador	6.65%		7.00%	7.00%	7.00%	6.30%
<b>SEGURO DE RIESGOS LABORALES</b>		<b>LIMITE MÁXIMO PARA COTIZAR</b>				
		<u>Hasta 10 salarios mínimos</u>				
El seguro de riesgos laborales será financiado con una contribución promedio de un 1.2% del salario cotizable a cargo exclusivo del empleador.						
En adición, el empleador aportará el 0.4% del salario cotizable para cubrir el fondo de solidaridad social del sistema previsional.						
<b>LOS COSTOS DE LAS LEYES A SER SUSTITUIDAS</b>						
<b>LEY 1896 SOBRE SEGUROS SOCIALES</b>		<b>LIMITE MÁXIMO PARA COTIZAR</b>				
Se debe cotizar de la manera sgte:		Hasta RD\$ 4,003.97 al mes si es empleado de oficina. Si es obrero siempre se cotizará pero solo hasta dicho límite.				
Aporte del empleado						2.50%
Aporte del empleador						7.00%
<b>LEY 385 Y DECRETO 76/99 SOBRE SEGUROS</b>		<b>LÍMITE MÁXIMO A COTIZAR</b>				
Contra accidentes del trabajo		<u>hasta 4 veces el salario mínimo</u>				

**SIMULACION DE NOMINA CON LA FINALIDAD  
DE COMPARAR LOS COSTOS DE LAS LEYES  
385 Y 1896 CON LA 87-01**

NOMBRE DEL EMPLEADO	POSICIÓN	SUELDO	LEY 1896	LEY 385	SEG. PRIV.	TOTAL	PENSIÓN	SALUD	RIESGOS LAB.	TOTAL	INCREMENTO
Juan Pérez	Gte. General	125,000.00		209.00	1,000.00	1,209.00	2,622.00	1,646.00	313.00	4,581.00	3,372.00
Isidro Rodríguez	Asist. Gte. Gen.	30,000.00		209.00	500.00	709.00	1,506.00	1,646.00	313.00	3,465.00	2,756.00
Victor Ramirez	Gte. De Auditoria Interna	90,000.00		209.00	1,000.00	1,209.00	2,622.00	1,646.00	313.00	4,581.00	3,372.00
Cecilio Santana	Gte. Financiero	75,000.00		209.00	1,000.00	1,209.00	2,622.00	1,646.00	313.00	4,581.00	3,372.00
Ivonne taveras	Contador General	60,000.00		209.00	1,000.00	1,209.00	2,622.00	1,646.00	313.00	4,581.00	3,372.00
Nidia Cruz	Gte. De Informática	55,000.00		209.00	1,000.00	1,209.00	2,622.00	1,646.00	313.00	4,581.00	3,372.00
Andres Bautista	Gte. De Mercadeo	50,000.00		209.00	1,000.00	1,209.00	2,510.00	1,646.00	313.00	4,469.00	3,260.00
Awilda Alvarez	Gte. Administrativo	45,000.00		209.00	1,000.00	1,209.00	2,259.00	1,646.00	313.00	4,218.00	3,009.00
Ramón Alcantara	Sub- Contador	35,000.00		209.00	500.00	709.00	1,757.00	1,646.00	313.00	3,716.00	3,007.00
Hector Almonte	Asist. De Contabil.	20,000.00		209.00	500.00	709.00	1,004.00	1,260.00	240.00	2,504.00	1,795.00
Roberto Sánchez	Asist. Administrat.	15,000.00		209.00	500.00	709.00	753.00	945.00	180.00	1,878.00	1,169.00
Carmen Polanco	Asist. De Rec. Hum.	12,000.00		209.00	500.00	709.00	602.00	756.00	144.00	1,502.00	793.00
Bethania Reyes	Asist. De Mercadeo	13,000.00		209.00	500.00	709.00	653.00	819.00	156.00	1,628.00	919.00
Altagracia Salazar	Asist. Informática	14,000.00		233.00	500.00	733.00	703.00	882.00	168.00	1,753.00	1,020.00
Belkis Diaz	Secretaría	10,000.00		200.00	500.00	700.00	502.00	630.00	120.00	1,252.00	552.00
Clara Jimenez	Recepcionista	8,000.00		160.00	500.00	660.00	402.00	504.00	96.00	1,002.00	342.00
Mario Encarnación	Mensajero	6,000.00	280.00	120.00	1,000.00	1,400.00	301.00	378.00	72.00	751.00	(649.00)
José Rodríguez	conserje	5,000.00	280.00	100.00	1,000.00	1,380.00	251.00	315.00	60.00	626.00	(754.00)
<b>totales</b>		<b>668,000.00</b>	<b>560.00</b>	<b>3,530.00</b>	<b>13,500.00</b>	<b>17,590.00</b>	<b>26,313.00</b>	<b>21,303.00</b>	<b>4,053.00</b>	<b>51,669.00</b>	<b>34,079.00</b>

**NOTAS ACLARATORIAS:**

- 1) Hemos asumido un salario mínimo promedio de RD\$2,612.00.
- 2) Hemos asumido una tasa promedio de un 2% para el cálculo del valor a pagar por la ley 385.
- 3) Hemos asumido un seg./ med. Privado cuyo costo promedio es de RD\$500.00 para los empleados solteros y de RD\$ 1,000.00 para los empleados casados.
- 4) En adición, el empleador aportará un 0.4% del salario cotizable para cubrir el fondo de solidaridad social del sistema previsional.

**Pellerano & Herrera**  
*Attorneys at law*

SANTO DOMINGO  
Av. John F. Kennedy No.10  
Santo Domingo, Dominican Republic  
Apartado Postal 20682  
Tel. (809) 541-5200  
Fax (809) 567-0773

BAVARO, PUNTA CANA  
Plaza Larimar, Local 27,  
Cruce De Friusa  
Bávaro, Higuey, Dominican Republic  
Tel.: (809) 552-1105  
Fax: (809) 552-1986

International Mailing Address  
A-303  
P.O. Box 52-4121  
Miami, FL 33152-4121  
United States of America

**[www.phlaw.com](http://www.phlaw.com)**  
**[ph@phlaw.com](mailto:ph@phlaw.com)**

SANTIAGO  
Calle Paseo Oeste,  
La Rosaleda, Edif. Bionuclear  
1er. Piso, Santiago  
Dominican Republic  
Tel.: (809) 580-1725  
Fax : (809) 582-2170

AZUA  
Calle Duarte Esq. 19 De Marzo  
Edificio Banco Popular, Piso 2  
Azua, Dominican Republic  
Tel.: (809) 521-2178  
Fax: (809) 521-2281