Pellerano & Herrera
Attorneys at law

EXECUTIVE **SUMMARY**

Foreign investment Law of the Dominican Republic

On November 20, 1995 the new Foreign Investment Law of the Dominican Republic, Law No.16-95, was enacted by the Executive Branch, repealing our previous statute on foreign investments. The new legislation is the result of a series of consultations and studies initiated in 1990 under the auspices of the Inter-American Development Bank (IDB), the Inter-American Investment Corporation (IIC) and the Dominican Central Bank, with the participation of members from the public and the private sector.

The referenced works culminated in the preparation and submission of a draft bill for a new foreign investment law which reflected the consensus reached by the participants, and was submitted to the Executive Branch for further study and revision, and the subsequent introduction of the bill to Congress. The provisions in the initial bill reflected the prevailing and growing consensus among the different sectors in the country that the regulations pertaining foreign investments and, very particularly, had to be further liberalized in order to give equal access and treatment to foreign investors.

On October 24, 1995 the bill was approved with certain minor amendments by the Chamber of Deputies, and thereafter it was approved by the Senate on November 8, 1995 without further changes. The rules for the application of said law were given by the Presidential by Decree No.380-96 as of August 28, 1996.

TABLE OF CONTENTS

I. The new legislation in a setting for economic reform and political change.

II. Background of foreign investment law and regulation in the dominican republic.

III. Application requirements

IV. Defined terms.

V. Registration procedure at the central bank.

VI. Forms of foreign investment allowed.

VII. Destination of the foreign investment.

VIII. Areas of investment.

IX. Repatriation of annual dividends and the capital invested abroad.

X. Regime applicable to agreements involving a transfer of technology.

XI. Other aspects of interest.

I. THE NEW LEGISLATION IN A SETTING FOR ECONOMIC REFORM AND POLITICAL CHANGE.

As expressed in the whereas clauses of Law No. 16-95, two central notions underlie throughout its provisions. The first is the recognition by the Dominican State that the foreign investment and the transfer of technology contribute to

LAW NO.: 16-95
DATE OF THE LAW: November 20th, 1995
REVISED: July 28th, 2011
STATUS: in force

the economic growth and the social development of the country, for the creation of employments and the generations of earnings in freely convertible currency, promotes the process of capital formation, and bring along efficient production, marketing and management methods. The second is the principle that both foreign and national investors shall have similar rights and duties, which imply that under Dominican Law foreign investments, shall receive an equal or neutral treatment as compared to local investments.

Law No. 16-95 is the most recent instrument of a comprehensive and profound reform to economic law and regulation initiated in 1990, which has included the reform and modernization of Dominican tax and labor legislation; hence, in 1992 a new Tax Code and a new Labor Code entered into force, and in 1993 a new Tariff Code was enacted. Other legal reforms of great significance for the country will soon be approved, like a bill for a General Electricity Law, and the bills for a Financial and Monetary Code and for a law in support to the exporting sector.

The provisions of Law No.16-95 are fully consistent with the guidelines set forth by the Final Act adopted upon the completion of the Uruguay Round of Negotiations of the General Agreement on Tariffs and Trade, to which the Dominican Republic is a founding member. The Final Act was duly signed and thereafter approved by resolution of the National Congress early during year 1995. Accordingly, the new legislation can be regarded as a step further that will facilitate eventual negotiations leading to the inclusion of the Dominican Republic in regional and hemispheric free trade schemes.

The new Foreign Investment Law, together with other completed or proposed reforms, point toward a further liberalization and opening up of the Dominican economy to international trade and investment, leading to an enhanced competitiveness and insertion in regional and global markets, as well as a maximization of the country´s comparative and competitive advantages as tools to forestall economic development.

All the foregoing, together with the favorable changes introduced to the political system of the country upon the constitutional reform made in 1994, and the new generation of political leaders in the three dominant political parties, constitute firm indicators of a promising economic and political setting for the challenges posed to the Dominican Republic by the world´s dynamic international context at the end of the century.

II. BACKGROUND OF FOREIGN INVESTMENT LAW AND REGULATION IN THE DOMINICAN REPUBLIC.

Until the enactment of the Foreign Investment Law No. 861 in year 1978 no specific body of law in the Dominican Republic regulated foreign direct investments in a general and comprehensive manner, setting clear rules as to the placement of such investments in our jurisdiction. However, in absence of general regulations on foreign direct investment and portfolio investments, either pursuant to the terms of investment agreements executed between the Dominican State and foreign investors, or under different laws, presidential decrees and resolutions of the Monetary Board of the Central Bank, relevant restrictions, incentives and rules affecting the placement of such investments in certain areas of our economy, or pertaining the commercial

exploitation of determined goods and services have historically been set.

During the dictatorship of Rafael L. Trujillo (1930-1960) numerous investment agreements were executed between foreign investors and the Dominican State. Upon an amendment made in 1942 to the Dominican Constitution, under such agreements important tax exemptions were granted to foreign investors as incentive to make their investments in certain areas of the economy of strategic importance for the economic development process of the country, as it was the case of the industrial sector. The possibility for investors to obtain tax exemptions through concession agreements with the Dominican State in order to operate in those areas of the economy deemed of strategic interest for the development of the country is contemplated under Article 110 of the Dominican Constitution; however, upon the enactment of the Tax Code in 1992 tax legislation has substantially restricted the possibility of granting tax incentives as a policy for economic development.

Another important historical precedent to Law No. 861 was Law No. 299 on Industrial Protection and Development as of 1968, which contemplated important fiscal incentives and for more than thirty years laid down the foundations of the industrial development of the Dominican Republic. Although under Law No. 299 the placement of foreign direct investments in certain type of industrial undertakings and activities was allowed, which definitely contributed to liberalize the access of foreign capital to competition in the industrial sector in similar conditions to those allowed to native capital, a differentiation of applicable rules depending on the origin of the capital invested was made clear. With the enactment of the Tax Code of the Dominican Republic in June, 1992, Law No. 299 was repealed.

Direct precedents to Law No. 861 were the Law which Regulates the International Transfer of Funds, No.251 of 1964, and its Regulation No.1679 of 1964, which continue to be in force as will be explained below, as well as the First and the Fifth Resolution of the Monetary Board of the Central Bank issued in January and April of 1972, respectively, which allowed certain corporations and individuals operating in specific areas of the economy to register their foreign direct investments in the Central Bank as a requirement to legally exchange Dominican Pesos into freely convertible currency and remit profits abroad.

On July 22, 1978, Law No. 861 was passed. As other laws regulating foreign investments in various Latin American Countries, Law No.861 was largely inspired on the provisions of the Decision No. 24 adopted by the Commission of the Cartagena Convention, the highest authority of a group of Latin American Countries integrated by Bolivia, Colombia, Peru, Ecuador and Venezuela known as the Andean Pact.

III. THE NEW LAW AND THE REGULATION ON THE INTERNATIONAL TRANSFER OF FUNDS.

Generally, all international transfers of funds, from abroad to the Dominican Republic and vice-versa, regardless of their nature, are governed by the Law which Regulates the International Transfer of Funds, No.251 of 1964, as well as Regulation No.1679 of 1964 for the application of the latter law. Both portfolio investments and foreign direct investments

made in the Dominican Republic are included among the international movements of capital falling under the scope of Law No. 251.

Up to the enactment of Law No. 16-95, portfolio investments have been treated as other international indebtedness incurred by juridical or natural persons domiciled in the Dominican Republic, and as a consequence no particular statute other than Law No. 251, Regulation No. 1679, and the applicable resolutions of the Monetary Board have regulated them. This situation may vary as a result of the provisions under Article 3, letter (c) of Law No.16-95, as will be explained below.

Foreign direct investments, on the other hand, were subject to a special regime under the Foreign Investment Law, No.861 of 1978, the Internal Regulation of the Foreign Investment Directorate, and the applicable resolutions issued by the Monetary Board. Hence, all foreign direct investments made in the Dominican Republic had to comply, cumulatively, with the provisions of the Law on the International Transfer of Funds, the Foreign Investment Law and the Internal Regulation of the Foreign Investment Directorate, and the applicable resolutions issued by the Monetary Board of the Central Bank.

Article 2 of the Law which Regulates the International Transfer of Funds, No.251 of 1964, sets forth that any person, either natural or juridical, is obliged to exchange to the Central Bank of the Dominican Republic through the commercial banks authorized by the Monetary Board to negotiate with foreign currency or foreign exchange, at the legal exchange rate, the total amount of foreign currency that it may acquire -regardless of the nature of the transaction-, pursuant to the applicable rules issued by the Monetary Board. As to the channeling of foreign direct investments in the country, Article 2 of Law No. 251 makes mandatory the exchange into Dominican pesos of the foreign currency to be invested, through the commercial banks authorized by the Monetary Board, and pursuant to the resolutions of the Board that regulate the exchange system.

At its turn, Article 3 of Law No. 251 sets forth the general obligation of the Central Bank to sell, pursuant to the provisions of the law and the resolutions issued by the Monetary Board, through the commercial banks authorized by the Monetary Board, at the legal exchange rate, the foreign currency requested by any natural or juridical person to attend their payment obligations abroad. Under letter (d) of the same article, such payments include interests, profits and dividends on foreign investments, and the remittance of the capital invested abroad, with the authorization of the Central Bank. Hence, Article 3 of Law No. 251 allows the exchange, through the commercial banks authorized by the Monetary Board, and pursuant to the resolutions of the Board that regulate the exchange system, of the Dominican pesos obtained as profits or dividends on foreign investments, and the amounts invested, to foreign currency for repatriation purposes.

Broadly, Articles 2 and 3 of Law No. 251, together with the resolutions issued by the Monetary Board in force, allow access to the foreign exchange system for international transfers of funds related to foreign direct investments, from abroad to the Dominican Republic, and vice-versa. In addition to the provisions of Law No. 251, the Foreign Investment Law provides more specific rules as to the placement of foreign direct investments,

and possibly portfolio investments, and the remittance of funds originated from such investments abroad.

Provided that Law No.16-95 has not amended Article 2 of Law No. 251, but on the other hand Article 11 has repealed Article 3, letter (d) of Law No. 251, compliance with the provisions of the latter statute will continue to be required for foreign investors while placing their investments in order to have access to the exchange system created by the laws and the resolutions issued by the Monetary Board of the Central Bank, and thereafter seek the benefits of registration at the Central Bank. However, from a strict interpretation of Article 11 of Law No. 16-95 and subject to compliance by foreign investors with its provisions, Law No. 251 should not apply hereupon for the purposes of exchanging pesos into freely convertible currency in order to remit dividends and the capital invested abroad.

IV. DEFINED TERMS.

Article 1 of Law No. 16-95 includes a definition for six key terms used throughout its provisions. Noteworthy, the list of defined terms is substantially reduced as compared to the eleven terms defined under Article 1 of the previous law. Hence, terms such as "National Undertaking", "Mixed Undertaking", and "Foreign Undertaking", which, by differentiating the foreign investment percentage allowed in the equity of locally incorporated companies, were used as a basis to prohibit or restrict foreign investments in certain areas of the economy, were eliminated.

Article 1 of the new statute provides a shorter -yet much wider in scope- definition of "foreign direct investment", referred to as "the contributions coming/imported from abroad, which are the property of foreign natural or juridical persons, or national persons residing abroad, to the capital of an undertaking that operates in the national territory".

Certainly, as it will be explained in more detail below, regardless of the fact that the new definition seems to restrict foreign investments to the modality of "contributions" to the capital of an undertaking operating in the Dominican territory, put in the context of the law it does not seem that the term "contribution" should be interpreted in a restrictive manner and instead might encompass most modalities of direct investments, and even portfolio investments subject to approval by the Monetary Board of the Central Bank.

Law No. 16-95 adopts the same definition of the former statute on foreign investments for "Foreign Re-investment", understood as "the foreign investment made with all or part of the profits obtained from a registered foreign investment, in the same undertaking that has generated such profits" (letter b under Article 1), and for "New Foreign Investment", which means "the foreign investment made with all or part of the profits obtained from a registered foreign investment, in an undertaking different from the one which generated such profits" (letter c, under Article 1).

Article 1, letter (d) also adopts a definition similar to the definition provided in the old Law No. 861 while referring to "Foreign Investor" as the proprietor of a duly registered foreign investment". From a combined reading of the definition of "Foreign Direct Investment" and of "Foreign Investor" under letters (a) and (d) of Article 1 of Law No. 16-95, we may observe that it is the origin of the capi-

tal rather than the nationality of an individual or the country of incorporation of a company which will determine the foreign character of the corresponding investment.

V. REGISTRATION PROCEDURE AT THE CENTRAL BANK.

Pursuant to the new legislation, the requirement of a previous authorization as a requirement to register foreign investments has been eliminated and substituted by a simple procedure that any foreign investor shall follow within a ninety (90) day term upon the placement of its investment in our country. According to the new procedure which in some versions of the bill debated at Congress was expressly conferred a merely statistic objective - only the submittance of the following documents is required to obtain the immediate issuance of a "Certificate of Registration of a Foreign Direct Investment" by the Central Bank:

a) A written application or request for registration, providing therein information as to the capital invested and the area in which such investment has been made. Containing name, address, telephone, telefax and nationality of the investor to be registered, in case of being a physical person. If a juridical person, the same information should be provided for all board members;

b) The amount and form evidencing the entering to the country of the capital contribution made in freely convertible currency, or in-kind contribution;

c) The documents of incorporation of the undertaking, if the proprietor of the investment is a branch, then the authorization to establish legal domicile in the Dominican Republic as contemplated under the applicable laws would be necessary;

d) Area of investment;

e) Environmental studies, if applicable; and

f) Contract for the capitalization of technology, if considered as part of the investment.

The registration at the Central Bank is also required for Foreign Re-Investments and New Foreign Investments, as defined by Article 1 of Law No. 16-95 and for such event the Regulation 380-96 set forth the corresponding requirements.

Under this new rule for the foreign investment, applications are addressed to the International Department of the Central Bank of the Dominican Republic, which is the government body empowered by the law to administrate the law.

VI. FORMS OF FOREIGN INVESTMENT ALLOWED.

The new Law No.16-95 allows the registration of capital contributions in freely convertible currency duly exchanged through the local banks authorized by the Monetary Board of the Central Bank, as well as in-kind contributions to the capital of an undertaking. Article 2 of Law No. 16-95 has expanded the allowed forms of foreign investments, so to include the following:

a) Intangible technological contributions, among the other in-kind contributions permitted to the capital of an undertaking. Although, as we will examine below, the former statute allowed the registration of agreements involving a transfer of technology, which enabled

the foreign proprietor of such technology to receive payment of royalties or fees in freely convertible currency abroad, it never contemplated the possibility of capitalization of those intangible rights as contributions. For the purposes of the law, "intangible technological contributions" mean those resources originated in technology, such as trademarks, product models, industrial processing or service models, technical assistance, know-how, management assistance and licensing;

b) Those financial instruments as to which the Monetary Board of the Central Bank may qualify as foreign investments, with the exception of instruments resulting from a debt conversion program. Pursuant to this provision, different modalities of financial instruments issued and traded abroad from the Dominican Republic will potentially be acceptable for registration as foreign direct investments at the Central Bank, but conditioned to their acceptance by the corresponding resolution of the Monetary Board.

As it can be appreciated, the expansion of the forms of foreign investments that can be registered under Law No. 16-95 may well contribute to increase the transfer of capital and technology to the Dominican economy, with all the positive effects implied.

VII. DESTINATION OF THE FOREIGN INVESTMENT.

One of the new features of our new foreign investment legislation is to permit registrations on investments directed to existing enterprises in addition to existing ones, eliminating previous restrictions that limited investment in existing business owned by Dominicans.

Article 3 of Law No. 16-95 enhances foreign investors to channel their investments to other destinations, while permitting that foreign investments be destined to:

a) Different corporate modalities, including branches;

b) Real property located in the Dominican territory, subject to the limitations applicable to foreign investors under existing laws and regulations;

c) The acquisition of financial assets, according to the regulations issued on the subject by monetary authorities.

– A broader language under Article 3, letter (a) will indeed permit the placement of foreign investments in corporate modalities other than limited liability stock companies ("Compañías por Acciones"), including all of those forms contemplated under the Commercial Code, such as Partnerships ("Sociedades en Nombre Colectivo"), Limited Partnerships ("Sociedad en Comandita"), Special Partnerships ("Asociaciones en Participación") and to branches of companies organized and existing abroad.

The possibility of channeling investments though branches will certainly constitute the more relevant option among the different corporate forms in which foreign investors will be able to obtain registration, for it will save the time and costs necessary to comply with the formalities and requirements to incorporate an undertaking under Dominican Law. It may also be of convenience for the investor depending on the type of business in which it is engaged in, and the international corporate structure desired to carry on such business.

– Under Article 3, letter (b) a general prohibition to register investments to be placed in

real property for further commercialization, with the exception of such property to be used in investment projects and for the residence of the investor, has been lifted. In the present situation, foreign investors will be able to directly invest in real estate property for its use in any lawful purposes or projects. Acquisition of real estate properties by foreigners is subject of certain permits granted by the Presidential Branch, pursuant to Presidential Decree No.2543 of 1945, as amended.

– The new law allows the registration of investments made in "financial instruments authorized by the Monetary Board of the Central Bank", which: (a) may permit the placement of investments through the acquisition of the shares owned by a Dominican investor; and, (b) may potentially open the door to the registration of portfolio investments as foreign investments.

– Law 861 expressly used to prohibit the registration of foreign investments made through the acquisition of shares of a company owned by a Dominican corporation or individual, except in the event of bankruptcy of the corporation to transfer the shares, and provided that the activity carried out by the latter proved to be of interest for the economic development of the country. The new statute lifts the prohibition to register investments placed through the acquisition of shares of a national investor.

– The possibility of registration of investments made in "financial instruments authorized by the Monetary Board of the Central Bank", as previously indicated, may potentially open the door to the registration of portfolio investments as foreign investments, which at the turn would greatly contribute to the development of the Dominican securities market.

Hence, subject to the resolutions to be issued on the subject by the Monetary Board of the Central Bank, under the new law foreign investors will have clear rules in order to invest in the emerging Dominican "private" or self-regulated stock market ("Bolsa de Valores de Santo Domingo"), which would imply the right to legally exchange at the local market and remit in hard currency abroad the proceeds obtained from bonds or other modalities of commercial paper.

Up to the enactment of Law No. 16-95 it was the prevailing opinion that investments made in bonds and other obligations should be treated as other international indebtedness, and thus subject to the applicable monetary legislation, regulations and resolutions of the monetary board. With the new law, the Monetary Board of the Central Bank will have the opportunity to re-design in a sound and cautious manner the legal treatment previously granted to portfolio investments; it is expected that the new situation will allow access to new sources of fresh capital to the Dominican economy.

VIII. AREAS OF INVESTMENT.

Perhaps the most significant improvement derived from Law No. 1695 consists in the opening of previously forbidden or restricted areas of economic activity to registration of foreign investments. Hence, the registration of foreign investments made in undertakings engaged in public services and works, and in mining, where the registration was forbidden, and in other areas such as banking, private insurance, the media, agriculture and transportation, among other, where foreign investments were restricted, will be permitted.

It is noteworthy that Law No. 16-95 does not supersede or amend the special laws which govern investments made in the segments of the economy where registration was forbidden or restricted, nor will affect existing concession agreements with the Dominican State (in the Dominican legal system, as it is the case of other countries which have adopted the French legal system, public services are governed by the special regime of the "concessions", or agreements executed by the investor and the Dominican State, according to special laws). Rather, Law No. 16-95 will permit that, upon compliance with the specific requirements contemplated in the corresponding laws, and without detriment of the stipulations convened in the resulting concession agreements, the foreign investments placed in such segments benefit from registration at the Central Bank (Article 6, Paragraph III).

Similarly, other segments of the economy in which the registration of foreign direct investments was restricted to a determined percentage in the equity of the local undertaking to serve as vehicle for the investment will be totally open to foreign investments. For a better understanding of the scope of the reform introduced by Law No. 16-95 as to the previously forbidden or restricted areas of investment, we provide below a brief description as to how the provisions of Law No. 861 interacted with those under the special laws which regulated -and continue to regulate- investments in the different areas of the economy.

Investments made in Free Zones will continue to be expressly excluded from the scope of application of this new law, benefitting from a significantly more liberalized regime under the Free Zone Law, No.8-90 of 1990. In connection to investments made in Free Zones, the registration of the investments, including all information and requirements, shall be handled through the Dominican Free Zone Council.

Under Law No. 16-95, only the investments made in the following areas or activities shall be forbidden:

a) Disposal of hazardous, toxic or radioactive waste, non-generated in the country;

b) Activities that affect the public health and the environmental equilibrium;

c) The production of material and equipment directly related to the national defense; such activity may be allowed upon approval by the Executive Branch.

IX. REPATRIATION OF ANNUAL DIVIDENDS AND THE CAPITAL INVESTED ABROAD.

The proprietor of a foreign investment which had been registered at the Central Bank, under Law No. 861 of 1978 had traditionally benefitted from two basic rights. First, upon the previous authorization of the Foreign Investment Directorate, the investor was able to legally exchange through the commercial banks authorized by the Monetary Board and thereafter remit in convertible currency abroad annual profits to up to a 25% of the total amount registered at the Central Bank. Upon the corresponding authorization, the investor could choose as well to invest such profits again in the same company or in other company in the Dominican Republic and have it registered as foreign investment, which at the turn will increase the base for further repatriations.

The second right derived from the registration of foreign direct investments at the Central Bank under Law No. 861 consisted in the possibility of converting the total amount of Dominican pesos resulting from the liquidation of the capital originally invested into convertible currency at the termination of the activity pursued by the investor, and remitting thereafter the corresponding amount in convertible currency abroad. Such remittance by the foreign investor could only be made upon liquidation of any tax liabilities and other obligations pending at the moment of withdrawal of the investment. Law No.861 allowed a capital gain of a two percent (2%) per annum that could be computed upon the declared amount invested at the Central Bank for liquidation and repatriation purposes; the total amount thus allowed as capital gain could not exceed in any event from a total of a twenty percent (20%) of the total value registered. The previous authorization of the Foreign Investment Directorate was required as well in this event.

The lack of registration of a foreign investment that in principle would qualify for registration under Law No. 861 was not mandatory, and subject to compliance with applicable laws, did not necessarily affect the ownership rights of the investor. However, the investor would be unable to legally convert through the exchange system and remit in convertible currency abroad the dividends obtained from such investment, or the pesos resulting from the liquidation of the investment originally made.

Under the new Law No. 16-95 the foreign investor will have the right to remit abroad in freely convertible currency, and without the need of a previous authorization by the Central Bank, the following:

a) The total amount of the capital invested, including the capital gains realized and reflected in the books of the undertaking according to generally accepted accountancy principles;

b) The total amount of the dividends declared during each fiscal year, up to the net profits realized during such period, upon liquidation of the income tax.

The law requires that the following documentation be submitted to the Central Bank within a sixty (60) day period upon the remittance made:

a) A declaration of the dividends obtained during the fiscal year, duly certified by a Certified Public Accountant, and specifying therein the amount of such dividends that was remitted abroad;

b) Documentary evidence of the liquidation of the corresponding tax liabilities.

X. REGIME APPLICABLE TO AGREEMENTS INVOLVING A TRANSFER OF TECHNOLOGY.

Under Law No. 861 of 1978, as amended, and the Internal Regulation of the Foreign Investment Board international agreements involving a transfer of technology, such as licensing agreements, technical assistance agreements and other were subject to a previous approval by the Foreign Investment Directorate. Compliance with Law No. 861 and its regulation enabled the licensee to legally exchange in the local market the Dominican pesos into freely convertible currency in order to pay abroad royalties and other obligations assumed there under.

Under Law No. 16-95, the previous authorization by the Central Bank of agreements in-

volving a transfer of technology continues to be required. Other than that, no restrictions whatsoever have been set by the new statute and no limitation whatsoever applies as to the amount of royalties or fees that can be paid abroad under the same.

Article 6 of Regulation No. 380-96 for the application of the new Foreign Investment Law provides that the requests for registration of agreements involving a transfer of technology at the Central Bank shall be submitted together with a copy of the corresponding agreement, and documentary evidence of the rights of the grantor on the technology to be transferred. A Paragraph under Article 6 of Regulation No. 380-96 also sets forth certain documentary evidence that has to be submitted to the Central Bank within a sixty (60) day term upon the payment and remittance of royalties under duly registered agreements involving a transfer of technology abroad.

XI. OTHER ASPECTS OF INTEREST.

1. Direct investments in the importing sector.

Article 10 of Law No. 16-95 amends article 12 of Law No. 173 of 1966, on the Protection of Importer Agents of Merchandise and Products, eliminating a number or restrictions and requirements imposed on foreign investors, so to permit that both foreign individuals and corporations directly act and obtain registration under such law as distributors, representatives, agents, brokers or other modalities in connection to products or services manufactured or rendered abroad or in the Dominican Republic.

As a result of the amendment, local and foreign investors shall receive an equal treatment for the purposes of registration under Law No. 173, which will eventually permit them to receive the compensations set forth by this protective statute in case of their termination by the foreign grantor of representation, distribution or other rights.

Notwithstanding the foregoing, in case that any foreign investor having commercial relations with a local distributor or representative was interested in directly pursuing the sales and representation of its own products, the former has to compensate the latter according to the provisions allowed under Law No. 173 in case of termination without a "just cause" .

2. Governing Law; Competent Court.

Under Article 38 of Law No. 861 those agreements involving a transfer of technology necessarily had to abide by Dominican Law, and any disputes arising there from could not be submitted to foreign courts or arbitrators. The same situation implicitly occurred with those foreign direct investments registered under Law No. 861, which were subject to Dominican Law and Procedure as a result of the requirement that such investments could only be made in the form of contributions to the capital of a locally incorporated undertaking.

In absence of specific provisions on the subject under Law No. 16-95, and in light of the possibility of channeling foreign direct investments through branches of foreign corporations, there will be sufficient room to abide by foreign laws or submit disputes to foreign courts or arbitrators in certain matters where such possibility may be desirable.

3. Funds blocked under Law No. 861.

Article 12 of Law No. 16-95 provides a five (5) year mechanism for foreign investors previ-

ously registered at the Central Bank to gradually exchange and remit in freely convertible currency abroad those funds blocked as a result of the limitations imposed by Law No. 861.

Article 9 of Regulation 380-96 for the application of Law No.16-95 also allows a ninety (90) day grace period to seek and obtain registration of foreign investment agreements involving a transfer of technology that had not been registered up to the date in which such regulation was given by the President of the Republic.

CAN PELLERANO & HERRERA HELP YOU?

Yes. Pellerano & Herrera has been the leading law firm in the Dominican Republic for over 20 years. The firm is well known for providing pragmatic, strategic, and constructive legal advice to clients to help them meet their business goals. Pellerano & Herrera is committed to innovation and to the application of best practices, and it regularly identifies new opportunities for clients and designs legal strategies accordingly. As one example: The firm and its affiliates provide comprehensive assistance to clients establishing greenfield or brownfield projects by identifying not only the legal issues involved – and by helping to solve them – but also by assisting in tax planning and personnel recruitment.

Pellerano & Herrera is well known for promoting foreign capital investment in the Dominican Republic. We actively advise clients with respect to the country's Law of Foreign Investment, and our complimentary "Legal Guide to Doing Business in the Dominican Republic" has become the leading framework for potential investors here. Our advice is comprehensive and therefore includes everything relating to the implementation of a foreign business in the Dominican Republic. We represent foreign investors involved in the broadest range of industries, including the food and beverage, franchising, mining, hospitality, energy, and health industries. Our commitment to the country as an investment destination is manifested by our recurring participation in activities organized by chambers of commerce from different countries and by the CEI-RD, the body responsible for promoting foreign investment in the Dominican Republic.

Contact our experts:

Luis R. Pellerano
Partner
l.pellerano@phlaw.com
809-541-5200 Ext. 4005

Adolfo Toca
Partner
a.toca@phlaw.com
809-541-5200 Ext. 5006

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Pellerano & Herrera
Attorneys at law

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

www.phlaw.com
ph@phlaw.com

Mailing Address P.O. Box 25522
EPS A-303, Miami, Fl 33102 USA

© 2011. Pellerano & Herrera.
All rights reserved.
This document does not constitute legal advice.
Consult an attorney to seek specialized legal advice.