

Domain Extinction Law Number 340-22

Enacted: 07/28/2022

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1. KEY WORDS

- **Domain Extinction:** Loss of ownership declared by final judgment on an asset on which the Prosecutor has proven its connection with any of the illicit acts provided for in the law and demonstrated absence of good faith in those who claim right over it, which implies the transfer of ownership in favor of the state without any consideration, and always respecting third party creditors in good faith.
- **Domain Extinction Action:** Autonomous action independent of any other, exercised against the assets, consisting in the declaration of domain extinction and therefore loss of control, possession, or usufruct, producing the transfer of ownership to the state or their rightful owners.
- **Affected:** Natural or legal person who exercises ownership, owns, or enjoys a property that is the object of the action for domain extinction.
- **Good Faith:** Diligent conduct, free from all kinds of fraud and characterized by the observance of an objective duty.

2. PURPOSE

The objective of the law is to regulate the extinction of domain process of illicit assets, that is provided for in the Dominican Constitution and to establish the procedure that allows said process to be effective, establishing the attributions and powers of the authorities for its application, in order to guarantee the fundamental rights and procedural guarantees of the persons involved in said process.

3. SCOPE OF THE LAW

Illicit assets located within the national territory, as well as those located abroad and that may be prosecuted in accordance with current international cooperation agreements.

4. UNLAWFUL ACTS SUBJECT TO THE LAW

- The illicit trafficking of drugs and controlled substances.
- Any offense related to terrorism and terrorist financing.
- Illicit trafficking of human beings, including illegal immigrants.
- Human trafficking, including the sexual exploitation of minors.

- Child pornography.
- Illicit human organs trafficking.
- Illicit arms trafficking.
- Kidnapping.
- Extortion, including that related to recordings and electronic films made by natural or legal persons, among others.
- Forgery of coins, securities or titles and forgery of public documents.
- Fraud against the state and Aggravated Fraud.
- Transnational bribery.
- Tax and financial crimes.
- Piracy.
- Crimes against intellectual property.
- Fronting.
- Contract killings.
- Unjustified enrichment.
- Trafficking of art or archaeological pieces.
- High-tech crimes.
- Improper use of confidential or privileged information.

5. COMPETENT AUTHORITIES TO EXECUTE THE DOMAIN EXTINCTION PROCEDURE

The Prosecutor's Office will have the authority and exclusive power to exercise the action of domain extinction and creating specialized departments.

6. ASSETS SUBJECT TO FORFEITURE

The domain extinction action may be initiated against the following assets:

- Assets that proceed directly or indirectly from an illicit act, according to the scope of the law, carried out in national territory or abroad.
- Assets that have served as an instrument or correspond to the material object of the illegal act.
- Assets that come from the transformation, or partial or total conversion, whether physical or legal, of a product, that is the instrument or material object of the illicit act.
- Assets that, according to the circumstances in which they were found, or their particular characteristics, make it

possible to establish that they are intended for the execution of illicit acts.

- Assets used in illicit acts that have been abandoned, provided that they do not belong to a good faith acquirer.
- Assets that are in the name of third parties, but that can be determined to have been used, are the product of or are linked to an illegal act and that whoever is considered as responsible, behaves as the owner or holds the possession or domain over them.

7. ABANDONED AND NON-LOCATABLE ASSETS

If the case of persecuted assets, that due to circumstances at the time of filing the complaint, are abandoned and the Prosecutor is unable to determine in its investigative phase the legitimacy of their owner, a list of said assets must be published in a newspaper of national circulation, having a ninety (90) day period to be claimed from the last publication that is made.

The assets that cannot be located or present some circumstance that prevents the declaration of domain extinction, will be subject to the following rules:

- If the assets have undergone any transformation or have been converted into others, the domain extinction will be declared on the transformed or converted assets.
- Provided that the assets have been mixed with those acquired illicitly they may be subject to the declaration of forfeiture up to the estimated value of the intermixed illicit product.

8. JUDICIAL JURISDICTION

- The Criminal Chamber of the Courts of Appeals of the different judicial departments is the court in charge of deciding on the extinction of domain in first degree. The presiding judge of the Criminal Chamber of the Courts of Appeal will commission one of the judges who will fulfill the duties of the control and guarantees judge.
- The Criminal Chamber of the Supreme Court of Justice is competent to hear appeals against decisions issued in first degree.
- The plenary session of the Supreme Court of Justice is competent to hear cassation appeals filed in accordance with the provisions of the law.

9. TERRITORIAL JURISDICTION

In principle, territorial jurisdiction is awarded to the Criminal Chamber of the Courts of Appeal in whose judicial district the assets are located, however, if there are multiple assets located in different demarcations belonging to the same litigation process, the Criminal Chamber of the Courts of Appeal whose judicial department contains the greater amount of assets will have territorial jurisdiction; in the hypothetical case that both demarcations contain the same amount of assets, the Prosecutor will initiate the process in the demarcation of its choice.

10. STATUTE OF LIMITATIONS

The statute of limitations is twenty (20) years counting from the last infraction.

11. COMMENCEMENT OF THE PROCESS

The Prosecutor's Office may initiate the action of domain extinction ex officio or by the filing of an oral or written complaint by any natural or legal person if there are sufficient reasons and factual circumstances that justify it.

12. PHASES OF THE PROCESS

<p>The Patrimonial Investigation. The Prosecutor will oversee this phase. This investigation must be completed and concluded within a six (6) months term from the date the precautionary measures have been adopted over the assets with the possibility of extending it for two (2) additional months if requested. The Prosecutor has the capacity to execute the errands and procedures that do not require judicial authorization; however, if judicial authorization is required it must be presented to the Control and Guarantee Judge. The Control and Guarantee Judge has the functions of control over the patrimonial investigation and of the actions performed by the Prosecutor, for the protection of the fundamental rights of the affected parties. Once the term and its extension expire without the Prosecutor presenting the motion for domain extinction, the action is considered dismissed.</p>	<ul style="list-style-type: none">• Identify and locate the assets that are involved in the cause(s) of the domain extinction.• Prove that one or more of the causes of the action exist.• Identify the possible owners or holders of the assets and establish the place where they can be served during the course of the process. If the holder or owners fail to comply with a precautionary measure, a three (3) year prison sentence and a fine equivalent to five (5) times the value of each asset may be imposed on them; this decision must be answered in a period not exceeding of forty-eight (48) hours.• Prove the link between the possible owners or holders of the assets and the causes of the action, among others.
<p>The Judicial stage will be overseen by the Criminal Chamber of the Court of Appeals of the Judicial Department corresponding to the assets, acting in the capacity of domain extinction court, and it will begin with the presentation of the motion for domain extinction of the assets considered illicit.</p>	<ul style="list-style-type: none">• In cases in which, in accordance with the Dominican Constitution, a prior court order is required to carry out any diligence or procedure, the rules contained in the Criminal Procedure Code will be applied in a supplementary manner.

13. FALSE ACCUSATIONS

In cases in which the Prosecutor determines that the complaints made by individual (s) were filed with indications of fraud or bad faith, with the sole purpose to cause harm to a third party, the complainant may be sanctioned with two (2) to four (4) years in prison, and a fine of up to fifty (50) minimum wages.

In case the Prosecutor understands that, because of the preliminary investigations, that there are no grounds or merits for the action, it may dismiss the complaint.

14. PRECAUTIONARY MEASURES

The prosecuting attorney may request, at any stage of the procedure, to the competent judicial authority, the imposition of precautionary measures to avoid the theft, loss, destruction, or concealment of the assets. The following are exceptions to these measures:

- When, if not adopted, the effectiveness of the procedure or of a possible judgement that declares the domain extinction over the assets, is put at risk.
- When the assets in question are being used or misused.

The precautionary measures that can be filed are the following:

- Opposition to sell or encumber the assets.
- Sequestration, seizure, or immobilization of the assets.
- The appointment of a guardian or a judicial administrator of the assets.

These precautionary measures are subject to review, modification or lifting by the Prosecutor, which must be filed through a request that proves new circumstances that could not be taken into account at the time of granting.

15. DECISIONS FROM THE PROSECUTOR'S OFFICE

Final Dismissal Opinion	It may be challenged by any interested party within a maximum period of six (6) months from its issuance, in cases in which the illicit acts linked to the assets under investigation are related to crimes against public property. The judge overseeing the patrimonial investigation has judicial jurisdiction to decide on this impugment.
Provisional Dismissal Opinion	It may be lifted within a maximum period of one (1) year from its issuance, if new elements arise that change the factual, legal, and evidentiary arguments that motivated it.

16. PREPARATION FOR THE TRIAL

The acting court will set a hearing and issue an order within a max period of five (5) days, authorizing the notification of the action to the affected party. This hearing is celebrated in a public, oral, and contradictory manner and within a period of not less than twenty-five (25) business days and no later than thirty-five (35) business days.

The affected party will have a period of twenty (20) days from the notice of the domain extinction motion to present its defense brief, which may contain a compensation request based on the material damages that may have been caused by the adoption of precautionary measures on his/her assets. Once all procedural stages have been completed, the court must issue a judgement within a period of five (5) calendar days that can be extended.

17. NOTICES

During the judicial process, all notices must be made at the domicile of the affected party. If the affected party is a commercial entity, to the registered office and if the address is unknown, it's necessary to proceed in accordance with the provisions of the Civil Procedure Code. In the case of motor vehicles, notices must be served to the Department of Motor Vehicles of the Tax Authority and, additionally, it will be necessary to post said notice in the section of the institutional portals established for these purposes by the Judicial Power and the Prosecutor's office.

18. PUBLICITY

In accordance with the precautionary measures and publicity of the assets subject to the domain extinction action, within five (5) days after the decision, the list of the seized assets must be published in a newspaper of national circulation for two (2) consecutive days, in addition to being published in the institutional portals of the Judicial Power and the Prosecutor's office in the section established for these purposes. It's important to point out that the same rules that apply for publicity will apply when the judgment declaring the extinction of domain action is issued, and it shall specify which assets the judgment pertains to.

19. ADMINISTRATION AND DESTINATION OF THE ASSETS OBJECT OF THE ACTION

The administration and destination of the assets object of the domain extinction action will be the responsibility of the Office of Custody and Administration of Seized and Confiscated Assets (OCABID) and after the case has already been ruled and a judgement is issued in a favorable manner with respect to the extinction of domain, said assets will be awarded to the Dominican State.

20. ABBREVIATED DOMAIN EXTINCTION PROCEDURE

An abbreviated domain extinction procedure may be incorporated at any stage of the investigation, whether it be patrimonial or judicial and before any judgment is issued. The affected party and the Prosecutor's Office, can agree to an abbreviated procedure, having to sign an agreement, that contains the terms and conditions by which the change of process will take place. For said action to achieve its change, it is necessary that:

- The affected party expressly acknowledges that one or more of the causes for domain extinction provided in the law exist on the persecuted assets.
- The affected party waives the defense of its patrimonial rights over the assets subject of the domain extinction action and, consequently, consents to the application of an abbreviated procedure.

Said agreement will be approved by means of a judgment of the acting court and will be irrevocable and not subject to appeal; however, the affected party may benefit of compensation of up to three percent (3 %) of the value of the goods.

21. ASSETS LOCATED ABROAD

In the event the persecuted assets are located abroad, international legal assistance will be used, based on the legal instruments provided for in treaties, agreements and in some cases, the rules of other countries that carry out the persecution of said assets.



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