

General information for the incorporation of Dominican companies

A) GENERAL CONCEPTS

1.-The term "Company" or "Society" as it is also called by Dominican laws, refers to a group of individuals where each contribute something for a common objective. They participate in the earnings and suffer the losses in the same measure of their contribution, without being personally responsible for the group's debts. According to our laws these groups are individualized by means of a "Social Reason" composed of the selected name accompanied by the "S.A." and "C. por A." denominations, which are subject to the same legal and administrative requirements.

2.-The Company Objectives determine those activities to which it will dedicate itself, and limit its capacity to carry out certain operations. It is common to add that the company will also be able to dedicate its operations to all licit activities that are not specifically prohibited by the law.

3.-In accordance with the provisions of the Dominican Code of Commerce, the social capital is divided in shares in the hands of its shareholders, who will participate in the earnings and losses of the company in proportion to the number of shares they possess. The company has, at all times, its own legal personality and separate to that of its shareholders, and each of them is responsible only to the extent of his or hers investment in the company. So, unless there is a fraudulent intention, none of the shareholders is personally responsible.

4.-In addition to any other method of accounting the company may use, it is required by law to keep a series of books (daily book, inventory book, balance book). These should be kept following specific procedures defined by the law.

Dominican law requires that all company books and correspondence be kept for a minimum of ten years.

B) PROCEDURES AND REQUIREMENTS

1.-The company By-Laws make up the basic document of every Dominican company and should be signed by the company founders or their proxies during the incorporation process. They also possess the nature of a contract between future shareholders. Dominican laws provide certain restrictions and define particular characteristics regarding incorporation proceedings and requirements, which will be reviewed in detail:

- a) **Minimum Number of Shareholders:** The Dominican Code of Commerce prescribes that a company cannot be formed without having at least seven shareholders, and these may be natural persons or companies. Also, if at any given moment, all Company shares are owned by only one shareholder, the Company is automatically dissolved. There is no restriction as to the nationality of the shareholders; nevertheless, all foreign shareholders must be registered before the National

Registry of Contributors where a Tax Identification Number will be issued on their behalf. Filing a form accompanied by a copy of the shareholders passport, when the shareholder is a natural person makes this registry. When the shareholder is a company, its legal representative is registered in turn in the same manner described for natural persons.

- b) **Company Capital:** The company capital should consist either of sums of money or contributions in kind. When contributions in kind are made, the shareholders meet twice to complete the incorporation procedures. These meetings are called General Incorporation Assemblies. In the first of these, a special officer will be designated to value the contribution and make a report of it; in the second, the assembly will discuss the officer's report. The contributing shareholders do not have a vote in this matter. It is in this meeting where the contribution in kind will be approved.
- c) **Authorized Capital:** This is the amount considered necessary and sufficient for the development of the company objective, and it is based on this sum that the incorporation taxes are calculated. The authorized capital is the amount obtained when multiplying the number of authorized shares by their par value.
- d) **Paid-in Capital:** A company must have at least 10% of the authorized capital paid before starting operations.
- e) **Legal Reserve:** A minimum of 5% of the amount available for distribution (capital surplus or benefits) must be set aside as a general reserve. This rule is nevertheless attenuated when the legal reserve reaches to an amount equal to 10% of the authorized capital; then no additional amount must be added to the reserve.
- f) **Types of shares:** The law allows Dominican companies to issue common and preferred shares.
- g) **Types of shares by their form:** The most common forms of shares are Registered Shares and Bearer Shares. The former are issued in favor of a person whose name figures in the document and in the company's register book. Transference of these shares will not be valid to a third party or to the company unless it is acknowledged in the register book. The latter contain a clause that identifies them as bearer shares, and are transferred by simply handing over the document.
- h) **Share value:** The minimum face value of a share in the Dominican Republic is RD\$5.00. Usually companies issue shares with a face value of RD\$100.00.
- i) **Vigilance Officers:** One or more Vigilance Officers must be elected in the Incorporation Assembly (Asamblea General Constitutiva), and in each annual Shareholder's Assembly. The Vigilance Officer supervises the management of the

Company. Also the financial statements must be accompanied by a report from the Vigilance Officer(s) prior to the shareholders' vote to accept the management's financial report.

- j) **Direction of the Company:** A Dominican company is not incorporated until its administrators are appointed and they accept their designation. The Administration is in charge of managing the day-to-day business of the Company. According to the type of administration body of the company it may be called i) Presidential Company or ii) Board Company. A sole administrator called President- Administrator together with a Secretary runs presidential companies. A Board of Directors consisting of three or more members runs a Board Company. The Administrators are elected for a period that can run from a year to six years. The elected directors could also be shareholders.

2.- After signing the By-Laws, a sworn statement by the founder or founders should be prepared before a Notary Public. This statement will acknowledge that the Notary Public received an inventory listing all the funds and/or assets transferred to the company. He should

also receive, at this moment, a list of the shareholders and a copy of the By-Laws.

3.-The Incorporation and Capitalization Taxes must be paid at the Internal Revenue Department. Said taxes are paid according to the company's authorized capital. These vary between 1% on the authorized capital of companies in which it amounts to less than RD\$10,000.00, and 1/32% for companies with an authorized capital of RD\$500,000.00. An additional 12% charge is added to the resulting amount.

The incorporation of the company ends when the shareholders meet in the Incorporating Assembly (Asamblea General Constitutiva). In this first meeting the By-Laws are discusses, and the Board of Directors and Vigilance Officer are selected.

Other less important taxes exist for filing of copies of the incorporation documents, authorization of companies by tax authorities, and Notary Public's tariffs.

Some other requirements such as the deposit of copies of the documents before the corresponding chamber of commerce and the tax authorities should be met.

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