

Law No. 544-14 on Private International Law in the Dominican Republic

I. PURPOSE AND SCOPE

The purpose of Law No. 544-14 is the regulation of International Private Relationships, which are those related to a foreign legal system, either in view of their objective elements, or the personal elements that conform the legal relation in question. In this sense, this law is focused on delineating three (3) key points concerning conflict of laws: (i) the jurisdiction of local courts; (ii) the applicable law regarding an international legal situation; and (iii) the recognition and enforcement of foreign judgments in our country. Administrative, arbitration and bankruptcy procedures have been excluded from the scope of this law.

This law came into effect on December nineteenth (19th) two thousand fourteen (2014), and is applicable to all processes initiated after the date of its entry into force without prejudice to any previously acquired rights.

II. MAIN CONCEPTS

The main concept introduced by Law 544-14 is “International Private Relations”, this concept being the basis of the field of application of this law. The law further defines the following concepts:

(I) International Dispute: Any dispute that has an element characteristic of an International Private Relation.

(II) Dominican public order: Includes all regulations of our internal law which cannot be repealed by the parties.

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(III) International Public Order: Group of principles in which the dominican legal system is inspired and reflect the values of society at the moment of their appreciation.

(IV) Domicile: Refers to the place of habitual residence. In the case of a natural person the law does not admit more than one domicile.

(V) Habitual Residence: For a natural person, it's the de facto place of main establishment, taking into consideration the personal and professional circumstances that can provide an enduring bond with a specific place; and for a legal entity it's the place in which it has its headquarters, administration or main activity, for the purpose of its identification, as established in Law No. 479-08, General Law of Societies.

III. JURISDICTION OF LOCAL COURTS

The law establishes the general competence of dominican courts, which are competent for the knowledge of any disputes happening at the time in the country, except in cases where there is a previously agreed upon forum of choice, regardless of the nationality of the parties, who will have access to justice on equal terms. It was by means of this law that the legal provisions that established the foreigner or judicatum solvi bail, which was applicable to foreigners acting as plaintiffs, were formally and definitively repealed.

Notwithstanding the foregoing, within the specific powers granted under this law, we can list the following:

1) Exclusive Forums: Refers to matters that can only be known by local dominican courts; namely:

a) Those related to property rights and leases on property in dominican territory;

b) Constitution, validity, nullity, or dissolution of commercial companies domiciled in dominican territory; also regarding agreements and decisions of their organs, when the aforementioned action affect their existence and operating norms;

c) Validity or nullity of registrations made in a dominican registry;

d) Registration or validity of a patent and other rights submitted for deposit or registration when they have been requested in the Dominican Republic;

e) Recognition and enforcement of judicial and arbitration decisions in dominican territory;

f) Conservatory measures enforceable in the Dominican Republic; and,

g) Determination of dominican nationality.

2. Concurrent Forums: Refers to matters that can be known by both foreign courts and local dominican courts in specific circumstances, as listed below:

a) Forums of Persons and Family Matters: Dominican courts are competent for the knowledge of the following actions (i) declaration of disappearance or death; (ii) incapacity and actions related to protection of the person or property of the disabled; (iii) related to personal and patrimonial relationships between spouses; (iv) issues relating to filiation; (v) for the constitution of adoption; (iv) alimony when one of the parties has residence in the Dominican Republic, as applicable in each case.

b) Forums of Property Rights: In this matter, the local courts will be competent for the knowledge of actions, related to: (i) contractual obligations and non-contractual obliga-

tions, when they should be executed in the Dominican Republic, or if the parties have residence in the Dominican Republic; (ii) exploitation of a branch office, agency or business establishment located in the country; (iii) consumer contracts, if the consumer lives in the Dominican Republic; (iv) insurance when the beneficiary is domiciled in the country, or the damage was produced in dominican territory; (v) moveable assets located in dominican territory, and (vi) when the causative of a succession has had his last domicile, or has movable assets in the Dominican Republic.

3. Forum Election Agreement: For any other matter not mentioned previously, local courts will be competent when: (i) the defendant is domiciled in dominican territory or is reputed to be; or, (ii) when the involved parties have selected these courts, tacitly or explicitly, without any formality other than it being in written form.

Forum election agreements for contracts celebrated by consumers, in matters of insurance and actions related to moveable property located in dominican territory, will only be valid if: (i) the election of forum is made after the dispute has initiated; (ii) the parties were domiciled in dominican territory when the relationship started; or (iii) the defendant is the consumer, employee, insured, policyholder, injured or insurance beneficiary.

Other limitations related to competence

- In case of multiple defendants, local courts are competent if at least one of the defendants are domiciled in the Dominican Republic;
- In case of multiple pending cases on the same subject, as long as the cases are not

related to matters where local jurisdiction is the exclusive forum, local courts will suspend the process until foreign courts pronounce themselves about their competence. Once this has taken place, this exception will be admitted, therefore local courts will remit the case whenever a foreign court declares itself competent based on a forum of competence considered as reasonable;

- In case of incompetence, it can be declared by order of the courts when the defendant does not present himself to the court in the cases governed by the law in question; and,
- The procedural law applicable to each case must be the one currently in force when the action was introduced; it cannot be modified until the trial has concluded.

New Procedural Figures

(i) Forum Necessitatis: This figure allows dominican courts to know any case, in spite of not being competent for their knowledge, when elements of the case are associated to the Dominican Republic and if (a) no other foreign courts are competent to know the case; and/or, (b) the Dominican Republic denies execution of the foreign judgment of the pertaining case.

(ii) Non Convenient Competence Forum (Forum Non Conveniens): It allows local courts to remit a case they are competent to know if the need arose for the celebration of: (a) testimonial evidence from witnesses who reside abroad and their traveling to the country, or the celebration of this recollection of evidence in another country, would be very expensive for the parties; or (b) a judicial in-

spection abroad to improve the appreciation of the case.

IV. APPLICABLE LAW

In a general manner, the law formally establishes the principle of autonomy of will for the determination of applicable law except

in some specific cases where other interests are pursued, such as protecting the weakest party in a relationship of private international law, or public order. The law specifically establishes the rights that, in principle, are applicable in different situations, as shown in the following chart:

Matter	System of Applicable Law
Family Person and Rights	
1. Legal Personality	Dominican Law
2. Exercise of Civil Rights	Law of the domicile of the person in question.
3. Capacity and Marital Status	
4. Personality rights	
5. Names and surname	
6. Disappearance or Death	The law of domicile at the moment of the disappearance or death.
7. Commercial companies	Law of the country of constitution and headquarters.
8. Marriage	<ul style="list-style-type: none"> • Capacity and substantial requirements: Law of the parties domicile. • Validity, formal requirements and nullity: Law of the place where the marriage was celebrated, national law or law of the domicile of at least one of the parties at the moment of the celebration. The applicable law for nullity is the same for validity.
9. Relationships between spouses	Law of the marital domicile immediately acquired after the celebration of the marriage. If the spouses did not have a common domicile, the laws of their common nationality or where the marriage took place will apply.
10. Divorce and Judicial Separation	Agreement between the parties, or otherwise, law of the common domicile between the spouses at the moment when the divorce application was filed or if they do not have one, their last common domicile.
11. Non Matrimonial Unions	The capacity, form, existence, validity and effects of non-matrimonial unions are regulated by the place where it was constituted.

12. Parentage Determination	Law of the child's habitual residence.
13. Adoption	If the process is carried out in the Dominican Republic, the applicable law is dominican law.
14. Parental Responsibility	The provisions of the Hague Convention of October 19th of 1996 related to competence, applicable law, recognition, execution and cooperation in matters of Parental Responsibility and Protective Measures for Children.
15. Incapable	Law of the place of habitual residence of the incapacitated.
16. Maintenance Obligations	Law of the place of habitual residence of the creditor.
Of Successions and Donations	
17. Successions	Law of the domicile of the deceased at the time of death.
18. Action in Partition	Laws applicable to successions.
19. Validity of the Will	Law under which the act has been submitted; or the law of the country of nationality or domicile at the moment of death.
20. Donations	Substance: Law of the place of domicile of the donator at the moment when it took place. Form: The law that regulates the substance or the law of the place or the donation was carried out.
Contractual Obligations	
21. Law applicable to Contracts	Law chosen by the parties, this may be modified by mutual agreement from time to time. In the absence of an effective election, the principle of proximity would be applied. The laws of two countries may coincide in a same contract extraordinarily.
22. Incapacity of the Parties in Contracts celebrated in the Dominican Republic	The parties may only invoke incapacity resulting from the application of a foreign law when the counterpart in question had previous knowledge of the incapacity or negligently ignored it.
23. Form	When the parties are in the same place when the contact is celebrated: The applicable law shall be (i) the law chosen by the parties for the substance of the contract; (ii) the law of the place where the contact was celebrated; o, (iii) the law of the place where the contact will be executed. When the parties are in different places when the contract is celebrated: The applicable law shall be: (i) the law chosen by the parties for the substance of the contract; (ii) the law of the place where the contact was celebrated, and, (iii) the law of the place where the contact is being executed.

24. Labor Contracts	Law of the place where the work is being performed. It may be chosen by the parties as long the election is not less convenient for the employee than the law that might apply in accordance with the applicable general principle.
25. Consumer Contracts	Law of the place where the service is habitually provided. The parties can choose the applicable law as long as the election isn't less beneficial for the consumer than the law of habitual residence and the counterpart has commercial activity in said country.
26. Insurance Contracts	Laws of the place where the services are being provided or where the activity is usually performed.
Extra-Contractual Obligations	
27. Damaging Deeds	Law chosen by the author of the damage and the victim. If the parties have not chosen which laws shall apply the laws of the place where the damage was produced shall apply, and in cases where the author and the victim have regular residence in the country, dominican law will apply.
28. Malfunctioning Products	As applicable: Law of the place where the damaged party has habitual residence at the moment when the damage was produced, if the product was commercialized in that country; Law of the place where the product was acquired, if it was commercialized in it; Law of the place of business of the person responsible.
29. Unfair Competition	Law of the place in whose territory the competitive relationships or the collective interest might be damaged. If the act of unfair competition affects a person or company in particular general rules apply.
30. Restriction of Competition	Law of the place where the market is or may be affected.
31. Environmental Damage	The victim chooses whether to apply the law of the place where the damage was produced or where the generating event was produced.
32. Violation of Intellectual Property Rights	Law of the country where the right is protected.
Assets	
33. Possession and Property Rights	Law of the place where the property is.
Property in transit	Law of the place of destination.
34. Means of transportation	Law of the place of registration.
35. Intangible property	Law of the country where it is being used.

V. APPLICATION RULES

In the occasion of International Litigation— as this term is defined in the Law— the local courts and authorities will apply the rules of the conflict and the judges must decide based on foreign laws when applicable.

In regards to the application of foreign law by dominican courts, they must consider the following principles:

- Concurrent laws will be applied harmoniously, equitably and based on their teleological interpretation.
- Forwarding is eliminated; the applicable foreign law is the governing law.
- Foreign law will not apply when it is incompatible with the International Public Order, weighed based on the legal status of the Dominican Public Order and the gravity of the effects of its application. In these cases, another criterion of connection will be considered or dominican law will be applied.
- In case of multi-legislative systems, the conflict of the internal rules in question shall be taken into consideration to determine the application of a substantive rule or another.
- The rights acquired under foreign law right will be recognized in the country, provided they do not conflict with the principles of Dominican Public Order.

VI. RECOGNITION AND EXECUTION OF FOREIGN DOCUMENTS

All foreign documents of public nature, containing judicial decisions or acts of any nature must fulfill with the following requirements to

be considered valid in the Dominican Republic: (i) they have been drafted or granted in accordance with the requirements of law where they were issued to serve as complete proof; (ii) contains the form validity requirements to be considered authentic in the Dominican Republic; and (iii) they are accompanied by their corresponding translations, when they have been subscribed in another language.

VII. CONTENTIOUS JUDGMENTS

On the other hand, decisions resulting from contentious proceedings will be recognized in the Dominican Republic once exequatur has been obtained for their enforcement, which can only be denied in the following cases:

1. If the recognition were expressly against public order;
2. When the decision in question had declared the defection of the defendant without effective evidence of him being cited personally or in domicile;
3. If the decision is irreconcilable with a decision made previously in another country between the same parties in a dispute which had the same object and cause, when that decision fulfills the necessary conditions for its recognition in the Dominican Republic;
4. If the exclusive competence of local courts established by law where unacknowledged; and,
5. If the decision does not fulfill the requirements established by the country in which it has been issued to be considered authentic, as well as those required by dominican law for their validity.

The procedure of the obtainment of exequatur must be known by the Civil and Commer-

cial Chamber of the First Instance Court of the National District in non-contentious jurisdiction and it is subject to appeal under common law.

Other Foreign Decisions

Decisions related to capacity, family relationships, and personal rights: These decisions will be recognized when they have been pronounced by the authority of a State, whose law is applicable in accordance with the provisions of this Law, or when the decision produces consequences in the legal system of that State.

Foreign judgments of voluntary jurisdiction: These decisions will be recognized without requiring any special procedure when they have been pronounced by the authority of a State whose law is applicable in accordance to the provisions of this Law, or when the decision produces consequences in the legal system of that State.

Adoptions pronounced abroad: These decisions will be recognized when they are issued

by the State of domicile or nationality of the adopter or adoptee. Adoptions or similar institutions of foreign law whose effects of filiation are different than those recognized by dominican law will not be recognized.

Recognition of parent-child relationships: These decisions will be recognized when they have been pronounced by the State of the child's domicile or in the State of domicile of the parent who is the defendant.

Recognition of succession: These decisions or documents related to a succession and the rights derived of an open succession abroad, will be recognized when: (i) they have been pronounced or issued in the place of the last domicile of the deceased or the law of the place where the succession was submitted; (ii) they refer to real-estate property and have been pronounced or issued in the place where these assets are located.

In all the above cases public order and the respect for the right of defense should be considered.