Country Focus

Dominican Republic

The Legal Landscape

In association with
Pellerano & Herrera

GETTING THE DEAL THROUGH

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Welcome to **Country Focus:** *The Legal Landscape.*

This new Getting The Deal Through initiative is designed to offer in-house legal departments, as well as private practice lawyers with an international clientele, a concise ‘helicopter view’ of the legal environments in which they do business, or where they may be considering investment.

The Legal Landscape addresses the key factors that underpin civil and common law legal frameworks, policy, regulation and enforcement, taxation, organisational behaviour and investor strategies.

Getting the Deal Through has canvassed general counsel at more than 100 multinational corporations and financial institutions to focus on the first points of legal reference that in-house counsel need to know when assessing unfamiliar jurisdictions where they may seek opportunities or be exposed to risk. The following questions and answers cover the essential areas of consideration in their ‘first step’ analysis.

We would like to thank the team at Pellerano & Herrera – a leading law firm in the Dominican Republic for over 25 years – for their valued contribution to the country’s legal system.

GETTING THE DEAL THROUGH

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Dominican Republic: The Legal Landscape

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Pellerano & Herrera

Country overview

1 Give an overview of the country's economy, its structure and main characteristics, and prevailing government economic policy, particularly as regards foreign investment.

The Dominican Republic offers multiple business and investment opportunities as a result of its unique geographical location, current legal framework, economic stability and infrastructure. Its location, in the centre of the Caribbean, allows it to access the North, South and Central American markets with relative ease, as well as to serve as a bridge between those markets and Europe to trade goods and services.

In addition, the Dominican Republic has a developed a physical infrastructure adjusted to the requirements of a market focused on the production and commercialisation of goods and services. The Dominican roadways are among the best in the region, connecting almost all areas of the country. The country has modern, efficient airport and port systems comprising eight international airports and 14 significant seaports located in key production centres. Also, the Dominican Republic's modern telecommunications system is one of the country's main competitive advantages.

The main economic activities in the Dominican Republic are:

- agriculture and livestock;
- manufacturing (particularly in free trade zones);
- construction;
- wholesale and retail trade;
- tourism (which has secondary effects on various sectors of the economy); and
- transportation.

During the past few years, the Dominican Republic has had enviable macroeconomic stability, evidenced in the progressive growth of its economy and its uniform and healthy exchange rate and rate of inflation. In 2015, the Republic's real GDP grew by 7 per cent, a growth rate similar to that of the previous year, according to the Dominican Central Bank's statistics.

With regards to the prevailing economic policy in the country, the recent presidential administrations have implemented several economic reforms focused on developing social programmes and public infrastructure, and strengthening the economy by reducing public spending and the percentage of the GDP represented by public debt by implementing tax reforms designed to increase tax revenue and develop long-term fiscal sustainability.

Furthermore, the government's priority has been the promotion of foreign direct investment and the further integration of the country in international markets.

Accordingly, in recent years the Dominican government has implemented numerous legal reforms aimed at strengthening and modernising the legal framework with the objective of not only attracting foreign investment through different incentives for investors, but also protecting their investment. Additionally, the country created the Centre for Export and Investment (CEI-RD) in 2003, an entity that guides investors through the investment process in order to facilitate their decision to invest, providing a range of supportive and comprehensive free services, as well as personalised assistance and an aftercare service once they are installed in the country.

Further to the above, the One-Stop Investment Window was created in 2012 and was conceived with the interest of centralising government procedures in order to reduce time and costs for investors when establishing a project in the country.

Legal overview

2 Describe the legal framework and legal culture in your jurisdiction as regards business and commerce.

The Dominican Republic's legal system constitutes another incentive for investment. The country has a civil law system and is divided into three branches of power: executive, legislative and judicial.

The executive branch is headed by the President and divided into the different ministries and other central government agencies. Legislative power is exercised by a bicameral Congress that is divided into two chambers – the Senate and the Chamber of Deputies.

The judicial branch is led by the Supreme Court of Justice, acting as the highest-level court overlooking the Courts of Appeal, the Courts of First Instance, the Justices of the Peace and the Land Courts. The 2010 constitutional reform created the country's Constitutional Court for purposes of strengthening the country's legal framework. Other judicial entities include the country's General Prosecutor, a Court of Accounts, the Public Defender's Office, and the National Council of Magistrates.

The Dominican economy has experienced a continuous process of regulatory modernisation, which has led to the adoption of a variety of measures aimed at opening and commercially integrating the economy into the international markets. Having recognised that the Dominican market depends on international economic integration, the Dominican government has opted to create a solid legal foundation that allows for sustained economic stability and growth as well as ensuring freedom and security for the economy's different participants when commercialising goods and services.

During the 1990s, the Dominican Republic initiated the first wave of reforms to modernise the country's legal system and the economic framework under which corporate vehicles operate in the country, in order to:

- promote the flow of foreign capital into the country;
- adapt the economy to international competition; and
- facilitate its integration into economic groups at the regional and global level.

A second wave started in the early 2000s to continue to modernise the legal system's regulation of specific industries, such as the banking and monetary systems, including the strengthening of corporate governance, competition, consumer protection regulations, and public-private partnerships.

The main reforms that have taken place include new laws regarding telecommunications, industrial property, copyright, reactivation of exports, the environment, the financial system, the insurance sector, the energy sector, fiscal and customs reform, special legislation to attract retirees and baby boomers, trusts and the development of low-cost real estate projects, money laundering, risk prevention in financial institutions, government procurement, insolvency and bankruptcy procedures, among others. Legislative measures relating to the entry into force of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) also have been adopted.

Social reforms have also occupied a large part of the legislative agenda. The most significant reforms during the past decade were the modernisation of the criminal justice system, the adoption of a Code of Protection of Children and Adolescents, the Public Health Law, the Social Security Law, and the creation of specialised courts to prosecute the Public Administration. Although it has been a slow process, significant steps in the implementation of these regulations have been made, and some important developments are becoming evident, especially regarding the transparency of the judicial system. A few years ago, the Dominican Constitution was also amended with the goal of modernising the government and its essential regulations.

3 What are the main sources of civil and administrative law applicable to companies?

In general terms, in the Dominican Republic, formal sources of law include enacted laws (the Constitution, statutes, decrees, regulations and ordinances), jurisprudence, doctrine, customs and uses, and the general principles of law.

The main sources of civil law include the Constitution and the Civil Code of the Dominican Republic, while the main sources of administrative law include the Constitution, international treaties, statutes and regulations issued by administrative authorities.

Dispute resolution

4 How does the court system operate with regards to large commercial disputes?

As provided by the Dominican Constitution, access to justice and the right to ask a Dominican court to defend an individual or corporation is recognised both for Dominican citizens and for foreign individuals and entities, without regard to their country of origin.

Accordingly, with respect to large commercial disputes, the court system is impartial and operates under the principles of equality and justice. Hence, any commercial dispute must be fairly conducted as set forth in the Constitution and laws in force. The duration of the process depends on the workload of the relevant court and the interest of the parties. Courts are meant to grant the parties the opportunity to present the evidence on behalf of their petitions. Disputes start with a judicial bailiff's act and culminate with the issuance of a decision.

With respect to the structure of the court system, please note that large commercial disputes are mostly conducted by the provincial and territorial civil and commercial courts (lower courts and appeal courts), as well as the Supreme Court of the Dominican Republic, which will not decide on factual matters already established by the preceding courts, but will only review whether the applicable law has been correctly interpreted.

However, each kind of court has its own jurisdiction, which means that it has the authority to decide specific types of cases. Also, as previously mentioned, the Dominican Republic has a Constitutional Court, which is the highest court on interpretation of constitutional matters.

5 What legal recourse do consumers typically have against businesses?

In principle, consumers may file claims against businesses before the National Institute for the Protection of Consumers' Rights. However, the applicable laws set forth that consumers may directly sue businesses through (including without limitation) civil or commercial actions.

Moreover, the consumer rights conciliation and consumer arbitration system is conceived as an alternate method of addressing and resolving, in a binding and enforceable manner, the complaints and claims of the consumers and users regarding their rights, without prejudice to the rights of the parties to elect the ordinary forum, or the right of the Executive Director of the National Institute for the Protection of Consumers' Rights (to initiate or undertake the corresponding actions in the event of violation of public interest provisions of Law No. 358-05, the General Law for the Protection of Consumers and Users).

In principle, there is no plaintiff's bar in the Dominican Republic, but there is a public counselling service in certain criminal matters.

Likewise, it is important to highlight that the Dominican Republic has an Ombudsman, an independent, free to use and impartial officer, with the essential function of contributing to the protection of the fundamental rights of individuals and the collective and diffuse interests recognised by the Constitution and laws, if violated by any governmental entity or public services officer or by any individual.

Based on our experience, and to the best of our knowledge, class or group actions are not very frequent because they are only allowed for certain matters, such as (constitutional actions, specifically in connection with collective and diffuse rights and interests recognised by the Constitution and applicable laws; and, in claims regarding consumers' rights, under the scope of Law 358-05. However, class or group actions may be of significant concern to a business to the extent that such actions are legitimate and based on fair allegations.

As indicated above, the Dominican Constitution sets forth access to justice and the right to ask a Dominican court to defend an individual or corporation through effective judicial protection. The right to effective judicial protection entails accessible, well-timed and free administration of justice. Therefore, in principle, justice shall not have any material obstacle at the moment of access.

6 How significant is arbitration as a method of dispute resolution?

Beginning in 2008 with the enactment of the Commercial Arbitration Act, this alternative method of dispute resolution has experienced an unexpected boom in the Dominican Republic, to the extent that now the Chambers of Commerce in Santo Domingo and Santiago de los Caballeros have fully functioning arbitration tribunals able to render enforceable awards across the country without requiring the intervention of the national courts.

The advantages of arbitration are not only evident in time and price, but provide a degree of specialisation often standard for foreign litigants that Dominican courts may not necessarily have. In October 2001, the Dominican Republic became a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and is also part of the Inter-American International Commercial Arbitration (the Panama Convention). Therefore, the enforcement of foreign arbitral awards must be ordered by a local court, based on the provisions of international conventions and local laws on the subject.

7 What other methods of dispute resolution are commonly used?

In the Dominican Republic, as a civil justice system, the traditional dispute resolution process is litigation and trial before the ordinary courts. However, there are certain additional options available, such as negotiation, conciliation and arbitration. Mediation is recognised by law, but rarely used.

8 How easy is it to have foreign court judgments and foreign arbitral awards recognised and enforced in your jurisdiction?

A foreign court judgment or a foreign arbitral award may be executed in the territory of the Dominican Republic once it has been recognised or validated by a local court.

Decisions rendered by foreign courts or arbitration tribunals shall be validated in the Dominican Republic under the following conditions:

- the foreign court that has rendered the judgment must have jurisdiction to rule on the matter that has been decided;
- all parties in the matter must have received valid service to appear before court;
- the judgment must not be contrary to public order or public law in the country where execution is sought;
- the judgment must be executable in the country where it has been rendered;
- a valid translation must be obtained from an official interpreter in the country where execution is sought, if required;
- the document containing the judgment must be considered valid and authentic in the country where it has been rendered.

Likewise, based on the provisions of the Convention on International Private Law, such validation process will need to undergo all stages of the judicial process. For the Dominican Republic in particular, this means completing two separate stages, an initial request before a first instance court and a possible appeal before a Court of Appeals.

When the aforementioned requirements are duly fulfilled, foreign decisions may become executable in our territory without major complexities.

Foreign investment and trade

9 Outline any relevant treaty organisations, economic or monetary unions, or free trade agreements.

The Dominican Republic has maintained an active policy of multilateral trade relations, signing numerous free trade agreements as well as bilateral investment treaties with Argentina, Chile, South Korea, Spain, Finland, France, Italy, Morocco, Panama, Republic of China (Taiwan), the Netherlands and Switzerland. Additionally, it has signed double taxation treaties with Canada and Spain.

With respect to regional mercantile partnerships, the Dominican Republic has developed a policy of promoting trade integration within Latin America and the Caribbean and with that aim has signed free trade agreements with Central America, a free trade agreement with the Caribbean Community (Caricom), a free trade agreement with Central America and the United States (DR-CAFTA), and a Partial International Treaty with Panama. The Dominican Republic also belongs to the Cariforum, which, as part of the Forum of African, Caribbean and Pacific States, has signed a free trade agreement called the Economic Partnership Agreement (EPA) with the European Union.

10 Are foreign exchange or currency controls in place?

There are no foreign exchange or currency controls currently in place.

11 Are there restrictions on foreign investment?

Dominican law grants equal treatment to domestic and foreign investment. Nonetheless, please note that the only restrictions on foreign investment apply to some particularly sensitive industries, such as: (i) mining, where no sovereign government may invest in Dominican mining projects; (ii) activities that are detrimental to public health and the environment; and (iii) the manufacture of materials and equipment directly related to national security and defence, without the prior consent of the Dominican government. Investments in aviation, certain health projects such as hospitals and pharmacies, the handling of toxic waste, and radio transmissions, all require a minimum of Dominican capital. Additionally, public media managers must be Dominican, among other industry-specific restrictions.

It is important to highlight that the registration of foreign investment in the Dominican Republic is not mandatory and even without it foreign investors may remit profits and repatriate capital without prior authorisation, provided they comply with their local tax obligations, which are the same as for Dominican nationals.

12 Are there grants, incentives or tax reliefs for foreign investors or businesses?

In the Dominican Republic, several local laws create incentives or tax relief for foreign investors or businesses. Some of the most important are the following:

- Free zones: the free zone system is one of the pillars of the Dominican economy and has always been attractive to foreign investors because of the tax incentives it offers, including 100 per cent exemption from income tax, valued added tax and import duties, among others.
- Tourism: this is one of the most attractive industries for investment. Local legislation provides for the granting of tax incentives and deductions for a variety of tourism projects, incentives that increase when projects are created in certain areas considered ‘underdeveloped’.
- The National Film Industry: Law No. 108-10 for the Promotion of the Film Industry of the Dominican Republic provides significant incentives to filmmakers, including a deduction of the amounts invested from the income tax the producer has to pay. There is also a general exemption affecting services subject to value added tax, permits for the temporary importation of necessary equipment, and an exemption of up to 100 per cent of the income tax for film studios and cinemas. Foreign films produced in the country also enjoy tax exemptions and customs facilities, as mentioned above.
- Electricity and energy: a major advantage of the electricity and energy industry is the exemption from taxes on oil purchased for electricity generation, as well as various tax exemptions in the area of renewable or alternative energy.

Pursuant to Law No. 171-07, retirees and foreign passive investors may benefit from an expedited residency process and exemptions from certain taxes, including real property transfer taxes for the first property acquired, taxes on dividends and interest payments, import duties levied on the importation of home furnishings, office and professional equipment, among others.

13 What are the main taxes that apply to cross-border or foreign-owned business and investors?

The main fiscal obligations to consider are the following:

- Income tax: any legal entity or individual residing in the Dominican Republic as well as undivided estates located in the country are subject to the payment of taxes based on their Dominican-source income, and from sources outside the Dominican Republic deriving from investments and financial gains. The income tax is currently set at a rate of 27 per cent over net income, after subtracting costs, expenses and any tax deductions allowed.
- Asset tax: the asset tax is currently at a rate of 1 per cent of the value of the assets registered on the balance sheet of the taxpayer, not adjusted by inflation, after applying deductions for depreciation, amortisation, provision for unrecoverable receivables, stock investments, real estate properties located in rural areas, agriculture real estate and taxes paid in advance. This tax is only payable if the company does not have operations, or if the amount payable on account of income tax is less than the 1 per cent of the value of the assets of the entity.
- Transfer tax on real estate property: the current rate is 3 per cent of the value of the real estate property, and is payable only at the moment of the transfer of ownership of a real estate property.
- Tax on the transfer of industrialised goods and services (ITBIS): the ITBIS (local VAT) tax is applicable to the transfer of industrialised goods, imports and services. The general rate of the ITBIS is currently 18 per cent of the cost of the good or service, although some products may be subject to payment of a different rate.
- Tax on capital gains: capital gains are taxed at the same rate of 27 per cent as the income tax. To determine taxable capital gain amount, a taxpayer deducts the cost of acquisition or production of such asset from the price or value of an asset being transferred, adjusted by inflation.
- Withholdings on dividend payments: should a company established in the Dominican Republic distribute dividends to its shareholders, whether local or foreign, in any form of cash, it shall withhold 10 per cent of such amount as payment of advance to income taxes of the shareholders.
- Withholdings on payments to independent service providers: should a company in the Dominican Republic hire the services of individuals as independent services providers, it shall withhold 10 per cent of such payment on account of the income tax, if the payment is for professional fees; and 2 per cent if the payment is for a different concept. Additionally, if a company makes payments abroad for the concept of services provided, it shall withhold 27 per cent of such payment on account of income tax.
- Withholdings to employees: companies located within the Dominican Republic must withhold income tax on the wages paid to their employees exceeding the amount of 34,106.75 reais monthly. Depending on the amount of the wages, three different rates apply: 15, 20 and 25 per cent.
- Capital tax: if a company is incorporated, or its social capital is increased, it shall pay a rate of 1 per cent of the increased amount on account of capital tax.

Regulation

14 Which industry sectors are regulated or controlled by the government?

The following industry sectors are regulated or controlled by the government.

Mining

Traditionally, mining has been an important activity in the Dominican Republic, which exports gold, nickel, marble, limestone, granite and semi-precious stones. The importance of the country's mineral resources, in addition to advanced technical mandatory requirements for mining concessions, has made this one of the most interesting industries for investment. The supervisory body is the Ministry of Energy and Mines, created in 2014.

Electricity and energy

The electricity market in the Dominican Republic consists of three state distribution companies, a state transmission company, and tens of generators, ranging from private to semi-public and public. Each company focuses exclusively on one of the above-mentioned three activities except distributors, which may have a stake of up to 15 per cent in power generators. The government agencies that oversee the energy sector are the National Energy Commission and the Superintendence of Electricity.

Aviation

The Dominican aviation industry is the largest in the region, especially in view of the renewed commitment of Dominican authorities to gradually increase the flow of tourists to the island. As such, the country boasts a modern civil aviation law that, since 2013, permits the offer of civil aviation services even for companies with 100 per cent foreign capital if they are domiciled in the Dominican Republic. Civil aviation services are provided after a licence is obtained from the national authorities, which are the Civil Aviation Board (JAC), the final decision maker with respect to the granting of licences, and the Dominican Civil Aviation Institute (IDAC), which is the regulatory agency for the industry. Of importance is the involvement of the Specialised Corps of Airport Security and Civil Aviation (CESAC), which is responsible for ensuring the safety of passengers, crew, ground staff and the general public in all matters relating to civil aviation.

Telecommunications

Dominican law is complemented by the work of the Dominican Telecommunications Institute (INDOTEL), which regulates the industry after consultation with the industry's major participants. The Dominican telecommunications sector is one of the main recipients of foreign direct investment. Telecommunications services may be offered only after obtaining a licence from INDOTEL, which is granted by public tender. Once operations begin, companies are free to set their prices, although INDOTEL can intervene when it determines that there is abuse of a dominant position. Interconnection costs also are freely set and INDOTEL may also intervene when there is no consensus between the parties; it is able to order local loop unbundling, if necessary.

Banking

Recent legislative changes have liberalised banking services by granting equal treatment to foreign financial intermediaries and establishing the parameters to regulate their admission. Likewise, foreign banks not domiciled in the country are authorised to establish representative offices in the Dominican Republic, in accordance with current regulations. The establishment of financial intermediaries is subject to the approval of the Monetary Board, subject to the prior favourable opinion of the Banking Superintendence.

Insurance

The insurance industry is also of significant importance to the national economy. To operate an insurance company, one must obtain permission from the Superintendence of Insurance, which is responsible for supervising the operations of insurance and reinsurance institutions, intermediaries and adjusters.

Securities

Since the year 2000, a burgeoning and constantly diversifying securities market has been operating in the Dominican Republic. The regulatory framework, updated in 2012, governs the authorisation and treatment of public offerings of securities and issuers, from their issuance to their placement in the market, imposing new transparency standards that are superior to those previously existing. The law defines and strictly regulates the fiduciary responsibility of market participants, such as the Superintendence of Securities as the regulating agent, the National Council of Securities as the appellate organ for the Superintendent's decisions, the Stock Exchange and exchange posts, the Unique Centralised Deposit of Securities (CEVALDOM), compensation chambers, risk assessment companies, investment funds, fund administrators, mutual funds, and securitisation agencies. All of these market participants are required to promote market transparency for investors.

Free zones

The free zone system in the Dominican Republic is one of the most advanced in the world and the free zones are the source of 71 per cent of the products exported by the Dominican Republic, in addition to being the primary recipients of foreign direct investment in the country. Law No. 8-90 on Promotion of Free Zones created the National Free Zones Council (CNZF), the organisation in charge of regulating, supervising, defining and classifying free zones. The CNZF establishes the requirements for their installation and the applicable incentives and regulates, on an exceptional basis, the sale of their goods in the local market (taxed at a special rate).

15 Who are the key industry regulators, and what are their powers?

See question 14.

16 What are the other main enforcement authorities relevant to businesses?

Besides the aforementioned regulatory agencies, the other main enforcement authorities relevant to business include:

- the National Institute for the Protection of Consumers' Rights, the agency in charge of establishing and regulating the policies, standards and procedures necessary for the protection of consumer rights in the Dominican Republic;
- the National Commission for the Defence of Competition, an autonomous agency created for purposes of promoting and defending competition in the goods and services markets in the Dominican Republic;
- the General Directorate of Internal Revenue;
- the Office of the General Prosecutor of the Dominican Republic, which represents the Dominican Republic in the execution of public action, engaged in the formulation and implementation of policy against crime, criminal investigation, the administration of the prison and correctional system, the protection and care of victims and witnesses, prosecution of corruption and fraud, as well as a provider of administrative legal services required by law; and
- the General Directorate of Customs, which regulates customs in the country.

17 On which areas have regulators particularly focused their recent enforcement activities?

All regulated sectors are highly monitored by their respective regulatory agencies. Nonetheless, please be advised that recently enforcement activity has been evidenced mainly in relation to tax compliance as the local tax authority is currently monitoring business in order to prevent and sanction tax evasion, by imposing fines and proceeding with the closure of business establishments.

Compliance

18 What are the principal bribery, corruption and money laundering concerns for businesses?

The Dominican Republic has enacted several statutes with the aim of preventing and sanctioning bribery and corruption as well as money laundering activities in the Dominican Republic.

The provisions of our anti-money laundering law regarding the prevention and detection of such type of activities are applicable to regulated financial institutions, persons or entities dedicated to brokerage activities of securities, investments or futures; persons or entities working with currency exchange; the Central Bank of the Dominican Republic; and, any other person or entity involved in activities that are susceptible to being used in asset laundering such as casinos, real estate brokerage, car dealers, insurance companies and brokers, weapons dealers, professional services, etc. The aforementioned entities and persons are obligated to report suspicious transactions to the corresponding authorities, and maintain records of transactions undertaken for a minimum of 10 years, among other things.

On the other hand, in addition to the relevant provisions of the Dominican Constitution, the local legislation in force on bribery and corruption, in summary, explicitly prohibits the offering, promising or granting whether intentionally, directly or indirectly, (i) any article of monetary value or other benefit; or (ii) any favours, promises or advantages, to a public official or any person who performs public functions in the Dominican Republic, in return for the undertaking of any acts or omissions relevant to the exercise of its public functions.

Such prohibitions hinder the granting to public officials, and the receiving by such officials, of any gifts, bestowals, gratuities, commissions, rewards or advantages; therefore, such acts should be completely avoided when dealing with any public official in a business context.

19 What are the main data protection and privacy risks for businesses?

Considering that the Dominican Constitution safeguards and protects the right of all persons to privacy and intimacy, care has to be taken in the manner in which personal information (such as identification card numbers, address and phone numbers) is treated, particularly that of employees and clients. This may be more or less relevant for businesses to the extent that they deal with clients who are physical persons, and depending on the type of registry each business keeps, and the content of such registries.

In particular, our legislation contemplates a personal and credit data protection law, which essentially establishes the legal framework that regulates credit bureaus, guarantees the respect for the privacy of individuals, and promotes truth, accuracy, effective updating, and the proper use of information in the marketplace. Nonetheless, this law is mainly oriented to protect credit information, in order to minimise credit risk in the Dominican Republic.

Furthermore, it is important to mention that the Constitution (i) recognises the inviolability of correspondence, documents or messages, regardless of the format in which they are presented; and (ii) provides the corresponding constitutional remedy for requesting access and modification of personal data contained in private or public records.

20 What are the main anti-fraud and financial statements duties?

Legislation of this nature is scarce for the private sector, except for the provisions of our corporate law, which mainly establishes internal controls for the benefits of the shareholders or partners of private entities.

Nonetheless, our corporate law provides that companies shall keep accounting records in accordance with national and international accounting norms, as well as in accordance with local legislation. Furthermore, financial statements of any entity have to be duly audited by an authorised external auditor in the following cases: (i) if the entity has obtained financing from entities of financial intermediation in the Dominican Republic; (ii) if it has publicly issued bonds or shares; or (iii) if the entity has had earnings of more than 100 times the minimum wage – around 784,300 reais. There is no legal obligation to register or present financial statements to any public authorities, except in the case of regulated entities.

In addition to the foregoing, all companies must comply with the following reporting requirements before the General Directorate of Internal Revenue and the corresponding Mercantile Registry of the Chamber of Commerce and Production, including:

- resolutions from the company's shareholder or board meetings;
- increases in the company's authorised share capital;
- changes to the company's articles of association or by-laws;
- changes to the company's shareholders;
- the dissolution of the company;
- changes to the company's domicile or registered address; and
- changes to the company's contact details.

In addition to the foregoing there are further requirements applicable to corporations, such as the mandatory appointment of a vigilance offer that has to have certain professional qualifications and experience; as well as other reporting requirements applicable to publicly traded companies.

21 What are the main competition rules companies must comply with?

On 16 January 2008 a general antitrust law was enacted, however, it is still not in force as certain requirements that the law establishes have not been met. Once it becomes enforceable, it will be applicable to all economical agents performing commercial activities in the Dominican territory, whether they are individuals or corporations, public or private, local or foreign.

Such law sanctions agreements between competing economic agents that impose barriers on the market and commerce, behaviour that constitutes abuse of the dominant position of economic agents in a relevant market likely to create unjustified barriers to third parties, and any other practice that hinders effective competition between economic agents.

The relevant authority in charge of overseeing the application of such law is the National Commission for the Defence of Competition, but since the law has yet to be considered as enforceable; its duties are merely informal at the moment.

Without prejudice to the above, the Dominican Constitution protects the freedom of enterprise and explicitly prohibits the creation of private monopolies, although there have been no actions by the government to sanction or limit practices of this nature so far.

22 Outline the corporate governance regime.

The corporate governance regime applicable to entities incorporated according to the laws of the Dominican Republic varies depending on the corporate vehicle chosen, as well as on the nature of the entity in question, since some regulated entities such as banks have to comply with particular corporate governance rules and regulations.

For example, corporations are subject to a mandatory corporate governance structure, which includes the general meeting of shareholders at the top and then the board of directors, which undertakes the administration and representation of the company and must be composed of at least three members. Other corporate vehicles may choose between appointing a board of directors, or a sole or joint manager, among other options, as indicated in their by-laws.

On the other hand, the general principles of corporate governance provided in the corporate laws of the Dominican Republic apply to all locally incorporated entities. Rights and obligations derived from such principles include the right of information of the shareholders or partners, as applicable; and the obligation of the managers or directors to present an annual report.

23 Can business entities incur criminal liability? What are the sanctions for businesses, related companies and their directors and officers for wrongdoing and compliance breaches?

Yes, business entities may incur criminal liability. Sanctions for wrongdoing and compliance breaches are usually resolved either with a fine or with the annulment of any acts or resolutions that have not been issued in accordance with the applicable law; however, some major infringements – usually involving fraud – are punishable with a penalty of imprisonment applicable to the managers or directors of the entity in question, in cases where such directors or officers had an active role in the commission of the offence.

Business operations

24 What types of business entity are most commonly used by foreign investors and why? What are the main requirements for their establishment and operation?

The Dominican Corporate Law No. 479-08 expressly recognises six corporate structures and business forms, and acknowledges foreign companies once certain local law requirements are complied with. However, the most commonly used corporate vehicles are the following.

Corporation

Structure

The corporation is an entity formed by two or more partners who only assume the risk of losses up to their capital contributions. The corporation structure has been designed for the purpose of organising companies that require, above all, important levels of control over their corporate governance. Corporations may or may not seek funding from the securities markets as a form of financing and expansion of their operations. If they do so, they will be required to obtain an authorisation from the Dominican Republic's Securities Superintendent.

Capital and transfer provisions

Corporate capital is represented by shares, which are essentially negotiable securities. The minimum authorised corporate capital is 30 million reais and 10 per cent of such amount always must be paid and represented by outstanding shares. The Corporate Law in the Dominican Republic does not establish any restriction on the assignment of shares. Nevertheless, it provides that shareholders may agree to restrictions, so long as they do not contain any permanent prohibition on the transfer of shares.

Administration, supervision and decision making by shareholders

A board of directors composed of a minimum of three members is normally in charge of managing these companies. In terms of supervision, the Corporate Law establishes that corporations must be supervised by one or several vigilance officers that are named for two fiscal periods and are primarily appointed to verify the annual accounts presented by the board of directors and the documents addressed to the shareholders indicating the annual accounts and financial situation of the entity. The supreme decision-making entity is the general meeting of shareholders, which annually receives a report of all of the company's operations, decides on the distribution of dividends, and approves the management's annual report, among other duties.

Simplified corporation

The simplified corporation (SAS) is an entity formed by two or more shareholders whose losses with respect to the company's activities are limited to their capital contributions. Unlike a corporation, this company allows some freedom to shareholders to regulate the organisational structure of the entity in its by-laws, according to the needs and objectives of the company.

Capital and transfer provisions

The capital of a simplified corporation is represented by shares, which can only be issued in registered form. The minimum authorised capital required is 3 million reais and at least 10 per cent of this amount needs to be subscribed and paid in.

Administration and supervision

The shareholders may, by means of the by-laws, freely determine the organisational structure of the company, which can be managed and directed by a board of directors or by a president administrator. Also, a simplified corporation does not require the supervision of a vigilance officer, unless it issues debt instruments.

Limited liability companies

A limited liability company (SRL) is the entity formed by a minimum of two and a maximum of 50 partners, none of whom may have personal responsibility for company's debts. This form of commercial organisation is used for medium-sized businesses and closed capital entities.

Capital and transfer provisions

The capital of an SRL is divided into equal parts ownership parts denominated as social quotas, which cannot be represented by negotiable shares or have a nominal value below 100 reais. The minimum corporate capital of an SRL is 100,000 reais, which must be fully paid-in and outstanding. Social quotas, which represent the capital, are securities that are in essence non-negotiable securities. These securities generally are transferable in cases of a succession due to the death of a partner, the liquidation of marital property, and among family members. The assignment of such corporate units to third parties, as well as the creation of pledges on them, requires the consent of three-quarters of the partners, separately from other conditions and formalities.

Administration, supervision and decision making

The administration is controlled by one or several managers who must be individuals and who are individually invested with the broadest powers to act on behalf of the company under any circumstances. The designation of a vigilance officer is not necessary, but the financial statements of the company must be audited. Each partner has the right to vote on SRL decisions and has the same number of votes as the social quotas that the partner possesses.

Foreign companies

A corporation duly incorporated anywhere in the world is recognised in the Dominican Republic upon confirmation of its legal existence by the appropriate authorities, according to the formalities prescribed by the law of the place of incorporation. The Law No. 479-08 provides that foreign companies, as to their existence, capacity, operation, and dissolution, are governed by the law of the place of incorporation. Their operations and activities in the Dominican Republic are subject to Dominican law. Foreign companies setting a branch or permanent establishment in the Dominican Republic or that regularly engage in commercial transactions in the country must be registered in the Commercial Register and join the National Taxpayers Registry kept by the Directorate General of Internal Revenue. Dominican law recognises the equality of foreign companies with local companies and, therefore, declares that they have no obligation to provide any kind of bail or guarantee before initiating litigation.

Registration and formation

The following procedures must be followed to incorporate a company in the Dominican Republic:

Registration of the trade name before the National Industrial Property Office (ONAPI).

The incorporation documents must be filed at the relevant Chamber of Commerce and Production to obtain the company's mercantile registration certificate. At this point the company is deemed to be duly incorporated.

The incorporation documents must be filed before the General Directorate of Internal Revenue in order to obtain a national taxpayers registration (RNC) number.

25 Describe the M&A market and the merger control regime. How easy is it to complete deals in your jurisdiction?

Mergers and acquisitions in the Dominican Republic are not subject to merger control.

However, all practices, acts and agreements between economic agents that have the object or effect of imposing unjustified barriers on a local market as well as the abuse of the dominant position in the market are prohibited as per the provisions of the Competition Law. Furthermore, the prior consent of certain governmental authorities or additional filings may be necessary for companies in regulated industries such as banking, telecommunications and energy.

On the other hand, as there are no regulations on the matter, the process is subject to the negotiations of the contracting parties, therefore the time frame for completion of an acquisition may be affected by conditions as agreed by the parties in the preliminary agreement, and also by the structure chosen by the parties to execute the acquisition.

For example, if an authorisation or regulatory approval is required before closing, or if the approval of a credit facility or waiver from a third party is needed, closing would be extended to a reasonable period of time depending on the complexity of the matter.

Usually, parties execute a preliminary agreement at a very early stage of the negotiations, such as a memorandum of understanding (MOU) or a letter of intent (LOI). This type of agreement generally includes an exclusivity provision regarding the transaction. None of the parties, during the existence of such agreement, would be able to negotiate the same or a similar condition with third parties.

26 Outline the corporate insolvency regime. Is bankruptcy protection available for corporates?

The Dominican Republic is currently in a transition period regarding the regulation of bankruptcy, since a new law regulating such matters was enacted in 2015 but will not enter into force until February 2017.

Therefore, until the indicated deadline, the current laws applicable to insolvency procedures in the Dominican Republic are the

Commercial Code, which is based on the French Commercial Code of 1807 and Law 4582 of 1956. The bankruptcy laws in force in the Dominican Republic are significantly different from and less developed than those of the United States. Other than in connection with the amicable settlement process (described below), Dominican bankruptcy law does not provide for a reorganisation process for debtors or for an automatic stay on collection or foreclosure efforts by secured creditors. In addition, to the best of our knowledge, there have been very few bankruptcy proceedings in the Dominican Republic and none of them have been completed.

In general, the current bankruptcy laws of the Dominican Republic establish a threestage process. The first is a proceeding administered by the Ministry of State for Industry and Commerce in which the debtor and its creditors attempt to reach an amicable settlement; in the event that no amicable settlement is reached, a bankruptcy proceeding initiated before a court of first instance in which the court determines whether to enter a bankruptcy order declaring the debtor bankrupt; and if a bankruptcy order is entered, the management or liquidation of the business of the debtor and the resolution of creditor claims by up to three receivers.

On the other hand, Law No. 141-15 on the Restructuring and Liquidation of Entities and Merchants, expected to enter into force early next year, modernises the legal framework applicable to insolvency procedures by providing for a reorganisation procedure that will allow entities in financial distress to continue operating while safeguarding the rights of both creditors and employees. For those cases where such operational continuity is not possible, the law establishes proceedings for the liquidation of the distressed company's assets and payment of debts. It is important to highlight that Law No. 141-15 creates specialised courts that will have competence to oversee this process.

Employment

27 How easy is it to enter into and terminate employment contracts?

To enter into an employment contract in the Dominican Republic is necessary to determine the modality of the employment. Employment can be for an indefinite term, for a fixed period of time, or for a particular job or service.

The employment contract for an indefinite term or for a particular job or service can be made orally or in writing. However, the employment contract for a fixed period of time can only be made in writing.

In view of the foregoing, it is important to mention that whenever there is an employment contract in writing it is mandatory by law that such contract be registered with the Ministry of Labour within three days of the execution of the contract.

Furthermore, prior to registering the employment contract the employer must be registered as such before the Social Security Treasury and the Ministry of Labour; otherwise, the Ministry of Labour will not register the employment contract.

With regards to the termination of employment contracts, they may be terminated with or without liability for the parties depending on the cause of termination; however, in both scenarios there are some formalities that must be fulfilled.

The employment contract terminates without liability by mutual agreement, by execution of the agreement or because execution is impossible.

The employment contract terminates with liability for the parties in the following cases: (i) dismissal with cause undertaken by the employer; (ii) dismissal with cause undertaken by the employee; or (iii) dismissal without cause undertaken by the employer or the employee.

28 What are the key rights of local employees?

The key rights of local employees during the term of the employment contract pursuant to Dominican labour laws that are in force are the following:

- Vacations: local employees are entitled to 14 days of vacation after one year of uninterrupted work with a retribution paid pursuant to the following scale: (i) 14 days of ordinary salary if the employee has no more than five continuous years rendering services, and (ii) 18 days of ordinary salary if the employee has more than five continuous years rendering services.
- Christmas salary: local employees are entitled to a Christmas salary during the month of December, which consists of the 12th part of the ordinary salary perceived by the employee during the calendar year. This salary is payable no later than the 20th day of the month of December.
- Profit sharing: local employees are entitled to a profit share equivalent to 10 per cent of the annual net profits of the employer. However, under no circumstances must the profit share exceed (i) 45 days of ordinary salary if the employee has rendered services for no more than three years, and (ii) 60 days of ordinary salary if the employee has rendered services for more than three years.

29 What are the main restrictions on engaging foreign employees?

In accordance with Principle IV of the Dominican Labour Code, the laws related to employment apply without distinction to Dominican employees and foreign employees.

Notwithstanding the foregoing, the Labour Code establishes that at least 80 per cent of the total number of employees of a company must be Dominican employees. However, the foreign employees listed hereafter are exempted from the aforementioned percentage: (i) employees that exclusively perform the functions of direction or administration of the company; (ii) technicians, provided that, according to the labour authorities, there are no unemployed Dominicans with the capacity to replace them; (iii) employees of family workshops; (iv) foreign employees married to Dominicans, with more than three years of uninterrupted residence and more than two years of marriage; and (v) foreign employees with Dominican children with more than five years of uninterrupted residence.

Furthermore, the Code above-mentioned establishes that the salaries perceived by the Dominican employees of a company must ascend, in total, to at least 80 per cent of the salaries payable to all employees.

30 What are the other key employment law factors that foreign counsel, investors and businesses should be aware of?

The employers must register its employees with the Health and Pension Insurance at the Social Security Treasury and lack of compliance with this obligation involves sanctions against the employer.

Upon dismissal without cause, the party undertaking the termination must give to the other party prior notice pursuant to the following scale: (i) six days, if the employee rendered uninterrupted services for between three and six months; (ii) 14 days, if the employee rendered uninterrupted service for between six months and one year; and (iii) 28 days, if the employee rendered uninterrupted services for more than one year.

If the party undertaking the dismissal without cause does not give prior notice as indicated above or gives it in an insufficient manner, then that party must compensate the other party with remuneration according to the days in the scale above.

Furthermore, if the employer undertakes the dismissal without cause then the employee is entitled to severance assistance pursuant to the following scale: (i) six days of ordinary salary, if the employee rendered uninterrupted services for between three and six months; (ii) 13 days of ordinary salary, if the employee rendered uninterrupted services for between six months and one year; (iii) 21 days of ordinary salary for each year, if the employee rendered uninterrupted services for between one and five years; and (iv) 23 days of ordinary salary for each year, if the employee rendered uninterrupted services for more than five years.

Intellectual property

31 Describe the intellectual property environment. How effective is enforcement and what are the key current issues?

Dominican law regulates the transfer and dissemination of technology for the benefit of producers and users of technical expertise, in accordance with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the WTO, the Paris Convention for the Protection of Industrial Property, the Cooperation Treaty in Patents (PCT), Chapter 15 of DR-CAFTA and other international agreements, which gives the Dominican Republic one of the highest levels of protection for intellectual property in the region.

In the Dominican Republic, industrial property rights are protected by Law 20-00 dated 8 May 2000 on Industrial Property, which modernises the rules applicable to patents and trademarks by adapting them to the agreements of the World Trade Organization and creating the National Office of Industrial Property (ONAPI). Copyright is regulated by Law 65-00 on Copyright of 21 August 2000, which aims to provide a legal and institutional framework in accordance with the provisions of the Aspects of Intellectual Property Rights Agreement related to Commerce (TRIPS), which allows for the protection of copyright in the Dominican Republic, taking into account the national interest. The National Copyright Office (ONDA), under the Ministry of Industry and Commerce, is the national authority in charge of the registration and organisation of copyright applications.

The main problems affecting IP owners in the Dominican Republic are the availability of pirated and counterfeit products, and the use of unlicensed software. However, it is important to highlight that the Dominican Republic has made positive developments regarding enforcement actions against the manufacturing and distribution of counterfeit products. In this regard, the Customs Agency issued Resolution No. 01-2010, which created a Registry of Intellectual Property Titleholders. The purpose of such registry is to support the inspection and retention of goods in customs processing that are presumed to be in violation of intellectual property rights.

Local laws offer different civil, criminal or administrative legal processes in order to successfully enforce IP rights. Nonetheless one must be vigilant about the proper use of IP rights.

The registration system for industrial property (trademarks, trade names and patents) establishes that rights are acquired at the moment of registration. However, the legislation provides some exceptions. In light of the above, it is advisable to register any IP rights before using them locally. Dominican legislation is based on the territorial principle, which is not applied in cases of very well-known brands.

Though copyright registration is optional in view of the fact that rights are acquired at the moment the work is created, it is nonetheless recommended in order to grant the work a set day of creation.

Civil and criminal penalties may be applied in case of the infringement of intellectual property rights by the courts and these include the payment of damages and fines, or imprisonment, or both.

Legal reform and policy

32 What are the key issues in legal reform, government policy and the economy?

The most relevant key issue regarding legal reform is the imminent amendment to be made to the tax laws, which may eliminate certain tax exemptions applicable to different sectors of the economy.

On the other hand, pursuant to the new law regulating the notary public profession, the cost of obtaining legal documentation has increased due to the high fees established as payment for notaries in the law in question. Furthermore, the bureaucracy of some public institutions continues to be a limitation to business since some authorisations are sometimes unnecessarily delayed.

Without prejudice to the above, in general, foreign investment continues to be welcomed and incentivised as it represents a relevant portion of our economy. Moreover, the interest in investing in the Dominican Republic has increased in recent years as the economy continues to grow despite recent worldwide financial instability. Consequently, it is expected that the Dominican Republic will continue to be a focal point for foreign investment in Central America and the Caribbean.

33 Are there any significant legal developments ongoing or pending? What are their effects on the business environment?

As indicated in question 32, the amendment to the tax laws is the most relevant legal development pending that is expected to affect business and investment in the Dominican Republic. In particular, public opinion has indicated that upcoming changes, and consequently the tightening of the enforcement in the tax collection regime, may negatively impact small and medium-sized businesses.

It is also important to mention that a new bankruptcy law was enacted in 2015 and is expected to become applicable by February 2017. In general terms, this law is considered an improvement on the old regime since it organises and modernises the bankruptcy and liquidation process in the Dominican Republic, and contemplates a restructuring procedure for companies with liquidity issues. It is believed that this law will have a positive impact on the business community because it will both ensure the rights of creditors and employees, and allow businesses in trouble to stay afloat and to continue to operate if they comply with certain conditions.

Resources and references

34 Please cite helpful references, for example sources of law, websites of major regulators and government agencies.

www.minpre.gob.do (Ministry of the Presidency)
www.bancentral.gob.do (Central Bank of the Dominican Republic)
www.sb.gob.do (Superintendence of Banks of the Dominican Republic)
www.poderjudicial.gob.do (Judicial Banch of the Dominican Republic)
www.senado.gob.do (Senate of the Dominican Republic)
www.camaradediputados.gob.do (Chamber of Deputies of the Dominican Republic)
www.cei-rd.gob.do (Export and Investment Center of the Dominican Republic)
www.pgr.gob.do (Attorney General's Office)
www.siv.gov.do (Securities Superintendence)
www.indotel.gob.do (National Institute of Telecommunications).

Authors

Luis R Pellerano

Luis R Pellerano is partner at Pellerano & Herrera, co-head of the firm's international and foreign investment practice with over 35 years of experience. Luis concentrates his practice in banking and finance with vast experience counselling foreign companies and multinationals entering the Dominican market and companies in highly regulated industries such as energy, mining, pharmaceuticals and financial service providers. Luis' practice also includes advising clients on financial structuring, corporate and securities law, with a particular focus on the development and financing of international projects, mergers and acquisitions, strategic alliances and corporate finance.

His representative transactions include advising: brewing company AmBev Dominicana in the acquisition of a controlling stake in Cerveceria Nacional Dominicana, the largest acquisition in the history of the Dominican Republic, for more than US$2 billion; leading mining corporations in the establishment of their operations such as Barrick Gold Corporation, Xstrata and Perilya Ltd, including the financing of the Pueblo Viejo goldmine, which, at US$2.7 billion, was the largest registered foreign investment in the history of the Dominican Republic; and underwriters in the US$2.5 billion sovereign bond offering by the state of the Dominican Republic conducted under Rule 144 A Reg S, the largest bond offering to date by the Dominican state, awarded 'Sovereign Liability Management of the Year 2015' by *LatinFinance* Deals of the Year Awards.

Mariangela Pellerano

Mariangela has 13 years of experience practising law, concentrating her practice at the firm in the areas of project finance, mergers and acquisitions, trusts, mining, energy and corporate and banking law.

She has participated in highly complex business deals in the Dominican Republic. She assisted Barrick Gold Corporation, the largest gold producer in the world, with the complete installation and operation of the Pueblo Viejo gold mine project. Valued at US$2.7 billion, it is the largest foreign investment project in the history of the Dominican Republic. Likewise, she served as local counsel of Barrick Gold Corporation in securing a US$1.2 billion syndicated financing for the operation of its gold mine at Pueblo Viejo, which was recognized as 'Deal of the Year 2010' in project financing by Latin Lawyer.

Mariangela regularly assists local and foreign banks and multilateral institutions in syndicated and private equity investments. Among other transactions, she has advised International Finance Corporation (IFC) in a capital investment of US$100 million for the development of renewable energy sources in the Caribbean; International Finance Corporation (IFC) in the US$30 million financing granted to Indomina Group the first financing granted to a film company in the Dominican Republic under the country's Film Law; the Bank of Nova Scotia in a US$56 million loan to Sol Group for the purchase of Shell's 340 gas pumps in the Dominican Republic; and the underwriters in connection with the issuance of sovereign bonds, most recently including an issuance of US$2.5 billion, the largest such issuance to date in the history of the Dominican Republic.

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Pellerano & Herrera, the leading law firm in the Dominican Republic for over 25 years, boasts a multidisciplinary team of professionals that is the most comprehensive in the country, providing personalised legal advice with the highest standards of quality to its clients.

The firm is typically involved in all major mergers and acquisitions, joint ventures, project financing and foreign investments in the country. Pellerano & Herrera's lawyers also mediate the entry process for important multinational and Fortune 500 corporations to the Dominican market as well as in the international financing of high-profile operations, such as the issuance of commercial papers and bonds in both the American and European markets.

Pellerano & Herrera has a very strong and successful litigation practice with ample experience in alternative dispute resolution, business, civil and commercial lawsuits, civil rights actions, insurance, intellectual property litigation and issues of constitutional law.

Awards and honors that the firm recently has received include: 'Firm of the Year' by *Chambers and Partners* (2009, 2010, 2011, 2013 and 2015); 'Sovereign Liability Management of the Year 2015' by *LatinFinance* Deals of the Year Awards for assistance to underwriters in the bond offering of the Dominican state, 'Deal of the Year 2010' in Project Finance from *LatinLawyer*, for Pellerano & Herrera's work with Barrick Gold Corporation and the Pueblo Viejo Mine Financing (2011), 'Private Equity Deal of the Year 2009' from *The International Financial Law Review* (IFLR) for Pellerano & Herrera's work as legal counsel to the buyers in the acquisition of the Dominican Republic's airports (2009) ; Top Ranked 'Leading Firm' by *Chambers Latin America Guide* (2009–2017), Top Ranked 'Leading Firm' by *Chambers Global Guide* (2004–2016) 'Leading Firm' in the Dominican Republic by *LatinLawyer* (2008–2015), 'Top Tier Firm' by *The International Financial Law Review* (IFLR1000) 2010–2016, and 'Top Tier Firm' by the Legal 500 Guide for 2012–2016, 'Most Admired Law Firm' in the Dominican Republic in the 'Most Admired Companies' ranking (2009–2016) and as one of the 'Best Companies to Work For' (2007–2016) by Revista Mercado, and 'TopBrand' of the Dominican Republic by *Superbrands U.K.* for 2010, 2013 and 2016.

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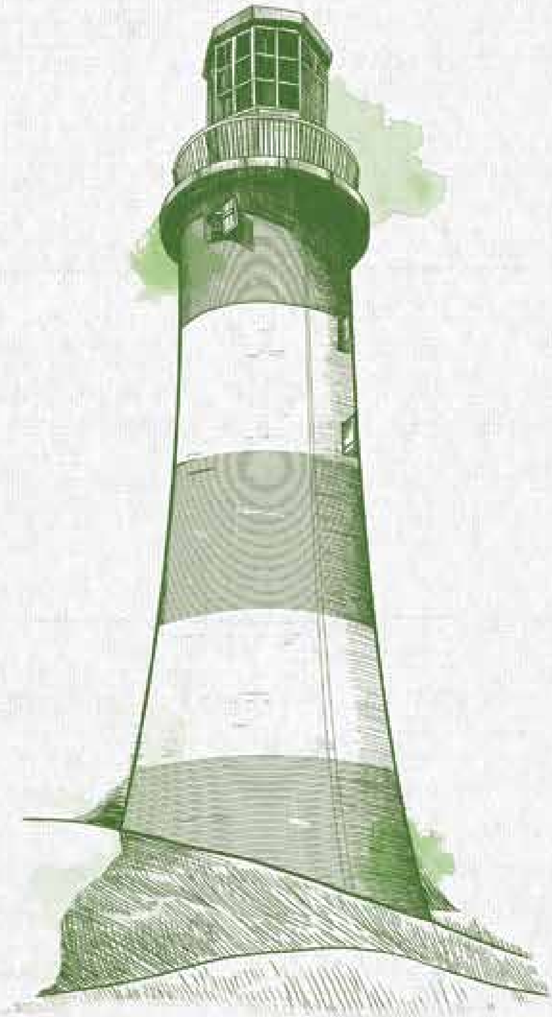

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