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# Product Liability & Safety

Dominican Republic  
Pellerano & Herrera

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## Law and Practice

*Contributed by Pellerano & Herrera*

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**Pellerano & Herrera** has been a leading law firm in the Dominican Republic for over 30 years. The firm has participated in the most relevant transactions in the country, involving the most important industrial sectors, including banking, tourism, energy, mining and natural resources, and real estate. Pellerano & Herrera regularly advises international clients on transactions involving acquisitions,

joint ventures, project finance, and tax planning, among other matters. The firm has a strong and successful litigation practice – considered one of the best in the country – with vast experience in sophisticated civil and commercial lawsuits, civil rights actions, issues of constitutional law, alternative dispute resolution, business, insurance, and intellectual property litigation.

## Authors



**Félix Fernández** joined the firm in 2017 and became a partner of the Dispute Resolution Department in 2019. He has more than 19 years of experience in legal practice and represents both national and international clients in matters in the area

of civil and commercial law, labour law and social security, corporate law, maritime and aviation law, administrative law and regulated sectors, criminal law, insurance, banking, international law, foreign investment, intellectual property, arbitration and litigation in general. Felix has vast experience counselling foreign companies entering the Dominican market and regularly advises clients on labour legislation, due diligence processes, corporate governance and adaptation of multinational regulations under the Dominican legal framework.



**Lucy Objío** joined the firm in 2009 and became a partner in 2012. She has 17 years of experience practising law, concentrating in civil litigation, commercial, labour, constitutional law, intellectual property, copyright, consumer law, insurance

litigation, real estate, aviation and maritime law, as well as commercial arbitration. Lucy has experience advising clients on banking, commercial and corporate regulations and franchise and distribution issues, among various other matters. She regularly advises companies and local and international financial institutions in the areas of complex contracts, dispute resolution, real estate disputes, intellectual property litigation, shareholder agreements, telecommunications, and damage awards resulting from lawsuits.

## 1. Product Safety

### 1.1 Legal Framework

The main laws and regulations of the product safety regime in the Dominican Republic are:

- Article 53 of the Dominican Constitution, voted on 13 June 2015, that institutes as a fundamental right of economic and social type, the rights of customers to good quality assets and services and to be compensated for any injury or damage resulting from bad quality assets or services;
- the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, that sets forth the regime of defence of said rights, assuring equity and juridical security on the relations between providers and customers;
- Presidential Executive Order (Decree) No 236-08, that institutes the regulations for implementing the aforementioned Law No 358-05;
- Rules on Customers and Users Organisations, issued by Pro Consumidor on 16 September 2010;
- Resolution No 11 on Regulation of Settlement and Arbitration of Consumption, issued by Pro Consumidor on 3 June 2008;

- Law No 107-13 on Administrative Process, voted on 6 August 2013;
- the General Law on Health No 42-01, voted on 8 March 2001;
- Law on Eradication of Illegal Commerce, Contraband and Falsification of Regulated Products No 17-19, voted on 20 February 2019.

### 1.2 Regulatory Authorities

In the Dominican Republic, there are several regulators for product safety:

- the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, created the National Institute of Protection of Consumer Rights (Pro Consumidor), a decentralised and autonomous governmental entity tasked with regulating the politics and proceedings related to customers and users in the Dominican Republic;
- the Ministry of Public Health – as per the General Law on Health No 42-01, voted on 8 March 2001 – regulates all the matters pertaining to food and pharmaceutical products;
- the National Institute on Transit and On-the-ground Transport (INTRANT) is entitled by Law No 63-17 On Mobility, On-the-ground Transport, Transit and Secu-

rity of Tracks, voted on 24 February 2017, to agree the minimal required safety conditions for motorised on-the-ground vehicles;

- the Civil Aviation Dominican Institute (IDAC) is charged by Law No 491-06 On Civil Aviation, voted on 28 December 2006, to issue safety regulations for aircrafts, while the Dominican Navy is charged of the same in case of vessels by Law No 3003 on Ports and Coasts Police, voted on 4 August 1951;
- the Ministry of Energy and Mines rules the nuclear and radiology safety of nuclear products as per Law No 100-13 On the Creation of the Ministry of Energy and Mines, voted on 2 August 2013; the Superintendence of Electricity sets forth the technical rules related to electric products safety as per Electricity General Law No 125-01, voted on 26 July 2001;
- the National Institute on Telecommunications (INDOTEL) is charged by the General Law of Telecommunications No 153-98, voted on 27 May 1998, of regulating the telecommunications sector and with capacities to defend the rights of users and customers, issuing regulations and enforcing the obligations of the parties.

### 1.3 Corrective Actions

Dominican law has established obligations regarding corrective actions in certain circumstances. In this sense, the Executive Director of the National Institute of Protection of Consumer Rights (Pro Consumidor) is entitled to exercise the corrective actions and sanctions for violation of the rights of the users and consumers.

Indeed, Article 36 of the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, obliges the provider to take every timely measures and comply with all pertaining measures ordered by the authorities in order to eliminate or reduce any danger, including the withdrawal or suspension of products affected, as well as its substitution or repairing.

Also, paragraph I of Article 88 of the aforementioned Law No 358-05 sets forth that every advertiser or owner of the advertisement its obligated, in case of misleading advertising, to stop the advertising, make a public rectification, replace the products or services acquired as a consequence of misleading advertising or in case of threat of public health, and repay what the consumers have paid for those products or services.

### 1.4 Notification to Regulatory Authorities

The provider of a product is obligated, as per Article 35 of the General Law On Protection of Customer or User Rights No 358-05, voted on 9 September 2005, to immediately and publicly inform to authorities and the population through a public campaign, in case of having products in the Dominican market, and realising the existence of risk, defect or any danger for the public health.

Moreover, paragraph I of Article 116 of the General Law on Health No 42-01, voted on 8 March 2001, obliges importers, manufacturers and health professionals to notify to the Ministry of Public Health any adverse effects caused by medicine and other health products. Likewise, Presidential Executive Order No 246-06 On Medications obligates the owner of a Sanitary Registry to notify the pertaining authorities in a timely manner (but not stating any specific term) any withdrawal of medications from the market; therefore, the causes of the withdrawal and the facts of each case will determine the term to be considered as sufficient to comply with this obligation.

The fulfilment of the obligation to inform the authorities is not subject to any specific forms and can be complied by any means.

### 1.5 Breach of Obligations

Breach of product safety obligations may trigger several penalties under Dominican Law, depending on the facts and sector of products involved, as detailed below.

#### Customers Rights Obligations

Violations to the General Law On Protection of Customer or User Rights No 358-05, voted on 9 September 2005, are qualified as minor, serious or major, depending on their extent and are punished with administrative fines from 20 up to 500 times the minimum wage.

Once the risks for the safety of customers are evidenced, the National Institute of Protection of Consumer Rights (Pro Consumidor) can impose the following preventive measures and complementary penalties:

- a warning;
- the confiscation of products;
- the destruction of products;
- the prohibition to sell the products;
- the closure of the commercial establishment.

Also, authorities can order the withdrawal of the product from the market or prohibit transit when unforeseen danger or toxicity is verified in any product in compliance with the Article 34 of the Presidential Executive Order (Decree) No 236-08, which institutes the Regulations for implementing the aforementioned Law No 358-05.

This same criteria is also applied to food products as per Article 130 of the General Law on Health No 42-01, voted on 8 March 2001. Moreover, paragraph I of Article 116 of Law No 42-01 sets forth that the Ministry of Public Health can suspend or revoke the licence to import or produce pharmaceutical products in case of serious threat to public health.

## **Penal Code Infringement**

Article 317 of the Dominican Penal Code punishes with one month to two years of imprisonment and a fine of DOP10 to DOP100 any individual that has provided in any way a substance that causes damages to the health of another individual. If the health damage caused lasts more than 20 days, the penalty will be increased from two years up to five years of imprisonment. However, if the victim is an ascendant of the offender, the penalties will be of: (i) in case of damages that lasts less than 20 days, from two to five years of imprisonment; and (ii) in case of damages that lasts more than 20 days, from three to 20 years of imprisonment.

Article 318 of the Dominican Penal Code punishes – with six days to one year of imprisonment, a fine of DOP5 to DOP20 and the confiscation of the products – any individual that sells or forwards false beverages with ingredients that damage the health of an individual.

## **Illegal Commerce, Contraband and Falsification of Products**

The Law on Eradication of Illegal Commerce, Contraband and Falsification of Regulated Products No 17-19, voted on 20 February 2019, sets forth two types of penalties in case of breach of its obligations: administrative and criminal.

### **Administrative penalties**

- Temporary Suspension: if during an inspection the authorities verify that registries or fiscal controls, quality or health requirements have been altered, distorted or not applied, the licence or permits will be immediately suspended. The law does not indicate the term of suspension and how to revoke it, therefore it would be subject to the ordinary administrative procedure and rights established by Law 107-13.
- Fines: regulators for each sector of products involved will determine the amount and degree of this penalty.
- Temporary or permanent closure of commercial establishment, warehouse or factory.
- Suspension or cancellation of licences, permits, concessions, authorisations and registries.
- Administrative confiscation of products.
- Destruction of products.
- Demolishment of buildings.
- Withdrawal or retention of equipment, installations or accessories.
- Prohibition or stoppage of activities or construction.

### **Criminal penalties**

Illegal commerce is punished with fines from 100 to 200 times the minimum wage and/or from three to five years of imprisonment for any product, except for medications, in which case the maximum of imprisonment is raised up to ten years.

The offences that constitute illegal commerce and pertain to safety products obligations breaches are:

- manufacture or selling within Dominican Republic territory of products not complying to legal or technical regulations;
- modification, alteration or adulteration of products;
- manufacture, import, export, distribution, warehousing and commercialisation of adulterated, re-labelled, with inadequate ingredients, without active ingredients, with insufficient active ingredients, chemically/physically modified or counterfeit medications.

## **Health Infractions**

The General Law on Health No 42-01, voted on 8 March 2001, sets forth several penalties for the breach of safety products regulations, depending on the level of impact and the nature of the actions committed by the offender, as follows:

- from 15 days to one year of imprisonment for importing, commercialisation, selling or donation of prostheses, orthotics, functional aids products, diagnosis agents, dental products, surgical products or hygienic products, when these products are not in good condition, have defects or malfunction;
- from three months to two years of imprisonment and/or fines from 15 to 25 times the minimum wage, when:
  - (a) someone sells or packages potable water not complying with the quality norms issued by the Ministry of Health; or
  - (b) someone manufactures, manipulates, transports, warehouses, imports, exports, distributes or sells medications, foods and beverages, not appropriate for human consumption or not complying with conditions and requirements set forth in the applicable regulations;
- from two to ten years of imprisonment or fines from 25 to 50 times the minimum wage, when:
  - (a) someone alters, adulterates or contaminates products destined for human consumption, when it could jeopardise the health, physical integrity or life of individuals; and
  - (b) someone processes or uses pesticides or fertilisers breaching the safety regulations regarding avoidance of pollution of foods and other goods, and consequently might cause damage to the health of individuals.

Recidivism is punished with doubling of the aforementioned penalties.

## **Safety Obligations Regarding Aviation Products**

Violations to regulations issued by the Dominican Institute on Civil Aviation (IDAC) are punished with:

- a warning letter and corrective measures request issued by the corresponding authorities;
- fines, divided on three types (indexed as per the yearly inflation rate issued by the Dominican Central Bank) –
  - (a) from DOP5,000 to DOP200,000 for each violation and each day of continuous violation for general breaches;
  - (b) from DOP20,000 to DOP300,000 for each violation, when committed by a person that operates national aviation or international commercial transport;
  - (c) from DOP20,000 to DOP300,000 for each violation, when pertaining to transport of dangerous merchandise;
- suspension of licence or certificates, for a term of up to one year; and
- cancellation of licence or certificates.

## 2. Product Liability

### 2.1 Causes of Action and Sources of Law

There are two main causes of action for product liability in the Dominican Republic: administrative proceeding and court proceedings.

#### Administrative Proceedings

The General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, establishes an administrative proceeding in which the National Institute of Protection of Consumer Rights (Pro Consumidor) acts as an arbitrator receiving a complaint from a consumer and deciding it. The complaint is filed against the provider.

At the beginning, this proceeding intends to achieve an agreement between the customer and the provider. In case this agreement is not reached, Pro Consumidor is able to issue, after the conclusion of the proceeding and when detecting a violation of the aforementioned Law No 358-05, administrative penalties against the provider.

This type of proceeding is the most frequently used by consumers in this type of case, especially since any person can access it through a mobile app launched by Pro Consumidor.

The administrative procedure is not a prerequisite to filing civil and commercial liability lawsuits.

#### Court Proceedings

Customers have also the option to go to Dominican courts by filing a civil and commercial liability lawsuit or by filing a criminal complaint, depending on the circumstances of the case.

#### Civil and commercial liability lawsuits

There are two types of liability in Dominican Law: contractual and non-contractual liabilities. While contractual civil

liability is established in articles 1146 to 1155 of the Dominican Civil Code, non-contractual liability regimes are established in articles 1382 to 1386 of the Dominican Civil Code.

In general terms, in order to retain liability, Dominican Law requires a fault committed by the defendant that has been the direct cause of a damage suffered by the plaintiff.

Moreover, when contractual, Dominican Law requires in order to retain liability, the existence of a previous and valid contract between the parties, that has been breached or untimely complied, causing a damage to the victim.

As per Article 102 of the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, the manufacturers, importers, distributors, businessmen, providers, and any person that interacts in the production and commercialisation of products and services, are jointly and severally liable for compensations due to damages suffered as result of the technology, inadequate, insufficient or incomplete instructions regarding the use of said products or services.

When the aforementioned damage is caused by manufacturing defect, insufficiency or inadequate, insufficient or incomplete instructions regarding the use of the product or service, the same joint and several liability regime is enforceable to all parties within the commercialisation chain.

#### Penal complaint

The penal responsibility and its elements will depend on the offence committed. Civil liability can be brought to the same criminal court that is hearing the violation of the penal law, and the victim can pursue the compensation of the damages suffered due to the offence committed by the defendant. The elements for this liability action would be the same as for civil and commercial lawsuits.

### 2.2 Legal Standing to Bring Claims

Everyone who is considered as a customer or user of a product, whoever acquires, consumes or uses products or services, as well as any person directly affected or their heirs, has standing to bring administrative, civil and criminal claims for product liability. If the case includes a criminal offence of public prosecution, the District Attorney also has standing before criminal courts but cannot pursue compensation.

### 2.3 Time Limits for Claims

The statute of limitations for all actions based on the violation of General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, is of two years.

The statute of limitation for contractual civil and commercial liability is of two years. The statute of limitation for non-contractual civil liability is of one year for intentional deeds and



six months for non-intentional deeds or quasi-contractual matters.

For penal cases, the statute of limitations would depend on the extent and type of penalties for each offence: (i) for offences sanctioned with imprisonment, the term will be the maximum of the imprisonment penalty, with a minimum of three years and a maximum of ten years; (ii) for offences sanctioned only with fines or other types of penalties different from imprisonment, the term will be one year.

## 2.4 Requirements to Invoke Jurisdiction

Various legal provisions rule the jurisdiction of Dominican Courts.

In principle, civil and commercial lawsuits follow the rules of Article 59 of the Civil Process Code, according to which the competent jurisdiction is the court of the domicile of the defendant. Moreover, Law No 544-14 on International Private Law, voted on 14 October 2014, retains jurisdiction for Dominican courts for contractual obligations to be complied in Dominican territory, for non-contractual obligations when the damages are suffered or could be suffered in the Dominican territory and the victim is a Dominican resident, for consumer rights when the consumer is domiciled in the Dominican Republic and the provider makes business in the Dominican territory, for movable assets when the same are located in the Dominican territory.

In criminal matter, as per Article 60 of the Criminal Procedural Code, the competence is identified by where the offence was committed; when this location is undetermined, the jurisdiction is determined by the place where the evidence is located or the residence of the defendant.

## 2.5 Pre-action Procedures and Requirements

In general, access to Dominican justice cannot be subordinated to any formality since it is a constitutional right. Nonetheless, for contractual civil liability lawsuits, as per Article 1146 of the Dominican Civil Code, the plaintiff must request the defendant, prior to filing the lawsuit, to satisfy its obligation in a period of time. This request is not mandatory when the obligation breached was supposed to be performed in a certain time already expired, or when the obligation breached is a not-to-do obligation. However, the recent court precedents issued by the Dominican Supreme Court of Justice sets forth that by filing the lawsuit this previous requirement is fulfilled and therefore, in practice, the non-compliance of the same has no consequence and the lawsuit can continue normally.

## 2.6 Rules for Preservation of Evidence

According to the Article 118 of the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, the Executive Director of the National Institute of Protection of Consumer Rights (Pro Consumidor) can

collect evidences and make the investigations necessary to obtain any evidence, and can have access to any professional or commercial documents related with the product or services involved in the case. Breaching these rules would be sanctioned with an administrative fine depending on the extent of the infraction. In penal cases, prosecutors are charged with the preservation of the evidence's authority.

Moreover, in cases of illegal commerce, contraband and falsification of products, Law 17-19, voted on 20 February 2019, sets forth a crime of obstruction to justice and imposes penalties of three to five years of imprisonment and a fine of up to two hundred times the minimum wage to any person that uses force, threatening or intimidating behaviour, acts of bribery, or interferes with the recollection and presentation of evidence.

## 2.7 Disclosure of Documents

Article 121 of the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005, establishes that the evidence collected by the Executive Directorate of Pro Consumidor during an investigation is confidential regarding to third parties. In civil liability lawsuits, the discovery of documental evidences is performed as per the provisions of articles 49 to 59 of Law 834, voted on 15 July 1978 – that is, they are discovered spontaneously by the parties or by order of the court; a forceful discovery of a document can be ordered by the court at the request of either party, and even against a third party not included in the process before court. Dominican courts are entitled to lift any provision of professional secrecy in order to obtain an evidence discovery.

## 2.8 Expert Evidence

Experts can be used in the investigation followed by the Executive Director of the National Institute of Protection of Consumer Rights (Pro Consumidor) as per the provisions of Article 118 of the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005.

In a civil liability lawsuit, either party can request the court to order an expert report that could be performed by one to three expert(s) appointed by the court. In some court cases, the expert report is mandatory by law. Judges may not necessarily abide with the conclusions of the expert report.

In penal cases, prosecutors or the court can order and appoint experts to issue a report when necessary, depending on the nature of the case and the evidence required.

## 2.9 Burden of Proof

The main provision regarding the burden of proof is established in Article 1315 of the Dominican Civil Code, according to which anyone who alleges something at court must prove it: whoever claims to have a credit must prove the obligation, and whoever claims to have paid its debt must prove

the payment. Therefore, in principle, the burden of proof is on the plaintiff side.

The Dominican penal procedure is based on the accusatory system, therefore, the burden of proof is on the side of the prosecutor and the innocence of the defendant is presumed.

## 2.10 Courts in Which Claims are Brought

Product liability cases in the Dominican Republic can be brought, depending of the specific case, to civil courts and criminal courts. In both cases, a judge is responsible for deciding the case; when an appeal is filed, the Court of Appeals is composed of three to five judges who decide the appeal. The Supreme Court of Justice is divided into chambers composed of five judges; when reviewing a case for a second time, all 16 Supreme Court justices hear the case.

Administrative sanctions can be imposed by the Executive Director of the National Institute of Protection of Consumer Rights (Pro Consumidor). Appeals against administrative sanctions are made before the Administrative Superior Court composed of three to five judges.

Dominican Courts are not assisted by jury in any case.

There is no limit nor amount pre-set by law, to be awarded for damages, since the Dominican liability system is based on the entire restitution of the 'damage caused' principle. No punitive damages are awarded by Dominican courts.

There are no specific procedural requirements for product liability cases, which are brought in the same way as any ordinary case.

## 2.11 Appeal Mechanisms

For civil and commercial liability cases the term to appeal a sentence is one month, starting from the date of its valid notification as per Article 443 of the Civil Procedural Code; this appeal is brought to the Court of Appeals.

In criminal matters, the term to appeal is 20 working days, starting from the date of its notification as per Article 418 of the Penal Procedural Code. The Penal Chamber of the Court of Appeals hears these appeals.

Regarding the administrative appeal of the decisions to be issued by the National Institute of Protection of Consumer Rights (Pro Consumidor), the term is 30 working days as per Article 5 of the Law No 13-07 and Article 53 of Law No 107-13. This appeal is brought to the Superior Administrative Court.

## 2.12 Defences

It is possible to interpose different kinds of defences to product liability claims, depending on the circumstances of the case.

For instance, different kind of procedural incidents are available, such as nullity application, interposition of counterclaim, and defence to the merits of the claim, among others.

## 2.13 Regulatory Compliance

Regulation compliance can be decisive in the determination of liability existence within a product liability claim, since infringement of a regulatory requirement is considered as a fault. This fault could be considered at the time of imposing an administrative sanction, or when retaining liability if damages are caused as a consequence of said fault.

## 2.14 Rules for Payment of Costs

Article 130 of the Civil Procedural Code sets forth that a losing party will be ordered to pay the winning party the costs of the process. The same provision is established for penal cases in Article 246 of the Penal Procedural Code. Moreover, paragraph II of Article 9 of Law 302 on Legal Fees and Costs, voted on 30 June 1964, sets forth that the winning party, which has paid the fees of his attorney and has advanced the costs, could action against the losing party which has been ordered to pay the costs and legal fees.

After obtaining a winning decision, the party that intends to recover the costs of the proceedings will file a motion requesting the same court to issue an order authorising the amount of the costs and expenses. This order can be challenged by the opposing party before the superior court.

The statute of limitation for claiming the payment of legal fees and costs is two years.

## 2.15 Funding Availability

The form of funding a litigation will be determined by the type of service contract arrived with the counsel. Law 302 on Legal Fees and Costs, voted on 30 June 1964, does not restrict or forbid any form of legal service agreement. Therefore, 'no-win, no-fee' arrangements are permissible. Quota litis agreements are also permitted.

In some cases, third parties could, in fact, fund the proceedings or claims when the claimant has no means to pay the costs to be incurred. However, no regulations in this regard have yet been adopted by the law and it is usually made through an assignment agreement.

## 2.16 Class Actions, Representative Proceedings or Co-ordinated Proceedings

In principle, in Dominican law it is prohibited to file representative proceedings, since it is void to file a lawsuit by delegation. Class actions are limited to specific matters such as environmental and fundamental rights cases due to permits provided by the law.



## 2.17 Significant Recent Cases

Two noteworthy product liability cases heard by Dominican courts during recent years are the following.

### **Case of Liability for Selling a Used Car and Being Unable to Obtain Full Insurance Coverage Due to Various Previous Accidents**

The claimant initiated administrative procedure actions before the National Institute of Protection of Consumer Rights (Pro Consumidor), claiming against the local retailer and distributor that sold the car. Pro Consumidor, after the conciliation failed, issued a decision ordering the defendant to reimburse the amount paid for the purchase and did not order the claimant to give back the car to the seller. This decision violates the separation of powers principle instituted by the Constitution, by not limiting the decision to impose administrative sanctions provided by the General Law on Protection of Customer or User Rights No 358-05, voted on 9 September 2005. Moreover, the capacity to order the reimbursement of the price is the exclusive authority of the courts within a civil lawsuit. This decision has been appealed at the Superior Administrative Court and the President Judge has granted precautionary measures by suspending the execution of the decision issued by Pro Consumidor after considering it illegal.

### **Case of Liability for Violation of the Obligation of Security for Products**

In a car accident, the airbags did not deploy and the driver suffered permanent injuries, for which he filed a civil liability lawsuit against the manufacturer, the local distributor and the seller of the car. The courts retained liability and ordered to pay an amount of DOP15 million as compensation for damages. The case was twice reviewed by the Supreme Court of Justice after two revisions by the Court of Appeals and the decision was sustained due to the criteria that neither the fault committed by the victim nor the force majeure could in this case contradict the obligation of security that the manufacturer has pertaining to the activation or deployment of airbags in case of car accidents. Moreover, the court made a distinction between the obligation of security and the warranty for defects, especially regarding the terms of the statute of limitation, confirming the application of the two-year term.

## 3. Product Law Policy

### 3.1 Policy Trends

There are no recent notable trends in the development of product liability and safety law.

There has been a recent significant change regarding the approval of the Law on Eradication of Illegal Commerce, Contraband and Falsification No 17-19, voted on 20 February 2019.

The campaign of customer education and the accessibility of the app launched by the National Institute of Protection of Consumers Rights (Pro Consumidor) – enabling customers to claim in case of any issue relating to the selling of products or services – has attracted or increased the administrative processes filed, regardless of the quantity involved.

### 3.2 Future Policy

The Dominican Republic is undergoing a process of approval and implementation of several technical regulations for diverse sectors through the Dominican Institute for Quality (INDOCAL). Some of the already approved regulations are available at <https://www.indocal.gob.do/nordom-digitales/>.

There is a draft Act that proposes modifications to the Civil Procedure Code and the Civil Code before the National Congress. It is expected that the Civil Procedure Code could be approved in the first place, although not in the foreseeable future. The change of the proceeding rules would be likely to facilitate the instruction of the lawsuits and reduce the resolution time of the cases at court.

### **Pellerano & Herrera**

10 John F Kennedy Ave.  
Santo Domingo  
Dominican Republic

Tel: + 809 541 5200  
Fax: + 809 567 0773  
Email: [ph@phlaw.com](mailto:ph@phlaw.com)  
Web: [www.phlaw.com](http://www.phlaw.com)

