

# Executive Summary

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## Law on the promotion of tourist development for new or low development locations in provinces and districts with great tourist potential, and for the creation of the tourist promotion official fund

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With Law No. 158-01 on the Promotion of Tourist Development for New or Low Development Locations in Provinces and Areas with Great Tourist Potential, and for the Creation of the Tourist Promotion Official Fund (hereinafter the "Law"), enacted by the Executive Power on October 9 of the present year 2001, it is clear that the government's intentions are to follow the same path as Law No. 153-71 but focusing on specific territories whose tourist potential is yet to be developed. This intention was reaffirmed through the enactment of the Application Norms contained in Decrees Nos. 1125-01 of November 20, 2001, and No. 74-02 of January 29, 2002.

However, contrary to Law No. 153-71, the Law has a distinct emphasis on protecting the environment and the natural resources, granting significant participation to the Secretariat of State of the Environment and Natural Resources, which reflects the practical development in Dominican legislation of world-wide acclaimed concepts such as eco-tourism and sustainable development.

### I. OBJECTIVE OF THE LAW

The main objective of the Law is to speed up a rationalized process for developing the tourist industry in those regions with great potential or that combine the natural conditions for tourist exploitation countrywide.

Though the objective is not restricted to the areas declared as tourist areas, the Law mentions specifically the following tourist areas and districts:

- Tourist Area No. 4, Jarabacoa and Constanza (Decrees Nos. 1157 of July 31, 1975; and 2729 of September 2, 1977);
- Tourist Area IV, expanded: Barahona, Bahoruco, Independencia, and Pedernales (Decree No. 322-91 of August 21, 1991);
- Tourist Area V, expanded: Montecristi, Dajabón, Santiago Rodríguez, and Valverde (Decree No. 16-93 of January 22, 1993);
- Tourist Area VIII, expanded, which includes the Province of San Cristóbal and the Palenque district; the provinces of Peravia and Azua de Compostela (Decree No. 197-99);
- Tourist Area combining the municipalities of Nagua and Cabrera (Decree No. 199-99);

### BACKGROUND

The Dominican Republic is the main tourist attraction of the Caribbean. Its geographic diversity, climate, natural resources, historic and cultural heritage make it the destination for investors.

Even though history presents the Dominican tourist industry as having had little intervention on the part of the legislative body, being its activities surpassed by the Executive Power, it is also true that the growth of the Dominican tourist industry has also been influenced by the legislative activity either through new laws or international agreements.

In 1971, Law No. 153 on Promotion and Incentive of Tourist Development was adopted, which provided fiscal incentives to local and foreign investors participating in the sector. This Law, whose entry into force coincides with the beginning of said industry in the Dominican Republic, was effective until 1992 when it was repealed by Law No. 11-92 that created the Tax Law of the Dominican Republic.

- f) Tourist Area of the Samaná province (Decree No. 91-94 of March 31, 1994);
- g) The Hato Mayor province and its municipalities; the El Seibo province and its municipalities; the San Pedro de Macorís province and its municipalities; the Espaillat province and the municipalities of Higüerito, José Contreras, Villa Trina y Jamao al Norte; the Sánchez Ramírez and Monseñor Nouel provinces; the Monte Plata province; and Guaigüí, La Vega.
- h) The Santiago province and its municipalities; and,
- i) The municipality of Las Lagunas de Nisibón, and the sections of El Macao, Uvero Alto y Juanillo, in the Altagracia province.

The Tourist areas of Puerto Plata or Costa de Ambar, Santo Domingo, and others that would have benefited from incentives in hotel facilities, through the Law will benefit only specific tourist activities except for hotel facilities, resorts, and/or hotels.

## **II. ¿WHO QUALIFIES FOR INCENTIVES AND BENEFITS?**

### *General principle*

According to article 2 of the Law, every individual or company residing in the country could obtain the incentives and benefits provided by it, as long as they promote or invest capital in any tourist activity specified in the Law at any of the tourist areas and/or provinces and/or districts specified under **article I** of this summary.

However, provision of such incentives and benefits will be strictly limited to new projects whose construction begins after the enactment of the Law.

### *Specific Tourism Activities*

For the purposes of this summary, we have considered as Specific Tourism Activities those restrictedly indicated under article 3 of the Law, whose implementation by local or foreign enterprises residing in the country would be considered of special interest for the Dominican Government. Such activities include the following:

Hotel facilities, resorts and/or hotel enclaves;

- 1. Hotel facilities, resorts and/or hotel enclaves;
- 2. Construction of facilities for conventions, fairs, international conferences, festivals, shows, and concerts;
- 3. Enterprises promoting activities for cruises that would use as mother-port for the departure and final destination of their ships any of the ports specified in the Law;
- 4. Construction and operation of amusement parks and/or ecological parks and/or theme parks;
- 5. Construction and/or operation of port/maritime infrastructures to provide tourist services, such as recreational and maritime ports.

- 6. Construction and/or operation of tourist infrastructures, such as aquariums, restaurants, golf courses, sports facilities, and any other that could be classified as an establishment for tourism activities;
- 7. Small and medium enterprises whose market is based primarily on tourism (handicrafts, ornamental plants, tropical fishes, farms to reproduce small endemic reptiles, and others of similar nature);
- 8. Infrastructure enterprises that provide basic services to the tourism industry, such as aqueducts, treatment plants, environmental sanitation, collection of garbage and solid wastes.

## **III. PROCEDURES BEFORE THE RELEVANT AUTHORITIES**

### *Council for the Promotion of Tourism*

Implementation of the Law falls on the Council for the Promotion of Tourism (CONFOTUR). Said Council will be chaired by the Secretary of State of Tourism and will be composed of:

- a) Secretary of State of Finance or his/her representative;
- b) Secretary of State of the Environment and Natural Resources or his/her representative;
- c) Secretary of State of Culture or his/her representative;
- d) a representative from the National Association of Hotels and Restaurants, Inc. (ASONAHORES).
- e) a representative from the Technical Under-secretariat of Tourism, who will act as Secretary;
- f) a renowned expert on environmental impact, chosen by the Secretariat of State of the Environment and Natural Resources;
- g) a representative from the Secretariat of State of Culture.

### *Technical Office for Planning and Programming*

The Technical Office for Planning and Programming is the body of the Secretariat of Tourism in charge of preparing sectoral development plans and guidelines that reflect the priorities of the tourist services, aiming at implementing those tourist projects applying for the benefits of the Law according to such plans and guidelines, previously approved by the Secretariat.

This Technical Office is responsible for all matters regarding the reception and handling of applications for classification and concession of incentives filed at CONFOTUR, and also to contact and offer investors all relevant information.

## **IV. REQUIREMENTS FOR FILING APPLICATIONS**

New projects applying for the incentives and benefits created by the Law must be drawn up and presented together with an application

letter describing the project, and accompanied by the following documents:

1. Description of the promoter or investor;
2. Economic and financial feasibility study of the project;
3. Architectural design and engineering plan of the project;
4. Project organization and implementation;
5. Marketing and promotion plan;
6. Evaluation of social benefits;
7. Bank and commercial references of the promoter or investor;
8. An environmental impact study considering the type of project, required infrastructure, impact zone, and sensitivity of the area, approved by the Secretariat of State of the Environment and Natural Resources in conformity with the provisions of the General Law No. 64-00 on the Environment and Natural Resources, its regulations, norms, and sectoral laws;

The Secretariat of State of the Environment and Natural Resources will be responsible for guaranteeing that during the construction and operation of any enterprise established in agreement with the benefits of the Law, all resources within the impact area be respected and preserved. To that effect, the Secretariat must demand the relevant environmental impact studies.

No enterprise may receive the incentives established by the Law nor can authorities provide them with such, if the investor does not have the required environmental license provided by the Secretariat of State of the Environment and Natural Resources.

9. An architectural draft plan, as well as all preliminary engineering details for same, prepared by a professional or renowned firm of apt Dominican professionals, legally established. Advisories, consultations, or participation by foreign experts in developing preliminary architectural/ engineering studies, or during the subsequent development stages of the project, will be carried out by a local professional firm or one duly authorized which will in charge of its development and will be legally responsible for it.
10. Projects that foresee handling volumes of fuel and/or involving intense ship traffic must be accompanied by a contingency plan to prevent and control fuel spills.
11. Projects must have evidence of preliminary approvals by the relevant urban planning and municipal bodies of their jurisdiction.
12. Before construction begins, and once all required authorizations have been obtained, all infrastructure projects must present a bank guarantee to cover for environmental restoration expenses, in the event of any environmental damages caused by the promoter's negligence.

## **V. THE PROCEDURE**

Classification applications on the part of those interested in following the terms of the Law must be submitted to the Technical Office for Planning and Programming, of the Secretariat of State of Tourism, which will keep a registry of the applications in agreement with CONFOTUR's regulations.

Within thirty (30) days after the applications have been filed, the Technical Office will deliver its evaluation to the Directory stating their conclusions and recommendations for the project in general as well as for each one of its elements.

Once projects are delivered to CONFOTUR, they will be either approved or rejected, with reasonable grounds, in a period not to exceed, in total, sixty (60) days.

Those classification applications favorably accepted by CONFOTUR, will be subject to a resolution containing the technical and economic specifications upon which the decision was based.

On the other hand, applications rejected by CONFOTUR may be submitted again once the situation that caused their rejection has ceased or has been corrected.

Based on the application regulations, CONFOTUR could dictate resolutions to grant provisional classification of the tourist project when its investor -whether an individual or a company- is still in the process of being established or when the application is not complete. It is important to point out that this classification only exempts from companies' incorporation taxes. This exemption also includes taxes on capital increases of companies that have already been incorporated.

A period not to exceed three (3) years, in any case, will be granted to initiate sustained or uninterrupted operations of the approved project; non compliance with such period will ipso facto imply the loss of the acquired exemption right. However, Regulation No. 1125-01 establishes that the deadline for the construction work to begin will be adjusted to the requirements of each project.

In principle, no infrastructure project will be approved within any protected area or national park, unless the Environmental Impact Study approved by the Secretariat of State of the Environment and Natural Resources proves that it will constitute no threat to the preservation of the natural resources, nor to the fauna or flora.

The Secretariat of State of the Environment and Natural Resources is thereby responsible for guaranteeing compliance with the provisions indicated in the previous paragraph. In addition, and through a special regulation, that once approved by the Executive Power, will determine the criteria, norms, and procedures that will regulate the approval of projects established within any protected area or national park, in conformity with the provisions of the General Law No. 64-00 on the Environment and Natural Resources, its Sectoral Law on Protected Areas, and the Territorial Ordering or Management Plan for each protected area approved by this Secretariat.

## **VI. INCENTIVES AND BENEFITS**

In order to achieve its purpose, the Law and its regulations grant a series of incentives to projects and investments that meet the objectives and goals identified by them.

Given that the Law grants benefits to projects as well as to investments, we find that it mainly establishes two types of benefits: a) Exemptions and b) Deductions.

### a) Exemptions

Companies domiciled in the Dominican Republic that wish to benefit from the Law, will enjoy an exoneration of one hundred per cent (100%) applicable to the following items:

1. From income tax generated from the promotion, implementation, or capital investment in specific tourism activities and in one of the areas stated under article I of this summary.
2. From national and municipal taxes collected for the use and issuance of construction permits, including the land purchase acts, as long as it is used for developing a specific tourism activity. This includes Transfer Taxes on Real State Rights (sale, in-kind contributions, and any other real state transfer) with regards to the land and its constructions, either to incorporate them to the project or to transfer them to investors or buyers.
3. From import taxes and other duties, such as rates, rights, surcharges, including the Tax on the Transfer of Industrialized Goods and Services (ITBIS) that may be applicable on the equipment, materials, and furniture required for the first equipping and initiation of operations of the tourism establishment in question. This includes all services, materials and equipment to be used in the construction of the facilities.

The fiscal exemption period applicable to any tourism project, business or enterprise is for ten (10) years, counted as of the date of termination of the construction work and equipping of the project subject to the incentives.

Also, national and international funding as well as their interests, granted to companies that are benefited by the incentives of the Law, shall not be subject to the payment of taxes nor to withholdings.

There is also a total and absolute exemption on the equipment and machineries necessary to achieve a high-profile quality product (furnaces, incubators, treatment plants for production control, and laboratories, among others), at the time of establishment.

We most emphasize that the provinces of Santiago and its municipalities and La Altagracia and its municipalities will only be exempted of taxes for the construction and equipment of hotels, but not for the exemption of income tax as indicated in item (1) of the present sub-section (A). It is important to mention that this exemption refers only to specific hotel operations, remaining under the benefits of such exemption and any other exemption established by the Law.

### b) Deductions

The Law empowers individuals and companies to deduct or abate up to 20 per cent (20%) of their annual utilities, as long as they invest them in some tourism project that falls within the sphere of the Law.

Finally, in general, the Law establishes a ban to establishing new taxes, tolls, rates, etc., during the period of fiscal exemption.

## **VII. THE SANCTIONS**

The Law set forth sanctions such as the loss and suspension of all benefits granted, which are independent from any other civil or penal sanctions established by Dominican laws and particularly by the General Law No. 64-00 on the Environment and Natural Resources.

Incentives granted by the Law are lost due to:

1. Non compliance on the part of a company or investor with the laws, norms, and regulations of the tourism activities, as determined by the Secretariat of State of Tourism;
2. Non compliance on the part of a company or investor with the guidelines and norms established in the Territorial Ordering Plan of the region where the investment is implemented, as determined by the Secretariat of State of the Environment and Natural Resources.
3. Harm caused to the environment and natural resources by the operations of a company, and the environmental authorities establish that an environmental felony has taken place, in accordance with General Law No. 64-00 on the Environment and Natural Resources, its regulations, norms, and sectoral laws.

Violation of the Law on the part of individuals or companies implies automatically losing all incentives as well as payment of the corresponding sums that had been exempted.

The Secretariat of State of Tourism is in charge of safeguarding compliance with the provisions of the Law, which it carries out through inspectors, who, duly authorized, could inspect the entire area, and, in the case of violations of the Law, or its regulations or all rules to that effect, the inspector must draw up a verification report, which will serve as proof until evidence to the contrary is submitted.

The Secretariat of State of Tourism must deliver these reports to the Attorney General who, in turn, will deliver them to the public prosecutor of the respective judicial district.

To impose a sanction that implies suspension of all incentives, the Secretariat of State of Tourism or that of the Environment and Natural Resources, as the case may be, must issue a resolution recommending said suspension to the Secretariat of State of Finances.

## **VIII. THE TOURIST PROMOTION OFFICIAL FUND**

The Tourist Promotion Official Fund (TPOF) was created in order to provide the Dominican Republic with more effective promotion as a

tourist destination in the international markets, and to provide more economic support to the new tourist areas created by the Law.

The TPOF shall be managed by the Secretariat of State of Tourism, with counseling from the private sector, mainly from the Asociación Nacional de Hoteles y Restaurantes, Inc. (ASONAHORES) and other institutions.

The TPOF will be funded and administered according to the following provisions:

a) From the revenues collected from application of the aeronautical rate to each passenger transported on incoming/outgoing regular,

non-regular, or chartered international flights, charged by the General Directorate of Civil Aeronautics (GDCA), 50% will be specialized for the TPOF under the management of the Secretariat of State of Tourism;

- b) The remaining 50% corresponds to the operational fund of the GDCA, to be used in specific programs of that Directorate, in order to improve security of Dominican civil aviation;
- c) All earnings generated by tourist cards in every airport and port of the country shall be deposited directly in the OFTP account, under the management of the Secretariat of State of Tourism.

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