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Contributing editor:

Homer E Moyer Jr
Miller & Chevalier Chartered

Business development manager

Joseph Samuel

Marketing managers

Alan Lee
George Ingledew
Robyn Hetherington
Dan White
Tamzin Mahmoud
Ellie Notley

Subscriptions manager

Nadine Radcliffe
subscriptions@
gettingthedealthrough.com

Assistant editor

Adam Myers

Editorial assistant

Nina Nowak

Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Senior subeditor

Kathryn Smuland

Subeditors

Ariana Frampton
Charlotte Stretch
Peter Beech

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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Dominican Republic

Marcos Peña-Rodríguez and Carmen Amaro Bergés

Jiménez Cruz Peña

1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The Dominican Republic is party to the Inter-American Convention Against Corruption as ratified by Resolution No. 498 of the Dominican Congress on 21 October 1998. Upon congressional ratification, an international convention is considered part of the country's internal legislation pursuant to section 26.1 of the Dominican Constitution.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The relevant Dominican laws that prohibit bribery of domestic and foreign public officials are:

- Law No. 41-08 of Public Service that Creates the Secretariat of State for Public Administration, enacted in 2008 (Law No. 41-08);
- the Penal Code of the Dominican Republic, enacted in 1884 (Penal Code); and
- Law No. 448-06 of Bribery in Trade and Investment, enacted in 2006 (Law No. 448-06).

As for prohibiting the bribery of foreign public officials, in addition to Law No. 448-06, which defines it as 'transnational bribery', the provisions against such acts as stated within the Inter-American Convention Against Corruption (the I-ACAC) and chapter 18 on Transparency of the Free Trade Agreement between the Dominican Republic, Central America, and the United States of America (the DR-CAFTA) are the laws referenced in the cases in which these conventions are relevant.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Law No. 448-06 prohibits 'intentionally offering or promising a foreign public official, any article of monetary value, or other benefit, such as promise or advantage, for the public official or any other person, in exchange for any act or omission, in the performance of that official's public functions, regarding issues that affect international trade or investments [...]'. The elements considered are:

- an offer or promise;
- an intent to make such an offer or promise;
- something of value;
- the act or omission of the public official;
- the fact that such act shall be connected to its function; and

- the relationship of such act with international trade or investments. The law does not require the actual commission of the act. For purposes of culpability, it is sufficient for the actor to have intentionally made an offer or promise.

The I-ACAC prohibits the following:

the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

The DR-CAFTA prohibits the following:

any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

4 Definition of a foreign public official

How does your law define a foreign public official?

Both Law No. 448-06 and chapter 18.10 of the DR-CAFTA defines foreign official as follows:

any person holding a legislative, administrative, or judicial office of foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organisation.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

Providing a foreign official with gifts, travel, expenses, meals or entertainment is always forbidden under the laws of the Dominican Republic.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Our laws and regulations do not permit facilitating or 'grease' payments for either domestic or foreign activities.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

There are no laws or regulations that directly address payments through intermediaries or third parties to foreign public officials. Nonetheless, Dominican anti-bribery laws are sufficiently broad in that any payment made to a foreign public official may be considered bribery, and therefore, payments made to foreign public officials through intermediaries or third parties would also be forbidden under Dominican law. If a payment to a foreign official was to be made by an intermediary, both the intermediary and the principal may be criminally charged.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Law No. 448-06 establishes that both individuals and companies can be held liable for bribing a foreign public official. However, it should be noted that this law is only applicable in matters related to trade and investment.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

Yes, there is civil and criminal enforcement of the Dominican Republic's foreign bribery laws (see question 15).

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

We do not have government agencies that specifically handle the enforcement of foreign bribery laws and regulations. The expectation is that the district attorney's office would deal with these types of cases. For domestic matters dealing with public officials who are employees of the Dominican government, the Ministry for Public Administration and the National Agency for Prosecution of Administrative Corruption are the agencies with the proper jurisdiction to take action on any breach of our internal bribery regulation.

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

There are no mechanisms for companies to disclose violations in exchange for lesser penalties. Notwithstanding the foregoing, prosecutors may request leniency on the charged person and ask for a conditional partial suspension of the sentence.

Conditional partial suspension of the sentence means that the court conditionally shortens a sentence. Such a lighter sentence is conditional upon the completion of certain acts as determined by the court. Said acts may include community service projects, completion of a scholastic programme or maintaining good behaviour in prison. This suspension is only extended under extraordinary circumstances, including the disclosure of violations.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

The violation of laws and regulations prohibiting bribery is considered a public criminal offence. As a result, such violations cannot be resolved through plea agreements, settlement agreements, prosecutorial discretion, or other similar means without a trial.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Although administrative corruption, including bribery, is on the government's agenda, we do not foresee any aggressive shifts in enforcement patterns of the foreign bribery laws and regulations because no domestic cases have been tried under Law No. 448-06.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

The Dominican legal system does not regulate the prosecution of foreign companies for foreign bribery. Dominican laws have a territorial effect, which means they only apply to Dominicans or foreigners (corporations or individuals) when committing acts that take place in the Dominican Republic.

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

Civil and criminal penalties can be imposed on both individuals and companies for violating Law No. 448-06.

Individuals and companies can be fined up to an amount of twice the gross of the reward offered, promised or granted. For individuals, this fine can never be less than the sum of 50 monthly minimum wage salaries, and for companies, this fine can never be less than the sum of 70 minimum wage salaries. The current monthly minimum wage salary is 6,400 Dominican pesos, which is subject to annual modification by the Salary Commission for the Ministry of State of Labor. In addition, individuals can also face up to 10 years of imprisonment.

If the individual is a professional, owner, or representative of a company from the industrial, commercial, agro industry, or service sector, a sentence may include the suspension of his or her licence up to five years. The sentence could also authorise the shut-down or an intervention of the professional establishment or company under his or her responsibility.

In addition to the monetary fine, companies may face the shutting down or intervention of its commercial operations for a period of two to five years. Also, the legal representative could face up to 10 years of imprisonment.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

To date, we have not had any landmark decisions or investigations involving the violations of laws prohibiting bribery of foreign officials.

Financial record keeping**17 Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The laws that require accurate corporate books and records, effective internal company controls, and periodic financial statements or external auditing are the following:

- General Law on Business Associations and Limited Liability Proprietorships, No. 479-08 (Law No. 479-08);
- Law No. 16-92, commonly known as the Labor Code; and
- Law No. 11-92, commonly known as the Tax Code.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Dominican laws and regulations associated with the payment of bribes do not require a company's disclosure of violations. Nonetheless, Law No. 479-08 requires the company's comptrollers to disclose any irregularity or inaccuracy detected at the shareholders' meeting. Moreover, pursuant to article 258 of Law No. 479-08, the comptroller may be held civilly and criminally liable for failing to disclose any violation carried out by the company.

In addition, the company's administrators, representatives, and managers are required to act loyally and diligently and to disclose any detected irregularity.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

The aforementioned regulations may be used to prosecute both domestic and foreign bribery.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There are no laws or regulations that specifically establish sanctions for violations of the accounting laws associated with the payment of bribes. For accounting violations in general, the comptroller, president, administrators or managers of a company can face a fine up to the sum of 60 monthly minimum wage salaries and up to three years of imprisonment. Some of these accounting violations include knowingly providing inaccurate information on the company's status or the falsifying of any book, record, or account to cover up the company's actual financial state.

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

No, Dominican tax laws do not refer specifically to the prohibition of the deductibility of domestic or foreign bribes; notwithstanding the foregoing, article 288 C of the Dominican Tax Code establishes that the losses derived from illegal transactions will be considered as unallowable deductions. In addition, article 288 E provides that expenses without an existing receipt with a fiscal or tax verification number will be considered as an unallowable deduction.

Considering the aforementioned, it can be reasonably concluded that any bribe payment whether domestic or foreign, may not be considered as a deductible expense.

Domestic bribery**22 Legal framework**

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Laws concerning bribery of public officials prohibit:

- public officials from accepting directly or through a third person gratuities, gifts, commissions or rewards as payment for acts related to their positions; and
- offering to a public official, directly or through a third person, gratuities, gifts, commissions or rewards as payment for acts related to their positions.

Update and trends

With the entry into force of the DR-CAFTA and its implementing legislation, it is likely that the government of the Dominican Republic will give more importance to the enforcement of the country's anti-corruption laws.

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. Dominican law prohibits the payment of a bribe and the solicitation or acceptance of a bribe by a public official.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

Under the Dominican law, the term 'public official' means any official or employee of the state or its dependencies, including those who have been selected, appointed or elected to perform activities or functions in the name of the state or in the service of the state, at any level of its hierarchy. Therefore, any person or employee occupying a position of public trust is considered a public official, including those working for state-owned or state-controlled companies.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Public officials may participate in commercial activities while serving as a public official only if the outside employment does not conflict with their official duties; and if the commercial activity does not involve public institutions, especially the one in which the public official works.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Providing public officials with gifts, travel expenses, meals or entertainment is forbidden under the laws of the Dominican Republic. The scope of these laws covers both the providing and receiving of such benefits.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

No type of gift is permitted under our domestic bribery laws. Nonetheless, it should be noted that a common practice in the Dominican Republic is to offer Christmas gifts to public officials. While these gift endowments are not sanctioned, the National Agency for Prosecution of Administrative Corruption reminds public officials every year that they are forbidden from 'accepting directly or through a third person gratuities, gifts, commissions or rewards as payment for acts related to their positions'.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

There are no laws or regulations that specifically address the prohibition of private commercial bribery. Nonetheless, when an employee accepts the payment of a bribe, it is considered as a dishonourable act. These type of actions are prohibited by the Dominican Labour Code and are considered a just cause to terminate a labour contract.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

Under Dominican law, both the provider and the recipient of a bribe can face the following sanctions in violation of the domestic bribery laws:

- social degradation (*degradación cívica*);
- a fine up to two times the monetary equivalent of the bribe;
- imprisonment from six months up to five years; and
- up to 20 years of imprisonment, if the purpose of the bribe has a criminal implication.

In addition, public officials can face disciplinary action by their employing agency or body.

For violations that affect matters related to trade and investment, see question 15.

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

As stated in question 6, our laws and regulations do not permit facilitating 'grease' payments; however, no case has been reported in which a 'grease' payment is the basis for a claim.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

To date, we have not had any landmark decisions or investigations involving the violation of laws prohibiting bribery of foreign officials.



Marcos Peña-Rodríguez

mpena@jcpdr.com

14th Floor Citi Tower at Acrópolis
Winston Churchill Avenue
Santo Domingo
Dominican Republic

Tel: +809 955 2727
Fax: +809 955 2728
www.jcpdr.com

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