

Dominican Republic

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I. OVERVIEW

1. What are the key features of the investment treaties to which this country is a party?

BIT Contracting Party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Argentina (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chile (8 May 2002)	Yes	Yes	Yes	Yes	Yes	4 months	Yes	Yes
Finland (21 July 2007)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
France (23 January 2003)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Italy (18 July 2007)	Yes	Yes	No ¹	Yes	Yes	6 months	Yes	Yes
Morocco (4 January 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Netherlands (1 October 2007)	Yes	Yes	Yes	Yes	Yes	4 months	Yes	Yes
Panama (19 September 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
South Korea (21 May 2008)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Switzerland	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Taiwan, Republic of China (27 November 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes

FTAs/EPAs	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
DR-CAFTA (1 March 2007)	Yes	Yes	Yes	Yes	No	6 months ²	No	Yes
Economic Partnership Agreement between the CARIFORUM States and the European Community (29 December 2008 – provisional application)	No	No	No	Yes	No	None	No	No
Dominican Republic-Central America FTA	Yes	Yes	Yes	Yes	No	5 months	Yes	Yes
CARICOM-Dominican Republic FTA (5 February 2002)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes

II. QUALIFYING CRITERIA

2. Definition of investor

What are the distinguishing features of the definition of 'investor' in this country's investment treaties?

Issue	Distinguishing features in relation to the definition of 'investor'
Nationality	The term 'investor' is normally defined to include only nationals of a Contracting Party. However, only citizens are afforded protection under the Taiwan BIT, and the CARICOM-Dominican Republic FTA. The Spain BIT only refers to legal residents.
Dual nationality	In the DR-CAFTA, 'a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality'. The Argentina BIT does not protect nationals of a Contracting Party who have had their residence for more than 2 years in the territory of the other Contracting Party, unless that person demonstrates that the investment was authorized from abroad. No other investment treaty refers to dual nationals.

Seat of business / Real economic activities	Most Dominican investment treaties provide that a corporation incorporated according to the laws of a Contracting Party and having its place of business in the territory of that Contracting Party, qualifies as 'investor'. Other treaties (such as Chile, Finland, Italy, Panamá, South Korea and Switzerland) also require that the corporate investor carries out real economic activities in the territory of a Contracting Party. The DR-CAFTA and the Dominican Republic – Central America FTA not only consider as investor an enterprise organised under the law of a Party, but also a branch located in the territory of a Party and carrying out business activities there.
Control by a national of a Contracting Party	Six Dominican treaties include in their definition of 'investor', companies organized under the laws of a non-contracting party that are controlled, directly or indirectly, by nationals or corporations of a Contracting Party. The BITs with Argentina, Morocco, South Korea, Spain and Taiwan, the FTAs, do not expressly protect corporations of a non-contracting party.

3. Definition of investment

What are the distinguishing features of the definition of 'investment' in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of 'investment'
Eligible assets	All BITs provide a broad definition of investment to include 'every kind of asset' owned or controlled by a national of one Party in the territory of the other Contracting Party, followed by a non-exhaustive list of qualifying assets. The DR-CAFTA and the Dominican Republic-Central America FTA define in more extent this term to include every asset that an investor owns or controls, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.
Indirect control of assets	Only the DR-CAFTA includes in the definitions of investment, assets owned or controlled, directly or indirectly, by a protected investor.
Excluded assets	The Dominican Republic-Central America FTA excludes from the definition: a payment obligation or investment 'payment obligation nor credit grant to the state or state agency', 'monetary claims resulting from commercial contracts', 'credit grant for a commercial transaction with a term not exceeding one year'. The Argentina and Spain BITs includes loans only when these are directly linked to a specific investment; other treaties do not make such distinction.
Compliance with the law	Most treaties (with the exception of Netherlands, Switzerland and Taiwan) contain an express clause requiring any investments to be in compliance with national law.
Modification of the investment form	Most Dominican investment treaties expressly provide that the modification of the form in which the investment was made, does not affect its nature as 'investment', provided that the modification is not contrary to the laws of the Contracting party host of the investment.
Commencement of treaty protection	Most Dominican investment treaties protect all existing investments whereas others only protect investments made after the entry into force (DR-CAFTA and the Dominican Republic-Central America FTA). Some treaties expressly provide that they do not apply to disputes that arose prior to the treaty's entry into force (Netherlands, Switzerland, Morocco, or to disputes that are directly related to acts that took place before the treaty's entry into force (Chile, Italy and Panama BITs).

III. SUBSTANTIVE PROTECTIONS

4. Fair and equitable treatment

What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Unqualified obligation to accord fair and equitable treatment	Most treaties contain a general statement to the effect that the parties will accord fair and equitable treatment to the investments of investors from the other Contracting Party (Chile, Morocco Netherlands, Panama, Spain and Taiwan BITs and Caricom FTA). The approach of other treaties, such as the France BIT and the DR-CAFTA, is to require fair and equitable treatment with additional substantive content such as denial of justice.
Relationship with customary international law	The France BIT, the Dominican Republic-Central America FTA and the DR-CAFTA limit the standard to the treatment required under customary international law.

5. Expropriation

What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Right to regulate for a public purpose	All Dominican treaties provide that neither party will expropriate the investments of investors of the other Party, unless certain conditions are fulfilled: (i) the expropriation is in the public interest, (ii) the expropriation is not discriminatory, and (iii) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.
Indirect expropriation	11 Dominican investment treaties, including DR-CAFTA and CARICOM FTA, expressly protect against indirect expropriation. The DR-CAFTA is the only one to define what amounts to indirect expropriation.
Expropriation in accordance with due process or local laws	Some investment treaties require that expropriation occurs 'under due process of law' (Panama, Netherlands, Argentina and Finland BITs, and DR-CAFTA), while others state that expropriation must occur 'in accordance with the law' of the expropriating state (Italy, Switzerland, Spain, Taiwan, and South Korea BITs).
Assessment of compensation and payment	Most investments treaties provide that compensation shall be assessed based on the market value of the investments on the date immediately after the measure was adopted or made public, and payment shall be made without delay, including all accrued interests. Under the Italy BIT, compensation shall be paid within 6 months.
Right to local remedies	Some BITs (Chile, Panama, Italy and Finland) only provide access to local courts, for a dispute regarding the validity of the expropriation and the compensation. The Dominican Republic-Central America FTA also allows the dispute to be brought before an 'independent authority'.
Right to arbitration	Under the South Korea BIT, the investor may submit a dispute regarding expropriation to local courts, or to arbitration.

6. National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment/most favoured nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope of the treatment	Under Dominican investment treaties, the standards for most favoured nation treatment and national treatment generally extend only to investments and return of investments. Only 5 treaties extend most favoured nation treatment and national treatment to investors and their investments (Finland, France, South Korea, DR CAFTA and Dominican Republic-Central America FTA). The Switzerland BIT and DR CAFTA extend the guarantee of most favoured nation treatment to 'the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of the investment'. Other treaties extend the most favoured nation treatment to the expropriation proceedings. (France, Morocco.)
Exceptions to MFN treatment	Dominican BITs expressly provide that the most favoured nation treatment does not extend to privileges and benefits granted to nationals of a third state under customs unions, monetary unions or free trade area, or any agreements on taxation.
Limitation of national treatment	Under the France BIT, the Contracting parties shall apply national treatment according to the host state's laws and regulations.

7. Protection and security

What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the 'protection and security' standard
Extent of obligations	The standard varies among treaties. Some treaties (Argentina, Chile, Morocco, Panama, Taiwan and Spain BITs) only require the Contracting party to provide 'full protection' to investments. Others go beyond this limit, and provide 'full protection and security' to investments and, in some cases, to return of investments (Finland, France, Netherlands, South Korea and Switzerland BITs). There is no express obligation of this kind in the Italy BIT, however, the Contracting parties undertake to guarantee that the management, use, maintenance, transformation, assignment of the investment will not be subject to discriminatory and unjustified measures.
Relationship with customary international law	The DR-CAFTA provides that 'full protection and security' requires each Party to provide the level of police protection required under customary international law, while in the Dominican Republic-Central America FTA and the CARICOM-Dominican Republic FTA, the level of protection and security must be granted in accordance with international law.

8. Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any 'umbrella clause'
Scope	The Chile and Taiwan BIT provide that each Contracting shall respect all rights related to investments, agreements and authorizations, while the Finland and the Netherlands BIT state that the parties shall respect all obligations arising out of a specific investment. The Italy BIT orders the Parties to comply in good faith with the commitments made with investors, and the CARICOM-Dominican Republic FTA focuses on compliance with commitments regarding investment. The dispute resolution provision in the DR CAFTA grants an investor the right to bring an arbitration claim for breach of an obligation under Section A which refers to an investment, an investment authorization, or an investment agreement.

9. Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country's investment treaties?

Issue	Other substantive protections
Armed conflict and civil unrest	Except for France and Morocco, all Dominican BITs guarantee investors of Contracting Parties the most favoured nation treatment and national treatment in regards to compensation paid to their nationals or other investors of other states, in the case of armed conflict or civil unrest. The Italy BIT only refers to the most favoured nation treatment in such cases. The DR-CAFTA, Dominican Republic-Central America FTA and CARICOM-Dominican Republic FTA also guarantee most favoured nation treatment for compensation for losses.
Free transfer of payments	All investment treaties permit all transfers relating to a investment to be made freely and without delay into and out of its territory; most treaties provide a non-exhaustive list of payments that may be transferred freely. The Morocco and Chile BIT set a term of 60 days o 2 months for the transfer to be considered 'without delay'. In some treaties (Panamá, Morocco and Italy BITs), the protection is subject to the laws and policies of the host state, including those concerning bankruptcy.
Transparency	Some investment treaties, such as Chile, Panamá and Switzerland BITs, state that the parties shall exchange information regarding investments or benefits covered by such treaty. The CARICOM-Dominican Republic FTA provides that each Party shall publish all laws, judgments, administrative practices and procedures regarding investments, or which may affect the same. The DR-CAFTA requires transparency during arbitral proceedings.
Non-impairment	Most Dominican BITs impose upon the Contracting party in whose territory the investment was made, the obligation not to impair, by unjustified or discriminatory measures, the management, maintenance, use, capitalisation, disposal of any investment.

IV. PROCEDURAL RIGHTS

10. Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural rights
Waiver of local remedies	The South Korea BIT conditions the right to commence arbitration on an investor having waived its rights to initiate or continue any other proceeding relating to the alleged breach of the treaty before the courts of the Contracting Party concerned; however, the election to submit a dispute to arbitration may not preclude an investor commencing proceedings in local courts to obtain certain types of interim relief.
Fork-in-the-road	Only 7 Dominican investment treaties (Chile, Italy, Morocco, Panama Argentina and Finland BITs, and the Dominican Republic-Central America FTA) provide that once an investor submits a dispute to the competent tribunal of the Contracting Party or to international arbitration, that choice is final.
Arbitral fora	Most Dominican BITs provide that the investor may choose to submit the dispute to: (a) arbitration under the ICSID rules (although the Dominican Republic is not a member); (b) arbitration under the ICSID Additional Facility Rules; (c) ad hoc tribunal established according to the UNCITRAL arbitration rules. Some treaties (eg, Netherlands and Taiwan BIT) also provide as choice of forum the ICC Court. Under the Spain BIT the dispute can only be submitted to an ad hoc tribunal established according to the UNCITRAL arbitration rules.
Applicable law	Although most treaties are silent on the applicable law, the Dominican Republic-Central America FTA, and 3 BITs (Morocco, Taiwan and Spain) state that the arbitral tribunal shall decide the case based on (i) the provisions of the applicable BIT, (ii) rules of international law, (iii) national law of the Contracting party involved in the dispute, and (iv) provisions of the investment agreement. Under the France BIT, the dispute shall be solved based on the provisions of the BIT, rules of international law, and the provisions of the investment agreement.

11. What is the status of this country's investment treaties?

The Dominican Republic is in the process of negotiating new investment treaties (Haiti, Canada), and has not made any declarations indicating that it will not agree to investor-state dispute settlement provisions. After the enactment of the Arbitration Law No. 489-08 in 19 December 2008, and the amendment of the Constitution in 26 January 2010, which expressly recognizes the right of the state to submit to arbitration or a treaty dispute mechanism, it has become ordinary practice for the state to waive its sovereign immunity and submit disputes to arbitration.

V. PRACTICALITIES (CLAIMS)

12. To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	According to article 5 of the Arbitration Law No. 408-09, if the arbitration against the Dominican state arises out of a free trade treaty or an investment agreement, the claim is served on the National Treaty Coordinating Authority, which is Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales, a dependency of the Ministry of State for Industry and Commerce. This dependency must inform the Legal Counsel of the Executive Branch of claim notices received.
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13. Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department which manages investment treaty arbitrations	The National Treaty Coordinating Authority manages investment treaty arbitrations, along with the Legal Counsel of Executive Branch and the government agency involved in the claim.
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14. Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/external counsel	External counsels are often used by the state in investment treaty arbitrations. Dominican firms act as local counsels to assist external counsels with Dominican law matters. The state does not go through a formal public procurement process to hire external counsels. Article 5 of the Arbitration Law No. 489-08 requires that the legal counsel for the State has experience and knowledge in the subject matter of arbitration and the arbitration process itself.
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VI. PRACTICALITIES (ENFORCEMENT)

15. Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	The Dominican Republic signed the Washington Convention on 20 March 2000, but it has not been ratified by the National Congress.
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16. Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	The Dominican Republic is a party to the New York Convention, ratified through Resolution No. 178-01 issued by the National Congress on 8 November 2001, and in force as of 10 July 2002. No declarations or notifications were made under articles I, X and XI. The Arbitration Law No. 408-09 also governs the enforcement of arbitral awards.
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17. Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	Yes, Arbitration Law No. 489-08 governs the enforcement of commercial arbitration awards and arbitral agreements, and arbitration proceedings in the Dominican Republic. Also, Law 50-87 on Chambers of Commerce and Production, as amended by Law 181-09 dated 6 July 2009, contains a chapter on arbitration, and allows for international arbitration cases to be administered by the Alternative Dispute Resolution Centres of the respective chambers. The Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo enacted a new set of Arbitration Rules in July 2011
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18. Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	The investment treaty cases that have been filed against the Dominican Republic have been settled during the course of the proceedings. Two notices of intent to submit disputes to arbitration were delivered to the Dominican Republic in the past year, but these cases are still in the initial phase. At the beginning of 2012, an award under the Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce was rendered against the Dominican state in a toll road concession case. It was a commercial arbitration, but the state complied with payment of the award.
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19. Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	The Dominican Republic has participated in the arbitration claims, in compliance with the compromises assumed in treaties and agreements, and has not made any declaration showing a change of attitude towards arbitration. The Dominican Republic is not a member of ICSID, but has consented to submit claims under the ICSID Additional Facility Rules.
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20. To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	Since the investment treaty claims filed against the Dominican Republic were settled prior to a final decision, local courts did not deliver any decision with respect to these cases. However, arbitration has been gaining ground in the Dominican Republic as one of the preferred dispute resolution mechanisms, and local courts strongly support it.
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VII. NATIONAL LEGISLATION PROTECTING INWARD INVESTMENT

21. Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law 16-95 on Foreign Investment in the Dominican Republic ³	No	No	No	No	No
Constitution of the Dominican Republic	Yes ⁴	No	No	No	Yes ⁵

VIII. NATIONAL LEGISLATION PROTECTING OUTGOING FOREIGN INVESTMENT

22. Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
	No, the Dominican Republic does not have an investment guarantee scheme or offers political risk insurance that protects local investors when investing abroad.

IX. AWARDS

23. Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties

Awards
Société Générale, in respect of DR Energy Holding Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. the Dominican Republic, LCIA Case No. UN 7927. Award on Preliminary Objections to Jurisdiction, 19 September 2008.
Pending proceedings
Michael, Lisa and Rachel Ballantine v. Dominican Republic. Notice of intent to submit dispute to arbitration served on June 2014. The investors allege that the Dominican Republic acted inconsistently with its obligations under Chapter 10 of the CAFTA-DR. Corona Materials LLC v. Dominican Republic, ICSID Case No. ARB(AF)/14/3. Notice of intent to submit dispute to arbitration served on March 2014, and Notice of Arbitration served on June 2014. The investor contends that the Dominican Republic acted inconsistently with its obligations under Chapter 10 of the CAFTA-DR. The claim was filed under the ICSID Additional Facility Rules.

24. Reading list

N/A.

Notes

- 1 There is no express obligation to provide protection and security to investment or investors; however, contracting parties undertake to guarantee that the management, use, maintenance, transformation, assignment of the investment will not be subject to discriminatory and unjustified measures.
- 2 The DR CAFTA also requires that at least 90 days before submitting any claim to arbitration, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration.
- 3 Law 16-95 guarantees to foreign investors national treatment and free repatriation of capital, net dividends, royalties and fees. Foreign investors do not need any authorizations to invest, re-invest, or repatriate capital or earnings, but are advised to register with the Center of Exports and Investment of the Dominican Republic. All types of capital contributions (in cash, in kind, or in intellectual property and know-how), as well as acquisition of real estate and financial assets, qualify as investment.
- 4 Article 221 of the Constitution of the Dominican Republic guarantees equal treatment to foreign and local investors.
- 5 Article 220 of the Constitution recognizes the right of the state to submit to arbitration or a treaty dispute mechanism.