

Litigation 2017

# Dominican Republic

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**LATIN**LAWYER

Reference

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### General

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#### 1 Outline the court system in your jurisdiction.

There is only one justice system throughout the country.

Our justice system consists of 12 judicial departments, of which there are 11 in operation. Each judicial department in turn is composed of one or more judicial districts. Currently there are 34 judicial districts. Each judicial department is headed by an appellate court divided into chambers according to the nature of the case: civil and commercial chamber, criminal chamber, labour chamber, etc.

Exceptionally, in judicial departments of low population density, there is a single chamber for all subjects.

Judicial districts in turn are composed of a lower court, which in turn is usually divided into chambers by type of issue.

The Supreme Court is the highest court in the judicial system and its main function is to examine the appeals that are brought against the decisions of the courts of appeal.

The appeal does not look into the facts of the case, as this is limited to matters of law, namely whether the law has been properly applied to a particular case. Its decisions do not have a binding precedent effect on third parties.

There is also a constitutional court which oversees the supremacy of the constitution, the defence of constitutional order and the protection of fundamental rights. The decisions of the Constitutional Court are final and have binding precedent effects on all branches of the state.

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#### 2 What remedies are available to a local entity or resident that is in a dispute with a foreign entity? Do the laws provide foreign entities the same rights afforded to local entities? Are there laws requiring foreign entities to post a bond or other security before they can defend a suit?

In accordance with our constitution, all entities, both local and foreign, are equal before the law, so there is no kind of privilege in favour of a national body when it is in dispute against a foreign entity.

The article 8 of the law 544-14 – private international law – bans any bond or security based on the citizenship or residence of the plaintiff.

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#### 3 What is the process by which a foreign entity may challenge the jurisdiction or venue of the; court where litigation is filed? What factors are considered when a court evaluates whether; to exercise jurisdiction over a foreign entity?

The jurisdiction or venue could be challenged through a motion of lack of jurisdiction.

The main factors evaluated are the source of the conflict, the place of the conflict, the domicile of the defendant and the type of claim.

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#### 4 What is the most common type of litigation encountered in your jurisdiction by foreign entities?

The most common types of disputes is the breach of contract, also are commons the civil liability claims and debt collection lawsuits both civil and commercial. Labour disputes are equally common.

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#### 5 How frequently do parties pursue criminal actions in the context of commercial disputes? May criminal trial evidence be adduced in follow-on civil litigation? May civil cases be brought concurrently or after criminal litigation?

Criminal actions are open in the context of commercial disputes in cases where this is a violation of criminal law, however this does not happen very often.

You can use in civil litigation some evidence used in criminal proceedings. However, it should be noted that in commercial litigation proof means are more flexible than in civil litigation, where proof is essentially in writing.

Under the provisions of article 50 of the Penal Procedure Code, civil action can be brought together with the prosecution in the criminal courts. Similarly, civil action can be taken separately from the criminal action before the civil courts, in

such cases, the civil action must be suspended when prosecution is initiated, and criminal action takes precedence over the civil action. Additionally, the law seeks to avoid contradictions.

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#### 6 Is there a right to a trial by jury in a commercial dispute?

The justice system of the Dominican Republic does not provide for jury trials in trade, or any other matter.

Commercial disputes are resolved in a first-instance court by a single judge and on appeal by a court composed of five judges with the power to decide with three judges.

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#### 7 Do courts require or strongly encourage mediation or other alternative dispute resolution methods before or during a litigation proceeding?

In general, for civil and commercial disputes, courts do not require or suggest to the parties to use alternative methods of arranged. However, these methods of dispute resolution are available for solving certain types of disputes, as in the case of labour disputes which impose a preliminary procedure of conciliation, which is governed by articles 516 and following of the Labour Code.

The conciliation and mediation is also available for certain criminal conflicts. In this sense, articles 37 and 38 of the Penal Procedure Code indicate that conciliation is appropriate in wrongdoing and criminal actions where public interest is not compromised.

In cases where there are conflicts between insurance companies and policyholders, article 198 and following of Law No. 146-02 on Insurance and Bonding provides for a preliminary settlement with the regulator (Insurance Superintendency). Likewise, the indicated text provides for an alternate solution through arbitration.

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#### 8 Will choice of law and choice of forum provisions in a contract be recognised?

According to Law 544-14 on the private international right, the parties can make a choice of the forum and the law applicable to solve the litigation.

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#### 9 Does your jurisdiction have a specific arbitration law? Are arbitration awards enforced by the courts? May courts enjoin/prohibit arbitration proceedings in matters that are also pending in a court proceeding?

The Dominican Republic has a special law governing commercial arbitration, Law 489-08, published on 30 December 2008.

Foreign arbitration awards are enforceable according to the New York Convention of 1958 and the Panama Convention on International Arbitration of 1975 of which the Dominican Republic is a signatory.

Arbitral courts have the jurisdiction over all the conflicts that have been validly referred to it by the parties in an arbitration agreement.

Article 12 of Law 498-08 states that courts must disengage from all disputes which are subject to arbitration.

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#### 10 Do the courts recognise attorney-client privilege? If so, is the privilege applicable to in-house lawyers?

Local courts recognise professional secrecy governing the relationship between lawyer and client. This privilege is established in Decree 1290 dated 2 August 1983, which established the Code of Ethics for lawyers. Our legislation does not make any special provision for in-house lawyers. However, in their capacity as employees they are subject to the provisions of the Labour Code which establishes a confidentiality obligation for employees.

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#### 11 Are legal proceedings public? In other words, can the general public observe hearings and review the filings of the parties?

Legal proceedings are public, so stated in article 17 of Law 821 of 1927 on judicial organisation and article 87 of the Civil Procedure Code. Exceptionally, the law provides that some processes will be restricted to the public (fundamentally, those involving family disputes and the rights of minors).

In particular cases and for justified reasons, the trial judge may order that certain processes are held behind closed doors. In all cases the decision of the court shall be pronounced in public and anyone interested will have access to the file.

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#### 12 May a defendant join other potentially liable parties to the existing lawsuit?

In a trial, the defendant has the right to call onto the lawsuit anyone who he considers to be responsible, even if that party has not been identified by the defendant.

The service of process of a third party intervention is called compulsory and takes place through an incidental lawsuit and is regulated by articles 337 and following of the Civil Procedure Code.

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#### 13 How may a party enforce a foreign judgment?

The foreign court decisions are enforceable in the country following the procedure established in Dominican law.

As provided in article 89 of the law 544-14 the decisions of foreign courts are enforceable in the Dominican Republic by the declaration of enforceability by a local court – exequatur.

The exequatur or declaration of enforceability is a non-adversarial proceeding in which the judge does not examine the substance matters, but only the form matters.

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#### 14 How is service of process effected?

The interested person must file to the Civil and Commercial Tribunal of the First Instance Court of Santo Domingo, National District a request of exequatur. The request must have attached all relevant documents, mainly a legalised copy of the foreign judgment.

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**15 How much time does a party have to answer a complaint?  
Can a party extend this time?**

The Civil Procedure Code provides that a defendant has a period of eight days to appoint a lawyer and notify to the plaintiff.

For overseas residents the time frame is greater, since according to article 73 of the Code, the term indicated increases by reason of the distance between the place of residence of the defendant and the Dominican Republic.

Upon hiring an attorney, the defendant is not required to file its defence. This will be presented during the examination of the case made by the competent court.

The term for hiring an attorney cannot be extended by the defendant. However, in the civil litigation practice, the attorney can be called even on the same day of the hearing.

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**16 What types of pretrial proceedings are available in court?  
What kinds of dispositive motions can be filed before trial?  
Under what circumstances may a lawsuit be dismissed prior to trial?**

For civil and commercial matters is available a pretrial procedure to obtain injunction for judicial protection in case of urgency.

For labour matters is available a pretrial conciliation.

According with the local rules a lawsuit can only be dismissed after a trial.

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**17 How long does it take to obtain a first-instance judgment in a typical commercial litigation case?**

The time will depend on where the court is located. In cities with low population it takes less time than in the larger cities court, such as the capital, where obtaining a decision on commercial litigation can be delayed between four and 10 months from the date of the final hearing.

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**18 Is a party required to submit all facts, arguments and supporting evidence with its initial pleading?**

Article 61 of the Civil Procedure Code requires the plaintiff to indicate in its initial written statement the purpose of the lawsuit as well as a summary of the main arguments.

We must point out that it is not about initially exposing all proof means, arguments and evidence, but only a summary of these. The full disclosure of all evidence and arguments will be requested during the course of the lawsuit.

As to the defendant, the initial action should only list the name and address of the attorney to who he has entrusted its defence and legal representation.

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**19 Does litigation provide a process for investigating claims or right to discovery of evidence prior to trial?**

The procedural rules do not require the parties to present their evidence before trial.

As noted in the answer to question 16, prior to trial, the plaintiff must only specify the object of his claim and make a summary of the arguments. The presentation of evidence is only imposed during the investigation of the case.

In principle, the parties are required to submit all documents in the case. In practice, the evidence presented is only the one that can help the case of the party, excluding that which might affect it.

Based on the requirements of article 55 of the Civil Procedure Code, exceptionally and upon request of a party, the court may order the production of a particular document, if deemed relevant to the dispute.

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**20 Does litigation provide a process to subpoena or obtain documents or testimony from third parties?**

As for the evidence, the Civil Procedure Code state that the judge may order the production of testimonial information. For that, it will summon the witness or witnesses it deems can help solve the case.

Regarding obtaining documents held by third parties, the Code provides a procedure for the forced presentation of documents held by third parties. As pointed out by the text, the judge can instruct a third party to submit to the court any given document.

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**21 Does the judge or opposing counsel examine witnesses?**

In civil or commercial procedure, the witness interrogation can be done both by the judge and the lawyer of the opposing party. However, counsel for the opposing party can only question through the judge, that is, he should direct his questions to the judge, who in turn will ask them of the witness. It is an indirect questioning mechanism.

In criminal litigation, lawyers can directly question witnesses.

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**22 How may evidence be challenged? Are there specific rules of evidence?**

In civil and commercial litigation evidence must be submitted to the court during the investigation of the case. The evidence is deposited in the clerk's office and it is made available to the counterpart so that it can present his or her arguments and defences on the evidence presented.

Article 49 and following of Law 834 of 1978, indicates that the presiding judge has the power to set the terms and manner in which the evidence will be presented for discussion.

Articles 295 and following of the Civil Procedure Code, which govern the lawsuit incidents, indicate the different ways in which the evidence can be attacked.

Overall evidence can be attacked through ancillary lawsuits filed with the court hearing the case, which, depending on the type of incident, may hear and decide about the incident before deciding over the case or along with the decision of the case.

In criminal matters, articles 166 to 221, determine the process of presenting and challenging evidence.

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**23 Do courts typically allow hearings at or before a trial? At what stage may parties present expert witness testimony?**

In civil and commercial litigation holding one or more hearings is the general rule.

All expert witness intervention must be requested to the

court before filing formal conclusions. That is, during the investigative phase of the case.

Articles 302 and following of the Civil Procedure Code establishes the rules applicable to the expert. The article states that will always be up to the court to grant or deny the report of an expert, which, if granted, does not obligate or bind the court, it may use or dispose of the expert's report.

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#### 24 What must be demonstrated to collect a debt based on a written instrument?

Article 1315 of the Civil Code establishes the rule applicable to the case, that is, that everyone who is seeking enforcement of an obligation must prove its existence. Consequently, whoever demands payment of a debt contained in a written instrument must show that the claim is true and that is enforceable, for example, that the payment term has expired.

Additionally, the law requires that the creditor make a formal request for payment, it is made via a bailiff.

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#### 25 What remedies are available in your jurisdiction to a minority shareholder of a corporation in a dispute with the corporation or the majority shareholders?

Shareholders representing at least 5 per cent of the share capital of the company, have the right to know at any time the economic and financial stand of the company, as it is so provided by article 36 of Law 479-08 of Business Companies. While article 249 of the same law states that minority shareholders representing at least 10 per cent of the share capital are entitled to request to a court the removal of the accounts commissary in the case of his or her absence or incapacity.

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#### 26 What rights are available in the courts for someone holding a maritime lien interest in a vessel?

According to the provisions of article 190 of the Commercial Code, vessels and ships are considered personal property. In case of attachment or execution of the ship, privileged creditors have the right to collect preferentially over other creditors.

Article 191 of the indicated Code sets the different types of privileged debts and their order.

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#### 27 What rights are available for a party holding a security interest in real property and personal property? Are there expedited proceedings to allow the recovery of property serving as security for debt obligations?

The creditor who holds a guaranteed credit over a property, has a preference right over any non guaranteed creditor to collect his credit from the value of property. In the case of coexistence of various real estate guaranteed creditors, preference is regulated based on the range of collateral. The law provides different ranges of collateral.

A creditor who has a personal guarantee has a preferred right over all the assets of the debtor.

The Civil Procedure Code sets the standard procedure for the recovery of credits secured by property collateral.

For certain types of loans and based on the quality of the creditor, the legal system establishes special procedures to

expedite the execution of the guarantee. This is what happens to the banks, which on the basis prescribed by the Monetary and Financial Code (Law 183-02) benefit from a special process of property foreclosure. The same applies to creditors and mortgage recorded in Law 189-11, for the Development and Trust Mortgage Market.

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#### 28 Describe the types of employment disputes that frequently result in litigation.

The most common disputes are about the determination of just cause for dismissal without severance payment.

Also, conflicts with the determination of the amount of fringe benefits are very common, which may be paid by the employer in case of termination of the employment contract without cause.

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#### 29 Does your jurisdiction allow class actions or some form of collective litigation proceeding?

The Dominican Republic's legal system does not provide for class action. However, for some subjects, such as the protection of consumer rights, the law allows entities or associations that oversee consumer rights to start legal proceedings against violators of consumer protection law.

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#### 30 Do government-owned or controlled entities enjoy any privilege when they are engaged in commercial activity and involved in a commercial or administrative litigation?

Government enterprises and government-controlled entities have the same rights and obligations as private entities.

Although in principle the state assets are not sizeable, the legal system distinguishes between public property of the state and private domain assets, with the assets of the companies and entities controlled by state private domain subject to seizure.

Law 86-11 regulates the seizure of public funds, establishing certain restrictions on such measures for centralised and decentralised institutions of the state. However, this law leaves open the possibility of executing credits against state institutions based on a final court decision.

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#### 31 Do foreign states or entities controlled or owned by foreign states enjoy any privilege when they are engaged in commercial activity and involved in a commercial or administrative litigation in your jurisdiction (state immunity)?

The Dominican Republic accepts the immunities and privileges based in international treaties signed and ratified by our government

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#### 32 Is injunctive or other relief available on an emergency basis?

Article 101 and following of Law 834 of 1978, which amends the Civil Procedure Code, establishes the procedure for *referimiento*, which is a special procedural instrument that allows the court to take urgent measures.

This procedure is available virtually for all private disputes of any nature and aims to prevent the occurrence of any damage or repair damage already created.

The decisions of the *referimiento* judge are provisional and are subject to the decision made about the merits of the case.

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**33 Is injunctive relief available as part of a final award? If so, in what types of cases do courts usually provide injunctive relief?**

Based on the procedural law and case law the judge can order an *astreinte* as part of a final judgment. Through *astreinte*, the court penalises the debtor for the violation or delay in the execution of the judgment.

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**34 What are the typical court fees and costs required to file a civil lawsuit?**

The Constitution of the Dominican Republic in article 149 states that access to the justice system is free. But, in practice, litigants must pay the minimum amounts for files to be processed.

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**35 Is a bond required for a non-resident? What is the amount of the bond?**

As noted in our response to question 2, the article 8 of Law 544-14 about international private law, bans any bond or security based on the citizenship or residence of the plaintiff.

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**36 What types of damages are available? How are damages quantified? Are punitive damages available?**

The Civil Code and jurisprudence indicate two types of damages: The general damages and special damages.

As for the general damages, the law states it will be determined based on the losses suffered and loss of earnings as a result of the damages.

The judge has complete freedom to quantify special damages.

Our legal system does not provide for punitive damages.

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**37 Is the losing party liable for the prevailing party?**

The party who loses the case may be ordered to pay the costs and fees of the process. For the payment of these expenses it is necessary that the judgment be final and firm, that is, not subject to any proceedings that may reverse or modify it.

The fees are predetermined by Law 302 of 1964, which establishes minimum amounts, which are settled together with expenditures by the Secretary of the court making the final decision on the case.

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**38 Will courts enforce a liquidated damages provision in a contract?**

Article 1226 of the Civil Code allows parties to agree in advance, on the contract, the amount of damages in case of default. This type of clause is known as a penalty clause. Before a penalty clause, the courts are obliged to provide compensation on the basis of the amount preset in the clause and are unable or increase or decrease this amount.

When the court determines damages based on a penalty

clause it may not establish additional damages unless the contract provides for this possibility.

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**39 What is the appeal process against trial court decisions?**

According to article 443 of the Civil Procedure Code, for civil and commercial litigation, the deadline for lodging an appeal is 30 days from the date of notification of the judgment of the first instance court.

The appeal is made by bailiff act served at the request of the appellant, which is notified to the counterpart. This act must mention the judgment being appealed, and a list of arguments that sustain the action.

The appeal is referred to a court composed of five judges, with the power to decide with three judges.

In other matters, such as criminal, the appeal is filed by submitting a brief to the clerk of the court that issued the judgment.

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**40 How frequently do appellate courts reverse trial court decisions?**

There are no statistics available on the percentage of change in the decisions of the trial courts by the appellate courts, but the general rule is that the frequency with which the appellate court decision will vary will depend on the matter in discussion and where the judgment has been given. For large cities the percentage of change is generally not greater than the percentage change in less densely populated cities.

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**41 May the courts entertain challenges to administrative decisions made by federal or local governments? If so, how frequently do courts reverse administrative decisions in favour of a private party?**

The Dominican Republic has an administrative court, whose competence in national jurisdiction is regulated by Law 13-07.

The administrative court frequently cancels or modifies decisions of government authorities, especially in cases of abuse and excess made by the administrative authority that result in damages to individuals.

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**42 How are trade secrets protected in judicial proceedings?**

Trade secrets are protected under article 178 and following of Law 20-00 on Industrial Property and Law 42-07 on competition.

Overall, it is considered that the disclosure of the trade, business and professional secrets is an act of unfair competition and therefore punished by law.

The law defines and specifies what should be understood as a trade secret and sets out the scope of protection.

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**43 Are settlement agreements confidential? Must the parties' settlement agreement be certified by the court?**

The settlement agreement will remain confidential as long as the parties have expressly provided for it in the agreement.

Under the provisions of article 1134 of the Civil Code, the

transaction is the law between the parties, therefore its validity is not subject to court approval.

Article 2052 of the Civil Code gives it a definitive character and therefore it is enforceable.

Transactional acts cannot be challenged, except in the cases expressly provided for in the Civil Code.

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#### 44 Who has the burden of proof at trial? What is the burden?

The Dominican Republic's legal system establishes the general principle that the plaintiff has the burden of proving the facts alleged. In this sense, article 1315 of the Civil Code states that whoever claims for the execution of an obligation, must prove its existence. Having proven the existence of the obligation, then it depends on the debtor to prove that it has been satisfied, either by having complied or by any other valid reason.

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#### 45 What are the most significant recent developments regarding judicial reform? Is any proposed legislation likely to affect the civil litigation market?

At this time our congress is studying a bill to reform and update the Civil Procedure Code. We expect that this bill could be approved next year.

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#### 46 Describe any recent noteworthy litigation and arbitral cases.

N/A.



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## Rodolfo Mesa Mesa Chavez

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In 1995 Rodolfo received his law degree from Pontificia Universidad Católica Madre y Maestra (PUCMM). In the year of 1999 he received his master's degree in economic legislation and business law from PUCMM, with distinction summa cum laude. In 2000 he finished his post-degree studies in international commerce from Universidad APEC. In 2002 he finished another post-degree study in civil procedural law from PUCMM. In 2005 he obtained a diploma of international commercial arbitration from the International Chamber of Commerce,

with its offices in Paris, France (CCI). 2010 Diploma in Business from Toronto University. He was a professor in the Law Faculty of the Universidad Iberoamericana (UNIBE). He writes on law-related issues in important magazines and is an official translator. He possesses a vast experience in civil and commercial law. He is also experienced in the consulting of companies, especially in banking, insurance and reinsurance, industrial property, arbitration, commercial law, mergers and acquisitions, banking law and maritime transport and free zones.

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Mesa & Mesa was founded in 1964. The firm has more than 50 years of experience as an extensive and comprehensive legal practice. Their lawyers specialise in advising and representing people and companies, in both the private and the public field, in commercial, insurance, banking and finance, air transport, maritime law, real estate, intellectual property, litigation and other matters.

The firm's lawyers represent leading Dominican and foreign corporations, including government agencies, banks and service companies.

The main focus of the firm is to provide a reliable, high-quality service with the most cost effective offer on the market.

Our philosophy is based on a profound commitment to our clients, with a fast capacity in responding to their needs and a high standard of quality, always attached to the highest level of professional ethics.