

Dominican Republic : An Introduction

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The past several years have witnessed a veritable revolution in dispute resolution in the Dominican Republic. These advances have been led by significant reforms to arbitration proceedings, a renewed emphasis on constitutional protections and guarantees, increased responsiveness by the judicial power and greater avenues to challenge administrative decisions.

1. Advances in Arbitration.

Perhaps the most important advance of the past few years has been in the renewed emphasis on arbitration as a means of alternative dispute resolution in the country. The Constitution of the Dominican Republic now expressly recognises arbitration as an effective and binding means of dispute resolution. Significant reforms in this area began in 2008 with the approval of a law establishing clear procedures and guidelines for arbitration. This new law also clarified a significant open question by recognising that the Dominican State can agree to - and be bound by - arbitration clauses in contracts with private entities.

The Center for Dispute Resolution (CRC) of the Chamber of Commerce and Production of Santo Domingo (CCPSD) is the largest and most respected arbitration centre in the country. Its modern rules governing arbitration – drafted with the assistance of the world-renowned International Chamber of Commerce in Paris – are flexible and consistent with world standards on the matter. In addition, the CRC has a large cadre of qualified and pre-screened arbitrators.

Due to the factors previously outlined, the enforcement and validity of arbitration clauses has been consistently upheld and reiterated by local courts. In fact, the CRC with the assistance of Mary Fernández, one of our partners, recently organised a training session for judges around the country regarding the application of arbitration as a means of alternative dispute resolution.

2. Increased Constitutional Protections and Guarantees.

The Constitution of the Dominican Republic was amended and restated in its entirety in 2010. An important part of these changes was the creation of a new Constitutional Court, charged with guarding and enforcing constitutional rights. The creation of a specialist process, coupled with the approval in 2011 of a law regulating constitutional appeals and proceedings, has led to greater certainty and responsiveness in the observance of constitutional rights.

Furthermore, the recently enacted Constitution went further than before in expressly outlining and contemplating - in almost 40 articles in the document - the constitutional rights of residents (be they persons or entities) of the Dominican Republic and the avenues

of redress for any violation of such rights. One means of redress that is also now expressly set forth by the Constitution is an emergency action ('amparo') seeking an injunction or other means of legal protection in the event of a Constitutional violation. This action is available to all residents and may be filed in the event of a violation by either a government entity or private parties.

3. Greater Responsiveness of the Judicial Power.

Over the past 20 years, the judicial power of the Dominican Republic has undergone significant changes that have led to noteworthy improvements in the quality of decisions and increased confidence in the system. Nevertheless, challenges in the administration of justice still remain: delays in concluding cases, judges in need of training and arbitrary or capricious rulings on the part of lower court judges. Fortunately, steps have been taken to address each of the issues that have been raised.

First, the highest authorities of the judicial power have been increasingly open to discussions with the private sector on concerns regarding judicial delays. The President of the Supreme Court recently met with representatives of the country's business and civic organisations to receive their feedback on the matter. This openness to receive feedback and to attempt to address the concerns raised provides hope that the judicial power and the administration of justice will continue to improve.

Second, a National Judges School was established a number of years ago. The school has trained all of the judges that have entered the judicial system during the past several years, and provides continuing legal education and feedback to judges who were already serving prior to the establishment of the school. The expectation is that, over time, the continual education provided to judges will lead to better decision-making.

Finally, through the creation of courts of first instance composed of a panel of judges, as well as a greater emphasis on quality control at the appellate level, instances of arbitrary or capricious rulings by a single judge continue to decrease. While this aspect still remains a work in progress, with new safeguards in place and training continuing to be a priority, there is reason to believe that improvements will continue to be made over the next few years.

4. New Avenues in Administrative Proceedings.

As the role of the state in regulating business has increased, so has the need to bring administrative proceedings challenging regulations and other decisions made by regulators. The local business community has been very active and vocal in ensuring that adequate safeguards are in place. In fact, a court specifically established to hear appeals of administrative rulings (and a separate court for tax rulings) has been in place for a number of years. What is noteworthy are the reforms enacted in 2007 to these jurisdictions, which made accessing them simpler and faster than before. In addition, a new law on administrative proceedings was signed into law in August 2013, providing greater certainty and guidance to persons seeking to challenge administrative decisions.

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In effect, the changes outlined above that have taken place during the past several years – including a noticeable acceleration during the past two years – have led to an increase in the confidence that investors have in the dispute resolution mechanisms available to them in the Dominican Republic.

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