



The
LEGAL
500

**COUNTRY
COMPARATIVE
GUIDES 2022**

The Legal 500 Country Comparative Guides

Dominican Republic

ENVIRONMENT

Contributing firm

Pellerano Nadal



Gustavo José Mena García

Partner | gmena@pellerano.com

Jean L. Franco Reynoso

Associate | jfranco@pellerano.com

This country-specific Q&A provides an overview of environment laws and regulations applicable in Dominican Republic.

For a full list of jurisdictional Q&As visit legal500.com/guides

DOMINICAN REPUBLIC ENVIRONMENT



1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

In the Dominican Republic, the environmental regulatory and legal framework is composed of General Law 64-00 on the Environment and Natural Resources, and the Sectorial Law on Protected Areas, the Sectorial Law on Biodiversity and the Sectorial Law on Forestry. As of 2010, the environmental framework expands its regulatory spectrum with the enactment of the 2010 Constitution, subsequently amended in 2015. From this moment on, environmental law in the Dominican Republic went from being a substantive law to an adjective normative field.

The first fundamental element of environmental regulations is the protection, conservation and restoration of the environment and natural resources, for present and future generations. The second element is the sustainable use of natural resources. The third element is the regulation of the Environmental Evaluation Process, which determines the issuance of the Environmental Authorizations that are granted by the Ministry of the Environment. And finally, the fourth fundamental element is to establish the regime of consequences for illegal acts that directly or indirectly affect the environment and natural resources, through the creation of sanctions and institutions that serve as means for the prosecution of these infractions.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The Ministry of Environment and Natural Resources is the main environmental regulatory authority. On a sectoral basis, the Ministry of Energy and Mines and the Ministry of Tourism have an impact on the environmental regulatory framework, and to a lesser extent, the municipalities have a small regulatory impact on the environmental framework. To enforce environmental

regulations, the Ministry of the Environment has all the instruments to inspect compliance with environmental regulations.

Additionally, the General Law 64-00 creates what is known as the Specialized Attorney's Office for the Protection of the Environment and Natural Resources, who individually or in conjunction with the Ministry, has the power to investigate, inspect and enforce compliance with environmental regulations.

3. What is the framework for the environmental permitting regime in your jurisdiction?

In our country, the General Law 64-00 introduces as a principle and starting point the environmental impact assessment process, a process through which environmental authorizations are issued or not. By virtue of Article 40 of said law, this process is an instrument regulated and administered exclusively by the Ministry of the Environment and Natural Resources. The issuance of environmental authorizations must be prior to the execution and operation of any existing activity in the Dominican Republic. Due to this, the Compendium of Regulations and Procedures for Environmental Authorizations in the Dominican Republic of 2014 was created, issued by Resolution 13-2014, dated September 22, 2014.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes. The process for the transfer of environmental authorizations is regulated in the Compendium of Regulations and Procedures for Environmental Authorizations in the Dominican Republic of 2014, issued by Resolution 13-2014, dated September 22, 2014, specifically in its article 14, and such transfer is known in Dominican environmental regulations as Modification of

Environmental Authorization.

To carry out this process it is necessary to deposit before the Ministry of Environment and Natural Resources a letter requesting the change of project developer, complete the Form for Renewals, Modifications and Substitution due to Loss of Environmental Authorizations, and deposit all documentation that the Ministry considers necessary and relevant to carry out such modification.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Environmental authorizations in the Dominican Republic are considered administrative acts. Consequently, these administrative acts can be appealed at different stages of the process. During the environmental authorization request process, the following appeals may be filed: (i) Appeal for Suspension of the Environmental Assessment Process and (ii) Appeal for Non-Emission of Environmental Authorization.

Once an environmental authorization has been issued, there are two ways to file appeals against the permits issued, which are (i) before the Ministry of Environment and Natural Resources (Administrative appeal) and (ii) before the Contentious Administrative Court.

At the Ministry, a Review Appeal may be filed against such authorization. Subsequently, before the decision issued by such appeal, a Reconsideration Appeal or a Hierarchical Appeal may be filed before the department immediately superior to the one that issued the decision of the original appeal.

On the other hand, before the Contentious Administrative Court, it is possible to file a Contentious Administrative Appeal, together or not with a Request for a Precautionary Measure, by means of which it is possible to request the suspension of both the activity and the authorization itself.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The Environmental Assessment Process Regulations create four classifications for environmental projects, defined by their potential to impact the environment and natural resources. These classifications are:

Environmental License (Category A), Environmental Permit (Category B), Environmental Constancy (Category C) and Minimum Impact Certificate (Category D).

The Environmental Impact Assessment is required only for projects with high potential impacts, and they correspond to Category A or Environmental License. Similarly, in the Dominican Republic there is an Environmental Impact Statement, which is required for projects with moderate impact, and corresponds to Category B or Environmental Permit.

The fundamental elements for carrying out the Environmental Impact Study or Declaration are determined by the Ministry of the Environment through the Terms of Reference ("TdR" for its Spanish abbreviation), which vary according to the activity to be carried out and the level of environmental impact it may cause.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

General Law 64-00 in its articles 86 to 91 establishes the applicable regulations for the mitigation of water and soil contamination, but the General Law establishes in article 5 that it is the responsibility of the Government, society and each inhabitant of the country to protect, conserve and restore the environment and make sustainable use of natural resources. In addition, the General Law (Article 45) establishes that those who hold an environmental permit or license are obliged to assume administrative, civil, and criminal liability for the damage they cause to the environment and natural resources.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

There is no positive obligation to investigate or to provide investigative reports to regulatory authorities. However, the Ministry of Environment and Natural Resources does have the obligation to investigate, always consulting with the sectors involved, the cause of water and soil contamination.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Yes. The General Waste Law states that owners or occupants of a contaminated property are jointly liable for remediation regardless of fault. Therefore, since there is an obligation to inform the competent authorities, in this case will be the Environmental Management Department of the Ministry of the Environment.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Yes. The owner has the right to file a civil action for environmental harm before the General Attorney's Office for Environmental Defense and Natural Resources. It is important to take into account that this institution is competent to receive complaints that affect any natural resource or element that makes up the environment. Likewise, any environmental harm will consequently be processed by administrative or criminal means, depending on the seriousness of the damage.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The Ministry of Environment and Natural Resources will be the enforcement authority in waste matters, with the power to regulate, direct and control the application. For this purpose, Law 225-20 was enacted with the objective of "preventing the generation of waste and establishing the legal framework for its integral management and promoting the reduction, reuse, recycling, use and recovery of waste.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

The General Waste Law provides that liability remains

with the generator if waste is transferred unlawfully. There is the principle of extended producer liability. It is a special waste management regime that has the purpose of guaranteeing that producers, importers and marketers are responsible for the correct handling of waste in the post-industrial and post-consumer phases.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

According to the principle of shared responsibility, it is recognized that municipal solid waste and special handling waste are generated from the performance of activities that satisfy the needs of society, through value chains such as production, processing, packaging, distribution and consumption of products, and that, consequently, their integrated management is a social responsibility and requires the joint, coordinated and differentiated participation of producers, importers, distributors, consumers, users of by-products, government, as appropriate, under a scheme of market feasibility and environmental, technological, economic and social efficiency.

There is the principle of extended producer, importer and marketer responsibility: Producers, importers and marketers are responsible for the product throughout its life cycle, including the post-industrial and post-consumer phases.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

N/A

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

N/A

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing

requirements) in your jurisdiction?

In 2007, the Dominican Republic enacted Law 57-07 on Incentives for the Development of Renewable Energy Sources and its Special Regimes, which aims to encourage and regulate the development and investment of projects that take advantage of renewable energy sources. Although it is a tax incentive law, for the application of these incentives there is a governmental institute called the National Energy Commission, which is in charge of auditing the energy produced by renewable sources.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The Dominican Republic has issued the main aspects of climate change through Decree 269-15 (on National Climate Change Policy) and Decree 541-20 (on the Greenhouse Gas Measurement System). These decrees are complemented by the Constitution, the General Law 64-00, and the Sectoral Law of Protected Areas, however, we do not have a law dedicated to climate change in the Dominican Republic.

Additionally, there is Law No. 01-12, which establishes the National Development Strategy 2030, in which the third and fourth axis of this law seek a Sustainable, Integrating and Competitive Economy (Renewable Energy), as well as an Environmentally Sustainable Production and Consumption Society that adapts to Climate Change.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

Since 2000, the application and implementation of social and environmental measures within companies in the Dominican Republic has been increasing, as legal instruments for the application of environmental, social

and governance parameters have increased (see document prepared by GM and BGR).

In the Dominican Republic it is mandatory by law to conduct due diligence for transactions. Additionally, companies are obliged to report all environmental issues to the Ministry of Environment, regardless of whether the evolution and outcome of the projects are positive or negative.

19. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Yes. In 2008, the National Council for Climate Change and Clean Development Mechanism was created through Decree 601-08. Subsequently, through Decree 269-15, in 2015 the National Policy on Climate Change was created, inspired by the Kyoto Protocol and the United Nations Framework Convention on Climate Change.

Recently, the Dominican Republic increased its ambition to reduce greenhouse gas emissions by including, among its international commitments, to reduce the generation of short-lived climate polluting gases such as black carbon, methane, ozone, and hydrofluorocarbons or HFCs, and aims to reduce the emission of Greenhouse Gases by 27% by 2030 compared to 2010.

20. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms?

N/A. although the activity might be related, there isn't a regulation for these labels.

21. Have there been any notable court judgments in relation to climate change or ESG-related litigation over the past three years?

In the last 3 years there have been no notable rulings in the area of climate change in the Dominican Republic.

22. In light of the commitments of your jurisdiction that were made at or surrounding COP26, do you expect there to

be substantial legislative change or reform in the relation to climate change in the near future?

No, since Dominican Republic has a National Plan of Development targeting 2030, there isn't any substantial legislative change relating, nevertheless there is a Law of Climate Change being discussed by the Congress at the moment of this Comparative Guide.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

(a) The company that is the promoter of a project that could generate a negative environmental impact due to the non-compliance of the environmental legislation in the Dominican Republic shall be the main responsible for the damage caused. (b) The shareholders of a company shall be liable in proportion to the equity interest they hold in such company. (c) The directors or managers of a development company of the project will be passively liable, by the figure of the Employer-Employee Liability established in article 1384 of the Civil Code of the Dominican Republic. (d) the parent company is jointly and severally liable with the company that is the promoter of a project that could generate a negative environmental impact due to non-compliance with environmental legislation in the Dominican Republic. (e) financial institutions cannot be held liable for environmental damage in the normal exercise of their business functions and activities.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

The individual or legal entity that, directly or indirectly, contaminates a site or causes damage or affectation to the environment as a result of the generation, handling or release, discharge, infiltration or incorporation of materials or urban solid waste, special handling and hazardous waste to the environment, will be liable and is

obliged to make the corresponding remediation.

The owners or possessors of private property and the holders of concessioned areas, whose soils are contaminated, will be jointly and severally liable for carrying out the necessary remediation actions.

The Ministry of the Environment and Natural Resources shall be empowered to make effective the guarantees that may have been granted by the responsible parties who have abandoned the site.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

It is necessary in the Dominican Republic that a transaction is preceded by an Environmental Due Diligence in order to confirm if the seller has environmental authorization. According to the compendium of regulations on procedures for environmental authorizations issued by Resolution No. 13-2014 issued by the Ministry of Environment and Natural Resources, there is an obligation to modify environmental authorizations, which means that the beneficiary of the authorization will be the buyer. It is important to take into account that the owners or possessors of privately owned land and the holders of concessioned areas, whose soils are contaminated, will be jointly and severally liable for carrying out the necessary remediation actions. Those responsible for the contamination of a site will be subject to the corresponding criminal and administrative.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

The risks covered by insurances are the risk of executing the Environmental Adjustment and Management Plan and the environmental risk of executing the activity to be carried out, and these risks require the execution of an Environmental Compliance Bond Contract for an amount of 10% of the project's budget. Obtaining the bond is a legal obligation established in Article 47 of the General Law 64-00 for every license and permit obtained by a company.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

General Law 64-00, creates the National System of Information on the Environment and Natural Resources, which has as its objective the collection, registration and organization of all technical and scientific information on the state of the environment and natural resources. Additionally, it must ensure the publication and dissemination of the information collected periodically, as long as it does not violate specific laws or harm the intellectual property rights of anyone who conducts research or work on the environment and natural resources.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

In accordance with General Law 64-00, and the Access to Public Information Law, any person may request to the Access to Information Offices any information they wish to consult, through written requests, specifying the type of information they wish to consult and the reason behind this request. In some cases, it is possible that the authorities may reject these requests on the grounds that what is requested is considered confidential information.

29. To what extent does your jurisdiction have legislation targeting modern slavery issues, both in relation to employers themselves but also their supply chains?

Within the Dominican Republic, there is no direct law dedicated against modern slavery. However, the

Dominican Constitution establishes the right to life, human dignity and personal and social freedom as fundamental rights, therefore any type of slavery is prohibited in the Dominican Republic. In the labor aspect, our legal system has regulations such as the Labor Code and the Code of Protection and Fundamental Rights of Children and Adolescents, through which there are instruments that do not allow the implementation of any measures that could be considered as labor slavery.

30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

N/A

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

Yes. We have the following:

- Forestry Sector Law No. 57-18, issued on December 11, 2018, which regulates and promotes sustainable forestry management, seeking its conservation, exploitation, production and commercialization in the Dominican Republic.
- Law No. 94-20, on Environmental Education and Communication, which seeks to include environmental education in the different levels of the Dominican school and higher education system, in both public and private educational centers.

On the other hand, the General Law on Climate Change and the Water Law are currently being discussed on the Congress.

Contributors

Gustavo José Mena García
Partner

gmena@pellerano.com



Jean L. Franco Reynoso
Associate

jfranco@pellerano.com

