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Dominican Republic: Law and Practice

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DOMINICAN REPUBLIC

Law and Practice

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ten offices, strategically located in the most important tourist and business areas in the country, including the capital city of Santo Domingo, Punta Cana, La Romana, Casa de Campo, Cap Cana, Puerto Plata – Sosúa, Cabrera and Samaná, Las Terrenas and Las Galeras. The firm's knowledge, commitment and responsiveness to clients, along with its cost-effective strategies, have earned it the reputation in the international business community of being a trusted and respected law firm that delivers results.

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1. General

1.1 Governing Law

In the Dominican Republic, construction contracts are mainly governed by the Civil Code.

The construction industry is governed mainly by the following laws and regulations (other regulatory agencies and regulations apply in specific industries and sectors not listed below):

- Law 160-21, which creates the Ministry of Housing, Habitats and Buildings;
- Law No 687-82, establishing a system for the development of technical regulations for the preparation and implementation related to engineering, architecture and related fields;
- Law 158-01 on incentives for the development of the tourism industry;
- Law 108-05, the real estate law;
- Law 189-11 on trusts and development of the mortgage market of the Dominican Republic;
- Law 340-06 on public procurement (which concerns government contractors for construction projects);
- Law 47-20 on public-private partnerships (PPPs);
- Law 176-07 on the national district and municipalities;
- Law 64-00 on environmental protection;
- Regulations of the Ministry of Housing for private constructions;
- Regulations of the Ministry of Public Work for public constructions and infrastructure;
- Regulations of municipalities for zoning of each demarcation of the Dominican Republic;
- Regulations of the Ministry of Tourism for touristic developments; and
- Regulations of the City Halls for zoning and allowances.

1.2 Standard Contracts

In the Dominican Republic, construction contracts are primarily governed by the principle of contractual freedom.

Various formats are used and are influenced by civil law countries, as well as common law practice, including engineering, procurement and construction (EPC), general contractor and turnkey contracts, depending on the nature of the project and the parties involved.

While international models such as FIDIC are occasionally applied – particularly in projects financed by multilateral institutions (ie, the IDB or World Bank) – there is no mandatory use of standard forms.

Contracts are generally drafted on an ad hoc basis.

2. Parties

2.1 The Employer

In the Dominican Republic, employers in construction projects include:

- Dominican estate (government), considered the main source of these activities;
- real estate for home and commercial developers;
- touristic real estate and hotel developers;
- industrial investors and developers;
- energy investors and developers;
- international organisations or NGOs; and
- private companies or entities.

The employer is generally responsible for paying the agreed price in accordance with the terms and conditions established in the contract. The price may be paid upon delivery or in instal-

ments. Progress payments are typically made based on quantity surveys (locally referred to as *pagos por cubicación*), certified by the supervising engineer. There is contractual freedom in this regard.

The employer is to receive the work completed by the contractor. Reception of the work is a unilateral legal act by which the employer formally approves the work performed.

The employer is not necessarily linked to the subcontractors. In big projects or developments, the employer tends to have a general or EPC contractor that will take care of all the elements for building the project and delivering it. In that sense, subcontractors are only parties linked contractually to the general contractor.

In the Dominican Republic system, a subcontractor's breach of contract towards the general contractor can trigger a claim by the employer based on a civil liability figure as a tort, but not a contractual action or claim.

Regarding financing parties, it is common for lenders to require comprehensive security over the project, including:

- performance bonds;
- parent company guarantees;
- assignment of contractual receivables (cession of contract flux);
- pledge over project accounts;
- mortgage over land or buildings;
- fiduciary transfer of assets; and
- other typical project finance collateral.

In some projects, depending on the risk and value of main collaterals, lenders may also request subsidiary guarantees from shareholders or

related parties, as well as a pledge of shares in the project company.

In public projects, multilateral financing entities typically require the issuance of sovereign debt, which must be approved by Congress in accordance with constitutional and legal procedures.

2.2 The Contractor

In the Dominican Republic, in principle any company can act as a contractor for a construction project.

From a regulatory standpoint, however, construction work requires the involvement of a licensed engineer and/or architect registered with CODIA (*Colegio Dominicano de Ingenieros, Arquitectos y Agrimensores*, the national professional association). No construction project may proceed without such licensed professionals, who must be the appointed persons responsible for the execution of the works.

The employer generally has the right to demand that the contractor fully and faithfully execute the project as per the agreed scope of works.

The contractor must have the technical, financial and professional qualifications necessary for the job. These requirements are more strictly applied in public procurement, where the contractor is selected based on specific criteria outlined in the bidding documents.

In the private sector, although the demands are less formalised, the contractor is still expected to possess the necessary capabilities and relevant experience to carry out the project as promised in the contractual relationship.

2.3 The Subcontractors

In the Dominican Republic's construction industry, it is common for general contractors to engage specialised subcontractors to handle specific aspects of the project, such as electro-mechanical installations, mechanical systems, plumbing, finishing works, landscaping, furniture-fixtures-equipment (FFE), elevator installation or lighting. These subcontractors operate in niche segments within the broader construction scope and are often necessary to ensure high-quality and technically complex execution.

There are no legal limitations on the use of subcontractors. However, many civil and commercial contracts require prior disclosure of subcontractors for purposes such as background checks or conflict-of-interest assessments.

In public procurement, subcontractors must often be approved by the contracting authority, especially if their participation exceeds a certain threshold – typically 25% of the project value – set either by law or by the terms of the tender.

Subcontractors typically have a contractual relationship only with the general contractor, not with the project owner. As a result, any claims or disputes generally arise between the general contractor and the subcontractor. Nonetheless, it is advisable for the owner to review key subcontracting agreements to ensure that they include appropriate termination or exit clauses, thereby avoiding disruptions to the overall project due to subcontractor-related issues.

2.4 The Financiers

Construction financing in the Dominican Republic is flexible and encompasses a wide range of models depending on the nature and scale of the project.

Financial arms in the Dominican Republic's construction sector are of various kinds. The main, most common and simplest is the bank, through debt financing.

There are also pension funds, investment funds and brokerage firms that securitise specific projects in order to attract investors to contribute capital for the development of construction works, mainly with the objective of keeping the final asset as part of the portfolio.

Hedge funds, venture capital firms, multinational banks and multilateral institutions (such as the World Bank and CABEL) are also involved.

When the Dominican State is a party to the contract, it is required by decree that proof of funding approval be presented. However, these funds are often allocated to the contracting entity's budget through a sovereign debt loan previously approved by Congress.

Something specific to the Dominican Republic – particularly in small to mid-scale residential and commercial developments – involves suppliers themselves, who finance their materials or even deliver them in exchange, either fully or partially, for part of the final product of the construction. Part of the construction budget is financed through materials that are later paid for with delivery of the completed product, such as apartments or commercial units to the creditors (suppliers). In many cases, a significant portion of the developer's debt to suppliers is settled partly with units from the project and then with cash.

Financing methods are adapted to the commercial purpose, scale and risk profile of each project. The regulatory framework permits a high degree of contractual freedom, allowing devel-

opers and financiers to structure custom solutions that balance risk, control and profitability.

Guarantees offered in construction financing may include:

- mortgages over the land and improvements;
- pledges of company shares or contractual receivables;
- personal or corporate guarantees from developers;
- pledges of construction materials, equipment and movable assets; and
- escrow accounts or fiduciary fund control mechanisms, specially structured via Law 189-11.

2.5 The Designer

In the Dominican Republic, architectural design is generally provided by architectural firms, which may be either local or international. Several prominent international firms operate in the country and have been responsible for major design projects.

It is common for developers or promoters to engage well-known foreign firms – often based in the United States or Europe – to create the design for the construction project.

These designs must ensure compliance with local building codes, regulations and construction practices.

For execution, local guidance is necessary. This local guidance is crucial, as fully foreign designs often encounter challenges during implementation due to differences in technical standards and construction methods. For this reason, the involvement of a local team is recommended.

Regardless of whether the original design is developed abroad, Dominican regulations require that all construction plans submitted for permitting be signed and sealed by a licensed architect or engineer registered with CODIA. Without this, the plans cannot be processed or approved by the relevant authorities.

In terms of compensation, design services may be billed as a professional fee paid by the developer. In other cases, the design may be contributed as equity to the project. Some firms waive the design fee altogether if they are also contracted to carry out the construction, in which case the cost of the design is integrated into the overall construction budget.

3. Works

3.1 Scope

In this jurisdiction, the scope of work in construction contracts is freely determined by the parties, in accordance with the principle of contractual freedom. The definition of the contractor's obligations generally depends on the type of contract involved.

In the case of EPC contracts, the scope of work is typically more comprehensive and includes not only construction but also the design, procurement of materials and equipment, and commissioning of the project. These contracts usually require the contractor to deliver a fully operational facility that meets specific performance criteria agreed upon with the project owner. Accordingly, the description of deliverables in EPC contracts tends to be highly detailed.

In turnkey agreements, the scope of work typically includes all components necessary for delivering a fully functional project.

In real estate, tourism or industrial developments, the scope is defined based on the construction documents, along with a general and detailed description of all deliverables required for proper acceptance by the project owner.

It is rare to find a construction contract that does not include a clear and precise definition of the contractor's obligations with respect to the final product to be delivered. These obligations are usually aligned with the general description of the project, as found in the construction documents prepared by the project's architects or engineers.

In fact, in most cases, the construction documents, plans and technical specifications developed by the design professionals are included as annexes to the contract. Similarly, the description of materials, the brands of the equipment to be installed, and other technical features form part of the contractor's obligations and define the deliverables of the project.

3.2 Variations

In more complex construction contracts, it is common for the parties to adopt communications and change management protocols for all matters related to modifications, additions and clarifications.

These include requests for information (RFIs), submittals, change orders and additional work orders, which are typically formalised using templates agreed upon by the parties. Such documents usually specify the nature of the change, the pricing adjustment, the scope of work and any extension of the substantial completion deadline.

Also, these changes and additions fall within the scope of contractual freedom, and the par-

ties may choose to implement such protocols or to proceed with modifications as they see fit. It is important that these be mutually agreed on and properly documented, in accordance with Dominican civil law. It is essential – particularly in fixed-price or lump-sum contracts – that any changes be formalised in writing (whether hard paper or electronic), to comply with provisions of Article 1794 of the Civil Code.

The communication protocol and the way in which modifications are documented are very important, since the risks of improper execution or unauthorised changes typically fall on the contractor.

Therefore, proper legal planning and contract administration are crucial to managing construction risks effectively.

3.3 Design

In most cases, the project design is prepared by architects and engineers hired by the employer.

Once the construction documents are finalised, they serve as the basis for contractors to submit their bids or prepare budgets in accordance with the design. It is therefore not common for the contractor to also be responsible for doing the design, although there is no legal restriction against it and in some cases this approach is also adopted.

A key issue in such situations is whether the contractor performs a design audit or technical review of the plans and specifications.

During execution, inconsistencies or omissions in the original design may arise, requiring adjustments or additional works – for example, the need to construct footings or slabs not originally shown in the plans; this can be a situa-

tion adverse to the contractor, if no provisions or proper language are included in the contract.

3.4 Construction

The party responsible for the design and plans is usually the one hired by the project owner for that specific purpose. This same party is often also tasked – either directly or in co-ordination with a legal or technical team – with managing all necessary permits and approvals for the construction.

Once the project is ready for execution, the general contractor typically assumes responsibility for construction. This general contractor is free to engage subcontractors as needed for specific components or work packages, according to the structure and complexity of the project.

In terms of liability, it is uncommon for the project owner to directly engage multiple contractors for different portions of the work. The standard practice is to appoint a single general contractor, who is then responsible for organising and managing all related subcontractors, suppliers and collaborators.

3.5 Site

In this jurisdiction, liability for environmental matters related to the land and site – such as contamination or archaeological findings – rests primarily with the project owner, who is generally also the landowner.

While the contractor may be held liable for environmental harm directly caused by its own actions, overall responsibility for ensuring compliance with environmental regulations throughout the development process lies with the project owner.

Nevertheless, the owner may seek indemnification from the contractor if the breach of environmental law is attributable to the contractor's fault or negligence.

3.6 Permits

Construction licences, environmental permits, land use authorisations from municipal authorities and any other required permits – such as those issued by the Navy in coastal areas or by mining authorities, electrical authorities or tourism authorities, depending on the project – are all the responsibility of the project owner.

Although it is common for the contractor to be delegated the task of managing and processing these permits, the legal obligation to obtain them remains with the owner.

In some contracts, the contractor is expressly required to act as permit manager, but the responsibility for ensuring that all necessary licences and approvals are secured for the construction and real estate development lies with the project owner, since they are the party liable towards authorities.

3.7 Maintenance

Under the law and most standard construction contracts, the responsibility for maintaining the worksite – including all materials deposited on-site and the construction camp – generally falls on the contractor (typically the general contractor when designated as the main builder).

In some exceptional cases, a specific contractor may be assigned custodial duties, though this is uncommon. This obligation is both legal and contractual in nature.

While the parties may contractually agree to shift this responsibility, the general and prevailing practice is for the general contractor to bear it.

3.8 Other Functions

In general, the project owner is contractually responsible for the full extent of obligations and duties for the construction, and for ensuring that the work is functionally or fully completed and delivered.

Instructions involving other parties – such as fiduciaries – typically arise in cases where the project is developed under a construction and administration trust. In such cases, the trustee may be tasked with managing aspects related to the fiduciary guarantees in favour of financial stakeholders. The transfer of the constructed property or units to a specific beneficiary usually occurs within the framework of Trust Law No 189-11.

In contracts between a project owner and a contractor, the contractor is generally responsible for delivering the work in full.

Financing obligations fall upon the developer or promoter, who must co-ordinate with lenders and establish the corresponding guarantees as required by the creditor or financing structure.

3.9 Tests

Testing procedures usually include pre-completion inspections, tests for systems (HVAC, elevators, electrical, machinery, general equipment, FFE installations), etc.

In many cases, there is a final inspection by the employer or third-party inspector, whether hired by the employer or appointed by mutual agreement in the contract.

Responsibility for conducting and documenting tests rests with the contractor, but approval must be granted by the employer or its appointed parties.

3.10 Completion, Takeover and Delivery

After the construction is finished, the contractor and owner must mainly undertake three phases:

- completion – the contractor finishes the works and notifies the employer that it has finished;
- takeover – the employer inspects and accepts the works; and
- delivery – formal handover with documentation (as-built plans, substantial completions list, manuals when applicable, etc).

In this process, the defects liability period applies; also, the insurance policies transfer to the owner, as do the associated risks upon delivery.

3.11 Defects and Defects Liability Period

Under Dominican law (Article 2270 and 1792 of the Civil Code), contractors are liable for hidden defects or structural failures for up to ten years, unless otherwise specified.

Visible defects in the work are deemed accepted upon delivery. Hidden defects are subject to a redhibitory action that must be brought within 90 days. However, most issues that arise under the category of hidden defects also fall within the broader legal framework of construction guarantees – such as the guarantee of structural or other legal warranties – which may extend up to two years (or even up to ten), in accordance with general legal principles applicable in this jurisdiction. It is important to know that the ten-year delay came from a recent precedent of the Supreme Court, as historically the Supreme

Court had ruled this to be a five-year period with a modification in the regimen of statutory limitation, back in the 1960s.

Contracts typically define a defects liability and functional liability period of 12 to 24 months post-completion.

Some equipment will follow the same guarantee period of the manufacturer.

When there are defects, remedies include:

- repair at the contractor's cost;
- change of the item, if applicable;
- refund of payment, if applicable.
- retention of payments, if still applicable, until the situation is repaired or completed; and
- contractual penalties or legal action to repair accrued damages.

4. Price

4.1 Contract Price

In the Dominican Republic, price determination in construction contracts is governed by the principle of contractual freedom. Parties are free to agree on the pricing structure that best suits their needs.

The most common model is the fixed-price contract, which is favoured due to the civil law rule that prohibits contractors from unilaterally modifying the price, even when the adjustment appears justified, unless prior written agreement has been reached with the project owner. This model provides a high degree of protection for the owner. However, in practice, it is rare to find a construction contract that does not include indexation or adjustment formulas to address potential economic changes.

The second most common pricing method is the cost estimate model, which includes the contractor's indirect costs – such as technical supervision, transport and contingencies – as percentages added to the base budget, and from which the contractor derives its profit margin.

Another frequent arrangement is the guaranteed maximum price (GMP) contract, under which the contractor undertakes to complete the project without exceeding a predetermined cap, while retaining the ability to generate savings against the projected total.

There are also unit price contracts, where individual deliverables are priced separately, and lump-sum contracts with discretionary cost management, where the contractor provides a total project cost.

All of these methods are valid under Dominican law and reflect the broad scope of contractual autonomy available to the parties.

4.2 Indexation

Since there is no statutory indexation clause under Dominican law to address adverse economic changes during the performance of a contract, parties often include contractual indexation provisions, according to the nature of the project.

These clauses may reflect variations in the percentage of budgeted costs, particularly for materials or unit prices, which may be subject to adjustment based on the degree of increase over time. Other indexation mechanisms may refer to external benchmarks, such as the US Consumer Price Index or foreign exchange rates, tied to the US dollar.

However, most of these provisions are linked to the overall project budget, which is the most unpredictable component for both parties. When an indexation clause is triggered, the contract price must be adjusted in accordance with the agreed formula.

In the absence of any indexation provision, the risk of cost fluctuation generally falls on the contractor, particularly in fixed-price contracts, as provided under Article 1794 of the Civil Code.

4.3 Payment

Payment structures in construction contracts depend on the pricing formula agreed upon by the parties.

The most common practice in the Dominican Republic is payment based on progress measurement, known locally as *cubicación*. Under this method, the contractor submits a monthly report reflecting the quantity of work completed, and payments are calculated based on the corresponding portion of the budgeted costs. This is the most widely used and practical system in local construction projects.

In other cases, monthly payments are established, whereby the total project cost is divided into equal monthly instalments paid to the contractor.

In other cases, contractors may receive advance payments for materials, while their profit margin is withheld until final delivery of the project. Although this model is used less frequently, it remains an available option.

It is also standard practice for *cubicación*-based payments to include a 10% retention, which is held until the project is fully completed and delivered. This retained amount serves as a guaran-

tee to cover the punch list – the final adjustments or repairs the contractor must perform before formal project closure.

Late payments are usually subject to a late interest or fee. Sometimes, late payments include additional days for the date of delivery to the contractor.

4.4 Invoicing

In construction projects, invoicing is generally tied to the approval of the progress measurement report (*cubicación*) when that is the agreed payment method. Invoices typically reflect a breakdown of their content.

Under Dominican tax regulations, construction services are subject to a special VAT treatment: instead of the standard 18% VAT, only 10% of that amount is applied – effectively a 1.8% VAT on the total invoiced value. Because of this, invoices usually distinguish between the portion corresponding to the contractor's technical supervision or services and the portion related to materials incorporated into the work, in order to properly apply the reduced VAT rate only on the value-added portion generated by the contractor.

When the construction project is for a development pertaining to an exempt sector, such as under the Free Trade Zone regime, the Law on Industrial Incentives or the Tourism Promotion Law, invoicing must be carried out in coordination with the beneficiary entity of those exemptions to ensure proper application of the tax benefits. This co-ordination is essential to take full advantage of the fiscal incentives and to comply with the documentation and procedures required by the relevant regulatory authorities.

5. Time

5.1 Planning and Programme

In the Dominican Republic, construction planning is typically addressed from the start through the main contract – whether general, turnkey or another project management instrument.

A construction schedule is generally included, setting deadlines for different stages or the final delivery. However, in practice, contractors seldom adjust timelines for logistical or cost reasons, and strict adherence is not always enforced, regardless of the commitment to delivery on the term date.

Delays, rather than deviations from the original schedule, are what typically give rise to claims.

For multi-phase projects, each stage may have its own timeline depending on how the owner structures the development.

In functional or industrial projects, the focus is usually on meeting the final delivery deadline for the completed work.

5.2 Delays

Delays in construction projects in the Dominican Republic are assessed based on their cause. When delays result from external factors – such as heavy rain, adverse weather, strikes or transport issues – these must be notified to the project owner, and most contracts provide for time extensions under such circumstances.

If delays are due to the contractor's own fault or negligence, contracts may include provisions for compensation or penalties, often calculated at the end of the project. However, due to the complexity of construction logistics, extensions are not always attributed to poor performance.

When delays result from the project owner's instructions – such as change orders or additional work – contracts typically specify the corresponding extension to the substantial completion deadline.

5.3 Remedies in the Event of Delays

The contractual remedies available to the contractor in cases of delay depend on the circumstances. When delays are caused by external events that prevent progress, the number of days lost is typically acknowledged, and one or two additional “*grace days*” may be granted, as such events disrupt not only workdays but also the broader logistics of the construction process.

When delays result from requests made by the project owner, contracts usually stipulate the corresponding time extensions, based on the estimated impact of the additional work.

It is essential that all such extensions and remedies be clearly outlined in the contract. Relying solely on the Civil Code is insufficient, as its provisions are outdated and do not reflect the complexity of modern construction. Therefore, careful contractual drafting is of key importance in this jurisdiction.

5.4 Extension of Time

Apart from cases of force majeure or adverse external events beyond the control of either party, there are situations that – while foreseeable to the contractor – are not entirely within their control, and these are very common in practice. These can include:

- delays in the supply chain;
- issues with logistics for material delivery;
- problems transporting specialised personnel for component installation; or

- shortages of skilled labour at critical stages of the project.

In such cases, where the delay is not strictly a force majeure event but still falls partially outside the contractor's direct responsibility, contracts often include provisions that allow the contractor to request additional time or contractual allowances.

However, the most common approach in this jurisdiction is to include a grace period clause, which protects against these everyday uncertainties that are difficult to justify formally but are typical in construction. These grace periods usually range from 60 to 90 days, or even up to 120 days, beyond the contractual delivery date. This is especially prevalent in civil works projects such as residential buildings and housing developments.

5.5 Force Majeure

Force majeure and fortuitous events are legally recognised occurrences that must meet three conditions to qualify as such:

- the event must be unforeseeable, meaning that no useful preventative measures could have reasonably been taken;
- it must be irresistible, in the sense that, regardless of any action taken, performance is rendered impossible; and
- it must be external, meaning that the event must be unrelated to the activities of the contractor or its subcontractors.

Once an event meets these three criteria, it may be classified as a case of force majeure, which may be either temporary or permanent. If temporary, the affected party is legally exempt from fulfilling its obligations during the duration of the force majeure event. In such cases, contractual

performance is suspended until the event ceases or its effects are neutralised. No damages or penalties are applicable, as the law itself grants a statutory exemption.

As a legal concept, force majeure applies by effect of the law. Nonetheless, in some specific circumstances, its application could be contractually limited if the parties agree that certain risks – regardless of their origin – must be borne by the contractor, even if such risks prevent the performance of a contractual obligation; however, this type of risk allocation remains uncommon in practice, and in some circumstances its enforceability could be challenged in a court.

5.6 Unforeseen Circumstances

The legal treatment differs when a situation arises under the contract that does not meet the criteria for force majeure – for instance, external circumstances that adversely affect the economic balance or results of the contract. In this jurisdiction, there are no general legal doctrines equivalent to *rebus sic stantibus*, *imprévision* or “hardship” as found in other civil law systems.

Therefore, unless the parties have contractually provided for remedies in the event of such circumstances, any adverse effects that fall short of force majeure must be addressed based solely on the terms of the contract. In the absence of express provisions, the law assigns the risk to the party who must bear it according to the nature of the contract.

For example, in civil law, the loss of a thing is borne by its owner. In construction, if a contract is entered into at a fixed price, the contractor bears the risk of any increase in material costs.

As such, effective contract drafting is essential in order to anticipate unexpected circumstances

and to provide mechanisms for the parties to mitigate adverse economic effects resulting from events that do not qualify as force majeure.

5.7 Disruption

Disruption is not a legally defined concept under Dominican civil law. When certain factors negatively impact a contractor's productivity or performance on-site, the legal analysis must focus on the specific cause of the disruption.

While Dominican law does not expressly regulate disruption, certain principles may provide limited protection, such as the duty to *mitigate damages*, or the general principle of *good faith*, which may support a duty of *tolerance or moderation* on the part of the creditor. These principles can, in some cases, prevent minor disruptive events from leading to damage claims against the contractor. However, such remedies are limited and must be applied with caution.

Contractual provisions should include mechanisms to address disruption, since the Civil Code does not contain any specific rule beyond what can be derived from the principle of good faith, as explained above.

When the disruptive events originate from actions or omissions by the employer, the legal treatment changes significantly. In such cases, if the disruption or defective progress of the work can be clearly attributed to the owner, the contractor shall not be held liable.

6. Liability

6.1 Exclusion of Liability

No limitation nor exclusion of liability may apply to obligations related to security or safety. Liability cannot be excluded where a contractual

breach also constitutes a tortious act (delictual or personal fault) by its nature.

Additionally, parties cannot exclude liability for defective products, and no limitation or exclusion clause may apply to the essential obligation of the contract – the core obligation that performance is fundamental to the contract's purpose.

6.2 Wilful Misconduct and Gross Negligence

Dominican civil law recognises gross fault, intentional fault and a specific category known as professional fault, all of which may arise in the context of construction.

When gross or intentional fault occurs, the consequences in terms of damages are significant: the liable party is not limited to compensating only foreseeable damages, as is normally the case in contractual liability. Instead, the debtor must provide full compensation for all damages caused, including those that were not foreseeable, due to the severity or intentional nature of the breach – the so-called “*principle of complete reparation of damage*” according to Article 1151 of the Civil Code.

6.3 Limitation of Liability

In general, limitation of liability and exclusion of liability clauses are valid under Dominican civil law. However, they are subject to two important limitations.

First, such clauses do not apply in cases of gross negligence (*faute lourde*) by the obligated party. Second, they are unenforceable when the breach is committed in bad faith or with intent. In both situations, the party cannot invoke contractual clauses to escape liability.

They also cannot apply when the breach is consistent with a tort (delictual fault) or if the obligation breached is the main obligation of the contract.

7. Risk, Insurance and Securities

7.1 Indemnities

In this jurisdiction, it is not common practice to include limitation of liability clauses or pre-liquidated damage assessments in construction contracts. Generally, in the event of a breach or damages caused to the project owner or another interested party, the applicable standards are those of contractual liability, or specific formulas agreed in the contract that serve as a reference for damage assessment. However, limitation of liability provisions are rarely included.

Some subcontractors may include such clauses when their work is highly specialised and not directly related to the core development of the construction project – such as the installation of technological components such as cabling systems, Wi-Fi infrastructure or similar elements.

7.2 Guarantees

With regard to guarantees, much depends on the type of project being developed, and the terms can vary significantly. For instance, in the case of functional works such as a gas plant, warranties often guarantee that the plant will operate at a minimum of 95% capacity for the next five to eight years. In other words, warranties are mainly case-specific.

However, for civil works in general, there is a standard one-year functional warranty covering the basic elements of the construction.

Under the Civil Code, statutory guarantees are five years for engineers and architects who designed the project, and ten years for the structural integrity of the work. Functional elements of the project – such as technological systems or installed equipment – are typically subject to the manufacturer's warranty.

Additionally, Dominican law provides a remedy for defective products, which grants the project owner recourse in cases where a product has factory defects. However, this is limited to functional components and does not generally apply to the structural aspects of the construction.

One guarantee commonly used, but that is not an insurance instrument, is the retention of 10% of the fees related to each stage of the project. This is a practical measure adopted by project owners to ensure that, after substantial completion, any remaining punch list items are addressed before releasing the retained funds. The retained amount serves as a financial guarantee to ensure the proper completion of the final adjustments.

7.3 Insurance

In the Dominican Republic, the so-called “*All-Risks Construction Insurance*” is widely used.

This type of policy provides comprehensive coverage to the contractor against a broad range of risks and unforeseen events that may occur during the execution of the construction project.

The standard coverage offered by Dominican insurers under this type of policy typically includes:

- material damage to the work (accidents, fire, flood, etc);
- theft of construction materials or equipment;

- natural disasters (eg, hurricanes, earthquakes, landslides);
- damage caused by human error or negligence;
- collapse or structural failure during construction;
- damage to third parties or existing property;
- vandalism and malicious acts;
- damage related to debris removal and cleanup; and
- general civil liability arising during the execution of the project.

It is also customary for the contractor to obtain a performance bond from an insurance company, which guarantees the faithful execution of the project. In this jurisdiction, this bond typically amounts to around 20% of the total contract value. These insurance policies are usually renewed annually, as Dominican insurance standards set one-year terms for coverage of specific risks.

Additionally, once the project is delivered, the owner typically obtains insurance for the completed structure against common risks such as hurricanes, earthquakes, fires and other similar hazards.

7.4 Insolvency

In this jurisdiction, under Law 141-15, insolvency alone does not justify termination, and any automatic termination clauses based solely on the commencement of restructuring proceedings are unenforceable; hence, ongoing construction contracts could remain generally enforceable during insolvency proceedings unless the court, upon recommendation of the conciliator, finds that continuing the contract would harm the estate.

The court cannot modify contractual terms without the parties' mutual consent. If the contract

continues, the debtor must fulfil all obligations as they become due, and any new obligations incurred during the proceeding are treated as priority claims.

The counterparty is also bound to perform, even if the debtor previously defaulted under other agreements. If the counterparty breaches the contract, the conciliator may seek termination and claim damages on behalf of the estate.

If the debtor fails to comply with post-petition obligations, the contract may be terminated by law, without prejudice to civil or contractual liability. In staged contracts, early termination may be ordered if the debtor is found unable to meet future obligations, while the counterparty may still pursue damages as provided by contract or under civil law.

In contracts, it is advisable to provide that each party shall promptly notify the other in writing upon the occurrence of any event that may result in the initiation of a restructuring or liquidation proceeding under Law No 141-15, including the filing of a request for restructuration or the designation of a conciliator.

7.5 Risk Sharing

The allocation of risks depends on how the construction contract is structured and who will execute the project. In many cases, particularly when dealing with the Dominican State, the contractor is a consortium. Multiple companies join forces and are awarded the contract collectively. Under Dominican law, consortium members are jointly and severally liable towards the State; however, internally, they typically allocate risks and responsibilities based on their respective participation percentages.

Regarding the relationship between contractors, subcontractors and the project owner, risk allocation varies depending on the circumstances. Two types of contractual chains exist in this jurisdiction: homogeneous and heterogeneous.

A homogeneous chain arises when there is a transfer of ownership rights from one link to the next – for example, in cases involving the sale or supply of materials. In such cases, all parties in the supply chain are jointly liable to the project owner for damages.

A heterogeneous chain, on the other hand, refers to cases where the general contractor subcontracts others to perform specific work – not for the supply of goods, but for labour or services. In these cases, if a subcontractor breaches its obligations, the breach constitutes a contractual fault towards the general contractor. However, the project owner may still invoke the breach as a tort (delictual liability) if it results in harm. In practice, the owner typically makes a claim against the general contractor, who would then seek recourse against the subcontractors in breach.

Additionally, when faults are committed on-site by individual workers, their employers may be held liable under the principle of vicarious liability (*comitencia*) in Dominican law.

8. Contract Administration and Claims

8.1 Personnel

The construction industry in the Dominican Republic is a regulated sector, from the design phase through to project approval and execution. In this context, architects and engineers must be licensed professionals and affiliated

with CODIA, the official body that governs these professions.

Foreign architects and engineers are not prohibited from designing or preparing project plans, drawings or construction documents for use in the Dominican Republic. However, all such plans must be reviewed, signed and stamped by locally licensed professionals in order to be submitted to the relevant authorities for approval, and must comply with local regulation on the design and structure.

In addition, the general contractor – whether local or foreign – must appoint for the project a person who is a licensed architect or engineer in the Dominican Republic.

In the Dominican Republic, the physical labour workforce – such as masons, rebar workers, carpenters, tile layers and plasterers, etc – are generally hired either by the general contractor (when the latter performs on-site work) or by the subcontractors responsible for specific areas. In this jurisdiction, it is important to clearly define the labour responsibilities of each party and to maintain good organisation regarding the payroll or fixed personnel plans of the specific employees of each company involved. This helps to minimise the risk of labour claims against parties who are not the actual employers, which is a frequent issue in this jurisdiction.

8.2 Subcontracting

In the Dominican Republic, the subcontracting of contractors in a construction project is open and subject to contractual freedom. There are no restrictions regarding who may act as subcontractors on a project.

Some limitations may exist in public procurement involving the Dominican State, where sub-

contractors might need to be approved depending on the percentage of construction work they would be undertaking, as required by the contracting public entity.

In the private sector, subcontracting is completely open and only requires strategic planning by the project owner to clearly define the responsibilities assigned to the general contractor, in order to minimise risks related to the quality of those who will actually be working on-site. It is well understood that in construction the choice of contractor is a personal decision based on their experience and qualifications. Even when a bidding process is held, the characteristics of the prospective contractor are always taken into account by the project owner.

8.3 Intellectual Property

In the Dominican Republic, matters related to industrial property are generally not reserved in civil construction projects. Industrial property protections tend to appear only in very specific developments, such as branded residences or hotel projects involving a particular brand, where provisions are made to safeguard the interests of the parties involved. However, these protections are typically flexible, since construction works themselves are not usually registered as autonomous elements of industrial property in this jurisdiction.

As for architects and designers, it is possible for a work to be protected under copyright law, though this is not a central concern in the Dominican construction industry. There is no strict enforcement of industrial property protection in the context of civil works construction.

9. Remedies and Damages

9.1 Remedies

Under the Dominican civil law system, a breach of contract or default on an obligation – when it concerns a principal obligation – entitles the non-defaulting party to terminate the contract and seek compensation for damages arising as a direct consequence of the default. The breach of a secondary obligation may also give rise to a right to compensation.

In certain cases, specific performance (forced execution) is available. However, it is not a common practice in the Dominican Republic, as its scope is limited, and Dominican civil law principles have not yet evolved to recognise unilateral remedies as in other civil law jurisdictions.

A creditor may also perform the obligation itself at the debtor's expense.

When the obligation in default involves a payment, specific enforcement may be sought through garnishment of bank accounts or third-party receivables, as well as foreclosure of movable or immovable assets. To proceed with such enforcement, the creditor must hold an enforceable court judgment, an arbitral award or an executable title, such as a registered privilege, mortgage or notarial promissory note.

Contract termination may be exercised unilaterally if such a clause is agreed upon in the contract; otherwise, it must be granted by a court or arbiter decision.

Additionally, even in the absence of a termination clause, some precedents in the Dominican Republic have recognised the right to terminate a contract based on the conduct of the breaching party – similar to the *Arrêt Tocqueville* doc-

trine in France (the Dominican civil-commercial legal system is based on French civil law).

The suspension of performance by one party is also permitted when the other party is in default (the *exception d'inexécution* principle). This is a temporary remedy that allows the creditor to suspend its performance as leverage to compel fulfilment of an enforceable obligation.

Retention rights (*droit de rétention*) may also be exercised by a contractor acting as a creditor of the employer.

9.2 Restricting Remedies

In construction contracts, the parties may limit available remedies through various provisions commonly used in this jurisdiction, such as:

- limiting the damages that can be claimed through a limitation of liability clause;
- restricting or prohibiting the contractor from withholding work or access to the construction site, thereby allowing only claims for damages or payment upon termination; and
- establishing liquidated damages in the form of penalty clauses in the event of breach, so that any dispute is limited to whether the clause is enforceable, rather than an open assessment of damages.

9.3 Sole Remedy Clauses

Sole remedy clauses are seldom used, but are recommended for employers to prevent contractors from invoking a right to retain control of the construction site. These clauses typically establish an indemnity as the exclusive remedy available to the contractor upon termination of the contract – whether termination occurs unilaterally (at the employer's sole discretion) or due to a breach.

9.4 Excluded Damages

The expectation of gain may be excluded when the parties limit liability through a limitation of liability clause. However, if the default is deemed to have been committed in bad faith or intentionally, such clauses will not apply. In those cases, the creditor is entitled to full compensation for the damages caused.

9.5 Retention and Suspension Rights

Retention and suspension rights are permitted in this jurisdiction; however, the parties may limit or exclude them contractually, as previously indicated.

9.6 Termination

Construction contracts may be terminated at the sole discretion of the employer (Article 1794 of the Civil Code). In such cases, however, the contractor must be compensated for the profit they would have earned from the full performance of the contract.

A contract may also be unilaterally terminated due to a material breach. The affected party may seek compensation for the damages resulting directly from the breach.

A contract may be terminated by judicial or arbitral decision when a dispute arises and parties allege a breach and request termination. In such cases, parties may seek compensation for damages resulting from the breach.

10. Dispute Resolution

10.1 Regular Dispute Resolution

Construction conflicts between private parties fall under the jurisdiction of the civil and commercial courts of the Dominican Republic.

Contributed by: Alberto Reyes Báez, Guzmán Ariza

If the conflict involves a public contract with the government, it falls under the jurisdiction of the administrative courts.

10.2 Alternative Dispute Resolution

Arbitration and mediation are available as alternative dispute resolution in construction disputes. Arbitration is commonly used.

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