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**MINISTERIO DE
INDUSTRIA Y COMERCIO**

REPÚBLICA DOMINICANA



Pre Investment Conditions in the Dominican Republic



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Organic Law Of The National Strategy For Development Of The Dominican Republic 2030

Objective 3.2 : Reliable, efficient and environmentally sustainable energy



Energy Investment



- ❖ The National Energy Commission is the organism in charge of all energy concessions, and is in charge of the approval of new investments.

IIAs Energy Obligations

EPA Agreement

- ❖ Article 138: Cooperation on eco-innovation and renewable energy
 - ❖ The parties agree to cooperate, including by facilitating support on forms of eco-innovation which include energy efficiency and renewable sources of energy.

Investment Rules in IIAs

Among the reservations made by the Dominican Republic in the DR-CAFTA, we can find the energy sector.

Standards of Pre-Investment Protection BITS

All our agreements have standards set in place to protect international investments.

Bilateral Investment Agreements

- ❖ Fair and equitable treatment : **France (restriction to sales and transportation)**
- ❖ National Treatment : **Finland**
- ❖ MFN: **Finland**
- ❖ Performance Requirements: **Chile, Finland, Italy**

No Pre-investments Obligations: Morocco, Switzerland, Netherlands, DR BIT Model

Pre-investment Rules in IIAs

- ❖ Negative List: Each Party establishes non-conforming measures to certain provisions

DR-CAFTA:

- ❖ National Treatment
- ❖ Most-Favored-Nation Treatment
- ❖ Performance Requirement
- *Each party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances to its owns investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.*
- It also applies to Investments.

Mechanism for Prevention and Resolution of Disputes



Pilot Project with the World Bank on prevention:

- This aims to assist countries to stimulate and retain private investment, including FDI, as well as improving integration and the effects of investment in the local economy. Thus national and international regulatory measures that may affect the attraction, establishment, operation, retention and generation of FDI are addressed.

Legal Basis

Dominican Constitution

- ❖ Article 220: "...the State and other persons of public law may submit disputes arising from contractual relationship to jurisdictions constituted under existing international treaties. They can also submit it to national and international arbitration in accordance with the law

Decree No. 610-05

- ❖ Established the National Council for the Implementation and Administration of Treaties (CONAIT), corresponding to the Ministry of Industry and Trade

Decree No. 610-07

- ❖ Designates the DICOEX as National Coordinating Authority, responsible for the settlement of disputes arising under the Free Trade and Investment Agreements signed by the Dominican Republic

Legal Basis

Decree No. 303-15

- This Decree creates the National System for the Prevention and Management of Disputes of the Dominican Republic and declares of public interest the prevention, management and effective defense of the controversies. The Decree states that the prevention of disputes will have a permanent and official character. The legislation contains a number of substantive provisions in favor of the effective prevention and management of trade and investment disputes. It also establishes that DICOEX is the National State Authority for the defense of these disputes.

Mechanism for Prevention and Resolution of Disputes

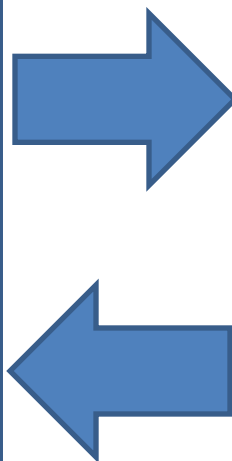
Justification:

The Dominican State has a dozen of Bilateral Investment Treaties, plus four Free Trade Agreements and Economic Partnership Agreements with investment provisions, in which the mechanism provided for the settlement of disputes is primarily through arbitration, escaping the knowledge of disputes from the local courts.

How the Mechanism for Prevention and Resolution resembles the ECT arbitration protocols

Mechanism for Prevention and Resolution

- ❖ Establish prevention as the central pillar of the defense strategy.
 - ❖ Mediation
 - ❖ Negotiations
 - ❖ Conciliations
- ❖ These strategies are used to avoid arbitration.
- ❖ Seeks to provide effective training in prevention and defense of disputes



Energy Charter Treaty

- ❖ The main goal is to reach an amicable settlement
- ❖ This settlement is tried to accomplish through mediation to not reach arbitration.
- ❖ State Responsibility:
 - ❖ Restitution
 - ❖ Compensation
 - ❖ Satisfaction
- ❖ Institutions have to ensure ensuring that personnel is appropriately-trained

National Barriers Overcome in the Energy Sector

- ❖ Technical
 - ❖ Enabling of ports
- ❖ Territorial
 - ❖ Facilitation of Ownership Rights
- ❖ Bureaucrats
 - ❖ Implementation of Law 57-07

This has led to the development of various energy projects such as the Wind Farms “Los Cocos” and “Larimar”.

DICOEX's Recent Experience in the Energy Sector

- Arbitration under the France-Dominican Republic Bilateral Investment Treaty : **Société Générale v. Dominican Republic.**
- Arbitration under DR-CAFTA Treaty: **TCW Group, Inc. and Dominican Energy Holdings, LP v. Dominican Republic.**
- In the above two cases we reached a Negotiation, Transfer and Mutual Discharge Agreement.



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Thank you
