

GENERAL LAW ON BUSINESS ASSOCIATIONS AND  
INDIVIDUAL PROPRIETORSHIPS WITH LIMITED LIABILITY  
LAW NO. 479-08

EXECUTIVE SUMMARY

The Law on Business Associations and Individual Proprietorships with Limited Liability (Law No. 479-08) was issued on December 11, 2008. This law repeals and replaces Title III of the Code of Commerce. It represents a complete revision and overhaul of Dominican company law. It creates a distinction between public and private corporations; it introduces limited liability companies (LLC), and it allows individual businessmen to remove their personal assets from the reach of their business creditors by placing their business assets in an Individual Proprietorship with Limited Liability (IPLL). Additionally, the law regulates the most significant processes of corporate life (mergers, spin-offs, increase and decrease in capital, purchase and redemption of its own shares by a company, dissolution and liquidation).

The new law includes the following innovations:

1. All business entities become endowed with legal personality at the time of registration at the Commercial Registry;
2. Corporate existence can be disregarded (i.e. in the case of a corporation, the corporate veil can be pierced) when the entity is used as a vehicle to commit fraud or violates rules of public policy;
3. A corporation can be formed with only two shareholders, while previously seven shareholders were required;
4. Foreign companies will not be required to post bond as a condition to filing suit in Dominican courts;
5. Pre-incorporation agreements and agreements among shareholders are recognized;
6. Definitions are given for the concepts of parent company and subsidiary, branches and agencies;
7. The law makes it possible to hold meetings without the need for the members to be physically present;
8. The right of shareholders and partners to receive information is strengthened;
9. The number of cases for a business organization to be considered void are limited;
10. The law sets forth new corporate governance rules, including increased responsibilities and liabilities for directors or managers of business associations. With respect directors' powers ultra vires doctrine (implied powers) is established. Further, there are fiduciary obligations provisions, including self dealings prohibition rules.
11. Corporations are divided into public and private corporations; the powers of the corporate comptroller are strengthened; non-voting shares are allowed; the shares of publicly-held corporations can be listed on the stock exchange; and the group of bondholders is endowed with legal personality.

DATE OF ENTRY INTO FORCE OF THE  
LAW AND IMPORTANT DEADLINES

The new law shall take effect on June 19, 2009. Existing corporations are granted a term of up to June 11, 2009 to conform to the new law. The Commercial Registry is going to start receiving said filings starting from April 1<sup>st</sup>, 2009.

Additionally, companies have the option of transforming themselves into another one of the company types provided by the law. The new law sets forth the transformation process for companies wanting to convert to one of the other types of companies without having to dissolve or go through a liquidation process. The Commercial Registry is going to start receiving transformation filings starting from June 19, 2009.

## GENERAL OVERVIEW OF THE LAW

The law is divided into three titles: Title I: Business Associations, Title II: Individual Proprietorships with Limited Liability, and Title III: Criminal Provisions.

Below are the main innovations and most relevant issues touched upon by this new law.

### I. BUSINESS ASSOCIATIONS.

Law No. 479-08 retains the existing types of business organization: the corporation (“sociedad anónima”), the partnership (“sociedad colectiva”), and the limited partnership (“sociedad en comandita”), and adds the limited liability company (LLC) (“sociedad de responsabilidad limitada”) as a new form of business organization. Corporations are considered appropriate for large enterprises and are divided into two classes: private or close corporations and public corporations.

The law also contemplates the informal joint venture (“sociedad en participación”), which is not registered and does not enjoy legal personality. The terms of informal joint ventures are not required to be expressed in writing and their existence can be proved by testimony or any other means.

Foreign companies have the same rights and obligations as locally-formed entities, with certain exceptions. Please note that in order for foreign companies to qualify to do business in the Dominican Republic they must be registered in the Commercial Registry and in the National Registry of Taxpayers.

#### 1.1 Limited Liability Companies

Limited Liability Companies (LLC) is a hybrid between a partnership and a corporation. It has some resemblance to partnerships on account of the fact that they are based on the personal cooperation of their members rather than mere capital investment and because of the fact that their shares are not freely transferable and are not negotiable securities. On the other hand, they resemble a corporation on account of the fact that they have limited liability. Their organization is less formal and more flexible than that of a corporation. It is likely that most of the existing corporations will be transformed into LLCs.

Limited Liability Company (LLC)	Main Characteristics
Number of Partners	Must have at least two members and may have up to 50.
Company Name	The company’s name must be followed by the words “Sociedad de Responsabilidad Limitada” or the initials SRL.
Capital	The capital of an LLC is divided into shares which are non-negotiable. Capital must be all paid up and if in cash, deposited in a bank in order to be able to record company at Commercial Registry. The minimum capital of an LLC is RD\$100,000.00, divided into shares, each having a par value of at least RD\$100.00 Every three years, the Ministry of Industry and Trade (“Secretaría de Estado de

Limited Liability Company (LLC)	Main Characteristics
	<p>Industria y Comercio”) will revise these numbers to take into account the rate of inflation as measured by the Index of the Cost of Living published by the Central Bank.</p> <p>Existing members have a right of first refusal in any increase of capital through the issuance of new ownership interests, but the Members’ Meeting which resolves to increase the capital will be able to suppress or limit this right of first refusal under certain conditions.</p>
Transfer of company quotas	The sale of ownership interests to outsiders requires the approval of at least half of the members representing 3/4 of the outstanding capital. If the sale is not approved, the remaining members will be required to purchase the shares offered for sale in proportion to their respective holdings.
Comptroller	A limited liability company is not required to have a comptroller, but members representing 10% or more of the capital may petition the judge to appoint a comptroller.
Management of the Company	An LLC must be managed by one or more managers, who must be natural persons. They have broad powers to act on behalf of the company except for matters over which the law gives power to the members. They bind the company even when acting ultra vires, i.e. outside the scope of the company purpose, unless the third party with whom they are dealing has knowledge of the company purpose or could not have ignored it under the circumstances. <u>No person may hold the position of manager in more than five business associations at any one time.</u>
Members Meeting	Member resolutions must be adopted at Members’ Meetings, but the by-laws of an LLC may provide that they may also be taken by means of a written consent signed by each member or by a draft resolution circulated among them. Votes can be sent in writing or in electronic form.

## 1.2 Corporations.

Corporations can be either private or public. A corporation is designated as “sociedad anónima” or S.A. A public corporation is one which offers its shares to the public, whether or not through the stock exchange, either as an initial subscription at the time of formation or at a later time for a capital increase. A corporation is also considered public if it has the power to issue bonds or debentures to the public. Public corporations are subject to supervision by the Superintendency of Securities in connection with their formation, amendments to their corporate

charters and by-laws, changes in their capital structure, the issuance of negotiable shares or debentures, mergers, spin-offs, dissolution and liquidation.

Private corporations are those which are formed and capitalized by their own shareholders without recourse to the public.

Share Companies/ Corporations	Main Characteristics
<b>Number of Shareholders</b>	All corporations must have at least two shareholders
<b>Company Name</b>	The company name may be freely formed or may include the last names of one or more of the shareholders. Said name should be followed by the words “Stock Company” (“Sociedad Anónima” in Spanish) or its acronym “S.A.”
<b>Capital</b>	<p>All corporations must have at least two shareholders. The minimum capital of a private corporation must be RD\$30,000,000, divided into shares having a par value of at least RD\$100 each. The minimum capital and par values of a public corporation are set by the Superintendent of Securities, and currently has been set by Superintendent of Securities at RD\$30,000,000, minimum capital, and a minimum par value of at least RD\$100. As with the LLC’s, every three years, the Ministry of Industry and Trade will revise these numbers to take into account inflation as measured by the Index of the Cost of Living published by the Central Bank.</p> <p>The shares of both public and private corporations must be subscribed and paid in full before the respective shares are issued, and a minimum of 10% of the authorized capital must be subscribed and paid in. A subscription is evidenced by a receipt in the case of a private corporation and by a subscription bulletin in the case of a public corporation. In addition, in the case of public corporations, the paid in capital contributed in cash must be deposited in a bank.</p>
<b>Increase in Capital</b>	In the case of an increase of capital by means of the issuance of new common or preferred shares, existing shareholders shall have a right of first refusal in proportion to their respective shares in the corporate capital, but this right can be waived or assigned.
<b>Comptroller</b>	All corporations must have one or more comptrollers, who must be certified public accountants with at least three years of experience as auditors, among other requirements. No person may hold the position of comptroller in more than five (5) business associations at any one time. A comptroller’s job is to verify the accounts of the corporation and to ensure that its accounting procedures are in conformity with generally accepted accounting principles. They must also audit the annual reports presented by the directors to the shareholders. A comptroller may not be appointed to a managerial position in the corporation or its parent or of any of its subsidiaries until two years have elapsed from the time he resigns his position as comptroller; nor may a manager or employee of a corporation be a comptroller of the corporation, its parent or any of its subsidiaries until two years have elapsed from the time he resigned his position.

Share Companies/ Corporations	Main Characteristics
<b>Company Management</b>	A corporation is managed by a board of directors of at least three members. <u>No person may hold the position of director in more than five business associations at any one time.</u> The board of directors elects a chairman, who is also president of the corporation (in Spanish “presidente”), and who must be a natural person. If a legal entity is appointed as a director, it must designate a natural person to represent it on the board, and this person will have the same rights and be subject to the same liabilities jointly and severally with the entity which appointed him. The board of directors’s binds the company even when acting ultra vires.
<b>Shareholder Meetings</b>	In private corporations shareholder resolutions must be adopted at Shareholders’ Meetings, but may be adopted in a minute signed by all the shareholders without the need of the shareholders to be physically present. Votes can be expressed through any electronic or digital media.

## II. SOLE PROPRIETORSHIP LIMITED LIABILITY ENTITIES

These entities belong to a single natural person and their assets are segregated from his other personal belongings. Their capital is in the amount stated by their owner in accordance to the value of the assets contributed to the same. Their names may not reflect the name or nickname of their owner or of any other person and must be followed by the words “Empresa Individual de Responsabilidad Limitada” or the letters “EIRL”. The owner can appoint a manager or manage the business himself. The ownership of an SPLL is freely transferable. A comptroller is neither required nor applicable.

## III. CRIMINAL PROVISIONS RELATING TO COMMERCIAL COMPANIES AND SOLE PROPRIETORSHIP LIMITED LIABILITY ENTITIES

The third title of the law describes criminal provisions applicable to corporations, partnerships, LLCs and SPLLs. In addition to these entities, the founders, presidents,

comptrollers, legally appointed or de facto directors, officers and agents of the entity are subject to penalties for violations of the criminal provisions contained in the Law, as well as other crimes which they may commit while performing their functions. These criminal provisions have various purposes, including: (i) to protect public savings and investments in public corporations; (ii) to give shareholders and partners access to complete and accurate information concerning the conduct of the business; and (iii) to render managers and directors liable for misappropriation of funds belonging to the business.

Individuals are subject to imprisonment for up to ten years and, for the first time in Dominican law, legal entities can be criminally liable and subject to penalties such as fines, temporary or permanent closure of their places of business, prohibitions to engage in certain activities, and dissolution. Fines are measured in terms of a given number of minimum wages, up to a maximum of 120.

**Attached is a table on the Types of Vehicles for Doing Business and their Main Characteristics.**

**Types of Vehicles for Doing Business and Main Characteristics**

Type	Minimum Partners	Capital	Partner's Liability
<b>Sociedad Anónima de Suscripción Privada (equivalent to the Privately Owned Share Company or Corporation)</b>	2	Starting at RD\$30,000,000.00	Limited to the extent of the investment
<b>Sociedad Anónima de Suscripción Pública (equivalent to the Publicly Traded Share Company or Corporation)</b>	2	Set by the Securities Superintendence (currently RD\$30,000,000.00)	Limited to the extent of the investment
<b>Sociedad de Responsabilidad Limitada (equivalent to the Limited Liability Company)</b>	2, Max. 50	Starting at RD\$100,000.00	Limited to the extent of the investment
<b>Sociedad en Nombre Colectivo (equivalent to the General Partnership)</b>	2	Set by the partnership agreement	Unlimited
<b>Sociedad en Comandita Simple (equivalent to the Limited Partnership)</b>	2	Set by the partnership agreement	Unlimited for the general partners and limited for the limited partners
<b>Sociedad en Comandita por Acciones (equivalent to the Limited Partnership with Share Capital)</b>	1 general partner and 3 limited partners	Set by the partnership agreement	Unlimited for the non silent partners and limited for the silent partners
<b>Empresas Individuales de Responsabilidad Limitada (equivalent to the Sole Proprietorship Limited Liability Entities)</b>	1	Set by the incorporation document	Limited to the extent of the investment