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# **The Legal 500 Country Comparative Guides**

## **Dominican Republic**

# **ENERGY - OIL & GAS**

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

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## DOMINICAN REPUBLIC ENERGY - OIL & GAS



### 1. Does your jurisdiction have an established upstream oil and gas industry? What are the current production levels and what are the oil and gas reserve levels?

No. In the last 30 years there has been no gas or oil exploration or exploration activity in the Dominican Republic ("DR"), until very recently in November 2019, when a contract for oil and gas exploration and exploitation of block 2 of the offshore basin of San Pedro de Macorís was granted to Apache Dominican Republic Corporation, a subsidiary of the US company Apache Corporation. The agreement was executed by the Executive Branch on October 2020, and is currently pending for Congressional approval. According to the agreement, Apache Corporation will make an initial investment of USD\$5MM for exploration in the first four years and will invest another USD\$8MM in the second phase. The company will make investments in the exploration phase at its own cost and risk, with a full commitment of operating in an environmentally and socially responsible manner. For the third phase, the company committed with the drilling of an exploratory well, and if the oil discovery is successful, the investment in exploitation would reach about USD\$100MM.

This contract was awarded as the result of an international public bidding process launched by the Dominican government on July 2019 as its first oil and gas licensing round, for a mix of onshore and offshore blocks. At this first auction round, the Dominican government offered 14 blocks, including 10 onshore blocks (6 blocks at the Cibao basin, 3 blocks at the Enriquillo basin and 1 block at the Azua basin) and 4 offshore blocks at the San Pedro de Macorís basin.

The Dominican government has already announced that will launch a second auction round for oil and gas exploration in the coming months in new areas that were not offered in the first round.

These licensing rounds are part of the country's National Development Strategy for 2030, which aims at

implementing a comprehensive plan for developing an upstream oil and gas industry in the DR. As part of such plan, the government has already created a National Database for oil and gas prospecting, exploration and production, which comprises 1,491 maps and drawings, 805 seismic profiles, 202 well logs, 321 reports and 209 magnetic tapes with seismic information, with all this data stored in SEG-Y format and freely available for interested investors.

Furthermore, in February 2016 the DR joined the Extractive Industries Transparency Initiative (EITI) and is currently in the process of being validated under the 2016 EITI Standard. The latest decision of the EITI's Board on the DR's validation process, dated February 14<sup>th</sup>, 2020, reports that the DR has made significant progress overall in executing the 2016 EITI Standard, especially regarding the availability of accessible and comprehensible information and contract transparency.

### 2. How are rights to explore and exploit oil and gas resources granted? Please provide a brief overview of the structure of the regulatory regime for upstream oil and gas. Is the regime the same for both onshore and offshore?

Oil and gas exploration and exploitation rights for both onshore and offshore are acquired through contracts granted by the Dominican State in accordance with the Dominican laws.

Oil and other hydrocarbons are expressly excluded from the scope of the Mining Law. The regulatory framework of the DR upstream oil and gas industry, including both onshore and offshore, is mainly directed by the following laws and regulations:

Law No. 4532-56

Law No. 4532-56 on exploration, exploitation and benefit of oil and other hydrocarbons, as amended by Law No. 4833-58, grants direct and discretionary power to the

Executive Branch, subject to Congressional approval, to execute contracts to explore, exploit and obtain benefits from oil and other hydrocarbons, including asphalt, naphtha, bitumen, pitch, ozokerite and other similar substances.

Law No. 64-00

Environmental Law No. 64-00 and its complementary regulations set out the legal framework for environmental authorizations, permits and licenses applicable to projects with environmental impact, including such related to the exploration of oil and derivatives, mining exploration or prospecting, removal of the vegetal layer and the earth's crust, exploitations, construction and operation of wells, dams of queues, processing plants, refineries and waste disposal.

Law No. 100-13

Law No. 100-13 creates the Ministry of Energy and Mines ("MEM") as the governing body of the upstream oil and gas industry.

Decree No. 83-16

Decree No. 83-16 creates the Hydrocarbon Exploration and Production Regulation, which regulates the exploration and exploitation of hydrocarbon deposits, in any physical state.

Resolution 001-2016

Resolution 001-2016 issued by the MEM, regulates the obligation to obtain a permit and or authorization to carry out geological and or geophysical studies for hydrocarbons within the DR.

Resolution 012-2019

Resolution 012-2019 issued by the MEM, establishes the obligation to carry out geophysical records in the drilling of wells for hydrocarbons within the DR.

Law No. 47-20

Law No. 47-20 on Public Private Partnerships, which aims at establishing a legal and regulatory framework for the initiation, selection, award, contracting and execution of public-private-partnerships within the DR.

**3. What are the key features of the licence/production sharing contract/concession/other pursuant to which oil and gas companies undertake oil**

**and gas exploration and exploitation?**

Oil and gas exploration and exploitation rights in the DR are granted through production sharing agreements (PSAs). In May 2018 the MEM presented a PSA model that establishes the general terms and conditions that will govern the exploration and exploitation of hydrocarbons in the DR, based on a shared production scheme. Two templates were prepared:

- hydrocarbon exploration and exploitation agreement for offshore areas; and
- hydrocarbon exploration and exploitation agreement for onshore areas.

The templates are available in the National Database mentioned above. For details on the applicable royalties, production sharing scheme and taxes, please refer to question No. 9.

**4. Are there any unconventional hydrocarbon resources (such as shale gas) being exploited and is there a separate regulatory regime for unconventional?**

The potential existence of unconventional hydrocarbons resources in the DR is currently unknown.

**5. Who are the key regulators for the upstream oil and gas industry?**

MEM is the governing body of the upstream oil and gas industry in the DR. It is responsible for the formulation, adoption, monitoring, evaluation and control of policies, strategies, general plans, programs, projects and services related to the upstream oil and gas industry.

Law No. 100-13 declared the National Geological Service (SGN) as an attached agency of the MEM and under its direction. The SGN supports the MEM by providing the necessary studies and knowledge for the correct administration of the country's geological resources.

Furthermore, the Ministry of Environment and Natural Resources (MMARN) created by Law No. 64-00 is the governing body for the management of the environment, the ecosystems, and natural resources. MMARN is in charge of dictating the environmental policy and granting environmental authorizations, permits and licenses to all projects with environmental impact.

**6. Is the government directly involved in**

## the upstream oil and gas industry? Is there a government-owned oil and gas company?

The Dominican government is not directly involved in the oil and gas exploration and production activities. These activities are currently carried out by private companies through contracts granted by the Dominican State. Notwithstanding, the regulation recognizes the Dominican State right to invest and/or participate in any contract or private-public-partnership (PPP) for the exploitation of oil and gas.

## 7. Are there any special requirements for or restrictions on participation in the upstream oil and gas industry by foreign oil and gas companies?

The Dominican laws do not impose any restrictions on the participation of foreign companies in oil and gas upstream activities. Foreign companies interested in becoming beneficiaries of oil and gas exploration and exploitation rights are only required to register locally so that they can be recognized with the same rights as local entities under the Companies Law. For such purposes, foreign companies must establish a domicile in the DR, register at the Mercantile Registry and obtain a tax identification number.

All the upstream oil and gas activity carried out by foreign companies in the DR is subject and governed by the laws of the DR; neither the Dominican State nor any foreign company under a contract for hydrocarbons exploration and exploitation in the DR will be subject to foreign laws. International arbitration clauses are allowed in contracts, provided that Dominican law will be applicable and arbitration procedures will be conducted in Spanish.

## 8. What are the key features of the environmental and health and safety regime that applies to upstream oil and gas activities?

Upstream oil and gas exploration and exploitation activities are subject to Environmental Law No. 64-00. The awarding of oil and gas exploration and exploitation rights will be subject to the approval by the MMARN of an environmental impact study.

The winning bidder must submit the study within 4 months from the date of issuance of the award resolution. Once the study is submitted, MEM will have a period of 3 months to evaluate the study and approve it, or request improvements. MEM will have the right to

deny the definitive award of the contract if it determines that the exploration and exploitation activities may cause serious or irreversible damage to the environment.

## 9. How does the government derive value from oil and gas resources (royalties/production sharing/taxes)? Are there any special tax deductions or incentives offered?

The tax regime for the production sharing agreements (PSAs) in the DR is comprised by the following terms and conditions:

- There is a Minimum State Participation (*Participación Mínima del Estado*, "PME"). Companies granted a PSA shall pay the Dominican State a minimum of 40% of the attributable benefits throughout the life of the project. This is basically the total oil revenues of the project (*renta petrolera total*, "RPT").
- Companies granted a PSA are subject to a corporate income tax rate of 27%. The recoverable costs for the income tax include the costs and investments incurred during the exploration phase and the production phase in the area authorized under the agreement. All expenditures that are strictly indispensable for performing oil and gas activities, incurred since effective date up to the end of the contract, are admitted as recoverable costs. There is a cost recovery limit of 95% of the gross income per period; companies can unlimitedly carry forward unused deductions.
- Companies granted a PSA may enter to the DR the machinery and equipment necessary for performing oil exploitation activities under a temporary admission regime.
- During exploration and production periods, companies granted a PSA shall make annual rental payments to the Dominican tax authority based on the surface area covered by the contract. The annual rental fee is calculated per square kilometer; the amount of the fee is different for each of the phases of the exploration period and for the production phase, respectively.
- During the exploration phase, some payments to nonresidents shall not be subject to withholding tax; while during the production phase, a 10% withholding tax shall be applicable to nonresidents payments.

### 10. Are there any restrictions on export, local content obligations or domestic supply obligations?

No, in the DR there are no restrictions on export, local content obligations or domestic supply obligations. However, during the exploitation phase, companies may be required to pay to the Dominican government a cash or in-kind royalty over the gross hydrocarbon product, destined to the provinces of the territory where the production commercial fields are located.

### 11. Does the regulatory regime include any specific decommissioning obligations?

The minimum provisions that contracts must contain according to the regulation include dismantling and rehabilitation obligations upon termination of the contract for any reason.

### 12. What is the regulatory regime that applies to the construction and operation of offshore and onshore oil and gas pipelines?

The construction and operation of offshore and onshore oil and gas pipelines is regulated by the Hydrocarbons Law No. 112-00 ("Law 112-00") and its ruling of application created through Decree No. 307-01 (Decree 307-01).

In accordance with Decree 307-01, the storage of oil or gas for sale or self-consumption purposes is subject to a "Deposit License" issued by the Ministry of Industry, Commerce, Micro, Small & Medium Enterprises ("MICM" for its acronym in Spanish). In addition, it is required a "Transportation License", also issued by the MICM.

### 13. What is the regulatory regime that applies to LNG liquefaction and LNG receiving terminals? Are there any such terminals in your jurisdiction?

LNG liquefaction and LNG receiving terminals are also subject to Law 112-00 and Decree 307-01. To construct and operate a LNG receiving terminal it is required an "Importation with Terminal License" issued by the MICM.

As of today the only LNG receiving terminal in the DR is the AES Dominicana LNG terminal at AES Andres Energy Complex located in Andrés Boca Chica.

### 14. What is the regulatory regime that applies to gas storage (not LNG)? Are there any gas storage facilities in your jurisdiction?

The construction and operation of any type of storage facilities for the storage of gas or any other oil derivative for sale or self-consumption purposes is also subject to a Deposit License issued by the MICM in accordance with Law 112-00 and Decree 307-01.

Yes, there are several gas storage facilities in the DR.

As for LPG, there is the Dominican Petroleum Refinery PDV ("Refidomsa") which has LPG storage infrastructure installed in Haina and Azua. In addition to its refinery business, through which it buys crude oil and turns it into LPG and other fuels, Refidomsa also imports LPG and other products, given its limited refining capacity (approximately 30,000 barrels per day). Furthermore, there is also a fuel import and export terminal in San Pedro de Macorís, owned by Coastal Petroleum Dominicana, which imports and stores most of the LPG in the country.

As for natural gas, as indicated before, we currently have a LNG receiving terminal and a dock owned by AES, with capacity to discharge around 10,000 cubic meters of liquid natural gas per hour. AES also has a 34km natural gas pipeline that goes from its LNG terminal in Boca Chica to Los Mina, Santo Domingo. In addition, it was recently launched the Eastern Gas Pipeline ("Gaseoducto del Este"), another 50km natural gas pipeline that goes from AES the Boca Chica terminal to San Pedro de Macoris, which involved an US\$250MM investment. Furthermore, there is new 120,000 cubic meter LNG storage tank currently under construction, that involved a US\$100MM investment and is expected to initiate commercial operation in 2023. The expansion of the DR natural gas storage infrastructure has its origin in the intention announced by the government last year, to convert about 1GW of oil-burning power capacity to gas derived from imported LNG, as a result of which several of the existing oil-burning power plants were converted to natural gas, adding an installed capacity of 750 MW of natural gas generation to the Dominican energy matrix.

It is expected that the natural gas storage infrastructure continues to expand in the short term, as the President has announced a regional project to expand the Manzanillo Port, located at the Northwest area of the country, which will include both natural gas storage infrastructure and power generation.

**15. Is there a gas transmission and distribution system in your jurisdiction? How is gas distribution and transmission infrastructure owned and regulated? Is there a third party access regime?**

Yes, there is a gas transmission and distribution system in the DR. The use and distribution of liquefied petroleum gas (LPG) and liquified natural gas (LNG) is regulated by the MICM, which is the governing body of the Dominican LPG and the LNG distribution markets, respectively. The gas distribution and transmission infrastructure is mainly owned by private companies licensed by the government to operate in the Dominican market subject to the requirements established by the applicable regulations.

The Dominican Antitrust Law provides for legal provisions aimed at preventing the abuse of dominant position by economics agents of a relevant market that may limit the entrance of new competitors. Based on these provisions and the application of the doctrinal and jurisprudential developments on the “essential facilities” institution, under very specific circumstances, a person with legitimated grounds may be able to invoke the third-party access criteria in cases where it is necessary to grant access to essential facilities (*facilidades esenciales*).

**16. Is there a competitive and privatised downstream gas market or is gas supplied to end-customers by one or more incumbent/government-owned suppliers? Can customers choose their supplier?**

Yes, there is a competitive and privatized downstream gas market in the DR where customers can choose among several suppliers.

**17. How is the downstream gas market regulated?**

The downstream gas market is also regulated by the MICM, which is the regulatory body that issues licenses, sets the regulation, rules and requirement to operate in the downstream gas market, supervises compliance with them and apply sanctions in response to their violation.

In the case of the LPG upstream market, Decree No. 2119 together with other complementary resolutions issued by the MICM establishes the legal framework on the licenses and safety requirements for LPG terminals and storage deposits, processing plants and platforms,

distribution stations, LPG distributors, LPG transportation vehicles (including bulk LPG vehicles and cylinder transport vehicles), LPG packaging equipment, LPG industrial tanks, etc.

As for the LNG distribution market, it is regulated by several resolutions issued by the MICM on the use of vehicular natural gas; licenses for the commercialization of natural gas; requirements for the design, construction, operation and safety of vehicular natural gas stations; the distribution, transportation and sale of natural gas; the wholesale distribution of natural gas, among others.

**18. Have there been any significant recent changes in government policy and regulation in relation to the oil and gas industry?**

No, there have not been any significant recent changes in government policy and regulation in relation to the Dominican oil and gas industry.

However, it is important to highlight that in 2015 the Dominican government enacted Decree 262-15, aiming at positioning the DR as a logistic hub for the Caribbean, relying on the significant increase of the country’s maritime connectivity and cargo transits. This regulation created a new customs regime, the “logistic deposit regime”, whereby foreign goods, including oil derivatives and fossil fuels, are allowed to enter into a logistic center in the DR -a special type of free-trade zone - under a temporary suspension of payment of the taxes and duties applicable to international trade for a period of 6 months. During this period, the goods under the regime may receive logistic services (i.e., storage, refrigeration, re-exportation, transportation, among others) and/or be destined for re-exportation, consumption or any other customs regime. The goods can also be distributed to free trade zones, airports, international ports or other logistic centers for its use within the Dominican territory or abroad. Exported services rendered in a logistic center by authorized logistic center operating companies from the DR to abroad are exempted of VAT. More recently in 2019, the tax authority issued General Rule No. 01-2019 on Logistic Operations for the application of Decree 202-15.

**19. What key challenges have been identified by the government and/or industry in relation to your jurisdiction’s oil and gas industry? In this context, has the Covid-19 pandemic had an impact on the**

### oil and gas industry and if so, how has the government and/or industry responded to it?

The main challenge of the government in the oil and gas industry is the Dominican Republic' dependency on costly fossil fuel imports.

As for the impact of Covid-19 in the Dominican oil and gas industry, as a result of the pandemic, according to data published by the Central Bank, in the first quarter of 2020, the import of crude oil registered an absolute decrease of 538,432 barrels (-26.83%), decreasing from 2,544,672 barrels between January and March 2019 to 2,006,240 in the same period in 2020. The value of these imports also decreased by US\$57.4MM (-53.44%), decreasing from US\$164.8MM between January and March 2019 to US\$107.4MM during the same period in 2020. The decrease in crude oil imports was due to the decline in economic activities, due to the effects of the restrictive measures imposed on production due to the pandemic.

### 20. Are there any policies or regulatory requirements relating to the oil and gas

### industry which reflect/implement the global trend towards the low-carbon energy transition?

Yes, the country's National Development Strategy for 2030 has set the objective of adopting sustainable management practices and mitigating climate change by increasing the use of renewable energy sources with lower environmental impact as well as decarbonizing the national economy through the development of a biofuels market and the promotion of energy efficiency and clean transportation system.

The DR signed and ratified the Paris Agreement at COP21 and has set the goal to reduce greenhouse gas emissions to 25% by 2030 compared to 2010.

Furthermore, the DR has set the goal of increasing its share of renewable energy in the power generation mix to 25% by 2025. For such purpose, our Renewable Energy Law establishes numerous incentives for the development of renewable energy projects, such as import duties exemptions on renewable energy generation equipment, tax credits for micro-scale auto-producers, among others.

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