

LATIN LAWYER REGULATORS

National Energy Commission (Dominican Republic)

Comisión Nacional de Energía

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Key individuals

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Regulatory oversight

The reform of the Dominican electricity sector began with the promulgation of Public Company Reform Law No. 141-97 in 1997. With this legal framework, the state electric company, which had operated as a vertically integrated monopoly, was divided into three companies: distribution, transmission and hydraulic energy generation.

In this context, the General Electricity Law No. 125-01 was enacted in 2001, which established the regulatory framework on which the Dominican electricity market currently operates the activities of the following sub-sectors: electricity, hydrocarbons and alternative sources and rational use of energy. Likewise, the General Electricity Law established two fundamental principles: the promotion of private participation in the electricity sector and the promotion of competitive markets in activities that are not monopolies.

As a result, the role of the state was reoriented to plan and regulate, which led to the creation of the National Energy Commission (NEC) to be responsible for outlining the state's policies in the energy sector. Subsequently, from the drafting of the national energy plan 2004-2015 by the NEC, Law No. 57-07 on the Incentive for the Development of Renewable Energy Sources and its Special Regimes (Law 57-07) was enacted, which granted functions to promote renewable energy sources to the NEC. Other initiatives and programmes have strengthened institutional actions in this area, such as the Net Measurement and Distribution Generation Regulations.

Moreover, as of 2006, through Law No. 496-06 (which created the Secretary of State for the Economy, Planning and Development), new functions were attributed to the NEC, such as the control and approval of the application of ionising radiations. In addition, with Law No. 103-13 on Incentives for the Import of Non-Conventional Energy Vehicles, enacted in 2013, specific functions were also attributed, including the incorporation of the benefits provided by Law 57-07 to the vehicles that use energy sources rather than fossil fuels. Therefore, the scope of the NEC's powers includes the processing and approval of permits and authorisations of small and large-scale power generation projects to source:

- conventional energy, from fossil fuels, natural gas and coal;
- renewable energy, from solar, wind and hydraulic sources; and
- biofuels, such as bioethanol, biodiesel and biogas.

The NEC is also responsible for:

- preparing and coordinating projects relating to legal and regulatory frameworks;
- planning the state's policy for the energy sector;
- preparing indicative plans for the energy sector;
- promoting investments in accordance with the National Energy Plan;
- ensuring the correct application of Law 57-07 and its regulations;
- regulating activities involving the use of radioactive substances and devices that generate ionising radiation; and
- promoting and disseminating the uses and applications of nuclear technology in the country.

It is important to highlight that on 25 February 2021, the President of the Republic together with the actors of the electricity subsector of the Dominican Republic, institutions of the central government, the Economic and Social Council, the representatives of business, labour and social organisations, political parties and other actors of Dominican society, signed the Electricity Pact.

The Electricity Pact is a set of agreements and commitments that are translated into policies, some concrete to be executed by the Administration, and others only enunciated in principles, evolved based on Law 1-12 (National Development Strategy), in the framework of sustainable national development, to be applied over a nine-year horizon (2021–2030).

In this sense, one of the most relevant points of the Electricity Pact is that the NEC will be eventually absorbed by the Ministry of Energy and Mines (MEM).

Reporting and disclosure obligations

The main reporting and disclosure obligations that companies have to comply with and provide to the NEC are the following:

- Once a provisional concession has been obtained for the construction of an energy project, the concessionaire must submit reports on the progress of construction of the project, as well as any event, unforeseen or not, that could delay or affect its conclusion.
- After obtaining a provisional concession, so as to acquire the definitive concession, among the necessary requirements, the following specific reports must be made:
 - on raw material supply, self-production, subcontracted production or imports thereof, and supply agreements, which ensure the stability of production and the economic viability of the project; and
 - on the selection criteria of the technologies to be used in the different international processes and references, and the shortlist of the technologists, engineers and consultants selected for the purposes of carrying out the technical and economic studies for the projects.
- Once the definitive concession has been granted, the concessionaire will provide the NEC with:
 - information about the production, consumption and sale of energy, among others, established by regulation;
 - technical and economic information, as established in the current regulations;
 - for statistical purposes, definitive concessionaires for the production of biofuels must provide a monthly report that lists the raw materials used and the productions obtained, as well as a list of quantities of biofuels exported and the countries receiving imports of their productions; and
 - companies that have a definitive concession and supply to the local market must immediately notify the NEC of any incident affecting their production schedule, as well as a damage assessment, and the steps and plans to resolve it.
- At the request of the NEC, self-producers and their consumers should announce and fulfil their production and consumption programmes.

Monetary sanctions and recent behaviour

Law 57-07 gives the NEC powers to carry out the pertinent administrative and judicial actions directed to prosecute and sanction any breach of the provisions established in the aforementioned law and its regulations. Therefore, the following administrative sanctions will be imposed through a resolution issued by the NEC to the concessionaires, institutions of social interest (producer associations, incorporated and registered cooperatives) and individuals who fail to comply with Law 57-07 and its regulations:

- a fine equivalent to 50 to 200 times the minimum wage in the public sector;
- revocation of the benefits and incentives established in Law 57-07, in the event of a repeated offence; and
- provisional suspension of benefits and incentives established in Law 57-07 for 180 days.

In our opinion, the most severe action is a recommendation from the NEC to the executive branch, advising the cancellation of a concession contract for the construction and commissioning of a power generation project. When the breach is by an entity, the sanctions will be applied to the manager or director of the company and majority shareholders.

Other applicable sanctions and general provisions include the following:

- The deviation or non-use for the intended purposes of the equipment and machinery favoured by tax exemptions under Law 57-07 is sanctioned with fines of three times the value of the exempted amount, without disregarding other applicable penalties. The court may also order the confiscation of the equipment and machinery.
- Failure to comply with the obligations set forth in Law 57-07 by concessionaires will be punished with fines of between 50 and 200 times the minimum wage in the public sector. The same sanction will be imposed on biofuel producers who are in violation of the obligations provided in Law 57-07 and its regulations.
- Breach of the obligations of a concessionaire, under Law 57-07, implies the opening of a sanctioning administrative process by the NEC. The sanctions are fines and the amount will be proportional to the damage to the electricity system and the environment. In the case of repeat offences, the NEC can recommend to the executive branch the cancellation of the concession and seizure of the properties.
- An installation for the production of electricity from biomass that, in a particular year, has not been able to meet the equivalent electrical performance required, in accordance with Law 57-07 and has not communicated any temporary suspension during that year, will receive as a consequence the lower remuneration set out in the Law.
- A breach of the equivalent electrical performance can only occur once during the useful life of a plant. In the event of a recurrence, the rights and incentives provided under Law 57-07 will be temporarily revoked, and the corresponding sanctioning procedure will be initiated. If the producer chooses the option of selling energy at a regulated rate, the remuneration will be a price equivalent to the final hourly market price, instead of the price of electricity in the special regime.

Non-monetary sanctioning powers and behaviour

In addition to the penalties listed in the previous section, the following may also apply:

- In the event of a recurrence of the deviation or non-use of the intended purposes of the equipment and machinery favoured by tax exemptions under Law 57-07, the licences or concessions granted will be revoked, and the regulator might prohibit commercial or business relationships with public sector institutions for 10 years.
- Repeated failure by the concessionaires and biofuel producers to comply with the obligations set forth in Law 57-07 could result in the revocation of the licences and benefits granted.
- The suspension of the economic regime owing to a breach of equivalent electrical performance will still be reflected in the administrative registry of production facilities subject to special regime production, even after the breach is fixed.
- Initiation of a sanctioning process to cogeneration facilities after an inspection by the authorities in which it is found that the facilities do not comply with the values reported in the calculation of electrical performance equivalent to its installation.
- A criminal action for the prosecution of the offences typified and sanctioned in Law 57-07 will be considered of a public nature and, as such, prosecuted in accordance with the provisions of the Criminal Procedure Code of the Dominican Republic. Likewise, the legal actions that are initiated for violation of Law 57-07 and its regulations before the criminal jurisdiction, will follow the forms, deadlines and procedures established in the Dominican Criminal Procedure Code.

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Recent and upcoming developments

Although in recent years the Dominican Republic has enjoyed economic and governmental stability, with the election of a new government in August 2020, substantial changes are foreseen in the energy sector.

Starting with the issuance of Decree 342-20 on 16 August 2020. Said Decree, among other provisions, (i) declared the liquidation of the Dominican Corporation of State Electrical Companies (CDEEE) of high national interest; (ii) transfers to the MEM the functions, attributions and powers currently performed by the CDEEE; and (iii) creates the CDEEE liquidation commission, which will be in charge, among others, of the programming, organisation, direction and execution of the CDEEE liquidation process, as well as the administration and legal representation of the CDEEE until the liquidation process is completed. Said Commission announced that it will submit to the National Congress a bill with the required modifications to General Electricity Law 125-01 and Law 100-13, which created the Ministry of Energy and Mines, and any others as a consequence of this process.

As mentioned above, on 25 February 2021, the Electricity Pact was signed. This agreement is aimed to strengthen the efficiency, effectiveness and legal security of the electricity sector. It also seeks to eliminate non-compliance, overlapping roles, current legal insufficiencies and distortions in the application of regulations. Its main contribution will be to improve confidence, the investment climate, business and systemic competitiveness, the sustainable performance of public finances and the execution of important government programmes designed to solve crucial problems of the development of the country's energy subsector.

Some relevant aspects of the Electricity Pact are: (i) it confirms that the NEC will be absorbed by the MEM; (ii) the functions of the Rural Electrification Unit and Sub-Urban (UERS) will pass to the MEM; and (iii) it declares high interest compliance with the bidding process for long-term energy purchases from electricity distribution companies.

One of the regulations that is pending approval is an amendment to the regulation of net measurement and distributed generation. At the time of writing, the NEC has been working on this modification to correct certain distortions that imply evident restrictions for the development of generation projects for residences and commercial centres. The limitations that this regulation establishes for self-producers of energy mainly relate to access to the distribution networks, by establishing that the aggregate capacity of all renewable generation systems connected to the same main network, including the proposed generation system, does not exceed 15% of the annual peak demand of said network, which translates into a barrier to access the networks beyond the 15% limit and, therefore, reduces the self-production facilities and affects those interested in selling the excess energy produced to distribution companies. Although the regulation establishes that the percentage of aggregate capacity mentioned can be modified through an agreement between customers and distribution companies, as long as it is technically supported, in practice, distribution companies are reluctant to negotiate with clients and to carry out the required studies for modifying this percentage, arguing that they do not have enough personnel or technical teams to carry out the technical supported needed.

Challenges

The main challenge faced by the NEC is to promote and develop energy generation projects to achieve the goal of generating 25% of the total energy demand of the Dominican territory from renewable sources by 2025, as established by Law 57-07 and the commitments in the Paris Agreement.

Other challenges that the NEC needs to overcome are the following.

From a technical and financial perspective:

- to develop a transmission system that can transport all the energy generated without operating restrictions;
- to comply with the expansion plans of the networks to guarantee access to new projects that will be developed in the future;

- to define the areas in which the new projects are going to be installed, as there are currently different studies being carried out by multilateral organisations and regulatory entities in the sector that create a certain lack of definition;
- to establish processes and policies regarding the contracting and granting of power purchase agreements and launch the tender; and
- to create conditions so that new general financing mechanisms can be applicable to energy businesses.

From a regulatory perspective:

- to specify the powers between regulatory institutions to avoid duplication of functions and inconsistency in the interpretation of the regulation, specifically with the Electricity Superintendence;
- to implement a one-stop scheme (*ventanilla única*) to obtain all permits and adjust the deadlines established in the regulations, instead of submitting requests to different entities, which makes it nearly impossible to comply with the required deadlines;
- to define a rule between the municipalities for granting land use permits and how they will arrange the collection of local taxes when a project extends across different territories;
- to amend the regulation on net metering and distributed generation, with the understanding that there are certain aspects that can be improved with such a modification, allowing a more dynamic development of residential energy generation projects and commercial establishments (small-scale projects); and
- to develop a regulatory framework on electric mobility since this is not contemplated in the current regulations.

Interacting with the regulator

The NEC is one of the few government institutions that are certified by the ISO 9001:2015 (on requirements for quality management systems). Therefore, regarding responses to the requests and decision-making, its practice is oriented to comply in relatively reasonable times and according to what is established.

Many of the NEC's services can be requested online; however, in practice, it is often necessary and more effective to request them in person to ensure that they will be processed by the corresponding departments within the established time limit.

Any queries or requests for information should be made in writing and in person for greater effectiveness. In practice, it is necessary for the interested party to constantly follow up on their requests to receive the response needed in a timely manner. However, there are regulations and laws, in addition to ISO 9001, such as free access to public information, that require the NEC to provide answers within the established deadlines.

From our perspective and experience, interacting with the regulator is not difficult but can be ineffective if not organised in advance. The most suitable approach is to make an appointment with the appropriate officer. However, because of this formality, appointments can be difficult to obtain at times.

Finally, communication in a foreign language could be a setback. Documents and other communications must be submitted to the NEC in Spanish. When applicable, a document in any other language must be translated by an accredited judicial interpreter and legalised by apostille by the country of origin. The same limitation applies to meetings and other communications, which must be held in Spanish.

Notes for foreign investors

The General Electricity Law provides that electricity companies subject to this law, whether they are national or foreign companies, with private or public capital, receive the same treatment without any discrimination. Also, this Law establishes that electrical concessions may be granted to legal entities that are legally incorporated, national or foreign, without any distinction.

Furthermore, the General Electricity Law guarantees foreign companies that invest in the activities of energy generation and the electricity sub-sector the transfer of their dividends and repatriation of the capital investment made, subject to any applicable tax provided in current laws and regulations.

In addition, the Dominican Foreign Investment Law guarantees equal treatment to both Dominican nationals and foreign individuals or companies who establish their businesses in the Dominican territory, or open and invest in the territory.

Finally, the Dominican Republic is a signatory of international treaties and agreements, such as the Dominican Republic–Central America Free Trade Agreement and the Economic Association Agreement with the European Union, which guarantees the same conditions and treatment to foreigners as it does its nationals. Therefore, there are no particular obstacles or less favourable treatment to foreign companies that want to establish themselves in the Dominican Republic or invest in businesses, including in the energy sector.

Other regulators it works closely with

The NEC interacts mainly with the Ministry of Energy and Mining and the Superintendence of Electricity, the latter being the regulatory entity for the electricity sub-sector. Together, these institutions are responsible for overseeing compliance with regulations in the energy and electricity sector, and regulatory compliance in procedures for requests for permits and authorisation for the construction of energy generation projects in the Dominican territory.

Additionally, and for the purposes of the approval and processing of permits for the construction of energy generation projects, the NEC interacts with the following entities.

Corporación Dominicana de Empresas Eléctricas Estatales

CDEEE

Dominican Corporation of State Electric Companies

The head and administrator of all state companies in the electricity sector

Organismo Coordinador del Sistema Eléctrico Nacional Interconectado

OC

Coordinating Body of the Interconnected National Electric System (Dominican Republic)

In charge of planning the operation of the electric system

Empresa de Transmisión Eléctrica Dominicana

ETED

Dominican Electric Transmission Company

In charge of energy transmission networks

Ministerio de Medioambiente y Recursos Naturales

Ministry of Environment and Natural Resources (Dominican Republic)

In charge of approving environmental permits for energy projects

Ministerio de Obras Públicas y Comunicaciones

MOPC

Ministry of Public Works and Communications (Dominican Republic)

In charge of approving civil works for energy projects

Town councils of the localities where energy projects are or will be built

Dirección General de Aduanas

DGA

General Direction of Customs (Dominican Republic)

Cuerpo de Bomberos

Fire Department (Dominican Republic)

Instituto Dominicano de Aviación Civil

IDAC

Dominican Civil Aviation Institute



**José
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José Maldonado Stark joined Russin, Vecchi & Heredia Bonetti on 2001 and is a partner since 2009. He concentrates his practice in transaction, international project finance and development, mergers and acquisitions, energy and public procurement.

Mr Maldonado Stark has significant experience in foreign direct investment advising major foreign investors, financial intermediaries, investment banks and global enterprises in local real estate, distressed credits and corporate acquisitions as well as providing assistance to international developers on regulatory, financing and project development matters.

Mr Maldonado Stark received his JD, magna cum laude, from Universidad Iberoamericana in 1999 and obtained an LLM in American law with focus on corporative law and securities regulation from Boston University School of Law in 2001. He has completed law programmes at the University of Paris (Pantheon-Sorbonne) with Cornell Law School and is coursing an LLM in constitutional law in Universidad Castilla de la Mancha-Pontificia Universidad Católica Madre y Maestra.

He is fluent in both Spanish and English.



Laura Cruz Felix

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Ms Laura Cruz joined the firm in August 2010, becoming part of the firm's business department in 2015. In the same year, she went to study her LLM at the Instituto Empresa (ie) in Madrid. Laura Cruz provides legal assistance and consulting to firms and investment projects in all matters relating to their legal needs, specifically in areas related to commercial law, corporate law, contracts and real estate in general. In addition, she has experience in e-commerce, data privacy and assisting client on compliance of fintech regulatory matters.

Education

- Universidad Iberoamericana (UNIBE), Santo Domingo, Dominican Republic, law degree, 2014.
- LLM in International Business Law, Instituto Empresa (ie), Madrid, Spain, 2016.
- Specialty in Real Estate Law, IDEMPRESA, Santo Domingo, Dominican Republic, 2018.
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Languages

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Russin, Vecchi & Heredia Bonetti

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As of 1994, the firm is Meritas' sole representative in the Dominican Republic and in Cuba, via its Cuban Desk. Meritas is a globally recognised association of independent law firms. The firm is also a member of several other legal associations, including BLITA, INTA, L2B, among others.

Russin Vecchi & Heredia Bonetti is a full-service law firm recognised for providing optimal legal advice in all aspects of the law, with particular emphasis on trade and investment matters, business law, commercial litigation, agency and distribution law, intellectual property, real estate, civil aviation, labour and employment law, environment and technological resources.

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