



Law No. 310-14 on the remission of unsolicited business e-mail (SPAM)

This past August eighth (8th) of the year two thousand fourteen (2014), President Danilo Medina enacted Law No. 310-14 regarding the remission of unsolicited business e-mail (SPAM).

This statute seeks to regulate the remission of unsolicited business communications, whether advertising or promotional, carried out via e-mail, without prejudice to current provisions on related commercial matters, advertising and consumer protection. We provide a summary of its key provisions below:

Conditions for Business Communications: All electronic business communications must contain the indication "publicity" in the corresponding subject field; if the content of the communication is related to the sale or distribution of goods or services that must only be read or acquired by those of legal age, the phrase "publicity for adults" shall be included. The texts must appear clearly, legibly, without grammatical errors or defects and without the inclusion of unrelated characters.

Requirements for the Remission of Business Communications: Electronic business communications remitted from an e-mail address must include: (i) the name or business name, full physical address and e-mail address for the initiator of the communication; (ii) a valid, active e-mail address for replies to which the recipient can send a message to notify interest in receiving no further business communications or the inclusion of other mechanisms that allow recipients to manifest their interest in no longer receiving further communications, mechanism which must be functional and capable of receiving said notification within the two (2) business days after it has been sent. Electronic business communications sent via written mobile phone messaging shall be subject to the same requirements, including a phone number in the e-mail's stead and excluding the need to include the full physical address in the communication.

Prohibition to Remit Unsolicited Business Communications or SPAM: The remission, whether direct or indirect, of business communications the reception of which has neither been requested nor consented by the intended recipient is statutorily prohibited.

Exceptions to the Remission of Unsolicited Business Communications: The remission of unsolicited business communications shall not give rise to the actions or sanctions provided for under the law in the following cases: (i) when the recipient has or has had a prior commercial relationship with the initiator of the communication and no notice indicating interest in receiving no further communications has been issued pursuant to the mechanisms indicated in the law; and (ii) when the recipient has manifested consent or authorization to receive the communication.

Illegal Business communications: Business communications shall be considered illegal, giving rise to the actions and sanctions provided for under the law, whenever they: (i) are remitted directly or indirectly without the recipient's express request or consent; (ii) contain false or misleading information in the subject field, not coinciding with the contents of the

message; (iii) preclude or hinder the efforts of the recipient, service providers or state authorities to identify, locate or respond to the person who made or issued said business communication or to investigate the alleged violation of the law; or (iv) is issued or transmitted five (5) days after the recipient has formulated a request to not receive further communications.

Recipient Rights: Recipients have the following rights: (i) to not receive unsolicited business communications; (ii) to expressly reject the receipt of unsolicited business communications using a valid, active response mechanism, with a simple forward of the communication in question to the initiator constituting express rejection; (iii) to revoke at any moment the consent previously granted for the reception of business communications, also possible via simple forward of the business communication in question to its initiator.

Competent Authority: The Public Ministry (Prosecutor) shall be the authority overseeing the due enforcement of the statute's provisions and of any other aspects related to electronic business communications, with the assistance of the High Tech Crime Investigations Department of the National Police Force.

Offences and Penalties: Perpetrators of remitting illegal business communications as described beforehand shall be liable for six (6) months to five (5) years of imprisonment and fines of up to two hundred (200) minimum wages; penalties which shall also be applicable to perpetrators of the offenses indicated below:

- Access computer systems (i) without authorization and intentionally initiate transmission of business communications from or through said systems; or (ii) to resend or retransmit business communications with the intent of deceiving recipients regarding the origin of said communications;
- Misrepresent the subject field of a message containing business communication and intentionally initiate its transmission;
- Fraudulently or maliciously register and collect, using false information, the identity of the owner of an e-mail account or e-mail accounts of public access sites or mass media that group e-mail addresses (e.g. chat sites, social networks, etc.), and intentionally initiating the transmission of multiple business communications without the authorization of the owner of the e-mail address or the operator of the access site in question;
- Offering the sale of e-mail address databases without the express consent of the owners of said e-mail addresses, with the objective of generating unsolicited business communications, applying the maximum penalty whenever the perpetrator is storing the e-mail addresses of customers, members or related persons, whether business-wise or socially.