

# Sales of Goods in Dominican Republic

The sales of goods in Dominican Republic (DR) with respect to consumer products is governed by *Consumer Protection Law 358-05,* enacted on September 9th of 2005, providing the DR Consumer Protection Institute (*Pro Consumer*) the responsibility for establishing the policies and procedures for the application of said Law and the authority to deal with products or services that may pose a danger to human health and safety.

Pursuant to Law 358-05, Pro-Consumer may undertake inspections and supervisions of public and private entities for the application and compliance of Law. On that sense Pro-Consumer can **a)** require information and data relevant to the cases in conflicts related to Law 358-05; and **b)** visit entities for inspection and supervision.

Law 358-05 established that any natural or legal person is obliged to provide to the competent authority any report and data previously required that may be considered relevant to the dispositions of the Consumer Protection Law.

Pro Consumer, together with the Dominican Institute for Quality (*Indocal*), perform verification of the conformity of products or services to standards of weight, quality and measurement.

The Indocal is undergoing a Triennial Plan (2015-2017) for the Development of Technical Norms contemplating the: (i) harmonization in developing norms based on international norms and, (ii) identical adoption of international norms as national norms, and (iii) harmonization of some national norms with the norms of the CROSQ (Regional Organization for Standards and Quality), to align the national norms with the minimum quality requirements accepted worldwide, set the basic standards for the government to establish regulations for different sectors, and insure that consumers have Technical Norms that protect them.

Pro Consumer also works in collaboration with DIGEMAPS (Directorate of Drugs, Foods and Health Products) for the regulation, control, auditing and vigilance of medicines, sanitary products, food, beverages, cosmetics, products for personal hygiene, and materials for human use, consumed or used in the rendering of health services and/or in the diet.

In order to import any foodstuff, an importer must submit a written application to the Ministry of Health. No products can be imported until the Ministry of Health issues a sanitary certificate, which works as an import license or permit for that product presentation only. Therefore, Customs does not authorize the dispatch of imported products that do not comply with sanitary registry, date of expiration in vigor, labels not in Spanish language, among other requirements.

With regards to labeling, the Dominican Republic has two standards (i) NORDOM 53 relating to pre-packaged food, and (ii) NORDOM 407 relating to medication, which are in line with international practices (ISO 750).

Food products must be labelled clearly, completely and accurately in the Spanish language. An imported food item, however may arrive in its original package, but a permanent 'sticker' label, in Spanish, must be attached to the package before its marketed. Labelling requirements are enforced by the Ministry of Health and Pro Consumer.

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Pursuant Law 358-05, the protection of human health and security is paramount, therefore, goods and services should be provided and rendered, in such way that consumed or used in normal or foreseeable conditions do not pose danger or harmfulness nor unexpected risks to the health and security of consumer or users.

Consumer claims, which are becoming increasingly popular as a consumer protection tool in the Dominican Republic, are often based on alleged breaches of *Law 358-05* protection statutes.

These statutes provide consumers who have been harmed with a variety of statutory remedies, including damages, penalties and rescission of agreements. Contract terms are interpreted in the most favorable way for the consumer.

Other contract terms, such as waivers of implied statutory warranties, terms requiring disputes to be submitted to arbitration or purporting to ban a consumer from initiating a lawsuit, may be unenforceable against consumers.

**Registration of Contract of Adhesion, Foreign professionals and Sales Promotions**

Contracts of Adhesion is the legal document drafted by a supplier of goods or services in which the consumer or user cannot change any provision if it wishes to acquire a product or obtain a service from the provider.

Law 358-05 established that in order to avoid abusive clauses on adhesion contracts, it is mandatory the registration of contracts of adhesion before the registry unit that Pro-Consumer has for such purposes. On that sense, any contract of Adhesion should be registered before Pro-Consumer.

On the other hand, the registration of foreign professionals who carry out activities within the Dominican Republic concerning their occupation is mandatory. Lastly, any sales promotion before reaching the general public should be registered at Pro-Consumer. For registration purposes, the sales promotion shall include all the conditions and rules applicable to the specified promotion.

**Product Liability**

Any business involved in the design, manufacture, distribution or sale of products is a potential defendant in a product liability claim. Claims may be based on breach of a contract or on negligence and sometimes on both.

Often, no contractual relationship will exist between a product manufacturer and the ultimate purchaser or user and, as a result, many product liability claims are tort-based claims alleging negligence. Claimants must prove that: (1) a duty of care was owed to them; (2) the product was defective; (3) there was a failure to meet the applicable standard of care; and, (4) the claimants suffered damage caused by the defendant's negligence.

The presence of a defect in a product can justify an inference of negligence in the manufacturing process. Where a product is not necessarily defective, but is or can be dangerous, a liability claim may be based on a failure to provide adequate warnings concerning the use of the product or a failure to warn of risks associated with its use. The duty to warn is a continuing duty, and can be triggered by information that becomes known after the product is in use.

In defining standard of care, courts assess the reasonableness of defendant's conduct with regard to industry standards.

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