
CHAMBERS GLOBAL PRACTICE GUIDES

Acquisition Finance 2023

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Dominican Republic: Law & Practice

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Pellerano Nadal Law & Consulting



DOMINICAN REPUBLIC



Law and Practice

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Pellerano Nadal Law & Consulting was founded by a talented team with more than 40 years of experience providing legal and tax advice. The team includes over ten legal professionals who counsel clients looking to do business in the Dominican Republic in a broad range of industries including energy, emerging technologies, tourism, aviation, mining, telecommunications, pharmaceuticals and financial services. The firm has also represented international and local clients in complex cross-border and do-

mestic transactions, including a series of landmark transactions such as the largest acquisition of a Dominican company, at the time valued at over USD2 billion; the largest foreign investment in the country, valued at over USD6 billion; the only international initial public offering and listing of a Dominican company on the New York Stock Exchange; and the first ever issuance of debt in the international capital markets by the Dominican government.

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Urania Paulino practises at Pellerano Nadal and has more than 20 years of experience in the areas of foreign investment, corporate and business law, banking and finance, aviation

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1. Market

1.1 Major Lender-Side Players

Similar to other jurisdictions from the region, the main acquisition finance players in the Dominican Republic are international banks, local banks and, in recent years, various international debt funds that have ventured into several sectors to finance different types of operations.

Usually, local banks participate in small- to mid-market deals and acquisition of target companies, where the buyer is also local. International banks and debt funds usually engage in mid- to large-market deals and targets, in many cases, with an international buyer. International banks and debt funds are also involved in cross-border transactions, where the Dominican target entity is just part of a bigger international acquisition. In both cases, local banks may participate as part of a syndicate formed by international players and, in some cases, may act as local collateral agents.

In this regard, it is important to point out that these acquisition finance deals are mostly governed by US or UK law, since they are the most common types of structures used internationally. The local collateral package, if applicable, is granted by Dominican governed security agreements.

1.2 Corporates and LBOs

The acquisition finance market in the Dominican Republic involves both local and international mid and large-cap corporations (by local standards). The acquisitions may be due to companies looking for vertical or horizontal integration, or in the case of some foreign companies, to enter the Dominican market. They may also be due to private equity firms looking for investments in the country. The latter commonly use leveraged

buyouts (LBOs), utilising a considerable amount of debt and committing, in proportion, significantly less equity/capital to acquire the target.

The first landmark LBO in the Dominican Republic was in 2008, where an international private equity firm acquired 100% of a Dominican airport operation. Since then, LBOs have become the usual method for private equity firms to make acquisitions in the country, as is the case in the global private equity market.

1.3 Geopolitical and Global Health Considerations

The beginning of the COVID-19 pandemic affected the Dominican market as business activity decreased to restrictions and lockdowns. This had two effects:

- target companies became less attractive to acquire, due to the negative impact of the pandemic on their businesses; and
- buyers preferred to hold off on acquisitions to see what would happen as the pandemic evolved.

In addition, the pandemic accelerated companies' plans for digital and technological transformation, which added new economic burdens. Banks began to demand new requirements (ie, as stricter conditions precedent for disbursement and covenants) to guarantee their operations with those companies that by their nature were more vulnerable to the effects of the pandemic.

Nonetheless, as the pandemic evolved and the Dominican government eased restrictions, the market started to regain confidence and some recovery could be seen. Therefore, since the second half of 2020 and throughout 2021 and 2022, the Dominican market saw several acquisitions

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across various industries and the transactional space seems to be at pre-pandemic levels. That said, due to the current macroeconomic matters, interest rates have also increased in the Dominican financial sector.

The overall acquisition and financing process has not changed dramatically. In terms of legal documentation, new clauses that have been incorporated into agreements, particularly regarding conditions precedent and covenants, as mentioned above, but also regarding force majeure, compliance and anti-money laundering matters and certain guarantees granted by the sellers of the business. Many of these changes are expected to remain as both buyers and lenders look to protect themselves from future similar events.

2. Documentation

2.1 Governing Law

In terms of governing law, there are no specific requirements in the Dominican Republic since in our legal system provides that the parties to any agreement are free to stipulate the provisions that will regulate it, as long as they do not contravene any law or else they will be considered void.

However, it is important to note that any collateral that is located in the Dominican Republic is regulated by Dominican law and, therefore, Dominican law-governed security agreements are usually prepared to register such collateral in the corresponding local public authority, to guarantee the lenders' rights (security ranking) over the collateral. Specific requirements may vary in regard to regulated industries.

The following are the finance methods used most often in the Dominican market.

- Corporate loans – mostly used for working capital purposes or for smaller acquisitions and will in most cases be granted by local banks under Dominican law-governed documents. Foreign banks can also be seen in the corporate loan market, but on a less common basis and for large-cap corporations. These foreign lenders typically use US or UK law-governed documents and may also include Dominican law-governed promissory notes (*pagarés*) and security agreements, as part of the financing documents.
- Acquisition finance/LBOs – these would typically be international banks or debt funds, mostly using US or UK law-governed documents with some cases involving Dominican law-governed promissory notes (*pagarés*) and security agreements. A mix of debt and equity can also be used for acquisition finance, particularly with the issuance of preferred shares.

2.2 Use of Loan Market Agreements (LMAs) or Other Standard Loans

In terms of Dominican law-governed operations, local financial institutions have developed their own loan agreement templates, depending on the type of transaction being structured. Some of these templates, particularly for retail and more customary operations, are registered with the Office for the Protection of User Financial Services (*Prousuario*) and must meet certain requirements from the Superintendency of Banks. However, for more sophisticated transactions, such as acquisition finance, the agreements may vary according to their particularity, the industry and negotiation with counterparties, among other matters. Over time, local banks have adapted their agreements for these types of transactions, becoming more robust and basing them on their

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experience in observing and participating in foreign law-governed documents.

Regarding international players using foreign law-governed documents, different models have been used, but many cases are based, or loosely based, on the common types of standard agreements used internationally, such as those from the Loan Syndications and Trading Associations and Loan Market Association (LMA).

2.3 Language

Documentation in the Dominican Republic may be drafted in any language, in accordance with the principle that the parties to any agreement are free to stipulate the provisions that will regulate it, which includes choosing the language. This is common in operations with foreign lenders and foreign law-governed documents, which are usually in English.

However, the official language of the Dominican Republic is Spanish, as stated in the Dominican Constitution and, therefore, all documents to be registered in any public authority or institution, including courts, should be in Spanish or translated into Spanish by an authorised Dominican legal interpreter.

Thus, in the case of a legal proceeding before a Dominican court, foreign law-governed agreements and documents would need to be translated into Spanish by an authorised legal interpreter in the Dominican Republic.

Local promissory notes and security agreements (for local collateral), which will be governed by Dominican law, are drafted in Spanish since their registration before the corresponding public authority is required. In some cases, at the request of foreign lenders, the security agreements and promissory notes are drafted in

Spanish and in the lenders' foreign language for their review, but the agreement stipulates that in the case of conflict or inconsistencies, the Spanish version would prevail.

2.4 Opinions

The content of legal opinions in acquisition finance transactions vary depending on the party that is being represented and if the transaction is local or cross-border.

The general aspects covered are:

- capacity and due authorisations of the parties;
- no conflicts with the parties with local law or their corporate documents;
- reference to the collateral/security granted by the debtor and their capacity to do so which may also include, when necessary, if the security is duly registered, its ranking and if it may be duly enforced in case of default; and
- validation that the transaction documents are considered legal, valid and binding to the parties.

In the case of cross-border transactions, they also include:

- the enforceability of foreign law in the Dominican Republic; and
- that none of the lenders will be deemed resident, domiciled or carrying on business and therefore subject to taxation in the Dominican Republic solely by reason of the execution, delivery, performance or enforcement of the transaction documents.

3. Structures

3.1 Senior Loans

Senior loans are structured according to the number of lenders in the transaction and whether they are local or foreign. In view of this, some senior loans are led by a single bank while others are structured in a syndicated manner. In some cases, the financing documents may have “facility increase” or “accordion” provisions, allowing the debtor to disburse additional amounts within a specific timeframe, although this may not be common in acquisition finance.

Regarding syndicated loan operations, the senior lenders will rank *pari passu* and, in the case of senior secured loans, will have first degree ranking security over the collateral. In these types of transactions, it is also common to see intercreditor agreements to regulate the relationship between the lenders as well as the designation of an administrative agent to act on behalf of all of the lenders, *vis-a-vis* the debtor.

Some terms and conditions may include prepayment penalties, restrictions on selling certain assets, paying dividends, entering into new lines of business, or converting debt into equity, among others.

Depending on the amount, industry and the type of lenders and/or debtors, senior secured loans may be used where the typical collateral would be granted as security, such as in:

- mortgage over real estate properties;
- pledge over shares, movable assets and inventory, bank accounts; and
- assignment of rights over permits, licences, financial instruments, etc.

3.2 Mezzanine/Payment-in-Kind (PIK) Loans

Mezzanine lenders are less common but still present in the acquisition finance market of the Dominican Republic. Typically, they are either multilateral banks or debt funds that focus on subordinated loans. If there is subordinated debt that is part of the transaction, then these mezzanine lenders may receive a secondary ranking lien over real estate collateral, since mortgages in the Dominican Republic allow this. However, for other types of collateral, such as pledges over shares, movable assets, etc, under current laws ranking is determined in the order that the security is registered. For example, New York law-governed intercreditor agreements may be arranged between senior and subordinated lenders, which state that senior lenders will be registered as the secured parties in the Dominican Republic, but that they recognise the subordination of such lenders over the secured collateral.

The authors are not aware of payment-in-kind loans being used for acquisition finance.

3.3 Bridge Loans

Locally, financing structures and documentation are generally similar and, therefore, bridge loans are not so different from senior loans, except for their term which is usually significantly shorter than for traditional loans. These loans may also be unsecured in some cases, or if secured, the security package may be simpler. For cross-border transactions, bridge loans will typically be granted by international banks under foreign law-governed documents.

3.4 Bonds/High-Yield Bonds

While issuing corporate bonds to acquire target companies or repay bridge loans used for acquisition financing may be common in other jurisdictions, it is not common in the Domini-

can Republic, given that the local securities market is still in development. Companies may issue bonds locally and have done so more frequently in recent years, but we are not aware of this being a common structure for acquisition finance.

Nonetheless, it may be the case that foreign buyers are using this method and issuing bonds abroad to acquire local targets.

3.5 Private Placements/Loan Notes

Similar to our response in **3.4 Bonds/High-Yield Bonds**, the authors are not aware of this structure being used locally for acquisition finance.

3.6 Asset-Based Financing

It is common in acquisition finance structures to see secured operations where collateral, such as mortgages, pledges and assignment of rights over assets, is granted by the debtor to the lenders.

In the case of private equity acquisitions, and particularly in LBOs, asset-based financing may be used where the assets of the target or the newly merged company will be used as collateral. The types of assets used as collateral may include accounts receivable, inventory, equipment or machinery. In the case of having inventory as collateral, lenders should establish mechanisms for protection when there is a rolling inventory.

4. Intercreditor Agreements

4.1 Typical Elements

Intercreditor agreements in acquisition finance in the Dominican Republic are usually governed by foreign law and will typically regulate the rela-

tionship between the various lenders' part of a financing.

These agreements generally include provisions regarding the following.

- Sharing of information – the lenders should use reasonable and prompt efforts to make available to the other lenders any material documents or information they receive regarding material changes of the borrower, financial condition, status of liens/collateral and occurrence of an event of default, among other matters.
- Priority – the senior lender(s) will have priority over the subordinated lenders and a first ranking lien on all of the collateral covered by the loan security.
- Application of funds – this determines the arrangement for sharing the funds received from the borrower. In the event of a sale or disposition of any collateral the net proceeds shall be applied first to the senior lender(s), second to the subordinated lender(s), and third to the borrower.
- Liens – lenders may also consent to the creation of the liens granted by the security agreements in their favour to secure the loan.
- Cross-default/acceleration – they may agree that the loan documents will be subject to customary cross-default/cross-acceleration provisions.
- Enforcement action/notice – no lender may take any enforcement action (other than acceleration of a loan upon an event of default) unless they have given the other lenders an enforcement notice and a determined period time, during which each lender shall consult with the other upon request about the reasons for taking such enforcement action. Usually, in the case of subordination, the senior lenders are entitled to exercise rights

and remedies following an event of default under the loan documentation and to lead any enforcement actions that may be undertaken from time to time. The subordinated lenders may also provide notice that they wish to carry out an enforcement action if the senior lenders are not already undertaking an enforcement action but are usually only entitled to do so after a determined period (the “standstill period”) and subject to customary consent rights for the senior lenders.

- Expenses – expenses are shared, or sometimes each lender shall bear all expenses they may incur as a result of any effort to enforce their rights under the loan documents.
- Local collateral agent – the process for appointing and replacing a local collateral agent to protect the local collateral, acting on behalf of the lenders.

4.2 Bank/Bond Deals

See 4.1 Typical Elements.

4.3 Role of Hedge Counterparties

Hedge counterparties may be used by lenders for the purpose of hedging interest rate or currency liabilities. This is not frequently used in local transactions but is sometimes used by international banks when participating in cross-border acquisition finance operations for acquisitions in the Dominican Republic.

5. Security

5.1 Types of Security Commonly Used

The types of securities are often based on the type of transaction and other factors, such as the financing amount, number of lenders, complexity and industry.

However, acquisition finance should include:

- the pledge of the shares of the buying and/or target company;
- pledge of material contracts;
- pledge over machinery, inventory and assets (including securities);
- pledge over the assets of a trust;
- pledge over intellectual property;
- mortgages over any properties held to secure the financing; and
- sponsor’s agreement

Real estate mortgages over properties are the preferred securities for local and international lenders as, once registered before the corresponding deed registries, they have obtained a priority ranked security that has been perfected. Real estate mortgages are governed by the general provisions set forth in the Dominican Civil Code and by the Real Property Registration Law No 108–05 of 2005.

Moreover, it is common practice that international lenders engage local banks to act as collateral agents to guarantee and enforce their rights in the event of default.

5.2 Form Requirements

As indicated in 5.1 Types of Security Commonly Used, securities in transactions of this nature vary by transactions. In terms of form, each one, depending on the type of security, must meet certain requirements for its registration, propriety, perfection and subsequent execution.

In view of these requirements, both the chattel pledges and mortgage contracts over real estate require certain minimum information to be registered. Some of the requirements to constitute a non-possessory chattel pledge are:

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- identification of the parties;
- consent between the parties;
- identification of the good or goods given as collateral;
- value of the good or goods given as collateral;
- amount of credit and interest to be received based on the credit; and
- loan maturity date.

Additionally, for the perfection of a possessory chattel pledge, by virtue of the consent of both parties, the delivery of the debtor's asset to the creditor is required. In this case, the creditor, who has possession of the debtor's asset as security or guarantee of their credit, has the obligation to take care of the asset and return it after the debtor makes the payment.

Moreover, with the entry into force in 2023 of Law No 45-20 on Movable Collateral, chattel pledge agreements are now registered before the Movable Collateral Electronic System (*Sistema Electrónico de Garantías Mobiliarias*) managed by the Ministry of Industry, Commerce and SMEs.

In cases where material contracts or shares have been pledged, notification via a bailiff's act to all parties is required for the former and notification to the corresponding Chamber of Commerce is required for the latter.

Mortgages

For the registration of mortgages, the debtor or the guarantor must be the owner of the property. For properties to be registered before the corresponding deed records, a contract whose signatures have been legalised by a notary public is sufficient. The parties need to be identified, the property, a description of the secured obligation, the amount to be secured by the collateral

and other general data must also be included. Any mortgage over a real estate property that is held by a married person needs to be executed by the couple.

For both types of securities, the agreements must be drafted in Spanish.

5.3 Registration Process Movable Assets

As of 2023, registration of movable assets must be registered before the Movable Collateral Electronic System (*Sistema Electrónico de Garantías Mobiliarias*) managed by the Ministry of Industry, Commerce and SMEs. See 5.2 Form Requirements for the information required in the contracts for registration.

Additionally, certain assets, such as security interests in vehicles need to be registered before the Tax Administration.

Regarding shares, these must be notified to the corresponding Chamber of Commerce to make the proper annotations in the Mercantile Registry and must be registered in the company's stock ledger.

Last, security interest over intellectual property and/or material contracts must be notified via bailiff's act to all parties.

Real Estate

Security interest over real estate is perfected with the registration of the mortgage agreement before the deeds registry (*Registro de Títulos*) corresponding to the domicile where the real estate property is located. Real estate can have multiple security interests; priority will be determined by the order of registration or through an assignment of ranking (*cesión de rango*).

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In order to record a mortgage, several documents need to be filed at the corresponding deeds registry, among which are:

- the mortgage agreement;
- an original of the certificate of title of the property;
- certification that the property taxes are update;
- a copy of the identity card or passport of the parties or tax ID if a legal entity; and
- a mortgage tax receipt.

Please note that to register a mortgage in favour of a foreign lender, the lender should obtain a local tax number.

As well as with the registration of movable assets, the registration process is done the same day of its deposit in the corresponding deeds registry, however, Dominican authorities take several weeks to issue the lender title deed with the corresponding security.

All these securities last until the debtor pays the credit or the creditor orders the removal of the inscription. An expiration date for a pledge can be renewed.

5.4 Restrictions on Upstream Security

There are generally no restrictions on the provision of security by a subsidiary to guarantee liabilities from its parent company or beneficial owners, except for any restrictions that may be included in the bylaws/corporate documents of the corresponding companies. In the case of granting upstream security, there would generally be a corporate resolution approving the granting of the corresponding security.

It is important to mention that Transfer Pricing Rules are regulated by Rule No 78-14 (*Regla-*

mento sobre Precios de Transferencias); this is one of the rules of the Tax Code of the Dominican Republic.

5.5 Financial Assistance

There are no rules prohibiting financial assistance in the context of acquisition finance Dominican Republic.

5.6 Other Restrictions

See 5.4 Restrictions on Upstream Security.

5.7 General Principles of Enforcement

The general principles applicable in the Dominican Republic to foreclosure of security apply to both movable assets and real estate and are regulated by the Dominican Civil Code and Law Nos 6186, 189-11 and 45-20. In particular, Law No 45-20 includes an abbreviated foreclosure process for collateral registered in the Movable Collateral Electronic System, however, given the law has only been in force for about a month as of the time of this writing, there is yet no precedent to ensure that the abbreviated foreclosure process has been successful and existing collateral that is registered at Peace Courts (as it used to be) has yet to be transferred to the new system. In this sense, please see the four phases of the traditional foreclosure process as outlined below.

If the creditor is not a bank, the creditor may request the corresponding Peace Court for an auction sale of the secured goods 90 days after the expiration of the term of the pledge contract without the debtor having fulfilled their obligation to pay.

If the creditor is a bank, they may request the sale at a public auction without submitting to the period of 90 days. The creditor who is a bank can request this at any time and their pledge

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right is up to the maximum duration of the statute of limitations – ie, 20 years.

Once the sale in public auction has been requested, the Peace Court will order the debtor to deliver the pledged goods within a period that must not be more than five days nor less than one legal day (*Día Franco*). This order is served on the debtor at their domicile by a Bailiff's Act. If the debtor complies with the deadline granted, the Peace Court appoints a guardian of the assets for their conservation until the sale is carried out at public auction.

In the event that the debtor does not deliver the assets, the Peace Court draws up a certificate of refusal of delivery and initiates an oral process of seizure of the assets, notwithstanding their location. If the assets given as collateral disappear for any reason attributable to the debtor, the Peace Court will carry out the corresponding criminal process.

In the event that the property given as security is in a jurisdiction outside that of the Peace Court, the rogatory commission process is initiated whereby the Peace Court designates a judge in the jurisdiction where the assets are located, who may proceed to seize the property on behalf of the Court.

Within the eight days following the expiration of the deadline for the delivery of the pledge or the day on which the judge has seized the secured assets, the judge will fix by order the day and time of the sale at public auction. The date will be announced for three days by means of notices on the doors and murals of the magistrate's court and in other public places selected at the discretion of the Peace Court. In practice, the creditors publicise the process.

The pledge will be delivered to the highest bidder by a sheriff, by order of the Peace Court after payment of the sale price has been made. If no bidder is present at the public auction, the creditor is awarded the pledge. This applies both to creditors who are banks and to those who are not.

It should be noted that these decisions issued by the Peace Court are subject to appeal within 15 days of their notification.

Once the Peace Court makes the deductions for the costs and expenses of the sale and seizure, if applicable, they will deliver the amount to the creditor.

It should be noted that, in cases of pledge with dispossession (ie, when the debtor does not have the pledge in their possession but a third party has it or the creditor themselves), the pledge creditor may go to the Justice of the Peace to request the sale of the property at public auction.

If the share pledge was structured correctly, the creditor can enforce the security immediately if a default occurs.

Some considerations must be mentioned when enforcing this type of security, according with the General Corporate Law on the Dominican Republic No 479-08, as follows.

- In the case of limited liability companies (*sociedades de responsabilidad limitada*), if the company approves of the pledge of shares, consent implies acceptance of the transferee in case of collateral execution, unless the company chooses to repurchase the social quotas without delay, before or after enforcement.

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- In the case of corporations (*sociedades anonimas*) and simplified stock corporations (*sociedades anonimas simplificadas*), if the company has approved the pledge of shares as provided by the bylaws, consent implies acceptance of the transferee in cases of collateral execution, unless the company chooses to repurchase the shares.

6. Guarantees

6.1 Types of Guarantees

Aside from the security mentioned in 5.1 **Types of Security Commonly Used** that can be granted as collateral in acquisition finance, there can also be personal guarantees, such as the “*Fianza*”, which is a contract by which a person (the guarantor) commits to a creditor to pay the debt of a third party (the debtor). In the event that the debtor does not pay the sums owed to the creditor, the guarantor assumes that obligation.

For the execution of a personal guarantee contract (*fianza*), the following conditions must be met:

- consent of the parties;
- capacity and power to sign the contract;
- cause of the obligation; and
- the object of the contract.

Similarly, the guarantor must have the capacity to fulfil the contract, be solvent and have a domicile within the territory of the Peace Court in which the personal guarantee will be registered. In many cases, this type of guarantee is accompanied by a promissory note issued by the guarantor in favour of the lender to facilitate collection. Promissory notes must comply with certain formalities and, depending on the type of note, require registration.

However, these types of personal guarantees are only common in small- to medium-market acquisitions. In larger or cross-border transactions, it is more common to see a parent guarantee, granted by the parent of the borrower who is acquiring the target company.

6.2 Restrictions

See 5.4 **Restrictions on Upstream Security**, which also applies to this section.

6.3 Requirement for Guarantee Fees

Dominican law does not consider any fees for guarantees.

7. Lender Liability

7.1 Equitable Subordination Rules

Law No 141–15 on Restructuring and Insolvency of Companies and Business Persons contains rules for reorganisation and liquidation proceedings. However, although this law applies to national or foreign companies and business persons with domicile or continuous presence in the Dominican Republic, the law excludes commercial entities controlled by the state, financial intermediation entities regulated by the Monetary and Financial Law No 183–2, securities intermediaries, investment fund management companies, centralised security deposits, investment fund management companies, centralised security deposits, stock exchanges, securitisation companies and any other entity considered to be a stock market participant, with the exception of publicly traded companies and companies governed by Law No 19–00 on Securities Market dated May 2000. Special rules apply to companies participating in the electric sector are also excluded. Some assets are also excluded from the bankruptcy proceedings.

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According to Law No 141–15, debt payments must be carried out in the following order:

- labour liabilities, arising from the Labour Code or social security regulations;
- costs of the restructuring process, including fees of officials and auxiliaries involved in the process;
- loans agreed to by financial entities or third parties that will contribute to the financing of debts owed to essential and public service providers or suppliers, duly authorised by the court;
- debts that result from the execution of agreements that remain in force after the beginning of the restructuring process, with respect to which the creditor in question agrees to receive deferred payment; and
- other liabilities according to their rank under law.

Additionally, penalties for anticipated termination of lease agreements and overdue rents corresponding to the last 12 months also have higher priority in relation to other claims.

7.2 Claw-Back Risk

Article 98 of Law No 141–15 established the possibility of requesting annulment of transactions made within a period of two years prior to the filing date of the reorganisation request, provided that the court deems they constitute an unjustified diversion of assets or are detrimental to creditors.

In addition, Law No 141–15 has a list of transactions that can be declared as null and void, among which are:

- transfers of assets free of charge or at a price below market value when the intended con-

sideration is worth less than the obligation performed, or vice versa;

- the cancellation or partial or total relief of the debt by the debtor;
- transactions with related entities where the debtor or any of the creditors serve as an administrator or are part of the administering body, represent at least 51% of the subscribed and paid-in capital, hold decisive power at the shareholder assemblies or are in the position to name the majority of the members of the governing body;
- the grant of guarantees or the increase of the value of guarantees approved prior to the initiation of the proceeding without reasonable consideration; and
- payments of obligations not yet due.

8. Tax Issues

8.1 Stamp Taxes

There are no stamp taxes applicable for the execution and maintenance of financing agreements in the Dominican Republic. However, some fees may apply for the registration of notary promissory notes (*pagarés notariales*) and security over real estate and movable assets.

8.2 Withholding Tax/Qualifying Lender Concepts

For Dominican Republic tax purposes, qualifying lender concept is applicable only through the benefits of a tax treaty. Currently the Dominican Republic is signatory to tax treaties with Spain and Canada, based on the Organisation for Economic Co-operation and Development Tax Treaty Model. Loans between a Dominican Republic resident and other jurisdictions, in which the first is the borrower, will be subject to 10% withholding income tax on interest payments.

8.3 Thin-Capitalisation Rules

Two rules exist and the applicable one will be the most favourable one to the tax authorities.

- The deduction of interest paid to non-resident recipients (or non-resident individuals) is limited to the amount that results from applying the interest withholding rate (currently 10%) and the corporate income tax rate (currently 27%). The payer cannot deduct interest which is equal to or higher than 27%.
- Thin capitalisation – the maximum debt-to-equity ratio allowed to taxpayers is 3:1 pursuant to thin-capitalisation rules. The deduction of interest expense is limited when exceeding this threshold.

The shareholders' equity is the share capital, legal reserves and retained earnings, as expressed in the financial statements. Profits earned in the relevant period are excluded. All debts that generate interests exclude debts owed to Dominican Republic residents.

These rules do not apply to:

- debts between Dominican Republic residents who include the interest in their taxable income (27%); or
- financial institutions classified as such before the Monetary Board of the Dominican Republic and the Superintendence of Banks.

Interest may be carried forward in subsequent periods for up to three years.

9. Takeover Finance

9.1 Regulated Targets

In the Dominican Republic, certain sectors are subject to special regulations and, therefore, certain procedural authorisations must be obtained from the corresponding regulator in order to be acquired through these types of financing. Some of these sectors include financial institutions, insurance, free zone companies, telecoms, mining and energy.

9.2 Listed Targets

In the Dominican Republic, the acquisition of a publicly traded company can only be made via a public tender offer, whenever the buyer intends to acquire or become the direct or indirect beneficial owner of 30% or more of the company's stock, with voting rights.

The terms for the public tender offer, as well as beneficial owner, are regulated by Law No 249-17 and Regulation No R-CNMV-2019-24-MV.

The above-mentioned acquisitions must first obtain prior authorisation from the Superintendency of Securities. Some exceptions may apply, such as when the total acquisition of the company has been negotiated with all of the stockholders of a listed company.

10. Jurisdiction-Specific Features

10.1 Other Acquisition Finance Issues

Sections 1. Market to 9. Takeover Finance contain a comprehensive guide to acquisition finance in the Dominican Republic.

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