# Dominican Republic

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## Legislation

**1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?**

On 7 August 2015, a new law on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) was signed into law in the Dominican Republic. Law No. 141-15 repeals and substitutes all laws and regulations on the matter prior to the same, and in particular, articles 437 to 614 of the Code of Commerce, as well as Law No. 4,582 on Declaration of Bankruptcy, which dates to 1956. Prior to the enactment of the new Law, it was not possible to request the reorganisation of the insolvent debtor in the Dominican Republic, given that all the laws applicable to insolvency proceedings solely referred to its liquidation. Note that as Law No. 141-15 will enter into effect as of 7 February 2017, the Code of Commerce and Law No. 4,582 on Declaration of Bankruptcy will remain in effect and apply to any insolvency proceedings prior to such time.

Under the terms of Law No. 141-15, a debtor could become subject to a restructuring proceeding – whether voluntary or involuntary – if one of the following conditions is met: failure to pay claims regarded as certain, due and payable under Dominican law for a period of more than 90 days, after formal notice to pay; when the debtor's current liabilities exceed the current assets for a period of more than six months; failure to pay withheld taxes to the tax authorities for a period of more than six fiscal quotas; failure to pay two consecutive salaries to employees on the corresponding payment date, with the exception of payments made in the hands of a third party when required by a court order, and of the 'economic assistance' set out by the Labour Code for businesses unable to produce funds; when the administration hides or remains vacant for a reasonable period of time and no officer is designated to comply with its obligations, suggesting the intention to deceit the creditors; when the closure of the business is ordered because of the absence of the administrators, as well as the transfer – partial or total – of its assets to a third party for distribution to all or some creditors; the use of deceitful or fraudulent practices, criminal association, breach of trust, falsehood, simulation or fraud to default creditors; the notification to creditors of the suspension of payments by the debtor, or of the intent to do so; the commencement of a foreign insolvency proceeding in the jurisdiction of the debtor's parent company or of its main place of business; the foreclosure of more than 50 per cent of the debtor's total assets; and the existence of decisions or sentence-enforcement procedures that may affect more than may affect more than 50 per cent of the debtor's total assets.

Prior to the enactment of Law No. 141-15, the criterion to determine whether a debtor could become subject to bankruptcy proceedings revolved around the concept of 'cessation in payments' rather than considering a state of insolvency. Thus, a merchant or a commercial entity that discontinued payments might have very well been subject to a declaration of bankruptcy. The number and quantity of the debts owed were not the relevant factors established by law in considering whether a bankruptcy declaration may proceed.

## Courts

**2 What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?**

Law No. 141-15 of 2015 creates a special jurisdiction for restructuring and judicial liquidation, comprising courts of first instance and courts of appeal, both of which will be specialised to hear restructuring and liquidation proceedings. However, until the new jurisdiction is created, the actions provided for in the law will fall within the jurisdiction of the ordinary civil and commercial courts.

The restructuring and liquidation courts will be competent to hear all actions related to the restructuring plan, as well as any other judicial or extrajudicial action linked to the debtor and its equity. The restructuring and liquidation courts will also be competent to hear all possible measures to preserve the debtor's assets, including petitions for precautionary measures and protective actions. Civil or criminal actions for non-compliance with the law shall be heard by the ordinary courts.

Under the previous legislation, bankruptcy proceedings were brought before the Civil and Commercial Chamber of the Court of First Instance. However, prior to bringing the claim to court, a mandatory conciliation proceeding governed by Law No. 4,582 had to take place before the Chamber of Commerce. Most attempted bankruptcy proceedings were settled at this stage and rarely continued to the litigation stage.

## Excluded entities and excluded assets

**3 What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?**

Law No. 141-15 applies to national or foreign companies and business persons with domicile or continuous presence in the country, and excludes commercial entities controlled by the state; financial intermediation entities regulated by the Monetary and Financial Law No. 183-02, dated November 2002, and its modifications; securities intermediaries, 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.

Law No. 141-15 excludes the following assets from the bankruptcy proceedings: those which might be claimed by third parties in accordance with law; unregistered purchases of real property that remain unpaid; amounts related to tax withholdings; assets and rights owned by third parties in possession of the debtor; as well as personal belongings that are essential for the debtor's subsistence, and assets employed in the ordinary course of business. Additionally, Law No. 1,024 of 1928 provides that 'family property', once declared or converted as such, is not subject to attachment or foreclosure, even in cases of bankruptcy or liquidation.

## Public enterprises

**4 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?**

Law No. 141-15 excludes entities that are government owned or controlled. According to the Public Administration Organic Law No. 247-12, dated 14 August 2012, the suppression of government entities may only be decided by instruments with the same regulatory status as the one that created them. Government entities that are functionally decentralised may only be suppressed by law, which will provide the basic rules that will govern its dissolution as well as the necessary powers to the entity responsible for the liquidation.

## Protection for large financial institutions

**5 Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?**

Dominican law does not specifically address the concept of 'too big to fail', but the Monetary and Financial Law, Law No. 183-02 of 2002, does have specific procedures related to the insolvency of financial institutions. The Superintendency of Banks, along with the Monetary Board of the Dominican Republic, is charged with the primary supervision and actions related to such procedures. Financial institutions facing economic difficulties must present a regularisation plan upon the occurrence of one of the following situations: a decrease of 10 per cent to 50 per cent of the value of their net equity within a period of 12 months; if the institution's solvency ratio falls below the coefficient required by law; deficiencies in the legal reserve during a number of periods established by law; repeated recourse to the Central Bank as a lender of last resort; the submission of false financial information or fraudulent documentation to the Superintendency of Banks or the Central Bank; the performance of transactions that seriously endanger public deposits or the institution's liquidity or solvency; among others. The Superintendency of Banks is required to render a decision with respect to the proposed regularisation plan within the five days following its presentation. The regularisation period may not exceed six months.

Failure to present the regularisation plan will lead to the dissolution of the financial institution, as well as any of the following causes: the rejection of the regularisation plan; a cessation of payments; a decrease of the solvency ratio 50 per cent below the coefficient required by law; carrying out operations during the execution of the regularisation plan that make the same unfeasible; failure to remedy of the causes that gave rise to the regularisation plan before the expiry of the term; and the revocation of the institution's authorisation (licence) to operate. The Central Bank also operates a contingency fund, funded from mandatory contributions of all financial institutions of the country, which guarantees deposits up to a certain amount and which may also be used to assist troubled institutions in limited circumstances.

In the case of failed banks, the Superintendency of Banks may resort to the securitisation regime foreseen in said Securities Market Law to implement the dissolution procedure. Securitisation of assets will require structures similar to investment funds, which will issue shares of several categories, granting various rights to its holders. Article 63, letters d and e, of Financial Law No. 183-02, was amended by Law No. 189-11 for the Development of the Mortgage Market and Trust in the Dominican Republic (Law No. 189-11), to include debt securities for construction and house financing as privileged obligations in light of a dissolution procedure of a banking entity.

The Dominican Social Security Law No. 87-01 provides that insurers and reinsurers operating in the local market may be subject to both voluntary and involuntary liquidation procedures. The involuntary liquidation shall occur when authorisation granted to the insurer or reinsurer is revoked because of failure to maintain the funds of the 'guarantee of profitability' account above 1 per cent of the total value of the pension funds, or when the minimum profitability of the fund is below the real profitability of the past 12 months and the pension fund manager is unable to cover the difference. In these cases, the Superintendency shall dissolve the entity without judicial intervention. Should dissolution or liquidation occur under other circumstances, the procedure established by Law No. 141-15 for companies and business persons will apply.

## Secured lending and credit (immoveables)

**6 What principal types of security are taken on immoveable (real) property?**

The principal type of security on real property is the mortgage. Mortgages are governed by the general provisions set forth in articles 2114 et al of the Dominican Civil Code and by the Real Property Registration Law, Law No. 108-05 of 2005. The Dominican Civil Code defines a mortgage as a guaranty right over real property that guarantees the fulfillment of an obligation.

## Secured lending and credit (moveables)

**7 What principal types of security are taken on moveable (personal) property?**

The principal type of security taken on moveable property under Dominican law is the non-possessory pledge. Similar to the chattel mortgage and originally intended for crops and agricultural equipment but later expanded to cover virtually all sorts of moveable assets, including industrial machinery and motor vehicles, this type of security is governed by the Agricultural Incentive Law No. 6,186 of 1963.

In addition to the above, pledges – generally governed by the provisions set forth in the Civil Code, and for transactions involving merchants, governed by the provisions of the Code of Commerce – may be granted over virtually any type of personal property, including intangible goods such as stock, securities, account receivables and industrial property rights. When a pledge over tangible assets is granted under the provisions set forth in either of the aforementioned codes, the pledgor is not allowed to retain possession of the asset.

A proposed bill that would modernise and introduce new credit possibilities for moveable property is soon to be presented before Congress.

## Unsecured credit

**8 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?**

Before commencing any other action, an unsecured creditor can seek from the judge, in an ex parte proceeding, an order attaching personal property owned by his or her debtor. This right is granted to the creditor by article 48 of the Code of Civil Procedure, as amended by Law No. 845 of 1978. Most judges are lenient in granting this authorisation and base their decision primarily on the plaintiff's allegations, without demanding proof of the urgency or danger or questioning the prima facie validity of the claim, although the Supreme Court has repeatedly insisted that judges should do so. The claimant then asks a bailiff to serve a copy of that order on the debtor, in person or at his domicile. The bailiff seizes and removes assets of the debtor or obtains a commitment from the debtor or a third person that he or she will act as custodian of the assets that are listed on the bailiff's return. These assets are the security for the payment of the final ruling on the merits of the case. After the assets have been attached, the claimant has 30 days in which to file his or her action on the merits.

Prior to any insolvency proceedings, the claimant can also attach real property owned by the debtor in an ex parte pre-judgment proceeding pursuant to article 54 of the Code of Civil Procedure, except that if the property is the debtor's homestead, in accordance with Law No. 1,024 of 1928, it may not be attached. To attach real property, the creditor applies to the court for a provisional judicial lien, which when granted is filed at the Land Registrar's Office and is then notified to the debtor within the following 15 days. After the case on the merits is heard, if the plaintiff is successful, the provisional judicial lien is converted into a definitive judicial lien, which the plaintiff can then foreclose on the property in a separate proceeding.

Another possibility that the claimant may use (prior to the commencement of any insolvency proceedings) is that of garnishing a debt owed to his debtor by a third party. This possibility is known as an *embargo retentivo*. For a garnishment, the creditor needs a judicial authorisation only if his or her claim is for an indeterminate amount, for example, as damages for a personal injury or a breach of contract. If he or she holds an instrument giving a right against the debtor for the payment of a liquid sum, such as a promissory note, a dishonoured cheque, or an acknowledgment of the debt, then he or she need only join a copy

of that instrument to the notice of garnishment that the bailiff serves on the third party. Typically, the third party is a bank in which the debtor has funds on deposit.

After the enactment of Law No. 141-15, upon approval by court of the restructuring request, all judicial, administrative or arbitral decisions that affect the assets of the Debtor, any enforcement or eviction procedures regarding the Debtor's moveable and immoveable property, calculation of interest under loans and other credit documents, among others, are suspended.

According to Law No. 141-15, following the judgment ordering the liquidation of the debtor, the verification of unsecured claims will not occur in those cases where the judicial costs and secured claims completely absorb the product of the realization of the assets, except for businesses, in the cases where the administrators (remunerated or not) may be required to take charge over part or all the liabilities.

Foreign creditors have the same rights and can rely on the same remedies available to local creditors.

## Voluntary liquidations

### 9 What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Under Law No. 141-15, the debtor may request its judicial liquidation before the court at any moment. However, the person verifying the financial situation of the debtor, and the conciliator of the reorganisation, may recommend the immediate liquidation under specific circumstances (such as the refusal of the debtor to recognise the reorganisation requested by the creditors, the recommendation made by the creditor's representative, the non-approval of the reorganisation plan or failure to comply with the restructuring plan).

The notice of the judgment that orders a judicial liquidation entails that the debtor immediately loses all right to manage and dispose of all properties until the judicial liquidation process has concluded. The court must then designate a person who will act as the administrator of the liquidation process (the liquidator). The liquidator assumes the authority of the governing bodies. During the judicial liquidation process, the rights and actions of the debtor are exercised by the liquidator. Upon his appointment, the liquidator assumes all management functions and powers of the debtor. Likewise, for three consecutive days, the liquidator must publish in a newspaper of national circulation and on the webpage of the court an excerpt of the judgment that orders the liquidation, and must notify the judgment to the debtor and the creditors.

Prior to the enactment of Law No. 141-15, the debtor would pursue its liquidation amicably through the amicable settlement process governed by Law No. 4,582 of 1956. If such attempt was unsuccessful, the liquidation was brought to a judicial court.

## Involuntary liquidations

### 10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

Law No. 141-15 establishes the obligation to attempt the reorganisation of the debtor prior to initiating involuntary liquidation proceedings. However, the person verifying the financial situation of the debtor and the conciliator of the reorganisation may recommend the immediate liquidation under specific circumstances.

The judicial liquidation of the debtor may be initiated by the verifier, if there is a lack of information or efforts to thwart the duties of the verifier by the debtor, or when the verifier determines that the debtor is not in a position that makes possible a restructuring process; by the conciliator during the phase of conciliation and negotiation, whether it is a result of the impossibility of assuming his or her functions because of the lack of cooperation by the debtor or a determination that the debtor will be unable to restructure; or by any of the debtor, the conciliator, any recognised creditor or by decision of the majority of creditor in the event of non-compliance with the terms of the restructuring plan. See question 9 for further information regarding the effects of the judgment that orders a judicial liquidation under Law 141-15.

Prior to the enactment of Law No. 141-15, only unsecured creditors could bring the liquidation action through judicial proceedings after attempting the amicable settlement process governed by Law No. 4,582 of 1956. Basically, a creditor with such interest was required to provide proof of the insolvency of the debtor or its general cessation of payment of debts. The effects of the involuntary liquidation proceedings were the same as the ones for a voluntary liquidation process.

## Voluntary reorganisations

### 11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

Law No. 141-15 contemplates the commencement of the insolvency proceedings by the Debtor at any moment (see question 1 for further information regarding the criteria to determine if a debtor is insolvent). Prior to the enactment of Law No. 141-15, the applicable laws dealt mainly with liquidation and did not contemplate reorganisation.

The restructuring of the debtor may be requested before the court through a petition. According to article 29 of Law No. 141-15, the restructuring request presented by the debtor voluntarily must be accompanied with the financial statements issued for the last three fiscal years; a report explaining the debtor's economic condition and justifying the need for restructuring; a list of all its creditors and the status of all its claims and liabilities (including date of approval and of expiration and a description of the collateral – if any); in the case of businesses, the authorisation of the management expressly approving the restructuring request); a detailed report of all judicial, administrative, labour, arbitral or any other action or procedure to which the debtor is a party; a certification issued by the tax authorities confirming that the debtor is up to date with its fiscal obligations; copies of bank account statements; among other documents.

Following the restructuring request, the court has the obligation to appoint a verifier within a period of three days, who will have the duty to verify the debtor's financial situation and inform the court thereof. The verifier may be assisted by experts on the matter and has ample powers to obtain information about the debtor's business, assets and liabilities and financial situation (in particular, about the assets of the debtor's business that are subject to the restructuring process, or the estate). The verifier is required to present his report to the court within 15 business days following his appointment. Within five business days following the presentation of the verifier's report, the court must decide whether to accept the restructuring request or deny the same.

In the event that the restructuring request is accepted by the court, then such decision must be duly notified to the debtor and the creditors. The court will then appoint a conciliator, whose principal role is to mediate between the debtor and its creditors in order to reach a restructuring plan. Furthermore, the court will order the publication of an excerpt of the restructuring request in a newspaper of national reach in the country as well as on the court's website.

Upon appointment of the conciliator, the conciliation and negotiation process is initiated. The law calls for the ordinary functioning of the debtor and his business during the conciliation process. During this process, the management of the debtor's assets continues to be handled by the debtor, but remains subject to the supervision of the conciliator. Likewise, during the conciliation, all judicial, administrative or arbitral decisions that affect the assets of the debtor, any enforcement or eviction procedures regarding the debtor's moveable and immoveable property, calculation of interest under loans and other credit documents, among others, are suspended.

The restructuring plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. In the event that the creditors reject the proposal, the restructuring of the debtor may follow. However, if the restructuring plan proposal is approved by the creditors, it must be presented to the court for verification and subsequent approval. Once approved by the court, the conciliator is charged with overseeing compliance with the restructuring plan.

In addition, the law provides for 'pre-pack agreements', which may be presented if the debtor and the majority of his creditors reach a restructuring agreement prior to the commencement of the restructuring process. If this is the case, the debtor and the creditors must present said 'pre-pack agreement' to the court, which will reject any restructuring petition file with respect to the debtor for a period of 30 days following the request of the agreement. The 'pre-pack agreement' proposal must be accompanied by a proposal for appointment of a conciliator, which shall be designated by the court if the plan is accepted to oversee the execution of said plan. The approval of the 'pre-pack agreement' shall be notified to the debtor and the creditors, and will produce the same legal effects as a restructuring plan.

## Involuntary reorganisations

**12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?**

Pursuant to Law No. 141-15, the restructuring of the debtor may be requested before the court, through a petition, by any creditor who has an asset (liability in relation the debtor) in an amount that exceeds 50 monthly minimum wages and if the debtor is facing any of the situations that can give rise to the right to petition under the Law (in particular, cessation of payments or any other event that leads a creditor to believe that the debtor is in a precarious financial situation). See question 1 for further information regarding the criteria to determine whether the debtor may be subjected to a restructuring request.

Creditors are required to present the before the court following documentation with their restructuring petition: a list of the creditors filing the request; identification of the debtor and a list of its offices or installations; a precise indication of the facts giving rise to the request; copy of the documents that verify the creditor's rights or assets; copy of the last financial statements (in the case of legal entities); a certification issued by the tax authorities confirming that the claimants are up to date with their fiscal obligations; and copy of the power granted on behalf of the creditor's representatives. In the case of foreign creditors, a local representative shall be designated.

Following the request, the court has the obligation to appoint a verifier within a period of three days, who will have the duty to verify the debtor's financial situation and inform the court thereof. Restructuring requests filed by the creditors must be notified to the debtor within a period of three business days following the filing date, and shall include all the documents presented to the court by the creditors. The creditors have the obligation to present proof of the notification before the court within a period of two business days; failure to do so entails the dismissal of the request.

In the event that the restructuring request is accepted by the court, a conciliator shall be appointed in order to reach a restructuring plan. During the conciliation process, the creditors must declare and supply to the conciliator the documents evidencing their assets (liabilities in relation to the debtor). After the conciliator verifies and confirms such liabilities, this portion of the conciliation process concludes with the publication of a final list of liabilities (subject to any annulment action that remains in course).

The restructuring plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. In the event that the creditors reject the proposal, judicial liquidation of the debtor may follow. However, if the restructuring plan proposal is approved by the creditors, it must be presented to the court for verification and subsequent approval. Once approved by the court, the conciliator is charged with overseeing compliance with the restructuring plan.

## Mandatory commencement of insolvency proceedings

**13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?**

According to article 227 of Law No. 141-15, all persons who directly or indirectly administer, direct or liquidate, in fact or in law, a business subject to the Law, may face criminal prosecution and be subject to imprisonment of up to five years and penalties of up to 3,500 minimum wages. People responsible for the intentional delay of the procedure; the completion of fraudulent transactions for personal gains; the fraudulent reduction or increase of the debtor's assets; as well as the use of false accounting or separate bookkeeping, will be held criminally liable under the terms of the Law.

All transactions made while the debtor is insolvent will be declared null and void if the other party is aware of the general cessation of payment of the company. See question 39, below, for further information regarding transactions that may be annulled.

## Doing business in reorganisations

**14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?**

Law No. 141-15 contemplates the possibility of carrying on business during reorganisation subject to the approval of the conciliator, who has the obligation to inform the court and the creditors of all issues regarding the administration of the debtor. During the negotiation phase of the proceedings, the debtor remains in possession of the business under the supervision of the conciliator, and may only dispose of the necessary assets for the ordinary course of business. However, the conciliator may remove the debtor from the administration of the business to protect the estate. In that same vein, the conciliator may initiate an annulment action against acts executed by the debtor undertaken within the two years prior to the restructuring request, when these have constituted an unjustified dissipation of the debtor's assets and have caused damage to the creditors. See question 39 for further information regarding transactions that may be annulled.

Under the terms of Law No. 141-15, new debts have a higher priority in relation to all other secured and unsecured claims of the debtor, with the exception of tax claims, employee claims, and claims resulting from the payment of the restructuring process, which are entitled to a higher priority status. See question 33 for further information regarding the higher priority of new debt under the terms of No. 141-15.

Upon approval of the restructuring request, the court will order the publication of an excerpt of the restructuring request in a newspaper of national reach in the country as well as on the court's website. Following the publication, the debtor has the obligation to file before the court a list of the providers or suppliers that are essential for the ordinary course of business. Such providers or suppliers are required to maintain the provision facilities during the restructuring of the debtor. Should the essential providers or suppliers refuse to continue supplying goods and services without adequate justification, the court may order the continuation of the supply for a reasonable period of time upon request of the conciliator. The definitive refusal to continue supplying goods and services after the commencement of the process may result in the declaration of such debt as unsecured credit.

Law No. 141-15 also includes the concept of post-filing debtor in possession (DIP) financing and establishes a priority for its payment. New financing must have the approval of the court and the petition presented by the conciliator may be objected by the creditors. The constitution of new financial collateral may also be authorised by the court, after hearing the creditors' adviser. New obligations will be ranked after existing privileges.

During the review of the restructuring request and for as long as the restructuring process is in course, the creditors have the right to appoint a physical or legal person to assume their collective representation during the procedures and actions provided for in the law (the creditors' adviser). Upon proposal of the conciliator and considering the position of the majority of creditors, the court must decide on the termination of existing contracts and the approval of new debt, the constitution of new collateral, the sale of assets and the disposal of assets that are not required for the ordinary course of business. Notices have to be given to creditors prior to the sale or disposition of assets, who may file their opinion through a written report within a period of 10 days. If an encumbered asset is sold, the secured creditors shall receive a proportion of the selling price. The court may authorise the immediate sale by the conciliator of perishable or depreciable assets. Creditors who represent at least 30 per cent of the claims may appeal the court's approval.

The conciliator has the faculty of convening meetings with the debtor's governing bodies when deemed necessary. If a meeting does not occur after two notices given to the corresponding body, the conciliator may take the judicial and extrajudicial actions necessary to request the replacement of the governing bodies of the debtor.

## Stays of proceedings and moratoria

**15 What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?**

According to Law No. 141-15, upon initiation of the conciliation and negotiation process, all judicial, administrative or arbitral decisions that affect the assets of the debtor and any enforcement or eviction procedures regarding the debtor's property (moveable and immoveable) are suspended until the reorganisation plan is approved. However, the debtor's obligations to support their families and children (in the case of natural persons); labour and social security obligations; and payments made as a result of the ordinary course of business, will not be suspended. Definitive judgments awarding money damages are also excluded from the stay, provided that they are not susceptible of being annulled, as well as legal actions concerning securities of public offering originated prior to the restructuring request with subsequent settlement date.

Unless the judge opposes to a claim, it will remain enforceable after the commencement of the reorganisation proceedings; if contract is extended, such claims are treated as new debts and therefore acquire a higher priority in relation to other claims. See question 33, below, for further information regarding the higher priority of new debt under the terms of Law No. 141-15.

Secured claims that benefited from collateral during the 'suspect period' may be subject to the invalidation of such collateral. However, bona fide pledgees may oppose the return of the asset until the secured obligation and any accessory rights are repaid or exchanged for equivalent collateral. See question 39, below, for further information regarding transactions that may be annulled.

Pursuant to article 149 of the law, the judgment that orders a judicial liquidation overturns the stay of all legal proceedings and resumes all actions against the debtor.

## Post-filing credit

**16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?**

Upon the request of the conciliator, and provided there is no objection from the majority of creditors, the court may authorise new super-senior financing on account of the debtor, in order to assure the continuity of the ordinary operations of the debtor. The law establishes a priority for the payment of post-filing credit, which must be requested by the conciliator with the approval of the court; the petition may be objected to by the creditors. See question 33, for further information regarding the higher priority of new debt under the terms of Law No. 141-15.

Prior to the enactment of Law No. 141-15, the debtor could not contract any further obligations. However, the liquidation administrator could incur further debt towards the continuation of a bankrupt business in the interest of unsecured creditors.

## Set-off and netting

**17 To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?**

Law No. 141-15 contemplates the right of set-off and establishes the inclusion of alternative payment proposals in the restructuring plan, such as the conversion of debt into shares, participation loans and netting of claims, provided that the terms of the latter are agreed prior to the initiation of the conciliation and negotiation process. In addition, the stay of all proceedings caused by the declaration of liquidation by a judge does not affect the offsetting of credits.

## Sale of assets

**18 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?**

Law No. 141-15 contemplates the possibility of selling assets during the execution of the reorganisation plan for the purpose of allowing the debtor to satisfy its financial obligations as well as the continuation of its business. The court can approve the sale of assets that are perishable when abstaining from their sale would be harmful to the creditors of the bankrupt debtor. However, the conciliator may initiate an annulment action against acts that have constituted an unjustified dissipation of the debtor's assets and have caused damage to the creditors. See question 14 for further information regarding the conditions that apply to the use or sale of the assets of the business and question 39 for further information regarding transactions that may be annulled.

The awarding of assets approved by court is admitted during the conciliation and negotiation process, which entails the cancellation of any existing mortgages and the passing of assets 'free and clear'. According to article 177 of Law No. 141-15, the court can approve the amicable awarding of assets during the liquidation procedure, subject to further bids are contemplated in the liquidation plan. Any assets acquired would be passed 'free and clear' to the purchaser, except in connection with property that is subject to a lease. The initiation of the restructuring or liquidation of the debtor does not imply the termination of the lease agreements, which must be requested before the court through a petition. Penalties for anticipated termination of the lease and overdue rents corresponding to the last 12 months have higher priority in relation to other claims of the debtor.

Stalking horse bids in sale procedures and credit bidding in sales are not expressly contemplated by the law. However, the inclusion of alternative payment proposals in the restructuring plan is allowed. Provided that the creditor has been recognised (that is, that the credit has been duly verified and confirmed by the conciliator) and the claim has not been classified as subordinate because of the assignee's relation to the debtor, the credit bidder shall be permitted to bid in sales.

## Intellectual property assets in insolvencies

**19 May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?**

There are no provisions regulating this particular matter in the relevant legislation. The agreement that grants the rights over IP will usually prevail and parties will be bound by the terms of the agreement in question. However, upon proposal of the conciliator and considering the position of the majority of creditors, the court may decide to terminate any existing contract.

## Personal data in insolvencies

**20 Where personal information or customer data collected by an insolvent company is valuable to its reorganisation, are there any restrictions in your country on the use of that information in the insolvency or its transfer to a purchaser?**

Pursuant to article 61 of Law No. 141-15, during the phase of conciliation and negotiation, the conciliator has the right to obtain from public organisms all necessary information to achieve its objectives. In cases where the lifting of the bank secrecy is required, the conciliator may request that the court request the protected information through the mechanisms established by law. Additionally, the conciliator may file a written petition through the court requesting access to all information about the debtor that may be in possession of third parties, such as clients, suppliers, providers and credit information societies, provided that the information is necessary for the exercise of its duties

and achievement of its objectives. Pursuant to the terms of the Law, access may only be granted with respect to information necessary for the insolvency process.

## Rejection and disclaimer of contracts in reorganisations

**21 Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?**

Law No. 141-15, establishes the invalidity of contracts, which within 60 days prior to the commencement of the negotiation phase, or after the initiation of the proceedings, aggravate the situation of the debtor or accelerate the enforceability of claims not due. Additionally, pursuant to the terms of the said Law, no legal provision or contractual clause could give rise to the division, termination, resolution or annulment of the contract solely because of the acceptance of a reorganisation request or designation of the conciliator.

## Arbitration processes in insolvency cases

**22 How frequently is arbitration used in insolvency proceedings? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?**

Under Law No. 141-15, any controversy arising in the course of a restructuring procedure, or derived from the execution of the restructuring plan, may be subject to resolution before institutional or ad hoc arbitration. The request for arbitration will not be a cause per se for the suspension of the restructuring process. Administrative actions related to the restructuring, as well as all actions related to the liquidation, shall remain within the exclusive jurisdiction of a special court.

Prior to the enactment of Law No. 141-15, arbitration was not available for insolvency proceedings under Dominican law.

## Successful reorganisations

**23 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?**

During the conciliation process, the creditors must declare and supply to the conciliator the documents evidencing their assets (liabilities in relation to the debtor). After the conciliator verifies and confirms such liabilities, this portion of the conciliation process concludes with the publication of a final list of liabilities (subject to any annulment action that remains in course). Once the liabilities have been verified, the restructuring plan must be presented.

The restructuring plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. In the event that the creditors reject the proposal, judicial liquidation of the debtor may follow. However, if the restructuring plan proposal is approved by the creditors, it must be presented to the court for verification and subsequent approval. Once approved by the court, the conciliator is charged with overseeing compliance with the restructuring plan.

For purposes of a plan, creditors are classified as secured, unsecured and subordinated. Subordinated creditors are defined as those holding claims contractually defined as such; interest claims, excepting those payable under secured credit; claims for fines and penalties; claims owed by a related entity; and claims resulting from the cancellation of a transaction. The restructuring plan will contain, at least, the debtor's background; a summary of the restructuring plan, with a clear description of its main characteristics; information concerning the financial situation of the debtor; non-financial information of the debtor that may impact its future activity; a description of the future operations of the debtor and the effects of the restructuring; potential financial needs and the costs related to the proceedings; and a payment plan for the company's liabilities and the company's business plan for at least the following five years.

The restructuring plan can be organised through the constitution of a trust formed in accordance to the provisions of Law No. 189 on the Development of the Mortgage Market and Trusts in the Dominican Republic.

## Expedited reorganisations

**24 Do procedures exist for expedited reorganisations?**

Law No. 141-15 establishes a special expedited procedure for restructuring where the total liabilities of the debtor do not exceed 10 million pesos, and where the time frames in court are reduced by half. In these cases, the minimum total liabilities to give rise to the right to file a request for restructuring is in an amount of at least 15 times the minimum monthly wage. The appointment of advisers for the creditors or expert and auxiliaries for the conciliator will not be applicable.

Prior to the enactment of Law No. 141-15, Dominican legislation did not contemplate the possibility of expedited reorganisations.

## Unsuccessful reorganisations

**25 How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?**

The restructuring plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. In the event that the creditors reject the proposal, judicial liquidation of the debtor may follow. According to Law No. 141-15, the debtor may request its judicial liquidation before the court at any moment. In addition, the person verifying the financial situation of the debtor, and the conciliator, may recommend the immediate liquidation under specific circumstances, such as the refusal of the debtor to recognise the restructuring requested by the creditors, the recommendation made by the creditor's representative, the non-approval of the restructuring plan or failure to comply with the restructuring plan.

See question 10 for further information regarding the involuntary liquidation of the debtor.

## Insolvency processes

**26 During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?**

The law provides mechanisms for the participation by interested parties in the restructuring process. In that sense, during the review of the restructuring request and for as long as the restructuring process is in course, the creditors have the right to appoint the creditors' adviser, a physical or legal person to assume their collective representation during the procedures and actions provided for in the law. The creditors of securities of the debtor issued in a public offering can also appoint a representative known as the 'representative of publicly issued securities'. Likewise, the employees of the debtor may also appoint a person who will act in the capacity of adviser for the employees (the employees' adviser). Advisers represent the collective interests of the respective interested groups with priority over other interested parties during the restructuring process. However, in cases where advisers are not appointed, or are appointed and then removed, their duties and obligations will correspond to the creditors or employees.

The creditors' adviser has the obligation to inform creditors of all actions concerning the restructuring process; to assess the creditors on the approval of the restructuring plan proposals, the reports for the constitution of new credit, off-setting of credits and the constitution of collateral; request any information that may affect the creditor's rights through a written petition, among others.

Notices shall be given to creditors prior to the sale or disposition of assets, who may file their opinion through a written report within a period of 10 days. Creditors have the right to request all the information they deem necessary to evaluate the proposed restructuring plan. After the liquidation plan is decided, the liquidator has the obligation to inform the court and the creditors, via the creditors' adviser, of its compliance.

Upon petition of any creditor, the creditor may request the 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. See question 39 for further information regarding transactions that may be annulled. The plan may provide for the cancellation of fiscal debt by the tax authorities.

## Enforcement of estate's rights

**27 If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?**

Law No. 141-15 contemplates the possibility of recovering moveable assets in favor of the estate, provided that their sale was resolved prior to the commencement of the reorganisation or a by a judicial decision rendered afterwards. In the case of assets sold by the debtor that remain unpaid, the creditors may subrogate in the rights of the debtor as the legitimate owners against the third-party purchaser.

## Creditor representation

**28 What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?**

The law provides mechanisms for the participation by interested parties in the restructuring process. Creditors and employees have the right to appoint advisers, who represent the collective interests of the respective interested groups with priority over other interested parties during the restructuring process. The advisers are appointed by majority voting. See question 26 for further information regarding the representatives appointed by the parties and their functions.

Decisions are made by the creditors with a minimum of 60 per cent of favourable votes. Each registered or recognised creditor has the right to one vote per every 1 per cent (or portion higher than 0.5 per cent) of the total registered debt to which he or she is entitled. Except when there is only one creditor, one registered or recognised creditor cannot hold more than 50 per cent of the votes, regardless of the sum of their claim.

## Insolvency of corporate groups

**29 In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?**

There are no special provisions regarding insolvency proceedings of a corporate group. In principle, separate proceedings will take place for each entity comprising the corporate group.

Law No. 141-15 sets forth a legal framework applicable to insolvency proceedings with international or cross-border effects, developed in accordance with the United Nations Commission on International Trade Law (UNCITRAL). Upon recognition of the foreign procedure, the foreign representative may request the court the appointment of an officer for the distribution of all or part of the estate located in Dominican territory, provided that the court assures the protection of the rights of Dominican creditors.

No provisions exist either in relation to the transfer of assets between administrations appointed in different jurisdictions. Given that insolvency in the Dominican Republic is ruled by the territoriality principle, the enforcement of a consolidation of proceedings in different countries is unlikely. Proceedings in the Dominican Republic will only affect assets located in the Dominican Republic as the territoriality principle will also bar a local administration from exercising jurisdiction abroad.

## Appeals

**30 What are the rights of appeal from court orders made in an insolvency proceeding? Does an appellant have an automatic right of appeal or must it obtain permission to appeal? Is there a requirement to post security to proceed with an appeal and, if so, how is the amount determined?**

Pursuant to Law No. 141-15, the appellant has an automatic right to appeal those decisions whose review is permitted by the law. Decisions must be appealed within a period of 30 days following their notification, unless specifically stated otherwise by the Law. The placement of security is not required.

Decisions issued by the courts of first instance may be appealed to the restructuring and liquidation courts of appeal. These judgments may then be appealed to the Supreme Court of Justice. Decisions rendered by the Supreme Court only analyse the correct application of the law, and may confirm the appealed judgment or remand it for reconsideration by another court of equal hierarchy. Ultimately, should a party be unsatisfied with the said decision, it may be appealed to the Supreme Court of Justice for a second time. At this stage, the Supreme Court may confirm the decision or reach a new decision without need to remand to a different court.

In accordance with article 51 of Law No. 141-15, the decision of the court that accepts or denies the restructuring request may be appealed by any party within a period of 10 days following its notification. Considering that the appeal of the decision does not suspend the initiation of the phase of conciliation and negotiation, precautionary measures and protective actions may be taken by the court. In accordance with article 80 of the Law, creditors who represent at least 30 per cent of the claims may appeal the court's decision to authorise the immediate sale of depreciable assets by the conciliator.

Article 143 of the Law states that all decisions adopted by the court in connection with the execution or the amendment of the restructuring plan are subject to appeal. In addition, the decision of the court that accepts or denies the liquidation plan may be appealed within a period of five days following its notification. In accordance with article 193 of the Law, the following decisions are also subject to appeal: those that refer to the acceptance of the liquidation procedure may be appealed by the debtors; those that refer to the expiration of the recognition of claims may be appealed by the creditors; and those that refer to the restructuring plan and the liquidation procedure, may be appealed by the debtor, the creditors and the employees' adviser. Any other decision may be appealed by any party with legal capacity and legally protected interest.

Article 193 of the Law states that appeals do not suspend the ongoing procedure. However, the appellant may request the suspension of the matters decided by the appealed decision before the presidency of the Court of Appeals.

See question 2 for further information regarding the courts involved in the insolvency process. See question 31 for further information regarding the appeal of decisions related to a creditor's claims.

## Claims

**31 How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?**

Upon approval of the restructuring request, the court will order the publication of an excerpt of the restructuring request in a newspaper of national reach in the country as well as on the court's website. Following the publication, the appointed conciliator must give notice to creditors within a period of one business day. The creditors may apply for a review of the approval within a period of 10 days following its notification. The recourse shall be notified to the other parties within a period of five business days from the filing date.

Law No. 141-15 establishes a period of 30 business days following the publication of an excerpt of the restructuring request for creditors to present their claims. Claims that are not presented within this deadline may present a tardy declaration at his cost, unless the creditor proves that his failure to notify was because of force majeure. The court must decide on the late declarations within a period of 20 business days.

The submission of claims can be made by the creditor or any representative, and must include general information of the debtor; the elected domicile for purposes of the receipt of notices given as a result of the restructuring procedure, or any alternative means of communication such as fax or an email; the amount of the claim with indication of the debt maturity date; the ranking of the claim; information on any other administrative, judicial or arbitral proceeding initiated with respect to the claim; and a declaration of the creditor on the existence of the claim, in the absence of an enforceable title. Claim submissions must be accompanied by copies of all the supporting documentation (whose originals may be requested by the conciliator). Claims in foreign currency shall be verified and paid in the currency agreed upon.

The conciliator must decide on the recognition of claims for contingent or unliquidated amounts. Pending obligations shall be met by the debtor unless the court decides otherwise. If contract is extended, such claims are treated as new debts and therefore acquire a higher priority in relation to other claims.

Questioned or disallowed claims are subject to judicial proceeding in which the interested parties may file evidence of their claims and legal arguments for their admittance within a period of 10 days after notices made via a national newspaper.

According to article 181 of Law No. 141-15, upon initiation of the liquidation procedure, and prior to admission of their claims, creditors with a special privilege of a lien or a mortgage, and the tax administration, may execute their individual rights if the liquidator has failed to initiate the liquidation procedure within a period of 45 business days following the date of the judgment that establishes the definitive list of credits.

## Modifying creditors' rights

### 32 May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Under the terms of Law No. 141-15, new debts have a higher priority in relation to all other secured and unsecured claims of the debtor, with the exception of tax claims, employee claims, and claims resulting from the payment of the restructuring process, which are entitled to a higher priority status. See question 33 for further information regarding the higher priority of new debt under the terms of Law No. 141-15.

Secured claims that benefited from collateral during the 'suspect period' may be subject to the invalidation of such collateral. See question 39, below, for further information regarding transactions that may be annulled.

## Priority claims

### 33 Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Under the terms of Law No. 141-15, new debts have a higher priority in relation to all other secured and unsecured claims of the debtor, with the exception of tax claims, employee claims, and claims resulting from the payment of the restructuring process, which are entitled to a higher priority status.

According to article 86 of the law, the payment of debts must be carried out in the order described below:

- labour liabilities, if the same have not been advanced in application of the Labour Code or other laws related to social security or the employee's health;
- the costs of the restructuring process, including fees of officials and auxiliaries involved in the process;
- the loans agreed to by financial intermediation entities or third parties that will contribute to financing of the debtor, and which have been duly authorised by the court;
- the debts owed to essential and public service providers or suppliers, duly authorised by the court;
- the 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.

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.

## Employment-related liabilities in restructurings

### 34 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

According to Law No. 141-15, the termination of an employee during a restructuring or liquidation shall comply with the provisions of the applicable labour legislation. Upon termination, employees would be entitled to full payment of their severance unless, concomitantly with the insolvency proceedings, a separate process is conducted under article 82, section 5 of the Labour Code, which sets out the rules allowing a business to shut down and terminate its employees upon payment, as severance, of an 'economic assistance' amount, which is considerably lower than the termination payment that would otherwise be paid.

The conciliator must give notice to the employees' adviser of the verified labour credits within a period of 15 days following the publication of an excerpt of the restructuring request in a newspaper of national reach. Once the employees' adviser verifies the list, it must be notified to the Ministry of Labour and published on the website of the court. Employees whose claims are not included in the list presented by the conciliator may present their claims before the court within a period of 15 days following the notification made by the conciliator to the employees' representative.

## Pension claims

### 35 What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

Pension-related claims arising from the restructuring or liquidation of the employer are not specifically regulated by Dominican insolvency legislation. In the case of failed pension funds, the Dominican Social Security Law No. 87-01 contemplates the intervention of the Superintendence of Pensions, which is required to proportionally allocate the employee's contributions to the rest of the pension fund managers.

See question 5 for further information regarding the insolvency of insurers and reinsurers operating in the local market. See question 34 for further information regarding employment-related liabilities.

## Environmental problems and liabilities

### 36 In insolvency proceedings where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

There are no provisions regulating this particular matter in the relevant legislation.

## Liabilities that survive insolvency proceedings

### 37 Do any liabilities of a debtor survive an insolvency or a reorganisation?

The debtor's liabilities may survive the restructuring of the debtor upon the final conclusion of the proceedings, as established in the restructuring plan. See question 23 for mandatory features of the restructuring plan. See question 33 for further information regarding the order for the payment of debts under Law No. 141-15.

## Distributions

### 38 How and when are distributions made to creditors in liquidations and reorganisations?

Law No. 141-15 establishes that distributions will be made on a pro rata basis, after deducting from the realisation value of the assets the costs of the proceedings and the amounts paid to privileged creditors. See question 33 for further information regarding claims entitled to priority

**Update and trends**

As discussed earlier, on 7 August 2015, a new Law on restructuring and insolvency (Law No. 141-15) was signed into law in the Dominican Republic. The Law is discussed in greater detail throughout this chapter. The Law will enter into effect on 7 February 2017.

status. If encumbered assets are sold, the secured creditors shall receive a proportion of the selling price.

## Transactions that may be annulled

**39 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?**

Law No. 141-15 contemplates 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. However, contracts on securities of public offering originated prior to the restructuring request and with subsequent settlement date are not subject to this annulment procedure.

The Law expressly declares several transactions as null and void, such as transfers of assets free of charge or at a price below market value; when the intended consideration is worth less than the obligation performed, or vice versa; the cancellation or partial or total relief of debt by the debtor; the grant of guarantees or the increase of the value of guarantees approved prior to the initiation of the proceeding without reasonable consideration; payments of obligations not yet due; transfers of property in favour of creditors which result in the payment of a higher amount to that received as a result of the liquidation; transactions with related entities or companies where the debtor or any of the creditors serve as an administrator or are part of the administrating body, represent (jointly or separately) at least 51 per cent 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; transactions with related entities or companies where the debtor, its administrators, shareholders or directors represent, jointly or separately, at least 30 per cent 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 among others.

Should the debtor be a natural person, the Law expressly declares several transactions as null and void, such as negotiations with the spouse or partner, people with whom the debtor coexists, or with whom the debtor has procreated, or their descendants, ascendants, or related collaterally or by affinity; and transactions with commercial entities where any of the previously cited people are administrators, serve as an administrator or as part of the administrating body, or represent (jointly or separately) at least 51 per cent 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.

## Proceedings to annul transactions

**40 Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?**

The law provides that transactions may be attacked before the court by the conciliator at the request of any creditor. Voidable transactions may be attacked upon initiation of the reorganisation proceedings. See question 39 for further information regarding transactions that may be annulled.

## Directors and officers

**41 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?**

Law No. 141-15 also establishes the liability of officers for failure to meet the requirements established by law for the execution of their duties. According to article 223, the officers in charge of the restructuring or liquidation procedures who act in violation of the restrains, inabilities constrains and disabilities established by the law, may face criminal prosecution and be subject to imprisonment of up to two years and penalties of up to 1,250 minimum wages. The officers found guilty of such acts shall be condemned to interdiction to exercise any function in any procedure established by the law for a period of five years from the definitive decision; and the interdiction to act as an administrator for a period of five years from the definitive decision.

Additionally, corporate officers and directors may be liable for labour claims and tax claims. Their liability may also be established upon their violation of criminal provisions relating to bankruptcies. If directors of a corporate bankrupt entity have been careless in the operation of the business and the keeping of its accounts or have concealed assets or engaged in other inappropriate conduct, they may become liable for criminal bankruptcy. Administrators of insolvent entities that act carelessly in the operation of the business may also be liable.

## Groups of companies

**42 In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?**

There are no provisions under Dominican law regarding the effects of insolvency proceedings on subsidiaries or affiliates of the debtor under the current regime. Insolvency procedures of subsidiaries and affiliates would be treated as separate procedures, since there are no provisions regarding substantive consolidation or joint administration of related restructuring proceedings.

## Insider claims

**43 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?**

Law No. 141-15 expressly declares that transactions made with entities in which the debtor or its directors represent, jointly or separately, at least 30 per cent of the capital of the company or have decision-making authority are to be considered null and void. See question 39 for further information regarding transactions that may be annulled.

## Creditors' enforcement

**44 Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?**

There are no processes by which some or all of a business's assets may be seized outside of court proceedings, except for such pre-judgment liens explained above, as available remedies to all creditors.

## Corporate procedures

**45 Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?**

Yes, there are extrajudicial proceedings for the liquidation of a corporation. This is done by the decision of the shareholders through fulfilment of formalities set forth in the by-laws of the corporate entity. If the by-laws are silent on this procedure, the shareholders designate the person in charge of the arrangements of said dissolution and liquidation. The dissolution is usually decided by a general extraordinary assembly in which the shareholders decide to put an end to the existence of the company and appoint a liquidator, who is in charge of managing the debts and assets of the company.

The main difference between the private liquidation of a corporation and liquidation under insolvency proceedings is that unpaid claims

may still survive a private liquidation; the dissolved company will be considered a de facto entity for such purposes.

## Conclusion of case

**46 How are liquidation and reorganisation cases formally concluded?**

Reorganisation cases are formally concluded with the fulfilment of the reorganisation plan. Failure to comply with the terms of the reorganisation plan entails the initiation of the liquidation procedure.

## International cases

**47 What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?**

Law No. 141-15 sets forth a legal framework applicable to insolvency proceedings with international or cross-border effects, developed in accordance with the United Nations Commission on International Trade Law (UNCITRAL). The law provides that foreign creditors have the same rights and can rely on the same remedies available to local creditors.

Upon filing of the application for recognition of the foreign proceeding, all judicial, administrative or arbitral decisions that affect the assets of the debtor and any enforcement or eviction procedures regarding the debtor's property (moveable and immoveable) are suspended until the court reaches a decision. The application for recognition of the foreign insolvency proceeding must be decided by the court within a period of 15 business days from the filing date. From the date in which the recognition of the foreign proceeding is requested, the foreign representative may request the appointment of an officer by the court for the distribution of all or part of the estate located in Dominican territory, provided that the court assures the protection of the rights of Dominican creditors. In addition, the foreign representative may request the verifier, conciliator or liquidator, the recovery of assets that belong to the estate, and the annulment of acts that have constituted an unjustified dissipation of the debtor's assets and have caused damage to the creditors.

As a result of the recognition of a foreign main proceeding, only one local restructuring procedure can be initiated. The effects of said procedure are limited to the assets located in the Dominican territory, and other assets that pursuant to Law No. 141-15 shall be administered in accordance with the law.

## COMI

**48 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?**

According to article 206 of Law No. 141-15, the debtor's COMI will be deemed its domicile for the purpose of the law, unless proven otherwise. The COMI is the centre of main interest of the debtor, or the place where the administration of its interests is conducted on regular basis and is accepted by third parties. In the case of natural persons, the debtor's domicile is the place of habitual residence.

The Dominican Tax Code provides that for tax purposes, business entities may be considered domiciled in Dominican territory when their COMI is located in the country, or its effective centre of management. COMIs are regarded as permanent establishments for income tax purposes.

## Cross-border cooperation

**49 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?**

Law No. 141-15 contemplates the possibility of processing local and foreign insolvency proceedings simultaneously, in which case the local court shall collabourate and coordinate its actions with the foreign proceeding. See question 47 for further information regarding international insolvency proceedings.

There is no precedent that we are aware of concerning refusal to recognise foreign proceedings or awards. Nonetheless, in accordance to Dominican laws a judgment or award by a foreign court shall be enforceable in the Dominican Republic through an exequatur, authorising the validity of the foreign judgment. Dominican courts will ratify such judgment if it complies with all formalities required for the enforceability thereof under the laws of the foreign country; has been translated into Spanish, together with related documents and satisfies the authentication requirements of Dominican law; was issued by a competent court after valid service of process upon the parties to the action; was issued after an opportunity was given to the defendant to present its defence; is not subject to further appeal; and is not against Dominican public policy.

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**Cross-border insolvency protocols and joint court hearings**

**50 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?**

Law No. 141-15 contemplates the possibility of processing local and foreign insolvency proceedings simultaneously. To the best of our knowledge, no joint hearings have been held by Dominican courts with courts in other countries. See questions 47 and 49 for further information regarding the recognition of insolvency proceedings in other countries.