LATINLAWYER

Dominican Republic

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Actions prior to a formal proceeding

1. What duties do directors, officers or controlling shareholders of a company owe creditors or other third parties if the company is insolvent or in financial difficulties, or has negative net worth? Is there a standard of care towards third parties? In what circumstances can directors, officers or controlling shareholders be found civilly or criminally liable for continuing to operate a company in financial difficulties? In practice, are such liabilities commonly enforced?

A new Law on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15 or the Law) was signed into law on 7 August 2015. 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. 4582 on the Declaration of Bankruptcy, which dates to 1956.

Law No. 141-15 establishes the liability of officers for failure to meet the requirements established for the execution of their duties. Pursuant to article 223, the officers in charge of the restructuring or liquidation procedures who act in violation of the restraints, inabilities, constraints 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. Interdiction to exercise any function in any procedure established by the Law for a period of five years from the definitive decision is imposed on officers found guilty of such acts. In addition, article 227 of Law No. 141-15 provides that all persons who directly or indirectly administer, direct or liquidate a business subject to the Law, in fact or in 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 of the intentional retardation 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.

Applicable law states that corporate officers and directors may be liable for labour claims and tax claims; shareholders may be found liable in proportion to their ownership interests. Upon the liquidation of the company, shareholders may become liable with respect to labour claims, in case of fraudulent manoeuvres or unpaid salaries; in this latter case, criminal penalties are imposed on the administrators and directors of the business, or any other individual who manages the same.

In practice, these liabilities are not commonly enforced.

2. What actions are available to creditors (secured or unsecured) prior to a formal insolvency proceeding to recover on a defaulted loan or obligation of a debtor? Are there any expedited formal proceedings?

Secured creditors may exercise rights and remedies on a defaulted loan or obligation with respect to the collateral, prior to commencement of insolvency or bankruptcy proceedings. The preferred security on real property is the mortgage. However, the ordinary procedure for the foreclosure of a mortgage is extremely complicated and often takes longer than 12 months. In certain instances, an abbreviated mortgage procedure set forth in Law No. 6186 of 1963, applicable to financial institutions, may be available. The most common type of security for moveable property is the non-possessory pledge, also established pursuant to Law No. 6186. This security, similar to a chattel mortgage, and originally intended for crops and agricultural equipment, was expanded by judicial interpretation to cover most moveable assets, including industrial machinery and motor vehicles.

A proposed bill that would modernise and introduce new credit possibilities for moveable property has been presented before Congress.

Prior to the commencement of formal insolvency proceedings, unsecured creditors may institute one of several actions to recover on a defaulted loan or other obligation. The claimant may apply for a provisional judicial lien that will enable the creditor to seize real property owned by the debtor in an ex parte pre-judgment proceeding. The provisional judicial lien will be registered at the Real Estate Registrar's Office, and may be converted into a definitive judicial lien if the claimant is successful, and the claimant can then foreclose on the property in a separate proceeding. However, if the property is the debtor's declared homestead, then this remedy is not available to unsecured creditors.

In addition, an unsecured creditor may seek a judicial order to attach personal property owned by the debtor in an ex parte proceeding. Judges are lenient in granting this authorisation, and frequently do not request proof of the urgency or question the prima facie validity of the claim, in spite of the fact that the Dominican Supreme Court has repeatedly insisted that judges must satisfy themselves on these questions. Once the assets are attached, the claimant has 30 days to present the merits of the case.

The claimant may also place a garnishment on a debt owed to his debtor by a third party (known as *embargo retentivo*). If the creditor is the holder of an instrument setting forth the amount of the debt (such as a promissory note, a dishonoured cheque, or an acknowledgment of the debt), the creditor will only need to attach a copy of such a document to the notice of garnishment served by a bailiff to the third party (most often a financial institution where the debtor has deposited funds). Should the claim be for an indeterminate amount (for example, damages arising out of a breach of contract), then the creditor will need judicial authorisation to proceed with the garnishment.

Law No. 141-15 establishes a special expedited procedure for restructuring when the total liabilities of the debtor do not exceed RD$10 million (approximately US$ 207,700), whereby the timeframes in court are reduced by half. The minimum liability required by the Law to file a request for restructuring is of at least 15 minimum monthly wages. The appointment of advisers for the creditors or expert and auxiliaries for the conciliator will not be applicable under the expedited procedure.

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

3. Can a creditor that has secured debt foreclose on the collateral or sell collateral in a private sale? If so, what rules exist to ensure the sale or foreclosure generates the maximum amount of sales proceeds possible? Can lenders take possession or control of the underlying collateral? Do insolvency proceedings stay the ability of secured creditors to foreclose on collateral of the debtor? Are there any accelerated procedures available for secured creditors, and if so, under what circumstances can they be used?

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.

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.

Under the terms of Law No. 141-15, 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 past 12 months have higher priority in relation to other claims of the debtor.

Lenders cannot take control of the underlying collateral outside of a judicial proceeding.

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.

For accelerated procedures available, please refer to the response to question 2.

4. Can creditors that have equity as collateral take control of a debtor by exercising voting rights attached to pledged shares?

Creditors that have equity as collateral may not take control of a debtor. In cases of pledged shares, shareholders preserve their right to vote; accordingly, creditors cannot take control of the board as there are no voting rights attached to pledged shares.

5. Can secured creditors credit-bid their debt in a sale of a debtor's assets, outside or within a formal insolvency proceeding? If so, what procedures or limitations apply?

Credit bidding in sales is not expressly contemplated by the Law. However, the inclusion of alternative payment proposals in the restructuring plan is allowed. The credit bidder shall be permitted to bid in sales provided that the creditor has been recognised (that is, that the credit has been duly verified and confirmed by the conciliator) and that the claim has not been classified as subordinate due to the assignee's relation to the debtor.

6. Are there legal or regulatory concerns that secured creditors should consider in connection with a sale or foreclosure?

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 14 for further information regarding transactions that may be annulled.

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 19 for further information regarding the higher priority of new debt under the terms of Law No. 141-15.

See question 1 for further information regarding the circumstances under which shareholders could be found civilly or criminally liable.

Formal proceedings

7. What types of insolvency proceedings are available in your jurisdiction? Are different insolvency proceedings available for individuals and companies? Is there any distinction made between "preventive" insolvency proceedings and "actual" insolvency proceedings?

New 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. 4582 on Declaration of Bankruptcy, which dates to 1956. Prior to the enactment of new Law No. 141-15, it was not possible to request the reorganisation of an insolvent debtor in the Dominican Republic, given that all the applicable laws solely referred to its liquidation.

On 13 February 2017, the Executive Branch issued Decree No. 20-17 for the enactment of the Regulation for the Application of Law No. 141-15 (the Regulation). The Regulation provides a framework for important aspects of the Law and develops other aspects that were not clearly established in the text of the law, such as the definition of “business person”; the functions, selection and sanctions applicable to the officers in charge of implementing and overseeing proceedings under Law No. 141-15, as well as the process for their registration before the corresponding Chambers of Commerce; the rules and procedural principles applicable to the special courts created by Law No. 141-15; the rules applicable to the proposal of a Preliminary Restructuring Agreement; relevant aspects of the restructuring and liquidation procedures; among others.

Special insolvency rules exist for financial institutions under the jurisdiction of the Superintendency of Banks. There are also special regimes for companies participating in the electric sector (primarily the business of power distribution), insurance companies, and pension funds. There are no rules governing the insolvency of state-owned enterprises.

There is no distinction between "preventive" and "actual" insolvency proceedings. However, Law No. 141-15 establishes the obligation to attempt the reorganisation of the debtor prior to initiating involuntary liquidation proceedings.

In addition, Law No. 141-15 establishes a special expedited procedure for restructuring whereby the total liabilities of the debtor do not exceed RD$10 million (approximately US$207,700). See question 2 for further information regarding the special expedited reorganisation procedure under the terms of No. 141-15. Prior to the enactment of Law No. 141-15, Dominican legislation did not contemplate the possibility of expedited reorganisations.

Informal reorganisation processes are not available to Dominican debtors. Law No. 141-15 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 (the approval of the Representative of Publicly Issued Securities is also required, if applicable). 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 Regulation establishes the possibility of reaching an agreement with only one or several categories of debtors, which shall be grouped in the following classes: (i) local and foreign financial entities; (ii) bondholders; (iii) providers or suppliers; (iv) labour liabilities; (v) state entities; and (vi) other creditors. Different actions and stipulations may be agreed for each class.

Law No. 141-15 and its Regulation call for the ordinary functioning of the debtor and his or her business during the approval process of the pre-pack agreement. Hence, the management of the debtor's assets continues to be handled by the debtor but remains subject to supervision.

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.

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 the Securities Market dated May 2000; and companies participating in the electric sector.

8. May government-owned entities, states or municipalities file for an insolvency proceeding in your jurisdiction? If so, are there special rules or a separate regime that applies to such entities?

Law No. 141-15 excludes entities that are government owned or controlled. According to the Public Administration Organic Law No. 247-12 of 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 shall provide the basic rules that will govern its dissolution as well as the necessary powers to the entity responsible for the liquidation.

9. On what grounds may or must a debtor be placed into an insolvency proceeding? Who may do this? What are the grounds for a voluntary proceeding? If an involuntary proceeding is filed, must a bond be posted or is there any risk of liability to the creditor or creditors who filed the action?

Prior to the enactment of Law No. 141-15, 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. 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.

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 due to 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 50 per cent of the debtor's total assets.

Under Law No. 141-15, the involuntary restructuring of the debtor may be requested before the court, through a petition, by any creditor who has an asset (liability vis-à-vis 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).

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 (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). If creditors have not yet reached a decision in regard to the restructuring plan, the conciliator may only propose the liquidation of the debtor when: after the commencement of the conciliation and negotiation proceedings, the ordinary operations of the debtor cease for more than three uninterrupted months; resuming the debtor's operations would entail the accumulation of new debt for amounts not proportional to the debtor's assets or with the economic viability of the business; or with the approval of the majority of creditors.

In addition, Law No. 141-15 contemplates the voluntary commencement of the insolvency proceedings by the debtor at any moment. Prior to the enactment of Law No. 141-15, the applicable laws dealt mainly with liquidation and did not contemplate reorganisation. Under the previous legislation, a debtor company is compelled to file for bankruptcy within three days following a general cessation of payments. Failure to do so may give rise to criminal prosecution and subject the officers and directors of the bankruptcy company to imprisonment (from 15 days to one year). Should the compulsory conciliation procedure be unsuccessful, unsecured creditors may bring the liquidation action through judicial proceedings.

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 debtors' 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 and/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; among other documents; copies of bank account statements; among other documents.

The posting of a bond is not required. The creditors who file the action bear no risk of liability, unless the insolvency proceeding is initiated recklessly or in bad faith.

10. What effect, if any, does a filing have on a subsidiary or affiliate of the debtor? Are there any actions the debtor, the subsidiary or the affiliate can take to limit such effects? Are there any grounds for procedurally and substantively consolidating insolvency proceedings involving related parties? If a debtor organised under the laws of your jurisdiction entered into local insolvency proceedings, could the debtor's foreign affiliates be included in the local filing?

There are no provisions under Dominican law regarding the effects of insolvency proceedings on subsidiaries or affiliates of the debtor under the previous 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.

Law No. 141-15 contemplates the possibility of processing local and foreign insolvency proceedings simultaneously, in which case the local court shall collaborate and coordinate its actions with the foreign proceeding. If a local insolvency proceeding were initiated, foreign affiliates could not be included in the local filing inasmuch as the effects of local insolvency proceedings are limited to the assets located on Dominican territory.

11. What notifications and meetings are required after a debtor has been placed in an insolvency proceeding? Do the insolvency laws recognise bondholders under an indenture? What must they show to prove their ownership interest in the underlying debt?

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 a restructuring request is accepted by the court, such decision must be duly notified to the debtor and the creditors; the court will then appoint a conciliator. 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 due to 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 mean 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.

Upon appointment of the conciliator, the conciliation and negotiation process is initiated. 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.

Bondholders will be considered as secured or unsecured creditors and will either be entitled to participate directly in the proceeding or through the indenture trustee, depending on the terms and conditions of the relevant bondholder instruments.

12. How are contingent creditors dealt with? Are inter-company or affiliate claims treated differently from other creditor claims in terms of recovery or voting? If so, has this been challenged and with what result? Are there special rules for certain contracts?

The conciliator must decide on the recognition of claims for contingent or unliquidated amounts. Questioned or disallowed claims are subject to a 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 notice is made via a national newspaper.

Inter-company of affiliate claims are classified as subordinated by Law No.141-15. The Law 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. In addition, the Law expressly declares several transactions as null and void, such as 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.

Law No. 141-15, establishes the invalidity of contracts executed within 60 days prior to the commencement of the negotiation phase or after the initiation of the proceedings, which 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 due to the acceptance of a reorganisation request or designation of the conciliator.

Companies in certain sectors may be entitled to different treatment and resolution of relevant claims (please see questions 7 and 25). It should also be noted that tax claims and employee claims are entitled to super-priority status in any bankruptcy proceeding.

13. What effect does the commencement of an insolvency proceeding have on the debtor and its operations? Is there an automatic stay that prevents third parties from acting against the debtor? Can a debtor terminate or reject contracts to which it is a party?

As discussed in our response to question 3, under the terms of Law No. 141-15, 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 upon initiation of the conciliation and negotiation process, 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.

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 this process. Hence, the management of the debtor's assets continues to be handled by the debtor, but remains subject to the supervision of the conciliator.

The debtor 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 14 for further information regarding transactions that may be annulled.

Pending obligations shall remain enforceable after the commencement of the reorganisation proceedings 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. See question 19 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.

14. In what circumstances could transactions entered into before an insolvency proceeding be challenged? How far does the claw-back period extend? Who can bring such challenges and who bears the burden of proof? How frequently are such challenges made and upheld?

Prior to the enactment of Law No. 141-15, the transfer of the assets prior to the bankruptcy order to be issued by the court could not be challenged by third parties or creditors of the failed business or company nor declared void by a court, provided that such transfer has (i) met the requirements set forth in Dominican law for the transfer of these assets depending

on their type or nature; (ii) have been made before the insolvency date, as fixed by the court; or, (iii) if made after the insolvency date, but before the date of the bankruptcy order, the purchaser ignored that the company had become insolvent before the petition for bankruptcy.

After the enactment of Law No. 141-15, transactions made within a period of two years prior to the filing date of the reorganisation request might be annulled, provided that the court deems they constitute an unjustified diversion of assets or are detrimental to creditors. Any creditor or the conciliator could bring the annulment action through judicial proceedings, which are required to provide proof of the invalidity of the challenged transaction.

In addition, the Law expressly declares several transactions as null and void, such as the cancellation or partial or total relief of debt by the debtor; 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 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 favor 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 other 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, 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.

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15. How are secured creditors treated in an insolvency proceeding? How do they protect their collateral, particularly liquid assets? Can they seek remedies? Must their approval be obtained to use or dispose of their collateral? Do liens on receivables, revenues or cash flow continue with respect to such collateral after a debtor’s insolvency filing has been accepted by a court, or are they cut off as of the

date of the filing or acceptance? If they are not cut off, may the debtor use that cash collateral and, if so, must it provide any protection to the secured creditors?

Prior to the enactment of Law No. 141-15, the bankruptcy declaration had no effect on secured creditors, except that interest payable on their claims could only be collected from sums generated through the use of the collateral. They could only benefit from bankruptcy proceedings with respect to unsecured portions of their claims (except accruing interest).

Under the terms of Law No. 141-15, the conciliator has the obligation to inform the court and the creditors of all issues regarding the administration of the debtor. Upon proposal of the conciliator and taking into account 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. **Prior to the sale or disposition of assets n**otices must be given to creditors, 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.
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 14 for further information regarding transactions that may be annulled.

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.

Cash collateral procedures are not expressly contemplated by the Law.

16. How are unsecured creditors treated? How are equity holders treated? May an equity holder recover prior to creditors being paid in full?

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. 4582 of 1956. A creditor with such interest was required to provide proof of the insolvency of the debtor or its general cessation of payment of debts, and the effects of the involuntary liquidation proceedings were the same as the ones for a voluntary liquidation process.

Under the terms of Law No. 141-15, the restructuring plan proposal must be presented for review and subsequent approval or rejection of all the creditors. Unsecured creditors have the same rights and can rely on the same remedies available to secured creditors.

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 realisation 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.

Equity holders may not recover prior to creditors.

17. What is the effect of an insolvency proceeding on current and retired employees?

Employees have a super-priority claim to their unpaid salaries and benefits (including over secured creditors, please see question 19). There are no specific provisions set forth for retired employees; such employees would most likely be treated as unsecured creditors.

18. Do directors or officers of companies in insolvency proceedings suffer any consequences?

Under the previous legislation, once a company enters into an insolvency proceeding, officers and directors cease to act as such and the court will appoint administrators or liquidators. Former directors or officers are not disqualified from serving as officers or directors of other companies or as liquidators of the company involved in the insolvency proceeding. See question 1 for further information regarding the liability of directors or officers of companies involved in insolvency proceedings.

Administrators of insolvent entities that act carelessly in the operation of the business may also be liable. Administrators have a duty towards the company or any third party, and are responsible for damages resulting from their actions, omissions, or failure to meet the requirements established by law for the execution of their duties.

19. How do the various types of claims rank in an insolvency proceeding? Do some claims automatically have higher priority? May claimants with lower priority receive consideration under a reorganisation plan even though claimants with higher priority are not paid in full?

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.

Pursuant to article 86 of the Law, the payment of debts must be carried out in the order described below: (i) 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; (ii) the costs of the restructuring process, including fees of officials and auxiliaries involved in the process; (iii) 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; (iv) the debts owed to essential and public service providers or suppliers, duly authorised by the court; (v) 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 (vi) 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.

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. If encumbered assets are sold, the secured creditors shall receive a proportion of the selling price. According to the Regulation, distributions made on a pro rata basis shall be made in the following order: privileged and secured claims; unsecured claims and portions of secured claims that were not paid with the selling price of the encumbered assets or privileges; subordinated claims; and interest payments suspended after the commencement of the restructuring procedure. Any remaining balance shall be paid to the debtor.

According to article 158 of the Law, the verification of unsecured claims will not occur in the course of liquidation proceedings if the judicial costs and secured claims have completely absorbed the product of the realisation 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.

20. Are local creditors treated differently from foreign creditors in practice? What laws exist to prevent such disparate treatment? What factors contribute to how effectively those laws are applied?

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.

Law No 141-15 contemplates the possibility of processing local and foreign insolvency proceedings simultaneously, in which case the local court shall collaborate and coordinate its actions with the foreign proceeding.

21. What level of creditor support is needed to approve a reorganisation plan? Can secured creditors and other priority claim holders that do not approve a reorganisation proposal be "crammed down"? Are there any substantive criteria that a plan must satisfy? Must hearings take place or documents be distributed?

Previous legislation essentially provides for a liquidation procedure. However, a debt restructuring or a plan to honour unsecured claims may be sought through an out-of-court restructuring or during the compulsory preliminary conciliation. Any plan agreed to at the compulsory conciliation stage must provide for the repayment of at least 50 per cent of all unsecured debt of the debtor payable within a term no longer than two years, and two-thirds of the admitted credits must approve the proposal. Under this scenario, a hearing was held before the Conciliatory Commission established by the law to verify and admit all credits prior to the presentation by the debtor of his or her proposal for payment.

After the enactment of Law No. 141-15, the restructuring plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. The restructuring plan must 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.

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 faction higher than 0.5 per cent) of the total registered debt to which he 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.

Notices shall be given to creditors prior to the 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 creditor's adviser, of its compliance.

Secured creditors and other priority claim holders that do not approve a reorganisation may not be 'crammed down'. See question 15 for further information regarding the treatment of creditors during the insolvency proceedings.

22. May creditors trade their claims during the course of a reorganisation? What impact, if any, will it have on voting for a plan?

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 existing credits.

23. What kind of court supervision is there in each type of insolvency proceeding? Are the judges that supervise and administer the process specialised? Is a trustee or receiver (or other court-appointed officer) appointed to supervise the debtor or can the debtor continue to control operations during the insolvency proceeding? May a debtor company or its creditors select or influence the selection of the trustee, receiver or other court-appointed officer? Can creditors form creditors' committees? What formal role do creditors (or creditors' committees) play in the process? Do insolvency proceedings permit competing reorganisation plans? Are the judges that supervise and administer the process specialised? Does a debtor company or its creditors have any power to select or influence the selection of the trustee, receiver or other court-appointed officer?

Prior to the enactment of new Law No. 141-15, a mandatory conciliation proceeding before the Chamber of Commerce had to take place prior to the intervention of the courts in a bankruptcy. Most attempted bankruptcy proceedings were settled at this stage and rarely escalated to the judicial stage. No legal provisions referred to the formation of creditors' committees. There were no rules governing competing reorganisation plans, and the judges that supervised and administered the process were not specialised (there was no specialised jurisdiction for insolvency or bankruptcy proceedings).

New Law No. 141-15 of 2015 creates a special jurisdiction for restructuring and judicial liquidation, comprised of courts of first instance and Courts of Appeals, which will be specialised to hear restructuring and liquidation proceedings, as well as any other judicial or extrajudicial action linked to the debtor and its equity. 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.

According to Resolution No. 44/2016 issued by the Council of the Judicial Branch on 7 December 2016, the First Courtroom of the Civil and Commercial Chamber of the Court of First Instance of the National District, and the Second Courtroom of the Civil and Commercial Chamber of the Court of First Instance of the Judicial District of Santiago, have

been provisionally designated as Courts of First Instance of Restructuring and Liquidation in their respective jurisdictions. In addition, the Second Courtroom of the Civil and Commercial Chamber of the Court of Appeals of the National District, and the First Courtroom of the Civil and Commercial Chamber of the Court of Appeals of the Judicial District of Santiago, have been provisionally designated as Courts of Appeals of Restructuring and Liquidation.

According to the Regulation, the restructuring and liquidation courts will be competent to hear all actions related to the restructuring and liquidation procedures, as well as all possible judicial or extrajudicial measures related to the debtor's assets, including petitions for precautionary measures and protective actions, and the dissolution or liquidation procedure of commercial entities. Civil or criminal actions for non-compliance of the Law shall be heard by the ordinary courts.

Under the terms of new Law No. 141-15, the debtor remains in possession of the business during the negotiation phase of the proceedings, under the supervision of the conciliator. See question 13 for further information regarding the possibility of carrying on business during reorganisation.

The debtor and its creditors may select or influence the selection of the court-appointed officer. Initially, the court-appointed officers are selected following a random procedure. However, the debtor and the majority of the creditors may mutually agree to request the substitution of the conciliator, the verifier or the liquidator with another officer duly registered under the terms of the Law and Regulation, without need to express a cause. The Law also provides that 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. See question 7 for further information regarding pre-pack agreements.

During the review of the restructuring request and for as long as the restructuring process is on course, the creditors have the right to appoint the "creditors' adviser", to assume their collective representation during the procedures and actions provided for in the Law. The creditors of securities issued in a public offering can also appoint a representative denominated the Representative of Publicly Issued Securities. The creditor's 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, offsetting of credits and the constitution of collateral; request any information that may affect the creditor's rights through a written petition, among others.

The Restructuring Plan proposal must be presented for review and subsequent approval, or rejection, of the creditors. See question 21 for further information regarding the reorganisation plan.

24. May a debtor obtain financing while in insolvency? Will the lender enjoy special rights or preferences for providing DIP financing? Can a DIP lender 'prime' or come ahead of an existing lien? What difficulties typically arise in obtaining such funding or any required approval thereof?

Prior to the enactment of Law No. 141-15, the debtor undergoing a liquidation proceeding could not contract additional obligations. However, the designated administrator or administrators may incur a further debt towards the continuation of the business in the interest of unsecured creditors.

Law No. 141-15 also includes the concept of post-filing debtor in possession financing 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 19 for further information regarding the higher priority of new debt under the terms of No. 141-15.

25. If a debtor company has issued debt securities, does your jurisdiction's insolvency or securities law provide for any exemptions from registration of those securities under applicable securities law?

The public offering of debt securities is subject to a special law on the Securities Market. In the case of failed banks, as provided under Monetary and Financial Law, 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. The Monetary and Financial Law was amended in 2011 to include debt securities for construction and house financing as privileged obligations in light of a dissolution procedure of a banking entity.

According to article 84 of Law No. 141-15, securities of public offering issued by the debtor prior to the restructuring request may continue to be negotiated in the secondary securities market during the course of the insolvency proceedings.

26. May creditors offset debts owed to them by the debtor in an insolvency proceeding? Does this require court approval? Can creditors recover the expense of participating in the process? How?

Law No. 141-15 contemplates the right of set-off and establishes the inclusion of alternative payment proposals in the restructuring plan. In addition, the stay of all proceedings caused by the declaration of liquidation by a judge does not affect the offsetting of credits.

According to Law No. 141-15, the costs of the restructuring process, including fees of officials and auxiliaries involved in the process must be paid after labour liabilities, and prior to all other debt. See question 19 for further information regarding claim ranks in an insolvency proceeding under the terms of No. 141-15. The judicial decision will refer to the payment of procedural costs and expenses.

27. If a debtor company has tax losses prior to a reorganisation, will it retain and be able to use such losses after it emerges from the reorganisation?

There are no special rules regarding the use of tax losses of a business upon the same emerging from a reorganisation. Losses will simply be deductible as per general tax rules, against future tax years, up to a maximum of five years.

28. What happens at the end of an insolvency proceeding? If there is a discharge of prior claims, is it permanent or subject to any conditions subsequent?

According to Law No. 141-15, in the event that the restructuring plan proposal is rejected by creditors, judicial liquidation of the debtor may follow. Under the terms of the Law, 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.

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.

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 or her appointment, the liquidator assumes all management functions and powers of the debtor. Likewise, during 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.

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 realisation 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.

29. How long do restructurings last? Is there a formal deadline?

Law No. 141-15 provides that the reorganisation plan must be submitted for approval by the creditors and the debtor within 120 days from the date of appointment of the conciliator, which can be extended for 60 additional days. Liquidation may be requested in the absence of approval before the deadline.

According to article 152 of the Law, following the judgment ordering the liquidation of the debtor, the court may authorise that the debtor continues its operations during a specific period of time.

30. Is there an expedited or summary proceeding available to obtain court approval of an out-of-court restructuring plan? If so, what types of claims and creditors may participate and how does the process work? Are out-of-court proceedings commonly used and what are the primary benefits and drawbacks?

Law No. 141-15 establishes a special expedited procedure for restructuring whereby the total liabilities of the debtor do not exceed RD$10 million (approximately US$222,000). See question 2 for further information regarding the special expedited reorganisation procedure under the terms of No. 141-15.

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. 4582 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.

Additional considerations

31. Does the government tend to play an active role in insolvency proceedings? What factors determine this?

Government has not been seen to play any role in insolvency proceedings.

32. How are extraterritorial bankruptcy or insolvency proceedings recognised? Could a bankruptcy or insolvency judgment abroad substantially delay an insolvency proceeding in your jurisdiction? Does your jurisdiction contemplate ancillary or parallel insolvency proceedings with respect to a foreign proceeding? If a company organised under the laws of your jurisdiction (or whose principal place of business is in your jurisdiction) entered into extraterritorial bankruptcy or insolvency proceedings, would those proceedings be recognised in your jurisdiction?

Prior to the enactment of Law No. 141-15, there were no provisions regarding extraterritorial insolvency proceedings or ancillary or parallel insolvency proceedings.

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

Law No. 141-15 contemplates the possibility of processing local and foreign insolvency proceedings simultaneously, in which case the local court shall collaborate and coordinate its actions with the foreign proceeding. 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 (movable and immovable) 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 the local insolvency 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 to the Law.

33. How frequently do debtor companies reorganise and emerge from bankruptcy as opposed to liquidation? What factors determine this?

Private out-of-court reorganisations are fairly common and in many cases they are successful. However, as explained above, Dominican law does not provide for in-court reorganisation of an insolvent company.

34. What is the appeal process for an insolvency proceeding in your jurisdiction and what effect do appeals have on approved plans? How long do appeals take to resolve?

Under the previous legislation, appeals of judgments issued by the commercial court followed normally the same rules of ordinary law provisions but were carried out as summary proceedings. The appeal needed to be filed before the corresponding court of appeals within a 15-day period commencing after the notification of the judgment. Generally, an appeal in civil and commercial matters could take from up to six months to a year.

In accordance with Law No. 141-15, decisions issued by the courts of first instance may be appealed to the restructuring and liquidation Courts of Appeal.

Article 193 of the Law provides 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, which may also take precautionary measures and protective actions. 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.

Pursuant to article 143 of the Law, decisions adopted by the court in connection to the execution or the amendment of the restructuring plan are subject to appeal.

Judgments issued by the Court of Appeals may 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 that 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. Law No. 141-15 establishes a period of 30 business days for the appeal against the court's decisions.

35. Are there any common techniques that debtors use to manipulate or control insolvency proceedings? Have any of these techniques been challenged, and if so, what was the result?

Prior to the enactment of Law No. 141-15, the amicable settlement procedures prohibited the recording of secured credits after the date of the suspension of payments. In the past, debtors have abused the use of the initiation of the insolvency process to defraud creditors by avoiding the registration of secured credits.

36. What impact, if any, has the ongoing volatility in the global credit markets and rise in corporate restructurings had on your jurisdiction's insolvency regime? Are any amendments to your jurisdiction's insolvency laws envisaged? If so, which problems are such amendments intended to address and how?

As discussed in question 1, 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. 4582 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.