



CHAMBERS
Global Practice Guides

Insolvency

The Dominican Republic
– Law & Practice

Contributed by
Headrick Rizik Alvarez
& Fernández

2016

THE DOMINICAN REPUBLIC

LAW & PRACTICE:

p.3

Contributed by Headrick Rizik Alvarez & Fernández

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law & Practice

Contributed by Headrick Rizik Alvarez & Fernández

CONTENTS

1. Market Panorama	p.5	8.4 Shadow Directorship	p.12
1.1 Market Dynamics	p.5	9. Solvent Restructuring/Reorganisation and Rescue Procedures	p.12
1.2 Market Developments	p.6	9.1 Statutory Mechanisms	p.12
2. Debt Trading	p.6	9.2 Position of Company During Procedure	p.15
2.1 Limitations on Non-Banks and Foreign Institutions	p.6	9.3 Position of Creditors During Procedure	p.15
2.2 Debt Trading Practice	p.6	9.4 Claims of a Dissenting Class of Creditors	p.15
2.3 Loan Market Guidelines	p.7	9.5 Trading Claims of Dissenting Creditors	p.15
2.4 Transfer Prohibition	p.7	9.6 Re-organising a Corporate Group	p.15
2.5 Navigating Transfer Restrictions	p.7	9.7 Conditions Applied to Use or Sale of Assets	p.15
3. Informal and Consensual Restructuring Framework	p.7	9.8 Distressed Disposals	p.15
3.1 Consensual Restructuring	p.7	9.9 Release of Security and Other Claims	p.16
4. Legislative Regime Applicable to Restructuring and Insolvency	p.8	9.10 Priority	p.16
4.1 General Overview	p.8	9.11 Determining the Value of Claims	p.16
4.2 Restructuring and Solvency Regimes	p.8	9.12 The Agreement Amongst Creditors	p.16
5. Remedies Available to Unsecured Creditors	p.9	9.13 Rejecting or Dismissing Claims	p.16
5.1 Unsecured Creditors	p.9	9.14 Releasing Non-Debtor Parties from Liability	p.16
5.2 Rights and Remedies	p.9	9.15 Rights of Set-Off or Netting in a Proceeding	p.16
5.3 Pre-Judgment Attachments	p.9	9.16 Implications of Failure to Observe Agreed Plan	p.16
5.4 Timeline for Enforcing an Unsecured Claim	p.9	10. Mandatory Commencement of Insolvency Proceedings	p.17
5.5 Rights and Remedies for Landlords	p.10	10.1 Obligation to File Within Specific Timeline	p.17
5.6 Special Procedures for Foreign Unsecured Creditors	p.10	10.2 Procedural Options	p.17
6. Secured Creditors: Security and Enforcement	p.10	10.3 Implications of Not Commencing Insolvency Proceedings	p.17
6.1 Types of Security	p.10	11. Insolvency Proceedings	p.17
6.2 Enforcing Security	p.10	11.1 Types of Voluntary and Involuntary Insolvency Proceedings	p.17
6.3 Timeline for Enforcing Security	p.11	11.2 Distressed Disposals	p.17
6.4 Foreign Secured Creditors	p.11	11.3 Failure to Observe Agreed Rescue Plan	p.18
7. The Importance of Valuations in the Restructuring and Insolvency Process	p.11	11.4 Priority New Money	p.18
7.1 Purpose and Importance of Valuations	p.11	11.5 Liquidation on a Combined Basis/Under Related Proceedings	p.18
7.2 Initiating the Valuation	p.11	11.6 Use or Sale of Assets During Insolvency Proceedings	p.18
8. Directors' Duties and Personal Liability	p.12	12. Transactions That May Be Set Aside	p.18
8.1 Duties of Directors in a Distressed Company	p.12	12.1 Grounds to Set Aside/Annul Transactions	p.18
8.2 Enforcement of Creditors' Claims	p.12	12.2 Look-Back Period	p.19
8.3 Chief Restructuring	p.12		

THE DOMINICAN REPUBLIC LAW & PRACTICE

Contributed by Headrick Rizik Alvarez & Fernández **Authors:** Mary Fernández, Jaime Senior, Melba Alcántara

12.3 Identity of Claimant	p.19
12.4 Claims in Insolvency and Restructuring Proceedings	p.19
13. Priorities and Waterfalls	p.19
13.1 Priority Claims	p.19
13.2 Priority Over Secured Creditor Claims	p.19
13.3 Statutory Waterfall of Claims	p.19
14. Courts and Arbitration	p.19
14.1 Courts	p.19
14.2 Specialist Judges	p.19
14.3 Limitations on Matters that Can be Heard	p.19
14.4 Arbitration	p.19
15. International Issues and Recognition	p.19
15.1 Recognition/Relief in Connection with Overseas Proceedings	p.19
15.2 Protocols in Cross-Border Cases	p.20
15.3 Foreign Creditors	p.20

Headrick Rizik Alvarez & Fernández has nine partners and 30 associates, as well as a number of paralegals and other highly qualified administrative personnel who strive to provide clients with the highest level of service and ex-

cellence. This commitment to service and excellence has allowed the firm and its professionals to acquire a first-rate reputation; the firm is widely considered to be one of the leading firms of the Dominican Republic.

Authors



Mary Fernández is a founding partner at Headrick Rizik Alvarez & Fernández. She serves as counsel to national and international clients in matters of foreign investment, corporate law, banking and international finances, negotiation and execution of contracts involving public or private entities; franchising and distribution relations; structuring and implementation of real estate and tourist projects, restructuring and insolvency, as well as intellectual property matters in general, including arbitration and litigation. Mary is arbiter and president of the Mediation, Conciliation and Arbitration Committee of the Asociación Interamericana de Propiedad Intelectual (ASIPI), judge of the Disciplinary Panel of the ASIPI, and arbiter and member of the Board of the Centre for Resolution of Controversies (CRC) of the Chamber of Commerce and Production of Santo Domingo, Inc (CCPSD). She is a member of the Board of Directors of the American Chamber of Commerce (AMCHAMDR), and past chair of its Legal Committee, editor for the Caribbean of the “International Opposition Guide” of the International Trademark Association (INTA) and a member of the editorial committee of *Gaceta Judicial*, the only legal periodical in the country. Currently vice president of the Board of Instituto Tecnológico de Santo Domingo (INTEC), Mary teaches contracts in intellectual property at the Pontificia Universidad Católica Madre y Maestra (PCUMM). She a past president of the Asociación Dominicana de Propiedad Intelectual, Inc (ADOPI) and of Fundación Institucionalidad y Justicia, Inc (FINJUS).



Jaime Senior is a partner at Headrick Rizik Alvarez & Fernández. Jaime concentrates his practice on matters of civil, commercial and business organisational laws generally, with an emphasis on banking and financial transactions and foreign investment. His practice has been recognised by several international publications. In his practice, he regularly counsels foreign and domestic clients in mergers and acquisitions, the negotiation of all types of commercial agreements, tax matters, financings, corporate reorganisations as well as tourism and industrial free zones investments. Additionally, he is experienced in the supervision and strategy of dispute resolution matters, with an emphasis on disputes related to foreign investment. Prior to joining Headrick Rizik Alvarez & Fernández as a partner, Mr Senior was an associate in the New York office of Sidley Austin LLP, where his practice was focused on counselling international firms and investors in mergers and acquisitions transactions. Jaime also represented financial institutions and sponsors in all aspects of private equity funds, with a focus on Latin America.



Melba Alcántara is an associate at Headrick Rizik Alvarez & Fernández. Her expertise is focused in the areas of business law in general, tax law and Intellectual Property.

1. Market Panorama

1.1 Market Dynamics

Although a new law on the restructuring and liquidation of companies and business persons (Law No. 141-15) was signed on 7 August 2015, the Code of Commerce and Law No. 4582 on Declaration of Bankruptcy are the laws currently applicable to bankruptcy proceedings in the Dominican Republic. Law No. 141-15 will enter into effect as of 7 February 2017, and prior to such time, the Code of Commerce and Law No. 4582 on Declaration of Bankruptcy will remain in effect.

Under current law, bankruptcy proceedings are 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 must take place before the Chamber of Commerce.

Two compulsory preliminary conciliation proceedings were held before the Chamber of Commerce in 2015. Statistical data on foreclosure cases and other judicial procedures is not available, given that the cases are handled through courts and no centralised recordal system exists.

No compulsory preliminary conciliation proceedings have been held before the Ministry of Industry and Commerce, the Dominican Federation of Chambers of Commerce (FE-DOCAMARAS), or the Superintendencies of Electricity, Insurances and Banks, in 2015. This information was obtained after conducting unofficial investigations before said entities.

Specific sector trends

Although the Dominican Republic recently updated its insolvency and bankruptcy legislation, the laws and regulations on the matter date back to 1956. Legislative bills on corporate reorganisations were submitted to Congress for almost a decade but failed to gain sufficient validation to be approved. Considering that the new Law No. 141-15 will enter into effect as of 7 February 2017, a date that is 18 months following its enactment, no factors have increased the number of restructuring or insolvencies.

The impact of the changing nature of the credit markets, recent economic cycles and the evolving regulatory and legislative environment

Reorganisation is not available to Dominican debtors under current law. Thus, although changes in the credit markets and recent economic cycles may have affected the number of bankruptcies filed in the Dominican Republic, they had no effect on the number of restructurings and insolvencies in our jurisdiction.

The impact of recent or expected legal, tax or regulatory developments.

The entry into force of Law No. 141-15 as of 7 February 2017 will have an absolute impact on restructurings and insolvencies initiated in our jurisdiction, as it repeals and substitutes all laws and regulations on the matter prior to the same.

1.2 Market Developments

At this time, the restructuring and insolvency market has not seen an influx of distressed debt investors, increasing debt trading and/or distressed M&A transactions, although in the distressed debt space there has been interest in Dominican companies that had issued US or international debt and who were under financial distress. The universe of such companies is quite limited. In terms of distressed M&A, there is certainly a possibility that M&A transactions are driven by liquidity or solvency considerations, but there is no true distressed M&A practice in the country.

2. Debt Trading

2.1 Limitations on Non-Banks and Foreign Institutions

Pursuant to the terms of the Securities Market Law No. 19-00 of 2000 (hereinafter referred to as “Law 19-00”) and its Regulation for Application No. 189-11 (approved by Decree No. 664-12 dated 7 December 2012, hereinafter to be re-

ferred to as the “Regulation”), public offerings of securities must be approved by and registered before the Securities Superintendence.

The promotion of private offerings is not regulated. However, the Regulation establishes obligations with respect to privately offered securities which have already been subject to a public offering outside the Dominican Republic.

Private market transactions involving the purchase and sale of securities which have not been subject to a public offering, except those generally relating to the purchase and sale of goods, do not have to comply with all the rules set forth in local securities laws and regulations for public offerings. Having said that, any promotion of a private offering through massive media may be associated to or interpreted as public offerings, and consequently fall within the scope of the local laws and regulations.

Under the terms of Law No. 141-15, foreign creditors have the same rights and can rely on the same remedies available to local creditors. In any case, according to Article 86, loans agreed to in the course of insolvency proceedings by financial intermediation entities or third parties that wish to contribute to financing of the debtor, must be duly authorised by the court.

2.2 Debt Trading Practice

The type of documents required for a transaction will depend on the structure of the corporate vehicle. For loans, investments and similar transactions, companies are generally required to provide articles of incorporation, by-laws and other organisational documents or agreements, as well as the authorisation from the board of directors (or similar governance organ) for the transaction, and a certificate of the corporate registration (from the Mercantile Registry), among other documents.

Assignment is the most common form of legal transfer mechanism, although novation is also used on occasion. There has been a move towards considering true participations, but to our knowledge, these have not been implemented.

There are no provisions that impede the transfer of associated benefits of guarantees and security against the debtor. However, under the terms of Law No. 141-15, several transactions may be declared as null and void if 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. These include: any 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; and 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, among others.

The Securities Market Law No. 19-00 of 2000 and its Regulation for Application No. 189-11 limit the ability of participants to trade debt on the basis of an inequality of information. According to Article 11 of Law No. 19-00, individuals who possesses inside information must refrain from trading for their own benefit or the benefit of third parties with any class of securities whose price may be influenced by such information, until it becomes public knowledge. Those who act in violation of the restrictions established by the Law may face criminal prosecution and be subject to imprisonment of up to one year and penalties of up to DOP1,000,000.00. The use of big boy letters is not common in the jurisdiction, and such use is not likely to be considered effective vis-à-vis regulatory restrictions.

2.3 Loan Market Guidelines

The trading of private loans is not regulated. The Superintendence of Securities published the “Standard for Market Participants which Establishes Provisions on Inside Information, Relevant Events and Market Manipulation” on June 2, 2008 (Standard R-CNV-2008-02-MV), with the purpose of regulating the handling of inside information to prevent its use to the detriment of the proper functioning of the market. In addition to the entities and individuals who, due to their position, function or connection are presumed to have access to non-public or price-sensitive information, external auditors, securitisation companies, as well as any other registered entity characterised as an issuer of securities, are subjected to the terms of the standard.

Under the terms of the standard, the use of privileged or confidential information to conduct or advise in securities transactions is classified as market manipulation, as established by the Regulation for the Application of the Securities Market Law No. 19-00.

The “Standard for Market Participants which Establishes Provisions on Inside Information, Relevant Events and Market Manipulation” published by the Superintendence of Securities is of compulsory implementation and has legal effect. Pursuant to Article 6 of the Standard, stockbrokers, exchanges, central securities depository, risk-rating agencies, external auditors and issuers, shall all establish policies, guidelines and control mechanisms that are binding to related parties who, due to their position or function, may have access to privileged information.

According to Article 16 of the standard, failure to comply with its provisions may result in the same penalties as established by Securities Market Law No. 19-00 being applicable,

consisting of imprisonment of up to one year and penalties of up to DOP1,000,000.00.

Such LMA Guidelines are not likely to be widely known by regulators or considered in decision making at this point.

2.4 Transfer Prohibition

Loan agreements in the Dominican Republic typically prohibit transfers without consent (short of a default or an event of default).

2.5 Navigating Transfer Restrictions

Trusts or synthetic structures such as total-return-swaps can be used to navigate transfer restrictions as there are no provisions that impede the transfer of claims.

3. Informal and Consensual Restructuring Framework

3.1 Consensual Restructuring

There are no informal/consensual restructuring frameworks in the Dominican Republic. Prior to the enactment of Law No. 141-15 on August 7, 2015, it was not possible to request the reorganisation of the insolvent debtor given that the applicable laws solely referred to its liquidation.

Informal/consensual reorganisation processes are not available to Dominican debtors. Consequently, most bankruptcy proceedings are settled during the mandatory conciliation proceeding held before the Chamber of Commerce prior to bringing the liquidation action through judicial proceedings. Prior to the enactment of Law No. 141-15 last August, the effects of the involuntary liquidation proceedings were the same as the ones for a voluntary liquidation process.

This notwithstanding, there is a general perception among professionals that consensual processes are preferable to statutory processes. Under current law, creditors recover less than one third of their investment, with a recovery rate of 9.3 cents on the dollar (according to the ‘Doing Business 2015’ report published by the World Bank Group). New Law No. 141-15 establishes mechanisms and proceedings to protect creditors in cases of the financial difficulty of their debtors by allowing the latter to remain in operation and overcome the economic difficulties that thwart them from complying with previously undertaken obligations, thus achieving business continuity of companies and business persons.

Banks and credit funds do not advocate a supporting approach to companies experiencing financial difficulties. Under the current legislation, the criterion to determine whether a debtor could become subject to bankruptcy proceedings in the Dominican Republic revolves around the concept of ‘cessation in payments’ rather than considering a

state of insolvency. Thus, a merchant or a commercial entity that refuses to make payments may very well be subject to a declaration of bankruptcy regardless of being solvent.

There are no informal out-of-court consensual restructuring frameworks in the Dominican Republic. Under the legislation currently in force, a mandatory conciliation proceeding governed by Law No. 4582 of 1956 must take place before the Chamber of Commerce before bringing the claim to court.

4. Legislative Regime Applicable to Restructuring and Insolvency

4.1 General Overview

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.

As Law No. 141-15 will enter into effect as of 7 February 2017, the Code of Commerce and Law No. 4582 on Declaration of Bankruptcy will remain in effect and apply to any insolvency proceedings prior to such time. These rules mainly deal with liquidation and do not contemplate reorganisation, although a debt restructuring can be agreed upon during a preliminary stage of the proceedings.

4.2 Restructuring and Solvency Regimes

The Dominican Monetary and Financial Law No. 183-02 of 2002, establishes the procedures related to the insolvency of financial institutions. The Superintendence 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% to 50% 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 Superintendence of Banks or the Central Bank; and the performance of transactions that seriously endanger public deposits or the institution's liquidity or solvency, among

others. The Superintendence of Banks is required to render a decision with respect to the proposed regularisation plan within the five days following its presentation, and the regularisation period may not exceed six months.

Failure to present the regularisation plan by the financial institution will lead to its dissolution, as will any of the following causes: the rejection of the regularisation plan; a cessation of payments; a decrease of the solvency ratio of 50% below the coefficient required by law; carrying out operations during the execution of the regularisation plan that make the same unfeasible; failure to remedy 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 Superintendence of Banks may resort to the securitisation regime foreseen in the Securities Market Law No. 19-00 of 2000 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 183-02, was amended by Law 189-11 for the development of the mortgage market and trusts in the Dominican Republic 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 will occur when authorisation granted to the insurer and/or reinsurer is revoked due to failure to maintain the funds of the "guarantee of profitability" account above 1% of the total value of the pension funds, or when the minimum profitability of the fund is below the real profitability of the last 12 months and the pension fund manager is unable to cover the difference. In these cases, the Superintendence shall dissolve the entity without judicial intervention. Should dissolution and/or liquidation occur under other circumstances, the procedure established by Law No. 141-15 for companies and business persons will apply.

In the case of companies participating in the electric sector, the General Electricity Law No. 125-01 of 26 July 2001 (Law No. 125-01), contemplates the bidding of rights and assets of distribution concessionaires by the Superintendence of Electricity.

5. Remedies Available to Unsecured Creditors

5.1 Unsecured Creditors

Under current law, the reorganisation of the debtor is not contemplated, inasmuch as the Code of Commerce and Law No. 4582 of 1956 deal mainly with liquidation. The possibility to continue operating as a going concern is practically unavailable for troubled businesses filing for insolvency in the Dominican Republic.

Distributions under Law No. 4582 of 1956 are made in accordance with the repayment plan. In judicial bankruptcy proceedings, distributions are made under the liquidation plan approved by the majority of creditors. Such distributions are made dealing solely with unsecured claims, on a pro rata basis, except for subordinated claims (such as claims that derive from equity participations) and subordinated loans subject to the applicable subordination provisions.

According to the terms of the new Law No. 141-15, upon approval of the restructuring request, 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.

5.2 Rights and Remedies

After attempting the amicable settlement process governed by Law No. 4582 of 1956, only unsecured creditors may bring the liquidation action through judicial proceedings. Basically, a creditor with such interest is 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 are the same as the ones for a voluntary liquidation process.

Under Law No. 141-15, effective as of 7 February 2017, a restructuring plan proposal must be presented for the 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.

After the enactment of Law No. 141-15, upon approval by the 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 movable and immovable 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 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. However, the liquidation administrator could incur further debt towards the continuation of a bankrupt business in the interest of unsecured creditors.

5.3 Pre-Judgment Attachments

Pursuant to Article 54 of the Code of Civil Procedure, prior to any insolvency proceedings the claimant can attach real property owned by the debtor in an ex parte pre-judgment proceeding, with the exception of homestead property which, in accordance with Law No. 1024 of 1928, may not be attached. For the attachment of real property, the creditor applies to the court for a provisional judicial lien, which is filed at the Land Registrar's Office when granted 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.

5.4 Timeline for Enforcing an Unsecured Claim

Prior to commencing any other action, an unsecured creditor can seek from the judge an order attaching personal property owned by his or her debtor in an ex parte proceeding, under the provisions of 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. However, the Supreme Court has repeatedly insisted that judges should do so. If granted, the claimant asks a bailiff to serve a copy of the said 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 they 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.

The claimant may also garnish a debt owed to his debtor by a third party prior to the commencement of any insolvency proceedings, an action known as an embargo retentivo. For a

garnishment, the creditor needs a judicial authorisation only if his claim is for an indeterminate amount, for example, as damages for a personal injury or a breach of contract. If the creditor holds an instrument giving him a right against the debtor for the payment of a liquid sum, such as a promissory note, an acknowledgment of the debt or a dishonoured cheque, he will only need to enclose a copy of that instrument to the notice of garnishment that the bailiff serves on the third party. The third party is typically a bank in which the debtor has funds on deposit.

5.5 Rights and Remedies for Landlords

After the enactment of Law No. 141-15, 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.

5.6 Special Procedures for Foreign Unsecured Creditors

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

6. Secured Creditors: Security and Enforcement

6.1 Types of Security

The principal type of security on real property is the mortgage, defined by the Dominican Civil Code as a guaranty right over real property that guarantees the fulfilment of an obligation. 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 principal type of security on moveable property is the non-possessory pledge. This type of security, 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, is governed by the Agricultural Incentive Law No. 6186 of 1963.

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.

6.2 Enforcing Security

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.

Upon commencement of the amicable settlement process, and then upon the declaration of bankruptcy by a judge, all legal proceedings towards the enforcement of unsecured claims are stayed. However, the stay did not apply to secured claims. Thus, the bankruptcy declaration has no effect for secured creditors, who could benefit from bankruptcy proceedings only with respect to unsecured portions of their claims.

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 movable and immovable property, calculation of interest under loans and other credit documents, among others, are suspended.

Considering that Law No. 141-15 establishes the obligation to attempt the reorganisation of the debtor prior to initiating involuntary liquidation proceedings, creditors may not disrupt a formal voluntary or involuntary process. However, the judicial liquidation of the debtor may be initiated by any recognised creditor or by decision of the majority of creditors in the event of noncompliance with the terms of the restructuring plan.

During the review of the restructuring request, 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 ten 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% of the claims may appeal the court's approval.

Law No. 141-15 establishes that distributions will be made on a pro rata basis, after deducting the costs of the proceedings and the amounts paid to privileged creditors from the realisation value of the assets. If encumbered assets are sold, the secured creditors shall receive a proportion of the selling price. Secured claims that benefited from collateral during the two-year '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.

6.3 Timeline for Enforcing Security

Both cash collateral and share pledges are common in the Dominican Republic. If structured correctly, the creditor can enforce the security immediately upon an event of default.

With respect to share pledges, the General Law on Business Associations and Individual Proprietorships with Limited Liability No. 479-08, Law 479-08), as amended by Law 31-11 dated 8 February 2011, refers to the pledge of shares. In the case of limited liability companies (*sociedades de responsabilidad limitada*), if the company approves of the pledge of shares, consent implies acceptance of the transferee in case of collateral execution, unless the company chooses to repurchase the social quotas without delay, before or after enforcement. In the case of Corporations (SA) and Simplified Stock Corporations (SAS), if the company has approved of the pledge of shares as provided by the by-laws, consent implies acceptance of the transferee in case of collateral execution unless the company chooses to repurchase the shares.

6.4 Foreign Secured Creditors

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

7. The Importance of Valuations in the Restructuring and Insolvency Process

7.1 Purpose and Importance of Valuations

Valuation systems are not expressly contemplated by the law.

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.

Under the terms of Law No. 141-15, a debtor will 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 Labor 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 deceive 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% of the debtor’s total assets; and the existence of decisions or sentence-enforcement procedures that may affect more than 50% of the debtor’s total assets.

Pursuant to Article 19 of Law No. 141-15, decisions are made by the creditors with a minimum of 60% of favourable votes. Each registered or recognised creditor has the right to one vote per every 1% (or fraction higher than 0.5%) 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.

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 debtor and the creditors must present said “Pre-Pack Agreement” to the court, which will reject any restructuring petition filed 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, who shall be designated by the Court if the plan is accepted to oversee its execution. 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.

Fulcrum-creditors are not expressly contemplated by the law.

7.2 Initiating the Valuation

Under current law, the effects of the involuntary liquidation proceedings are the same as the ones for a voluntary liquidation process. If the debtor’s assets suffice to honour any outstanding claims, it may attempt a voluntary liquidation of its business outside any court proceedings, through the amicable settlement process governed by Law No. 4582 of 1956. If the assets are insufficient, the liquidation must be

brought to a judicial court under the bankruptcy provisions set forth in the Dominican Code of Commerce.

In addition, unsecured creditors can bring the liquidation action through judicial proceedings after attempting the amicable settlement process governed by Law No. 4582 of 1956. Basically, a creditor with such interest is required to provide proof of the insolvency of the debtor or its general cessation of payment of debts.

Cash collateral procedures are not expressly contemplated by the law.

8. Directors' Duties and Personal Liability

8.1 Duties of Directors in a Distressed Company

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 bankrupt corporate 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. Administrators have a duty towards the company or any third party.

Additionally, Law No. 141-15 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 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. 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.

8.2 Enforcement of Creditors' Claims

Creditors may not pursue a claim against the directors directly. After the enactment of Law No. 141-2015, creditors shall pursue their claims before the court through a petition, directly or via the "creditors' adviser". See section 8.3, for further information regarding the creditors' adviser.

In accordance with the General Law on Business Associations and Individual Proprietorships with Limited Liability No. 479-08, Law 479-08), as amended by Law 31-11, dated 8 February 2011, refers to the pledge of shares. In the case

of Limited Liability Companies (Sociedades de Responsabilidad Limitada), the company's administrators, managers and representatives are only responsible to third parties, individually or jointly, as appropriate, for damages resulting from their actions, omissions, or failure to meet the requirements established by law for the execution of their duties.

8.3 Chief Restructuring

During the review of the restructuring request and for as long as the restructuring process is in process, 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 by the law. The creditors of any securities of the debtor issued in a public offering can also appoint a representative denominated the "representative of publicly issued securities". In cases where advisors are not appointed, or are appointed and then removed, their duties and obligations will correspond to the creditors and/or employees.

Creditors' advisors are obliged 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, the offsetting of credits and the constitution of collateral; and request any information that may affect the creditors' rights through a written petition, among others.

8.4 Shadow Directorship

Shadow directors are not contemplated by Dominican Law.

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. The conciliator may remove the Debtor from the administration of the business to protect the Estate.

9. Solvent Restructuring/Reorganisation and Rescue Procedures

9.1 Statutory Mechanisms

Prior to the enactment of Law No. 141-15, reorganisation was not available to Dominican debtors.

Until the entry into effect of Law No. 141-15 on 7 February 2017, the possibility to continue operating as a going concern is unavailable. The debtor must pursue their liquidation amicably through the amicable settlement process governed by Law No. 4582 of 1956, and if such attempt is unsuccessful, the liquidation must be brought to a judicial court.

A debt restructuring or a plan to honour unsecured claims may be sought by the debtor through an out-of-court restructuring or during the compulsory preliminary conciliation provided by Law 4582 of 1956. 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 creditors must approve the proposal. Under this scenario, a hearing must be held before the conciliatory commission established by the law to verify and admit all creditors prior to the presentation by the debtor of his or her proposal for payment. Notices have to be given to creditors in the liquidation proceedings and meetings have to be held towards the adoption of a payment or liquidation plan.

Should the compulsory conciliation procedure be unsuccessful, if the debtor has sufficient assets to satisfy outstanding claims, it may attempt a voluntary out-of-court liquidation. If its assets are insufficient to satisfy all claims, then the debtor will need to initiate their voluntary liquidation through the existing bankruptcy proceedings.

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).

See **8.1**, for further information regarding the criteria to determine if a debtor is insolvent.

In addition, the 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).

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 the 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; and copies of bank account statements, among other documents.

In the case of involuntary procedures, creditors are required to present before the court the 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 creditors' representatives. In the case of foreign creditors, a local representative shall be designated.

Plan/agreement approval by creditors, value distribution to creditors and conclusion of the procedure

Following the restructuring request, the court has the obligation to appoint a verifier within a period of three days, who will verify the debtor's financial situation and inform the court thereof within a period of 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 or deny the restructuring request.

In the event that the restructuring request is accepted by the court, the latter will appoint a conciliator, whose main duty is to mediate between the debtor and its creditors in order to reach a restructuring plan. Upon approval by the 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 movable and immovable property, calculation of interest under loans and other credit documents, among others, are suspended.

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. Hence, the management of the debtor's assets continues to be handled by the latter subject to the supervision of the conciliator.

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 will have the obligation to oversee its compliance.

See 7.1, for further information regarding Pre-Pack Agreements.

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.

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 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 creditors' representative, the non-approval of the restructuring plan or failure to comply with the restructuring plan.

Creditors who do not vote, "unknown" creditors or contingent claimants claims

Pursuant to Article 19 of Law No. 141-15, decisions are made by the creditors with a minimum of 60% of favourable votes. Decisions adopted by the majority of creditors are binding to the dissident or absent minority.

Prior to the entry into force of Law No. 141-15 on 7 February 2017, debt restructuring or a plan to honour unsecured claims may be sought by means of Law No. 4582 of 1956, which provides that any plan deriving from the amicable settlement process must include a repayment of at least 50% of all unsecured debt of the debtor payable within a term no shorter than two years.

After the enactment of Law No. 141-15, the plan shall 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 and 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.

For purposes of the 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 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.

According to Article 86 of Law No. 141-15, 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 Labor 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 the 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.

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.

A court driven and supervised process

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, both of 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.

The restructuring and liquidation courts will be competent to hear all actions related to the restructuring plan, as well as 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 of the Law shall be heard by the ordinary courts.

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 status. 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.

9.2 Position of Company During Procedure

Upon commencement of the amicable settlement process under Law No. 4582 of 1956, and then upon the declaration of bankruptcy by a judge, all legal proceedings towards the enforcement of unsecured claims are stayed. However, the stay does not apply to secured claims.

After the enactment of 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 (movable and immovable) are suspended until the reorganisation plan is approved.

The management of the debtor's assets continues to be handled by the debtor. According to Article 29 of Law No. 141-15, the restructuring request presented by the debtor voluntarily must be accompanied with a report explaining the debtor's economic condition and justifying the need for restructuring, among other documents.

9.3 Position of Creditors During Procedure

Prior to the enactment of Law No. 141-15, there were no legal provisions for the formation of committees.

The law provides mechanisms for the participation by interested parties in the restructuring process. During the review of the restructuring request and for as long as the restructuring process is in progress, 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 denominated 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 they are not appointed (or removed), their duties and obligations will correspond to the creditors and/or employees.

Law No. 141-15 is pending regulation and does not establish the terms of the selection of these committees nor their remunerations. However, according to Article 12 of said law, the remuneration of the advisors will be considered as part of the cost of the process, and the compensation plan must

be consistent with labour market conditions, functions and linked to performance.

In the case of expedited restructuring procedures whereby the total liabilities of the debtor do not exceed DOP10,000,000.00 (approximately USD222,000.00), the appointment of advisers for the creditors or expert and auxiliaries for the conciliator will not be applicable.

According to Law No. 141-15, the creditors' adviser has the obligation to inform creditors of all actions concerning the restructuring process, as well as to request any information that may affect the creditors' rights through a written petition, among others. Committees have the right to request all the information they deem necessary to evaluate the proposed restructuring plan.

9.4 Claims of a Dissenting Class of Creditors

According to Article 139 of Law No. 141-15, upon approval, the plan becomes applicable to all creditors, including those who did not pay conformity, except those who are dissident but privileged. See 6.2 for further information regarding the objection to the disposition of assets by the conciliator.

9.5 Trading Claims of Dissenting Creditors

There are no provisions that impede the transfer of associated of loans without the debtor's consent. However, according to Article 129 of Law No. 141-15, the assignees or awardees of claims belonging to entities related to the debtor will be presumed to be related to the debtor if the transfer occurred within the two years prior to the filing date of the reorganisation request.

9.6 Re-organising a Corporate Group

Applicable law does not establish special insolvency proceedings of a corporate group. In principle, separate proceedings will take place for each entity comprising the corporate group.

9.7 Conditions Applied to Use or Sale of Assets

After the enactment of Law No. 141-15, the debtor remains in possession of the business during the negotiation phase of the proceedings, and may dispose of the necessary assets for the ordinary course of business under the supervision of the conciliator. The court can also approve the sale of assets that are perishable, when abstaining from their sale would be harmful to the creditors of the bankrupt debtor.

9.8 Distressed Disposals

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 section 12.1 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 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 due to the assignee's relation to the debtor, the credit bidder shall be permitted to bid in sales.

9.9 Release of Security and Other Claims

All transactions made by the debtor while insolvent will be declared null and void when the other party is aware of the general cessation of payment of the company.

Law No. 141-15 expressly declares the cancellation or partial or total relief of debt by the debtor as null and void. In addition, 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.

9.10 Priority

According to Law No. 141-15, post-filing debtor in possession (DIP) financing has priority for its payment. Pursuant to Article 87 of the law, new financing must be approved by the court; 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.

9.11 Determining the Value of Claims

It is not possible to use the procedure as a forum for determining the value of claims and those creditors with an economic interest in the company.

9.12 The Agreement Amongst Creditors

Under Law No. 141-15, the restructuring plan proposal must be presented for review and subsequent approval or rejection of the creditors. If approved by the creditors, the plan must be presented to the court for verification and subsequent approval. In the case of "pre-pack agreements", the court must verify that the rights or the absent or dissenting creditors are not affected.

9.13 Rejecting or Dismissing Claims

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.

In addition, 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. Under the terms of 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.

9.14 Releasing Non-Debtor Parties from Liability

The release of non-debtor parties from liabilities is not expressly contemplated by the law.

9.15 Rights of Set-Off or Netting in a Proceeding

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 are agreed prior to the initiation of the conciliation and negotiation process. The suspension or termination of such set-off rights is not expressly contemplated by the law.

9.16 Implications of Failure to Observe Agreed Plan

According to Law No. 141-15, the conciliator may recommend the immediate liquidation of the debtor under specific circumstances, such as failure to comply with the restructuring plan.

10. Mandatory Commencement of Insolvency Proceedings

10.1 Obligation to File Within Specific Timeline

See 8.1 for further information regarding the criteria to determine if a debtor is insolvent.

10.2 Procedural Options

See 9.1 for further information regarding the statutory mechanisms for implementing a restructuring/reorganisation agreement.

10.3 Implications of Not Commencing Insolvency Proceedings

Those 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 book-keeping, will be held criminally liable under the terms of the law.

11. Insolvency Proceedings

11.1 Types of Voluntary and Involuntary Insolvency Proceedings

Prior to the enactment of Law No. 141-15, the debtor would pursue their liquidation amicably through the amicable settlement process governed by Law No. 4582 of 1956. If such attempt was unsuccessful, the liquidation was brought to a judicial court. In the case of involuntary liquidations, only unsecured creditors could bring the liquidation action through judicial proceedings after attempting the amicable settlement process governed by Law No. 4582 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.

After the enactment of Law No. 141-15, the debtor may request its judicial liquidation before the court at any moment. The law 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 may recommend 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.

In addition, the judicial liquidation of the debtor may be initiated by the verifier, if there is a lack of information or efforts to obstruct its duties 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, as a result of the impossibility of assuming his functions because of the lack of co-operation 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 noncompliance with the terms of the restructuring plan.

The notice of the judgment that orders a judicial liquidation entails the immediate loss of all right to manage and dispose of all properties by the debtor until the judicial liquidation process has concluded. The court must designate a "liquidator", the person who will act as the administrator of the liquidation process and 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 their 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.

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.

The liquidation plan proposal must be presented for review of the debtor, the creditors, and the employees' adviser, and subsequent approval or rejection by the court. 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.

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.

11.2 Distressed Disposals

The General Law on Business Associations and Individual Proprietorships with Limited Liability No. 479-08 (Law 479-08), contemplates the possibility of resorting to extrajudicial corporate proceedings for the liquidation of a corporation, 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 extraordinary general assembly in which the shareholders decide to end the existence of the company and appoint a liquidator, who will be in charge of managing the debts and assets of the company.

In the course of judicial liquidation proceedings, the liquidator is in charge of managing the debts and assets of the company.

After the enactment of Law No. 141-15, the court can approve the amicable awarding of assets during the liquidation procedure, which, 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 due to the assignee's relation to the debtor, the credit bidder shall be permitted to bid in sales.

Pre-pack sales are not expressly contemplated by the law.

11.3 Failure to Observe Agreed Rescue Plan

According to Article 189 of Law No. 141-15, failure to comply with the restructuring plan leads to the closure of the liquidation proceedings by the court. Creditors may not pursue a claim against the debtor directly, except for violation of the creditor's personal rights.

According to Article 191 of Law No. 141-15, non-debtor parties may pursue a claim against the debtor directly after closure of the liquidation proceedings by the court.

11.4 Priority New Money

Pursuant to Law No. 141-15, after 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. The liquidation administrator could incur further debt towards the continuation of a bankrupt business in the interest of unsecured creditors.

11.5 Liquidation on a Combined Basis/Under Related Proceedings

Applicable law does not establish special insolvency proceedings of a corporate group. In principle, separate proceedings will take place for each entity comprising the corporate group.

11.6 Use or Sale of Assets During Insolvency Proceedings

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.

12. Transactions That May Be Set Aside

12.1 Grounds to Set Aside/Annul Transactions

The annulment of transactions made within a period of two years prior to the filing date of the reorganisation request may be requested, 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 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 administering body, represent (jointly or separately) at least 51% of the subscribed and paid-in capital, hold decisive power at the shareholder assemblies or are in the position to name the majority of the members of the governing body; transactions with related entities or companies where the debtor, its administrators, shareholders or directors represent, jointly or separately, at least 30% 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.

In case the debtor is 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 administering body, or represent (jointly or separately) at least 51% of the subscribed and paid-in capital, hold decisive power at the shareholder

assemblies or are in the position to name the majority of the members of the governing body.

12.2 Look-Back Period

The annulment of transactions made within a period of two years prior to the filing date of the reorganisation request may be requested, provided that the court deems they constitute an unjustified diversion of assets or are detrimental to creditors.

12.3 Identity of Claimant

Creditors may not pursue a claim against the directors directly. After the enactment of law No. 141-2015, creditors shall pursue their claims before the court through a petition, directly or via the “creditors’ adviser”. See 8.2 for further information regarding the creditors’ adviser.

12.4 Claims in Insolvency and Restructuring Proceedings

The annulment of transactions may be requested at any time of proceedings.

13. Priorities and Waterfalls

13.1 Priority Claims

See 9.1 for further information regarding the higher priority of new debt under the terms of Law No. 141-15.

13.2 Priority Over Secured Creditor Claims

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

13.3 Statutory Waterfall of Claims

According to Article 184 of Law No. 141-15, payments in liquidation proceedings shall be made in accordance to applicable law.

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% of the claims may appeal the court’s approval.

14. Courts and Arbitration

14.1 Courts

See 9.1 for further information regarding the special jurisdiction for restructuring and judicial liquidation created by Law No. 141-15.

14.2 Specialist Judges

See section 9.1, for further information regarding the special jurisdiction for restructuring and judicial liquidation created by Law No. 141-15.

14.3 Limitations on Matters that Can be Heard

The restructuring and liquidation courts will be competent to hear all actions related to the restructuring plan, as well as being 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 of the Law shall be heard by the ordinary courts.

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 status. 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.

14.4 Arbitration

Under Law No. 141-15, controversies 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.

15. International Issues and Recognition

15.1 Recognition/Relief in Connection with Overseas Proceedings

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 (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 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 to the law.

The law also contemplates the possibility of processing local and foreign insolvency proceedings simultaneously, in which case the local court shall collaborate and co-ordinate its actions with the foreign proceeding.

15.2 Protocols in Cross-Border Cases

To date, no joint hearings have been held by Dominican courts with courts in other countries.

15.3 Foreign Creditors

Under the terms of Law No. 141-15, foreign creditors have the same rights and can rely on the same remedies available to local creditors.

Headrick Rizik Alvarez & Fernandez

Calle Gustavo Mejía Ricart 106
Torre Piantini, 6th Floor
Santo Domingo
Distrito Nacional
Dominican Republic
10148

Tel: +1 809 473 4500
Fax: +1 809 683 2936
Email: mail@hrafdom.com
Web: www.hrafdom.com/

