

Project Finance

Contributing editors

Phillip Fletcher and Aled Davies



2019

GETTING THE
DEAL THROUGH

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Phillip Fletcher and Aled Davies

Milbank, Tweed, Hadley & McCloy LLP

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Preface

Project Finance 2019

Twelfth edition

Getting the Deal Through is delighted to publish the twelfth edition of *Project Finance*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador, Germany Kenya, Korea and Vietnam.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Phillip Fletcher and Aled Davies, of Milbank, Tweed, Hadley & McCloy LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
July 2018

Dominican Republic

Fabio J Guzmán Saladín, Alfredo A Guzmán Saladín and Alberto Reyes Báez

Guzmán Ariza

Creating collateral security packages

1 What types of collateral and security interests are available?

Under Dominican law, security interests, such as mortgages, liens, privileges, encumbrances, pledges or endorsement may be granted on the following assets:

- real estate properties (collateral may cover the land and the improvements built thereon);
- moveable assets (motor vehicles, boats and vessels, aircraft, machinery, equipment, inventory, present and future agricultural crops, goods);
- intellectual and industrial property rights (patents, industrial designs, trademarks, trade names);
- contractual rights (credits, receivables, concessions, licences, promissory notes, insurance policies) as long as such rights are transferrable; and
- financial instruments and securities (bank accounts, investments, certificates of deposit, shares, bonds, income derived from securities).

It is important to bear in mind that Dominican law does not recognise the possibility of granting blanket security interests over an entire business. Security interests must be granted over specific assets.

Nevertheless, with the enactment of Dominican Trust Law No. 189-11, single collateral instrument-denominated warranty trusts can now be created, comprising all or some of the assets listed above.

2 How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

Real estate properties

Requirements for perfection of collateral and how priority is established

Mortgage securities are created by the execution of a mortgage agreement, which must be subject to local law, executed between the owner of the property or its representative and the creditor, and recorded at the Registry of Titles.

According to a new norm established in late 2016, a foreign entity requires a Dominican tax identification number to be able to register and perfect a mortgage or any type of security.

It is important to bear in mind that credit agreements themselves may be subject to a foreign legislation and are not subject to registration in the country; therefore, the need to comply with the local regulations by signing and registering a mortgage act is a requirement according to Dominican law which one must abide by if the asset given as collateral is located within the Dominican jurisdiction.

Priority and enforcement rights against third parties are perfected by filing the documentation at the registry of titles of the jurisdiction where the property is located. The first creditor who files a mortgage obtains a first-ranked security via the issuance of a creditor's registry certificate, which enables such creditor to collect its debt through the

foreclosure of the collateral, before all other lower-ranked registered mortgage creditors.

Documents

- Mortgage agreement, authenticated by a Dominican notary;
- owner's certificate of title;
- certification showing that the owner has paid his or her property tax obligations;
- receipt showing payment of the 2 per cent mortgage registration tax;
- certificate of no liens or encumbrances regarding the property; local tax ID of the creditor;
- creditor or debtor's registered assembly meeting or resolution authorising the registration of the mortgage (if either is a corporate entity); and
- registration of the POA at the Judiciary Registry.

Shares of a Dominican company

Requirements for perfection of collateral and how priority is established

The requirements to perfect the collateral based on the shares of a Dominican company will depend on the type of entity (stock corporation, simplified stock corporation or LLC) and on the procedure established by the company's by-laws.

In most cases, the shareholder who wishes to pledge his or her shares to a third party must notify his or her fellow shareholders, directly or via the board of directors, to receive approval prior to executing a share pledge agreement and registering the pledge.

All pledges must be registered at the Mercantile Registry Office of the company's domicile.

If the company operates in a regulated sector, such as telecommunications, energy or the financial sector, government approval or notification would also be required.

It is important to mention that, according to local law, shares cannot be pledged to more than one creditor at the same time.

Documents

- Company by-laws;
- share pledge agreement;
- minutes of the shareholders' meeting approving the pledge;
- share certificate (only applicable to stock corporations);
- shares transfer book (only applicable to stock corporations); and
- local tax ID of the creditor.

Movable assets

Requirements for perfection of collateral and how priority is established

There are various types of pledges over moveable assets pursuant to local laws. Civil pledges require that the debtor hand over possession of the asset to the creditor or to a designated third party for it to be valid. Chattel pledges are commonly used for securing vehicles, machinery, inventory and other movable assets. This type of pledge enables the debtor to keep possession of the asset while the security is in place.

Pledge agreements are subject to local law, but the financing agreement itself may be subject to a foreign legislation.

In both cases, assets cannot be pledged to more than one creditor at the same time.

In the case of chattel mortgages, registration is made at the office of the justice of the peace. Civil pledges are registered at the civil registry office.

In addition to the above, with respect to motor vehicles, creditors file a lien at the Division of Motor Vehicles and at the Internal Revenue Office to further secure the pledge and make it effectively enforceable against third parties.

As for aircraft, security agreements need to be drafted before a notary public and executed and filed at the Civil Registry Office and the National Institute of Civil Aviation. Securities over ships are registered at the Mercantile Marine Agency and the Naval Office.

Documents

- Pledge agreement, duly executed and notarised;
- inventory of assets;
- owner's certificate of registration (for aircraft, ships and vehicles); or an inventory of the assets to be pledged; and
- local tax ID of the creditor.

Contractual rights

Requirements for perfection of collateral and how priority is established

Pledges over contractual and other intangible rights are regulated by article 91 of the Commercial Code and article 2075 of the Civil Code, which require the execution of a pledge agreement, its notification to the counterparty and registration of the notified documentation at the Civil Registry Office. It is usually required by contract that the counterparty approves the pledge agreement.

Contractual rights cannot be pledged more than once. To guarantee its enforceability against third parties the pledge agreement must be served to the counterparty by bailiff action and registered as explained above.

Documents

- pledge agreement, duly notarised;
- notice by bailiff; and
- local Tax ID of the creditor.

Receivables

Requirements for perfection of collateral and how priority is established

Receivables are collateralised through the execution of a pledge agreement, its notice to the corresponding debtors and registration of the notice document at the corresponding Civil Registry Office.

Receivables cannot be pledged more than once. To guarantee its enforceability against third parties the pledge agreement must be notified via bailiff act and registered as detailed above.

Documents

- Pledge agreement;
- bailiff act; and
- local tax ID of the creditor.

Intellectual property rights

Requirements for perfection of collateral and how priority is established

Intellectual property rights are collateralised through the execution of a pledge agreement and its registration at the National Office of Intellectual Property (ONAPI).

Documents

- Pledge agreement, duly notarised;
- original of the certificate of registration of the corresponding IP right; and
- local tax ID of the creditor.

Financial instruments and securities

Requirements for perfection of collateral and how priority is established

There are various types of pledges over financial instruments and securities pursuant to local laws. For instance, a pledge over financial instruments must be performed via a notarised agreement between parties and must be duly notified to the financial entity where the instrument is held.

On the other hand, a pledge over a book-entry security must be performed by its holder through an authorised broker who will proceed to notify and file the said pledge before the corresponding regulatory authority and security depository.

With respect to the assignment of certificate of deposits and insurance policies, the agreement must be notified to the issuing institution for its final approval and formal registry.

Documents

- Pledge agreement, duly notarised;
- original of the certificate of deposit or insurance policy certificate;
- notice of the agreement to the issuing entity; and
- local tax ID of the creditor.

Taxes must be paid on mortgage securities at the moment of registration. Real estate mortgage taxes amount to 2 per cent of the mortgage amount (not of the market value of the land or its proportionate value to the mortgage being granted).

Securities over aircraft generate a registration fee for the authentic act formalising the security. This document needs to be registered before the Civil Registry Office. For the registration process, a registration fee must be paid. The amount of the registration fee may vary depending on the location of the security, since each registration office is controlled by the corresponding City Hall. Additionally, minor filing fees are applicable for the registration of the security before the National Institute of Civil Aviation. Securities over ships and boats also generate a registration fee similar to aircraft.

Other securities, such as pledges, will generate stamp duties and fees, which are fixed and minimal.

There is no legal technique to minimise the impact on taxes applicable to the registration of mortgages and other securities, aside from not registering them in the corresponding public records. However, not doing so would imply that the lender will not have priority over the collateral for the actual amount being lent against third parties, and may not have the possibility of foreclosing on such collateral until such registration has been made and its taxes have been paid.

Law 189-11 for the Development of the Mortgage Market and Trusts, introduced trusts and collateral agent structures for mortgage securities as an alternative and in most cases, better protection of collaterals and included an expedited process for foreclosures. Multiple service banks, savings and loan associations or any other financial intermediary or foreign bank authorised by the Monetary Board can act as collateral agents, as well as any other commercial company incorporated under the laws of the Dominican Republic or foreign laws with the specific and exclusive purpose of acting as collateral agents.

In the case of debts or bankruptcy of the trust company, collateralised assets are not considered as part of the trust's estate for foreclosure purposes, except when fraud is involved.

3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

In general terms, creditors may conduct a title search to ascertain the legal status of the assets of a potential debtor in the public registry records on such securities.

For example, for real estate properties, a certification of liens and encumbrances from the Land Registry Office of the jurisdiction where the property is located can be sought and obtained. This certification will identify the recorded owner of the property and if there are any registered mortgages in that property.

On the other hand, for moveable assets, the certification may be issued by the Peace Court of the jurisdiction where the assets are located or from the domicile of the debtor, if they are not the same. With respect to vehicles, aircraft and boats, creditors can research the legal status of these assets at the corresponding government authorities in charge of registering such security interests.

Regarding intellectual property rights, research on securities can be undertaken at the National Office of Intellectual Property.

Securities over shares can be identified by performing a search at the Mercantile Registry where the company is registered (usually where its headquarters are located).

As for assurance over collateral of contractual rights or receivables, the creditor must keep on file a copy of the notification via the Bailiff Act sent to the debtor.

Finally, in relation to assurance over collateral of financial instruments and securities, the creditor must require its debtor to authorise the bank to disclose such information, when a bank is involved, or can search for it at the registry of the corresponding authorities.

4 Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

As mentioned above, the first step every creditor must undertake is to register their securities with the corresponding governmental authorities or registries.

When foreclosure is the appropriate course of action, the steps will vary depending on the type of collateral, but all of them entail sending a notice to the debtor via bailiff act (a document notified by an officer of the court) indicating the existence of an event of default, filing of a lawsuit to seek the foreclosure of the assets granted as security which would ultimately lead to a public court auction of the assets, whereby, if there are no interested bidders willing to pay the amount necessary for repayment of the debt and foreclosure-associate legal expenses, the lenders end up automatically receiving the asset in payment for the value of the debt.

These processes are carried out in the local currency of the Dominican Republic. Proceeds from the sale may be converted into foreign currency without restrictions and can be transferred abroad as desired.

Private disposition of collateralised assets and provisions that enable a creditor to take control of them without undergoing a public process is prohibited by Dominican law. Other creditors not directly pursuing the foreclosure process, as well as any third parties who have made the minimum deposit required for bidders by the public auction rules established by the executing creditor, can bid on the assets that are undergoing a public sale.

5 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

Upon issuance of Executive Decree No. 20-17, in February 2017, the Dominican Republic has a fully enforceable new Bankruptcy and Restructuring Law (No. 141-15). Until January 2018, Dominican Bankruptcy and Restructuring Courts had not yet approved a single case to proceed under the new law (Opening of Restructuring Procedure, Conciliation and Negotiation, Judicial Liquidation). Guzmán Ariza was the first to be able to obtain the green light in late January 2018 for its client PAWA Dominicana, the international flag carrier of the Dominican Republic, with scheduled flights to multiple destinations in the Caribbean and the United States. This is the first and major bankruptcy or restructuring proceeding in the Dominican Republic under the new Mercantile Restructuring Law 141-15 currently, and will involve hundreds of national and international creditors.

Aside from exceptions for certain regulated industries, such as Banks and Stock Exchange-related entities, as well as government-owned entities, the law is applicable to any Dominican or foreign entity or commercial individual person with a permanent establishment in the country.

All of the following processes against the debtor will be deemed as automatically stayed or prohibited once the court decides for the restructuring to take place (initial stage of the process):

- all legal, administrative, tax or arbitration claims or lawsuits, including foreclosure and sequestration processes;
- computation of liquidated damages clauses and contractual or judicial penalties;
- disposition of debtor's assets, unless otherwise authorised by the law; and
- payment against debts originated prior to the restructuring request.

These processes will remain stayed during the restructuring plan's execution, thereby prohibiting any asset seizure actions by the creditors. The stay will be lifted if the restructuring plan fails and the court authorises the debtor's asset liquidation.

During the restructuring's Conciliation and Negotiation stage, all creditors, including secured ones (registered securities, mortgages and pledges, etc), that wish to have voting rights assigned to them for the execution of the restructuring plan, must formally register their credits before the Bankruptcy Court, before the court-appointed mediator submits its final report to the court.

Foreign exchange and withholding tax issues

6 What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

There are no local restrictions, controls or taxes on foreign currency exchange in the Dominican Republic.

7 What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

No restrictions or controls apply on the remittance of investment returns or loans repayments abroad. As for taxes, the general principle is that Dominican source income (income derived from investments or interests located in the Dominican Republic) is subject to taxation. In that regard:

- interest payable abroad to financial institutions or by a branch office domiciled in the Dominican Republic is subject to a 10 per cent withholding;
- remittance of dividends is subject to a 10 per cent withholding tax; and
- all other payments made abroad are subjected to a 27 per cent withholding tax, considered as a final and definitive payment of the taxes owed for the operation.

On the other hand, regarding the restrictions of payments of principal, interest or premiums loans, the control and limitations established by the Dominican Internal Revenue Office are, among others, as follows:

- interest rates must be in the range of the rates offered in the market to avoid transfer pricing regulations enforcement;
- interest payments would only be considered deductible if the corresponding retentions have been paid; and
- leverage ratio of the company must be 3:1 of the amount of its social capital.

8 Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

There are no restrictions in terms of repatriation of earnings or currency conversion.

9 May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Yes, they may establish and maintain foreign currency accounts in other jurisdictions as well as locally. Only US dollar and euro savings accounts are available at local financial institutions.

Foreign investment issues

10 What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

There are no restrictions with respect to the ownership of project companies. Law No. 16-95, enacted in 1995, was created to foster foreign investment in the Dominican Republic, and it grants special benefits to investors. Moreover, according to Law No. 16-95, local and foreign investments in the Dominican Republic are treated equally. In 2003, the Centre for Exports and Investment of the Dominican Republic (CEI-RD) was created by Law 98-03. The main purpose of this government entity is to foster both Dominican exports and foreign investment in the Dominican Republic. In 2017, by Decree 275-17 the government created Prodominicana, a special investment office dedicated to attracting FDI to the Dominican Republic. Finally, according to a ruling from the Dominican Constitutional Court, foreigners bear the same rights as Dominican nationals with respect to their legal security.

As for registration, the applicable requirements vary depending on the industry. For instance, registration of a company (including its shareholders and directors) operating in the financial services, telecommunications, energy and mining sectors is required. Moreover, certain industries, such as insurance companies, have special requirements as to the nationality of its shareholders.

11 What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Insurance in the Dominican Republic is regulated by Law No. 146-02. Pursuant to this law, insurance policies on assets and interests located in Dominican territory have to be issued by companies duly authorised to operate as insurance companies in the country. However, insurance policies issued by local companies may be reinsured by foreign insurers.

Insurance policies issued for assets located in the country may be paid, as instructed by the owner of the asset, into the hands of the secured creditors. Assignments of proceeds to both insurance and reinsurance policies are common practice locally.

Notwithstanding the above, creditors may issue foreign insurance policies for assets or interests located in the Dominican Republic; however, such claims would not be governed by Dominican law.

12 What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

In principle, there are no restrictions on bringing foreign workers to work on a project on Dominican soil. However, article 135 of the Dominican Labour Code establishes that the workforce of companies operating locally must be composed of at least 80 per cent of Dominican employees as well as 80 per cent of the company's payroll. A company could file for an exemption of this rule for personnel carrying out executive or managerial duties and workers in technical positions for which there is no trained Dominican workforce.

13 What restrictions exist on the importation of project equipment?

There are no restrictions applicable to the importation of project equipment to Dominican territory, provided the corresponding custom duties are paid. Moreover, there are laws, such as the Competitiveness and Industrial Innovation Law 392-07, that grant classified and registered companies exemptions to import equipment and machinery necessary to carry out their industrial processes.

14 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Dominican Constitution, under article 51, provides that no person can be deprived of property rights unless there is a public utility or

social interest need, in which case, the owner will be entitled to receive payment for the property at a fair value determined by a competent court. Any expropriation process followed by the Dominican government must comply with this and all other constitutional provisions, including the guarantee of due process. There are no forms of incorporation or investment protected from expropriation.

Fiscal treatment of foreign investment

15 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

According to the equal treatment principle set by Law 16-95 on Foreign Investment, foreign investors are entitled to the same rights and obligations available to national investors. Tax incentives are granted in the Dominican Republic to tourism projects in the country, free zone companies, projects settled in the provinces located near the border with Haiti, renewable energy generation companies, companies operating in the cinematographic sector and innovative companies operating in the manufacturing or industrial sector.

Government authorities

16 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

The relevant government agencies or departments with authority over projects in the typical project sectors are as follows:

- oil and gas: the Ministry of Industry and Commerce regulates, supervises and controls the distribution, importation and commercialisation of oil and gas in the Dominican Republic; however, the Ministry of Energy and Mines regulates the exploration, extraction and policies concerning these natural resources;
- mining: the Ministry of Energy and Mines is the governing body in charge of overseeing mining activities in the country and granting exploration and extraction permits and concessions to private parties. The Ministry of the Environment and Natural Resources also grants environmental licences and permits to mining projects in the country;
- chemical refining is regulated by the Ministry of Public Health, the Ministry of Environment and Natural Resources, and the Ministry of Energy and Mines;
- water rights are regulated by the National Institute of Potable Water and Sewerage (INAPA), the General Directorate of Water Resources and each city's local water and sewer system administrator;
- tourism and real estate development: Ministry of Tourism, Ministry of Environmental and Natural Resources;
- free zones: National Free Zones Council and Association of Free Zones (ADOZONA);
- power generation, distribution and transmission: the energy sector is regulated by the General Electricity Law No. 125-01. The governmental bodies in charge of regulating the sector are the Superintendence of Electricity, National Energy Commission and the Dominican National Electrical Corporations (CDEEE). The Ministry of the Environment and Natural Resources and the Ministry of Energy and Mines are also involved in granting licences and permits to energy projects in the country;
- transportation: this sector is divided into three subsectors:
 - ground transportation, regulated by the National Board of Directors of Transit and Ground Transportation;
 - air transportation, regulated by the National Institution of Civil Aviation; and
 - maritime transportation, regulated by the Dominican Navy and the National Authority for Maritime Affairs;
- ports and public construction projects are regulated by the Ministry of Public Works, the Dominican Port Authority and the Dominican Navy. The Ministry of the Environment and Natural Resources also grants environmental licences and permits to these types of projects in the country; and

Update and trends

With the enforcement of the insolvency law there is a trend for companies to perform restructuring procedures to benefit from possible financial alternatives to stay in business.

The new anti-money laundering and prevention of terrorism financing law creates a solid due diligence enforceability and reporting obligations for both the financial and the non-financial sectors (ie, banks, insurance companies, attorneys, real estate developers, car dealers, casinos, jewellers, etc). This will help clean up our economy and give it greater access to foreign markets for project financing purposes.

According to a novel ruling issued by the Dominican Supreme Court of Justice in mid-2017, all creditors will now have the choice of pursuing their foreclosures through the simplified process established under Trust Law No. 189-11, which at the beginning was limited to foreclosures of properties subject to said law or those on which the parties expressly agreed to be subject to said abbreviated process on their mortgage registration act.

The main advantages of this abbreviated foreclosure process are the following:

- the notice of payment is converted automatically into an embargo, if after 15 days of the notice the outstanding debt has not been paid in full;
- dilatory motions are subject to a more rigorous procedure in favour of the foreclosing party, thereby avoiding the unnecessary extension of the foreclosure procedure;
- all motion pleadings are verbal and the parties cannot request postponements for the filing of formal written arguments; and
- rulings issued in connection with dilatory motions cannot be appealed or be subject to any other recourse.

Finally, our securities law has been updated with new regulations to guarantee transparency and legal stability.

- telecommunications: the Dominican Telecommunications Institute is the regulatory body in charge of telecommunications projects.

Regulation of natural resources

17 Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The Dominican government has ownership over all natural resources and may grant concession to private parties to exploit, extract or use such resources as regulated in the appropriate Concession Agreement. Foreign parties may acquire such concession rights, but in most cases local companies must be incorporated to operate a concession in the country.

There are no laws or regulations recognising any rights over natural resources in favour of aboriginal or indigenous groups.

18 What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

Royalties and taxes may vary according to the sector. Most are revenue-based.

19 What restrictions, fees or taxes exist on the export of natural resources?

Concession agreements will provide general guidelines for the export of such resources. At the present time, taxes or fees applicable for such exports are negotiated on a case-by-case basis.

Legal issues of general application

20 What government approvals are required for typical project finance transactions? What fees and other charges apply?

Government approval of project finance transactions is only required in certain sectors, such as free zones, telecommunications, energy and mining concessions, and non-objection in connection with port concessions. However, in most cases involving a government project or a concession, approval by the government is recommended to secure the enforceability of the security rights, sharing of communications related to the project, among other details.

21 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Security agreements, as explained above, must all be registered and for such purposes they must be executed or translated into Spanish and duly notarised. If executed abroad, such documents must also be apostilled to be registered with the appropriate authorities.

The financing agreement only needs to be translated if it will be enforced pursuant to local laws. Mostly, these agreements are governed and executed under foreign legislation.

According to the newly enacted Dominican Private International Law (544-14), parties are able to freely choose and change the

applicable law to any transaction contracted between them, with certain restrictions established in said law.

Pursuant to the newly enacted Anti-Money Laundering Law 155-17, attorneys and public notaries must perform and maintain proper due diligence documentation for a period of 10 years of all operations performed that may involve asset handling.

22 How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

The Dominican Republic has been a member of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards since 2001. Therefore, local courts are bound to recognise arbitration agreements as well as the mandatory referral of disputes relating to these agreements to arbitration.

According to Law 489-08, judicial enforcement of foreign arbitral awards are subject to a court order, called an exequatur, issued by local courts, which makes such awards enforceable in Dominican territory. The main requirements for the Dominican courts to grant an exequatur are that the legal requirements in the country of origin have been correctly applied and that the ruling has been duly legalised, apostilled or complied with any formality according to the law of origin.

Finally, public order-related and criminal disputes cannot be subject to arbitration according to Dominican law.

23 Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

As a result of the principle of contractual freedom, and according to Law 544-14, foreign law may be chosen as the applicable law to an agreement to the extent that such a choice of law is not contrary to public policy. New York law and the laws of England and Wales are frequently chosen for finance agreements. As for matters governed by domestic law, it should be noted that securities involving real estate assets and moveable assets (chattel mortgages) located in the Dominican Republic are subject to Dominican law as a matter of public policy order, although underlying credits agreements can be subject to foreign law.

24 Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Yes. However, judgments from foreign jurisdictions are not enforceable in the country until the Civil and Commercial Chamber of the National District's Court of First Instance authorises their validity and enforceability in the Dominican Republic via an exequatur, which is a non-contradictory court authorisation rendered after analysing that all applicable foreign requirements have been followed by the foreign issuing authority for the granting and issuance of said decision. This decision could be subject to appeal.

Environmental, health and safety laws**25 What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?**

Project sector	Law	Regulatory body
Banking	Law 183-02, the Monetary and Financial Law	Superintendency of Banks
		Monetary board
		Central Bank
Trusts/Fiduciaries	Law 189-11, related to the development of the mortgage market and trust	Bureau of Internal Revenue
		Superintendency of Stock Exchange
		Superintendency of Banks
Mineral extraction, oil and gas	Law 64-00 on the Environment and Natural Resources	Ministry of Environment and Natural Resources
	Law No. 146-71, related to the regulation of mining activities	Ministry of Energy and Mines
	Law No. 100-13, which creates the Ministry of Energy and Mines	
Water	Law No. 5994-62 and the Regulation for its application	Ministry of Environment and Natural Resources
	Law No. 5852	Ministry of Public Health
	Law No. 238-62	National Institute of Potable Water
	Law No. 5994-62, which creates INAPA	National Institute of Water Resources
Electricity (generation, distribution and transmission)	Law 125-01 and the Regulation for its application	Ministry of Energy and Mines Superintendency of Electricity National Energy Commission Dominican National Electrical Corporations (CDEEE)
Ports	Law No. 70, dated 16 December 1970	Port Authority
	Regulation No. 1673-80 related to Port Services	National Civil Aviation Institute
	Regulation No. 309-98 related to Port Concessions	Dominican Navy Dominican Customs
Telecommunications	General Telecommunications Law 153-98 and the Regulation for its application	National Institute of Telecommunications

Project sector	Law	Regulatory body
Tourism (hospitality)	Law 84-79, that creates the Ministry of Tourism (SECTUR)	Ministry of Tourism Ministry of Public Health
	General Tourism Law No. 541-69	
	Law 158-01 on Promotion of Tourism Development	
	Law 64-00 on the Environment and Natural Resources	Ministry of Environment and Natural Resources
Insurance	Law 146-02, the Insurance Law	Insurance Superintendency

Project companies**26 What are the principal business structures of project companies? What are the principal sources of financing available to project companies?**

Under certain regulated sectors, such as telecommunications and insurance, the project company needs to be organised under the laws of the Dominican Republic, even though in most cases there are no limits or restrictions as to their shareholders' nationality. Subject to certain limitations, the same applies when the project is state-owned. Pursuant to local law, a percentage of the company's equity must be held by a local investor in state-owned projects. The typical form of a project company is a *sociedad anónima* (stock corporation), which is, among other corporate vehicles, the entity that requires more strict corporate governance, and which brings a perception of safety to both the lenders and the sponsors.

Local and foreign financial institutions are the principal sources of financing available to project companies.

Public-private partnership legislation**27 Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?**

Not currently.

PPP – limitations**28 What, if any, are the practical and legal limitations on PPP transactions?**

Most of the limitations derive from the state's ability to incur obligations or delegate functions, which are subject to congressional approval. Obtaining such approval may become a lengthy process as it requires review by both the Senate and the Chamber of Representatives and a subsequent enactment of a Presidential Decree. The contracting power of the state is subject to the restrictions set forth under the Constitution. The executive branch has limited powers and to the extent that the



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agreement has an effect on national income or grants tax benefits to a third party, it should be approved by Congress.

PPP - transactions

29 What have been the most significant PPP transactions completed to date in your jurisdiction?

These have been in the energy sector concerning energy generation, road construction and management, maritime port and airports.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes

Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans

Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
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