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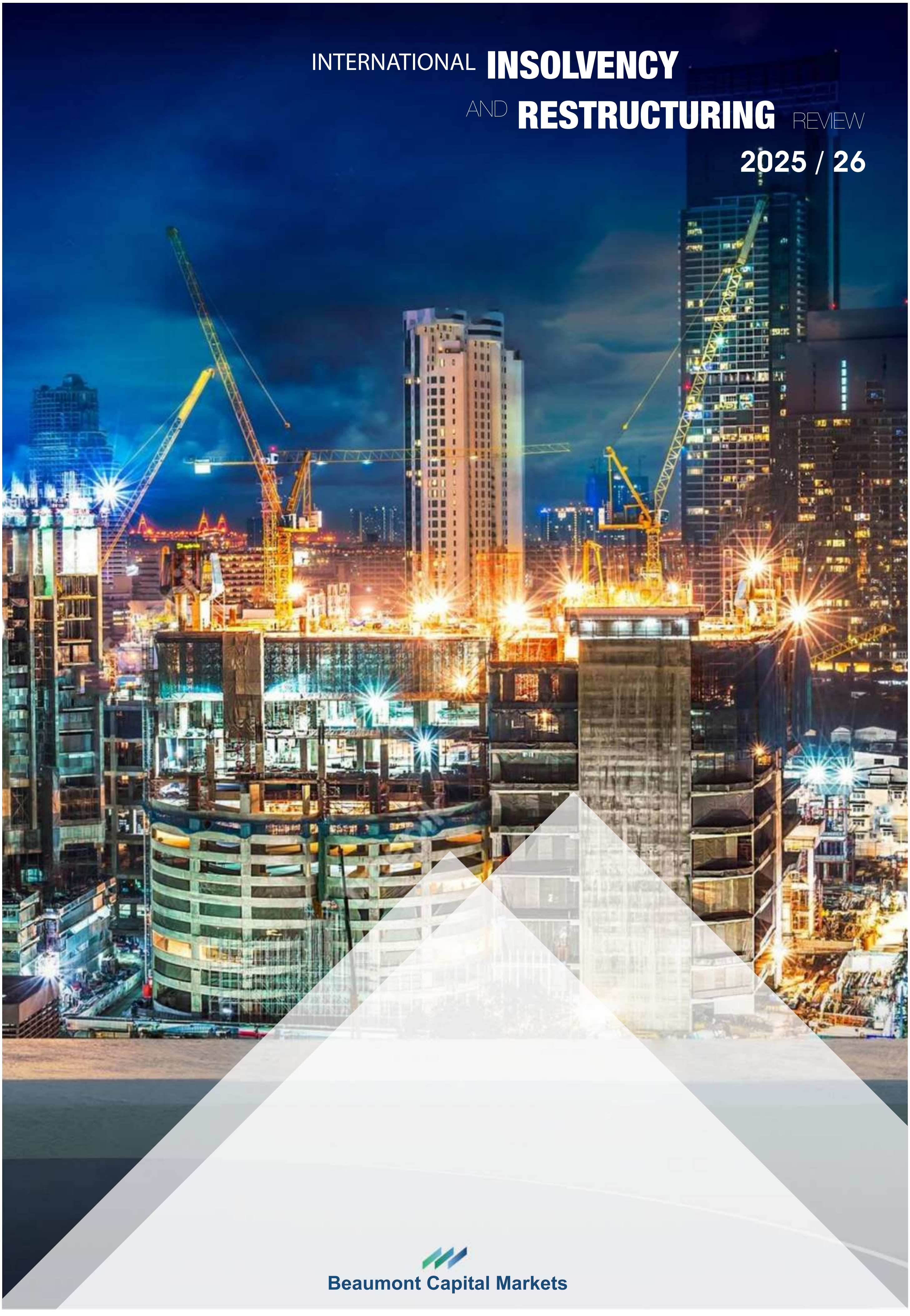

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DOMINICAN REPUBLIC

Restructuring and Insolvency in the Dominican Republic: Legal Framework, Challenges, and Best Practices

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BIO

Pamela Benzán Arbaje provides legal assistance to Guzmán Ariza's clients in business transactions and financing. Her main practice areas are corporate and business, restructuring and bankruptcy, mergers and acquisitions, project finance, banking, capital markets and foreign investment. She has extensive experience with distressed companies, corporate restructurings, corporate bankruptcy, cross-border insolvency, financial investigation and asset recovery and has assisted local and international clients in restructuring and judicial liquidations procedures in the Dominican Republic as per the local insolvency legislation, having an active participation in 90 per cent of the cases in the country, both as an ancillary expert of the trustee and attorney of the debtor or main creditors. Due to her expertise, she was appointed by the Federation of Chambers of Commerce of the Dominican Republic as coordinator of the Observatory of Mercantile Restructuring of the Dominican Republic and is also working with the restructuring committee of said Federation in the preparation of a bill to modify the current restructuring legislation.

Restructuring and Insolvency in the Dominican Republic: Legal Framework, Challenges, and Best Practices

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Insolvency and restructuring procedures are vital for ensuring the continued viability of distressed companies and the protection of creditors' rights. The Dominican Republic, with its developing economy and dynamic business environment, has set up a legal framework to address these challenges.

This framework, primarily governed by Law 141-15 on Restructuring and Insolvency, provides for various mechanisms aimed at helping businesses in financial distress, while ensuring creditors' interests are respected and protected. However, while the law provides a comprehensive structure, it also presents significant practical challenges for both creditors and insolvency officers. This article delves into the legal framework for insolvency and restructuring in the Dominican Republic, the role of creditors and insolvency officers, and the challenges that persist in the system.

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> Law 141-15 modernizes insolvency and restructuring in the Dominican Republic, offering businesses a structured path to recovery while balancing creditors' rights.

Legal Framework of Restructuring and Insolvency in the Dominican Republic

The Insolvency Law, introduced in 2015, was designed to streamline and modernize the Dominican Republic's insolvency and restructuring procedures. The law provides a structured process for businesses facing financial distress to either restructure their debt or enter into liquidation. It includes provisions for both voluntary and involuntary insolvency proceedings, offering debtors a chance to reorganize their affairs and maintain operations where possible, or to liquidate assets if recovery is deemed unfeasible.

Key Procedural Steps in Restructuring

Filing for Restructuring: Involuntary restructuring procedures can be initiated by creditors when a debtor is unable to meet its obligations. The debtor can also request voluntary restructuring if it believes that it has the potential to recover. The initial filing includes a petition to the court, accompanied by a description of the financial difficulties, a list of creditors, and proposed restructuring measures.

Appointment of the Trustee: Once the restructuring request is filed, the court appoints a trustee to oversee the process. The trustee's duties include managing the debtor's assets, negotiating with creditors, and proposing a restructuring plan. This is critical for ensuring the process is handled fairly and efficiently, with the trustee acting as an impartial mediator between the debtor and creditors.

Publication of Creditors' List: A key step in the restructuring process is the publication of the list of creditors. The debtor must notify all creditors, and a provisional list of claims is published. This enables creditors to confirm their claims, dispute errors, or register any new claims.

The Restructuring Plan: Following negotiations, the debtor and trustee propose a restructuring plan that outlines how the debtor intends to meet its obligations. This plan can include debt rescheduling, reductions, or even the cancellation of certain debts, depending on the situation. Creditors are given the opportunity to vote on the plan, and if approved, the debtor moves forward with the restructuring.

Confirmation and Execution of the Plan: Once the restructuring plan is approved by the court and creditors, it is executed, and the debtor must adhere to the terms laid out in the plan. This phase involves monitoring the debtor's compliance and ensuring that creditors receive payments as agreed.

Insolvency Liquidation
In cases where restructuring is not possible, or the debtor is unable to meet the conditions of the restructuring plan, the insolvency proceedings may shift towards liquidation. Liquidation involves selling the debtor's assets to pay creditors in accordance with their priority claims. This step is considered a last resort, as it generally leads to the dissolution of the business.

Role of Creditors in the Restructuring Process

Creditors play a vital role in the restructuring process. Their active participation is necessary for the approval of a restructuring plan. However, their ability to participate is contingent on timely registration of their claims with the trustee.

Creditor Registration: Creditors are required to register their claims within a set period, which begins from the initiation of the restructuring process. Failure to register claims in a timely manner results in exclusion from the restructuring plan. However, creditors may pursue alternative avenues to recover their debts after the plan is completed or if liquidation occurs. The court must decide whether to allow any late claims, considering the reasons for the delay.

In the Dominican Republic, there have been instances where creditors attempted to bypass the registration process by filing writs of protection, claiming that their exclusion from the restructuring plan violated their constitutional property rights. However, the restructuring courts have consistently ruled that these claims were without merit, as the creditors had failed to adhere to the established procedural deadlines. This stance ensures that the restructuring process remains orderly and prevents any unnecessary disruptions from non-compliant creditors.

Late Claim Declarations: Creditors who miss the registration period may still participate in the restructuring process through a late declaration process. However, such creditors must bear the costs associated with this late submission, unless they can prove that their failure to register was caused by force majeure events (such as natural disasters) that hindered their ability to file on time. This ensures that the restructuring process remains efficient while allowing for flexibility in cases of legitimate delays.

Secured Creditors: Secured creditors have more flexibility than unsecured creditors. They are allowed to declare their claims at any time, even if they were not initially notified about the commencement of the restructuring proceedings. This is a critical provision, as it ensures that secured creditors are not unfairly excluded from the process.

Challenges Faced by Creditors

Despite the legal framework, creditors face several challenges in the restructuring process.
One of the most significant issues is the potential for delays in the payment of their claims. While creditors have a higher priority than other debts, the execution of the restructuring plan can take time, and some creditors may feel that their claims are not being settled as quickly as they should be.

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> Creditors are central to the Dominican Republic's restructuring process, but timely claim registration is critical to protect their rights amidst potential delays.

Additionally, creditors must be vigilant in ensuring that their claims are properly registered and that they are included in the final distribution plan. Non-compliance with the registration process can result in the loss of any right to participate in the restructuring, which can significantly impact the financial interests of creditors.

Challenges Faced by Insolvency Officers

Insolvency officers, including trustees, verifiers, and liquidators, are crucial in ensuring that the insolvency process proceeds smoothly and fairly. However, they too face a variety of challenges within the legal framework of Dominican insolvency.

Uncertainty Around Payment of Fees: One of the most significant issues faced by insolvency officers is the uncertainty regarding payment for their services. Historically, many insolvency officers have expressed frustration with the delayed payments of their fees. While the law provides that insolvency officers' fees are privileged claims, meaning they have priority over other debts, this does not always translate into timely payments.

Advances for Fees: In response to these concerns, courts have developed a more flexible approach regarding the payment of fees, allowing insolvency officers to receive advance payments based on provisional estimates. This has been particularly beneficial for trustees and liquidators, who are now more likely to accept appointments knowing they will receive partial payments during the process.

> Insolvency officers in the Dominican Republic face payment uncertainties, but recent court rulings, like the Munne decision, ensure fairer compensation and bolster process integrity.

Verifiers' Fees: Verifiers, who are tasked with evaluating the financial situation of the debtor and confirming whether restructuring is feasible, have also faced challenges regarding the payment of their fees. Local law requires that the verifier's fees be estimated provisionally upon appointment but does not clarify when these fees should be paid. As a result, verifiers have often rejected appointments or asked to be removed from the official list of officers due to concerns over payment uncertainty.

In response, the court ruled that verifiers' fees must be paid as soon as their work concludes, ensuring that they are compensated for their services without unnecessary delay. This decision has brought some much-needed stability to the process, encouraging more verifiers to participate.

Recent Developments and Precedents

Recent court rulings have helped clarify several key issues in the restructuring and insolvency process. For example, in the case of the Munne decision, the court approved the advance payment of trustee fees during the execution of a restructuring plan, establishing a beneficial precedent for insolvency officers. This ruling has contributed to greater clarity in the treatment of insolvency officers' fees, which is essential for maintaining the credibility and integrity of the insolvency process.

Additionally, the court has taken steps to ensure that creditors who attempt to misuse legal procedures, such as writs of protection, are held accountable. This has improved judicial certainty in the process, ensuring that the restructuring procedure remains fair and transparent.

Conclusion

The Dominican Republic's legal framework for restructuring and insolvency has made significant strides in providing a fair and organized process for distressed businesses and their creditors. While the law offers several safeguards to protect creditors' rights and ensure the proper management of insolvency proceedings, challenges remain in terms of timely payments and the registration of claims. Recent judicial precedents have addressed some of these issues, particularly regarding the payment of insolvency officers' fees and the treatment of late claims.

For the system to work effectively, both creditors and insolvency officers must be proactive in understanding and adhering to the procedural requirements laid out in the Insolvency Law. By doing so, they can ensure that the restructuring process proceeds smoothly, preserving business viability and protecting creditors' financial interests.

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