PANORAMIC

RESTRUCTURING & INSOLVENCY

Dominican Republic

LEXOLOGY

Restructuring & Insolvency

Contributing Editors

Catherine Balmond and Katharina Crinson

Freshfields

Generated on: March 12, 2025

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Contributors

Dominican Republic

Guzmán Ariza

GUZMÁN ARIZA ATTORNEYS AT LAW

Fabio Guzmán Saladín fabio@drlawyer.com
Pamela Benzán Arbaje pbenzan@drlawyer.com

GENERAL

Legislation
What main legislation is applicable to insolvencies and reorganisations?

Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) is the principal legislation that governs insolvencies and restructuring procedures in the Dominican Republic. The Law was enacted in August 2015; however, it entered into effect on 7 February 2017, after an 18-month transitory period. Further, the rules of application of the Law No. 141-15 were also signed into law by Decree No. 20-17, on 13 February 2017.

Law stated - 10 September 2024

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

The scope of application of Law No. 141-15 is defined in article 2, which establishes that it is applicable to all national or foreign companies and businesspersons with domicile or permanent presence in the country, but expressly excludes:

- commercial entities that have a majority stake belonging to the state or are controlled by it;
- financial entities are governed by the Monetary and Financial Law No. 183-02, dated November 2002, and its modifications;
- securities intermediaries, investment funds management companies, centralised security deposits, stock exchanges, securitisation companies and any other entity considered to be a stock market participant, with the exception of publicly traded companies and companies governed by Law No. 19-00 on Securities; and
- electrical, insurance, trustees and other regulated entities.

According to article 64 of Law No. 141-15, the following assets are excluded from the customary insolvency proceedings:

- those that might be claimed by third parties in accordance with the law;
- purchases of real property that remain unpaid and were not registered in the corresponding public records;
- amounts recovered or withheld by the debtor on behalf of the tax authorities;
- third-party assets and property rights in possession of the debtor; and
- in the case that the debtor is a businessperson, all assets essential for the debtor's subsistence and work tools required for the ordinary course of business.

Further, pursuant to article 55 of the Dominican Constitution, all real estate declared as 'homestead' (as per the provisions of Law No. 1024 of 1928) is inalienable and un-attachable, and thus would not be affected by insolvency proceedings.

Law stated - 10 September 2024

Public enterprises

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

There is no special insolvency regulation for government-owned enterprises.

Law stated - 10 September 2024

Protection for large financial institutions

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

There are no references to the concept of 'too big to fail' in Dominican law. However, the Monetary and Financial Law No. 183-02 establishes special procedures for cases involving bankruptcy of financial institutions, which are under the supervision of the Superintendency of Banks and the Monetary Board. The law indicates that the regularisation can be initiated voluntarily by the financial institution or involuntarily by the Superintendency of Banks, whenever the occurrence of any of the following situations is verified:

- a decrease of 10 to 50 per cent of the value of their net equity within a period of 12 months;
- if the institution's solvency ratio falls below the coefficient required by law;
- deficiencies in the legal reserve during a number of established periods;
- frequent use of the facilities of the Central Bank as an ultimate lender;
- submission of false financial information or fraudulent documentation to the Superintendence of Banks or the Central Bank;
- continuous non-compliance with the instructive issued by the Central Bank or the Superintendency of Banks, or the administrative acts of the Monetary and Financial administration;
- performance of transactions that seriously endanger public deposits or the institution's liquidity or solvency; and
- when the external auditors issue an opinion regarding the regulatory solvency of the financial institution or the publication of incomplete audited financial statements, among others.

The regularisation plan must refer to the necessary measures to overcome the situations that originated the need for regularisation. The Superintendency of Banks must deliver a

decision in relation to the approval or rejection of the plan within five days following its presentation. The entire regularisation period may not exceed six months.

If the financial institution does not present its regularisation plan or if the plan is rejected, the financial institution will be dissolved. Moreover, the financial institution could be dissolved for any of the following causes:

- a cessation of payments;
- a decrease of the solvency ratio 50 per cent below the coefficient required by law;
- the performance of operations during the execution of the regularisation plan that turn it unfeasible;
- failure to remedy the causes of the regularisation plan before the deadline; and
- the revocation of the institution's authorisation to operate.

Additionally, the law provides for the creation of a contingency fund administrated by the Central Bank for exclusive use during the dissolution process. The fund consists of mandatory contributions from all financial institutions to guarantee deposits up to a certain amount and may also be used to assist financial institutions facing economic difficulties in certain circumstances.

On the other hand, 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 procedure established by Law No. 141-15 for companies and businesspersons would apply in these cases.

Moreover, Law No. 183-02 establishes that the Superintendency of Banks may employ the securitisation regime conceived in the Securities Law to implement the dissolution procedure. This regime entails structures similar to investment funds, which will issue shares of several categories, granting a variety of rights to its holders. After the enactment of Trust Law No. 189-11, debt securities for construction and house financing were included as privileged obligations in the event of a dissolution procedure of a banking entity.

Law stated - 10 September 2024

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Law No. 141-15 of 2015 created a new specialised jurisdiction for restructuring and liquidation proceedings, composed of first instance courts and courts of appeals in Santo Domingo and Santiago. These courts are the only ones with jurisdiction to rule on these proceedings, as well as all possible measures to safeguard the debtor's assets, including petitions for precautionary measures and protective actions. However, any legal action that arises regarding a non-compliance of the law, as civil and criminal actions, would be the jurisdiction of the ordinary courts or could be resolved in arbitration.

This law conceives diverse appeals mechanisms that can be delivered during the course of the process. In that regard, the law establishes that at any time during the process the parties may challenge the designation of the verifier, conciliator or liquidator. In this case, the court will hold a public hearing, after which it will issue a decision. This decision may be appealed. This does not suspend the restructuring process, and if the request is admitted a new verifier will be designated. Additionally, the decision that admits or dismisses the restructuring request can also be challenged.

Moreover, judgments whereby the court approves or rejects the credits, approves or rejects the restructuring or the liquidation process or declares the expiry of the recognition of credits, may also be appealed.

The initiation of any of the appeals does not automatically suspend the conciliation and negotiations process, neither the judicial liquidation process, nor the obligations of the officials. However, the interested party could demand the provisional suspension of the process to the court.

In the cases where an appeal is possible, the parties have an automatic right to appeal the decisions delivered by the courts during the process and do not require a special permission granted to that end. In that sense, it is important to mention that any party that proves that a decision rendered by the courts during a process caused him irreparable damages could appeal the decisions issued by the courts. There is no requirement to post security to proceed with an appeal.

Law stated - 10 September 2024

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

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

Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) establishes that the debtor may make a request to the court for voluntary liquidation at any time accompanied by the documents that allow the confirmation of the reasons that justify the liquidation. Further, if the debtor is a company the request must be filed along with a resolution issued by the board of directors authorising the liquidation of the company. The conditions for voluntary liquidations are not expressly identified in the law in the same way voluntary reorganisations are, but it is understood that at least one of the conditions for the latter must be met.

If voluntary liquidation is requested during the reorganisation procedure, the judgment that orders the initiation of the judicial liquidation process leaves without effect the suspensions caused by the beginning of a reorganisation procedure of all the judicial, administrative or arbitral processes initiated against the debtor, which will recommence in the procedural stage where they were suspended and will continue until a decision is reached. However, the suspension of all foreclosures, evictions, payments of debts originated before the reorganisation request, execution of tax credits procedures, the calculation of interests under loans and other credit documents and enforcement of penalty clauses are enforceable and maintained during the liquidation process.

Also, the judgment implies the removal of the debtor from the administration, the designation of the liquidator as administrator and the prohibition for the debtor of disposing of any of its assets until the liquidation is concluded.

The court must designate a liquidator who assumes all management functions and powers of the debtor.

Law stated - 10 September 2024

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

The debtor may request voluntary reorganisation at any time whenever any of the following conditions are verified:

- 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 authorities for a period of more than six 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 the economic assistance or severance package set out by the labour code for businesses unable to produce funds;
- when the administration of the company 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 because of the absence of the administrators, as well as the transfer – partial or total – of its assets to a third party for distribution to all or some creditors;
- the use of deceitful or fraudulent practices, criminal association, breach of trust, falsehood, simulation or fraud to default creditors;
- the notification to creditors of the suspension of payments by the debtor, or the intent to do so;
- the commencement of a foreign insolvency proceeding in the jurisdiction of the debtor's parent company or of its main place of business;
- the foreclosure of more than 50 per cent of the debtor's total assets; and
- the existence of enforcement procedures that may affect more than 50 per cent of the debtor's total assets.

The petition must be filed in a written document at the court, indicating the debtor's name and main business address. The request must be presented along with:

- the financial statements of the last three fiscal years;

- a report on the debtor's economic condition;
- a list of all its creditors, detailing the type of credit, amounts involved, date of approval and expiry, description of collaterals, if any;
- a detailed inventory of all the assets of the debtor;
- a report with the status of all its claims, liabilities and open judicial processes;
- a list of all the active contracts at the time of the request;
- a copy of the mercantile registry, in the case of companies, and a resolution issued by the board of directors or management body of the company authorising the reorganisation request;
- a tax compliance certification issued by the tax authority;
- bank account statements; and
- a list of all the pending bills, indicating those that are essential for the ordinary course of business, among other documents.

However, article 55 of the rules of application of Law No. 141-15 establishes the possibility for the court to approve the petition and order the initiation of the reorganisation process even if some of the documents are missing, as long as such documents are not essential to achieve the expected results of the process or if they could be substituted by other documents.

The approval of the restructuring request formally opens the process of conciliation and negotiation. During this process, 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 until the reorganisation plan is approved or the judicial liquidation is ordered. If the liquidation is ordered, the judicial, administrative and arbitral decisions will recommence in the procedural stage where they were suspended and will continue only until obtaining a final decision.

The decision that approves the restructuring request will designate the conciliator, who will perform all necessary studies, investigations and appraisals that are required to determine the current debts, contracts in force, as well as the assets that are available to satisfy the credits and prepare the restructuring proposal or recommend the judicial liquidation of the debtor.

The debtor is obligated 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 and the credit originated after the start of the restructuring process will be considered preferential for payment. During the negotiation phase, the debtor remains in possession of the business and may dispose of the necessary assets for the ordinary course of business, under the supervision of the conciliator.

Upon a proposal from 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. Moreover, the court can approve the sale of assets that are perishable when abstaining from their sale would be harmful to the creditors.

Additionally, the conciliator may initiate, unilaterally or upon request of the creditors, an annulment action against acts that have constituted an unjustified dissipation of the debtor's assets and have caused damage to the creditors.

Further, Law No. 141-15 establishes the invalidity of contracts that, within 60 days before 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 the law, no legal provision or contractual clause may give rise to the division, termination, resolution or annulment of the contract solely because of the acceptance of a reorganisation request or designation of the conciliator.

Law No. 141-15 also provides for the possibility of prepack insolvency agreements, which may be submitted to the court for approval if the debtor and the majority of its creditors reach a restructuring agreement before the commencement of the restructuring process. The approval of this agreement would produce the same legal effects as a reorganisation plan.

Law stated - 10 September 2024

Successful reorganisations

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

Pursuant to article 128 of Law No. 141-15, creditors are classified as secured, unsecured and subordinated. The following credits are considered to be subordinated according to the law:

- credits contractually defined as such;
- interest claims, excluding those payable under secured credit;
- credits originated from fines and penalties;
- claims owed to a related entity of the debtor; and
- credits resulting from annulled transactions in which it is determined that the beneficiary acted in bad faith.

Moreover, some credits originated after the reorganisation process, when duly authorised by the court, will be considered as privileged credits, with higher priority over other existing credits, such as:

- credit originated for the costs of the restructuring process, including fees of officials and auxiliaries involved in the process;
- loans agreed to by financial intermediation entities or third parties that will contribute to the financing of the debtor;
- debts owed to essential providers and public services; and
- debts that result from the execution of agreements that remain in force after the beginning of the restructuring process.

The plan shall contain at minimum:

- 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.

Law No. 141-15 does not conceive the possibility of releasing non-debtor parties from liability.

Law stated - 10 September 2024

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

According to the provisions of Law No. 141-15, creditors cannot request the involuntary liquidation of the debtor before attempting a reorganisation. However, upon a reorganisation request, the verifier and the conciliator may recommend the immediate liquidation of the debtor under specific circumstances, such as:

- lack of cooperation of the debtor during the verification or negotiation phase;
- when a reorganisation plan is not feasible under the particular circumstances of the debtor; or
- to avoid the increase of the debt and the diminishing of the debtors' assets.

Likewise, the debtor, the conciliator or any recognised creditor could demand the judicial liquidation of the debtor because of failure to comply with the restructuring plan. There are no material differences to proceedings opened voluntarily.

Law stated - 10 September 2024

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Any creditor with credits that represent at least 50 minimum wages (approximately US$13,850) can file a restructuring request against the debtor. This request would be justified

under several circumstances established in article 29 of Law No. 141-15. There are no material differences to proceedings opened voluntarily.

Law stated - 10 September 2024

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

Law No. 141-15 establishes expedited reorganisation procedures for the cases where the total liabilities of the debtor do not exceed 10 million Dominican Republic pesos. A creditor could only benefit from this procedure if it has credits for at least 15 minimum monthly wages. This abbreviated procedure reduces by half most of the time frames established in the law for the ordinary reorganisation procedure and exempts the requirement of appointing an adviser for the creditors, as well as the designation of experts and advisers for the conciliator.

Law stated - 10 September 2024

Unsuccessful reorganisations

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

If the reorganisation is involuntary, the reorganisation plan must be prepared by the conciliator and approved by the debtor and the creditors with voting rights that represent at least 60 per cent of the registered debt before submitting it for the approval of the court. In the case of companies, the plan must be approved by the board of the company. If the reorganisation is voluntary, the debtor must prepare and submit its plan to the conciliator for the purpose of reviewing it, before seeking the approval of the creditors. The plan must be approved within 120 days after the designation of the conciliator or within 180 days if an extension (maximum 60 days) is granted. If a plan is not performed or if the plan is expressly rejected or it is not approved within this delay, the conciliator must present to the court the request for the termination of the process and the beginning of the judicial liquidation of the debtor.

Law stated - 10 September 2024

Corporate procedures

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

Corporate Law No. 479-08 establishes an extrajudicial process for the dissolution and liquidation of a company or entity. The dissolution would proceed in any of these scenarios:

- agreement reached by the majority (two-thirds) of the shareholders;

- the arrival of the term of the company established in the articles of incorporation;
- the impossibility of carrying out the corporate purpose of the company;
- losses that reduce the social capital to less than half of the paid-in capital, unless it is adjusted;
- the reduction of the share capital below the legal minimum;
- the merger or spin-off of the company;
- if the number of shareholders is reduced below the minimum for each type of company; or
- any other cause established in the articles of incorporation of the company.

The dissolution of the company is followed by a liquidation process.

The dissolution process set forth in Law No. 479-08 differs from that established in Law No. 141-15 in several aspects – principally, it originates from an agreement between shareholders and does not require that the company is experiencing financial difficulties. Further, in Law No. 479-08, unpaid claims could survive the liquidation proceeding and thus the creditors could pursue the payment of debt after the liquidation of the company. On the contrary, in Law No. 141-15, debts could not survive the liquidation process, which could only be collected after the liquidation process, in the event that new assets are identified.

Law stated - 10 September 2024

Conclusion of case
How are liquidation and reorganisation cases formally concluded?

Reorganisation procedures are formally concluded with the approval and fulfilment of the reorganisation plan. During the enforcement of the plan, the conciliator must inform the court on a quarterly basis of the plan compliance and the debtor must inform the conciliator on a monthly basis about the execution and evolution of the measures conceived in the plan and the expectations regarding its compliance. The law does not establish a maximum term for the enforcement of the plan. Non-compliance would entail the beginning of the liquidation procedure.

With respect to the judicial liquidation, the court may pronounce the termination of the process when all debts have been paid or the liquidator has enough assets to set off the debts, or if the continuation of the liquidation proceedings is impossible because of the insufficiency of assets. In any case, the liquidator must render accounts before the court.

Law stated - 10 September 2024

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency
What is the test to determine if a debtor is insolvent?

The main criterion used in Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) is the verification of a situation of default or cessation of payments.

Law stated - 10 September 2024

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

Law No. 141-15 does not establish a mandatory filing. However, article 225 defines the crime of bankruptcy and conceives criminal sanctions and fines for all persons who intentionally undertake any of the following:

- delay the commencement of the reorganisation procedure;
- carry out fraudulent transactions with the purpose of perceiving personal gains;
- deviate or conceal the assets of the debtor;
- deceitfully increase the debt of the debtor;
- falsify accounting records or separate bookkeeping;
- disappear accounting documents of the debtor; or
- carry out any incomplete or irregular accounting.

Law stated - 10 September 2024

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) establishes the crime of bankruptcy, which has a criminal sanction of up to three years in prison and a fine between 2,500 and 3,500 minimum monthly wages, for any person who intentionally undertakes the actions described in article 225. This applies to any person or representative of the company who directly or indirectly administers, manages or liquidates a company, as well as to partners in the bankruptcy crime, even when they are not businesspersons or are considered to be direct or indirect administrators or managers of the company.

Law stated - 10 September 2024

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

According to Law No. 479-08, directors have both civil and criminal liability for their actions during their tenure as company executives. The liability will be conditioned to their involvement and the proof of malicious intent. Corporate officers and directors may be liable for labour claims and tax claims. Additionally, both officers and directors that are negligent in the insolvency proceedings or during the operation of the business will be criminally liable.

Law stated - 10 September 2024

Directors' liability – defences
What defences are available to directors and officers in the context of an insolvency or reorganisation?

The criminal liability of the directors and officers in the context of bankruptcy proceedings are subject to the ordinary criminal court and proceedings, thus the malicious intent and proof participation in wrongdoings will be the main factors to be considered in a criminal claim. Also, most of the conditions to be criminally liable for a fraudulent bankruptcy require that the officers and directors who commit fraud have knowledge of and participate in the fraudulent actions that lead the company to bankruptcy. Therefore, the defences will most likely argue non-participation or lack of accountability or control of the operations, or even lack of knowledge of the decisions or situations that caused the bankruptcy.

Law stated - 10 September 2024

Shift in directors' duties
Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

No. During the negotiation phase, the debtor remains in possession of the business and may dispose of the necessary assets for the ordinary course of business, under the supervision of the conciliator. However, upon recommendation of the conciliator, the court could remove the administration of the company and could order the conciliator to assume the function of a manager on a provisional basis. Also, the court order that initiates a judicial liquidation process implies the removal of the debtor from the administration and the designation of the liquidator as administrator until the judicial liquidation is concluded.

Law stated - 10 September 2024

Directors' powers after proceedings commence
What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

After the reorganisation request is filed and during the negotiation phase, the administration of the company will remain in possession of its managers or board of directors, who may only dispose of the necessary assets for the ordinary course of business under the supervision of the conciliator. The directors may continue transactions with the essential providers and suppliers of the company. Moreover, the directors will continue with the payment of labour credits and any other payment necessary to maintain the operations of the company. The commencement of liquidation proceedings implies the removal of the debtor from the administration and the designation of the liquidator as administrator until the judicial liquidation is concluded.

Law stated - 10 September 2024

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

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

During the 30 days following the request for the approval of prepack insolvency agreements, the court will reject any restructuring petition filed with respect to the debtor.

Once the decision approving the reorganisation request becomes irrevocable and the conciliation and negotiation process commences, all judicial, administrative or arbitral proceedings 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 until the reorganisation plan is approved or the judicial liquidation is ordered. This stay of proceedings will stand during all the negotiation and conciliation process and will be overturned with the approval of the reorganisation plan or with the judgment that orders the initiation of the judicial liquidation process. In the last scenario, the judicial, administrative or arbitral proceedings may recommence, but until reaching a final decision and before the execution of any foreclosures. All other suspensions are maintained during the liquidation process.

Further, pursuant to article 56 of Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15), all legal actions intended for the collection of moneys that were filed before the submission of the reorganisation request and subsequently suspended for the approval of such request, may be reinitiated, upon request of the creditors, once their credits have been declared and recognised by the court or upon the commencement of a reorganisation plan. However, such actions may only be reinitiated for the verification or liquidation of the credit.

The law expressly exempts from the suspension certain payments as:

- child or family support, if the debtor is a physical person;
- labour credits; and
- any other payment necessary for the ordinary course of business, as long as they are determined and justified in an exceptional manner before the conciliator.

Also, article 127 of Law No. 141-15 establishes that if there are any labour processes in train at the moment of submission of the reorganisation request, the employees' adviser and the conciliator must be under subpoena to participate in the proceedings.

In the event that the judicial liquidation process is terminated because of insufficiency of funds, the creditors may be able to initiate individual actions against the debtor, but merely in the case of a criminal indictment or for rights related to the person of the creditor. Only if there has been fraud against such creditors or personal bankruptcy or interdiction to manage the company, the creditors will recover the right to initiate individual prosecutions against the debtor.

Law stated - 10 September 2024

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

During the negotiation phase of a reorganisation proceeding, the debtor remains in possession of the business and may dispose of the necessary assets for the ordinary course of business, under the supervision of the conciliator. The conciliator may initiate, unilaterally or upon request of the creditors, an annulment action against acts that have constituted an unjustified dissipation of the debtor's assets and have caused damage to the creditors.

Law No. 141-15 establishes the invalidity of contracts that 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 the law, no legal provision or contractual clause could give rise to the division, termination, resolution or annulment of the contract solely because of the acceptance of a reorganisation request or designation of the conciliator.

Essential suppliers are required to maintain the provision facilities during the reorganisation of the debtor and the credit originated after the start of the reorganisation process will be considered preferential for payment.

On the contrary, during the liquidation proceeding the business is stopped completely.

Law stated - 10 September 2024

Post-filing credit

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

According to article 87 of Law No. 141-15, upon request of the conciliator and if the creditors do not oppose the request, the court may authorise the debtor to obtain secured and

unsecured loans or credits after the commencement of the negotiation and conciliation process. These credits will be preferential for payment over other credits.

In the case of secured loans, the court may authorise new securities over the assets of the debtor to secure the payment of the credits, including securities over already encumbered assets. In the latter scenario, the new security could only obtain a higher priority over other registered securities if the conciliator obtains authorisation from the secured creditors.

Law stated - 10 September 2024

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

During the negotiation and conciliation process, upon a proposal of the conciliator and considering the position of the majority of creditors, the court must decide on the sale of assets and the disposal of assets that are not required for the ordinary course of business. Encumbered assets could also be sold with the approval of the secured creditor, who may be granted an equal security over other assets of the debtor.

When the sale entails the disposition of substantial assets of the debtor or the approval of new securities, the conciliator must inform the court, the creditors and the employees' adviser, who may present their opposition to the sale. However, the court can approve the immediate sale of assets that are perishable when abstaining from their sale would be harmful to the creditors of the bankrupt debtor, without giving prior notice to the creditors.

If the sale regards an asset affected by a privilege, pledge or mortgage, the proportional price that corresponds to the creditors over such security will be deposited in a bank account opened for the purposes of the reorganisation process and the sums received for the sale will be distributed according to the reorganisation plan, if approved, or in a proportional basis in the case of liquidation.

Articles 60 and 107 of Decree No. 20-17 conceive the possibility of selling a group of assets or the entire business of the debtor. Whenever the sale of assets is approved by the court, all existing mortgages and privileges will be cancelled; the new owner is only obliged to pay for the sale price and the assets are transferred free of any liens or encumbrances.

Law stated - 10 September 2024

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

There is no specific legislation that either prohibits or encourages stalking horse birds or credit bidding in sale procedures. The admission of such procedures would be at the discretion of the conciliator and liquidator, who would have to evaluate the proposals and submit their decision to the court for approval. A credit bidder shall be permitted to bid in

the sales of the debtor assets, as long as he or she would not be considered a subordinate creditor under the terms of the law, and this credit has been recognised by the court.

Law stated - 10 September 2024

Rejection and disclaimer of contracts

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

The debtor must comply with existing contracts, unless the court, after consulting the conciliator, opposes its continuation to protect the interests of the creditors. In the cases where the debtor is a public service provider, the court may not object to the execution of the contract. Article 91 of Law No. 141-15 establishes the obligation for the conciliator to notify the court with a report of all existing contracts with their recommendation on its continuity or termination.

The creditor must also comply with the contract, in spite of the prior non-compliance of the debtor. In the case of non-compliance of the other party, the conciliator could request the termination of the contract to the court and it may be subject to a claim of damages.

However, the law establishes the invalidity of any contractual agreement entered into by the debtor within 60 days prior or after the commencement of the conciliation or negotiation process or the designation of the conciliator, which aggravates the contractual terms to the debtor detriment or that turn enforceable claims not due.

Under the terms of Law No. 141-15, no legal provision or contractual clause could give rise to the division, termination, resolution or annulment of a contract solely because of the acceptance of a reorganisation request or designation of the conciliator.

Conversely, the commencement of the conciliation and negotiation process does not entail the termination of the lease contracts where the debtor is the lessee. However, the court could opt for the termination of the contract, upon recommendation of the conciliator, in which case all fees due must be paid to the landlord, as well as the penalty for early termination.

Similarly, in the case that the labour conditions of the employees must be modified to achieve the objective of the reorganisation, such modifications must be performed in compliance with the labour legislation and protecting the employees' rights.

In the event that the debtor breaches the contract after the insolvency case is opened, the contract may be terminated by the creditor and damages may be sought according to the contractual agreement or civil procedure.

Law stated - 10 September 2024

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

The IP licensor or owner may not terminate the licence agreement solely because of the acceptance of a reorganisation request or the designation of the conciliator. Likewise, the debtor shall comply with existing contracts, unless the court, after consulting the conciliator, opposes its continuation to protect the interests of the creditors.

Law stated - 10 September 2024

Personal data

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

The law grants ample powers to the officers involved in the insolvency proceedings to collect information in relation to the debtor, including its accounting books, registries, bank statements, operations, interviews with the members of the board of directors or the administrators in general, including financial, tax, legal and accounting advisers.

Law No. 141-15 expressly establishes an obligation of confidentiality for the verifiers, conciliators, liquidators and their advisers in relation to industrial secrets, internal procedures, patents and trademarks, as well as any other information collected during the process. Also, it indicates that all information collected in the performance of their duties as officers must be used exclusively for the purposes of the insolvency proceedings and they may be held liable for any damage caused by the disclosure of confidential information to third parties not related to the process.

Additionally, Law No. 172-13 on data protection must be respected during the course of the proceedings.

Law stated - 10 September 2024

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Given that the law has just recently entered into force, there have not been many liquidation or reorganisation proceedings yet and so far no insolvency procedure has been subjected to arbitration. However, the law allows for any controversy or interpretation disagreement that originated in the course of the insolvency proceedings or in a reorganisation plan to be submitted to an arbitral process subject to the agreement reached by the parties to that end. Moreover, any administrative action or any other related to the insolvency proceedings per se may only be submitted through the specialised jurisdiction created by the law.

Law stated - 10 September 2024

CREDITOR REMEDIES

Creditors' enforcement

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

Aside from movable or chattel pledges procedures recognised by Law No. 6186, the law does not conceive the possibility of seizing assets of a business outside of a court proceeding, except for those assets that were already awarded to a creditor by a court judgment prior to the commencement of the insolvency proceedings.

Law stated - 10 September 2024

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

After the approval of the reorganisation request and during the conciliation and negotiation process, the options available to unsecured creditors are limited, as a statutory moratorium and stay in proceedings will apply until the reorganisation restructuring plan is approved or the judicial liquidation is ordered to any proceedings initiated, including 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.

Article 188 of Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15) establishes that the remaining value of the debtor's assets, after deducting the legal fees and expenses incurred in the liquidation process, as well as the sums paid to the preferential and secured creditors, will be distributed on a pro rata basis between all other creditors.

Nonetheless, a creditor may commence proceedings through the ordinary courts to recover outstanding amounts before the initiation of the insolvency proceedings. The Civil Procedure Code conceives different mechanisms for unsecured creditors to obtain pre-judgment attachments.

In some cases, there must be valid and justified credit and evidence of the imminent insolvency of the debtor. The creditor could obtain an order attaching personal property owned by the debtor, through an ex parte proceeding before a judge. Also, a creditor may obtain a provisional judicial mortgage over the real property of the debtor.

Further, an unsecured creditor who has a determinate or liquidated credit could oppose the payment of the sums owed to the debtor by serving a notice to a third-party holding asset of the debtor – this is often used as a cautionary measure.

Law stated - 10 September 2024

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

The creditors may hold meetings freely and privately every time they deem it appropriate, without the intervention of the officers or the court. The conciliator, the verifier, the liquidator, the creditor advisers or the creditors who represent at least 30 per cent of the total credits of the debtor, could request that the court call to a meeting whenever there is a reasonable and justified reason. These meetings may be held in the presence of the parties or using electronic means to participate. In such cases, the call to the meeting would indicate the available means of communication, such as videoconferences.

The creditors participate in the insolvency process from the initial reorganisation request through to the culmination of the liquidation proceedings and they could act personally or in groups, or be represented through a creditors' adviser, employees' adviser or representative of publicly issued securities, depending on the type of creditors.

As for the liquidator reporting information, pursuant to article 174 of Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons (Law No. 141-15), after the approval of the liquidation plan, the liquidator is obligated to report on a monthly basis to the court and the creditors, either directly or through the creditors' adviser, if existent, informing them of the compliance of the plan.

Law stated - 10 September 2024

Creditor representation

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

The law establishes the designation of a creditors' adviser, an employees' adviser and the representative of publicly traded securities. These advisers will represent the collective interests of the creditors including the debtor employees, during the insolvency proceedings and will:

- inform them on the developments of the process;
- supervise the proceedings;
- advise on the approval or rejection of the reorganisation plans proposals, new credits, disposal of assets, incorporation or substitution of securities;
- propose to the court the removal of the administration of the company;
- request to the court the review of certain records or documents; and
-

request to the officer's information regarding the administration of the debtor assets, among others.

In cases where these advisers are not appointed or they are removed, their obligations will remain in the creditors and employees, who could perform all the above-indicated duties personally or in groups. In such a scenario, the articles of application of the law indicate that the creditors could personally or in groups:

- request information to the insolvency proceedings officers regarding the development of the process and any other topic of the interest of the petitioner;
- propose cautionary measures to the officers, as well as the conservation or liquidation of the debtor's assets;
- inform the court about any action of the officers or third parties that could risk the debtor estate or the interests of the creditors, and request the adoption of appropriate measures to avoid such damages; and
- request any other action to protect their rights.

The law indicates whether the employees and creditors' advisers may act upon remuneration or not, and in any case, the creditors or employees would cover such expenses.

The law refers to the designation of expert advisers for the verifiers, conciliators and liquidators, but does not make any reference to expert advisers for the creditors or the employees. Nevertheless, as there is no prohibition to that end, the creditors or employees could always designate an expert to act as their advisers or to assist them during the process. The creditors or employees would fund any expense originated for these services.

Law stated - 10 September 2024

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

The law establishes the possibility of claiming all movable assets whose sale has been resolved before the commencement of the insolvency proceedings, be it for a judicial judgment, arbitral award or for the application of a cancellation clause contractually agreed by the parties. The claim will also proceed in cases where the resolution of the sale has been declared by judicial judgment after the commencement of the insolvency proceedings or when it has been attempted before the commencement of the process by the seller, for a cause other than non-payment of the price. The assets that remain unpaid can also be recovered, as long as they have not been legally resold.

Moreover, the conciliator is obligated to identify all assets belonging to the debtor that are in the possession of third parties and claim their reincorporation. Upon inaction of the conciliator to that end, the creditors that hold at least 30 per cent of the debtor credits could request the reincorporation directly to the court. All recovered sums will belong to the insolvency estate and will be used for the payment of the creditors.

Further, the law establishes a process for the annulment of transactions. The judgment that approves the annulment of transactions will order the restitution of the assets or rights to the insolvency estate. In accordance with article 63 of Law No. 141-15, the assets and rights claimed or recovered through the legal existing proceedings would be part of the insolvency estate. Any recovered asset or right could be assigned to a third party.

Law stated - 10 September 2024

Claims

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

In the case of reorganisation procedures initiated by the creditors, they 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;
- a copy of the documents that verify the creditor's rights or assets;
- a 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
- a copy of the power granted on behalf of the creditors' representatives.

In the case of foreign creditors, a local representative shall be designated.

The creditors must declare to the conciliator all the credits they may hold against the debtor that were originated before the commencement of the insolvency proceedings within 30 working days after the publication of the decision ordering the reorganisation of the company in the webpage of the court and a national newspaper. After the expiration of this period, the conciliator must present to the court a provisional list of the existing creditors within 30 additional working days. After filing this report, the court will publish a provisional list with the recognised creditors in a newspaper and will notify the creditors and the debtor. The court must decide on the registration of unliquidated credits as well, based on the information provided by the accounting of the debtor and the creditors, even in the cases where the creditors have not requested the recognition of the credit. The unliquidated credits are taken into consideration for the reserves of the liquidation process and are not paid until the credits are liquidated. The creditors can commence proceedings to liquidate the amounts owed for the registration of their credits.

All credits not declared in this period may participate in the reorganisation process through a late declaration process. The costs involved in such process will be borne by the creditor, except when the delay is caused by an act of God or fortuitous event, which must be demonstrated to the court. On the other hand, the secured creditors who were not informed

about the commencement of the proceedings or the designation of the conciliator may declare their credits at any time. Lack of declaration within the time frames conceived in the law will entail the disallowance of the creditors in the distributions, unless the court unveils the prescription.

The insolvency legislation has no special provision regarding claims trading. However, it indicates that whenever there is a transfer of a credit from a person or entity related to the creditor, such credit will be considered to be subordinated. The new creditor would have to disclose the transfer to ask for the recognition of their credit. Given that the discount is a private matter between the selling creditor and the acquirer, the latter would be entitled to receive the full face value of the claim.

A creditor can claim the interests that accrued after the opening of an insolvency proceeding; however, the credit for these interests would be considered subordinated. Therefore, the creditor would only be paid after all other creditors are paid, as well as the fees of the officers and other expenses originated by the insolvency proceedings. In any case, the creditor could only claim the interests accrued after the moratorium is terminated.

Law stated - 10 September 2024

Set-off and netting

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

The law permits the set-off and netting of debts during the insolvency proceedings, even during the stay of proceedings. There are no provisions regarding the deprivation of set off for creditors, neither temporarily nor permanently.

Law stated - 10 September 2024

Modifying creditors' rights

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

There is an automatic change in the priority of the credits because of the provisions of the law, which establishes that credits originated after the commencement of the insolvency proceedings, when approved by the court, have a higher priority in relation to all other secured and unsecured claims, other than those owed to the tax authorities, employees or originated by the insolvency proceedings.

The court could invalidate the collateral consented during the moratorium. Also, the court may change the priority of a creditors' claim in the case of authorisation of new secured loans.

Law stated - 10 September 2024

Priority claims

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

Credits originated after the commencement of the insolvency proceedings, when approved by the court, have a higher priority in relation to all other secured and unsecured claims other than those owed to the tax authorities, to the employees or originated by the insolvency proceedings.

Article 86 of Law No. 141-15 establishes that the payment of debts must be performed in the order indicated below:

- labour liabilities, whenever they have not been advanced in accordance with the provisions of the labour code or any other laws regarding social security or employees' health;
- the costs and expenses originated by the reorganisation process, including the fees of the officials and auxiliaries involved;
- the loans approved by the court and granted by financial intermediation entities or third parties for the financing of the debtor;
- the credits of essential and public service providers or suppliers, duly authorised by the court;
- the debts resulting from the execution of contracts that remain in force after the commencement of the reorganisation process, when approved by the court and the corresponding creditor agrees to deferred payment; and
- other liabilities, according to their priority (secured credits will prevail).

Law stated - 10 September 2024

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

The termination of employment contracts because of a court decision must be executed in accordance with the provisions of the labour code, which establishes the concession of an economic assistance for the employees. Labour liabilities have the highest priority of claims, and pursuant to article 169 of Law No. 141-15, they must be paid within 10 days of the judgment that orders the liquidation if the liquidator has enough funds to cover the debts. If there are not enough funds, employees will be partially liquidated on a proportional basis according to the available funds until fully liquidated.

Law stated - 10 September 2024

Pension claims

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

The insolvency legislation does not specifically refer to pension-related claims. However, pension claims are considered to be included in the social security claims that have the highest priority, as with labour liabilities.

Law stated - 10 September 2024

Environmental problems and liabilities

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

Insolvency legislation in the Dominican Republic does not regulate this matter; however, depending on the environmental infractions, they could follow both the company and the managers or representatives.

Law stated - 10 September 2024

Liabilities that survive insolvency or reorganisation proceedings

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

Only if there has been fraud against the creditors or personal bankruptcy or interdiction to administrate the company will the creditors recover the right to initiate individual prosecutions against the debtor after the termination of the liquidation process. Also, the creditors may initiate individual actions against the debtor in the case of a criminal indictment or for rights related to the person of the creditor.

Moreover, there is a possibility of resuming the judicial liquidation process within two years after the closure for insufficiency of assets in the case that the creditors identify some other assets of the debtor that were not considered in the initial process. In this case, the interested creditor will request the recommencement of the process and will have to advance the legal fees involved in the process subject to refund. After the expiry of this term, the judicial liquidation process would conclude without the requirement of any other judicial or extrajudicial action.

Law stated - 10 September 2024

Distributions

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

Distributions will be made according to priority and on a pro rata basis, subsequent to the deduction of the costs of the proceedings and the amounts paid to preferential creditors from the realisation value of the assets. If encumbered assets are sold, the secured creditors shall receive a proportion of the selling price.

Law stated - 10 September 2024

SECURITY

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

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);
- movable assets (motor vehicles, boats, aircraft, machinery, equipment, inventory, present and future agricultural crops, goods, etc);
- intellectual and industrial property rights (patents, industrial designs, trademarks, trade names, etc);
- contractual rights (credits, receivables, concessions, licences, promissory notes, insurance policies, etc) as long as such rights are transferrable; and
- financial instruments and securities (bank accounts, investments, certificates of deposit, shares, bonds, income derived from securities, etc).

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.

Law stated - 10 September 2024

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

Under Dominican law, security interests, such as mortgages, liens, privileges, encumbrances, pledges or endorsement may be granted on movable assets such as motor vehicles, boats, aircraft, machinery, equipment, inventory, present and future agricultural crops, goods, etc.

Law stated - 10 September 2024

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

Ex officio or upon petition of any creditor, the conciliator may request to the court the nullity of any transaction that took place two years before the reorganisation request, when they constitute an unjustified dissipation of the debtor's assets. Transactions regarding public offering securities originated before the reorganisation request and, with subsequent payment, dates are not subject to the nullity action.

Transactions involving the free transfer of assets or any other transactions entered into by the debtor after the commencement of the insolvency proceedings may be annulled. Some transactions are expressly considered to be null and void, such as:

- transfers of assets free of charge or at a price below market value;
- when the compensation given to the debtor or the creditor is notoriously superior or inferior to the compensation given or the obligation performed by the other party;
- the partial or full compensations made by the debtor;
- payment of obligations not due by the debtor;
- grant of new securities or increase of existing securities for debts originated prior to the reorganisation request with no justification;
- transfers of property in favour of creditors that results in the payment of a higher amount to that received as a result of the liquidation; or
- transactions with related entities or companies where the debtor or any of the creditors serve as an administrator or are members of the board of administrators, or exercise effective control of the company or represent 51 per cent or more of the capital, or are able to designate the majority of its board of administrators, among others.

Further, Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons establishes the invalidity of any contractual clause that, within 60 days prior to the commencement of the negotiation phase or after the initiation of the proceedings, aggravates the situation of the debtor or accelerates the enforceability of claims not due. Under the terms of the law, no legal provision or contractual clause could give rise to the division, termination, resolution or annulment of the contract solely because of the acceptance of a reorganisation request or designation of the conciliator.

Law stated - 10 September 2024

Equitable subordination
Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Claims by related parties or non-arm's length creditors will be considered subordinated. Additionally, some transactions with related entities or companies are considered null and void.

Law stated - 10 September 2024

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

The insolvency legislation does not address any scenario where a lender could be held liable for the insolvency of a debtor.

Law stated - 10 September 2024

GROUPS OF COMPANIES

Groups of companies

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

In the event of international insolvency proceedings, it would be possible to involve parent or affiliated corporations in the cooperation procedure. The legislation does not cover any other scenario in which a parent or affiliated corporation may be responsible for the liabilities of subsidiaries or affiliates.

Law stated - 10 September 2024

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

It would depend on whether it is considered an economic group. It would also apply in cases involving international insolvency proceedings. Even when the legislation doesn't cover this specific scenario, there is precedent already where the proceedings of a group of companies was combined for administrative purposes after they were deemed by the court to be an economic group.

Law stated - 10 September 2024

INTERNATIONAL CASES

Recognition of foreign judgments

Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

Foreign judgments and orders may be recognised and enforced in the Dominican Republic by obtaining an exequatur, which is granted by a Dominican court pursuant to Law No. 544-14 on private international law. To that end, the court will verify that the foreign judgment:

- complies with all formalities required for its enforceability according to the law of origin;
- is written or translated into Spanish;
- satisfies the authentication requirements provided in Dominican law;
- was enacted by a court with jurisdiction over the matter, following due process and preserving the right of defence of the defendant;
- has become irrevocable; and
- does not contradict Dominican public order.

Law stated - 10 September 2024

UNCITRAL Model Laws

Have any of the UNCITRAL Model Laws in relation to insolvency been adopted or is adoption under consideration in your country?

Yes. Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons, which came into force in February 2017, was developed in accordance with the UNCITRAL Model Law on Cross-Border Insolvency. Other model laws, such as the Enterprise Group Insolvency Model Law and the Recognition and Enforcement of Insolvency-Related Judgements Model Law, have not been adopted.

Law stated - 10 September 2024

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors benefit from the same rights and remedies recognised by national foreigners in relation to liquidations and reorganisations.

Law stated - 10 September 2024

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

In the event of international insolvency proceedings, it would be possible to submit precautionary measures to safeguard the administration of the assets involved in the procedure.

Law stated - 10 September 2024

COMI

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

The insolvency law establishes that, for companies, the COMI is the social domicile or COMI of the debtor or the place where the administration of its interests is conducted on a regular basis, as accepted and recognised by third parties, while for individuals it is their main residence. On the other hand, the Dominican tax code stipulates that whenever a company's COMI or its main operational and management centre is located in the Dominican Republic, the company will be considered to be domiciled in the country.

Law stated - 10 September 2024

Cross-border cooperation

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

The insolvency legislation expressly provides for the cooperation and coordination between domestic and foreign courts and administrators in cross-border insolvencies and reorganisations proceedings.

For the recognition of foreign insolvency proceedings, the foreign representative must submit to the court:

- a request for the recognition of the foreign process, which must be accompanied by a certificate issued by the foreign court certifying the existence of the process and the designation of the foreign representative;
- a declaration indicating the information regarding all foreign processes opened against the debtor, which the foreign representative may be aware of; and
- the domicile of the debtor for notice purposes.

The approval of the request will have similar effects to a reorganisation request filed at the national courts, especially in relation to the stay of proceedings.

We are not aware of any refusal of the recognition of foreign proceedings or to cooperate with foreign courts for insolvency matters, as Dominican insolvency law is fairly new.

Law stated - 10 September 2024

Cross-border insolvency protocols and joint court hearings

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

The insolvency legislation conceives the possibility of simultaneous insolvency proceedings in the national and foreign courts. We are not aware of any joint hearings with courts in other countries in cross-border cases, as Dominican insolvency law is fairly new.

Law stated - 10 September 2024

Winding-up of foreign companies
What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

The Dominican courts do not have jurisdiction to order the winding-up of foreign companies doing business in the Dominican Republic that are not domiciled in the Dominican Republic or registered in the Mercantile Registry and the Tax Authority. However, a foreign company registered in the Dominican Republic or any of its creditors may file a reorganisation or judicial liquidation request of the Dominican branch and cross-border insolvency regulation will apply for this non-principal procedure.

Law stated - 10 September 2024

QUICK REFERENCE

Summary of law and procedure
Applicable insolvency law, reorganisations and liquidations

Law No. 141-15 on Restructuring and Liquidation of Companies and Business Persons, along with Decree No. 20-17.

Law stated - 10 September 2024

Summary of law and procedure
Customary kinds of security devices on immovables

Mortgages and privileges.

Law stated - 10 September 2024

Summary of law and procedure
Customary kinds of security devices on movables

Chattel pledges, both ordinary and non-possessory.

Law stated - 10 September 2024

Summary of law and procedure
Stays of proceedings in reorganisations/liquidations

The stay in proceedings commences after the decision approving the reorganisation request becomes irrevocable and is overturned with the approval of the reorganisation plan or the initiation of the liquidation process.

Law stated - 10 September 2024

Summary of law and procedure
Duties of the insolvency administrator

Dispose only of the necessary assets for the ordinary course of business, under the supervision of the officers. Render accounts to the court.

Law stated - 10 September 2024

Summary of law and procedure
Set-off and post-filing credit

Set-off and netting of debts are allowed during the insolvency proceedings.

The court may authorise the debtor to obtain secured and unsecured loans or credits, as well as new securities.

Law stated - 10 September 2024

Summary of law and procedure
Creditor claims and appeals

Most decisions rendered during the proceedings may be appealed.

Law stated - 10 September 2024

Summary of law and procedure
Priority claims

Credits originated after the commencement of the insolvency proceedings, when approved by the court, have a higher priority in relation to all other than those owed to the tax authorities, to the employees or originated by the insolvency proceedings.

Law stated - 10 September 2024

Summary of law and procedure
Major kinds of voidable transactions

Transactions involving the free transfer of assets or those entered into with related parties.

Law stated - 10 September 2024

Summary of law and procedure
Operating and financing during reorganisations

The debtor remains in possession of the business and may dispose of the necessary assets for the ordinary course of business, under the supervision of the conciliator.

The court may authorise new financing.

Law stated - 10 September 2024

Summary of law and procedure
International cooperation and communication

Cooperation and coordination between domestic and foreign courts and administrators is conceived in Dominican legislation.

Law stated - 10 September 2024

Summary of law and procedure
Liabilities of directors and officers

Cooperation and coordination between domestic and foreign courts and administrators is conceived in Dominican legislation.

Law stated - 10 September 2024

Summary of law and procedure
Pending legislation

Officers are subject to administrative sanctions and are responsible civilly and criminally for their own acts, as well as for the acts of their expert advisers.

Corporate officers and directors may be liable for labour claims and tax claims, as well as criminal claims.

Law stated - 10 September 2024

UPDATE AND TRENDS

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Since the adoption of Law No. 141-15 on Restructuring and Liquidation of Companies and Business P
ersons (Law No. 141-15), the courts have developed important criteria regarding several interesting topics, such as the payment of officers' fees and processing expenses. An important precedent has been established in relation to the capability of the insolvency jurisdiction as a specialised jurisdiction to suspend decisions rendered by other courts during the insolvency proceeding whenever such decisions affect the assets of the debtor. Furthermore, the courts have settled legislation contradictions with the insolvency statute, such as the abbreviated foreclosure procedure provided by Law 189-11 on trusts, regarding the effects of the insolvency law and the scope of the stay of proceedings conceived by it.

Some current hot topics in the area of insolvency and restructuring law are addressed below.

Conflict between legal instruments solved by courts in relation to the stay of proceedings, the suspension of adjudication decisions in foreclosure procedures and the jurisdiction of labour courts

In the context of restructuring proceedings involving Transporte Duluc (Tradulca), SA; Servicios Petroleros, SA; and AMG, SA, the trustee filed a claim for the return of trucks seized by a creditor after the commencement of restructuring proceedings. The court rejected the claim, citing a discrepancy between the law and application norms regarding the commencement of the stay of proceedings. While the law stipulates an automatic stay upon filing a restructuring request, application norms clarify that the stay takes effect upon the publication of the resolution. The court, aligning with international doctrine, ruled in favour of the application norms. Given the widely recognised and indisputable limitations of the court's capabilities, including the severely constrained personnel and resources, as well as the significant workload and bureaucratic procedures in place for compliance with these publication requirements, we acknowledge that applying this criterion is risky and we prefer adherence to the law to ensure automatic implementation of the stay of proceedings, to provide legal certainty and protect the restructuring process's integrity.

Additionally, there has been a lot of discussion around the conflicting legal provisions from Law No. 141-15 and Trust Law 189-11, specifically in relation to the application of the stay of proceedings in foreclosure procedures initiated prior to restructuring requests. There are two main cases to refer to here where the court has applied different criteria. In the first case involving Transporte Duluc (Tradulca), SA; Servicios Petroleros, SA; and AMG, SA, a secured creditor pursued a foreclosure under Trust Law 189-11 despite the mandated stay of proceedings under Law No. 141-15. The Court of Appeals upheld the insolvency court's decision, emphasising the jurisdictional unity of insolvency courts and asserting the supremacy of insolvency law over trust law. The Court of Appeals clarified that the stay of proceedings was mandatory from the moment of restructuring request acceptance, regardless that the foreclosure was initiated beforehand. In a contrasting scenario with 33

Renova Expert SRL, the Supreme Court's decision rejected the appeal against the foreclosure approval, asserting that the stay of proceedings outlined in Law No. 141-15 only becomes mandatory when explicitly ordered by the restructuring court.

The different rulings have sparked inquiries into the applicable criteria. The ***Tradulca*** restructuring case was initiated in the initial phase of the foreclosure process, where the secured creditor was actively participating and there was an explicit court declaration of the stay of proceedings upon accepting the restructuring request. Conversely, in the ***Renova*** case, the foreclosure process was well underway when the restructuring request was submitted. Notably, the stay of proceedings was claimed post-appointment by the liquidator and was not previously ordered by the restructuring court. Additionally, while both cases began due to creditors' requests, ***Tradulca*** featured uncontested restructuring and voluntary debtor participation and adherence to the proceeding with affiliated companies, whereas ***Renova*** involved debtor contestation, appeals against creditor claims and a lack of voluntary restructuring involvement by the creditor. These differing debtor responses, coupled with the cases' unique circumstances, influenced the legitimacy and necessity of enforcing mandatory stays. This nuanced approach, driven by individual case circumstances, highlights the evident effects of article 54 of Law No. 141-15 on foreclosure proceedings, showcasing that the application of the stay of proceedings hinges on the specific phase of the foreclosure process at the time of restructuring request acceptance. The anticipated Supreme Court decision on ***Tradulca*** is awaited to confirm the Court of Appeals' criteria and potentially provide further differentiation between the two cases.

Exclusive jurisdiction of the restructuring court affecting the assets of the debtor

In its decision No. SCJ-TS-22-1251 dated 16 December 2022, the Supreme Court of Justice addressed a crucial matter concerning the conflict between Law No. 141-15 and the Labour Code, providing a resolution based on the principle of ***lex posterior derogat priori***, which essentially means that later laws repeal earlier ones. The Supreme Court of Justice emphasised that, according to this principle, the most recent law (in this case, Law No. 141-15) implicitly and partially transferred jurisdiction from the labour court, acting as the referee judge, to the First Instance Restructuring and Liquidation Court to handle requests for conservatory or precautionary measures involving the assets of an employer, once a restructuring request is submitted. As a result, the Supreme Court revoked a decision enacted by the President of the Court of Appeals in Labour Matters, which had ordered conservatory and precautionary measures over the assets of the employer. This revocation was based on the lack of jurisdiction of this court to render a decision of this nature, considering that the employer in question was under a restructuring procedure as per Law No. 141-15. This important decision establishes a clear precedence regarding the exclusive jurisdiction of the restructuring court to handle precautionary and conservative measures related to assets of the debtor, even in labour claims.

Non-appeal of decisions of preliminary dismissals of restructuring requests

The Supreme Court of Justice has confirmed the decisions of the courts of first instance and courts of appeal regarding the impossibility of appealing the preliminary dismissal of restructuring requests, as these decisions are considered to have an administrative nature. Since the preliminary dismissal decision is rendered as a purely administrative

verification, the applicant can resubmit their request after addressing or completing the essential requirements specified in articles 29 and 31 and subsequent articles of the Law.

Challenges of restructurings through trusts

One major challenge arises when the debtor restructuring is carried out through the incorporation of a trust, as the existing law lacks specific procedures to safeguard creditors' rights, adhere to legal principles and ensure transparency and efficiency. Only one restructuring through a trust, the ***Arconim*** case, has been approved. The tax authority has posed obstacles to trust incorporation and the execution of trustee-approved sales, including non-essential real estate, citing concerns about the trustee's authority and causing delays in trust incorporation. In response, the trustee filed an injunction claim, leading to a court decision in September 2023 ordering the tax authority to register the trust for Arconim Constructora, SA; issue the necessary tax identification number; and remove hindrances conflicting with the restructuring plan, the law's purpose and the principle of non-double taxation. The court's decision, establishing a precedent on non-double taxation, highlighted the illogical requirement of transferring already sold assets to the newly incorporated trust. The case underscores the need to modify Law No. 141-15 or issue specific regulations for reorganisation trust incorporation to avoid discretionary actions by the tax authority that may violate the principles of the law.

Requirements for creditors to file restructuring requests against debtors

Creditors holding credits equivalent to at least 50 minimum monthly wages (approximately US$13,550) are granted the right to file a restructuring request against a debtor based on specific circumstances outlined in article 29 of Law No. 141-15. Recently, a group of creditors filed a restructuring request against Promotora Los Navarros, SRL, citing the debtor's failure to comply with the construction and delivery of a commercial plaza. The request aimed to suspend the foreclosure of property where the plaza was supposed to be built to allow completion of the project. However, the Restructuring Court dismissed the request, asserting that the creditor's claims did not meet the criteria of being liquid and enforceable, as they were seeking the execution of a contract and not the reorganisation of the company. Also, the court rejected claims filed by a creditor based on payment notices made by other creditors that were not part of the claim. The decisions established crucial criteria for creditors filing restructuring requests and prevent the misuse of insolvency regulations to arbitrarily suspend foreclosure proceedings, addressing concerns related to Law No. 141-15.

Dismissal of liquidation requests

One significant challenge in the Dominican Republic's insolvency landscape is the rejection of liquidation claims filed by debtors under Law No. 141-15. The Court of First Instance on Restructuring tends to dismiss such petitions when a debtor's assets are deemed insufficient to cover their debts, suggesting alternative, ostensibly less costly procedures like voluntary liquidation under Company Law 479-08. However, this overlooks the inadequacy of the voluntary liquidation procedure when a company's assets cannot satisfy all creditors, contrary to the specific design of Law No. 141-15 to handle insolvency cases. An appeal has been submitted to address this, awaiting the Court of Appeals' decision, which is expected

to provide crucial clarification on the matter, potentially shaping the future of insolvency procedures in the country.

In conclusion, the application of Law No. 141-15 faces various challenges, including conflicts between laws, resistance from specialised courts and the absence of specific regulations for certain procedures like restructuring through trusts. Efforts are underway to address these issues, with the Dominican Federation of Chambers of Commerce actively working on a bill to modify the rules of Law No. 141-15, particularly focusing on articles related to officers' fees. The Federation, through its Observatory of Mercantile Restructuring, is collaborating with the judiciary and restructuring courts to improve the law and provide training to judges, recognising that the legal system is evolving to adapt to the challenges and enhance the effectiveness of insolvency proceedings in the Dominican Republic.

Law stated - 10 September 2024