



# Real Estate

in 31 jurisdictions worldwide

Contributing editor: Sheri P Chromow

# 2009



**Published by  
GETTING THE DEAL THROUGH  
in association with:**

Advokatfirman Glimstedt  
Advokatska Kancelarija Bogdanovic  
Arzinger & Partners Law Firm  
Bin Shabib & Associates LLP  
Brandão Teixeira, Ricardo e Foz Advogados  
Carnelutti Studio Legale Associato  
CHSH Cerha Hempel Spiegelfeld Hlawati  
CHSH Gilesco & Partenerii SCA  
CHSH Šiška & Partners  
Delchev & Partners  
Divjak, Topic & Bahtijarevic  
Drakopoulos Law Firm  
Eversheds Saladžius  
Fangda Partners  
González Calvillo SC  
Headrick Rizik Alvarez & Fernández  
Henrique Abecasis, Andresen Guimarães,  
Pedro Guerra & Álvaro Roquette  
Morais Sociedade de Advogados RL  
Katten Muchin Rosenman LLP  
Law Chambers Nicos Papacleovoulou  
Luthra & Luthra Law Offices  
Mamo TCV  
Mizrachi, Davarro & Urriola  
Nagashima Ohno & Tsunematsu  
Orrick Rambaud Martel  
Paksoy  
Reed Smith  
Rödl & Partner  
Russell Kennedy  
Schellenberg Wittmer  
Simont Braun

# Dominican Republic

Sarah De León Perelló and Carolina Silié

Headrick Rizik Alvarez & Fernández

---

## Acquisition of real estate

### 1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Due to its history, the Dominican Republic follows a civil law system predominantly based on the French Codes drafted during the reign of Napoleon in France. Consequently, Dominican statutory law is primarily codified in the Civil, Commercial, Civil Procedure and Penal Codes, sometimes referred to as the Napoleon Codes. In light of the connection to the French legal system, Dominican judges are generally influenced by French case law and their interpretation of the Napoleon Codes. Nonetheless, some more recent statutes have departed from the French legal system influence (for example the Criminal Procedure Code).

However, the Dominican real estate property system is based on the Torrens System, which originated in Australia (common law). In this system, recorded real estate property rights are binding and enforceable against all third parties once said rights have been recorded, and provides that the person who records first has priority. Therefore, the Dominican real estate property system can be assimilated to a record-notice jurisdiction.

Dominican courts do not rule in equity. The Dominican legal system acknowledges the possibility of obtaining either mandatory or prohibitive injunctions as equitable remedies to prevent unlawful actions or for the execution of certain types of contracts and obligations. An example of this remedy applicable for real estate property matters would be the possibility of obtaining provisional measures before the land court, aimed at preventing an eventual damage or eliminating any illegal or excessive disturbance. Parol or oral evidence is admissible.

Some oral agreements are expressly recognised by Dominican law; such is the case of leases, labour contracts and mandates. However, the Dominican Civil Code establishes that all agreements that exceed 30 Dominican pesos (approximately US\$0.75) must be in writing in order to be admitted as evidence. In real estate transactions, statutory law states that all agreements must be in writing, in order to serve as notice to all third parties.

### 2 Recording conveyance documents

What are the legal requirements for recording conveyance documents?

Conveyance documents must be filed at the title registrar office that has jurisdiction over the property. In order to record a conveyance, the following documents are required:

- conveyance document, which must be drafted in accordance with Dominican Real Estate Law (Law No. 108-05);
- original title certificate, in order for it to be cancelled and substituted by a new title certificate to be issued in favour of new owner by the Title Registrar Office;

- evidence of tax payments related to the real estate property;
- payment of real estate transfer taxes (3 per cent of the price set forth in the agreement or the appraisal made by Dominican tax authorities, whichever one is higher) – these fees are paid by the purchaser, unless agreed otherwise; and
- copy of the identity card or passport of the parties, or taxpayer card, if a legal entity.

---

### 3 Foreign investors

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

In accordance with article 3 of the Dominican Civil Code, real estate properties, even if owned by foreigners, are subject to Dominican law. Likewise, foreign nationals do not have any restrictions in the acquisition or leasing of real estate property.

Any entity that does business in Dominican territory, including owning real estate property, whether foreign or Dominican, must register in the Mercantile Registry that is kept by the local chamber of commerce and production in the place the company has its main domicile and will have to register in the National Taxpayers Registry. Likewise, the individual or entity must pay applicable annual taxes on the real estate property, and, in accordance with its operations in the country, file the appropriate income and other tax returns as may be applicable.

---

### 4 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues? What about return of capital?

There are no exchange control issues in the jurisdiction, and Dominican law grants foreign investors the possibility of exchanging profits generated by their direct investments in hard currency and transferring said funds abroad. The exchange regime is based on free convertibility of local currency with other foreign currency, and thus, monetary operations are carried out under free market conditions. All economic agents may perform transactions in foreign currency.

Please note that the Anti-Money Laundering Law No. 72-023 of 7 July 2002 establishes penalties of imprisonment and fines on any person, national or foreigner, who at the moment of entering or leaving the country by air, by sea or by land, holds cash, bearer bonds or bearer instruments, or sends them by public or private mail, in excess of US\$10,000 or its equivalent in any other currency, without properly disclosing such information to the competent officers or on the forms prepared for such purposes.

**5 Legal liability**

What types of liability does an owner of real estate face? Is there a standard of strict liability and can there be liability to subsequent owners? What about tort liability?

Liability regime in the Dominican Republic is divided in two main systems: contractual and extra-contractual liability. Under this latter liability system, article 1,384 of Dominican Civil Code foresees a legal presumption of liability against custodians of both moveables and immovable objects under their care, provided the damages are caused by the said object. Under said legal provisions, third parties may seek damages from real estate property owners, including environmental damage. Owners are presumed as custodians in the absence of evidence to the contrary. Custodians are defined by doctrine and case law as the party entitled to use, control and management of the possession that causes the damage. In addition, article 1,386 of the Civil Code sets forth the basis for liability for the owner of any type of building in case of damages due to its ruin. Finally, as set forth by Environmental Law No. 64-00, a strict liability regime is enforceable against any person who causes damages to the environment or natural resources.

**6 Protection against liability**

How can owners protect themselves from liability and what types of insurance can they obtain?

The Dominican legal system provides a broad liability regime, and consequently, there are no risk-free structures that allow a total limitation of owner's liability. However, Law No. 146-02 on Insurance and Bonds enables the possibility of obtaining insurance against property damage, including damages caused by natural catastrophes, and third-party damages claims, limited to the coverage amount as indicated in the policy.

**7 Choice of law**

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction?

Dominican real estate property law states that Dominican courts have exclusive jurisdiction to hear cases concerning real property matters. This provision is a matter of public policy and may not be amended by the parties.

Local law explicitly allows the parties to state the law under which the contract will be interpreted, except for cases in which public policy prohibits it. It should be noted that courts in the Dominican Republic would most likely follow the principle of 'locus regit actum' under which conventions will be subject to the law of the place they were executed. However, in respect to the merits of the agreements and the obligations executed by the parties, these shall be judged applying the choice of law elected by the parties.

**8 Subject-matter jurisdiction**

Does subject matter jurisdiction exist? Who are necessary parties? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

Dominican procedure law recognises the explicit authority attributed to courts to hear cases presented before them, depending on the subject matter at hand. All matters that are not explicitly attributed to a specific court are heard before the civil and commercial chambers of the courts of first instance located subject to rules of territorial jurisdiction. Likewise, Dominican law attributes certain matters to courts specially designed for the matter; such is the case of real prop-

erty matters that are heard by the land courts of the territory where the property is located.

For any legal action to be valid, Dominican courts requires that each party be properly identified.

Service by bailiff acts prevails in connection with service of process. In cases of out-of-jurisdiction service of process, there is a special procedure carried out through the district attorney's office of the competent ruling court. This process is carried out by delivering the service through official correspondence to the Ministry of Foreign Affairs, which then delivers the service through official correspondence to the Dominican consulate closest to the intended person's domicile or address, which finally delivers the service to the person.

Foreigners are not required to be qualified to do business in the jurisdiction in order to enforce legal remedies in the Dominican Republic. However, a foreign natural or juridical person acting as principal plaintiff or voluntary intervenient in any matter before any Dominican court may be required to present a litigation bond, known as the *judicatum solvi* bond, as guarantee that any costs or damages resulting from the legal action brought by them will be covered, except if it has legal domicile in the country or owns real estate property in the Dominican Republic whose value is sufficient to cover the legal costs and possible damage awards that may result from litigation. This bond has been discarded in some statutes, such as real estate law, and some lower courts have discarded this motion.

**9 Investment entities**

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Investment entities generally do business either via a local Dominican stock company or branch of an offshore or foreign entity. There are no pass-through entities for tax purposes, as all for profit, business associations of two or more parties, regardless of its form, are taxed in the same fashion as a company.

A Dominican stock company ultimately best shields owners from liability, as it is the only corporate vehicle that affords limited liability to all shareholders in Dominican law. Another option, as a means of risk control management, is to incorporate an offshore subsidiary, and establish a branch of the same in the Dominican Republic.

**10 Foreign investors**

What form of entities do foreign investors customarily use in your jurisdiction?

Foreign investors customarily either do business via the incorporation of a Dominican stock company or via the establishment of a local branch of an offshore affiliate or subsidiary.

**11 Organisational formalities**

What are the organisational formalities of creating the above entities? What requirements does your jurisdiction impose on a foreign entity? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

The process for incorporating a Dominican stock company mainly entails the following steps:

- registration before the National Office of Industrial Property of the trade name;
- payment of taxes over company's authorised capital;
- drafting and execution of the incorporation documents;
- registration of the company before the Mercantile Registry; and
- company registration with the National Taxpayer's Registry.

For foreign companies, registration at the Mercantile Registry and the Taxpayer's Registry must be carried out. In addition, Dominican law provides for the possibility of a foreign company or entity of establishing a legal domicile in Dominican territory, via the issuance of a presidential decree.

In general terms, Dominican and foreign companies receive very similar treatment under Dominican tax law, provided the foreign entity has a permanent establishment in the country in which case, for income tax purposes, will be subject to the same corporate tax rate as local corporations or business associations, which is 25 per cent, and income taxes will be levied upon net income, instead of upon gross income.

If a foreign company does not qualify as permanent establishment, its income will be subject to withholding tax of the gross amount paid abroad. In this vein, taxable income of Dominican source other than dividends, or interest of Dominican source paid to financial institutions located abroad from the Dominican Republic, is subject to a 25 per cent withholding tax in the hands of the payer.

All local and foreign individuals or corporations or business associations must pay taxes on their income generated from a Dominican source, and fiscal laws are territorial and of public policy.

## 12 Documentation

Does your jurisdiction or customs recognise a non-binding form of agreement? Is there a form of non-binding agreement before a contract? Is it customary to take the property off the market while negotiation of a contract is ongoing?

Our jurisdiction recognises non-binding forms of agreement such as letters of intent, though the same are not expressly regulated. However, under Dominican law, when the parties have agreed upon the price and object of the sale, it is construed as the sale having taken place, therefore letters of intent or any other type of precontracts have to expressly state that consent to the sale has not been granted yet. There is no form of non-binding agreement before a contract.

In addition, while in negotiations, it is customary to take the property off the market, in which case normally the parties execute a promise to sell and put option agreement, and the potential buyer makes a deposit. This deposit would be credited to the price if the sale takes place. Unless the parties agree otherwise, if the seller decides not to go through with the sale, it would have to pay a penalty that would be equal to double the amount deposited by the potential purchaser; and if potential purchaser decides to not to go through with the purchase, the seller may retain the deposit as a penalty.

Real estate law has also incorporated a new concept, the 'certification with priority reserve', whereby during 15 days upon its issuance date, the Real Estate Registrar would not accept any transaction that would modify the legal status of the real estate, as described in said certification, other than the one that originated the priority reserve.

## 13 Contract of sale

What are typical provisions in a contract of sale?

First of all, real estate purchase and sale agreements must include the agreed purchase price and a description of the real estate property, as well as the description of the parties. Other mandatory formalities are set forth in real estate law.

Regarding other customary provisions, they include following:

- method of payment of the purchase price and any conditions on the payment of same;
- representations and warranties;
- legal guarantees with respect to hidden vices and eviction;
- tax payments and expenses connected with the sale;
- delivery of the real estate property;

- notices; and
- seller's lien in case the price is not paid in full when the agreement is executed.

With regards to down payment, this may vary on a case-by-case basis, but a range of 15 to 50 per cent of the total purchase price is customary. Though escrows are not regulated in the jurisdiction, escrow agreements are also used, mainly with foreign clients.

As for the documents to secure good title to the property, the following, among others may be required: title certificate or deeds, agreements, authorisations, surveys, tax certifications, appraisals; certification of the existence of liens and encumbrances, certification stating if there is a pending litigation involving the property and certification of historical track of the land.

Finally, typically representations and warranties are given thought not required under our law to be obliged to sell in good title. Some typical representations and warranties are the following:

- the seller has all legal rights with respect the property and good title, and the same is free of any liens and encumbrances;
- the property has not been leased, given as put option, pre-emption right, in use or occupied, whether legally or not, by any third party;
- the seller is up to date in any and all tax payments in connection to the property;
- there are no claims or litigation pertaining the property or that may affect the same; and
- that seller is up to date with payment of condominium quotas, telephone, waste collection, electricity, water, etc, if applicable.

## 14 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

Future environmental clean-up liability is assumed by purchaser, since unless otherwise agreed; the sale entails transmission of environmental liability. Long-term environmental liability and indemnity clauses are common in real estate agreements, especially when financing is involved. As for typical general covenants, it is customary to obtain all the environmental permits and licences, as well as maintenance of environmental conditions.

Unless otherwise agreed, the purchaser must pay all expenses related to the sale and transfer tax of the property. Unless otherwise agreed upon, with the perfection of the sale, the risks of loss pass to buyer. In the event of breach of contract, the remedy shall vary depending on the matter, but namely involve the possibility of rescinding the agreement or seeking for specific performance or seeking damages (or both).

## 15 Leases

What are typical representations and covenants regarding leases?

Do they cover brokerage agreements and do they survive closing? Are estoppel certificates customarily required and can estoppel certificates substitute for representations?

Although ordinary Dominican lease agreements do not contain representations, some typical representations and covenants provided in the jurisdiction for leases agreements include:

- assurance that there is no pending litigation that will affect the property;
- peaceful and exclusive use and enjoyment; and
- the specific authorised use by lessee of the property.

Prohibiting the sublease of the property is commonly included as a covenant, since otherwise it would be permitted.

Ordinarily representations and covenants do not include brokerage agreements, but they are part of local leasing transactions. The jurisdiction does not encompass estoppel certificates.

#### 16 Leases and mortgages

Is a lease generally subordinate to a mortgage pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a mortgage upon foreclosure? Do lenders typically require subordination and non-disturbance agreements?

A lease is not subordinate to a mortgage pursuant to the provisions of the lease, unless the lease was recorded at the Title Registrar Office before the mortgage.

In this vein, awarding judgments in cases of mortgage foreclosures only transfer property rights in favour of creditors, but lease rights are not enforceable by lessee with regard to the creditor, unless the lease has been registered at the Title Registrar Office. However, when the lease was registered prior to mortgages, said lease will be considered superior in priority to the mortgage, and thus, the lessee's rights are enforceable and binding upon the mortgagee's creditors. In cases where the lease registration is made after mortgage recordation and without creditor's consent, the law allows mortgage creditors to seek the annulment of the lease, if, in cases of contractual mortgages, said leases exceed mortgage term, and in legal or judicial mortgages, if they exceed a one-year term, starting from the date the lease was recorded.

#### 17 Delivery of security deposits

What steps are taken to ensure delivery of security deposits to a buyer? How common is it to get a security deposit under a lease? Do leases customarily have periodic rent resets?

In the Dominican Republic, security deposits are mainly regulated for leases in accordance with Decree No. 4,314 and its subsequent amendments, which foresees a cash deposit by the lessee of the equivalent of one month's rent for one-year term lease agreements, two months' rent for one-and-a-half to two-year term agreements and three months' rent for three or more years' term. For house renting, said regulation requires only one month's rent as a security deposit. Security deposits must be filed at the Banco Agrícola de la República Dominicana, a government entity.

#### 18 Due diligence

What is the typical method of a title search and is it customary to order searches? Is there something akin to title insurance and opinion letters? Does your jurisdiction provide statutory priority for recorded instruments?

As part of the legal due diligence, title searches are made in order to verify the status of a real estate property. These searches are customary. To this end, the buyer requests delivery of certifications of liens and encumbrances by the corresponding Title Registrar's Office, and real estate litigation certifications and historical track (historical real estate status certifications) issued at the competent land court.

There are title insurance companies in the jurisdiction (basically branches or subsidiaries of US title insurers), and whose services are not regulated locally. As for opinion letters, they are not customarily part of ordinary real estate transactions but they are usually requested in transactions involving international financing.

Our jurisdiction follows the principle 'first in time, first with rights', and provides for preeminence of any given right based on the date of its recording.

#### 19 Reviews

Is it customary to arrange an engineering or an environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

Depending on the type of transaction, it is customary to arrange for engineering and environmental reviews, as well as surveys. Engineering reviews are basically aimed at verifying the conditions of the plot and surface and subsurface conditions, as well as verifying the structure.

Environmental reviews are aimed at verifying compliance with environmental regulation, and the existence of any issue that may affect the project from an environmental point of view. Representations and indemnities are customary when dealing with environmental and construction liabilities. Environmental insurance is available.

#### 20 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Leases are commonly reviewed by lawyers. The lease issues that one would point to a client shall vary, but customarily the following issues are highlighted: price and lease instalment, security deposit, authorised use of the property, lease term and renewal conditions, improvements, insurance, taxes and expenses, and sublease prohibitions.

Property management agreements are commonly used in the jurisdiction to manage condominium units, hotel or tourist projects.

#### 21 Other agreements

What other agreements does a lawyer customarily review?

Lawyers normally review all agreements in connection to the transaction, including but not limited to brokerage agreements, service contracts, construction agreements, financing agreements, option to purchase agreements, condominium deeds, leases, mortgages, etc.

#### 22 Closing

How does a lawyer customarily prepare for a closing?

Deliverables for real estate property acquisition in the Dominican Republic often entail the following but may vary depending on the type of transaction:

- delivery of title certificate or deed;
- evidence of tax payments concerning the property (see answer to question 2);
- evidence of basic service payments and condominium maintenance in the case of condominium units;
- relevant corporate documentation and authorisations; and
- evidence of price payments as set forth in executed agreement.

### Financing

#### 23 Form of lien

What is the method of creating and perfecting liens?

The main types of security for business loans are the real estate mortgage, the commercial pledge of securities, and the pledge without dis-possession, similar to the chattel mortgage. Accounts receivable can also be pledged, but the practice is restricted to large single accounts on account of the need to notify the account debtor by a document served by a bailiff.

Real estate mortgage agreements must be signed in the Dominican Republic (as documents executed abroad do not give rise to a mortgage) and filed before the corresponding Title Registrar Office corresponding to the location of the real estate property.



Security in personal property is mainly granted via a commercial pledge, which is available for bonds, shares of stock, certificates of deposit and similar papers. Pledges over negotiable instruments are normally affected via endorsement. Pledges over stock vary depending on whether stock is registered to the order or in bearer form, and the requirements set forth in the company's by-laws. Both civil and commercial pledges require the dispossession of the pledged collateral.

Non-possessory pledges virtually cover all sorts of moveable assets, including industrial machinery and motor vehicles. In order to perfect the same, the agreement must be signed in the presence of a notary public or justice of the peace and placed on record at the office of the justice of the peace in the debtor's domicile, except in the case of motor vehicles, where the document must also be recorded at the Department of Motor Vehicles and recorded on the title.

#### 24 Legal requirements

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

Lenders from another jurisdiction making loan secured by collateral in the Dominican Republic do not have to qualify to do business in our jurisdiction provided its operations are managed abroad. However, local taxes are applicable whenever Dominican source income is generated, and interest on a local loan is considered as such. Foreign financial institutions that do not have a permanent establishment for tax purposes are subject to 10 per cent withholding tax over interest payments.

Lien documents are drafted as an agreement or a unilateral granting of lien, with signatures legalised before a notary public, and its form varies depending on the type of lien.

Cost for recordation of a mortgage entails payment of recording taxes amount to 2 per cent of the secured amount. Mortgage is assignable, and this same tax (2 per cent) must be paid to record the existing mortgage in the name of the new mortgagee.

#### 25 Interest

Is interest charged on a spread over LIBOR, Euribor or an equivalent? What rate of interest is unreasonably high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?

International transactions customarily refer to LIBOR or Euribor rates. However, local loans will usually refer to the financing entity's standard rate or market rate for that type of loan.

In the Dominican Republic, there is no definition as to what would be considered as an unreasonably high rate of interest. Since the enactment of the current Monetary and Financial Law, there is no limit to interest on consumer credit, loans or other kinds of receivables. Nonetheless, the Regulation for the Protection of Users of Financial Services condemns abusive clauses in agreements entered into with regulated financial institutions.

#### 26 Enforcement

How are remedies enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding?

The enforcement of remedies is ordinarily carried out through judicial procedures. These procedures commonly require that the plaintiff file a principal action for recovery of the amounts owed and secondary procedures seeking to secure the payment of the money owed, whether at the same or different as the case may be, in accordance with rules of jurisdiction. One action is not sufficient to realise

all types of collateral, as each type of collateral has its own specific enforcement procedure.

Foreclosure proceedings are filed before the civil chambers of the courts of first instance of the domicile of the debtor. As a matter of public policy, Dominican courts must carry out foreclosure procedures of properties located within the Dominican Republic.

Ordinary procedure for the foreclosure of a mortgage is extremely complicated and takes approximately six to 12 months, provided no dilatory motions are filed, but there is also an abbreviated mortgage procedure set forth in Law No. 6,186 of 1963, and applicable to all financial institutions. The procedure begins with the service of a demand for payment, and, following other procedural actions, ends where there are no other bidders, at which point the real estate property is adjudicated to the mortgagee for the first bid price. The mortgagee then applies for recordation of the judgment of adjudication at the corresponding Title Registrar's Office.

The procedure for foreclosure of non-possessory pledges and ordinary commercial pledges is extrajudicial, and rather fast, and ordinarily takes approximately six to nine months for a non-possessory pledge, and two months for ordinary commercial pledge.

#### 27 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

Mortgages and pledges without dispossession are the only types of lien that do not imply dispossession, as ordinary pledges entail that collateral is surrendered to pledgee. Upon commencement, and during the foreclosure proceedings, the mortgagor is considered the owner of the property and will be considered as such, until the property is sold through a public judicial bidding process to a third party or adjudicated to mortgagee. Once these foreclosure proceedings are initiated, there is a concept similar to receivership where creditors may request that real estate properties be declared under custody of a judicial administrator empowered to collect rents and profits obtained from such property.

#### 28 Recourse

Do the security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy filing?

Typically recourse is limited to the secured interest. Notwithstanding, recourse may be sought against a debtor for any deficiency after a foreclosure from its other assets, unless specifically waived by the creditor, which is not customary in local loans. In a bankruptcy filing, the creditor whose loan is secured by a mortgage or a pledge shall have privilege against unsecured creditors over its secured interest, and if any other amounts are due, will collect such amounts together with other creditors as an unsecured creditor.

#### 29 Cash management systems

Is it typical to require a cash management system and do lenders typically take reserves?

It is not typical to require cash management systems. A lender typically take reserves.

#### 30 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

Holdbacks are normally used in project finance transactions, and are released upon meeting the agreed milestones. Such guarantees are

**Update and trends**

The legal framework on real estate has been substantially modified upon the enactment on 23 March 2005 of Law No. 108-05 on Real Estate Registration, which sets forth a complete new set of procedural and administrative rules. Some of the changes include new rules for surveys, banning of transfer of non-surveyed portions of land, repeal of the *judicatum solvi* bond for foreign plaintiffs, change of some procedures from judicial to administrative such as condominium regime registration, lost title certificate and change of name of record holders which are legal entities, changes in title searches and certification on property status,

incorporation into law of a new concept, the ‘certification with priority reserve’, etc.

The Efficiency Collection Law, dated 17 July 2007, simplified and reduced several taxes applicable to real estate transactions.

Finally, there is a bill in Congress of the General Companies Law and limited liability sole proprietorships, which, if enacted, would significantly amend and update company law; that includes two new corporate vehicles: limited liability companies and sole proprietorship limited liability entities.

customarily provided, and thus enforceable, by executed agreements in connection with the transaction. The most common personal guarantee is the guarantee of payment.

financial reporting requirements, among others. It is common to require periodic appraisals.

**31 Covenants**

What are commonly used covenants in loan documents? What is the difference depending on asset classes?

Common covenants in loan documents are:

- obligations for comprehensive submission of financial statements – property operating statements and other financial reporting throughout the loan term;
- prohibition on additional indebtedness or on granting company’s asset as collateral;
- limitations on affecting a different business than the one currently undertaken by borrower without the lender’s consent, asset sales, dividend and other payment restrictions, on mergers and consolidations, guarantees and changing control;
- maintenance of collateral and insurance bonds;
- maintenance of corporate existence and properties;
- control of management, corporate governance; and
- assurance of legal existence and maintaining the identity of the going concern.

Covenants vary depending on the type of loan and security.

**32 Financial covenants**

What are typical financial covenants?

Typical financial covenants are based on loan-to-value ratios and may include debt service coverage ratio, interest coverage ratio and

**33 Bankruptcy**

Briefly describe the bankruptcy system in your jurisdiction?

The core provisions on bankruptcy are set forth in the Code of Commerce of the Dominican Republic, and this procedure is hardly used. Bankruptcy is only applicable to merchants (including companies) as there is no organised insolvency for non-merchants and no system of debtor relief or protection against overindebtedness. Some regulated entities such as insurance companies, financial institutions, pension funds, electricity distribution companies, etc, have their own specialised insolvency statutory regime.

Most of the rules set forth in said code deal with liquidation proceedings; there are no provisions regarding reorganisation, although a debt restructuring can be agreed upon in a preliminary hearing before the Chamber of Commerce, as set forth by Law No. 4,582 of 1956, which establishes a compulsory preliminary conciliation proceeding before the Chamber of Commerce, prior to instituting a bankruptcy proceeding against its debtor. Attempted bankruptcies often end at this stage. However, if an agreement is not reached through conciliation, an involuntary bankruptcy proceeding may be brought by unsecured creditors, or by secured creditors only with respect to unsecured portions of their claims, by means of a liquidation action through judicial proceedings. In order to do so, the creditor must prove that the debtor is insolvent. Once bankruptcy proceedings have begun, and a trustee and a receiver are appointed by the judge, there is another compulsory proceeding aimed at achieving an agreement between the debtor and his creditors and must be completed before the assets of the debtor can be liquidated.



**Sarah De León Perelló**

**sdeleon@hrafdom.com**

Torre Piantini, 6th Floor  
 Avenida Gustavo Mejía Ricart corner of Abraham Lincoln  
 Santo Domingo  
 Dominican Republic

Tel: +809 473 4500  
 Fax: +809 683 5936  
 www.hrafdom.com

If a formal bankruptcy is declared, preferential payments and transfers of assets, and the granting of security for antecedent debts, made by the debtor prior to bankruptcy, during the time he was insolvent, can be set aside. Further, upon commencement of preliminary conciliation, and subsequently, upon declaration of bankruptcy by a judge, all legal proceedings towards the enforcement of unsecured claims are stayed. These prohibitions do not apply with respect to secured claims.

---

**34 Secured assets**

What are the requirements of creation and perfection of a security interest? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

The creation of a security is evidenced in a security agreement, drafted in Spanish, and governed by Dominican laws, at least with

respect to the creation, perfection and enforcement of the security interest in question. Regarding registration and other perfection requirements, see question 23. Control agreements are not necessary to perfect a security interest, and the question is not applicable to our jurisdiction.

---

**35 Single-purpose entity (SPE)**

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy filing, has the concept been upheld?

Lenders do not require that each borrower be an SPE nor is it a part of the statutory regime of the jurisdiction. Moreover, the concept of an independent director of an SPE does not exist in our jurisdiction.