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in 52 jurisdictions worldwide

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Dominican Republic

Mary Fernández and Hipólito García

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1 Legislation

What legislation is applicable to insolvencies and reorganisations?
What criteria are applied in your country to determine if a debtor is insolvent?

The Code of Commerce contains the basic provisions on bankruptcy in the Dominican Republic. Such bankruptcy rules deal mainly with liquidation. They do not contemplate reorganisation, although a debt restructuring can be agreed upon a preliminary hearing before the Chamber of Commerce, as prescribed by Law No. 4,582 of 1956. Said law establishes a compulsory preliminary conciliation proceeding before the Chamber of Commerce, prior to a creditor being able to institute a bankruptcy proceeding against its debtor. Attempted bankruptcies often end at this stage. The Code of Commerce and Law No. 4,582 comprise the legislation applicable to bankruptcies in the Dominican Republic.

The criterion to determine if a debtor could be made subject to bankruptcy proceedings in the Dominican Republic revolves around the concept of ‘cessation in payments’ rather than considering a state of insolvency. Traditional French doctrine and jurisprudence considers that cessation in payments is a notion inherent to commercial law not to be confused with insolvency. An insolvent person is etymologically considered as a debtor that does not pay, but it is understood that such payment is defaulted by reason of said debtor’s liabilities being superior to its assets. On the contrary, a merchant or a commercial entity that discontinues payments may very well be solvent but refuse to make a payment, and therefore must be declared bankrupted. The number and importance of the debts owed are not established by law. The Dominican Republic’s Supreme Court of Justice has ruled in few occasions on these issues; however, it has determined that a cessation in payment is not constituted by a simple default towards one creditor within multiple commercial activities. It has also determined that a cessation in payments demands for the reunion of two elements: an external or formal element consisting on the suspension of payments; and a purely legal element consisting on the loss of credit.

2 Courts

What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

Bankruptcy procedures are brought before the Civil and Commercial Chamber of the Court of First Instance. However, prior to bringing the claim to court, the mandatory conciliation proceeding governed by Law No. 4,582, must take place before the Chamber of Commerce. Most attempted bankruptcy proceedings are settled at this stage and rarely do the proceedings ever escalate to the litigation stage.

3 Excluded entities and excluded assets

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

The bankruptcy provisions of the Code of Commerce relate only to merchants. They describe only the individual proprietor of a business. However, it is also possible to subject a company that is also a merchant to a bankruptcy proceeding in accordance with Dominican law. There is no organised insolvency for non-merchants and no system of debtor relief or protection against over-indebtedness.

There are special insolvency rules for financial institutions, which involve intervention by the Superintendency of Banks and a fund with which to support a bank in the interest of its depositors. There are also special rules for companies in the business of distributing electric power, insurance companies and pension funds. There are no rules governing the insolvency of state enterprises.

The Code of Commerce states that the following goods or assets must be secluded from the bankruptcy proceeding: clothing, dresses, pieces of furniture and personal belongings of the debtor and his family; assets which could be exposed to immediate damage or imminent depreciation; assets employed in the exploitation of the business establishment, when this exploitation cannot be interrupted without damage to the interest of creditors.

Additionally, Law No. 1,024 states that family property, once declared or converted as such is not attachable, even in cases of bankruptcy or liquidation. The family property may include dwelling, a portion of such, or any other type of housing, provided its ownership is duly registered.

4 Secured lending and credit (immoveables)

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

The principal type of security device on real property is the conventional mortgage. Mortgages are governed by the general provisions set forth in article 2,114 et al of the Dominican Civil Code and by the Real Property Registration Law, No. 108-05.

The Dominican Civil Code defines a mortgage as a right over real property that is attached to the fulfilment of an obligation.

5 Secured lending and credit (moveables)

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

The principal type of security device taken on moveable property under Dominican law is the non-possessory pledge. Similar to the chattel mortgage and originally intended for crops and agricultural equipment but later expanded to cover virtually all sorts of moveable assets, including industrial machinery and motor vehicles, this type of security is governed by the Agricultural Incentive Law No. 6,186.

In addition to the above, pledges – generally governed by the provisions set forth in the Civil Code, and for transactions involving merchants, by the provisions of the Code of Commerce – may be granted over virtually any type of personal property, particularly, intangibles such as stock, securities, account receivables and industrial property rights. When a pledge over tangible assets is granted under the provisions set forth in the aforementioned codes, the pledgor is not allowed to remain in possession of the asset.

6 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Before commencing any other action, or at any time during such proceedings, an unsecured creditor can seek from the judge, in an *ex parte* proceeding, an order attaching personal property owned by his or her debtor. This right is given by article 48 of the Code of Civil Procedure, as amended by Law No. 845 of 1978. Most judges are lenient in granting this authorisation. They base themselves primarily on the plaintiff's allegations, without demanding proof of the urgency or danger or questioning the *prima facie* validity of the claim, although the Supreme Court has repeatedly insisted that they must satisfy themselves on these scores. The claimant then asks a bailiff to serve a copy of that order on the debtor, in person or at his domicile. The bailiff seizes and removes assets of the debtor or obtains a commitment from the debtor or a third person that he or she will act as custodian of the assets that are listed on the bailiff's return. These assets are the security for the payment of the judgment, once it is handed down. After the assets have been attached, the claimant has 30 days in which to institute his or her action on the merits.

The claimant can also attach real property owned by the debtor in an *ex parte* pre-judgment proceeding pursuant to article 54 of the Code of Civil Procedure, except that, if the property is the debtor's declared homestead, in accordance with Law No. 1,024 of 1928, it may not be seized. To attach real property, the creditor applies to the judge for a provisional judicial lien, which is filed at the Land Registrar's Office, and then notifies the debtor within the next 15 days. After the case on the merits is heard, if the plaintiff is successful, the provisional judicial lien is converted into a definitive judicial lien, which the plaintiff can then foreclose in a separate proceeding.

Another possibility that the claimant may use is that of garnishing a debt owed to his debtor by a third party. This possibility is known as an *embargo retentivo*. For a garnishment, the creditor needs a judicial authorisation only if his claim is for an indeterminate amount, for example, as damages for a personal injury or a breach of contract. If he holds an instrument giving him a right against the debtor for the payment of a liquid sum, such as a promissory note, a dishonoured cheque, or an acknowledgment of the debt, then he need only join a copy of that instrument to the notice of garnishment that the bailiff serves on the third party. Typically, the third party is a bank in which the debtor has funds on deposit.

No special proceedings are available for foreign creditors; in principle they can rely on the same remedies available to local creditors. However, foreigners may be at a disadvantage when it comes to asserting their rights in Dominican courts by the need to post security to cover the attorneys' fees and court costs incurred by the defendant, as well as any damages for wrongful prosecution, in case the latter is successful. This requirement is set forth in article 16 of the Civil Code and articles 166 and 167 of the Code of Civil Procedure. The defendant can request the placement of this security at the inception of the suit. In practice, the demand is for a very large bond and the request is, to a large extent, usually granted. This means that the foreigner is placed in a dilemma to either freeze considerable assets or appeal against the amount of the bond, arguing that it is excessive, in which case his or her action will be stayed for a considerable time

until the amount of the bond is reset by the Court of Appeals. If it is lowered by any amount, the defendant, to gain time, can appeal to the Supreme Court. The need for foreigners to post security has thus become a means to prevent them from having their day in court. Waivers to the aforementioned litigation bond are valid, and furthermore, certain local courts in the Dominican Republic have declared the provisions of article 16 of the Civil Code, and articles 166 and 167 of the Civil Procedure Code, as unconstitutional and, therefore, null and void in the benefit of the claimant.

An exception to the need to post security for costs has been inserted in recent laws, passed during 2000, on copyright (Law No. 65-00) and industrial property (Law No. 20-00).

The requirement of a bond applies only to foreigners in transit, and thus cannot be required of a foreigner who is a permanent resident of the Dominican Republic, nor of a company that has obtained an authorisation to establish its 'domicile' in the country. The foregoing was strengthened recently upon enactment and entry into force of a new company law for the Dominican Republic (Law No. 479-08), according to which foreign companies are exempted from the obligations to place the litigation bond in question when acting as claimants before judicial or administrative courts of the Dominican Republic. The requirement of a litigation bond is also excluded by the Bustamante Code, to which the Dominican Republic is a party, but this exclusion is of no use to exporters from Japan, the US or western Europe who may have trade claims against their Dominican customers, nor to foreign tourists.

7 Voluntary liquidations

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

A debtor may attempt a voluntary liquidation of its business outside any court proceedings, if its assets suffice to honour any outstanding claims of the debtor; if such assets are insufficient, a debtor needs to start its voluntary liquidation through bankruptcy proceedings.

For purposes of the above, a debtor would pursue its liquidation amicably through the amicable settlement process governed by Law No. 4,582. If such attempt is unsuccessful, the liquidation must be brought to a judicial court under the bankruptcy provisions set forth in the Dominican Code of Commerce.

A debtor (necessarily a merchant) must file for its own bankruptcy declaration within three days following its general cessation of payment of debts, before the competent judicial court as per the debtor's domicile. The declaration of the debtor must be accompanied by a balance sheet of its businesses, or a manifestation of the motives that prevent the debtor from continuing such businesses. Such balance sheet must contain a list of all its assets and their value, the status of its claims and liabilities and its income and expenses, and must be signed by the debtor certifying the truthfulness of the information.

The bankruptcy declaration has no effect for secured creditors of the debtor, except that interest payable under such secured claims may only be collected from the security interest granted for the benefit of such claim. Except for interest, secured creditors may benefit from bankruptcy proceedings with respect to unsecured portions of their claims. Only actions towards establishing liens or seizing property by unsecured creditors are stayed upon declaration of bankruptcy of the debtor; interest on unsecured claims stops accruing, and all indebtedness of the debtor becomes due through acceleration. Also, a debtor is removed from the administration of its business or assets.

8 Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

After attempting the amicable settlement process governed by Law No. 4,582, only unsecured creditors may bring the liquidation action

through judicial proceedings. Basically, a creditor with such interest is required to provide proof of the insolvency of the debtor or its general cessation of payment of debts.

The effects of the involuntary liquidation proceedings are the same as the ones for a voluntary liquidation process.

9 Voluntary reorganisations

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

There are no provisions in the Code of Commerce or any other law that provides for the reorganisation of a bankrupt business. However, nothing precludes the debtor from seeking such reorganisation in a private fashion with the agreement of all his creditors. The amicable settlement process governed by Law No. 4,582 may also be commenced in combination with such reorganisation efforts.

10 Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

See question 9.

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result?

According to article 437 of the Dominican Code of Commerce, a debtor in general cessation of payment of debts is compelled to file its bankruptcy within three days following such event. Failure to do so may give rise to criminal prosecution (simple bankruptcy) subject to imprisonment of between 15 days and one year.

12 Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? 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?

See question 9; no general provisions are currently available in the Dominican Republic governing reorganisation of failed businesses.

13 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?

Upon commencement of the amicable settlement process under Law No. 4,582, and then upon the declaration of bankruptcy by a judge, all legal proceedings towards the enforcement of unsecured claims are stayed. These prohibitions do not apply for secured claims.

14 Post-filing credit

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

The debtor undergoing a liquidation proceeding cannot contract any further obligations. However, the liquidation administrator may incur in further debt towards the continuation of a bankrupt business in the interest of unsecured creditors. French doctrine, to which local

judges and attorneys resort, sustains that these new debts will have a higher priority in relation to other unsecured claims of the debtor.

15 Set-off and netting

To what extent are creditors able to 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?

A set-off made with respect to claims not yet due by the debtor may be subject to its invalidation upon a bankruptcy procedure; however, in principle, set-off of due claims is still permissible during bankruptcy proceedings.

16 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? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

In accordance with articles 469 and 470 of the Dominican Code of Commerce, the sale of specific assets out of the ordinary course of business is allowed during a liquidation procedure when such assets are perishable and when abstaining from their sale would be harmful to the creditors of the bankrupt debtor. Any assets acquired would be passed 'free and clear' to the purchaser, except arguably in connection with property that is subject to a lease, as current regulation, deemed as a matter of public policy, prevents the termination of leases unless carried out under certain circumstances and through a somewhat bureaucratic process.

Generally, the judge will authorise the administrator to continue the commercial exploitation of the business. The terms of such authorisation must be adopted in the presence of a qualified majority of creditors. These rules apply solely to the liquidation process under our bankruptcy legislation as no general provisions of law are available for the purposes of reorganisation.

Stalking horse bids in sale procedures and credit bidding in sales are not contemplated in Dominican legislation.

17 Intellectual property assets in insolvencies

May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

There are no provisions regulating this particular matter in the relevant legislation; however, the agreement that grants the rights over IP will usually prevail and parties will be bound by what the agreement states in this regard.

18 Rejection and disclaimer of contracts in reorganisations

Can a debtor undergoing a 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?

See question 9 on the lack of provisions regarding reorganisations under Dominican legislation. Accordingly, there are no provisions regarding the rejection of unfavourable contracts.

19 Arbitration processes in insolvency cases

How frequently is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? Will the court allow arbitration proceedings to continue after an insolvency case is opened?

Arbitration is not available for insolvency proceedings under Dominican law.

20 Successful reorganisations

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

Debt restructuring or a plan to honour unsecured claims may be sought by means of Law No. 4,582, which provides that any plan deriving from the amicable settlement process must include a repayment of at least 50 per cent of all unsecured debt of the debtor payable within a term no shorter than two years. There are no provisions relating or allowing for releases in favour of third parties in the course of reorganisations. See question 9.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

Dominican legislation does not contemplate the possibility of expedited reorganisations.

22 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?

See question 9. A proposed plan to repay unsecured claims under Law No. 4,582 may be defeated if it fails to meet the minimum conditions detailed above. If the plan is not approved, proceedings initiated by unsecured creditors against the debtor may be continued until the judicial proceedings involving bankruptcy are either commenced by the debtor or other unsecured creditors.

23 Insolvency processes

During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings 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 insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

Notices are to be given to creditors in proceedings governed by Law No. 4,582 and the Code of Commerce towards the assertion of claims against the debtor, evaluation of such claims and meetings towards the adoption of a repayment or liquidation plan. Creditors at these stages are pre-empted from pursuing remedies against third parties, unless such third parties are guarantors of such claims.

The meetings held with the creditors are convened by the administrator within a period no longer than 15 days after his appointment. During said meetings, the creditors are entitled to submit observations regarding the appointed administrator, with the possibility to increase or reduce their number.

Creditors with duly authenticated credits may be present at the hearing for the verification of the credits.

The obligations of the insolvency administration are contained in articles 468 et seq of the Code of Commerce. The administrator is obliged to make an inventory of all of the debtor's assets, including warehouses, desks, boxes, paper baskets, books, paper and furniture, and to draft balances reflecting all of the debtors' commercial

operations, and the claims against its estate. The administrator is also required to collect accounts receivable, sell items subject to deterioration and mortgage all real estate belonging to the bankrupt's debtors.

24 Enforcement of estate's rights

If the insolvency administrator 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?

There are no procedures by which the creditors can pursue the estate's remedies under this scenario.

25 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 group of creditors present will be called the board of creditors and will hold a meeting that will be presided by the appointed judge, in order to agree on a repayment plan for unsecured credits. There are no legal provisions for the formation of creditors' committees.

26 Insolvency of corporate groups

In insolvency 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? May assets be transferred from an administration in your country to an administration in another country?

There are no special provisions regarding insolvency proceedings of a corporate group. In principle, separate proceedings will take place for each entity comprising the corporate group.

No provisions exist either in relation to the transfer of assets between administrations appointed in different jurisdictions. Given that bankruptcy in the Dominican Republic is ruled by the territoriality principle, the enforcement of a consolidation of proceedings in different countries is unlikely. Given the fact that current bankruptcy proceedings in the Dominican Republic deal solely with liquidation, such proceedings will only affect assets located in the Dominican Republic as the territoriality principle will also bar a local administration from exercising jurisdiction abroad.

27 Claims and appeals

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

In accordance with articles 462, 492 et al of the Dominican Code of Commerce, within 15 days following the notice given to presumed creditors by the appointed judge, such creditor may present its claims before the court. An additional period of 20 days is provided following the notice to be made via a national newspaper for creditors that did not have the opportunity to present their claims. The claims are verified by the appointed liquidation administrators. Questioned or disallowed claims are subject to a separate judicial proceeding in which the interested parties may file evidence of their claims and legal arguments for their admittance. There are no provisions that impede the purchase, sale or transfer of claims against the debtor.

Claims for contingent or unliquidated amounts can be recognised on the grounds set out in article 444 of the Dominican Code of Commerce, which establishes that the decision confirming the debtor's insolvency makes all claims payable even if they have not matured.

28 Modifying creditors' rights

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

Secured claims that benefited from collateral during the 'suspect period' may be subject to the invalidation of such collateral. When 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 it was insolvent, can be set aside. This period, during which the effect of bankruptcy is retroactive, is known as the 'suspect period'. Its inception is determined by the judge. See question 33 for transactions that may be annulled.

29 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?

Apart from the right of employees to their unpaid salaries, claims from the tax administration in relation to unsatisfied tax obligations of the debtor come first before the repayment of any unsecured or secured claims.

30 Employment-related liabilities in restructurings

What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Claims arising from the termination of an employee during a restructuring or liquidation are not specifically regulated by Dominican insolvency legislation. However, the Code of Commerce previously attributed the status of privileged claims to the salaries accrued by direct employees of the debtor within the month prior to the declaration of bankruptcy, and within the previous six months to other employees. This privilege is not regulated and applied in general to all employees of the failed business or employer under the rules of the Labour Code. Upon termination, employees would be entitled to full payment of their severance unless, concomitantly with the insolvency proceedings, a separate process is conducted under article 82, section 5 of the Labour Code, which sets out the rules allowing a business to shut down and terminate its employees upon payment, as severance, of an 'economic assistance' amount, which is considerably lower than the termination payment that would otherwise be paid.

31 Liabilities that survive insolvency proceedings

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

Only secured or privileged claims may survive an insolvency upon its final conclusion.

32 Distributions

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

Distributions are made in accordance with the repayment plan (under Law No. 4,582) or under the liquidation plan (for judicial bankruptcy proceedings) approved by the majority of creditors. Such distributions are made as dealing solely with unsecured claims, on a pro rata basis, except for subordinated claims (such as claims that derive from equity participations) and subordinated loans subject to the applicable subordination provisions.

33 Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

Upon entry of a bankruptcy order, the court must determine an insolvency date, which is the date as of which the debtor ceased to make

payments to its creditors. The insolvency date could be as early as a date prior to the initiation of the amicable settlement process. If, for any reason, the court has not fixed such a date, the insolvency date will be deemed to be the date the bankruptcy order was issued. The following transfers of property by the debtor are defined by the Code of Commerce as null and void:

- payments made within 10 days of the insolvency date or after the insolvency date for obligations not yet due and payable, or obligations due and payable but made other than in cash; and
- any transfers of cash or property made without consideration.

Persons who benefited by the annulled payments will have a claim against the debtor and may participate in the bankruptcy proceedings so as to receive a valid payment on a pro rata basis.

34 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

As stated, a 'suspect period' or 'cessation of payment period' is used during bankruptcy proceedings. These only become relevant during liquidation proceedings. The voidable transactions may be attacked by any party with an interest, such as receivers or unsecured creditors participating in the proceedings.

35 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Corporate officers and directors may be liable for labour claims and tax claims. Their liability may also be established upon their violation of criminal provisions relating to bankruptcies. If directors of a corporate bankrupt entity have been careless in the operation of the business and the keeping of its accounts or have concealed assets or engaged in other inappropriate conduct, they may become liable for criminal bankruptcy. Outside these cases, there are no explicit obligations of joint and several liability between the corporate debtor and its officers and directors.

36 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?

There are no processes by which some or all of a business's assets may be seized outside of court proceedings, except for such pre-judgment liens explained above, as available remedies to all creditors.

37 Corporate procedures

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

Yes, there are extrajudicial proceedings for the liquidation of a corporation. This is done by the decision of the shareholders through fulfilment of formalities set forth in the by-laws of the corporate entity. If the by-laws are silent on this procedure, the shareholders designate the person in charge of the arrangements of said dissolution and liquidation. The dissolution is usually decided by a general extraordinary assembly in which the shareholders decide to put an end to the existence of the company and appoint a liquidator, who is in charge of managing the debts and assets of the company.

The main difference between the private liquidation of a corporation and liquidation under bankruptcy proceedings is that unpaid claims may still survive a private liquidation; the dissolved company will be considered a de facto entity for such purposes.

38 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Liquidation cases are formally concluded with the approval of the liquidation plan and distribution of assets pro rata to unsecured creditors.

39 International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? 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? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

Under the current regime, there is no relief available concerning an insolvency proceeding in another country, except in the benefit of signatory countries of the International Private Law Convention signed in Havana in 1928 (the Bustamante Code). This provides for extra-territorial effects within the signatory countries of the bankruptcy declaration of a debtor, and remedies pursued by appointed receivers or liquidation administrators. It also provides rules for the enforcement of foreign judgments within the signatory countries.

Outside the cases that could benefit signatory countries of the Bustamante Code, foreign judgments or awards are made enforceable in the Dominican Republic upon issuance of an exequatur by a local judge. The request to obtain this exequatur or validation must be made before the court of first instance, which reviews the foreign decision or judgment and verifies mainly that it was issued by a competent court; the decision is not subject to any further appeals or remedies in the country of origin; the defendant was allowed to exercise its right of defence if applicable; and the decision does not violate Dominican law or public policy. Since there are no predetermined summary procedures to validate foreign judgments in the Dominican Republic, the process may become another litigation procedure.

On 30 March 2007, the government sent a legislative proposal to Congress to address bankruptcy issues in the country. The

proposal was not approved by Congress upon its first and subsequent submissions. The proposal was recently reintroduced to Congress and is at present awaiting congressional approval. For the chapter on cross-border insolvency within this bill, the committee in charge of drafting the proposed legislation resorted to the UNCITRAL Model Law of 1997.

40 Cross-border cooperation

Does your country's system allow 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?

There are no provisions regarding cooperation actions between domestic and foreign courts or administrators. Nonetheless, the Dominican Code of Commerce contains provisions for a reserve for the payment of foreign claims.

There is no precedent that we are aware of concerning this aspect. Nonetheless, in accordance to Dominican laws a judgment or award by a foreign court shall be enforceable in the Dominican Republic through an exequatur, authorising the validity of the foreign judgment. Dominican courts will ratify such judgment if it: complies with all formalities required for the enforceability thereof under the laws of the foreign country; has been translated into Spanish, together with related documents and satisfies the authentication requirements of Dominican law; was issued by a competent court after valid service of process upon the parties to the action; was issued after an opportunity was given to the defendant to present its defence; is not subject to further appeal; and is not against Dominican public policy.

41 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?

Courts in the Dominican Republic have not entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries, nor have they communicated or held joint hearings with courts in other countries in cross-border cases.

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