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Growth continues in M&A and project finance

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An increasing number of corporate transactions involving foreign entities are taking place in the Dominican Republic. These range from mergers and acquisitions of hotels and casinos and investments in important - and growing - Dominican industries including construction, insurance and the project finance of hydroelectric facilities, power plants and ports. The jurisdiction is also seeing more securitisation of corporate receivables and other assets.

The legal environment for these and similar types of corporate financings is quite favourable in the Dominican Republic, as a wide range of laws have been revised or enacted in recent years to facilitate foreign investment.

Mergers and acquisitions

In the Dominican Republic, the most common forms of business combinations are mergers, share purchases, asset purchases and joint-venture agreements. These are generally governed by the provisions of the Dominican Civil Code, the Code of Commerce, the Tax Code and its governing regulations, Law 19-00 (which regulates the securities market) and corporate by-laws.

Depending on the nature of the business or industry involved, specific provisions of M&A laws may apply. The Dominican Republic has specific regulations for, among others, business combinations in telecoms, banking and insurance. Typically, a business combination requires the prior approval of the relevant governmental authorities. In addition, transactions with companies that have issued public securities require the notification and approval of the Securities Superintendent.

Generally speaking, the parties involved in a business combination in the Dominican Republic are free to choose their governing law. There are exceptions to this general rule for matters of public order; for example, the acquisition of real estate will be governed by Dominican law when one or all of the companies involved have been incorporated under Dominican jurisdiction.

A Bill to reform the regulations applicable to corporations has been introduced to the Dominican Congress. This Bill specifically regulates corporate governance and business combinations. If approved by the Dominican Congress, it will be the first legal framework for mergers and acquisitions. The Bill would make companies that have issued publicly traded securities subject to the supervision and control of the Securities Superintendent, including the approval of the Securities Superintendent for mergers and other types of business combinations.

Project finance

Project finance transactions in the Dominican Republic generally require no government approvals, although in most cases notice of a transaction must be provided to the regulator of the industry involved. There are also no restrictions on the ownership of project companies.

The project finance markets in the Dominican Republic are favourable in other ways as well. For example, foreign investors are entitled to the same rights as Dominican investors and the Dominican Republic grants tax incentives to tourism projects located in specific areas of the country, free-zone companies, projects settled in the provinces located near the border with Haiti, energy generation companies and other industries. Additionally, the Dominican Congress frequently ratifies special agreements whereby local tax incentives are granted for governmental projects in the mining, construction and energy industries.

Dominican law authorises the perfection of security interests in collateral as diverse as real estate, shares of stock, receivables, intangible assets including contractual rights, and moveable assets such as motor vehicles, boats, and aircrafts. Dominican law also permits creditors to determine whether such assets are subject to existing liens by requesting a certification of liens and encumbrances from the authority in charge, or the registration of such liens. For instance, for real-estate assets, certifications may be issued by the Land Registrar's Office of the jurisdiction where the property is located.

Dominican law does not restrict the repatriation of earnings, and in fact contains no restrictions or controls and imposes no fees on the remittance of investment returns or loan payments abroad. With respect to taxes, the general rule is that income derived from investments or interests located in the Dominican Republic is subject to taxation. Interest payable to financial institutions abroad is subject to 10% withholding tax and interest payable to non-financial institutions is subject to 30% withholding tax, which is also the applicable general income tax rate.

As a result of the Dominican principle of contractual freedom, foreign laws may be chosen as the applicable laws for a project finance agreement to the extent that the law chosen is not contrary to public policy. US and UK law are frequently chosen for finance agreements. As for matters governed by domestic law, securities involving real-estate assets and movables (non-possessory liens) located in the Dominican Republic are subject to Dominican law as a matter of public policy.

For now, local and foreign financial institutions remain the most frequently chosen options for providing project financing but a potential tax reform that is likely to create incentives for investors in the local public securities market may change that.