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Growth continues in M&A and project finance

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More and more 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 such as construction and insurance, to the project finance of hydroelectric facilities, electric plants, and ports. The jurisdiction is also seeing more securitization of corporate receivables and other assets.

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

Mergers and acquisitions

The most common forms of business combinations in the Dominican Republic are mergers, share purchases, asset purchases, and joint venture agreements. These kinds of transactions are generally governed by provisions of the Dominican Civil Code, the Code of Commerce, the Tax Code and its governing regulations, Law no 19-00 (which regulates the securities market in the Dominican Republic), and corporate by-laws.

Depending on the nature of the business or industry involved in a business combination, specific provisions of M&A laws may apply. For instance, the Dominican Republic has specific regulations for business combinations in telecommunications, banking and insurance, among others. 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 properties is required to be governed by Dominican law.

A bill to reform the regulations applicable to corporations has been introduced in 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 in the Dominican Republic. 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 in the transaction. There are also no restrictions on the ownership of project companies.

The project finance markets in the Dominican 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, and energy generation companies. 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 authorizes 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 aircraft. 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 law for a project finance agreement to the extent that such choice of law is not contrary to public policy. New York law and the laws of England are frequently chosen for finance agreement. 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 frequent option for providing project financing. A potential tax reform that is likely to create incentives for investors in the local public securities market may change that.