

Dominican Republic

Chamber of commerce:

Cámara de Comercio y Producción del Distrito Nacional
Enterprise Building
Avenue of the Aces 7
PO Box 44, Santiago de los Treinta Caballeros
Dominican Republic
Tel: +809 582 2856
Fax: +809 241 4546
Email: economia@camarasantiago.com
Web: www.camarasantiago.com

Professional body:

Colegio de Abogados de la República Dominicana
Casa de Abogado, Calle Isabel la Católica No151
Santo Domingo
Dominican Republic
Tel: +809 682 4122
Fax: +809 687 8864
Email: colegiodeabogados@msn.com

Project finance and M&A increase in Dominican Republic as world's economy begins recovery

Luis R Pellerano
Pellerano & Herrera
Santo Domingo

There are signs around the world that the economy is recovering from the economic meltdown of 2008-2009, and this certainly is true in the Dominican Republic. Here, foreign entities are participating in a growing number of corporate transactions, from the project finance of hydro-electric facilities, power plants, and ports to mergers and acquisitions involving companies in hotel and casino businesses, among others. The country also continues to see an increase in securitizations, corporate financings, and investments in industries as diverse as construction, insurance, and mining.

The Dominican Republic's leaders have recognised that the country's dynamic economy requires a comprehensive set of laws and a clear framework in which to operate. Therefore, in recent years, the government has enacted reforms to meet those goals and to promote foreign investment. While maintaining a sensitivity to local concerns, these statutory and regulatory developments also meet global standards. They have been responsive to requirements under the DR-Cafta and the Free Trade Agreement with the European Union. Equally as important, they are intended to keep the Dominican Republic as a safe and attractive destination for foreign investors.

New legislation includes a law on commercial arbitration; a new corporate law; an environmental law; a law creating free zones; an antitrust law; a law relating to special incentives for foreign retirees; and several laws with respect to the promotion and develop-

ment of small- and medium-sized businesses. The country even has a new constitution.

Project finance

There are a number of reasons for the current growth in project finance in the Dominican Republic. These transactions typically require no government approvals, and there are no restrictions on the ownership of project companies. Foreign investors have the same rights as Dominican investors, and projects in specific areas (such as in free zones, and on the border with Haiti) are able to claim tax incentives. The Dominican government also frequently agrees to tax incentives for projects in the mining, construction, and energy industries.

Under Dominican law, the repatriation of earnings is not restricted. Indeed, Dominican law does not impose fees on the remittance of investment returns or loan payments abroad. Dominican contractual law also permits parties to select foreign law to govern a project finance agreement (to the extent that the law chosen is not contrary to public policy). As a result, US and UK law frequently are chosen to govern project finance agreements.

Mergers and acquisitions

In the Dominican Republic, the most common forms of business combination are mergers, share purchases, asset purchases and joint venture agreements. These matters generally are governed by the Dominican Civil Code, the Code of Commerce, the Tax Code and its governing regulations, the law regulating the securities market, and corporate by-laws.

The provisions of the country's mergers and acquisitions law that apply depend on the nature of the business or industry involved in the transaction. For example, there are specific rules for business combinations involving telecommunications companies, banks, and insurance carriers.

As is the case with project finance, the parties in a business combination may choose their governing law (although the acquisition of real estate must be governed by Dominican law when any company is incorporated in the country). A new corporate law regulates business combinations, as well as corporate governance.

What's next?

In keeping up with the modernization of the Dominican legal system, we can look forward, in the near future, to the creation of a law on restructuring and bankruptcy; an informational privacy law; and amendments to the Monetary and Financial Law, to the Capital Markets Law, and to the Corporations Law.

The future for investors remains bright in the Dominican Republic.

Financial and corporate

Recommended firms

Tier 1

Headrick Rizik Alvarez & Fernández
Pellerano & Herrera

Tier 2

OMG
Squire Sanders & Dempsey Peña Prieto
Gamundi

Tier 3

Biaggi & Messina
Castillo & Castillo
Jiménez Cruz Peña

Tier 4

Grisóla & Bobadilla
Russin Vecchi & Heredia Bonetti
Troncoso y Caceres

When an earthquake devastated Haiti on January 12 2010 the first foreign assistance came from the Dominican Republic, which shares the island of Hispaniola with its impoverished neighbour. Dominican hospitals quickly filled with Haitian casualties, and mobile medical units, kitchens and heavy lifting equipment provided the first relief to victims at the quake's epicentre. For the first crucial days after the disaster the republic provided the only air and sea ports through which large-scale deliveries of international aid could reach the island.

Commentators hold that with the world's attention waning, it will be increasingly up to the republic to lead Haiti's reconstruction. In March Dominican President Leonel Fernández proposed a worldwide \$10 billion reconstruction package to be distributed over five years, and urged creditors to forgive Haiti's multi-billion dollar debt. The plan has met approval from sovereign governments globally, though only a fraction of the amount has actually been sent to date.

If world leaders make good on their pledges of financial support, lawyers see a great deal of work for Dominican companies rebuilding their impoverished neighbour. Already, Dominican telecom Indotel is at work rebuilding the nation's shattered communications infrastructure. With the republic's future intractably linked to Haiti, commentators see an opportunity for a stronger, more self-sufficient and modern nation to rise from the rubble. "If Haiti progresses it will be less of a burden on us," one leading lawyer states.

In the last few years the government has found success on a macroeconomic level fuelled by an ambitious privatisation process and free-trade agreements with foreign countries. While the economy seems strong from a foreign standpoint, financial lawyers contend the success is not being felt by the people on the street, particularly by the republic's large immigrant population. The sentiment was echoed by a March UN report, which called on the government to implement anti-discriminatory programs.

One commodity the nation seems to have an in-exhaustive supply of is baseball talent, and America's Major League Baseball teams are flush with Dominican names like Albert Pujols and Vladimir Guerrero. In November 2008 MLB and USAid launched a joint venture to develop baseball camps in low-income communities, pledging \$1 million over three years. With Dominican players individually active in their native communities, baseball fuels what could be considered the ultimate form of remittance for the republic's population.

Headrick Rizik Alvarez & Fernández

In addition to its strength in litigation matters, competitors note Headrick is a leader in the Dominican Republic's financial market. One peer admits: "It tends to be the firm you would see more in large-scale financing transactions." Rivals also find partner Mary Fernández "very strong in IP as well".

When Cafta-DR opened the floodgates of multilateral investing peers say Headrick was quick to position itself as the go-to firm for their legal services. In one notable transaction, partner Fernández led a team that took the Central American Bank for Economic Integration to the market with a \$20.4 million peso-denominated bond launched last year. The issuance marks the republic's first bond issuance by a multilateral financial institution.

Partner Roberto Rizik is complemented by peers as an all-around talented lawyer. "He's very good on the technical side but has the ability to really understand the deals," one competitor says. Another peer says partner Hípolito Garcia is a "pretty active in the particular area of loan syndication".

One client in particular praises Garcia for his ability to navigate the challenges of dealing with the Dominican government. "Required a high degree of improvisation, which he negotiated very well," the client explains.

Working locally with Allen & Overy, Rizik and partner Garcia represented a consortium of multilateral lenders, including IDB and the European Investment Bank, in a \$149 million toll-road financing project. The Boulevard Turístico del Atlántico will connect several cities along the Samaná Peninsula in the Northeast part of the island.

Leading lawyers

Mary Fernández
Roberto Rizik

Pellerano & Herrera

A key talent for a corporate counsel is the ability to negotiate with government administrators, and one client mentions partner Luis Pellerano as very capable before the Dominican authorities. "He was basically sitting with me every time I saw high government officials," the client says.

Founding partner Juan Manuel Pellerano is mentioned as "one of the best if not the best" corporate counsels in the republic, and is "active but nearing retirement". Peers point to partner Marielle Garrigó as carrying out the firm's transactional leadership.

Last year Garrigó and a team of Pellerano attorneys acted locally for Credit Suisse in recording a senior debt pledge on Terremark

Worldwide's BVI assets, part of a global debt restructuring totalling \$420 million.

With Barrick's mammoth \$2.7 billion financing in place, the lawyers at Pellerano were recently active helping the mining company put in place the utilities needed to operate the Pueblo Viejo gold mine. In August 2009 Barrick acquired the 100MW Monte Rio power plant and two power barges, a process requiring the rare registration of a naval mortgage.

While one client says Pellerano was "well connected [and] knowledgeable about our needs", another believed the firm's reputation outsized its true capabilities. It's a good service," the client says, "but it's a bigger name than the service they provide."

Commentators mention the firm's position in the market brings specialised work suited to the firm's experience. "Because of their tradition with some large financial clients and also strong in litigation, they do some collections work," notes one rival.

Leading lawyers

Marielle Garrigó
Juan Manuel Pellerano

OMG

Completing a firm-wide rebranding last year, the law firm formerly known as Oficina Melo Guerrero adopts the widely-used initials as its formal identity. Competitors and Clients agree that partner Leonel Melo earns the greatest distinction in the firm "because of the importance of deals" he is involved in.

"He is very well connected and is highly educated in Dominican law," one client explains, "so he can handle absolutely everything concerning the evolving legal climate on the island."

In 2009 the firm participated in the first successful Chapter 11 bankruptcy ever filed in the US for a Dominican company. Acting locally on behalf of JPMorgan Chase, OMG counselled the liquidation of telecom group Tricom to several creditors led by American investment group Amzak. The complex, multi-jurisdictional deal preceded approval of Tricom's \$650 million debt restructuring.

One important client for OMG is the Vicini Group. Last March Melo's team advised Vicini's acquisition of a stake in Shell's divested Dominican lubricants distributorship, completed through a joint venture agreement and \$100 million contribution.

That same month Vicini bought a \$110 million interest in Roco Ki, a massive multiple-use tourist and residential complex under construction in Punta Cana, after many months of due diligence and negotiations. OMG performed these duties, as well as

helped renegotiate the project's more than \$200 million financial facilities.

Leading lawyers

Leonel Melo

Squire Sanders & Dempsey Peña Prieto Gamundi

When the local partners of an international firm earn equal billing with their global brand, you can be sure the attorneys have carved a respected identity within the national legal market. Still, one competitor in the local market says, "They are good to work with because they are a very US-style firm." Peers say partner Alejandro Peña-Prieto is a "delightful person to work with and very proactive".

Clients emphasise counsel Flavio Dario Espinal's experience as the Dominican Republic's ambassador to the US is "particularly worth mentioning." Speaking of one recent transaction, a corporate counsel says, "His lobbying and all he did with the regulator was really essential to the process."

One important local client is Popular Association for Savings and Loans (Apap), the republic's largest mutual investment company. The firm has kept busy over the past several years with a strategic modernisation project, which has seen Apap update its banking system and merged with the Dominican Association of Savings and Loans.

It's good to have a global network, and late in 2009 the firm teamed up with King & Spalding to advise Major League Baseball team the Houston Astros in developing a sports complex and training facility in the Dominican Republic.

Leading lawyers

Pedro O Gamundi
Alejandro Peña-Prieto

Other ranked firms

Competitors characterise **Biaggi & Messina** as a smaller corporate player with a focus on litigation and IP matters. Still, the firm earns praise in the market for its level of talent. "They have a good complement there," One rival notes. "I would feel comfortable referring a client to them."

While the firm draws lineage back to 1924, rivals say the current iteration formed a decade ago when Messina & Messina merged with Gustavo Biaggi, a former partner of Pellerano and "good lawyer for both financial and corporate." Senior partner Ana Isabel Messina "has always been involved in IP."

Leading lawyers: Gustavo Biaggi and Ana Isabel Messina

A solid middle-tier referral in the financial market, **Castillo & Castillo** is most noted by competitors for its relationship with Banco Popular, the republic's largest commercial bank. "Because of that client they have a very large portfolio in banking," says one peer.

Father-son team Práxedes J Castillo Báez and Práxedes Castillo Perez are commended recently for work with Spanish banks. As one rival observes: "They have been acting as legal counsel for several Spanish casas in restructuring work."

Leading lawyers: Práxedes J Castillo Báez and Práxedes Castillo Perez

2011 marks just eight full years in the market for **Jiménez Cruz Peña**, and true to form competitors characterise the team as "very young, very active" attorneys. "They have a good team because they complement each other well," says one rival.

While Luis J Jiménez is recommended by peers for transactional matters and corporate work, market feedback affirms partner Marcos Peña Rodríguez is "well known in litigation and dispute resolution as well".

Last March Peña advised electricity distributors Edenorte and Edeeste in a \$70 million emergency loan from Citibank, Popular and Banco Leon.

Leading lawyers: Luis J Jiménez and Marcos Peña Rodríguez

Counting world's richest man Carlos Slim among clients, rivals say **Grisolía & Bobadilla** has a small but valuable portfolio of clients. "They are becoming a boutique law firm for very wealthy families," remarks one peer.

One competitor calls partner Fernando P Henríquez as an "upcoming lawyer".

Leading lawyers: Andrés Emilio Bobadilla and Juan Miguel Grisolía

Over 50 years in the market makes **Russin Vecchi & Heredia Bonetti** a "traditional but more diverse" player in the Dominican market. Noted for their specialised practice in civil aviation, the firm also earns praise from rivals for their work in foreign investment.

One peer notes partner Georges Santoni Recio's French educational background makes him "more academic" than his partners. Another rival states partner José Maldonado Stark is "the firm's youngest partner and is becoming very well known".

Leading lawyers: and Georges Santoni Recio

Previously known as a one of the country's strongest banking firms before the 2003 failure of Banco Intercontinental, one rival says **Troncoso y Caceres** "has been more active in corporate matters lately".

Commentators agree the firm has found a solid footing in intellectual property. "That's where we would consider them to be the strongest firm in general," one peer notes.

Partner Ana Isabel Caceres Matos earns distinction in the market as the firm's representation in financial matters. One competitor chooses partner Juan Manuel Caceres Torres as a "good young lawyer".

Leading lawyers: Ana Isabel Caceres Matos