

The epidemiological outbreak of COVID-19 has collapsed the international health systems and provoked huge economic losses to global economies. For these reasons, countries affected by COVID-19 have adopted sanitary and economic measures to reduce the spread and negative impact to its economies.

In the specific case of the Dominican Republic, to combat the negative effects of COVID-19, the Dominican government has adopted sanitary measures aiming to avoid the spread of the virus by means of social distancing orders, restrictions to the freedom of transit and temporary closure of commercial activities considered as non-essential. In the economic field, the Central Bank of the Dominican Republic (the "**BCRD**") has adopted monetary, financial and foreign exchange measures, to increase the liquidity of the financial market, expand the flow of resources to companies and households, and guaranty the stability of the foreign exchange market; and, the General Directorate of Internal Taxes (the "**DGII**") has granted facilities for the payment of taxes. For more information regarding these measures, you may access the following link: [insert link]

Without a doubt, the sanitary measures adopted by the Dominican government as result of COVID-19 have had a significant impact on the performance of the overall economy and the financial health of companies.

Consequently, if your company is facing serious financial deficiencies, despite the economic measures adopted by the BCRD and the facilities granted by the DGII to stimulate the economy and alleviate the negative economic effects caused by COVID-19, Law No. 141-15 regarding restructuring and liquidation of companies and individual merchants (hereinafter, the "**Restructuring Law**") may serve as a legal tool to preserve your company and avoid insolvency, or otherwise, to satisfy collectively the outstanding claims on your company through formal legal proceedings to settle all obligations simultaneously.

For creditors, the Restructuring Law seeks to protect their rights in the event their debtors are facing financial difficulties by granting them an equal treatment (without prejudice to the rules regarding privileges, priority rules and preferences set forth in the law) and to maximize the value of the company's assets in the event of a liquidation scenario with the aim to satisfy the largest amount of claims.

As follows, we provide a general perspective regarding the Restructuring Law.

Uses of the Restructuring Law

Hereinafter, we provide some offensive and defensive uses of the Restructuring Law for companies facing financial difficulties.

Offensive

- It allows reaching an agreement with the majority of creditors and the bondholders' trustee, if applicable (plan proposed prior to judicial restructuring), which agreements shall be binding to minority creditors that were dissident or absent, as long as at least one of the conditions that justify a restructuring petition is met, as described in the following section.
- It allows the implementation of a restructuring plan negotiated and agreed by and among all parties involved.

Defensive

- It improves the management of a liquidity crisis of the company facing financial distress.
- It suspends enforcement or collection actions (garnishments) by creditors, amongst other suspensions or automatic stays.
- It grants time to determine the best way to restructure the company facing financial difficulties.

Requirements for Restructuring

A company facing financial distress or any creditor whose claim represents at least 50 minimum wages, may petition the restructuring of the company, if one or several of the following conditions are met:

- Default for more than 90 days of at least one payment obligation, due and payable, in favor of any creditor, after a payment notice has been furnished
- When current liabilities exceeds current assets for a period higher than 6 months
- Payment default to the tax administration of any withholding tax, by virtue of the provisions of the Tax Code of the Dominican Republic as amended, including, any Transfer of Industrialized Goods and Services Tax (ITBIS) or any other tax obligation of at least 6 fiscal installments
- The failure to pay at least 2 consecutive employee's salaries when due (except in cases of labor contract suspensions or judgments issued by a court ordering the garnishment or distraction of salaries in favor of a third party)

- When the management of the company has remained vacant for a reasonable period of time without appointing a representative who can fulfill its obligations
- When the business offices of the company have been ordered to close due to the absence of the company's managers; or the partial or total assignment of its assets and rights to a third party with the intention to divide them between all or certain creditors
- When the company resorts to malicious, fraudulent or criminal practices to attend or breach its obligations
- When the company has notified to its creditors the suspension of any payments or the intention to suspend the payment of debts
- When a restructuring, bankruptcy, insolvency or payment suspension proceeding exists in a foreign country in which the parent company of the company is located or where it has its principal business establishment or center of interests
- When there are real property attachments or real estate foreclosures affecting more than 50% of the company's total assets
- When there are judgments or enforcement procedures regarding judgments that could affect more than 50% of the company's total assets.
- Any enforcement procedures, evictions or garnishments executed by creditors on the assets and real estate properties of the debtor company
- The performance by the debtor company of any asset dispositions or sales, except for certain permitted dispositions afforded by law
- The computation of contractual or legal interest, as well as any contractual penalties, which provision shall be extendable to guarantors and co-debtors for the amount of interests applicable pursuant to the credit agreement
- Payments by the debtor of any debts contracted prior to the date of the restructuring petition, including payment obligations generated by the issuance of securities of public offering (excluding compulsory child support payments, labor credits and payments necessary for the ordinary course of business which are duly justified); and,
- Tax credit enforcement proceedings.

The foregoing suspensions or stays seek to preserve the operational continuity of the company and prevent the acceleration of a possible bankruptcy liquidation. Likewise, the suspensions seek to prevent certain creditors from removing the most profitable assets of the company—causing or accelerating a possible bankruptcy liquidation—to the detriment of other creditors.

Management of the Company during the Restructuring Proceeding.

The management of the company will continue managing the company's operations during the restructuring proceeding. During this proceeding, the company may only dispose of assets necessary for the ordinary course of business (unless authorized by court). For such purposes, it will file before the restructuring and liquidation court a list of essential suppliers.

However, from the moment the restructuring petition is filed by the company or notified to the company by a qualified creditor, the managers of the company must notify to the trustee appointed by the court to manage the restructuring proceeding and to the restructuring and liquidation court, the performance of any management actions or dispositions that, directly or indirectly, involve the following:

- Amending the corporate bylaws or articles of incorporation; or carrying out mergers, acquisitions or spin-offs
- Granting or enforcing security interest on its assets and rights
- Executing setoffs, payments, settlements, discharges, garnishments, unilateral contractual terminations or by mutual agreements of ongoing processes or assumed obligations
- Carrying out settlements or transactions of any kind regarding their obligations
- Entering into agreements with any of the creditors outside the cases provided by law
- Disposing of assets or rights that do not correspond to the ordinary course of business of the company (unless authorized by court).

If the company facing financial distress meets one or more of the aforementioned conditions, it may try to reach a direct agreement with its creditors (plan proposed)—which must be filed before the restructuring and liquidation court in order to obtain recognition—or petition a court ordered restructuring in the interest to remedy the financial deficiencies.

If it decides to request the court ordered restructuring, the company will seek to reach a restructuring plan with its creditors—through a conciliation and negotiation procedure—to remedy the deficiencies that originated the restructuring petition. If these deficiencies cannot be remedied or in the event that a restructuring plan cannot be agreed, the debtor or the trustee appointed by the restructuring and liquidation court during the restructuring proceeding may request the bankruptcy liquidation of the company.

Restructuring suspensions (automatic stays)

In order to protect the company facing financial distress and to guaranty the rights of creditors, until the restructuring plan has been approved, the conciliation and negotiation procedure has ended or the bankruptcy liquidation has been ordered, the restructuring petition causes the suspensions or automatic stays of the following actions:

- All legal, administrative or arbitration actions of economic content exercised against the debtor (excluding cases where there is an adjudication judgment provided that it is not susceptible of annulment, and legal actions regarding contracts related to securities of public offering originated prior to the request, but with a settlement date after the restructuring petition)

In general, the acceptance of a restructuring petition will not partially or totally terminate the current agreements maintained by the company facing financial distress. The restructuring and liquidation court will determine the continuation or termination of such agreements. Therefore, the agreements pending for execution maintained by the company facing difficulties will be fulfilled unless the restructuring and liquidation court refuses after determining that it is unfavorable for the interests of the bankruptcy estate.

Debts arising after the restructuring proceeding has initiated due to the ordinary course of business of the company must be paid in the agreed form and with priority to all other credits.

Foreign Proceedings

In the case of multinational companies that are experiencing financial distress and that possess assets located in Dominican territory, the Restructuring Law includes a legal framework that prevents the disappearance of assets (or allows for the recovery of the same if diverted), maximize the value of assets, facilitate the administration of several bankruptcy proceedings between different countries, and increases efficiency and equal treatment in cross-border insolvency proceedings.

The Restructuring Law provides a framework for international judicial cooperation in cross-border insolvency, recognizes foreign restructuring or liquidation proceedings, and validates the participation of foreign representatives in restructuring or liquidation proceedings governed by the Restructuring Law.

It should be mentioned that the provisions of the Restructuring Law regarding foreign proceedings are based on the model law of the United Nations Commission on International Trade Law regarding cross-border insolvency, which text is considered to be the reference framework in this matter.

Consequently, a foreign court or a foreign representative^{3/4}defined as the person or body, even if appointed provisionally, that is appointed in a foreign proceeding to administer the restructuring or liquidation of the debtor's assets or companies^{3/4}may request assistance in the Dominican Republic in relation to a foreign bankruptcy proceeding.

Likewise, the restructuring and liquidation court or an official appointed within a restructuring or liquidation proceeding under the Restructuring Law, may request assistance from a foreign state in relation to a restructuring or liquidation proceeding that is being administered under this law.

In that same order, the Restructuring Law allows creditors or other interested persons who are in a foreign state to request the commencement of a court ordered restructuring or liquidation proceeding involving a debtor located in the Dominican Republic, or to participate in proceedings that are being administered in accordance with the Restructuring Law.

For such purposes, the foreign representative must submit a request to the restructuring and liquidation court for the recognition of the foreign proceeding. As soon as such request is filed, the foreign representative may request the restructuring and liquidation court to grant relief orders to protect the assets of the debtor company or the interests of creditors in Dominican territory. These measures could involve suspending any enforcement measures against the assets of the debtor company subject to an international insolvency proceeding; appointing an administrator or judicial custodian of all or a portion of the debtor's assets that are located in Dominican territory; suspending the right to transfer or pledge the debtor's assets; appointing a conciliator or liquidator for the administration or realization of all or a portion of the debtor's assets that are in Dominican territory; amongst others.

Final Considerations

In Squire Patton Boggs Peña Prieto Gamundi we have experience representing creditors as well as debtors that operate in different sectors of the economy, through the multiple phases of the restructuring or liquidation proceedings. Our attorneys have participated as speakers, in educational programs and courses organized by private academic centers of the Dominican Republic and multinational organizations, in matters such as bankruptcy liquidation and cross-border insolvency.

As follows, we present a summary of our most relevant experience in the field of bankruptcy restructuring and liquidation:

- Represented the monetary and financial authority of the Dominican Republic conducting a thorough due diligence with the purpose to render a report regarding the assets subject to administrative liquidation of a failed financial intermediation entity.
- Assisted the monetary and financial authority and the Dominican Republic in connection with the bankruptcy of the legal entity that had the mining exploitation rights of the gold mine located at Pueblo Viejo, in the structuring of an international public tender to offer the rights of exploitation of sulfated gold deposits to international bidders.
- Represented a leading telecommunications company in a highly complex cross-border insolvency case with obligations ascending to USD 650,000,0000.
- Advised a civil aviation company of the United States of America with the acquisition of a substantial part of the assets of another civil aviation company of the same country, which was subject to reorganization in accordance with the provisions of Chapter 11 of the Bankruptcy Code of the United States of America.
- We assisted an international airport operator with the filing of its proof of claim (credit) in the restructuring and liquidation case of Pan Am World Airways Dominicana, S.A.

Based on the above, we have the skills to provide assistance to our clients with the following services, which include and are not limited to:

- Requests for bankruptcy restructuring or judicial liquidation
- Filing of claims (credits) during the restructuring or judicial liquidation proceedings
- Representation before the conciliator, liquidator and the restructuring and liquidation court during restructuring or liquidation proceedings
- Representation of companies in financial distress, creditors and foreign representatives in cross-border insolvency cases.

If your company is facing financial difficulties or you have a claim (credit) against a company facing financial distress or insolvent, we are available to assist you exploring the different alternatives under the Restructuring Law, as well as under the insolvency and bankruptcy laws of the jurisdictions where the offices of Squire Patton Boggs operate.

In case you require our legal assistance on bankruptcy restructuring and liquidation matters, you may reach Pedro O. Gamundi and Miguel Cano, at the following e-mails: pedro.gamundi@squirepb.com and miguel.cano@squirepb.com, respectively.

We hope the information above is useful and we remain at your service should you have any questions regarding this matter.