

# Dominican Republic

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## General

### 1 Legal system

**How would you explain your jurisdiction's legal system to an investor?**

For the first hundred years or so from becoming independent in 1844, the Dominican Republic had a legal system based on French law, specifically on the Napoleonic Codes – Civil, Civil Procedure, Commercial, Criminal and Criminal Procedure – under a Constitution based on the American model, with three branches of government: a strong presidency, a legislature and a judiciary with the power to strike down acts of the other branches found to be unconstitutional. Since the first half of the 20th century, however, there has been a tendency away from the French model, with the adoption of many statutes and codes inspired by other legal systems: for example, the Land Registry Law of 1920, founded on the Torrens System, of Australian origin; the Labour Code of the 1950s and 1992, modelled on South American codes; the new Code of Criminal Procedure of 2002, based on the same adversarial principles that govern American criminal litigation; the new arbitration statute of US principles; the new arbitration statute in 2008, taken from the model arbitration code prepared by the United Nations, and the recently enacted bankruptcy and insolvency statute, influenced greatly by American bankruptcy law.

The Constitution of the Dominican Republic lays out the fundamental framework for the organisation and the operation of the Dominican government and its institutions, and recognises an impressive list of civil rights for all individuals, Dominicans and non-Dominicans, including an equal protection clause for non-Dominican citizens and investors. Article 25 of the Constitution expressly states that foreign nationals are entitled to the same rights and duties in the Dominican Republic as Dominican nationals, except – understandably – for the right to take part in political activities. Article 221 of the Constitution sets forth that the government will ensure equal treatment under the law for local and foreign investments.

Individuals and entities, domestic and foreign, have a quick and inexpensive remedy for the protection of their constitutionally protected rights: the writ of *amparo*, which is granted by all courts and is subject of an appeal to the Constitutional Court.

Cases in Dominican courts are decided by judges not by juries. Judges rule based on the texts of the Constitution and existing statutes, the precedents of the Constitutional Court (which are binding), and the precedents of other courts (which are not binding). They do not rule in equity, as in some common law countries, but the principle of good faith is recognised by statutory law and grants the courts some discretion. Punitive damages are not awarded in injury cases, just compensatory damages.

Finally, regarding evidence, parol evidence is admissible in criminal, labour and commercial matters, and, under certain circumstances, in civil and real estate matters.

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### 2 Land records

**Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?**

As mentioned, the Dominican Republic has employed, since 1920, the Torrens system for real estate registration purposes. This system was developed in Australia in the 19th century and is now widely used in many countries. In the Torrens title system, a register of land holdings is maintained by the government, which guarantees an indefeasible title to the properties included in the register. Land ownership is transferred through registration of title instead of using deeds. The registrar has a duty to ensure that only legally valid changes are made to the register. Any interest affecting or limiting the ownership rights of the registered owner, such as mortgages, easements, liens, etc, must also be registered. Interest in real estate (property, mortgages, privileges, etc) is only valid and enforceable against third parties upon registration at the office where the register is located (called 'Registry of Title' in the Dominican Republic). Once registered, the system guarantees title and priority on a first come, first served basis.

In the Torrens system a third party, acting in good faith, can rely on the information on the land register as to the ownership of a property and the other rights and interests that may affect it. In a property purchase, the buyer is not required to look beyond the record at the register. In contrast, in the common law system a vendor cannot transfer to a purchaser a greater interest than he or she owns, and the seller's title is as good or as defective as the weakest link in the chain of title, which necessitates a chain-of-title investigation at the record office.

As in most jurisdictions under the Torrens system, there are still some parcels of land in the Dominican Republic that are unregistered. However, most properties in the country – and 100 per cent of commercial properties – fall under the registered category. Unregistered property is governed by the French 'ministerial' system, whereby deeds affecting real estate are filed at a specific register that only serves as a recorder of documents, without any type of guarantee.

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### 3 Registration and recording

**What are the legal requirements for registration or recording conveyances, leases and real estate security interests?**

The legal requirements for recording conveyances are the following:

- deed of sale (sales contract), authenticated by a Dominican notary;
- certificate of title issued to the owner by the Registry of Title (a completely different document from the deed of sale) which serves as the only proof of ownership;
- certification showing that the seller is up to date with its property taxes;
- receipt attesting to the payment of the real estate transfer taxes (3 per cent of the government-appraised value of the property). In some cases (ie, first purchases in certain tourism projects, low-cost housing acquired with a bank loan), the buyer is exempt from this tax; and
- copy of the ID card or passport of the parties, or tax card if a legal entity. Non-resident foreigners need to provide an additional ID card from their country of origin in addition to their passports.

Registration rules are established by the General Director of the Registries of Title and are applicable nationwide. The Dominican Civil Code states that buyers pay all the fees, expenses and taxes required for conveyances unless agreed otherwise by the parties.

#### 4 Foreign owners and tenants

**What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction? What other factors should a foreign investor take into account in considering an investment in your jurisdiction?**

There are no restrictions on foreign individuals or entities owning or leasing real estate in the Dominican Republic. The process for purchasing or leasing real estate for foreigners is exactly the same as for Dominicans. Both foreign individuals and entities, and Dominicans, must register locally with the tax authorities before registering purchases of real estate. Individuals must submit their application directly at the Internal Revenue office, while entities must first register at the Chamber of Commerce and obtain a mercantile registry certificate, before applying for their tax number. These are mere formal requirements that can be easily fulfilled.

#### 5 Exchange control

**If a non-resident invests in a property in your jurisdiction, are there exchange control issues?**

Real estate can be purchased and sold in any currency, usually in local currency (Dominican pesos) or US dollars. There are neither controls nor restrictions on foreign currency exchange in place. Under current foreign investment laws, foreigners can freely repatriate capital and profits from their investment in the Dominican Republic.

#### 6 Legal liability

**What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?**

Owners and tenants face a standard strict tort liability (custody-based liability) for the real estate they own or lease for damages suffered by third parties on their property, if the property has played an active role in causing the damage, or for environmental damages. Only current owners or tenants at the time of occurrence of the damage can be held liable, not subsequent owners or tenants. Lenders are exempt.

#### 7 Protection against liability

**How can owners protect themselves from liability and what types of insurance can they obtain?**

Owners can protect themselves by acquiring a civil liability insurance policy. The environmental law requires mandatory insurance for projects that require a permit from the Ministry of Environment. There are no legal structures in place that can shield owners from their liabilities.

#### 8 Choice of law

**How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?**

The Dominican Civil Code mandates that all matters concerning real estate in the Dominican Republic are subject only to local law, no matter who owns the property (Dominican citizen or foreign individual entity) or the place where the contract was signed. This is a rule of public order that cannot be amended or waived by the contracting parties. If a transaction involves properties from another jurisdiction as well, then the part of the transaction that refers to the Dominican real estate must be governed by Dominican law, hence all closing documentation must be drafted and executed according to Dominican laws. Nevertheless, for estate purposes, a new conflict of laws statute, enacted in December 2014, allows foreigners to have their national law determine the rules of inheritance in connection with real estate located in the Dominican Republic; previously, Dominican inheritance rules applied in all cases.

In contractual matters not involving real estate, the parties can choose the applicable law as long as they do not breach public order provisions under Dominican law. For example, labour relations in the Dominican Republic must be governed by Dominican law.

#### 9 Jurisdiction

**Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?**

The Real Estate Registration Law provides a special jurisdiction for disputes over registered real estate, consisting of land courts of original jurisdiction, with a single judge, as a court of first instance, and superior land courts, with five judges, as appeal courts. Both decide on matters of fact and law. Decisions of a Superior Land Court may be appealed before the Supreme Court, which only verifies the correct application of the law.

All affected parties in a suit must be duly notified by bailiff before he or she can proceed. For parties domiciled abroad, notices are served through a special procedure established for this purpose through the Dominican consulate in the country where the party is domiciled.

A foreign party does not need to be qualified to do business in the Dominican Republic, nor is required to post a litigation bond to sue for remedies in the Dominican Republic.

#### 10 Commercial versus residential property

**How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?**

In general, Dominican law does not distinguish between commercial and residential properties: the same rules apply for both. However, properties held by commercial entities are taxed differently from those owned by individuals.

A 1 per cent annual tax is assessed on real property owned by individuals, based on the cumulative value of the properties owned by the same individual, as appraised by the government authorities. Properties are valued without taking into account any furniture or equipment to be found in them. For built lots, the 1 per cent is calculated only for values exceeding 6.8 million Dominican pesos. For unbuilt lots, the 1 per cent tax is calculated on the actual appraised value without the 6.8 million pesos exemption. Individuals pay this tax every year on or before 11 March, or in two equal instalments: 50 per cent on or before 11 March, and the remaining 50 per cent on or before 11 September. The 6.8 million pesos threshold is adjusted annually for inflation. The following properties are exempt from the property tax:

- built properties valued at 6.8 million Dominican pesos or less;
- farms; and
- houses inhabited by owners who are at least 65 years old, who have owned the house for more than 15 years and have no other property in their name.

Properties held in the name of a corporation or other entities do not at present pay a property tax per se; however, a 1 per cent tax is levied on company assets, including real estate. Beginning in 2017, however, property held by entities will also pay a 1 per cent property tax, and the tax on assets will be abolished.

There are also different tax treatments with regard to leasing to individuals or to corporate entities: the leases to entities are subject to value-added tax; leases by individual landlords are subject to a 10 per cent withholding tax that is credited toward the landlord's annual income tax.

## 11 Planning and land use

**How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?**

All planning and land use matters are handled by the municipalities, the Ministry of Tourism (in tourist areas) and by the Ministry of Environment. The municipalities and the Ministry of Tourism establish the general rules regarding use (residential, commercial, industrial, mixed, density, maximum height, etc). Any construction or development that may affect the environment must also be approved by the Ministry of Environment.

## 12 Government appropriation of real estate

**Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?**

The legal regime for government compulsory purchase or condemnation of real estate is established by the Constitution and Law 344 of 1943. The Dominican Constitution states that:

*No person shall be deprived of his or her property, except on justified grounds of public utility or social interest, for which a person shall be paid a fair value before expropriation, as determined by the mutual consent of the parties or by the judgment of a court of competent jurisdiction, pursuant to the law. In case of the declaration of a State of Emergency or Defense, compensation may not be paid before the expropriation.*

Law 344 establishes the specific procedure that the government must follow in any case of expropriation.

## 13 Forfeiture

**Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?**

The Constitution allows the government to seize property without compensation if a definitive court ruling has confirmed that the property has been obtained through illegal acts such as drug trafficking, money laundering, etc.

## 14 Bankruptcy and insolvency

**Briefly describe the bankruptcy and insolvency system in your jurisdiction.**

Bankruptcies are presently regulated by the archaic procedure established in the outdated Code of Commerce, being the reason why it is almost never used. However, special regulations govern insolvency in the banking, insurance, energy and pension funds sectors. As a general rule, bankruptcies are only applicable to merchants and companies, not to individuals who are not merchants.

Secured creditors are not affected by a bankruptcy process; they maintain their priority rights over their collateral. Compulsory or voluntary reorganisation of an insolvent debtor does not exist.

A modern bankruptcy and insolvency statute, modelled on US bankruptcy laws, was enacted in August 2015 and will be in effect from January 2017.

## Investment vehicles

### 15 Investment entities

**What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?**

There are no restrictions regarding the structure or legal form of a foreign entity. If it is duly incorporated and recognised in the jurisdiction where it was formed, entities can do business in the Dominican

Republic upon registration at the Chamber of Commerce and Internal Revenue. However, trusts as they are known in most common law jurisdictions are not recognised as legal entities and cannot, therefore, directly hold property in the Dominican Republic.

As for Dominican entities, Dominican company law allows different types of commercial companies (individually owned enterprise, LLC) and corporations (regular or simplified stock corporations), all of which provide limited liability for its owners or shareholders. There are other investment entities recognised under the law, such as business partnerships, limited partnerships and per share limited partnerships, but they are seldom used because they do not offer a full liability shield to their members, and are subject to the same tax treatment as the other entities. Also, the recently enacted Law 189-11 introduced local fiduciary vehicles as a holding option.

Local law does not recognise the concept of pass-through entities. Any entity, local or foreign, is taxed as an entity, regardless of its legal structure, except real estate assets held through a closed-end investment fund approved by the Dominican Republic Security and Exchange Superintendence. These funds are considered fiscally neutral investment vehicles and, as such, are not subject to income tax; their shareholders or beneficiaries, however, will pay income tax on the income received from the funds.

### 16 Foreign investors

**What forms of entity do foreign investors customarily use in your jurisdiction?**

The most common entity used by foreign investors is a local LLC. Some, preoccupied by the complexities of reporting a foreign entity to the tax authorities in their home jurisdiction, prefer to register their domestic entity in the Dominican Republic. Finally, high-income individuals with complex estate planning in place use the structures existing in their estate plan to acquire Dominican assets.

### 17 Organisational formalities

**What are the organisational formalities for creating the above entities? What requirements does your jurisdiction impose on a foreign entity? Does failure to comply incur monetary or other penalties? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?**

The five basic steps for incorporating any local entity are:

- registering the company's name before the National Office of Industrial Property;
- signing of the by-laws;
- payment of the incorporation tax (1 per cent of capital);
- recording the incorporation documents at the Chamber of Commerce and obtaining the mercantile registry certificate; and
- registering the company at Internal Revenue and obtaining a tax number.

The three basic steps for registering a foreign entity in the Dominican Republic (permanent establishment) are:

- translating into Spanish and authenticating the incorporation documents (by-laws, certificate of incorporation, designation of directors, etc);
- recording the incorporation documents at the Chamber of Commerce and obtaining the mercantile registry certificate; and
- registering the company at Internal Revenue and obtaining its tax number.

All foreign and local entities are taxed equally regardless of structure: a flat 28 per cent on net corporate profits and 10 per cent tax on dividends or profits sent abroad.

The Dominican tax code has a general anti-tax avoidance provision ('substance over form' principle) and specific rules for the sale of shares of foreign entities that own assets in the Dominican Republic.

All companies registered in the Dominican Republic, regardless of their being local or foreign entities, including those with no income or operations, must file income tax returns with the Dominican Republic's Tax Office (DGII) every year. Aside from the penalties on overdue taxes, which amount to 11.10 per cent for the first month and 5.10 per

cent for each additional month, entities that do not comply with the filings and subsequent payments of both income and asset taxes run the risk of having the Tax Office begin a lien registration process against the entity's properties.

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## Acquisitions and leases

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### 18 Ownership and occupancy

**Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.**

Dominican real estate law recognises the following interests in real estate:

- absolute ownership;
- usufruct;
- easements;
- betterments;
- leases;
- condominium regimes; and
- privileges and mortgages.

It does not recognise cooperative ownership arrangements or other occupancy interests.

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### 19 Pre-contract

**Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?**

Non-binding agreements do not really fit into the Dominican legal system and are rarely used. A general rule of the Civil Code establishes that with an agreement on the property and the sale price, the sale is perfected between the parties, even if the property has not been delivered nor the price paid. Although this rule can be waived, it is customary to characterise any agreement – including term sheets – as binding, meaning that penalties are applicable if, for example, the buyer decides not to buy or the seller decides not to sell, even in cases when the above-cited rule is subject to a suspensive condition. An agreement is usually considered as binding and will be treated by the courts accordingly.

Customarily, real estate transactions in the Dominican Republic do not follow the North American pattern of a written offer tendered by the buyer to the seller, followed by the seller's written acceptance, or the signing of a non-binding term sheet or letter of intent. Instead, after verbal agreement is reached by the buyer and seller on the price, a binding Promise of Sale is prepared and signed by the parties. A property is usually only taken off the market if a binding contract with a non-refundable deposit is in place.

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### 20 Contract of sale

**What are typical provisions in a contract of sale?**

A well-drafted contract of sale should contain, as a minimum, the following provisions:

- full name and particular of the parties. If the seller is married, the spouse must also form part of the contract;
- legal description of the property;
- purchase price and payment terms;
- obligation of the seller to deliver to the buyer at closing the documentation required for registering the purchase (certificate of title, tax receipts, etc);
- default clauses;
- date of delivery of the property; and
- representations by the parties and remedies in case of breach of contract.

The amount of down payment depends on the circumstances of the sale, especially on the time that the buyer will take possession of the

property. Before delivery, payment of 10 per cent of the purchase price is common. If possession will take place from the time of signing the promise of sale, then a much higher amount might be due, up to the amount of the sale price, even if the title does not change hands. Escrows are used, but are not mandatory and not always accepted by the seller; it is normally used when a part of the payment is subject to certain conditions (delivery of title, city hall construction permits) or the payment is going to be done by several bank transfers.

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### 21 Environmental clean-up

**Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?**

Issues of environmental clean-ups in real estate transactions are still very rare in the Dominican Republic. So far, this has been a problem only in the mining sector. Therefore, there are no general covenants in use. Of course, the parties to a contract are free to insert mutually agreed terms regarding long-term environmental liability and indemnity issues.

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### 22 Lease covenants and representation

**What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?**

The general recommendation for any real estate acquisition is to have the seller deliver the property without any tenants, considering the costs and duration of an eviction procedure under Dominican law. The final payment should always be made subject to such a delivery without tenants or any other type of occupation. If the buyer is interested in taking on the existing lease, the representations are extensive, starting with requesting full disclosure of the entire landlord-tenant subleases, related documents, lease receipts, etc. Leases survive a sale, but brokerage agreements do not. Requesting estoppel certificates from the tenants is not common in the Dominican Republic and the tenant is not obliged to sign them.

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### 23 Leases and real estate security instruments

**Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?**

In general leases are not registered at the Registry of Title and are, therefore, subordinate to a registered security instrument, such as a privilege or mortgage. However, in the unlikely case that a lease has been registered before a security interest, the terms of the lease must be respected by the creditor.

Banks usually require a first-rank mortgage and will not accept subordination to a lease. Ground or head leases are not treated differently from other commercial leases.

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### 24 Delivery of security deposits

**What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?**

Dominican law requires landlords to deposit mandatory security deposits (in an amount equivalent to one, two or three months of rent, depending on the term of the lease) at the government-controlled

Agricultural Bank. Any legal procedures against the tenant cannot be initiated unless such deposits have been made.

Leases commonly provide for periodic rent increases.

## 25 Due diligence

**What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate. Is it customary to obtain a zoning report or legal opinion regarding legal use and occupancy?**

The typical real estate due diligence overseen by the buyer's attorney regarding title consists of the following:

- obtaining a certification from the Registry of Title stating the legal status of the property;
- obtaining a certified report from an independent surveyor confirming that the official survey coincides with the property and that there are no overlapping surveys;
- obtaining a certificate from the Internal Revenue stating that the property tax, if any, has been paid;
- confirming that the property to be purchased may be used for the purposes sought by the buyer;
- investigating if a third party is occupying the property;
- investigating the property's environmental status; and
- ensuring that the seller, especially if a corporation, has the authority to sell and can convey clear title.

As noted before, under the Torrens system, there is no need to do a chain of title searches. Title insurance is available, but is not used frequently for various reasons, especially limited protection and costs, even though the indemnity fund contemplated by the Real Estate Registration Law has not functioned properly.

The Real Estate Registration Law establishes that whoever registers first has priority over those who register after. Registration is deemed to be complete on the date the application is submitted for registration, provided the application is approved, not on the date the Registry of Title issues the corresponding certificate. Priority among different interested parties can be contractually reordered.

## 26 Structural and environmental reviews

**Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?**

Structural reviews by engineers or architects can be obtained but are not very common. There is no standard procedure: it is usually the buyer and the solicitor who instruct the engineer about the scope of the review. The sales contract may establish specific representations concerning the structure and environmental issues and the corresponding sanctions in the event of a non-compliance (penalties, indemnity, right to rescind, etc), but they are not customary.

Environmental insurance is available.

It is customary to review all permits regarding existing structures or projects. Legal opinion letters are only used for internal purposes.

Any real estate project, subdivision or infrastructure must apply for and obtain environmental approval from the Ministry of the Environment and Natural Resources, pursuant to General Law on the Environment and Natural Resources 64-00, which regulates environmental pollution, the generation and control of toxic and hazardous substances, and the treatment of domestic and municipal waste, among other matters. Environmental due diligence is highly advisable for purchases of undeveloped land, as well as off-plan property purchases.

## 27 Review of leases

**Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?**

Leases are usually prepared and reviewed by lawyers. Dominican law is very protective of tenants' rights and there is no fast and efficient eviction procedure in place. Key lease issues include: lease term, tacit

renewal clauses, ownership of betterments made by tenant during the lease, default clauses and waiver of certain tenant-friendly statutory provisions, clear distinction between minor and major repairs and who will be the responsible party to cover these, specific use of the property during lease term (type of business or family residency), etc.

Very often, the tenant has to find a guarantor to co-sign the lease.

## 28 Other agreements

**What other agreements does a lawyer customarily review?**

The buyer's lawyer has to carefully review any agreement regarding the property: service agreements, brokerage agreements, previous sale agreement if the price has not been paid in full and the agreements on which any registered interest is founded (easement agreements, mortgage contracts, etc).

The lawyer should also review carefully the marital status of the seller, and, if he or she is married, review any existing marriage contract. Dominican law does not generally allow the sale of any property without the consent of both spouses.

## 29 Closing preparations

**How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?**

The lawyer's preparation for closing involves obtaining, reviewing or preparing the following:

- certification from the Registry of Title stating the legal status of the property;
- a certified report from an independent surveyor confirming that the official survey coincides with the property and that there are no overlapping surveys;
- a certification from the Internal Revenue stating that the property tax, if any, has been paid;
- pertinent permits or zoning reports;
- reports from engineers, if applicable;
- any agreements, receipts and discharges (services, employees, tenants, etc) related to the property;
- the identification and marital documents of the parties, and, if entities, the complete corporate documentation (by-laws, mercantile registry certification, tax ID, corporate resolution, etc);
- if the property is a condominium unit, obtaining and reviewing:
  - a copy of the condominium declaration;
  - a copy of the condominium regulations;
  - a copy of the approved construction plans;
  - certification from the condominium administration showing the seller is current with condominium dues; and
  - copies of the minutes of the last three condominium meetings;
- information as to how payment of the price of sale will be made;
- the contract of sale; and
- the closing checklist.

## 30 Closing formalities

**Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?**

The closing usually takes place in the lawyer's office with all the parties present or represented by power-of-attorney. It is not necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction.

At the closing, the buyer's lawyer receives two originals of the contract of sale – one for registration purposes and the other for his or her file – and the seller's original certificate of title.

Ideally, the signing of the contract of sale, payment of the purchase price and delivery of the seller's documentation will happen simultaneously. Regarding financing, the bank usually insists on registering the mortgage first before disbursing the funds to the seller.

**31 Contract breach****What are the remedies for breach of a contract to sell or finance real estate?**

The purchaser can:

- enforce the sales contract (specific performance) by filing a suit at the Land Court demanding the transfer of property (the suit is automatically recorded as a lien on the property at the Registry of Title);
- ask for specific performance and damages; or
- sue to rescind the contract and obtain damages.

Similarly, the borrower can sue the bank for specific performance and damages.

**32 Breach of lease terms****What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply?**

Tenants can sue landlords for the specific performance of any obligation assumed by the landlord in the lease and damages. The landlord, likewise, can sue for specific performance and damages, as well as for eviction.

The customary procedure to evict a defaulting tenant is to sue in court. The process is very time-consuming for two reasons:

- before suing, the landlord is required in many cases to go through an administrative procedure that usually grants the tenant grace periods of six months or more; and
- eviction orders by lower courts are subject to appeals to two higher courts, which lengthens the process to three or more years if the tenant retains the services of a savvy lawyer.

General contract law applies to the lease, but is limited by various statutes that protect the tenants. For example, if there is no escalating clause for rent in the lease, the landlord cannot raise it unilaterally without undertaking a lengthy administrative procedure.

**Financing****33 Secured lending****Discuss the types of real estate security instruments available to lenders in your jurisdiction.**

Mortgages (financing from third parties) and privileges (seller's financing) are the customary security interests. Both grant the lender a registered right on the property (collateral) that can be enforced in case of default through a foreclosure process.

**34 Leasehold financing****Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?**

There is no financing available for ground leases.

**35 Form of security****What is the method of creating and perfecting a security interest in real estate?**

Mortgages are created by contract between the owner and the lender, or by a tripartite agreement between seller, buyer and the lending institution. The contract is authenticated by a Dominican notary and then registered at the Registry of Titles after payment of the 2 per cent mortgage tax.

Privileges of the unpaid seller are automatic: upon review of the registration application submitted to the Registry of Titles, the registrar will register a privilege in favour of the seller if he or she can determine from the documents in the file that part of the price of sale has not been paid. The registration of the privilege is tax-exempt.

The registration of a security interest, be it a mortgage or a privilege, is perfected by filing the documentation at the Registry of Title in the jurisdiction where the property is located. The documents required for filing of a mortgage are:

- a mortgage contract;
- original of the certificate of title of the borrower;
- mortgage tax receipt; and
- certification attesting to the payment of property taxes.

For a privilege, the documents required are the same as for a sale.

**36 Valuation****Are third-party real estate appraisals required by lenders for their underwriting of loans? Must appraisers have specific qualifications?**

Third-party real estate appraisals are customarily required by lenders for their underwriting of loans. The appraiser, usually a surveyor or engineer, must be a recognised professional accredited by the Dominican Institute of Appraisers.

**37 Legal requirements****What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?**

A foreign lender does not need specific authorisation to do business in the Dominican Republic. To register a mortgage in his favour, the foreign lender should obtain a local tax number. Once this tax number has been obtained, the lender is no longer subject to the general withholding taxes established for payments sent abroad (28 per cent in general, 10 per cent for interest paid to foreign financial institutions). The lender will be taxed as a permanent establishment, under the same conditions as a Dominican entity.

Regarding required documents and registration taxes, the same rules that apply for local lenders apply to foreign lenders (see question 35).

Mortgages and underlying credits can be transferred without paying additional taxes.

**38 Loan interest rates****How are interest rates on commercial and high-value property loans commonly set (with reference to LIBOR, central bank rates, etc)? What rate of interest is legally impermissible in your jurisdiction and what are the consequences if a loan exceeds the legally permissible rate?**

Local interest rates are commonly set to the Dominican market standard rate, published on the Central Bank website. Loans can be obtained in local currency or in US dollars. Interest rates are higher than in Europe or the US and are usually fixed only for a limited time, being subject, usually, to unilateral annual review by the lender.

References to LIBOR or any other international indexes are only used in international loans.

There is no effective consumer protection in place for unreasonably high interest rates. An old usury law dating from 1919 was abolished in 2002.

**39 Loan default and enforcement****How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?**

The remedies against a debtor in default are enforced through a specific judicial procedure at the first instance court. It is a three-step procedure, usually based on monetary default: the creditor notifies a specific demand of payment to the debtor, then files an embargo at the Registry

### Update and trends

A law on the conflict of laws (Law 544-14 on International Private Law) came into force in December 2014; this statute liberalised transactions involving foreigners and abolished the requirement that foreign owners of real estate be bound by Dominican inheritance rules.

A new bankruptcy and insolvency law was enacted in August 2015, effective from January 2017. It will replace the very outdated insolvency procedure in the Dominican Republic.

of Title to completely block any further registrations on the property, and then initiates the court procedure for the foreclosure, which ends in a public auction. All the rules regarding the foreclosure are of public order. Foreclosure can only be judicial; non-judicial foreclosure is prohibited by law. Defaults other than monetary defaults are possible (unauthorised distribution of dividends, unauthorised changes in the corporate structure, etc) if properly established in the loan documents and proven by the creditor.

The usual time for an ordinary foreclosure is around six to 12 months. Financial institutions benefit from an expedited procedure that takes around three to six months. In any case, dilatory procedures can be initiated by the debtor or by any other party with a registered right on the property.

Law 189-11 introduced trusts and collateral agent structures for mortgage securities as an alternative to standard mortgage-foreclosure processes, providing better protection of collateral and including an expedited foreclosure procedure.

#### 40 Loan deficiency claims

**Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there time limits on a lender seeking a deficiency judgment? Are there any limitations on the amount or method of calculation of the deficiency?**

Yes. There are no limits on the amount or method of calculation of the deficiency.

#### 41 Protection of collateral

**What actions can a lender take to protect its collateral until it has possession of the property?**

Throughout the foreclosure process, the debtor continues being the owner of the property until it has been sold to the highest bidder or adjudicated to the lender. Once the foreclosure procedure is begun and registered at the Registry of Titles, the property is blocked from any registration by third parties. In addition, the lender can request an injunction designating a judicial administrator. By law, the lenders also have a preferential right to collect any rent produced by the collateral during the foreclosure process. There are no risks of liability during the foreclosure process nor for possession, since control of the property can only be granted if, at the end of the foreclosure process, the property is adjudicated to the creditor in case bidders do not show up or meet the minimum bid at the public auction.

#### 42 Recourse

**May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?**

Yes, security documents may provide for recourse to all the assets of the borrower. It is customary to insert a clause to that effect in all bank loans.

The existence of such a clause has no significance in a bankruptcy or insolvency filing. Personal recourse is not limited to actions such as bankruptcy filing, etc. The lender has a choice to foreclose on the collateral or collect from other assets of the borrower. As for guarantors, personal recourse against them is also unlimited: a special clause to that effect is customarily included in the mortgage contract.

#### 43 Cash management and reserves

**Is it typical to require a cash management system and do lenders typically take reserves? For what purposes are reserves usually required?**

Financial institutions usually require the necessary reserves to pay taxes and insurance. For commercial loans, it is common that the financial institutions require only a segregated account but not a lock box.

#### 44 Credit enhancements

**What other types of credit enhancements are common? What about forms of guarantee?**

The main method used by local banks for credit enhancement is to establish a scrutinised structure with two main elements: first, the loan is usually granted as a line of credit and any disbursement is subject to specific conditions (completion of a construction phase, obtaining of a specific permit, etc). Second, the bank is in control of a segregated account, which constitutes the only account that the borrower can use for receiving funds and making payments.

#### 45 Loan covenants

**What covenants are commonly required by the lender in loan documents?**

The commonly required covenants are the following:

- prohibition from disposing of the collateral in any possible way (sale, pledging as a collateral for any other loan, etc);
- maintenance of an insurance policy in favour of the lender;
- prohibition from merging with another entity or acquiring other major assets without the approval of the lender;
- prohibition from implementing changes to the corporate structure without the approval of the lender;
- prohibition from disbursing company dividends without the approval of the lender; and
- controlling and inspection structures.

These requirements usually do not depend on the asset class, but the situation of the borrower.

#### 46 Financial covenants

**What are typical financial covenants required by lenders?**

Typical financial covenants required by lenders are based on loan-to-value ratios (usually anywhere between 50:100 and 70:100), debt-service coverage ratios and financial reporting requirements. Ongoing appraisals are usually only required in specific cases.

#### 47 Secured moveable (personal) property

**What are the requirements for creation and perfection of a security interest in moveable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?**

The first requirement for the creation and perfection of collateral of moveable property, according to Dominican law, is always a notarised contract in Spanish that establishes or confirms the debt and describes the collateral to be pledged. Depending on the asset, there might be additional requirements, such as handing over the moveable asset to the lender and registration at the Civil Registry (regular civil pledge) or registration of an opposition at the Internal Revenue (vehicles).

Chattel mortgages, created by the Agricultural Promotion Law 6186 of 1963, are commonly used for securing machinery, inventory and other moveable assets. This type of pledge enables the debtor to keep possession of the asset while the security is in place. In the case of

chattel mortgages, registration is made by filing the documents in the appropriate court.

As for aircraft, security agreements need to be drafted before a notary public and executed and filed at the Civil Registry Office and the National Institute of Civil Aviation. Securities over ships are registered at the Industry and Commerce Department.

As for intangible assets, they can be securitised as follows:

- company shares: it will depend on the type of entity (stock corporation, simplified stock corporation or LLC) and on the procedure established by the company’s by-laws. In most cases, the shareholder who wishes to pledge his or her shares to a third party must notify other shareholders, directly or via the board of directors, to receive approval prior to executing a share pledge agreement and registering the pledge in the company register. All pledges over shares must also be registered at the Chamber of Commerce of the company’s domicile;
- contractual rights: the execution of a pledge agreement, its notification to the contract’s counterparty and registration of the notified documentation in the corresponding Civil Registry Office;

- receivables: through the execution of a pledge agreement, its notification to the corresponding debtors and registration of the notified documentation in the corresponding Civil Registry Office; and
- intellectual property: through the execution of a pledge agreement and its registration at the National Office of Intellectual Property.

**48 Single purpose entity (SPE)**

**Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?**

No. SPEs do not exist in the Dominican Republic. This does not prevent an SPE from a foreign jurisdiction from registering and doing business in the Dominican Republic.

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