

LATIN LAWYER REFERENCE CAPITAL MARKETS 2019

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# Dominican Republic

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## 1 Which laws, regulations and administrative rulings govern the offering and trading of securities and how are they proposed, adopted and amended?

The regulatory framework for the public offering and trading of securities in the Dominican Republic is characterised by a multi-tier, public and private normative structure.

The hierarchical pyramid is based on the Securities Exchange Law No. 249-17 enacted on 19 December 2017 (the Securities Law), which repealed the Securities Exchange Law No. 19-00. The Securities Law is a legislative act that was adopted by the Dominican Republic's National Congress.

The regulation to the Securities Exchange Law No. 19-00 (the Securities Regulation) was issued by Presidential Decree No. 664-12 on 7 December 2012 (including its modifications by Presidential Decree No. 119-16), and serves as secondary level rules that complement and interpret the provisions of the Securities Exchange Law No. 19-00 that, along with the existing Securities Law, securities regulations and resolutions, will continue to be in full force and effect until the Securities Superintendency (SIMV) and the National Securities Board (CNMV) issue new regulations and resolutions to complement the Securities Law. Pursuant to the Securities Law, the SIMV must issue the regulatory framework within two years from the enactment of said law.

Additional administrative rulings or resolutions (normas) serve mostly as tertiary level regulatory instruments. Such resolutions set out the formal operative requirements, conduct of business rules, accounting standards and prudential policies and obligations that market participants, issuers and other active players must abide by. These resolutions are issued either by the SIMV or the CNMV depending on the scope of the regulated subject matter, and are proposed, amended and adopted by these regulatory bodies. Finally, the fourth level administrative norms (circulares) are issued by the SIMV.

Further, securities exchanges and the central securities depository (CSD) are allowed to issue self-regulation, within the framework of the existing laws and regulations. This entails additional levels of rules existing for market participants and issuers that interact through organised exchanges, as well as for clearing and settlement through the CSD.

Finally, the Dominican Companies Law No. 479-08 (amended by Law No. 31-11), Law No. 189-11 on the Development of the Mortgages Market and Trusts (fideicomisos), Law No. 107-13 on the Rights of Individuals in their Relations with the Public Administration and Administrative Procedure, the Restructuring and Liquidation of Companies and Merchants Law No. 141-15, the Law No. 155-17 against Money Laundering and Terrorism Financing, and other monetary and financial regulations, serve as complementary legislation for the securities market.

## 2 What is the rationale behind this legislation?

The objective of the Securities Law and its complementary norms is threefold. Foremost, it creates a regulatory framework that promotes the exchange of securities with the aim of forming an organised, transparent and efficient market. Secondly, the securities legislation characterises and depicts the necessary market participants and institutions that provide for a sound and robust securities market oriented towards attaining the maximisation of legal and commercial certainty in its transactions. Finally, there is a clear-cut policy regarding the importance of investor protection underlying Dominican capital market rules. The aim is to reduce information asymmetries between issuers and investors by imposing on issuers a duty for disclosure, alongside compulsory credit ratings and external audits. Transparency and the proper disclosure of complete, sufficient and timely information are promoted as safeguards for investors and their financial interests.

## 3 Which regulatory authorities oversee capital markets and what is the scope of their jurisdiction?

A two-tier administrative structure oversees the regulation of securities in the Dominican Republic. The CNMV and the SIMV are the main regulatory authorities that oversee capital markets in the Dominican Republic. The SIMV is an autonomous decentralised administrative body in charge of regulating, controlling and promoting the securities market according to the rules set out by the securities legislation. The SIMV also has policing functions over market participants and issuers. The CNMV is the highest oversight body for the capital markets, and is composed of seven members and presided over by a high-ranking representative from the Dominican Central Bank, which is designated by the Dominican Monetary Board, along with the Securities Superintendent, a high-ranking representative from the Ministry of Finance and four private members who are all appointed by the president of the Dominican Republic from shortlists presented by the Dominican Monetary Board. The CNMV supervises the SIMV and authorises the price lists for the services that the SIMV provides for market participants and issuers. Also, the CNMV serves as an appellate body for the decisions of the SIMV, as well as a dispute resolution forum for market participants whenever such disputes cannot be properly addressed by the SIMV.

The Dominican Constitution also entrusts the Monetary Board with the regulation of the nation's monetary and financial system. As a result, the Monetary Board, chaired by the governor of the Dominican Central Bank, is in charge of coordinating regulators in the financial markets.

#### **4 How is financial fraud and price manipulation in capital markets regulated?**

The Securities Law and its complementary norms set strong regulatory policies against insider trading, market abuse and financial fraud. In order to tackle insider trading, a legal presumption is established regarding certain individuals that are linked to market participants and issuers. This presumption shifts the burden of proof and establishes an assumption, which can be challenged with proper evidence, that particular people have access to privileged information, which can be challenged with proper evidence.

The Securities Law and the Securities Regulation set out detailed examples of certain practices that can be construed as price tampering and market abuse. There is also a tertiary tier resolution that serves to establish, in greater detail, which actions and practices constitute market abuse or insider dealing.

Moreover, issuers and market participants are required to duly submit periodical information to the SIMV and to the Financial Analysis Unit (UAF) regarding their operations, transactions, money laundering control procedures, as well as capital requirements and prudential financial information. External auditing firms authorised by the SIMV also inspect the financial statements of issuers and market participants. Financial crimes related to money laundering activities are also strongly sanctioned by the Law No. 155-17 against Money Laundering and Terrorism Financing and a Money Laundering Prevention Ruling issued by the CNMV.

#### **5 What sanctions and remedies can the regulatory authorities impose?**

The SIMV and the Criminal Tribunal of First Instance of the National District are the jurisdictional authorities commissioned to impose civil, criminal and administrative sanctions regarding unlawful activities related to publicly offered securities. The Criminal Tribunal of First Instance of the National District is the forum *conveniens* authorised to impose civil (torts) and criminal sanctions, while the SIMV can levy administrative sanctions that include the revocation of the licence of an issuer or market participant. Ordinary civil remedies are also available for seeking redress (including disgorgement of illegal profits and the seizure of assets employed for money laundering activities).

#### **6 What are the private remedies an investor may pursue?**

Additional private remedies available for investors include ordinary civil and criminal prosecution, arbitration (whenever contractually stated), and conciliation proceedings before the SIMV and the CNMV.

Regarding arbitration, the Dominican Republic has enacted Law No. 489-08, an arbitration legislation based on the United Nations Commission on International Trade Law (UNCITRAL) model law, which could be applied for those relations where the parties agree upon by means of a written document, to use arbitration as their dispute resolution mechanism. Such law foresees that the arbitration could take place in the Dominican Republic or in a foreign country.

#### **7 Give details of the frequency and nature of enforcement actions or private actions. Describe whistle-blower protection and incentives under the regulations.**

The SIMV regularly imposes fines and other sanctions to market participants (mostly securities intermediaries and investment fund companies), on minor violations to regulations detected through on-going audits and inspections.

Dominican legislation does not grant special incentives or protection to whistleblowers. However, certain stakeholders – such as shareholders and bondholders, are empowered to present complaints against issuers their directors and vigilance officer before the SIMV. In addition, anyone can file a claim denouncing the public nature of an unauthorised securities offering and requesting the SIMV to investigate it further.

#### **8 What is the legal definition of a 'security' and which types of securities are commonly traded?**

Article 3.41 of the Securities Law defines security as the right or bundle of rights of an economic nature, that incorporates a literal and autonomous right that is exercised by its legitimate holder. It also includes derivatives instruments that are registered in the Securities Market Registry. The Securities Regulation further categorise securities by listing the different types that can be traded in the Dominican securities market.

To date, derivatives have not been traded in the public securities market. Corporate, treasury debt and Dominican Central Bank instruments are most commonly traded, as well as debt instruments issued by multilateral financial institutions. There are also securities issued by close-ended investment funds, open investment funds and securities issued by trust funds.

On another note, since cryptocurrencies are not backed by the Dominican Central Bank, issued nor controlled by a foreign central bank, they are not recognised nor accepted as legal tender. To date, cryptocurrencies are not regulated by the Dominican legislation and cannot be traded under the scope of the Securities Law.

## 9 How are securities offered and sold to the public?

The Securities Law and its complementary norms only regulate public offerings of securities. Primarily, contractual and private law (alongside certain dispositions of the Companies Law regarding securities) cover private placements, which are left unregulated.

Pursuant to the rules of the Dominican Companies Law No. 479-08, public issuers must be locally domiciled in the Dominican Republic with their corresponding taxation and commercial registry identification numbers assigned. Purported issuers must register as such before the SIMV, complying with all the formal requirements for publicly traded companies. The registration and authorisation of the issuer and its projected issuance programme can be requested and obtained by means of a unified single request to the SIMV. The authorisation process begins with the submission of all of the requested corporate and financial information related to the issuer and its planned public offer. All documents in the submission must be in Spanish or translated into Spanish by a judicial interpreter in the Dominican Republic.

The supporting documentation must be accompanied by a report from an external independent auditor as well as a credit rating for the issuer and the purported issuance. The SIMV has a 25-day period to authorise the public offer or make observations to the presented documentation. The role of the SIMV during the authorisation process is limited to verifying that the presented documentation complies with the standards contained in the Securities Law and its complementary norms. After the public offering programme has been authorised by the SIMV, the issuer has a 365-day time frame to place the securities (or a first tranche) with the public. The SIMV Resolutions extend to three years the time frame to publicly place the securities issued by (i) close-ended investment funds; (ii) open investment funds; (iii) securities issued by trusts; and (iv) securities issued by securitisation companies.

The distinction between public and private offerings has long been a murky subject. A public offering is defined in the Securities Law as:

*(...) all offer, direct or indirect, made by any person to the public in general or to specific sectors or groups thereof, through any means of communication or diffusion, so that they subscribe, acquire, sell or negotiate individually an indeterminate number of securities (...).*

According to the Securities Regulation, a private offering must:

- not be publicised through mass media (newspapers, internet, radio, television, etc);
- be subscribed by no more than 49 investors;
- offered securities must be issued in physical form; and
- they must not be held in dematerialised form by any national or foreign securities depository.

The Securities Regulation states that if a particular offering fails to comply with any of these requirements, it is presumed to be a public offering.

## 10 What are the disclosure requirements for securities issuers for both public and private offerings?

Corporate issuers that wish to issue publicly traded securities must disclose corporate and financial information, including audited financial statements dating back to the three years prior to the request, corporate documents (shareholder meeting minutes and resolutions, articles of incorporation, etc), beneficial ownership of the issuing vehicle, qualifications and composition of its board of directors, consolidated financial information (if the issuer belongs to a conglomerate group of companies) as well as the financial information corresponding to the trimester preceding the request. Moreover, all relevant facts that occur from that point onwards must be informed to the SIMV and the general public. With regards to private offerings, since contractual law governs those transactions, there are no statutory disclosure requirements for companies that privately issue securities to various creditors. An issuance is considered private if it does not meet the quantitative and qualitative requirements established by the Securities Regulation and the Securities Law. Any issuance that targets more than 50 investors or uses public media (including massive phone contacts) to reach prospects is considered a public offer.

## 11 Are there exemptions from securities registration?

There are no exemptions from securities registration for public offerings. An expedite registration procedure exists for multilateral organisations to which the Dominican Republic is a member, central banks and sovereign states that wish to issue securities locally in the Dominican Republic (referred to altogether as emisores diferenciados or differentiated issuers).

## 12 Do your accounting standards differ in significant ways from other jurisdictions' generally accepted accounting principles?

No. The official accounting standards are the International Financial Reporting Standards (IFRS).

## 13 To the extent that the International Accounting Standards Committee's International Financial Reporting Standards have not been fully implemented, is full convergence planned? What is the expected timetable?

The IFRS are indeed the official accounting standards. This has been reinstated under article 210 of the Securities Regulations as well as SIMV's Resolutions.

## 14 Does your jurisdiction offer policy and tax incentives to invest in the capital markets?

The Securities Law does not contemplate significant tax exemptions for investments in the Dominican securities market; however, electronic transfers made with securities registered in the Securities Market Registry are exempt from the 0.15 per cent rate applied to electronic transfers.

## 15 Please describe the applicable tax withholding regime, the customary exceptions and the commonly used standard tax-planning devices.

For publicly traded securities, tax withholdings are deducted by the securities depository (which functions as a delegated withholding agent). The depository pays the tax directly to the taxation authorities on behalf of the investor.

There is a 10 per cent withholding tax on the interests generated by securities for investors that are natural persons. There is also a 10 per cent withholding tax applicable whenever the interest payments are made to natural or legal persons located abroad.

## 16 Where and how are securities traded?

Securities are traded and placed in either a primary or a secondary market. Securities can be traded by means of a formal securities exchange or OTC. Securities can only be purchased through registered securities intermediaries, which include securities firms (or brokerage firms) and stockbrokers.

## 17 Where and how do securities clear? Can securities denominated in a foreign currency clear?

Clearance takes place through a licensed central securities depository in charge of custody, clearing and settlement. Securities denominated in a foreign currency can be cleared.

## 18 Please provide a general description of securities settlement systems in your jurisdiction.

The clearing and settlement of securities is primarily performed by the central securities depository (CSD). The securities depository is an integrated component of the National Payment Settlement System, administered and overseen by the Dominican Central Bank (the SIPARD). The progressive widespread dematerialisation of securities has made clearing and settlement of securities more efficient. The system is based on the "delivery versus payment" settlement principle, which ultimately adds more legal certainty to transactions.

Notwithstanding the foregoing, it is important to note that the Securities Law states that stock exchange companies and central counterparties can carry out clearing and settlement activities.

The overriding rules that govern the Dominican National Payment Settlement System are based on recommendations exacted by the Bank for International Settlements (BIS).

## **19 What are the distinguishing characteristics of your debt and equity capital markets?**

To date, the equity market includes listed close-ended fixed income investment funds, open investment funds, and securities issued by trusts. Moreover, the bond market is active and fairly liquid. Although quite incipient, the development of the local bond market is thriving owing to recent notable public offerings by major corporations, multilateral organisations and national debt issued by the Dominican state.

## **20 Where and how are derivatives traded?**

Derivatives are not publicly traded in the Dominican Republic. There are no existing clearing houses to allow the trading, clearing and settlement of derivatives.

The Securities Law's regulatory framework is still under discussion (including a regulation to establish and operate in the OTC market); the SIMV must issue the regulatory framework within two years from the enactment of said law.

## **21 Can you explain development of structured finance instruments in your country?**

After the enactment of Law No. 189-11 on the Development of the Mortgages Market and Trusts, a greater activity on structured finance is expected. This law, along with the Securities Law, sets the necessary legal conditions for securitisation to be effective. Prior to Law No. 189-11, it was not possible to achieve a proper segregation of assets under securitisation between the fund and a fund's administrator. This insufficiency of the legal system for the most part explained the lack of development of structured finance instruments, and has now been solved with a clear provision in the law establishing the protection of securitised assets. In addition, Law No. 189-11 and the Securities Law promote tax neutrality regarding fideicomisos, investment funds and securitisations.

## **22 How are institutional investors defined and regulated?**

Article 3.21 of the Securities Law defines institutional investors as financial intermediaries, insurance and reinsurance companies, pension fund managers, investment fund companies, security intermediaries (brokerage firms), trust companies and securitisation companies, as well as any entity authorised to manage resources from third parties, primarily to invest in the Dominican securities market.

## **23 Can foreign broker dealers offer and sell securities in the jurisdiction? To which investors and under what circumstances?**

No. Only brokers registered with the SIMV can offer and sell securities in the Dominican Republic.

## **24 What is the definition of 'insider trading', and who enforces the insider trading law? Outline the major developments in insider trading law giving details of any recent cases.**

The Securities Law, the securities regulations and a special ruling on Insider Trading and Market Abuse issued by the SIMV serve to regulate insider trading. Insider trading is broadly defined as using the privileged knowledge of acts, information or circumstances regarding publicly traded securities, which could ultimately affect their price, in order to gain advantages while trading such securities. The Securities Regulation also describes insider information as the "act of communicating insider information to third parties or recommending third parties to trade securities based on such insider information".

There have been no cases of enforcement of insider trading regulation by the SIMV.

## **25 What are the roles of the authorities when a foreign issuer makes a public offering? Who has jurisdiction over the public offering?**

The Dominican securities and corporate framework is very welcoming for foreign issuers that can either structure a public offering for the local market or "import" securities to the Dominican market from an existing public offer. In addition, a foreign

prospected issuer must set a permanent establishment at the Mercantile Registry and the Tax Administration (although no assets need to be located within the Dominican Republic), and be registered as an authorised issuer by the SIMV.

## **26 Is there a formal understanding with other jurisdictions to share information and provide reciprocal assistance in enforcement matters? If so, which jurisdictions?**

The Securities Law empowers the SIMV to share information, provide reciprocal assistance in enforcement matters and to provide technical consultation and assistance with other jurisdictions.

The SIMV also recognises a list of securities regulators from many leading jurisdictions that have undertaken MOU agreements with the International Organization of Securities Commissions (IOSCO) in order to facilitate the cross-border offer of securities registered in such countries, locally in the Dominican Republic, after the fulfilment of certain registration and authorisation requirements made by the SIMV.

## **27 Describe the framework for corporate governance.**

Dominican Companies Law No. 479-08 and the Securities Law have included important corporate governance dispositions applicable to private and public corporations. The compensation of executives and members of the board of directors must be expressly stated in the corporate charter or can be fixed by the shareholders' ordinary assembly. Nonetheless, variable directors' compensation structure is limited to up to 10 per cent of the company's reported earnings for a period.

Related-party transactions and transactions between the company and its shareholders and directors are closely regulated, as well as conflict of interests and agency problems. Moreover, public companies are required to have an oversight officer and all financial accounts for issuers and market participants are subject to the inspection of authorised external auditors and the SIMV.

In accordance with Dominican Companies Law No. 479-08, the directors and managers of a company are accountable to it and to the shareholders of the shortcomings that might be made during their tenure. In this sense, the law requires directors of commercial companies the duty to comply with certain obligations for the purpose of enabling the business and to protect the public interest. Among the fiduciary duties of directors is the "duty of care", which is primarily the duty of the director to conduct with prudence and faithfully. In addition, directors are required to act in accordance with the laws in force and in that sense, are bound to what we could call "duty of proper diligence", that is, to implement control measures necessary to ensure that officials and employees of the company carry out activities in accordance with the law.

It is important to note that the Securities Law requires the issuance of a regulatory framework regarding corporate governance, which is under discussion.

## **28 Which governing bodies (board of directors, audit committee etc) are required for public companies? What are their main functions and duties?**

Public companies incorporated under the Dominican Republic laws must have two main internal governing bodies (the board of directors or administrators and the shareholders' assembly) as well as one oversight officer or "statutory auditor". Additional governance bodies can be voluntarily included in the company's by-laws, including executive, financial and audit committees, etc. In addition, bond issuers are required to have a bondholders' general assembly and a bondholders' general representative. The board of directors must be composed of at least three members and is in charge of all of the management aspects related to the company. The shareholders' assembly or general meeting is the maximum governing body of a public corporation, in charge of ratifying and authorising all acts and operations through its resolutions according to the laws and the corporate charter. The shareholders' assembly elects oversight officers or statutory auditors, who are principally in charge of verifying and auditing the company's financial accounts and statements presented by the board of administrators. The bondholders' representative and the bondholders' general assembly have decision-making powers in all matters related to the issuer that could have an impact on an issuance.

Once issued the regulatory framework regarding corporate governance, public companies must abide such policies and obligations.

## **29 Are there any laws governing capital markets that are unique to your jurisdiction?**

No.

### **30 How do authorities and issuers resolve matters that are not expressly provided for in the securities laws and regulations?**

The SIMV and the CNMV have conciliatory powers that enable them to conduct dispute resolution and consultations with market participants and issuers. Additionally, issuers may engage in private consultations with their stakeholders and investors in order to resolve matters not expressly provided for in the securities norms. The securities rules and the Companies Law recognise the de facto civil juristic personality of an issuer's bondholders' assembly and requires them to be represented by a commissioned bondholders' representative, who can also broker dispute settlement between issuers and bondholders.

It is important to indicate that, in accordance with the Securities Law, securities exchanges have a self-regulatory role, so they are obliged to establish and enforce rules and standards of conduct for their members and for the protection of investors.

### **31 Which types of companies may make public offerings in your jurisdiction?**

Article 46 of the Securities Law establishes the organisational forms that issuers can take. These organisational forms include Dominican joint-stock companies, sociedades anónimas simplificadas and limited liability companies, foreign joint-stock companies, financial intermediaries (corporations, but also mutual societies) that are enabled to issue securities by the Dominican Monetary and Financial Law and other entities recognised by the Securities Law (namely, public bodies corporate, like foreign states, multilateral organisations and/or central banks).

### **32 Which economic activities or segments are the most active in the capital markets in your jurisdiction?**

Public sector issuers (the Ministry of Finance and the Dominican Central Bank) are the most active. Active private issuers include financial institutions (banks and other financial intermediaries – such as brokerage firms), local industries (including food and drink, chemicals, construction and steel products), tourism and real estate development projects and energy enterprises. In recent years, some multilateral financial institutions have also successfully issued bonds in the local market.

The main institutional investors are the pension funds (through their administrators) and banking institutions. Recent years have seen increased bond placements targeting investments from small corporate and individual investors.

### **33 Describe the main stock exchanges and OTC networks.**

The only stock exchange is the Bolsa de Valores de la República Dominicana (BVRD). To date (January 2019), there are approximately 35 issuers in the Securities Market Registry. This includes multilateral organisations, investment funds and fideicomisos (trusts). In addition, the Dominican Central Bank and the Ministry of Finance are also listed as issuers.

Likewise, there is a vibrant OTC market primarily formed by a network of market intermediaries that constantly trade with each other outside the stock exchange.

### **34 Describe recent initiatives undertaken by the government to improve the regulation and efficiency of its capital markets and, if applicable, to incentivise or facilitate companies' access to the capital markets.**

The government revamped the securities market through the issuance of the Securities Law. Said Law enhances corporate governance standards in the Dominican Republic, harmonises existing norms with the IOSCO principles as well as filling in the normative gap between the former Securities Exchange Law No. 19-00 and other recent important laws, such as Law No. 189-11 and the Dominican Companies Law No. 479-08. The SIMV and the CNMV must issue within a 24-month time frame from the enactment of the Securities Law, new regulations and resolutions that will complement the new Securities Law. The SIMV recently issued the regulatory framework (i) against money laundering and terrorism and (ii) on the registration fees and other services rendered by the SIMV. Additionally, it is under discussion the OTC market and corporate governance regulations.

Recent years have seen a reduction – rather than an increase, in the economic incentives for companies and investors to access capital markets. This includes rising supervisory and registry fees levied by the SIMV and the elimination of tax incentives for investments in publicly traded securities. For the development and competitiveness of micro, small and medium-sized enterprises, the SIMV and the market participants should promote access to the securities market to small and medium-sized enterprises, establishing differential and preferential rates.

**35 Describe the main obstacles that a company may confront in your jurisdiction when it is trying to become public. Describe any reform that you feel should be a national priority to improve capital raising by companies.**

Capitalisation requirements for publicly traded joint-stock companies has been set at an amount approximately equal to US\$600,000 (as of January 2019). At least 10 per cent of this amount must be entirely paid before constituting and listing the company. With the enactment of the Securities Law, the SIMV and the market participants will promote access to the securities market to small and medium-sized enterprises, establishing to this end differential and preferential rates.

It is important to note that costs related to the required capital and corporate governance structure required for public companies may be too cumbersome.

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