

## Capital Markets 2013 – 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 normative structure.

The hierarchical pyramid is based on the Securities Exchange Law No. 19-00 issued on 8 May 2000. The Securities and Exchange Law (the Securities Law) is a legislative act that was proposed and adopted by the Dominican Republic's National Congress. The National Congress is the only recognised authority that can amend the Securities Law. The Regulations to the Securities Exchange Law (the Security Regulations), which have been recently modified by Presidential Decree No. 664-12, serve as secondary level rules that complement and interpret the provisions of the Securities Law. The Securities Regulations were adopted on 7 December 2012 by the Executive Branch and can be modified by a presidential decree.

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 and prudential policies and obligations that market participants, issuers and other active players must abide by. These resolutions are issued either by the Securities Superintendency (SIV) or the National Securities Board (CNV) depending on the scope of the regulated subject matter. They are proposed, amended and adopted by these regulatory bodies. Fourth level administrative norms exist (*Circulares*), issued by the Superintendency.

Finally, the Dominican Companies Law No. 479-08 (including its modifications by Law No. 31-11) and the Money Laundering Prevention Law serve as harmonising legislation for the securities exchange.

### 2 What is the rationale behind this legislation?

The objective of the Securities Exchange 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. 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 CNV and the SIV are the main regulatory authorities that oversee capital markets in the Dominican Republic. The SIV 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 SIV also has policing functions over market participants and issuers. The CNV 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 that are all appointed by the president of the Dominican Republic from shortlists presented by the securities intermediaries association, the local stock exchanges, the commodities exchanges and the Commercial Chamber. The CNV supervises the SIV and authorises the price lists for the services that the SIV provides for market participants and issuers. Also, the CNV serves as an appellate body for the decisions of the SIV as well as a dispute resolution forum for market participants whenever such disputes cannot be properly addressed by the SIV.

The Dominican Constitution of 2010 also entrusts the Monetary Board with the regulation of the nation's monetary and financial system. As a result, the Monetary Board, chaired by governor of the 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 Exchange 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.

While the Securities Exchange Law is silent regarding market abuse, its Regulations and complementary resolutions define the practice. The disciplinary efficacy of this characterisation by means of a secondary level norm is disputed. Nonetheless, the new Regulations set out detailed examples of certain practices that can be construed as price tampering. 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 SIV regarding their operations, transactions, money laundering control procedures, as well as capital requirements and prudential financial information. External auditing firms authorised by the SIV also inspect the financial statements of issuers and market participants. Financial crimes related to money laundering activities are also strongly sanctioned by the Money Laundering Prevention Law and a Money Laundering Prevention Ruling issued by the SIV.

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

The SIV and the Criminal Tribunal of First Instance of the National District are the jurisdictional authorities authorised to impose civil, criminal and adminis-

trative 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 SIV 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 remedies, arbitration (whenever contractually stated), conciliation proceedings before the SIV and the CNV.

Regarding arbitration, the Dominican Republic has enacted Law No. 489-08, that is an arbitration legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law. It could be applied for those relations where the parties agree upon by means of a written document, to utilise arbitration as their dispute resolution forum. Such law foresees that the arbitration could be handled both in the Dominican Republic and in a foreign country.

#### 7 Give details of the frequency and nature of enforcement actions or private actions.

The SIV regularly imposes fines and other sanctions to market participants (mostly securities intermediaries, the stock exchange and the central depository) on minor violations to regulations detected through on-going audits and inspections. As of 7 May 2012 the SIV had issued a total of 121 resolutions imposing sanctions of different nature to participants in the market.

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

A security is defined by article 2 of the Securities Exchange Law as the right or bundle of rights of an economic nature, negotiable in the securities market, including stocks (equity), bonds, certificates, debt instruments, commercial papers, notes, securities resulting from securitisation operations. It also includes derivatives such as futures, swaps, securities and commodities options and other similar securities of any nature. The new Regulations further categorise securities by listing the different types that can be traded in the Dominican securities market.

To date, equity securities and derivatives have not been traded in the public securities market. Corporate, treasury debt and Central Bank instruments are most commonly traded. In addition, debt instruments issued by multilateral financial institutions are also commonly traded.

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

The Securities Exchange 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 Companies Law, 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 SIV, 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 SIV. 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 SIV has a 30-day period to authorise the public offer or make observations to the presented documentation. The role of the SIV during the authorisation process is limited to verifying that the presented documenta-

tion complies with the standards contained in the Securities Exchange Law and its complementary norms. After the public offering programme has been authorised by the SIV, the issuer has a 365-day time frame to place the securities (or a first tranche) with the public.

The distinction between public and private offerings has long been a murky subject. The new Regulations set out to distinguish between the two. Article 85 of the Regulations establishes that private offerings 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 Regulations state that if a particular offering fails to comply with all 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 SIV 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 regulations. Any issuance that targets more than fifty 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). However, convergence and full implementation is an on-going process. Full implementation is expected by the end of 2014 (for publicly traded companies).

#### 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. Full convergence is expected by the end of 2014.

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

Until November 2012, the Securities Exchange Law contemplated significant tax exemptions for investments in the Dominican securities markets. However, these exemptions were eliminated by Law No. 253-12 for the Strengthening of the State's Revenue, Fiscal Sustainability and Sustainable Development.

**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 newly established 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 stock 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?**

Clearance takes place through a licensed security depository in charge of custody, liquidation and settlement.

**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. The securities depository is an integrated component of the National Payment Settlement System administered and overseen by the Dominican Central Bank. The progressive widespread dematerialisation of securities has made clearing and settlement of securities more efficient in the last years. The System is based on the 'delivery versus payment' settlement principle, which ultimately adds more legal certainty to transactions.

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 is non-existent. The bond market is active and fairly liquid. Although quite incipient, the development of the local bond market is thriving due 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 in order to allow the trading and settlement of derivatives.

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

While the regulatory framework for these instruments exists, none have been actively structured or traded locally. After the enactment of Law No.189-11 on the Development of the Mortgages Market and Trusts (Fideicomisos) a greater activity on structured finance is expected, as the new statute 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 from those of the fund 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.

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

Article 12 of the Securities Exchange Law sparingly defines institutional investors as all financial institutions, including insurance companies and investment enterprises that regularly canalise deposits for investment in the capital markets. This definition has been expanded in the new Regulations in order to include entities like professional trustees, which are pivotal to Law No.189-11 on the

Development of the Mortgages Market and Trusts. Moreover, the Ruling for Securities Intermediaries expands this list to include securities intermediaries, banking instructions, pension fund administrators (acting on their own account and on behalf of their pension funds), mutual funds, private equity funds, hedge funds, central banks, multilateral organisations and sovereign states.

**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 SIV can offer and sell securities in the Dominican Republic.

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

The Securities Law, its Regulations and a special Ruling on Insider Trading and Market Abuse issued by the SIV 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 new Regulations also include into the definition of insider trading, 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 SIV.

**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 assemble public offering for the local market or 'import' securities to the Dominican market from an existing public offer authorised and placed in certain foreign jurisdictions recognised by the SIV (using a passport type approach recognition). The SIV has published a list of securities regulators from many leading jurisdictions, whose authorisations can be accepted locally. Nonetheless, a foreign prospected issuer must still set a permanent establishment at the Mercantile Registry and the Tax Administration (although no assets need to be located within the Dominican Republic) and must also register and become authorised as an issuer by the SIV.

The public offering will then fall under the regulatory scope of the SIV, which exerts its oversight role to all matters pertaining to local investors.

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

The SIV has subscribed a series of Memoranda of Understandings (MOUs) with some regulators, namely to share information, provide reciprocal assistance in enforcement matters and to provide technical consultation and assistance. Counterparts to these MOU agreements include:

- Comisión Nacional de Valores de Argentina (sharing of information, consultations and technical assistance);
- Superintendencia de Valores y Seguros de Chile (sharing of information, consultations and technical assistance);
- Superintendencia General de Valores de Costa Rica (technical assistance);
- Superintendencia de Valores de El Salvador (consultations and technical assistance);
- Comisión Nacional de Bancos y Seguros de la República Honduras (consultations and technical assistance);
- Comisión Nacional de Valores de la República de Panamá (sharing of information, consultations and technical assistance);
- Comisión Nacional Supervisor de Empresas y Valores de Perú (consultations and technical assistance); and
- Oficina del Comisionado de Instituciones Financieras del Estado Libre y Asociado de Puerto Rico (consultations and technical assistance).

The SIV also recognises a list of securities regulators from many leading jurisdictions that have undertaken MOU agreements with the International Organiza-

tion 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 SIV.

### 27 Please describe the framework for corporate governance.

The Companies Law has included important corporate governance dispositions that apply to private and public joint-stock companies. 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 dilemmas. 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 SIV.

In accordance with the Companies Law, 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 so-called 'duty of care', which is primarily the duty of the director to conduct with prudence and loyalty. 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.

### 28 Which governing bodies must public companies have and what are their main duties?

Locally incorporated public companies must have two main governing bodies (the board of directors or administrators and the shareholders' assembly) and 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. The board of directors must comprise 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. Oversight officers or statutory auditors are elected by the shareholders' assembly and are principally in charge of verifying and auditing the company's financial accounts and statements presented by the board of administrators.

### 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 SIV and the CNV 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 debt-holders' assembly and requires them to be represented by a commissioned bondholder representative, who can also broker dispute settlement of obscure matters.

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

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

Article 48 of the new Securities Regulations establishes the organisational forms that issuers can take. These organisational forms include Dominican joint-stock companies (according to the Companies Law No. 479-08), foreign joint-stock companies that have registered public securities with a foreign securities regulator recognised by the SIV, financial intermediaries (such as building 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 foreign central banks). In addition, the Trusts Law No. 189-11 provides for the issuance of securities by some types of trust funds.

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

Public sector issuers (Ministry of Finance and the Central Bank) are the most active. Active private issuers include financial institutions (banks and other financial intermediaries), 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.

### 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, there are approximately 19 companies and two multilateral organisations listed as issuers in the stock exchange. 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.

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34 Describe recent initiatives undertaken by the government to improve the regulation and efficiency of its capital markets.

Law No. 189-11 on the Development of the Mortgages Market and Trusts and its complementary regulations aim to complement the Securities Law and its regulatory framework in order to enhance and facilitate the trading of structured securities. This reform is an important landmark, which is expected to bring great change to the market and its participants in subsequent years.

Furthermore, the new Regulations have been issued under Decree No. 664.-12 in December 2012. These regulations set out to: enhance corporate governance standards in the Dominican Republic, harmonise existing norms with the IOSCO principles, introduce the IFRS into the securities market as well as fill in the normative gap between the Securities Law and other recent important laws, such as the aforementioned Trusts Law No. 189-11 and the Companies law No. 479-08. The new Regulations also aim to provide for greater investor protection through more rigorous disclosure requirements for public companies.

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\$750,000. At least 10 per cent of this amount must be entirely paid before constituting and listing the company. This precludes small start-up firms and business ventures (dealing in services or technology sectors that do not require excessive capital for operation) from accessing the capital markets for cheaper funding. We argue that this requirement should be eliminated in order to allow for smaller ventures to issue shares.

However, it is anticipated that the Law on Trusts will open new possibilities for structuring venture and angel capital projects through the issuance of trust securities.

Moreover, the transactional costs related to the required capital and corporate governance structure required for public companies may be too cumbersome.