

Stock Market Law of the Dominican Republic

I. INTRODUCTION

One of the main features needed to achieve greater economic development in any country is the existence of a complete, efficient and transparent market. To that end it is necessary to count on an adequate regulatory framework to regulate the activities of the participants in the stock markets, its interrelations and business.

In view of the above, Stock Market Law No.19-00 (hereinafter, the “Law 19-00” or the “Stock Market Law”, indistinctly) was promulgated in the Dominican Republic on May 8th, 2000. The implementation of this Law together with other bills presently being considered by the National Congress and the Executive Branch itself is intended to revolutionize the Dominican financial sector, increasing competitiveness among its actors, adapting it to market needs and as a consequence accelerating the development of our economy.

As is stated in the whereas clauses of Law 19-00 itself, “to adequately promote the stock market it is necessary to have a generic framework to regulate public supply, issuance and issuers of negotiable instruments in order to promote development of an organized, efficient and transparent market.” In that sense, this is the core of the legal framework applicable to the stock market and its products in the Dominican Republic (hereinafter, the “DR”).

To that effect, in the definition of its scope of application, the Law 19-00 states that it encompasses public offering of securities, both in local as well as foreign currency, its issuers, commodity exchange, as well as every individual or corporation, local or foreign, that participates in the stock market. For the purposes of this Law, the stock market includes the supply and demand of securities representatives of capital, credit, debt, and commodities. Likewise it includes associated instruments, whether related to securities or commodities.

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Regarding the structure of Law 19-00 it comprises seven titles, as it follows: (i) General Provisions; (ii) Superintendence of Securities; (iii) Securities Market Participants; (iv) Violations and Sanctions; (v) Fiscal Treatment; (vi) Temporary Provisions; and (vii) Regulations, Modifications and Repeals.

This executive summary is intended mainly, to provide the reader with a synthesis of Law 19-00 provisions. In addition, in the interest of being a part of the debate arising from the promulgation of said law, we have taken the liberty of outlining some of what we understand will be the main challenges of the regulation that will complement the law object of discussion.

II. BACKGROUND

Before promulgation of Law 19-00, there was no law in our country related to stock exchange transactions as such. The first law which somehow referred to the Dominican stock market was Organic Law of the National Stock Exchange No. 3553 dated 15 May 1953. securities.

The main institution created by the old Law No. 3553 was the *Bolsa Nacional de Valores* (hereinafter, the “BNDV”) or in English known as the National Stock Exchange, whose main role was to gather all types of legal business for trading of bearer securities and national and imported products. Another achievement of said law was the creation of the *Comisión Nacional de Valores*, or in English known as National Securities Commission, which was to be responsible for management of the BNDV.

Another important precedent for the Stock Market Law was the Law No. 550 regarding

the Companies or Entities which Offer Stock, Bonds or Instruments for Public Sale, dated December 23rd, 1964. Its purpose was to protect investors, who at the time of its promulgation were victims of deceitful actions committed by a group of companies dedicated to trading of illegal or false securities. As a consequence of the above, the legislator was required to subject public offering of stock to prior approval by the Superintendence of Banks. Although it is true that Law No. 550 solved the protection needs of the time, due to the protecting nature itself, the law was perceived by Dominican companies as a limitation to the development of a public stock market.

Despite the existence of Laws Nos. 3553 and 550, the stock market of the DR has been incipient at all times. It was not until the end of the decade of the 1980s that the interest of the economic agents began, when through the Decree No. 554-89 dated February 20th, 1989 the Stock Market of the DR was created as a non-profit organization, operating as a self-regulating institution since 1991.

To this date, most of the companies in need of capital have had to satisfy their financing needs through bank loans, issuance of active bonds, fixed interest securities, such as commercial papers, and on very rare occasions through the incursion in foreign stock markets. Similar limitations are faced by investors, who have limited investments in fixed assets bonds and in some cases to investment in securities issued and placed by foreign companies in foreign markets.

Laws Nos. 3353 and 550 of, 1953 and 1964, respectively, were revoked by Law 19-00.

III. MAIN DEFINITIONS INCLUDED IN THE LAW

The Stock Market Law defines, throughout its text, the terms essential to its adequate interpretation. Following are some of the most important ones:

Value: According to Article 2 of the Stock Market Law, value is the right or the set of rights of essentially an economic content, negotiable in the stock market, including stock, bonds, certificates, debentures, bills, instruments representative of commodities or resulting from securitization operations. It also includes futures and purchase-sales options on securities and commodities, and other bearer bonds of any nature.

Spot Market: Within the purview of this law, spot market will refer to those operations involving initial placement of stock issue, through which the issuers obtain financing for their activities, according to the Article 3 of the Law 19-00.

Secondary Market: According to the Article 3 of the Law 19-00, operations which involve the transfer of securities which were previously placed through the Spot Market, with the objective of facilitating liquidity to bondholders.

Public Stock Offer: Is one addressed to the public in general or to specific sectors of it, through any mass media communication mean so that they may acquire, alienate or negotiate instruments of any nature in the stock market. In this respect it envisages that those offers which do not conform to this definition will be private in nature and will not be subject to the provisions of the Stock Market, according to the Article 4 of the referred law.

Privileged Information: According to the 10th Article of the Stock Market Law, is the knowledge of actions, deed or events capable of influencing the prices of the stock object of a Public Offering, will be understood as privileged, for as long as such information is not made public.

IV. PARTICIPANTS IN THE STOCK MARKET

In general terms, the Dominican stock market will be comprised of institutional investors, private investors, issuers, stock and commodities exchanges, regulatory agencies, and other market support institutions. Following are the features and authorities of the most important ones.

A) STOCK EXCHANGE

Are institutions that have as main object, the lending to exchange posts duly registered, all necessary services so that they may perform in an efficient manner all transactions related to securities, as well as brokerage activities.

The Law restricts the expression “exchange” to those companies authorized by the Superintendence of Securities to provide its members with all necessary services so they may carry out securities transactions.

According to Law 19-00, main activities and competence of the stock exchange include:

- a) Establishing the facilities and equipment to facilitate the interaction of supply and demand within the stock market;
- b) Requesting information from issuers;
- c) Providing information regarding securities listed in it;

- d)** Dealing with requests to form new exchange posts;
- e)** Authorizing exchange posts representatives to perform as exchange brokers;
- f)** Authorizing registration of securities issue which had previously been approved by the Superintendence of Securities;
- g)** Requesting guarantees from the exchange posts, among others.

In addition, the Law 19-00 foresees that the subscribed and paid-in capital of a stock exchange can only be invested in the following assets:

- a)** In cash and deposits;
- b)** In the building and other facilities owned by the exchange;
- c)** In the furniture necessary for its operation;
- d)** In expenses for the installation, organization and operation;
- e)** In securities of well-known liquidity listed in the exchange, as long as the investment does not exceed 30% of its subscribed and paid-in capital, nor 10% of the subscribed and paid-in capital of the issuing company; and,
- f)** In a general manner, in any other related or complementary activity authorized by the Superintendence of Securities.

The Law establishes that the shares registered in the stock market registry and registered in a stock exchange can only be traded by the exchange posts in the stock exchange where they are members.

B) COMMODITY EXCHANGE

In accordance with the terms of the Stock Market Law, Commodity Exchanges are insti-

tutions whose main objective is to provide its members the services necessary to efficiently carry out trading activities of products originating or destined to agriculture and livestock, agro-industrial, and mining sectors including inputs required by them, as well as bonds representatives of commodities, futures contracts and byproducts of commodities, favoring free competition and market transparency.

The Commodity exchanges will have the following roles and authority, namely:

- a)** Keeping the operation of a commodity exchange that provides the general public with enough security and information regarding the products traded, its producers, the brokers and exchange operations, including trading;
- b)** Promote trading of corresponding products, fostering uniformity in the custom and usage of product trading, as well as the establishment of facilities and mechanisms to facilitate interaction of supply and demand of products;
- c)** Establish an adequate regime for its operations;
- d)** Issue certificates on trading of commodities, bonds and contracts subscribed and negotiated in the exchange; and,
- e)** Deal with requests to become an exchange post, among others;

In general, commodity exchanges will have the same powers and limitations established by the law for stock exchanges, which have been stated above.

It is important to point out that the stock exchange and commodity exchange are the only participants in the market to which Law 19-00 recognizes the capacity of self-regulation.

C) STOCK BROKERS

Are individuals or companies (local or foreign), who in a customary way, practice brokerage activities which are the object of public offerings. Subject to the market in which they are operating, the Law 19-00 distinguishes between two types of brokers, that is, exchange posts and dealers. The first operate both in the stock market as well as over the counter, whereas the second are limited to operate over the counter.

According to the provisions of Law 19-00 the exchange posts and dealers will be responsible for the actions of the persons they hire; of the authenticity and physical integrity of the securities traded; of the registration of their last holder in the registry of the issuer; and the authenticity of the last endorsement when appropriate. In addition, the exchange posts and dealers who act in security trading will be under the obligation to pay the purchase price or deliver the securities sold. Finally, among the most relevant provisions adopted by the Law regarding stock brokers is the obligation to provide a guarantee of immediate availability in order to ensure compliance of their obligations before present and future creditors.

Regarding restrictions applicable to the above-mentioned stock brokers, the Law also applies to them those applicable to the stock and commodity exchanges.

Finally, it must be pointed out that Law 19-00 limits the use of the terms "exchange posts", "dealers", "brokers" to those persons duly authorized by the Superintendence of Securities.

D) CLEARING HOUSES

Clearing Houses will be for the exclusive purpose of being a counterpart of all purchases

and sales of futures, of stock options, as well as other similar securities or obligations authorized by the Superintendence of Securities. Likewise, they will manage, control and liquidate the operations, unrestricted positions, current accounts, available margins and balances performed and maintained by customers and brokers of the stock market.

Among its main responsibilities are the following:

- a) Issue and register futures and options contract, being their counterpart;
- b) Receive from brokers the corresponding money and securities and credit same to their respective accounts;
- c) On a daily basis update the customers' positions, adjusting the margins and price variations, as well as charge and credit their accounts the corresponding earnings and losses; and,
- d) Provide information to brokers regarding the lack or excess of margins, among others.

E) CENTRALIZED SECURITIES DEPOSIT

The stock exchange and other companies authorized by the National Securities Council may act as centralized securities deposit. The centralized securities deposit is the set of services provided to market participants, for the purpose of safe-keeping, transferring, compensating and liquidating securities traded in cash. For the purpose of every operation with securities deposited for safe-keeping, the owners of same will be whoever appears registered as such in the corresponding deposit. Said securities will be transferred with the signature of its owner or representative duly authorized (the Law assumes that the securities deposited are registered).

The securities depositor will be responsible for the authenticity and existence of the bonds, as well as its existence and the rights and obligations they entail. Whereas the institutions that provide warehousing services must verify the physical condition of the securities they receive, being responsible for their deposit and proper safe-keeping of same.

In all cases in which the Law demands the presentation of the security in custody, the certification provided by the company providing the centralized securities deposit will suffice. It must be pointed out that the law does not establish the characteristics or specifications of said custody certification.

F) RISK QUALIFIER

Risk qualifiers will be the companies responsible for evaluating and rating the risk of the securities object of public offering.

To perform their role the risk qualifiers must base their opinions on the financial stability of the issuer, the liquidity and characteristics of the bond and the likelihood of non payment, among other criteria. With regards to the general securities evaluation and assessment methodology to be used, this must be determined by the Superintendence of Securities, in accordance with the terms of Law 19-00 and its implementation regulation to be enacted in the future.

All information received by the risk qualifiers must be treated as strictly confidential.

G) COLLECTIVE INVESTMENT INSTITUTIONS

There were no collective investment institutions in the Dominican market therefore, until promulgation of the Law 19-00 there was no regulation of such. However, the Stock Mar-

ket Law creates the figures of the Mutual or Open Fund or Closed Investment Fund, both managed by fund administrative societies or administrators.

Mutual or open funds are described in the Article 90 of the Stock Market Law as "variable equity constituted by contributions of individuals and companies to be invested in securities of public offerings, managed by a fund administrative company for the account and risk of the contributors, subject to a contract signed by the parties".

The contributions referred to under mutual open funds are called fund quotas, these being callable and redeemable at any time.

The operations are to be carried out by the administrative company, being the fund the holder of the investments, while the one in charge of safe-keeping of the bonds is a centralized securities deposit. Funds will be diversified and invested in accordance with the guidelines established. The fund's quotas will be appraised daily and the benefit obtained will be the gain that is obtained in the value of the quotas.

Similar to mutual open funds, is the closed investment fund which is equity integrated by contributions from third parties. However, said contributions have a maturity date and are not redeemable prior to that date.

H) FUND ADMINISTRATORS

The Law 19-00 describes Fund Administrators as the companies, duly authorized by the National Securities Council, whose exclusive role will be the administration of funds. Among its main duties are the following:

a) Periodically inform contributors to the funds managed;

- b)** Add to each fund all profits obtained during its management, discounting the expenses and compensations agreed upon; and
- c)** Implement, for the benefit of the contributors to the funds managed, all the rights granted by the law to the securities owners.
- d)** Regarding limitations to the Fund Administrators, the law provides the following:
 - e)** They cannot acquire, transfer, or merge the assets of one fund with those of another or with their own;
 - f)** Guarantee results, yield, rate or specific return;
 - g)** Lend money to the funds managed; and,
 - h)** Borrow money from the funds managed, among others.

I) SECURITIZATION INSTITUTIONS

Securitization is the process through which equity is constituted for the exclusive purpose of providing backing for the payment of the rights granted to holders of securities issued charged to said equity, as well as the transfer of assets to said equity and issuance of the corresponding securities.

The securitization process may be carried out by institutions authorized by law to carry out said functions, as well as by stock companies whose exclusive objective is the acquisition of assets for purposes of securitization.

The law provides that the equity constituted for this process must be independent of the equity of the securitization institution.

V. REGULATORY AGENCIES

Monitoring and regulation of the Dominican securities market is granted by Law 19-00 to the following State agencies:

A) Superintendence of Securities:

Is the agency responsible for the supervision of the securities market through its promotion, regulation and monitoring as well as ensuring faithful compliance of the law, having the authority to apply disciplinary penalties, monetary penalties and implement whatever legal actions that may be necessary.

The Superintendence of Securities (hereinafter, the "Superintendence") is an autonomous institution of the State of the DR, established by the Securities Market Law No. 19-00. It is vested with legal personality, its own, and is empowered to contract and sue in its own name and be sued. Its fiscal year is from 1 January to 31 December each year.

Sources of income of this agency may be: i) annual quotas set for the brokers, which may not exceed 2% of the commissions generated by securities brokerage at the closing of the previous semester; ii) annual quotas set for the funds administrators and securitization companies which may not exceed 1.5% of the total assets existing at the closing of the previous semester; iii) subscription rights in the registry of the stock market or any other service rendered (this may generate income for any item); and iv) grants made by the Central Government, the Central Bank of the Dominican Republic, multilateral institutions and foreign governments in the form of technical cooperation, equipment and infrastructure for its services, among others.

As was previously stated, the Superintendence is responsible for ensuring that the persons and companies monitored, from inception to the end of their liquidation, comply with the laws, regulations and provisions governing them, in that respect being able to

exercise, among others, the faculty of interpreting administratively, in its areas of responsibility, said laws, regulations and provisions; set norms and give instructions, investigate allegations or claims presented by market participants; examine all operations, assets, books and any information of the subjects monitored that should be made available to it.

In a more specific manner, Law 19-00 grants the Superintendence the following powers: i) implement and monitor compliance with the law, its regulations and norms dictated; ii) authorize public offerings (in local or foreign currency) and the minimum content of the prospect, the opening and functioning of the exchanges, stock brokers and other market participants; iii) request information from individuals and companies subject to said law; iv) monitor the use of privileged information; v) submit to the National Securities Council inflationary adjustments as well as quotas and rights envisaged by the law; vi) decide on allegations of irregular operations as well as investigate violating operations and sanction them, having the authority to sue before the corresponding courts; vii) prepare the annual budget and submit reports to the Executive Power; and viii) carry out all other relevant functions.

It should be pointed out that the Superintendence in the exercise of its functions, does not guarantee the quality of the stock neither that of its issuers. The Law has preferred to grant said role to the exchange pits and brokers.

Regarding the internal structure of the Superintendence, it will be chaired by the Superintendent of Securities, who will act as its legal representative. The second official of the Superintendence will be the Securities Inten-

dant, who must substitute the Superintendent in cases of his absence or temporary resignation. Both officers will be appointed by the Executive Power for periods of two (2) years of a list of three proposed by the absolute majority of the National Securities Council.

Concerning their responsibilities, the superintendent and the intendant must submit to the Board of Accounts a sworn statement of their property both at the beginning and the end of their term. In addition, before taking office of their respective posts, they must present before the Monetary Board a sworn statement of confidentiality regarding the issues discussed within the Superintendence where they state they will not be affected by the disabilities and incompatibilities with their posts, established by law.

In accordance with the terms of this law, none of these officials, while performing their duties may increase their declared assets.

In summary, the Superintendence will have a Registry of the Stock and Commodities Market in which all public information regarding securities and all participants of the stock market will be registered.

After promulgation of the Law the Superintendence must be created within a period not to exceed six (6) months.

B) National Securities Council:

Is the agency responsible for dealing with the appeals of decisions made by the Superintendence and the exchanges, as well as acting as conciliator of conflicts arising among the stock market participants, proposed by the Superintendence.

Also, the Council will act as a conciliator in cases of conflicts between participants of the

stock market, know the appeal requests to the decisions of the Superintendence and approve the transactions and registration in the Register of market participants submitted by the Superintendence.

The National Securities Council will be comprised of seven members, that is: i) an official of the Central Bank, appointed by the Monetary Board; ii) an official appointed by the Secretariat of State of Finance; iii) the Superintendent of Securities; and iv) four members of the private sector appointed by the Executive Power, for a period of two (2) years from lists of three persons submitted for said purpose by the associations of stock exchange posts and stock exchanges existing in the country, and two (2) from lists of three to be submitted by the commodities exchange and the Chamber of Commerce through the Monetary Board.

As with the superintendent and intendant, the members of the National Securities Council while in the exercise of their roles cannot increase their declared assets. The Superintendent is the chief of the Securities and legal representative thereof. It is responsible for the direction and control of the functions of the body and is appointed by the Executive for a period of two (2) years and shall be appointed for a further period but may not be immediately reappointed to a second term.

Meanwhile, the intendant is the second official of the Superintendence, and as such, the Superintendent may delegate his authority under the Law and Regulations, to carry out the functions that the Law assigns to the Superintendence; it will also replace the Superintendent in case of absence or temporary impediment of the latter.

Among the powers granted by the Law to the National Securities Council are the following: i) know of the monthly reports of the Superintendent of Securities regarding behavior of the stock market; ii) approve the quotas submitted by the Superintendent of Securities regarding the quotas and rights to be charged by the Superintendence for supervision and registration in the records and other services, as well as inflationary adjustments established under Law 19-00; and iii) approve disciplinary penalties when these are not standardized within the law.

Decisions made by the National Securities Council may be appealed by those interested within a period of five days as of the date of its notification. It is important to underline that this appeal does not postpone implementation of the appealed decision, except in the cases when it implies application of disciplinary penalties.

VI. PROCEDURES ESTABLISHED BY THE LAW

The Stock Market Law requires that local and foreign companies that wish to carry out public securities trading in the Dominican Republic must comply with certain formalities and requirements, as follows:

a) Authorization on the part of the Superintendence

The first requirement established by Law 19-00 for the public sale of securities, is to obtain the approval of the Superintendence. With regards to this requirement, it must be stated that the law limits the powers of the Superintendence in the approval process of securities trading to verification of compliance with the requirements established by the law, which

may vary depending on the nationality of the issuer and the number of years the issuing company has been operating.

Local companies: Local companies that wish to publicly offer securities in the Dominican market must accompany their request for approval addressed to the Superintendence with a prospectus containing the following information:

- a)** Economic and financial information of the issuer for at least the last three years. In this respect the law requires that the financial statement be audited by external auditors registered in the Stock Market registry;
- b)** Legal information regarding the issuing company; and
- c)** Features of the securities to be offered and their risk rating, the latter when applicable.

In accordance with the provisions of the Law 19-00, local companies that do not comply with the minimum of three years in operation may obtain the authorization from the Superintendence and make public offerings. Nevertheless, since the legislator has considered such issuances as risky, their negotiation is limited to special sections of the exchange and the legislator has decided to subject them to a specific regime that is to be determined through regulations.

It must be stressed that the requirements stated above must be completed with by those companies that wish to make public offerings abroad.

Foreign companies: As did Law No. 550, the Stock Market Law allows foreign companies to make public offerings in the country. In that regard, the 8th Article of Law 19-00 requires foreign companies' brokers, in order to obtain

authorization from the Superintendence, to submit certification of registration of the securities issued by the regulating agency of the stock market of the country of origin of the issuer. In addition, the referred article requires that foreign companies that wish to participate in the Dominican spot market must establish residence in the country.

One of the highlights of the Stock Market Law is that it allows in an express manner, the public sale of securities in foreign currency which has been previously registered before the Superintendence. In addition, the this law allows that payments corresponding to such securities be made in the currency consigned in the certificate, which constitutes an exception to provisions under Article 2 of the local Monetary Law, which prohibits making payments in foreign currency, except in a few cases.

In accordance with the provisions of Law 19-00, the Superintendence must rule regarding requests made within a period of thirty days as of the date of the made request. However, said term will be automatically suspended in the case when the Superintendence, through a written communication, requests the petitioner to complete, modify or submit additional information, restarting as of the time the petitioner complies with the request made. In those cases when the Superintendence does not comply with its responsibility within the above-mentioned period, the petitioner, under the protection of Paragraph III of said Article 6, may notify the Chairman of the National Securities Council the non-compliance on the part of the Superintendence.

Exceptions: Within the exceptions to the general prior authorization rule on the part of the Superintendence to carry out public offerings, are the securities issued by the Domini-

can Government and any of its agencies. Also, said authorization may not be necessary for public offerings made by multilateral agencies of which the Dominican Republic is part of or other Governments or central banks, subject to conditions of reciprocity, submission of country risk ratings, as well as certification of authenticity of the securities negotiated.

b) Registration in the Stock and Commodities Market Registry

Under Article 8 the law states the creation on the part of the Superintendence and the Commodities Registry. The purpose of the registry is to inform the public on compliance on the part of the participants with the information requirements established by the law or by the Regulations and at the same time allow the public access to such information. In said registry must be registered the securities and bonds object of public offerings, the issuers, the generic models of the purchase, sales, and futures contracts, the exchanges and brokers, the Clearing Houses, centralized securities deposits, administrators of investment funds, securitization companies, risk assessment institutions, external auditors and any other participant in the stock market.

In this order, once the participants obtain the approval from the Superintendence, the petitioner institution will request its registration as well as that of the approved securities in the registry of Stock and Commodities Market of said institution.

Also, institutions which do not require prior approval of the Superintendence for public sales, must request registration of securities issued in the Stock and Commodities Market Registry for which they must submit information relevant to the securities to be offered,

including a certification of authenticity of the securities to be negotiated.

Once the registration process is completed, petitioners will be empowered to negotiate and place their securities in the market.

c) Public Trading

The Law 19-00 restricts intervention of participants in the market in the trading of securities depending on the market in which said securities are placed. In this respect, the law requires that the securities negotiated for the first time, in the spot market, be sold directly by their issuers or in the exchange through brokers.

On the other hand, in accordance with the provisions of this law, securities traded in the secondary market, that is, in second or subsequent sales, must also be negotiated through brokers registered with the Superintendence

The Stock Market Law has determined that non-compliance with the provisions mentioned above is a criminal offense, which must be punished with fines of RD\$100,000.00 up to RD\$1,000,000.00 or with correctional imprisonment of six months to a year, or both.

Those registered participants who wish to discontinue their participation in the stock market, may request their exclusion to the Superintendence. Said institution, after verifying compliance with all required formalities and authorizes said exclusion must make public said information.

VII. PRIVILEGED INFORMATION

Monitoring of improper use of privileged information is one of the most relevant issues for the authorities in accordance with the

provisions of the law. In fact, Article 11 of the Law 19-00 prohibits what in general terms is known as insider trading, when it establishes that “people who have access to privileged information must restrain from trading, for their own benefit or that of third parties, with any type of securities whose price may be influenced by said information, until that information is public knowledge”.

The objective pursued by the Superintendence with its monitoring activities is to detect the improper use of privileged information in order to preserve the integrity of the stock market.

In this respect, Law 19-00 describes the persons that it is presumed have access to privileged information, whether because of their position, function or because they have direct access to the fact object of information, and establishes prohibitions and responsibilities for those having that type of information.

The persons considered by the Law to have access to privileged information are:

- a)** Directors, officials, managers, advisers to the issuers and institutional investors, their headquarters and brokers;
- b)** Employees under the direction of directors, managers and advisers to the issuers and institutional investors;
- c)** Partners, managers and members of board of directors and employees of the risk qualifier institutions that perform ratings of securities or of their issuers;
- d)** Auditors who perform audits of issuers or institutional investors;
- e)** Public or private employees who regulate, monitor or settle participants in the stock mar-

ket and members of the National Securities Council;

- f)** Central Bank officials and employees;
- g)** Spouses and relatives up to second degree of kinship of all the persons mentioned above; and,
- h)** Partners, managers and employees of the Clearing House and the Centralized Securities Deposit.

VIII. VIOLATIONS AND SANCTIONS

Any individual or company that infringes the law, its regulations or norms dictated by the Superintendence may be object of disciplinary penalties, which will be applied directly by the Superintendence to the participants in the Stock Market.

Applicable sanctions may be qualitative (such as oral or written reprimands, suspension or cancellation of activities) or quantitative (represented by monetary fines from RD\$50,000.00 up to RD\$1,000,000.00) or a combination of both. In addition, violators may be object of civil and criminal penalties which may be enforced by regular courts of justice, being specifically empowered the Court of First Instance of the National District, in its penal and criminal authority, before commission of a crime.

a) Disciplinary Penalty

The Superintendence is responsible for enforcement of disciplinary penalties defined under law 19-00. In those cases where it is a violation of the law which is not defined in same, the penalty enforced by the Superintendence must first have the approval of the National Securities Council.

Among the violations defined under the Law which entail disciplinary penalties are:

- a)** Making public offerings without having complied with the registration requirement in the Securities and Commodities Market Registry;
- b)** Use of the words “exchange,” “exchange posts,” “securities agent,” “broker” if they have not previously been duly authorized by the Superintendence;
- c)** Provide information regarding their own economic situation or regarding securities issued which may lead to adopting erroneous decisions;
- d)** Non-compliance with the request to divulge information periodically as required by law;
- e)** Non-compliance with the law on the part of employees and/or officials of the Superintendence; and
- f)** Any violation of this law not previously specified and which in the opinion of the Superintendent of Securities is liable for punishment.

Decisions made by the Superintendence may be reconsidered upon request of the interested party within ten days following notification. Said institution must rule within a period not to exceed thirty days, said ruling may be appealed before the National Securities Council.

In addition, monetary fines imposed by the Superintendence must be paid within fifteen (15) days after its notification through a deposit in a special account in favor of the Superintendence. Repetition of this offence may be sanctioned with double the amount of the last monetary fine enforced or, according to the Superintendence judgment with the tem-

porary, indefinite or permanent disqualification to conduct business in accordance with the power granted by the Law 19-00. In order to enforce this penalty, the Superintendence must first obtain the approval of the Monetary Board. Charges made to a company will also be made to the members of the board, officials, administrators, directors, managers or representatives responsible for the violation committed.

b) Civil and Criminal Penalties

The law grants exclusive power to the Court of First Instance of the National District, in its penal and criminal authority to deal with the violations to the present law, its regulations or norms dictated by the Superintendence.

In a general sense, and independently of civil indemnity, violations to Law 19-00 will be punished with fines of RD\$500,000.00 up to RD\$5,000,000.00, with correctional imprisonment from six months to two years, or both at the same time, depending on the seriousness of the violation. In the case of a violation committed by a company, the fines, and corresponding civil compensation and correctional imprisonment may be applied to its administrators, directors, managers or representatives responsible for said violation. In the case of repetitions, both penalties of imprisonment and fine will be applied jointly.

In particular the law sanctions with fines of RD\$1,000,000.00 up to RD\$10,000,000.00 or imprisonment from 2 to 10 years, or both at the same time, some violations among which are:

- a)** Submission of false background documents or certification of false deeds;
- b)** Performing acts which require prior registration in the stock market registry without

having been registered or when the registration has been suspended or cancelled;

c) Issuance, by those empowered, of false certificates regarding stock market operations;

d) False qualified opinions, by accountants or auditors, regarding the financial situation of a person subject to registration;

e) Malicious statements issued by directors, administrators or managers of a securities issuer object of public offering;

f) Revelation to third parties of information reserved to qualified issuers by those who have access to it; as well as concerted action to grant a rating that does not correspond to the risk of the bonds issued;

g) Carrying out trading or fictitious transactions in order to affect securities' prices;

h) Spreading false information, with the purpose of misleading the public and obtaining advantages for oneself or a third party;

i) Spreading of false information by those participating in the stock market;

j) Non-compliance of obligations originating in securities' transactions due to causes attributable to the obligor;

k) Obtaining undue profits or avoiding a debt by any person who due to his position acquires or alienates the securities issued by his own company;

l) Use of bonds, documents or securities received by customers, on the part of any person who due to his position in an exchange post or securities agency, for purposes other than those contracted with said customer; and,

m) Favors or damages caused to certain groups or persons within the stock market by

officers of the Superintendence, Insurance and Banks, of the Central Bank of the Dominican Republic, as well as by members of the National Securities Council.

In the cases of violations which are not among those cited and which constitute grave faults, the empowered court will be authorized to determine the applicable penalties or fines.

Criminal or civil penalties established under the Law are not incompatible with disciplinary penalties that the Superintendence may enforce neither the penalties due to indemnity in favor of third parties that are applicable to the violations. In the case of indemnity penalties dictated in favor of the Superintendence, when it is constituted as civil party, will be deposited in a special account in its favor.

Criminal and civil actions established for violation of the Law and its regulations prescribe after three years counted as of the date in which notification has been served.

IX. SPECIAL PROVISIONS

a) Taxes

The Stock Market Law establishes that income perceived from profits generated by fixed income instruments and dividends received from investments made by local individuals or foreign investors - whether individuals or companies - in securities approved by the Superintendence and traded through the exchanges, will be exempt of all taxes.

Also, Law 19-00 exempts purchase and sale operations of securities approved by the Superintendence, as well as its profit, from sales taxes applicable to securities and withholding established under Article 309 of the Tax Code.

The Stock Market Law also modifies Article 305 of the Tax Code, regarding general payments abroad, to exclude payments made to foreign investors, whether individuals or companies, who invest in securities approved by the Superintendence and traded through the exchange.

Finally, Law 19-00 annuls numeral VI of Article 2 of the Law No. 140-87 of Commercial and Industrial Patents, to exclude brokers of securities authorized by the Superintendence from the payment of 3% over brokerage commissions received.

b) Inflationary Adjustment

Also, it is important to mention that in order to keep updated the amounts envisaged by the law, such as monetary fines and the minimum paid-in capital required from participants, the Stock Market Law foresees that the Superintendence must implement at least every three years an inflationary adjustment in accordance with data provided by the Central Bank.

X. CHALLENGES

The regulatory text resorts to the development of regulations with excessive frequency. Consequently, final assessment of Law 19-00 will depend to a great extent on future modifications to the actual regulations and complementary norms to be promulgated prior to its implementation.

The Regulation regarding the application of the Stock Market Law, No. 729-04 (hereinafter, the "Regulation No. 729-04") has as primary object to regulate the basics involved in the development of stock market activities in the DR, as provided in the Stock Market

Law. This Regulation No. 729-04 aims to lay down general rules that will guide the actions Superintendence, in fulfilling their responsibilities regarding the treatment of the public offering of securities in both primary and secondary market, establishing general requirements for the approval, the organization, the opening and the operation of participants in the stock market. Likewise, in the system of supervision and control of the same; the system of sanctions; the charge for the services provided to issuers and other market participants; as well as all aspects necessary for ensure proper functioning of the stock market and an effective implementation of the Law.

One of the main issues already developed in the Regulation No.729-04 is the one referring to Privileged Information. According to the Article 35, any person who has inside information must refrain from run on their own or others, directly or indirectly, any conduct as it follows:

- a)** Agreeing or making any transaction on the securities to which the information relates, or any other value or contract of any kind, whose underlying values to which the information relates;
- b)** Communicate such information to third parties except in the normal course of their work, profession or position, and,
- c)** Recommend to a third party who acquires or disposes of securities or make another to buy or sell based on that information.

It is extremely important to determine key monitoring issues. Also, it is necessary to promote self-regulation of market agents, as this would enhance the monitoring capacity of supervisory agencies, promoting development of better organized and transparent markets.

The regulations to be implemented should also take into account the need to take actions geared to inform and educate investors regarding the stock market, whereas there is evidence that a market with well-informed investors enjoys the best conditions for its development.

In addition, the Article 197 of the referred Regulation establishes the transfer of securities for third parties and the constitution of pledges of securities deposited, shall be made by legal process established in Civil and Commercial Codes for these purposes, and will only be effective against entities offering the service central securities depository, subject to compliance with the Article 1690 of the Civil Code.

Moreover, it is important to mention that on December 7th, 2012 the Executive Branch enacted Decree No. 664-12, creating the regulation governing the application of the Stock Market Law, which abrogates the former Regulation No. 729-04 of August 3, 2004. With the Stock Market Law, the security transactions not adjusting to this definition were considered as private transactions and were not been regulated by the Stock Market Law.

Nevertheless, with the provisions of the Regulation, a new criteria is established. Such Regulation states that private offers shall be any offer for subscription of securities that meets the following conditions:

- a)** Not made through any mass media, such as newspapers, magazines, radio, television, Internet, or any other advertising activity established by the Superintendence through general rules;
- b)** The investors subscribing the securities of such offering shall not exceed the amount forty-nine (49);

- c)** That the securities offered are documented in physical deeds/certificates;

- d)** The securities offered are not represented by any book entry in any central securities deposit, foreign or domestic.

In this sense, the offer that does not meet all the above conditions shall be considered as a public offering of securities and requires to be authorized by the Superintendence.

Notwithstanding the above said, the Regulation also states that it would not be considered public offering:

- a)** The placement of shares for capital increase, as well as capitalizing on dividends to shareholders of a company, based on the right of priority provided for in the bylaws of the same;

- b)** The offer of shares or options to subscribe shares that targets exclusively to employees of the company that issues them;

- c)** The ability to secure funds by financial intermediaries regulated by the monetary authorities and regulated by the Superintendence of Banks, except for the issuing of debentures, stocks or other securities that meet the characteristics of public offering established in the Stock Market Law and this Regulation;

- d)** Offerings made by individuals; and,

- e)** Other than under certain conditions may be established by the Superintendence, by general ruling.

Securities offerings that do not constitute public offers are not subject to the provisions relating to compliance with the reporting requirements and prior approval of the Superintendence.