

Law on Restructuring and Liquidation of Commercial Entities and Merchants

I. PURPOSE

The purpose of the Law on Restructuring and Liquidation of Commercial Entities and Merchants (hereinafter “Law on Restructuring and Liquidation” or the “Law”) is the protection of creditors against the financial difficulties of their debtors, and equally the protection of those debtors against this difficulties. In order to achieve this purpose, the Law aims to ensure the operational continuity of commercial entities or merchants; however, for those cases where such operational continuity is not possible, the Law establishes the proceedings for the liquidation of assets and the payment of debts.

Consequently, the Law provides two separate proceedings, the Restructuring proceeding and the Liquidation proceeding.

II. SCOPE

The proceedings established by the Law on Restructuring and Liquidation are available to “domestic or foreign merchants, as well as domestic entities and entities that are domiciled or hold permanent presence”¹ in the country.

However, the following, are excluded from the regime established by the Law: (i) companies in which the Dominican Government is the main shareholder or exercises control; (ii) financial intermediation entities governed by the

¹ Article 2nd of Law on Restructuring and Liquidation of Companies and Individuals Traders.

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Monetary and Financial Code (Law 183-02); (iii) securities intermediation entities, investment fund managers, centralized securities depositories, stock exchanges, securitization companies and any other market participant, governed by the Securities Market Law (Law 19-00).

Please note that, the references in this executive summary to “creditor” and “debtor” cover both legal entities and natural persons.

III. COMPETENT JURISDICTION

The Law establishes that the First Instance Courts of Restructuring and Liquidation and the Courts of Appeal of Restructuring and Liquidation are competent for the knowledge of the processes of restructuring and liquidation. Likewise, the decisions rendered by these courts may be appealed before the Civil and Commercial Chamber of the Supreme Court of Justice.

The Law expressly creates the First Instance Courts of Restructuring and Liquidation Courts for both, the National District and Santiago; as well as the Courts of Appeal of Restructuring and Liquidation for the National District and Santiago, and distributes their respective jurisdictions by distinctly defined areas.

We emphasize that these same courts will have jurisdiction to decide on urgent measures aimed to preserving a debtor’s assets, including conservatory measures.

Actions relating to civil and criminal responsibility may arise from events leading to Restructuring and Liquidation proceedings and will continue to be subject to the jurisdiction of ordinary civil and criminal courts.

IV. RESTRUCTURING PROCEEDINGS

a) Concept:

The Restructuring Proceeding as defined by the Law itself, is intended to ensure recovery of the debtor, ensuring the continuity of their business operations, preserving existing jobs, protecting credits and facilitating their eventual payment to creditors.

b) Applicants:

In accordance with the provisions of the Law, the restructuring may be requested by either the debtor or by any of its creditors (the latter provided that their credits exceeds 50 minimum wages) before the competent court.

c) Requirements:

The application requires that at least one of the following conditions exists: (i) Breach of at least one, legally enforceable, payment obligation for which a formal notice has been served, for more than ninety (90) days; (ii) If the debtor’s current liabilities exceed its current assets for a period of six months; (iii) Failure to pay taxes withheld in favor of the tax authorities for not less than six tax quotas; (iv) Non-payment of salaries for two consecutive periods except in case of suspension of the employment contract or in case of seizure of such wages; (v) Disappearance or vacancy of the administration of the company that may suggest the intention of defrauding creditors; (vi) In case of disappearance or absence of the administration, the closing of the premises of the company, or the partial or total assignment of assets and rights to a third party; (vii) Use of intentional, fraudulent, criminal association, breach of trust, simulation or fraud to comply or breach obligations; (viii) Notice to creditors of the suspension of payment or

intention to stop payment; (ix) The existence of a process of restructuring, bankruptcy, insolvency or cessation of payments in a foreign State with respect to a parent company; (x) Filing of seizures affecting more than fifty percent (50%) of the assets of the debtor; (xi) The existence of judgments or judgment enforcement process that could affect more than fifty percent (50%) of the debtor's assets.

d) Effects of the Application:

Once a restructuring application is submitted by the debtor, or when it is notified to the latter if it emanates from a creditor, the debtor is subject to an obligation to inform the court and the verifier of any act of administration or provision aimed at changing the bylaws, implementation of mergers and scissions, constitution of guarantees, payments, transactions, conciliations, execution of agreements with creditors, or disposal of assets or rights.

e) Designation and Reports of the Verifier:

Once it has received a restructuring request, the court shall appoint a verifier, which together with other auxiliaries, shall have full access to the books, records and financial statements of the debtor, as well as their deposits and warehouses. The verifier shall be responsible of submitting a report detailing the presence or absence of the conditions invoked in the application of restructuring, as well as the financial status and payment capacity of the debtor.

The verifier will recommend either the opening of the restructuring process, or the opening of the liquidation process, taking into account the net worth of the debtor and circumstances of the case.

f) Decision of the Court:

Upon receipt of the verifier's report, the court will decide whether or not to accept the application for restructuring. If the court decides to accept it, then an extract of the decision shall be published in a newspaper of national circulation and on the website of the Judicial System, with invitation to creditors to participate in the process of recognition of credits. Likewise, in case of receiving the request, the court must appoint a conciliator, who shall lead the process of negotiation between the debtor and creditors to define a restructuring plan.

g) Stay of Actions:

Upon acceptance of the application of restructuring and until the restructuring plan is approved, or the conciliation and negotiation proceeding is closed, or a judicial liquidation is declared, all judicial, administrative or arbitral actions brought against the debtor as well as any execution, eviction or seizure of movable and immovable property of the debtor, the calculation of the interest, enforcement procedures of fiscal credits and other payments are suspended.

h) Recognition of Debts:

After the publication of the decision accepting the application of restructuring, the creditors will have a term to declare the debts they have with the debtor arising prior to the date of such request, in order to ensure their participation in the restructuring process. The court will recognize only those credits that are certain and can be determined based on the information provided by the debtor and creditors.

i) Conciliation and Negotiation:

This procedure aims to reach an agreement with respect to a restructuring plan that allows continued operation of the debtor as well as the fulfillment of financial obligations to creditors. The conciliator and its auxiliaries have an active participation in this process with the cooperation of the debtor and access to their records.

During this process the debtor is entitled to perform ordinary operations of commerce, subject to certain exceptions and under the supervision of the conciliator. The conciliator may also request the removal of the debtor as an administrator, when necessary. The Court can grant the conciliator with provisional administration of the enterprise.

We emphasize that the debts incurred on the occasion of regular operations within the course of the process of reconciliation and negotiation remain priority over those debts arising prior to the start of the process. Likewise, subject to court approval, they may give new guarantees on assets of the debtor.

With respect to contracts in force and pending execution, in principle, the debtor is obliged to its compliance, unless the court, after hearing the opinion of the conciliator, renders a decision to the contrary.

Likewise, subject to certain conditions, those transactions executed by the debtor within two (02) years prior to the application for restructuring and that are deemed as unjustified distractions of the debtor's assets, may be annulled.

j) The Debtor's Assets:

Upon acceptance of the application for restructuring, the assets and rights of the

debtor are considered constituted on the "mass." Some assets may be excluded from this mass, such as: (i) the property sold to the debtor but not paid; (ii) tax contributions withheld by the debtor; (iii) goods and rights of third parties that are the property of the debtor, by deposit, lease, usufruct, trust, among others; (iv) goods essential to the livelihood of the debtor where natural persons.

Also, those assets that corresponds to the spouse of the debtor and that are not part of the common assets of the marriage may be separated from the mass.

k) Restructuring Plan:

Once an agreement is reached between the debtor, creditors and the conciliator regarding the restructuring plan, the same is filed in court. The court will evaluate this agreement and may approve or reject it. The plan should contain provisions regarding the continued operation of the debtor, to pay the debts and payment of guarantees, taking into account the existing order of preference among them.

The conciliator is tasked with overseeing implementation of the plan and informing the court and creditors of advances regarding its execution as well as providing any information received in the exercise of their functions. Likewise, the conciliator may request the termination of the plan, where appropriate.

l) Plan of Prior Agreement:

It is possible for the debtor to preemptively file a Plan of Prior Agreement before court. This Plan of Prior Agreement must have been accepted by the majority of the creditors, and once authorized by the court shall have the same effects as the restructuring plans.

V. LIQUIDATION PROCEEDINGS

a) Concept:

The liquidation proceeding, as defined by the Law itself, is the judicial process intended to distribute all of the debtor's assets in favor of creditors. It is provided for cases where the continued operation of the debtor is not possible.

b) Applicants:

On occasion of a restructuring proceeding, the following may request the liquidation before court: i- the debtor, at any time; ii-the verifier, may request the liquidation when issuing its report, or in the absence of cooperation of the debtor; iii-the conciliator may request the liquidation, by lack or impossibility of approval of the restructuring plan, or in the absence of cooperation of the debtor; iv-a recognized creditor; and v-by decision of the majority of creditors.

c) Decision of the Court:

The court may accept or reject the application for liquidation.

If the court accepts the request, it shall appoint a liquidator, which is empowered to perform all acts necessary for the preservation of the rights involved, and may inscribe mortgages, liens and privileges. An extract from the decision approving the request must be published in a newspaper of national circulation, and on the website of the Judicial System.

d) Effects of the Application:

Once the liquidation is pronounced it lifts the suspension of judicial, administrative or arbitral actions and of enforcement procedures, evictions or liens on real estate and other

property of the debtor, the calculation of interest, procedures for implementing tax credits and other payments.

Once the liquidation is opened, the rights of the debtor for administration and disposal of its assets will cease, with the liquidator assuming said prerogatives and powers of administration.

e) Declaration and Verification of Debts

The liquidator must determine and identify declared and verified debt, either during arising from the restructuring process, either determined through its own verifications. Creditors may also declare their credits before the liquidator.

A creditor whose debt has not been declared and verified is not entitled to receive the benefits of distributions on the occasion of the liquidation process. On the other hand, unsecured debts will only be paid if the proceeds of liquidation are not absorbed by the costs of prosecution and privileged credits.

f) Determination of Assets:

It is the duty of the liquidator to render an inventory of the debtor's assets. It will also be possible to bring actions in vindication of property, as well as to separate the property of the spouse of the debtor.

g) Effect on Contractual Obligations:

The liquidator will be empowered to require the execution of contracts in force at the time of liquidation, but shall also be entitled to request to the court the termination of the contracts, if it considers that there are insufficient funds to meet payment obligations when applicable.

Likewise, those contracts whose execution is not carried out by the liquidator despite having been put in default by the creditor of the obligation will be considered void.

h) Liquidation Plan:

The liquidator shall submit a liquidation plan to the court once any claims and credits have been verified. This plan will take into consideration the financial situation of the debtor and any rights that make up the assets of the debtor. This plan must be notified to creditors, who may submit to the court its observations thereon.

Once the liquidation plan is approved, its execution corresponds to the liquidator pursuant to the procedures described in the Law.

i) Distribution of the Liquidation Proceeds:

The Law foresees the payment of creditors according to priorities established by law, and privileged and mortgaged creditors will participate in the distribution in proportion of their total credits, prior to the sale of properties.

If a real estate property sale is executed, the privileged and mortgage creditors have priority in order to receive full payment of their claims. Payments for subsequent range creditors will be made only to the amount of their mortgage placement.

Unsecured creditors and those privileged and mortgages that have not been entirely disinterested in the previous phases, are paid pro rata with any remaining funds.

j) Closing of the Liquidation:

The court may declare the liquidation closed when there are outstanding credits or when the liquidator does not have sufficient funds

for the payment of any remaining credits. The court may also declare the closing when the assets are insufficient to cover the debts.

Upon closing of the liquidation process, creditors will not maintain any action or right against the debtor, unless otherwise provided by law.

VI. PROCESSES ABROAD AND PARALLEL PROCESSES

The Law on Restructuring and Liquidation acknowledges that they may be procedures of restructuring and liquidation carried out in foreign jurisdictions, either in the place where the main establishment or the parent of a corporation is located, or where the branch of a commercial company is located. In these cases, the Law provides that a court or foreign representative may apply for assistance to the Dominican Republic in connection with such processes.

The Dominican Republic may require the assistance of a foreign state in occasion for proceedings before national courts. It will also be possible for a foreign creditor or interested person to request the opening or participate of a restructuring or liquidation procedure in the Dominican Republic.

The Law provides the formalities to be completed at each of these eventualities, in the interests of ensuring equal treatment between local and foreign creditors.

We emphasize that on the occasion of the existence of restructuring and liquidation proceedings abroad it may be possible to request conservatory measures before national courts aimed at ensuring the rights of potential foreign creditors.

Equally, the recognition of the foreign proceeding will have caused the stay of proceedings in the same manner generated by a local procedure. The Law even provides for the possibility of designating a conciliator or liquidator for the purpose of administering or liquidating any assets in the Dominican Republic belonging to a foreign entity or merchant.

The Law recognizes that a parallel process of restructuring or liquidation may be brought before national courts in respect of property situated in the territory of the Dominican Republic.

VII. INFRACTIONS AND SANCTIONS

The Law provides for imprisonment from two (2) years to three (3) years and fines from 125 to 1250 minimum wages for those merchants who fraudulently distract assets either before or during restructuring or bankruptcy proceedings, as well as for those who obstruct the work of the verified and the conciliator, and those who misuse the assets of a debtor.

It is worth noting, that third parties will be equally punished, regardless of their nature as merchants or otherwise, when they assist the debtors in distracting, concealing or disguising assets to the detriment of creditors, before or during the process of restructuring or liquidation.

Likewise, the Law criminalizes as bankruptcy the intentional delay in the opening of the restructuring or liquidation proceedings; the distraction of all or part of the assets of the debtor; the fraudulent increase in liabilities of the debtor; or the use of fictional accounts or hidden records.

The bankruptcy offense will be punishable by up to three (3) years of imprisonment and a fine of 2,500 minimum salaries. Those who are found guilty will also be blocked from exercising a public function, from participating in any process of restructuring or liquidation, and from exercising the administration of an entity for a period of five (5) years after completion of sentence of imprisonment.