

GETTING THE DEAL THROUGH

Mergers & Acquisitions

in 52 jurisdictions worldwide

Contributing editor: Casey Cogut

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Dominican Republic

Juana Barcelo and Marielle Garrigo

Pellerano & Herrera

1 Form

How may businesses combine?

The most common forms of business combination in the Dominican Republic are mergers, share purchases, asset purchases and joint venture agreements.

Mergers usually occur when two or more companies form a new company or when an existing company absorbs one or more companies. This type of combination is usually carried out through a merger agreement and a contribution in kind act.

Share purchases and asset purchases are usually carried out through asset purchase agreements or stock purchase agreements.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The main laws and regulations governing business combinations in the Dominican Republic are: the Civil Code; the Code of Commerce; the Tax Code and its applicable Regulations; Law No. 19-00 which regulates the securities market in the Dominican Republic; and the company's by-laws. Depending on the nature of the business or industry involved in a business combination, specific provisions regarding mergers and acquisitions may apply. For instance, the DR has specific regulations which need to be observed when dealing with business combinations in the areas of telecommunications, banking, and insurance, among others.

3 Governing law

What law typically governs the transaction agreements?

In principle, the governing law is typically freely chosen by the parties to an agreement except for public order issues, which shall be governed by the laws of the Dominican Republic and cannot be contracted out. The acquisition of certain assets such as real estate properties and shares shall be governed by the laws of the DR. Also, formalities required by local law and the by-laws of the relevant corporations have to be complied with in respect of a business combination.

Parties to a business combination normally enter into transaction document(s), which, depending on the type of transaction, could be a merger agreement, a stock purchase agreement, an asset purchase agreement or a joint venture agreement.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination?

Are there stamp taxes or other government fees in connection with completing a business combination?

The filings required in connection with a business combination would depend on the transaction involved. For mergers and other types of business reorganisation, the previous authorisation of the tax authorities is required for the transferring of fiscal rights and obligations. Documentation related to the merger, such as the shareholders' meetings of the entities, the merger agreement, the contribution in kind act, among other documents, shall be filed before the corresponding chamber of commerce. Subsequently, the registered documentation before the corresponding chamber of commerce shall be also filed with the tax authorities for approval of the transfer of the fiscal rights and obligations of the company. Depending on the type of industry, additional filings would be required for mergers. Capitalisation taxes of an approximate rate of 1.87 per cent are also paid if the authorised capital of the absorbing entity is increased or for the creation of the new corporation. Registration fees are required to register the merger documentation before the chamber of commerce. This latter amount will vary depending on the amount of the authorised capital of the corporation. Minimum stamp taxes are also paid to the tax authorities in connection with filing the documentation related to the merger.

Additional filings would also be required in connection with the transfer of the assets in a business combination. This would apply to mergers, assets acquisitions and share acquisitions. The applicable governmental entity would depend on the type of assets involved. Certain taxes would apply to the transfer of specific assets. For instance, the transfer of real estate properties (except for contribution in kind to DR companies, which is exempt) is subject to transfer tax of approximately 4.3 per cent.

The issuer of publicly traded securities must inform the Securities Superintendency of all relevant facts that might affect such issuer in connection with the combination.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

The information that needs to be made public depends on the type of structure and the industry involved.

Companies are required to comply with certain publicity requirements towards the corresponding chamber of commerce and the tax authorities every time they go through a merger or share acquisition process. The documentation that needs to be

made public for mergers includes corporate resolutions from the shareholders, merger agreements, contribution in kind acts, vigilance officer reports, the last tax return forms of dissolved entities and certification of dissolution, (this last two when applicable). The filing of additional documentation would apply to regulated sectors such as telecommunications, insurance, and banking, among others.

For share acquisition transactions, the share purchase agreement is required to be filed before the corresponding chamber of commerce and the tax authorities. The purchase and sale agreement of assets subject to registration (ie, real estate properties, motor vehicles, vessels) must be filed before the corresponding authorities to complete the transaction.

If the company has issued public securities, there are certain stipulations under Law 19-00 which obligate issuers to register documentation related with the business combination towards the Securities Superintendency. Additionally, the information related to the business combination will have to be included in the updated version of the prospectus, which needs to be filed semi-annually.

6 Disclosure requirements for shareholders

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

The disclosure requirements towards the shareholders would depend on the type of business combination and the provisions in the by-laws of the participants.

For mergers, the previous approval of the shareholders' meeting would be required. Notice, quorum and majority formalities would vary depending on the provisions of the by-laws.

Except for transactions between a company and directors and officers and other specific provisions within the by-laws of a particular corporation, no shareholder approval is required for assets and share acquisitions or for joint venture agreements.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Except for a duty of care similar to those expected from a prudent and competent person, no additional duty is imposed on the directors by law. Other duties may be imposed on the directors by the company's by-laws. Based on article 32 of the Commerce Code, directors are only responsible for executing the mandate given to them in accordance with the dispositions of the company's by-laws. Controlling shareholders do not have similar duties to those indicated above.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Shareholder approval is required for mergers. Unless otherwise provided in the by-laws of a particular company, shareholder approval would also be required for the sale of all or substantially all of the assets of a company.

No appraisal or similar right is established by law in the Dominican Republic.

9 Hostile transactions

What are the special considerations for unsolicited (hostile) transactions?

There are no special considerations for unsolicited (hostile) transactions for privately owned companies in the Dominican Republic. Note that local corporations have limited their issuance of publicly traded securities to bonds and we are not aware of any issuance or registration of shares to the public up to now.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Parties to a business combination are free to agree the break-up fees according to whatever terms they choose. In general, shareholders are allowed to establish a mechanism in the company's by-laws to protect deals from third parties, provided that such provisions are not contradictory to public order laws.

There is not a particular restriction on providing financial assistance to Dominican corporations in connection with a business combination.

11 Governmental influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations including for reasons of national security?

In practical terms, the Dominican tax authorities may influence the completion of business combinations.

12 Conditions permitted

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, can the financing be conditional?

There are no conditions for private transactions. Thus far, there are no local regulations in place establishing conditions for publicly traded companies and addressing issue such as trade-off, exchange offers and tradeovers.

13 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Shareholders will not lose their rights as shareholders of a corporation as result of a business combination unless they authorise it.

14 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

The Dominican law does not regulate cross-border transactions. However, companies must comply with the Dominican Republic law in connection with business combinations affecting local companies and assets.

15 Waiting or notification periods

Other than competition laws, what are the relevant waiting or notification periods for completing business combinations?
Are companies in specific industries subject to additional regulations and statutes?

In general, there is not a specific waiting period for business combinations.

The previous authorisation of the tax authorities is required in any business combination that entails the transfer of fiscal rights and obligations. The process would require the filing of certain documentation before the tax authorities and the issuance of an authorisation by such authority.

Certain industries, such as telecommunications, banking, insurance, and energy, among others, must comply with special regulation related to business combinations. Typically, the previous approval of the relevant governmental authorities would be required prior to the business combination coming into effect.

In addition, transactions with companies that have issued public securities would also require notification with and the approval of the Securities Superintendency.

16 Tax issues

What are the basic tax issues involved in business combinations?

Some of the basic tax issues that should be considered are the following:

- The results of mergers and other reorganisation processes that may arise as a consequence of the reorganisation are exempted from income tax. However, a capitalisation tax of an approximate of 1.8 per cent would apply if the authorised capital needs to be increased.
- The sale or contribution in kind of shares and real estate properties may generate capital gain taxes of 29 per cent.
- The acquisition of real estate properties and other assets may be subject to transfer taxes, withholding and value added tax.
- In principle, the surviving or new corporation, or the purchaser, will assume tax liabilities, subject to certain exemptions.
- In a merger transaction, the past losses of the dissolved entities are not transferred to the surviving or new corporation.

Update and trends

A bill to reform the regulations applicable to corporations has been introduced to Congress. Such bill specifically regulates corporate governance and business combinations. If approved by Congress, this bill will constitute the first legal framework for mergers and acquisitions in the Dominican Republic. Among the principal changes included in this bill, companies which have issued public traded securities will be subject to the supervision and control of the Securities Superintendence, including the approval of the Securities Superintendence for mergers and other types of business combinations.

17 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

The basic regulatory framework governing labour in the DR is the Labour Code of the Dominican Republic and its Regulations for application, Resolutions from the Ministry of Labour and Supreme Court jurisprudence. In general, the continuing corporation or the purchaser will assume labour liabilities.

18 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

If the formal process of bankruptcy has been initiated, the business combination would not be possible.

19 Sovereign wealth funds

Are there any regulations governing investments by sovereign wealth funds?

No.

Pellerano & Herrera

Abogados

Contacts: Marielle Garrigo
Juana Barcelo

e-mail: m.garrigo@phlaw.com
e-mail: j.barcelo@phlaw.com

10 John F Kennedy Ave
Santo Domingo
Dominican Republic

Tel: +1 809 541 5200
Fax: +1 809 567 0773
Website: www.phlaw.com