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Market Intelligence

M&A 2023

Global interview panel led by Simpson Thacher & Bartlett LLP

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Simpson Thacher & Bartlett LLP, this *M&A* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

- Keynote Deals
- Sector Focus
- M&A Activity Levels
- 2024 Outlook

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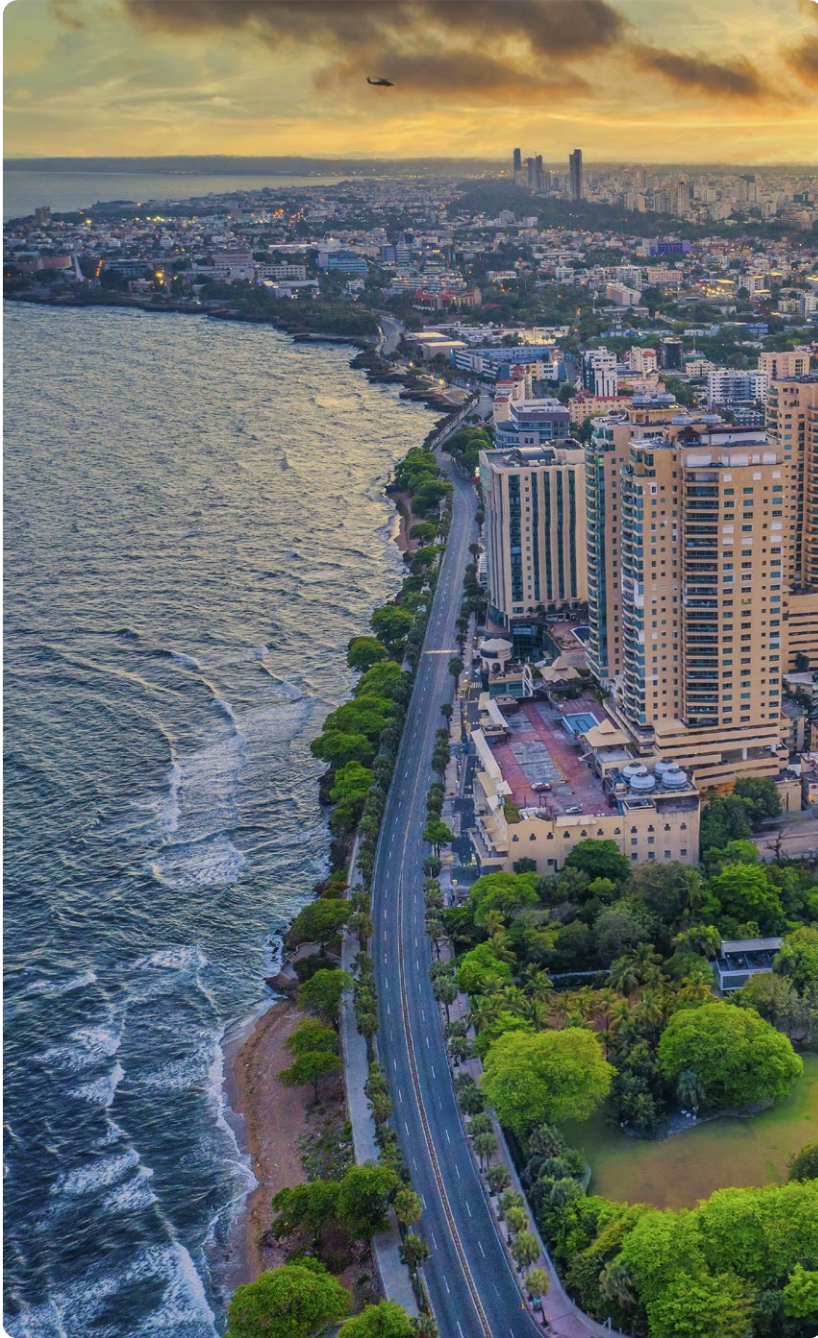


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Dominican Republic

Marielle Garrigó at Pellerano Nadal is highly renowned for her pivotal role in significant transactions in the Dominican Republic. With over 25 years of experience, she specialises in banking, M&A, project finance, capital markets and infrastructure. Marielle's career includes leadership at distinguished law firms and public sector involvement as special counsel to the Superintendent of Banks. Her accomplishments range from advising on the pioneering leveraged buyout of international airports to Anheuser-Busch InBev's major acquisition of Cervecería Nacional Dominicana. She has also been instrumental in sovereign bond offerings, energy sector bonds, mining company financing and syndicated loans. Recognised by prominent legal associations, Marielle is lauded for her expertise in corporate and finance law and contributes to esteemed publications.

Eduardo Pellerano specialises in banking, project finance, M&A, capital markets and foreign investments. He aids clients across sectors like infrastructure, technology, tourism and energy. Eduardo's accomplishments range from structuring Dominican government bond issuances to aiding multiple banks and multilaterals execute project financings in the Dominican Republic. Notably, he has contributed articles on economic 'Uberization' and is a member of the New York Bar Association. His work extends to regulatory advice, and he has been involved in the development of renewable energy projects and government infrastructure.



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INSIDE TRACK



1 What trends are you seeing in overall activity levels for mergers and acquisitions in your jurisdiction during the past year or so?

Despite the beginning of the election cycle, both local and foreign investors have exhibited a sustained pace of transactions, defying the typical deceleration often witnessed during pre-electoral and electoral years. Consequently, after the covid-19 pandemic and the ramifications of the Ukraine conflict, the nation experienced a notable upsurge starting from the final quarter of 2022 and throughout 2023. In fact, the Dominican Republic stands out as the preferred foreign direct investment (FDI) destination not only within Central America but also across the Caribbean, attributed to the country's steady growth within the region over the past several years.

Traditionally, transactions have taken the form of direct acquisitions or mergers. Nonetheless, the market's trajectory is one of constant evolution, with the anticipation of the emergence of alternative deal structures in the near future.

2 Which sectors have been particularly active or stagnant? What are the underlying reasons for these activity levels? What size are typical transactions?

Over recent years, sectors such as fuel, telecommunications, hospitality and renewable energy have witnessed heightened activity, emerging as focal points within the Dominican Republic's M&A landscape. These sectors have hosted some of the most substantial M&A deals over the past year. Notably, the fuel sector has experienced a surge in activity, characterised by the acquisition of local operations by prominent global ones.



The driving forces behind this surge in activity are manifold. A stable economic and political environment has played a pivotal role, while evolving regulations have fostered growth in the renewables sector. Furthermore, the escalating interest of investors from Central and South America in expanding their foothold within the region has further bolstered the momentum.

As for transaction sizes, they exhibit a degree of variability contingent upon the sector in question. Transaction magnitudes can span from modest figures of US\$100 million or even less, reaching up to around US\$750 million. Notably regulated industries, such as banking, financing and aviation, may witness transactions surpassing the US\$900 million threshold.

“Local sellers often entertain the notion of receiving shares from foreign investors as a strategic means of optimising tax advantages.”

3 What were the recent keynote deals? What made them so significant?

While the landscape of 2023 has predominantly been marked by robust project development and financing activities, notable M&A deals have also emerged.

A milestone achievement unfolded as Cesar Iglesias, a Dominican consumer products company, accomplished a historic feat by becoming the inaugural Dominican entity to successfully execute an IPO within the nation. This transaction achieved remarkable triumph, involving the issuance and purchase of 38,721,220 shares, aggregating to an approximate value of US\$87,677,363.53.

Grupo Punta Cana, historically specialised in the hospitality sector, has recently acquired *Diario Libre*, one of the top newspapers in the country.

Simultaneously, Barrick Gold embarked on an extensive expansion endeavour for the Pueblo Viejo Mine, investing a substantial US\$3 billion. This expansion, coupled with the recent establishment of a tail dam, spurred a series of land acquisitions integral to their expansion strategy.

Furthermore, the renewable sector is witnessing ongoing deal activities, with several transactions currently underway and anticipated to conclude by year end. These developments are poised to contribute to the sector's evolution.

4 In your experience, what consideration do shareholders in a target tend to prefer? Are mergers and acquisitions in your jurisdiction primarily cash or share transactions? Are shareholders generally willing to accept shares issued by a foreign acquirer?

Shareholders exhibit a degree of flexibility in considering payment structures. While a preference for cash payments exists, it is not uncommon to observe the utilisation of share transactions or a combination of both cash and shares. Our experience underscores that local sellers often entertain the notion of receiving shares from foreign investors as a strategic means of optimising tax advantages.

Conversely, the uniform rights enjoyed by foreign investors, akin to Dominican nationals, establish a context where share transactions are infrequent among foreign investors. Nonetheless, there are isolated instances where foreign investors opt for share transactions to retain local partners as way to benefit from their insights into the intricacies of the local market dynamics.



5 How has the legal and regulatory landscape for mergers and acquisitions changed during the past few years in your jurisdiction?

Over the preceding year, the legal and regulatory framework governing mergers and acquisitions has remained predominantly stable, having minimal impact on the landscape.

However, the current legislative landscape is marked by the presence of multiple bills within the Congress. These pending bills, if ratified, bear the potential to exert future implications on M&A proceedings. Prominent among these are the proposed new Civil Code and the forthcoming Securities Law. The envisaged comprehensive amendment to the Securities Law carries the prospect of introducing significant alterations, particularly in relation to the diversification of investment within pension funds. Notably, this reform aims to expand investment options beyond the existing limitations, thereby potentially encompassing diverse assets including bonds and entities beyond the local spectrum.

While recent years have witnessed a status quo in the legal and regulatory front, these prospective legislative developments signify a plausible shift in the trajectory of mergers and acquisitions, as they bear the promise of reshaping the future landscape and parameters of these transactions.

6 Describe recent developments in the commercial landscape. Are buyers from outside your jurisdiction common?

The prevailing commercial landscape is prominently characterised by the notable presence of foreign buyers and investors, often constituting a significant majority. This assertion finds substantiation

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in the consistent upsurge of FDI, exemplified by the figures recorded in 2021. During this period, FDI reached a substantial sum of US\$3.34 billion, marking a discernible increase on the previous year's US\$2.92 billion.

7 Are shareholder activists part of the corporate scene? How have they influenced M&A?

Shareholder activism is increasing in the corporate scene, especially since the Corporations Law expressly addresses minority shareholders' rights. Nevertheless, this activism is frequently burdened with bureaucracy and the cost derived from what may become a judicial process.



8 Take us through the typical stages of a transaction in your jurisdiction.

Merger and acquisition transactions in the Dominican Republic closely adhere to the standard process observed in common law jurisdictions, such as the United States, encompassing recognisable phases. Frequently involving intermediaries such as investment bankers and legal professionals, these transactions usually commence through interactions among these experts.

The initial stride commonly involves the execution of a non-disclosure or confidentiality agreement, laying the groundwork for the exchange of sensitive information. If the transaction takes the form of a restricted bidding process, it initiates with the provision of an information memorandum to potential buyers.

Negotiations pertaining to pricing are often deferred until a comprehensive due diligence exercise is undertaken. Virtual data rooms often facilitate this process, enabling efficient scrutiny of pertinent documentation. This due diligence procedure often encompasses interactions with the target company's management and on-site assessments.

Following the completion of the due diligence, negotiations encompassing price, operational structure and the delineation of transactional documents transpire. An initial closure of the deal ensues between parties, typically within the subsequent month, contingent upon the satisfaction of conditions precedents that are usually defined by the parties. In some instances, a non-compete agreement will be among the transaction documents; while in others, the creation of a temporary advisory role for the seller to facilitate the transition process will be put in place. Tax implications, as well as clauses related to guarantees and indemnities, usually constitute pivotal facets of these discussions.

“Merger and acquisition transactions in the Dominican Republic closely adhere to the standard process observed in common law jurisdictions, such as the United States.”

For target companies subject to special regulatory oversight, requiring governmental clearance or non-objection, parties generally formalise a memorandum of understanding (MOU), which outline a sequential timetable for ensuing stages. This step facilitates the navigation of regulatory procedures and approvals.

The distinct stages underscore the resemblance between M&A practices in the Dominican Republic and those used in well-established common law jurisdictions.

9 Are there any legal or commercial changes anticipated in the near future that will materially affect practice or activity in your jurisdiction?

The impending landscape harbors the potential for significant alterations as numerous proposed bills stand to impact the M&A realm. Among these, noteworthy mentions encompass the proposed new Civil Code, an envisioned amendment to the securities law, and



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refinements within the financial and monetary board's regulations. These anticipated modifications aim to fortify various facets, including the role of independent directors and the evolving fintech landscape, mirroring a commitment to enhanced regulatory frameworks. These developments, if realised, are poised to extend their influence across the spectrum of M&A practices and associated activities.

10 What does the future hold? What activity levels do you expect for the next year? Which sectors will be the most active? Do you foresee any particular geopolitical or macroeconomic developments that will affect deal sizes and activity?

Despite the upcoming year being an electoral one, foreign investors have demonstrated a notable degree of confidence in the Dominican Republic's enduring political, economic and societal stability. Consequently, we anticipate that M&A activity will remain relatively resilient, with a substantive reduction in activity being unlikely.

However, considering the inherent political dynamics associated with elections, it is foreseeable that any pending reforms or substantial legal amendments may experience a temporary pause until after the electoral process concludes. This precautionary measure aligns with the customary caution exercised during such periods.

This steadfast investor confidence and the underlying stability contribute to a positive outlook for the M&A landscape, suggesting that the prevailing activity momentum will persist across various sectors. While external geopolitical and macroeconomic factors may exert influence, the overall sentiment remains one of continuity and confidence.

QUESTIONS



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The Inside Track

What factors make mergers and acquisitions practice in your jurisdiction unique?

In the Dominican Republic, M&A practice thrives due to the nation's receptivity to foreign investment, backed by minimal legislative constraints and a plethora of incentive laws. However, a distinctive challenge arises from the country's bureaucratic intricacies; expert local counsel must streamline procedures and anticipate contingencies. This demands a counsel with a keen understanding of both jurisdictional nuances and client objectives, ensuring the formulation of optimal transactional strategies. Navigating the labyrinthine administrative landscape requires proactive liaising with government bodies, guaranteeing timely execution and the identification of prime dispute resolution alternatives.

What three things should a client consider when choosing counsel for a complex transaction in your jurisdiction?

When selecting counsel for intricate transactions, three key considerations emerge. First, a robust track record in managing complex M&A undertakings, particularly those spanning multiple jurisdictions and disciplines, is pivotal. Expertise acquired through such experience is indispensable in preemptively addressing potential challenges and navigating unforeseen complexities. Second, the counsel's capacity to rapidly assimilate and align with the client's objectives, goals and imperatives underscores their potential to propose pertinent legal structures and augment transactional value. Last, the counsel's commitment to upholding rigorous quality standards,

and their ability to meticulously adhere to predetermined timelines, signifies a level of dedication that can profoundly impact the transaction's outcome.

What is the most interesting or unusual matter you have recently worked on, and why?

We have been involved in the development of a mega project through a private-public partnership, holding immense significance for the nation. The project's expansive nature necessitates our coordination with a numerous of private and public stakeholders to ensure its resounding success. The project's scope spans key sectors, including real estate and the tourism industry, which holds paramount importance for the country. Additionally, the project encompasses environmental aspects, subjecting it to stringent international regulations due to the specific geographical area of its development.



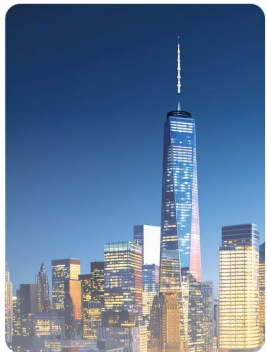
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Lexology GTDT: Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes in major jurisdictions around the world. Through engaging, easily comparable interviews, the series provides the legal profession's thought leaders with a platform for sharing their views on current market conditions and developments in the law.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

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