

Mutual Guarantee System

On 6th June 2017 the Senate passed the Bill creating the Mutual Guarantee System which makes it easier for Micro, Small and Medium-sized Enterprises (MSMEs) to access formal financing, as well as helping them with hiring and procurement of public and private goods and services.

The law creates two legal entities to mitigate the difficulties faced by MSMEs in accessing formal financing at a lower cost. They are “Mutual Guarantee Companies” and “Bonding Companies”, whose partners can be legal or natural persons, public or private, Dominican or foreign, and may be classified as shareholders or patrons.

Mutual guarantee companies extend guarantees for their shareholders, to back up obligations relating to their productive, professional and commercial activities, as well as providing technical, economic and financial advice to their shareholders, either directly or through third parties, and managing the credit facilities.

A company of this nature must have at least one (1) patron and at least twenty-five (25) shareholders; its corporate capital must be made up of their monetary contributions, with subscribed and paid up equity of at least DOP 50 million (DOP 50,000,000.00). The nominal value of each share should be DOP one hundred (DOP 100.00).

Mutual guarantee companies are to have general meetings and a board of directors as their governing bodies, as well as an audit committee, whose functions will be:

- (i) To verify on a regular basis the investments, guarantee contracts and the situation of corporate capital, reserves and risk coverage.
- (ii) Attend to the requirements and requests for clarification that may be received from the Banking Authority.

Bonding companies provide counter-guarantees for mutual guarantee companies, inasmuch as they offer additional cover for the risk taken on by these when granting guarantees to their shareholders. Their equity may be public, private or mixed, and should not be lower than DOP 75 million (DOP 75,000,000.00), while the nominal value of each share should be DOP one hundred (DOP 100.00).

Put simply, we could say that mutual guarantee firms will provide guarantees by issuing sureties, called guarantee certificates, to MSMEs, while bonding companies will underwrite the mutual guarantee companies to cover the risk from the sureties they have given.

Both types of company are bound by the regulations of the Monetary Board which in turn sets the rules on authorising, opening, operating, winding up and liquidating these companies.

The regulation distinguishes between three types of guarantee and surety:

- Financial guarantees: these give access to financing, issuing negotiable obligations and short term securities, discounting invoices, leasing and other transactions on the capital market.
- Commercial guarantees: guaranteeing transactions between companies, especially companies with links to one another, by using value chains.
- Technical guarantees: guaranteeing that obligations with government bodies and departments and other public entities, private customers and suppliers will be met, including those that are required by law over procurement and hiring of goods, services, building works, concessions and their modification.

The mutual guarantee contract will be considered as an enforceable instrument for the amount of the principal debt, interest and incidental charges, as well as the sum of the guarantee issued, and will be formalised in the presence of a public notary.

Similarly, the regulation establishes the infractions that can be penalised in the case of those companies and/or people holding positions as directors in these in the event of their non-compliance with the law or its regulations. These infractions may be quantitative if they involve a discrepancy, above or below, in the amount of funds required as per the regulations, or they may be qualitative in the event of non-compliance with the legal provisions that does not involve a sum of money; all this is in addition to the administrative sanctions.

The law's regulations and the modifications it implies in other regulations must be published within one hundred and eighty (180) days of the law being enacted.