RESTRUCTURING ARGENTINA'S SOVEREIGN DEBTS: NAVIGATING THE LEGAL LABYRINTH

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1. INTRODUCTION

On Feb. 19, 2020, the IMF declared that Argentina's debts were no longer sustainable and called upon bondholders to help resolve the crisis.[2] A schedule for the restructuring of Argentina's external debt has been announced by the Argentina Ministry of Finance on Jan. 29, 2020.[3] According to the Ministry, Argentina plans to launch a debt restructuring offer in the second week of March and execute the offer by the end of March. No doubt an ambitious plan.

But how did we get here? For almost two years, Argentina has been facing a severe economic recession and, since mid-2018, it was de-facto cut off from international debt capital markets.[4] This has been due to several factors, including but not limited to a broader capital flight from emerging markets following a period of U.S. Federal Reserve Bank rate hikes throughout 2018 and the country's persistent fiscal deficits and macroeconomic imbalances. In response, Argentina entered into the biggest-ever international financial assistance program by the International Monetary Fund (IMF),

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[2] Hugh Bronstein, *Argentina bonds take it on the chin after IMF approves restructuring*, REUTERS (Feb. 20, 2020), https://www.reuters.com/article/us-argentina-debt/argentine-bonds-take-it-on-the-chin-after-imf-approves-restructuring-idUSKBN20E2NB.

[3] Ministerio de Economía de Argentina, *Cronograma de acciones para la gestión del Proceso de Restauración de la Sostenibilidad de la Deuda Pública Externa*, Jan. 29, 2020, https://www.argentina.gob.ar/noticias/cronograma-de-acciones-para-la-gestion-del-proceso-de-restauracion-de-la-sostenibilidad-de.

[4] Santiago Perez and Ryan Dube, *Why Argentina Faces an Economic Crisis. Again.,* WALL ST. J. (Sep. 25, 2019)

with a total volume of $57 billion.[5] However, the official sector intervention did not yield the desired macroeconomic results, and most variables continued to deteriorate.

The debt restructuring has to happen quick and, for the sake of all parties involved, has to happen smoothly.[6] Argentina's repayment calendar for its external debt obligations looks intimidating, with $5.8 billion maturing in May and $8.2 billion in August.[7] A debt default should be avoided by all means, as it would be a catastrophic proposition both to creditors and Argentina. Indeed, nations facing deep economic crises seek to avoid defaults by all means, not least since the incumbent leaders rarely survive them. Instead, countries whose debt obligations have become unsustainable will attempt to renegotiate the terms of their indebtedness with their creditors. A process referred to as "sovereign debt restructuring." And this is the moment where things start to become really complicated – they become legal.

Given the absence of an international legal framework to deal with sovereign bankruptcies[8], counsels advising sovereigns must, in essence, consult the debt contracts that the country has signed. Indeed, contractual arrangements are the single most important source in the context of sovereign debt finance, especially when a sizeable amount of debt is raised in foreign currency and governed by foreign laws – as is the case for Argentina. To be sure, sovereigns are unique legal animals. They enjoy protection from foreign interference in their domestic affairs. Flowing from the idea of equality of nations on the international plane, countries enjoy sovereign immunity from suit and enforcement actions launched by foreign creditors.[9] This has emboldened private creditors, who may, provided they have the financial stamina, pursue litigation and arbitration against a sovereign country in debt distress.[10]

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[5] Dave Graham and Nicolas Misculin, *IMF boosts Argentina program to $57 billion in bid to halt peso slide*, REUTERS (Sep. 26, 2018).

[6] Argentina has defaulted eight times in its history, a record number.

[7] Sebastian Boyd, *Monetizing Debt is Only Good if You're an Argentina Bondholder*, BLOOMBERG (Jan. 7, 2020).

[8] See Ryan Molly, *Sovereign bankruptcy: Why now and why not in the IMF*, *82*(5) FORDHAM L. R. 2473 (2014).

[9] However, with the advent of cross-border finance many jurisdictions have abandoned the concept of absolute immunity in favor or relative immunity. *See* Mark Weidemaier, *Sovereign Immunity and sovereign debt*, 2014(1) U. ILL. L. REV. 67.

[10] *See* Julian Schumacher, Christoph Trebesch, and Henrik Enderlein, *Sovereign Defaults in Court*, ECB Working Paper Series (Feb. 2018), https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2135.en.pdf?8b8f4f0e99d7a74a28f1c8eb6e29fa60.

This paper sets out to describe and analyze those legal issues and obstacles that are likely to play a role in an Argentine debt restructuring. Since debt restructuring talks have not yet formally started, and no judge has been called to enforce a creditor claim, my analysis includes several forward-looking elements. It is structured as follows. Section 2 sets the stage by providing a succinct overview of the political and financial aspects of the current Argentine debt crisis. Section 3 turns to the legal aspects of Argentina's public debt stock, focusing on the "restructurability" of the respective instruments, which includes domestic debt, international sovereign bonds, and multilateral obligations, such as IMF "loans." Drawing sovereign bond prospectuses, pertinent cases of sovereign debt litigation, as well as a plethora of academic studies, the paper seeks to provide an informed assessment of the legal problems that will keep the negotiating teams on both sides of the table busy – and, potentially, even the courts.

2. SETTING THE STAGE – THE POLITICAL AND FINANCIAL BACKGROUND TO ARGENTINA'S DEBT CRISIS

a. How did we get here?

The economic crisis facing Argentina played a key role in the 2018 elections, in which the former President Macri was ousted after just one term in office. And Macri had left the new administration with a Hercules task. The country's inflation rate has risen above 50 percent and many of the measures to stabilize the currency have failed. The economy has shrunk for more than two years, with poverty levels rising to the highest levels in a decade.[11]

The country's new President, Mr. Alberto Fernandez, a Peronist, has stated his intentions to solve Argentina's sovereign debt issues quickly and without seeking a haircut on creditors.[12] Mr. Fernandez moreover announced to follow Uruguay's model in resolving sovereign debt problems, which restructured approximately $5.4 billion in public debts in 2003 by extending the maturities of the outstanding bonds.[13] Fernandez has also voiced his confidence that "there will be no difficulties to

[11] Manuel Rpalo, *Argentina declares economic emergency*, AL JAZEERA (Dec. 21, 2019).

[12] Charles Newbery, *Argentina's front-runner for president proposes quick debt restructuring*, LATINFINANCE (Sep. 30, 2019).

[13] IMF, *The Fund's Lending Framework and Sovereign Debt – Preliminary Considerations*, Jun. 2014, https://www.imf.org/external/np/pp/eng/2014/052214.pdf (last visited Jan. 2, 2020). In IMF jargon, such maturity

achieve [a debt reprofiling]" and that "[a reprofiling] will save time and there won't be discounts."[14] However, the optimism spread by the newly-elected administration seemed to have faded quickly. Argentina's new finance minister, Martin Guzman, himself an expert on sovereign debt crises, warned that if the government could not get a debt extension by March 2020, it is set up for a default on some foreign debts.[15]

Indeed, drawing a comparison with Uruguay's 2003 workout seems far-fetched. Uruguay extended the maturity date of 18 bonds issued in international markets by five years, while leaving coupon rates and principal payments untouched.[16] The maturity extension resulted in an average discount rate of 12.2%, which was one of the mildest in the history of sovereign debt restructurings.[17] By comparison, Argentina's 2005 restructuring imposed a 73% haircut on sovereign bondholders. Haircuts in other sovereign debt restructurings are to be found somewhere between these two extremes, with Pakistan's 2004 Eurobonds restructuring for instance at 21.4% discount rate and the Greek Private Sector Involvement of 2012 at roughly 53.5%.[18] Unsurprisingly, commentators have already cast doubt on Fernandez's announcement that Uruguay 2.0 will do the trick for Argentina.[19]

There is an inherent trade-off between size and time. As the Argentine economist Eduardo Yeyati rightly noted, "while a quick negotiation may fall short of what is needed to ensure solvency, a slow negotiation may delay a rebound and deepen the economic damage."[20]

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extension would be called "debt reprofiling" and implies that principal and interest payments are merely postponed rather than reduced.

[14] *See* Newbery, *supra* note 12.

[15] Kenneth Rapoza, *Argentina 2020: Can Bond Markets Really Be That Crazy?*, FORBES (Dec. 11, 2019).

[16] Federico Sturzenegger and Jeromin Zettelmeyer, *Haircuts: Estimating Investor Losses in Sovereign Debt Restructurings, 1998-2005*, IMF Working Paper WP/05/137, https://www.imf.org/external/pubs/ft/wp/2005/wp05137.pdf.

[17] *Id.*

[18] *Id.* For Greece, *see* Jeromin Zettelmeyer, Christoph Trebesch, and Mitu Gulati, *The Greek Debt Restructuring: An Autopsy*, 28(75) ECON. POL. 513 (2013).

[19] Eduardo Levy Yeyati, *Argentina: No Plan B, and No Easy Choices*, Americas Quarterly (Sep. 30, 2019), https://www.americasquarterly.org/content/argentina-no-plan-b-and-no-easy-choices.

[20] *Id.*

b. THE FINANCIAL ASPECTS OF AN ARGENTINE DEBT RESTRUCTURING

According to the latest official government statistics, the Republic of Argentina's total outstanding debts, including debts of public sector agencies, such owed to the private sector, and debts to multilateral and bilateral debt, amount to $337 billion, or 80.7% of GDP (the amount varies depending on the peso-dollar exchange rate, since a relevant portion of such debt is short-term and denominated in pesos).[21] Of the government's total financial obligations, 58% are denominated in U.S. dollars, 13.8% in Argentine pesos, 6.5% in Euros and 12.0% in other currencies (including the IMF's Special Drawing Rights). Argentina has a complex financial indebtedness structure which includes, in essence, the following types of instruments:

- Domestic debt,
- International sovereign bonds,
- IMF loans, and
- Credit facilities with multilateral and commercial financial institutions.

Below, I briefly describe the Argentina's relative exposure to each of these types of debt instruments, respectively, and also touch upon the issue of debt maturity.

i. Domestic debt

Broadly speaking, there are two ways to define "domestic debt". First, from a legal viewpoint, domestic debt may be defined as all obligations incurred by the government that are governed by local, and hence Argentine law (i.e. "domestic-law debt"). Argentine Treasury data shows that 59.2% of total outstanding financial obligations are governed by domestic law, while 40.8% are foreign-law debts.[22]

Second, from an economic perspective, domestic debt can be defined as all government debt denominated in domestic currency, i.e. Argentine Pesos (ARS) ("domestic-currency debt"). According

[21] Secretaria de Finanzas Argentina, *Deuda de la Administracion Central – Republica Argentina*, https://www.argentina.gob.ar/sites/default/files/presentacion_grafica_de_la_deuda_30-06-2019_0.pdf (last visited Dec. 2, 2020). In my analysis of Argentina's indebtedness levels as well as its debt structure, I rely primarily on Bloomberg data [and publicly available data provided by the Argentine government]. While I cannot guarantee the completeness of the dataset available on Bloomberg, it is certainly the most reliable and comprehensive source available. For the determination of the governing law, I draw on the publicly available information of the Luxembourg Stock Exchange; *see* https://www.bourse.lu/home (last visited Dec. 2, 2019).

[22] *Id.*

to the latest statistics, 23.2% of the total debt stock (excluding IMF loans) are domestic-currency obligations, and 76.8% are foreign-currency debts.[23]

However, to the author's best knowledge, there is insufficient public data to provide a comprehensive and coherent picture of Argentina's current domestic debt stock. What is clear is that the government has, according to Bloomberg, already delayed the repayment of some of its domestic debt.[24] Domestic-currency debt is typically held by local residents and institutional investors, and, as I describe below, there are fewer legal risks associated with the restructuring of such obligations.

ii. International sovereign debt

For the purpose of this essay, international sovereign debt is defined as debt denominated in a *foreign* currency. But, as Table 1 below indicates, Argentina's bonds are also governed by different laws and subject to the jurisdiction of different (foreign) courts. A sizeable portion of Argentina's foreign currency debt is also governed local law. These so-called "Bonar Bonds" amount to roughly $30 billon. By way of disclaimer, it is noted that the available data on Argentine sovereign bonds is not complete, and the amounts presented here should thus be appreciated as a rough indication rather than precise measures.[25]

As Table 1 below shows, Argentina has roughly $105 billion of outstanding international sovereign bonds. This number does not include T-bills ("Letras"), of which the government has issued approximately $69 billion. Ordinarily, T-bills have short maturities and would thus not be included in a restructuring. From the bonds issued since the Macri administration took office, 26 instruments with a total issued amount of $72 billion are still outstanding, which are denominated in three different currencies (U.S. dollar, Euro, Japanese Yen) and governed by three different governing laws (New York law, Argentine law, Japanese law).

[23] *Id.*

[24] Philip Sanders, Pablo Rosendo Gonzales, and Jorgelina Do Rosario, *Argentina Seeks to Extend Maturity of $101 Billion of Debt*, BLOOMBERG (Aug. 28, 2019).

[25] Bonds issued by Argentine provinces (sub-national government debt) is not included in this analysis. According to a Bloomberg report, the amount of outstanding provincial debt may be as high as $15 billion.

TABLE 1: OUTSTANDING INTERNATIONAL SOVEREIGN BONDS

	Amount in $bn	Governing law
Foreign law	**65.9**	**–**
"Kirchner bonds" (Restructuring bonds)	**24.6**	**–**
USD	11.0	NY law
EUR	13.3	English law
JPY	0.3	Japanese law
"Macri bonds"	**41.4**	
USD	30.4	NY law
EUR	5.7	NY law
CHF	0.4	–
Local Law	**38.9**	**–**
USD Bonars	30.4	AR law
USD Restructuring	8.6	AR law
Total	**104.8**	**-**

Source: Argentine Ministry of Finance (September 2019)[26]

iii. IMF loans

On June 20, 2018, the IMF Executive Board approved a 36-month Stand-By Arrangement (SBA) for Argentina with an amount of $50 billion, which was expanded on October 17 to a total amount of $57 billion.[27] Under an SBA, the IMF provides financial assistance that is due within 3¼-5 years of disbursement against certain macro-financial conditions approved by the IMF Executive Board and accepted by the borrower country in the Letter of Intent.[28] Argentina's IMF program is subject to twelve reviews between September 2018 and March 2021, and after the completion of each review

[26] *See* Ministro de Economía y Finanzas Públicas de Argentina, *Informes trimestales de la deuda*, Sep. 30, 2019, https://www.argentina.gob.ar/economia/finanzas/deudapublica/informes-trimestrales-de-la-deuda; Bloomberg Terminal. I want to thank Daniel Chodos for supporting me with the locating and structuring the financial data.

[27] IMF, *IMF Executive Board Approves US$50 Billion Stand-By Arrangement for Argentina*, Press Release No. 18/245 (Jun. 20, 2018), https://www.imf.org/en/News/Articles/2018/06/20/pr18245-argentina-imf-executive-board-approves-us50-billion-stand-by-arrangement.

[28] IMF, *Argentina: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding*, Oct. 17, 2018, https://www.imf.org/external/np/loi/2018/arg/101718.pdf.

the Fund must disburse additional funds under the SBA. The Fund completed its latest Fourth Review of Argentina's program in July 2019, allowing the disbursement of another $4.3 billion, bringing total disbursements since June 2018 to $44.1 billion, equaling more than three quarters of the amount available under the SBA ($57 billion).

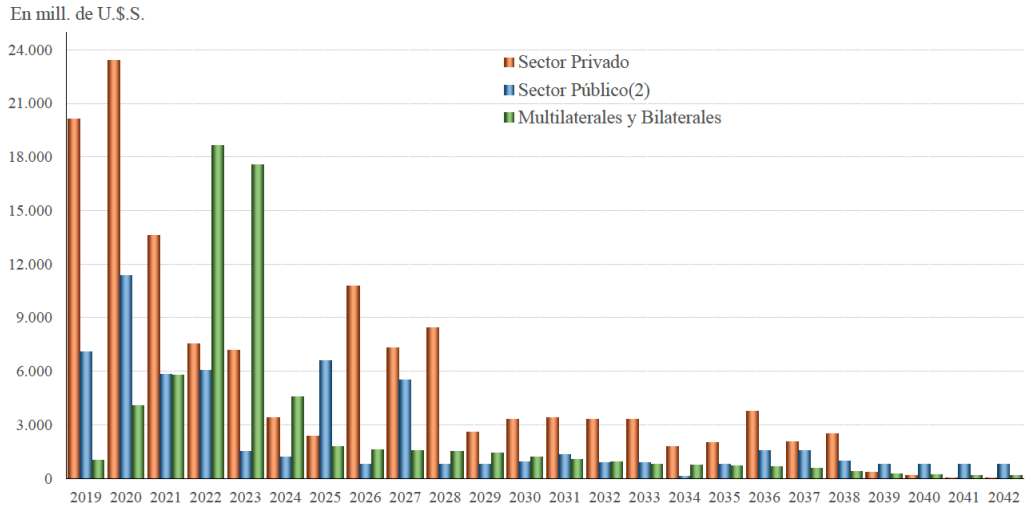
iv. Credit facilities with multilateral and commercial financial institutions

Bloomberg data on multilateral, bilateral, and commercial loans denominated in U.S. dollars seems somewhat less reliable and incomplete than bond data. Putting aside some uncertainties relating to data-quality, the total outstanding amount of U.S. dollar loans, excluding IMF loans, stands at approximately $17.2 billion.

v. Debt maturities

Figure 1 below by the Argentine Treasury provides a valuable insight into the debt's maturity profile (principal repayments), which is critical for a debt restructuring operation. It shows that Argentina faces relatively high repayment obligations in the near future. Especially repayments of short-term private-sector debts (in orange) as well as official-sector loans (in green) loom large and will exert pressure on the country's fiscal situation absent a debt restructuring.

Figure 1: Maturity structure of Argentina's private and public debt[29]



[29] Secretaria de Finanzas Argentina, *supra* note 21.

3. LEGAL ASPECTS AND "RESTRUCTURABILITY" OF THE DEBT STOCK

I now shift my analysis to the legal aspects of Argentina's debt, with a specific focus on the "restructurability" of the respective debt instruments. In other words, I analyze the legal aspects of altering the contractual terms of Argentina's debt, a necessary step to reduce the amount of outstanding debt. I discuss these issues, again, with respect to Argentina's (a) domestic debt, (b) international sovereign bonds, and (c) official sector debt. Where necessary, I briefly discuss the pertinent judicial precedents that are likely to influence potential claims by holdout investors in foreign courts.

a. Domestic debt

Argentina has issued a significant amount of bonds governed by local law, many of them with relatively short maturities. The main question is whether a unilateral restructuring of these instruments would be subject to legal challenges and whether these challenges may prove successful. In essence, domestic judges tend to be more empathic to the government's objective to resolve the economic emergency and are less likely to entertain legal actions initiated by litigious holdout investors. Indeed, a review of previous domestic litigation against debt restructuring measures suggest that bondholders suits in *domestic* courts are typically dismissed.

For instance, in the wake of the 2001 default, the *Corte Suprema de Justicia de la Nación* (CSJN), Argentina's Supreme Court, held that holdout creditors had no contractual right to interfere with the restructuring of Argentine sovereign debt instruments.[30] Specifically, in the *Galli* case, the CSJN defended the constitutionality of Argentina's debt restructuring measures, which included transformation of U.S. dollar bonds into bonds of the local currency were sovereign acts (*acta imperii iure*) justified by the state of emergency that Argentina found itself in.[31] Similarly, in *Bruniccardi*, the CSJN found that the (unilateral) suspension of sovereign debt payments did not violate the creditors' constitutional rights, given that the measure was exercised as part of the public order in the Argentine legislation.[32]

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[30] For an overview of the cases, *see, e.g.*, Alejandro Gabriel Manzo, *Enforceability of judgments against sovereign States: critical analysis of the NML vs. Argentina injunction*, 14(2) REVISTA DIREITO GV 682 (2018).

[31] *See* Galli, Hugo Gabriel y otro c/P.E.N. s/amparo sobre ley 25.561, CSJN, 05/04/2005, Fallos: 328:690.

[32] Brunicardi, Caredio c/ Estado Nacional (B.C.R.A.) s/ cobro., S.C., CSJN, B.592.XXIV, Fallos: 319:2886. *See* Manzo, *supra* note 32.

Other recent sovereign debt restructurings, and their subsequent judicial review in the issuer's municipal courts, seem to endorse the CSJN's position. For instance, the when Greece restructured its local-law bonds in 2012, both the highest administrative court in Greece as well as the European Court of Human Rights (ECtHR) held that the measures did not unduly interfere with creditors' property rights.[33] Against this backdrop, and given that the current Argentine crisis has thrown the country – again – into a state of emergency, it seems unlikely that holdout investors will stand a serious chance in Argentina's domestic courts. Market prices of local-law bonds arguably reflect this absence of solid legal remedies.[34]

Moreover, and this is particularly important from a transactional perspective, Argentine local-law bonds include none of the creditor protection clauses inherent to most international sovereign bonds. These provisions include, among others, collective action clauses (CACs), which allow for majority voting in debt restructurings, negative pledge clauses, cross-default clauses, or *pari passu* clauses. With respect to the relationship between domestic and international bonds, it is worth highlighting that a reprofiling of the domestic debt would not entitle holders of international bonds to accelerate their claims. The contracts governing the latter only allow for the declaration of a cross-default if Argentina fails to honor obligations that are defined as "Public *External* Indebtedness (emphasis added)." Domestic government debt instruments, be they bonded debt or loans, are *per definitionem* excluded.

To recall, holdout creditors typically bank on their ability to accelerate bond coupon and principal payments under the respective contract with a view at obtaining an enforceable judgement for the entire outstanding amount. This is because their speculative investment will only become lucrative if they are able to claim both interest and principal payments that are not yet due. Consequently, restructuring measures by the Argentine government concerning *domestic* debt instruments may be implemented without risking immediate lawsuits by holders of foreign debt instruments.[35]

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[33] *See* Sebastian Grund, *Restructuring Government Debt Under Local Law: The Greek Experience and Implications for Investor Protection in Europe*, 12(2) CAP. MKT. L. J. 253 (2017).

[34] Scott Squires, *Argentina Local-Law Bondholders Brace for Painful Restructuring*, BLOOMBERG (Dec. 11, 2019), https://www.bloomberg.com/news/articles/2019-12-11/argentina-local-law-bondholders-brace-for-painful-restructuring.

[35] This indeed seems to be the current strategy of the new Argentine government, which has "front-loaded" the reprofiling of domestic-law debt instruments. *See* Tommy Stubbington, Colby Smith, and Benedict Mander, *Argentina begins to restructure $101bn of debts*, FINANCIAL TIMES (Aug. 30, 2019).

b. International sovereign bonds

With respect to international sovereign bonds, and hence Argentina's external government debt, the legal situation is considerably more complex and the risks associated with a hasty restructuring loom large. At the same time, given the dwindling U.S. dollar reserves and the devaluation of the domestic currency, the restructuring of foreign-law, foreign-currency bonds seems anything but avoidable. The challenge for Guzman and his team will be to elegantly leverage the contractual devices Argentina has at its disposal during the negotiations. This section seeks to provide some guidance as regards the main legal considerations when it comes to the restructuring of Argentina's foreign debt. I will first discuss the role of the governing law, including a brief review of possible litigation in foreign courts, before delving into an analysis of collective action clause (CAC) and *pari passu* clauses – the two most relevant contractual provisions in the context of a debt workout.

i. Governing law

The majority of Argentina's outstanding international sovereign bonds are governed by New York law. However, as Table 1 above shows, Euro-denominated "Kirchner bonds" (bonds issued before 2016) are governed by English rather than New York law. It appears from the respective bond prospectuses that Argentina changed the governing law for its Euro-denominated bonds from English to New York law in 2016.[36] Moreover, securities denominated in Japanese yen are governed by Japanese law, albeit the amount of outstanding debt is negligible.

New York law will be the most important jurisdiction for holdout lawsuits against Argentina both because it governs the bulk of Argentina's outstanding foreign law and because New York courts have in the past entertained holdout lawsuits against sovereign debtors in distress.[37] Given that bondholders under English law are typically represented by trustees, their individual right to sue and enforce the sovereign bond is drastically limited, making these instruments less attractive to holdouts.[38] This article will thus focus on holdout litigation risks stemming from creditor action in the courts of New York City.

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[36] As shown in Table 1, Euro-denominated, English-law debt is roughly $33 billion, and hence a significant chunk of the overall outstanding bonded-debt.

[37] For an overview, *see, e.g.* W. Mark C. Weidemaier and Anna Gelpern, *Injunctions in Sovereign Debt Litigation*, 31 YALE J. ON REG. 189 (2014).

[38] *See, e.g.,* Lee Buchheit, *Trustees versus fiscal agents for sovereign bonds*, 13(3) CAP. MKTS. L. J. 410 (2018).

ii. Holdout litigation risks in New York courts

When it comes to potential creditor enforcement actions, one key difference between bonds issued before 2016 ("Kirchner bonds") and those issued after 2016 ("Macri bonds") must be pointed out. While Kirchner bonds allow individual bondholders to file suit in New York courts upon the occurrence of an event of default, Macri bonds assign an important role to the trustee in representing bondholders' interests. As the clause from the 2018 Macri bond prospectus shows, enforcement rights are vested in a trustee rather than in individual bondholders.[39]

A single bondholder may still file suit for repayment *after* the bond has matured without full repayment or if the trustee remains inactive.[40] However, even more critically, the Macri bonds include a so-called "sharing clause", which aims to further disincentivize go-alone holdout litigation. The sharing clause essentially stipulates that any individual bondholder action must be to the benefit of all holders by noting that:

> "any such action commenced by a holder must be for the equal, ratable and common benefit of all holders of such series of Bonds."

This sharing clause effectively means that even if bondholders obtain a judgement in court, they are obliged to share the proceeds of such actions with other creditors who did not join them in their enforcement actions. In contrast to the Macri bonds, the prospectus governing the Kirchner bond has no such sharing clause, which means that bondholders may individually file suit to obtain an

[39] The clause stipulates the following:

"If an event of default for a series of the Bonds has occurred and is continuing, the trustee may institute judicial action to enforce the rights of the holders of such Bonds."

[40] Specifically, the Macri bond prospectus includes the following provision:

"With the exception of a suit brought by a holder on or after the stated maturity date to enforce the absolute right to receive payment of the principal of and interest on the Bonds on the stated maturity date therefor (as that date may be amended or modified pursuant to the terms of the Bonds, but without giving effect to any acceleration), a holder has no right to bring a suit, action or proceeding with respect to the Bonds of a series unless: (1) such holder has given written notice to the trustee that a default with respect to such series of Bonds has occurred and is continuing; (2) holders of at least 25% of the aggregate principal amount outstanding of such series of Bonds have instructed the trustee by specific written request to institute an action or proceeding and provided an indemnity or other security satisfactory to the trustee; and (3) 60 days have passed since the trustee received the notice, request and provision of indemnity or other security, the trustee has failed to institute an action or proceeding as directed and no direction inconsistent with such written request shall have been given to the trustee by a majority of holders of such series of Bonds."

enforceable money judgement in New York courts. Kirchner bonds will thus be significantly more attractive for holdout arbitrageurs, whose objective is to either negotiate a preferential settlement with the government on the back of a serious threat of litigation or in fact seek to enforce their claims by attaching Argentine assets abroad.[41]

While an exhaustive analysis of the potential avenues under *substantive* law to attack the country's debt restructuring measures would go beyond the scope of this paper, it is undisputed that Argentina has waived its immunity from suit and enforcement in the relevant bond contracts. Thus, holdout investors may challenge the restructuring, provided that Argentina has breached its *contractual* obligations.[42] As discussed in detail below, a CAC is a contractual device that allow the country to call a bondholder meeting, in which a super-majority of them can approve a restructuring plan proposed by Argentina.

The threat of litigation will increase if Argentina fails to restructure its obligations by successfully implementing an exchange approved by the bondholders under the CAC procedure. To be sure, should Argentina actually default on one or more series of its international bonds, New York courts are likely to grant enforceable judgements to litigious creditors. They have done so in the past and there is little doubt that they will do it again.[43] As is the standard in most international sovereign bond issuances, Argentina has "irrevocably waived its [sovereign] immunity to the fullest extent permitted by the laws of [New York]", which includes immunity from suit and immunity from enforcement.[44] It will not be difficult to convince a judge in the Southern District Court of New York to grant a money judgement if Argentina did in fact fail to honor its contractual obligations, most notably by not paying interest or principal when they fall due.

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[41] The Argentine holdout saga following the 2001 default is well-documented in the pertinent literature; *see*, *e.g.*, Julian Schumacher, *Sovereign Debt Litigation in Argentina: Implications of the Pari Passu Default*, 1(1) J. FIN. REG. 143 (2015); Laura Alfaro, *Sovereign debt restructuring: Evaluating the impact of the Argentina ruling*, 5 HARV. BUS. L. REV. 47 (2015).

[42] In contrast to the 1994 New York-law bonds that the Argentine government restructured in 2005 and 2010, respectively, the currently outstanding instruments entail CACs. *See infra* 3.b.iii.

[43] *See Allied Bank International v Banco Credito Agricola de Cartago and ors*, Case No 225, Docket 83-7714, 757 F. 2d 516 (2d Cir. 1985); *Libra Bank Limited v Banco Nacional de Costa Rica*, 570 F. Supp 870 (SDNY 1983).

[44] However, the waiver excludes, for instance, reserves of the Argentine Central Bank, property that provides an essential public service, and military property.

At the same time, enforcement immunity is narrower. Under § 1610(a) of the U.S. Foreign Sovereign Immunities Act of 1976 (FSIA), a court is prohibited from executing against the property of a foreign state unless that property is: (1) in the United States; and (2) used for commercial activity in the U.S.[45] Creditor may only attach Argentine *commercial* property located in the U.S. What constitutes "commercial" property will thus be the crux of any execution suit in New York courts. Without delving further into the doctrinal discussion of the FSIA, property is generally deemed *not* commercial (and hence protected) if it is "central to a nation's operations as a sovereign that uses thereof would interrupt the public acts of [this] foreign state."[46] In another case, a New York court noted that non-commercial property is such that is derived from a uniquely governmental activity that a private person could not engage in.[47] However, and this is vital, the issuance of news sovereign bonds in the U.S. will be qualified as commercial activity (*acta iure gestionis*).[48] In other words, if Argentina would want to return to U.S. capital markets, it will have to settle claims with holdout investors who may otherwise seek to immediately attach the proceeds of a new issuance.[49]

The next section will return to the more probable scenario, which nonetheless comes with its own difficulties: a restructuring of claims by means of a CAC procedure.

iii. Collective Action Clauses (CACs)

Given that both maturity extensions as well as haircuts on principal or coupon repayments requires contractual changes, Argentina will need to hold a bondholder vote under the CAC procedures laid down in Argentina's respective bond prospectuses. CACs allow a country to call a bondholder meeting and let a supermajority of bondholders vote on a debt restructuring proposal by the country.

As Argentina's bonds have been issued over a time span of more than 10 years, the drafting of the respective CACs has evolved. Specifically, since 2014, most emerging market sovereign bond contracts employ the updated ICMA Model CAC, which, crucially, allows for a single vote across all series

[45] *AF-CAP Incorporated v. Congo,* 383 F.3d 361 (5th Cir. 2004).

[46] *Ct. Bank of Commerce v. Congo*, 309 F.3d 240, 253 (5th Cir. 2002).

[47] *LNC Investments v. Nicaragua*, No. 96 Civ. 6360 (JFK), 2000 WL 745550 (S.D.N.Y. June 8, 2000).

[48] *Republic of Argentina v. Weltover*, 504 U.S. 607 (1992).

[49] For an analysis of the 2015 settlement between Argentina and holdout creditors, *see* Juan J. Cruces and Tim R. Samples, *Settling Sovereign Debt's "Trial of the Century"*, 31 EMORY INT'L. L R. 5 (2016).

(aggregated voting).[50] Older bonds, however, entail different types of CACs, raising some delicate legal questions when it comes to the restructuring of the entire debt stock.

Kichner versus Macri bonds

As several journalists[51] and scholars[52] have pointed out, Argentina has some legacy bonds outstanding that were issued in the debt exchanges in 2005 and 2010, respectively. These legacy bonds have been referred to as "Kirchner bonds" (issued before 2016). Besides the different bondholder representation arrangements mentioned above[53], CACs in the Kirchner bonds also vary from the Macri bonds with regard to the voting thresholds. Kirchner bonds entail so-called "double-limb CACs", which require two affirmative votes for a successful restructuring, namely one resolution supported by 85% of bondholders across all series and another one supported by 66⅔% of bondholders in each individual series.

By contrast, Macri bonds, among other options, allow for a single-limb vote, which means that a modification is successfully adopted if 75% of all bondholders across all series or in each voting pool consent. They Macri bonds thus rely on the latest ICMA Model CAC. The story by Bloomberg claims that, due to the contractual divergence between Macri and Kirchner bonds, holdout investors seem to be targeting certain series of Kirchner bonds, as it would be harder for the government to garner sufficient bondholder support in each individual series.[54] This fear is not entirely unfounded, given that specialized holdout investors have repeatedly succeeded in acquiring sufficient blocking minorities in smaller bond series, most famously in the English-law bonds that the Greek government sought to restructure in March 2012.[55]

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[50] ICMA, *Collective action clauses*, https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-topics/collective-action-clauses/ (last visited Jan. 2, 2020).

[51] Aline Oyamada, *Fine Print on Argentine Bonds Becomes Crucial as Default Looms*, BLOOMBERG (Nov. 1, 2019).

[52] Anna Gelpern, *Imagine Riding the Ceteris Pari-bus into the Sunset…in Argentina*, Credit Slips (Nov. 5, 2019), https://www.creditslips.org/creditslips/2019/11/imagine-riding-the-cetris-pari-bus-into-the-sunset-in-argentina.html; Mark Weidemaier and Mitu Gulati, *Can Argentina Discriminate Against Bonds Issued Under Macri?*, Credit Slips (Nov. 4, 2019), https://www.creditslips.org/creditslips/2019/11/can-argentina-discriminate-against-bonds-issued-under-macri.html#more.

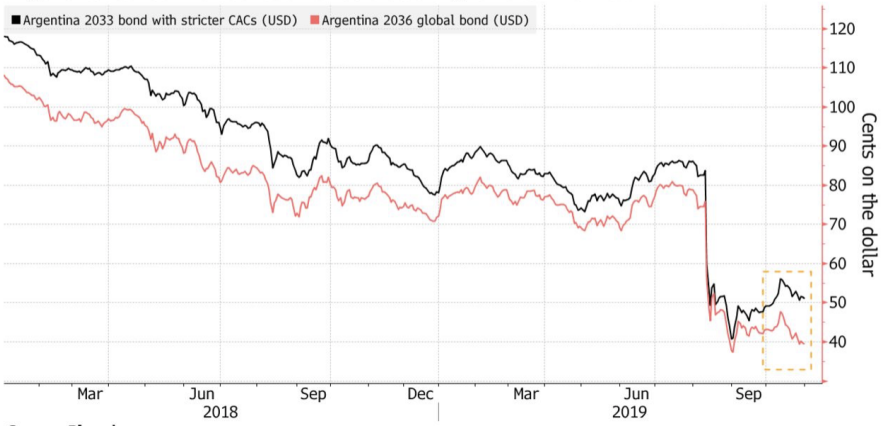
[53] *See supra* 3.b.ii.

[54] Oyamada, *supra* note 52.

[55] Zettelmeyer et al., *supra* note 18.

As a result, the Bloomberg story mentioned above notes that the price differential between Kirchner and Macri bonds has widened, as illustrated by Figure 2 below.

Figure 2: Price comparison of Kirchner and Macri bonds[56]



Carving out Kirchner bonds

Related to the divergence in CAC drafting, there has been some talk that Argentina could seek a restructuring of Macri bonds only, leaving Kirchner bonds, which are "harder" to restructure[57], outside the debt workout's perimeter.[58] Differentiating between the two types of bonds might also be politically appealing, as it signals to the population that, if anything, investors should face the harsh realities of Macri's spending spree gone wrong.

There are two ways to look at this issue: one is legal and the other one is transactional. As regards the **legality** of carving out specific series, one could argue that the Macri bond prospectus allows the government to include – or not to include – Kirchner bonds in the restructuring offer. The (excerpt of the) specific provision states the following:

> "For so long as any series of debt securities issued under the indenture dated as of June 2, 2005 between the Republic of Argentina, as issuer, and The Bank of New York Mellon (formerly, The Bank of New York), as trustee, as amended by the first supplemental indenture dated as of April 30, 2010 (the "2005 indenture") (2005 and 2010 debt securities) are outstanding, ***if*** **the Republic certifies** to the trustee and to the trustee under the 2005 indenture **that a cross-series modification is being sought**

[56] Oyamada, *supra* note 52.

[57] As mentioned above, Kirchner bonds are more difficult to restructure because the relevant CACs require two bondholder votes, with relatively high thresholds.

[58] Weidemaier & Gulati, *supra* note 53.

> **simultaneously** with a "2005 indenture reserve matter modification", the 2005 and 2010 debt securities affected by such 2005 indenture reserve matter modification shall be treated as "series affected by that proposed modification [emphasis added].

From the way this provision was drafted, one could conclude that Argentina may indeed choose to only restructure the Macri debt. Specifically, the "if" in the clause above seemingly suggests that Argentina can exercise discretion as to whether it seeks a simultaneous restructuring of Kirchner and Macri bonds.[59] The reading of this specific provision, which is a legacy from the 2005 and the 2010 restructurings, is contentious.[60] The most compelling way to interpret the clause is that it enables Argentina to count the votes garnered in a Kirchner bond restructuring towards the votes needed to clear the voting thresholds for Macri bonds.[61] Arguably, the idea is that Argentina should have the ability to carry out one comprehensive restructuring operation, which is not hampered by the different modes of voting in the respective Kirchner and the Macri CACs. Importantly, however, the clause does not work in the other direction. Argentina will have to clear the (higher) thresholds required for reserve matter modifications of the Kirchner bonds. Additionally, any "carve-out" of Kirchner bonds would of course have to comply with the *pari passu* clause in the respective bond instruments, as further discussed below.[62]

Even if we assume that only restructuring Macri bonds is legally feasible, it is not clear from a **transactional viewpoint** whether the restructuring offer would be capable of attracting sufficient bondholder support. Indeed, it is doubtful that 75% of Macri bondholders (should the government opt for a single-limb resolution) accept a restructuring deal when they know that all holders of Kirchner bonds will be unscathed. And there is also no opportunity to hide: a restructuring offer for the Macri bonds must include "a description of the Republic's proposed treatment of foreign debt instruments that are not affected by the proposed modification and its intentions with respect to any

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[59] This assumption is further bolstered by the freedom that the language in the Macri bond prospectus bestows upon Argentina when it comes to the design of its restructuring offer:

"The Republic may select, in its discretion, any modification method for a reserve matter modification in accordance with the Indenture and *to designate which series of debt securities will be included* for approval in the aggregate of modifications affecting two or more series of debt securities. Any selection of a modification method or designation of series to be included will be final for the purpose of that vote or consent solicitation [emphasis added]."

[60] Weidemaier & Gulati, *supra* note 53.

[61] This view has been advanced by Gelpern, *supra* note 53.

[62] *See* below 3.b.iii.

other major creditor groups." In other words, Argentina will have to disclose the (better) treatment of Kirchner bonds in the very moment when it tries to attract support for the restructuring of the Macri bonds.

Aggregation and pooling options

If Argentina were to opt for a wholesale debt workout, which includes Kirchner and Macri bonds, the enhanced CACs might prove extremely useful. A key innovation of the new ICMA Model CAC, which was released in 2014, was the option to aggregate bondholder votes across all series.[63] As the cause cited earlier indicates, the Macri bonds allow for an aggregation of votes not only across all Macri bonds, but would also enable the government to sweep in Kirchner bonds. To be sure, the votes were aggregated across Kirchner and Macri bonds, the higher voting thresholds as well as the double-limb voting process of the Kirchner bonds would still have to be respected.[64]

One technique to alleviate holdout risks in aggregated voting is "pooling". As recommended by the new ICMA Model CAC, the Macri bond prospectus allows Argentina to "designate which series of debt securities will be included for approval in the aggregate of modifications affecting two or more debt securities." This provision essentially enables Argentina to sub-aggregate certain series of bonds into various voting pools rather than carrying out a single resolution across all outstanding bonds. Pooling is incentive-driven: by putting apples in one basket (e.g. bonds with 3-4-year maturities) and

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[63] Anna Gelpern, Ben Heller, and Brad Setser, *Count the Limbs: Designing Robust Aggregation Clauses in Sovereign Bonds*, *Georgetown Law Faculty Publications and Other Works*. 1793, Nov. 24, 2015, https://scholarship.law.georgetown.edu/facpub/1793

[64] The pertinent provision in the Macri bond prospectus states the following:
"It is the intention that in the circumstances described in respect of any cross-series modification, the votes of the holders of the affected 2005 and 2010 debt securities be counted for purposes of the voting thresholds specified in the Indenture for the applicable cross-series modification as though those 2005 and 2010 debt securities had been affected by that cross-series modification although the effectiveness of any modification, as it relates to the 2005 and 2010 debt securities, shall be governed exclusively by the terms and conditions of those 2005 and 2010 debt securities and by the 2005 indenture; provided, however, that no such modification as to the debt securities will be effective unless such modification shall have also been adopted by the holders of the 2005 and 2010 debt securities pursuant to the amendment and modification provisions of such 2005 and 2010 debt securities."
See The Republic of Argentina, *Offers to exchange its Bonds Due 2019, 2021, 2026, 2046, 2028, 2036, 2022, 2027,* https://www.sec.gov/Archives/edgar/data/914021/000119312517081458/d314222d424b3.htm (last visited Jan. 2, 2020).

pears in another (e.g. bond with 25-30-year maturities), the idea is that a larger crowd of investors may be willing to vote in favor of the debt restructuring. Voting takes place exclusively within the pools, and, besides the requirement to disclose the design of the various pools, there are no legal limits for the issuer as to the pools' structure.

The success of pooling is predicated on the bondholders' approval. When it comes to pooling, the biggest obstacle will thus not be legal but transactional.

Requirement of "uniformly applicable offers"

The CACs in Argentina's debt stock stipulate that, should Argentina opt for a single-limb vote or a sub-aggregated vote, restructuring offers made by Argentina to bondholders needs to be uniformly applicable to holders of debt securities affected by the modification. The "uniformly applicable" requirement applies in the context of a single-limb vote across all series, and – as stated in the Macri bond prospectus[65] – if Kirchner bonds are modified together with Macri bonds. Gelpern[66] and Gulati and Weidemeier[67] have offered apt and insightful explanations how the uniformly applicable requirement may affect the design and success of an Argentine debt restructuring. Generally speaking, the uniform applicability concept does not require equal Net Present Value (NPV) reductions but rather offering investors (i) the same new instruments or (ii) new instruments from an identical menu of voting options.[68]

Ultimately, calibrating the uniformly applicable requirement in a litigation-proof fashion will be the crux any Argentine debt workout operation.

iv. *Pari passu* clauses

The *pari passu* clause in Argentina's old New York law bonds played a central role in the *NML v. Argentina* litigation in New York courts, dubbed by the Financial Times as the "sovereign debt trial of the century".[69] In 2012, New York courts held that *pari passu* meant that all creditors, regardless as to whether they participated in a restructuring or "held out", needed to be paid in equal steps - however, while the restructured creditors had agreed to a reduction of their claim, the holdouts could still

[65] *Id.*

[66] Gelpern, *supra* note 53.

[67] Weidemaier & Gulati, *supra* note 53.

[68] Gelpern et al., *supra* note 64.

[69] Benedict Mander, *Slow painful ending for 'trial of the century'*, FIN. TIMES (Feb. 18, 2014).

demand the full-face value of the bond.[70] When Argentina settled with them in 2016, the holdouts' return on their investment was formidable.

All Macri bonds, i.e. bonds issued by Argentina after 2016 and thus the majority of outstanding securities, feature the new ICMA *pari passu* clauses.[71] The new clauses expressly prohibit the interpretation that the New York courts entertained[72], and which ultimately resulted in the holdouts' victory over Argentina. Thus, there is little risk that holdouts litigants may successfully rely on the same legal strategy when it comes to the Macri bonds. With respect to the *pari passu* clauses in the Kirchner bond, the language is still strikingly similar to the clause[73] that holdouts successfully leveraged against Argentina in New York courts in the *NML v. Argentina case*[74], and upheld by the Second Circuit Court of Appeals.[75]

However, things have recently taken a turn. In October 2019, the Second Circuit has effectively overturned its previous *pari passu* decision and stated that a sovereign only violated the *pari passu* clause if acted in a "uniquely recalcitrant" manner.[76] The "payment interpretation", which enabled holdouts to leverage the clause against a debtor country post-restructuring, is thus no longer governing. As a result, the Argentine government must – only – pass the "uniquely recalcitrant debtor" test in a future restructuring. And, given the decade-long stand-off which gave rise to the concept of "unique recalcitrance", it seems far-fetched to assume that New York courts will lightly resuscitate it. Indeed, besides negotiating in good faith efforts, the government will be sufficiently protected from suits as

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[70] *NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG) (S.D.N.Y. 23 Feb 2012); *NML Capital, Ltd v Argentina*, 699 F3d 246, 264 (2d Cir. 2012); *NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG), 2012US Dist LEXIS; 167272 (S.D.N.Y. 21 Nov 2012); *NML Capital, Ltd v Argentina*, 727 F3d 230 (2d Cir. 2013), cert denied 134 SCt 2819 (16 June 2014).

[71] Deborah Zandstra, *New ICMA sovereign collective action and pari passu clauses*, Clifford Chance Briefings (Oct. 6, 2014), https://www.cliffordchance.com/briefings/2014/10/new_icma_sovereigncollectiveactionandpar.html.

[72] *See NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG) (S.D.N.Y. 23 Feb 2012).

[73] The clause in the Kirchner bonds stipulates the following: "The debt securities will be direct, unconditional, unsecured and unsubordinated obligations of Argentina and will rank pari passu and without preference among themselves. Argentina's payment obligations under the debt securities will rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness."

[74] *NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG) (S.D.N.Y. 23 Feb 2012).

[75] *NML Capital, Ltd v Argentina*, 727 F3d 230 (2d Cir. 2013).

[76] *Bison Bee LLC v. Republic of Argentina*, 18-3542-cv (2d Cir. 2019).

long as it abstains from using legislative instruments to deter holdout behavior, such as the infamous "Lock Law" that explicitly subordinated payments to holdouts.[77]

v. Cross-default clauses

Cross-default clauses enable a certain percentage of bondholders, 25% in the case of Argentina, to accelerate the maturity of a debt security if an "Event of Default" in any of the other outstanding bond series is triggered. Specifically, according to the prospectuses of both Macri and Kirchner bonds, cross-default may only be called if Argentina defaults on its "Performing Public *External* Indebtedness". Thus, any debt restructuring operations that do not involve international sovereign bonds, are irrelevant in the context of cross-default clauses. This contractual structure is one of the key reasons why a reprofiling or a restructuring of local-law debt, which Argentina has already announced, is possible without risking immediate legal threats by global bondholders.[78]

c. Official-sector debt

i. IMF loans

In its function as an official-sector creditor, and lender-of-last-resort to sovereigns, the IMF enjoys de-facto preferred creditor status (PCS).[79] Thus, while the IMF's Articles of Agreement make no reference to the Fund's PCS, States have accepted the IMF's de-facto priority for decades. Indeed, rather than a legal challenge, reneging on IMF debt is likely to trigger vigorous political reactions from the IMF's members, and may thus severely erode the international community's willingness to provide further financial assistance to the country in distress. There are exceptions to the rule, such as the

[77] For a non-technical explanation, *see* Hilary Burke, *What Argentina's fight with holdout creditors is all about*, REUTERS (Feb. 22, 2018). Also *see* Zoe Thomas, *How Argentina's lock law caused debt debacle*, IFLR (Jul. 15, 2014).

[78] The Economist Intelligence Unit, *Argentina announces debt reprofiling programme*, Aug. 29, 2019, http://www.eiu.com/industry/article/1138387097/argentina-announces-debt-reprofiling-programme/2019-08-29.

[79] Susan Schadler, *The IMF's Preferred Creditor Status: Does It Still Make Sense After the Euro Crisis?*, CIGI Policy Brief (Mar. 2014), https://www.cigionline.org/sites/default/files/cigi_pb_37_1.pdf.

Greece's default on an IMF loan in 2015.[80] Indeed, almost no country has dared to suspend their repayment of IMF loans in the past four decades.[81]

One interesting aspect in this context is that neither the IMF's stand-by agreement (SBA) nor the international sovereign bonds include cross-default provisions. Thus, if Argentina was to default on its international sovereign bonds, the IMF could not accelerate its repayments – rather its Lending-Into-Arrears Policy would come into play.[82] By the same token, if Argentina were to default on its IMF loans, it would not allow *private* creditors to accelerate future interest and coupon payments.

ii. Loans by International financial institutions (IFIs)

The World Bank and the International Finance Corporation, as multilateral lenders, also enjoy de-facto PCS.[83] To the best of the author's knowledge, there are also no cross-default clauses in the loan agreements signed with IFIs. As mentioned in the context of IMF loans, if Argentina was to delay its payments to IFIs, it would not automatically allow private bondholders to declare an "Event of Default" and accelerate their claims.

4. CONCLUSION

The new Argentine administration finds itself between a rock and a hard place. Argentina owes money to different types of creditors, including more than $100 billion to international creditors and roughly $45 billion to the IMF. Given that the latter enjoys a de-facto preferred creditor status, any debt restructuring operation is likely to include international sovereign bonds. Debt workouts involving instruments governed by the laws of foreign jurisdictions and adjudicated by foreign courts are, inherently, more challenging for the government than local-law debt. Foreign courts are, in the vast

[80] Renee Maltezou and Robert-Jan Bartunek, *Greece defaults on IMF payment despite last-minute overtures to creditors*, REUTERS (Jun. 29, 2016).

[81] Alberto Nardelli, *A brief history of countries with overdue IMF repayments*, THE GUARDIAN (Jun. 5, 2015).

[82] IMF, *IMF Policy on Lending into Arrears to Private Creditors,* Jun. 14, 1999, https://www.imf.org/external/pubs/ft/privcred/index.htm.

[83] *See* International Finance Corporation (IFC), *Preferred Creditor Status*, https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/solutions/products+and+services/syndications/preferred-creditor-status (last visited Jan. 2, 2020).

majority of cases, more reluctant to prioritize foreign sovereign's interests over bondholders' property rights.

Modern sovereign bond restructurings rest on the basic premise of bondholder democracy. In other words, as long as a sufficient majority of creditors accepts a restructuring offer, most legal obstacles can be overcome. As Abadi put it, to strike a mutually agreeable deal both the government and the creditors will have to put their respective "Messis" on the green table.[84] To be sure, as formation of creditor committees in some of the vulnerable Kirchner bond series suggests, some investors will gamble for a better deal, or try to leverage their contractual rights against the country in a classic holdout manner.[85]

To close on a positive note, one may argue that Argentina finds itself in a legally superior position compared to its last debt crisis: not only have CACs become more resilient to nasty holdout tactics, U.S. courts have, at least partially, reversed the unconventional rulings that brought Argentina to its knees in 2014.

[84] Carlos Abadi, *A third way for Argentina: reprofiling*, FIN. TIMES (Nov. 5, 2019).

[85] *See* Carolina Milan, Katia Porzecanski, Ben Bartenstein and Jorgelina Do Rosario, *Hedge Funds Join Forces to Prepare for Argentina Debt Talks*, BLOOMBERG (Feb. 14, 2020), https://www.bloomberg.com/news/articles/2020-02-14/monarch-is-spearheading-hedge-fund-creditor-group-in-argentina.