



## Private Debt Restructuring Strategy and Use of Statutory Creditor Stays

by Carlos E. Alfaro

### Introduction

Local and foreign-owned companies in Argentina have acquired or issued debt in order to finance their operations and investments during the years in which the peso was pegged to the dollar under the so-called Convertibility Law (1990-2001).

With the elimination of the convertibility system in January, 2002, and the subsequent devaluation of the Argentine peso, companies have been forced to renegotiate their debts, part of them in dollars terms. Though certain companies have decided that the best strategy is to file for court reorganization protection, others have hired investment banks or advisors to organize a private rescheduling of their debts.

Recent amendments to the Bankruptcy Law and drafts of new legislation in Congress provide debtors with interesting strategic alternatives. This article deals with some of them.

### Out of Court Quasi-formal Corporate Workout Procedure

In Argentina the Bankruptcy Code (Law 24.522) provides for a “quasi-formal corporate workout procedure” in order for debtors in financial distress to obtain a stay from new enforcements from its creditors (sections 69 to 76).

Carlos E. Alfaro is a Partner at the Buenos Aires law firm of Alfaro-Abogados. His practice is concentrated in the areas of international transactions, project finance, and mergers and acquisitions.

The last amendment to the Bankruptcy Code—enacted by the National Congress on May 15, 2002, through Law 25.589—has introduced important changes to such extra-judicial proceeding, due to the economic and social crisis currently in place in Argentina.

This process permits the submission before the Bankruptcy Court of a request to obtain judicial approval (*homologación*) of the terms of any agreement duly approved by creditors under this procedure.

The majority required for the approval of an “out of court proposal” is the same required in the case of the judicial reorganization proceeding (*concurso preventivo*): the absolute majority (half of the creditors plus one) representing 2/3 of the principal.

The Bankruptcy Code provides almost no formality for such petition, except that the creditor is required to sign the approval, and the signature must be certified by a notary public. In order to become binding to all creditors, it must be published during five days in the Official Gazette and at least one day in any of the most circulated newspapers.

As from the time of submission before the Court of the request for the judge’s approval of the debtor’s proposal, a mandatory stay is automatically in force, and creditors are impeded from initiating any judicial claim against the debtor. The law is ambiguous as to the effect of the submission on the stay of pending

judicial claims (except in the case of enforcements of mortgages or pledges that are expressly suspended by the law), as well as with respect to precautionary measures (such as judicial attachments) over the assets of the debtor.

If the Court approves the proposal, it produces the same effects as any debtor's proposal approved within a judicial reorganization proceeding. The proposal is binding for all the common non-secured creditors (*quirografarios*), regardless of whether or not they have participated in the proceeding. The proposal may not be imposed on the rest of the secured creditors unless they have expressly accepted it.

In practice, the extra-judicial proceeding has almost no application in the context of the present economic crisis in Argentina, in our opinion, due to the statutory extension of the legal terms of the formal pending reorganization proceedings and the suspension of some kind of enforcements provided by Law 25.563.<sup>1</sup>

As the economy stabilizes, the government will eliminate those restrictions, and debtors can take advantage of this procedure in order to renegotiate better terms for the repayment of their debts.

#### Proposed Legislation for Work Outs of Bond Debt

A question that remains unresolved is the negotiation with bondholders of local and foreign debt, which is still subject to the terms of the prospectus,<sup>2</sup> and excluded from the procedure discussed above.

The new regime introduced by the last amendment to the Bankruptcy Law for "out of court proposals" does not apply to debts related to the issuance of ONs<sup>3</sup> (*obligaciones negociables*) or bonds. The reason for such exclusion is due to the provisions of Law 23.576 (*Ley de Obligaciones Negociables*) (which establishes that any amendment to the terms and conditions of payment by the issuer of ONs as provided in the prospectus, must be approved by the majority of bondholders established in the prospectus).

The issuers of ONs generally establish the approval of a large majority of bondholders to obtain any amendment to the terms and conditions assumed in the prospectus. This strategy is designed to give confidence to the eventual investors (purchasers of ONs) in the sense that it would be very hard for the issuer to modify the obligations assumed in the prospectus, especially those related to the reimbursement of the loan.

Furthermore, in many cases the provisions of the prospectus might require the unanimous voting of the bondholders in order to introduce modifications related to major issues such as the payment of the services of principal and/or interest of the ONs. Thus, the bondholder is confident that the issuer will require its vote in order to obtain any modification to the original terms and conditions of payment.

A bill currently before the National Congress would remove this obstacle and facilitate the debt restructure in the case of ONs. The bill is designed to make the debtor's proposal binding as to all the bondholders, when the proposal is approved by an absolute majority (half of the bondholders plus one) representing 2/3 of the principal, similar to the majority provided by the Bankruptcy Code for the "out of court proposals."

This amendment to Law 24.522 is expected to permit local companies to restructure their debts, facilitating the negotiations with bondholders who, under the terms of the current Law, are reluctant to negotiate knowing that any proposal shall be approved unanimously to be binding to all bondholders.

---

<sup>1</sup>Law 25.563 was enacted by the National Congress on February 14, 2002, and declared the productive and credit emergency, as well as amended some articles of the Bankruptcy Code (Law 24.522).

<sup>2</sup>The prospectus is prepared by the issuer of the securities, in order to make public the terms and conditions of said issuance.

<sup>3</sup>The *Obligaciones Negociables* are securities issued under Law 17,811 (*Securities Law*), General Resolution No. 290 (CNV Resolution) of the Securities and Exchange Commission of Argentina (Comisión Nacional de Valores—CNV) and the applicable stock exchange regulations (*Stock Exchange Regulations*).