

UPDATE ON ARGENTINA SOVEREIGN DEBT DEFAULT

Background

During the 1990s, Argentina began issuing debt securities which were purchased both directly from Argentina, and on the secondary market. After Argentina defaulted on these securities in late 2000 due to its currency crisis, it declared a temporary moratorium on principal and interest payments.

In 2005 and 2010, Argentina proposed various restructurings of the debt, offering new bonds which paid less than 30 cents for each dollar owed in default, and by 2010, 93% of the original bondholders had agreed to a bond exchange. The remaining 7% "hold-out" investors repeatedly refused to participate in the bond exchanges, despite Argentina warning that one of the risks of not participating was that existing defaulted bonds that were not exchanged could remain in default indefinitely.

The plaintiffs (who had in large part acquired the debts on the secondary market) sued Argentina on the defaulted bonds in 2009-2011, alleging breach of contract and seeking injunctive relief.

Recent procedural history

On 26 October 2012, the Second Circuit US Court of Appeals upheld a ruling that Argentina could not service the bonds it issued in the 2005 and 2010 debt restructurings unless it also paid the hold-out investors. In its decision, the Court asked Judge Griesa, the judge responsible for the case, to determine precisely how much Argentina would have to pay the hold-out investors in order to stay current on its performing obligations.

In a decision on 21 November 2012, Judge Griesa found in favour of the hold-out investors, and found that Argentina could not fulfil one of its obligations—paying what it owes to the holders of its restructured debt, which is the next interest installment—unless it fulfilled the other as well: paying what it owes to the hold-out investors (namely, their full \$1.3 billion claim, representing the face value of the defaulted bonds plus a decade of past due interest).

Both Argentina and bondholders who took part in the exchanges filed appeals against Judge Griesa's order. The Second Circuit Court of Appeals granted the emergency stay, and agreed to hear the appeal on 27 February 2013. An emergency motion by the holdout investors requesting that Argentina put up a security deposit of \$250 million by 10 December 2012, or that the court expedite the case so that it can be resolved before 31 December 2012, was denied.

Decision

On 23 August 2013, the Second Circuit Court of Appeals handed down its decision.

It reaffirmed the injunction against Argentina, confirming that whenever Argentina made payments on bonds or other financial obligations issued in 2005 and 2010, it had to make a “ratable payment” to the plaintiffs.

However, the Second Circuit stayed the injunction’s entrance until the U.S. Supreme Court acts on a petition for certiorari filed by Argentina on 24 June 2013. This petition was denied by the Supreme Court on 7 October 2013.

In its decision, the Second Circuit dismissed Argentina’s argument that a ruling against it would hamper future efforts by overwhelmed debtor nations to restructure their debt, and sought to portray Argentina’s situation as unique, highlighting in particular Argentina’s:

- status as a “uniquely recalcitrant debtor,” with a “long history of defaulting on its debts”;
- repeated and publicly stated intention to defy any rulings and injunctions of the US courts with which they disagreed;
- failure to propose, in response to the Court’s invitation, an alternative payment formula and schedule for the outstanding bonds to which it would commit.

It also rejected Argentina's arguments that a ruling against it would violate its sovereignty and expose it to a new financial crisis; or would impede efforts by other nations to restructure their debt.

Further developments

Rehearing petition in respect of decision of 23 August 2013

Following the decision on 23 August 2013, on 6 September 2013, Argentina and two bondholder groups filed rehearing petitions with the Second Circuit with respect to that decision.

Commentators expect that those rehearing petitions will be denied, at which time a 90-day clock will begin to run on Argentina’s time to file a petition for a writ of certiorari in the Supreme Court.

Argentina settles US\$677 million dispute with five companies

In October 2013, Argentina agreed to compensate five companies that won rulings over investment disputes. In a statement released by the Economic Ministry on 18 October 2013, Argentina said the companies had agreed to reduce the principal amount of their awards by 25 percent and accept payment in dollar bonds. Under the settlement, Argentina will hand over local law bonds due in 2015 and 2017 with a face value of \$506 million for the \$677 million of claims.

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