Argentina Special Focus

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Argentina's debt restructuring - "Terminator-3"?

Summary

Argentina's complete refusal to face its contractual obligations and the denial of any meaningful negotiation unless forced to a table with "a gun at its head" are complicating future restructuring talks and may unpredictably increase their duration.

Reviewing the IMF's past record with Argentina we would warn investors: "the IMF is not your friend but it is just another disgruntled creditor in line which wants to be senior to you. Sorry to conclude this".

Economically speaking Argentina can afford to pay more of its debt than it says it can and should be forced to do so. Find out why.

We hardly see why Argentina may decide to improve its offer from Dubai unless a big, effective stick is produced by creditors. Nothing new under the sun.

Last year, the news about the vulture fund EM Ltd. case vs. Argentina attracted much attention from disgruntled investors. It is highly likely that when the last stay expires at the end of January it will be lifted and creditors can start recovery procedures.

The debate on "pari passu" clause has centred on the legal interpretation of the clause. So far two interpretations - one narrow and another broad - have emerged.

Possible consequences from the "pari-passu" saga or how we see them.

We believe it may be very difficult in reality to impound Argentina's payments to IMF and other multilaterals.

The US judge finally certified a class action. Find inside the report.

The creation of GCAB by ABRA, TFA, ABC and Japanese banks was right thing to do and its members should gain good leverage in upcoming talks.

Minister of Economy Lavagna surprisingly revealed that the Argentinean debt offer at Dubai assumed a 75% haircut including effects from disregarded (effectively refused) past due interest (PDI).

Currently floated ideas by retail investors suggest maximum 35% loss on NPV basis although our estimates downshift to the area of 50%.

Post Scriptum

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No wine and steaks

Although Argentina has been in default on its debt for slightly more than two years for now, things still seem to be moving very slowly and the direction of this motion is not so clear. One conclusion we can draw right at the beginning is that we underestimated Argentina's unwillingness to pay. Clearly, Argentina's complete refusal to face its contractual obligations and the denial of any meaningful negotiation unless forced to a table with "a gun at its head" are complicating future restructuring talks and may unpredictably increase their duration. Once portrayed as an example for other Emerging Markets by the IMF and some G7 governments, today Argentina resembles a worst default case ever known to the financial world.

The IMF and Argentina - is "banditry" endorsed?

As we expected last year, the IMF capitulated to Argentina's "banditry" position which was recently clearly re-emphasized by a top Argentine politician, President Kirchner. He literally said the following: "Argentina will not make the next payment to the IMF (due on March 9), unless completion of the second review of its IMF accord is already recommended by the [IMF] staff by then." Cool, yes? Believe it or not, the IMF seemed to swallow its pride and succumbed to an "offer it could not refuse". Needless to say, this approach echoes last September's event when Argentina defaulted "technically" on payments due to the Fund. The latter backed down in a matter of single day and granted Argentina what it wanted. Remember that the IMF endorsed loan deal with Argentina which envisaged a meagre 3% of GDP primary fiscal surplus for 2003 and left the targets for years 2004-2005 vague. Effectively, the IMF signalled to Argentina that the primary surplus and thus the amount it is willing to pay to settle defaulted private debt will depend on Argentina's willingness to behave. Thus, the Fund, contrary to its own policies eventually endorsed Argentina's desire to squeeze private debt holders and pay them few cents on a dollar invested into old debts. Further, in the opinion of many outside the IMF and maybe in Washington DC as well, the Fund violated its own rule of not lending to insolvent nations which fail to negotiate defaulted contracts in "good faith". Yet, it seems the IMF is more afraid of Argentina's possibly defaulting on IMF loans, while the US government is more minding its Latin American policy interests. So it appears the IMF was somehow arm-twisted into lending to this insolvent nation by a threat of non-payment from Argentina and fell a victim of US political goals as well. As a result, no matter what the Fund could have said in its defence, its own credibility plunged, at least in the eyes of the investment community. Hence, reviewing the IMF's past record with Argentina we would warn investors: "the IMF is not your friend in this 'Ladrónes'[1] game, it is just another disgruntled creditor in line which wants to be senior to you. Sorry to conclude this".

Argentina's debt offer in Dubai - Unacceptable!!!

Seemingly bolstered by the IMF's "capitulation" at end-September 2003, the Argentinean government delegation flew to Dubai and unveiled its debt restructuring proposal. As you already know, this proposal ran more along the lines of adding insult to injury. In a nutshell, Argentina suggested a 75% cut in principal value of due debt, refused to pay any cash up-front, disregarded past due interest (PDI), and offered below market coupon rates on new debt and a duration of 20-42 years. Many banks immediately ran their calculations and arrived at the obvious conclusion that this proposal would leave investors with only 5 to 10 cents on each invested dollar. In fact all three options of instruments offered at Dubai by Argentina would leave investors deep under water or, in proper words, with few cents per invested US dollar or Euro. Needless to say such offer was flatly rejected by nearly all creditor communities and individual investors of Argentina. Some creditors simply felt frustrated, while others still were hopeful of an improvement in the offer. Although one might have thought that Argentina merely presented a terribly aggressive offer so as to lay the ground for negotiations with an obvious improvement to the offer in the cards, recent events have shown that Argentina more likely has embarked on a unilateral path and ignored creditor interests by and large. Although Argentinean officials also warned creditors to negotiate rather than litigate, this sounded rather laughable, considering the plainly confiscatory offer placed on the table. A footnote to one funny cartoon accompanying an article on Russian-London Club debt negotiations in 1999 in one local news-

1 "Un Ladrón" in Spanish literally means "a thief". After the Argentinean default and unfair handling of its creditors (many of those creditors in Europe are small retail investors and pensioners who lost their life savings in the Argentinean default nightmare) some Italian and Spanish retail investors picked this word to describe their feelings about the credibility of Argentine politicians. Yet, we shall remain neutral to any kind of such "judgment", but would like to let you know what some of Argentina's creditors think.

paper said, "A promise of sausage in future is better than no sausage at all". In Argentina's case, however, no meaningful promise of "sausage in future" has yet been made. In light of this, we would conclude that unless creditors push Argentina into a corner, Argentina may not really consider improving its disastrous offer.

Economic realities do not match Argentina's arguments

As to Argentina's reasoning of why it cannot pay more than it is currently offering, the "widows and orphans" argument was rolled out as usual. Argentinean officials defused speculations that ongoing economic improvement might warrant better creditor treatment and cited social pressures constraining debt offer "kindness". Yet, as we have often said, the argument about "widows and orphans" does not fly when one takes a look at the state of the economy. We must conclude that last year Argentinean "widows and orphans" grew a bit "fatter" as the economy expanded by nearly 8%, inflation fell to as low as 4% and the positive current account pushed international reserves upwards. Furthermore, healthy economic growth allowed the Argentinean government to secure a record-high primary surplus on its budget and already allocate part of it for increasing social spending for "widows and orphans". As regards to how rich the "widows and orphans" really are, it is true to say that Argentinean per capita GDP (or call it wealth per capita) levels are still far below pre-crisis days (in 2000 wealth per capita was the equivalent of nearly 8000 US dollars). Nevertheless, in 2003 Argentina's per capita GDP reached about 3400 in US dollar equivalent, increasing from 2800. This compares fairly well to Brazil's 2900 US dollars per head, while Brazil continues to pay its large debt bill despite some difficulties in the recent past. If one succumbs to Argentinean "widows and orphans" demands today, then why not also grant something similar to Brazilian "widows and orphans" who live on similar incomes and may feel jealous about the Argentineans. Yet, let us hope our sad joke will not come true. For us it is clear that economically speaking Argentina can afford to pay more of its debt than it says it can and should be forced to do so. Regardless of the wishful thinking of Argentinean officials, one must remember a simple fact: Argentina is not such a poor country; in fact it is no poorer than neighbouring Brazil, and if Argentina denies larger compensation this stance has nothing to do with "widows and orphans" who themselves have probably lost any faith in Argentinean politicians (Who said 'Ladrónes'? Not us!). If Argentina refuses to increase the primary fiscal surplus target so as not to offer a more reasonable settlement on defaulted debt for creditors this is more so a signal of Argentina's unwillingness rather than its inability to improve its offer.

Show them a stick, keep a carrot in your pocket!

As Argentina has embarked on a policy of demonstrating a complete absence of willingness to pay or negotiate its defaulted debt in good faith, we hardly see why it may decide to improve its offer from Dubai unless a big, effective stick is produced by creditors. As things stand today, it appears that this kind of stick may emerge from the side of the most litigious creditors as their lawsuits might create precedents for others to follow. However it is rather clear that without an effective scare from litigious creditors Argentina will not be tempted to improve the offer while any failure of litigious creditors to attach will endorse Argentina in its robbery approach. The debt battle is already beginning to move to the courts in parallel with the continued efforts of large investor groups to negotiate a meaningful (not confiscatory or unilateral) deal. What Argentina is being threatened with in that sense is general deadlock if large groups of investors will conclude negatively and start to consider legal actions as well. As long as a holdout tactic assumes a minimal number of such holdouts with enough defaulted debt to corner the debtor, the larger number of holdouts becomes the lesser chance they will have to attach Argentina's government financial and other commercial assets overseas. Nevertheless, the more holdouts to remain, the lesser chance Argentina will have to restructure its debt. Without improving its offer, Argentina will not be able to solve the debt puzzle as more and more creditors will be inclined to follow the footsteps of litigious parties. Hence Argentina will risk remain in default for years to come, if it pleases. Up to now it seems that many large creditors have still demonstrated patience and tried to talk with Argentina in a polite tone, inviting it to the negotiation table. Yet, Argentina has not held any meaningful talks except for its appearance in a New York court to answer the plaintiffs of some of the most litigious creditors.

Law Suits - 'Vulture culture'[2]?

Last year, the news about the vulture fund EM Ltd. case vs. Argentina attracted much attention from disgruntled investors. This fund was created by US business mogul Mr. Dart and bought around 700m USD nominal of one series of Argentina's defaulted bond. After making contacts with Argentina, Mr. Dart, who was seeking full payment on the defaulted debt, filed a law suit with New York court of the Southern district to enforce the bonded contract issued by Argentina under US law. A few smaller investors became united in the "Lightwater" case and came along with the EM Ltd.. The plaintiffs (equivalent of complainant, litigator or petitioner) argued their case, asking the judge (Honourable Thomas Griesa) to permit the legal proceedings against Argentina in which plaintiffs were seeking to obtain summary judgments against the defendant (Argentina). The motion was granted while the defendant's request for a stay of the proceedings was refused. Last fall, the court issued summary judgments for plaintiffs recognizing their right to claim on Argentina's government overseas assets of commercial use, thus effectively ruling against Argentina.

The issue of stays

The judge however granted Argentina a stay of execution of the proceedings for 90 days following its request. A stay of execution effectively means delaying recovery efforts by the creditors. The judge ordered this to give Argentina time to present a debt restructuring offer that would be accepted or refused by the claimants. A further stay until the end of January 2004 was granted to Argentina last December, though the judge said that such stay would be final and Argentina's lawyer affirmed that the defendant would not seek a further extension of the stay. Accordingly, it is highly likely that when the last stay expires at the end of January it will be lifted and creditors can start recovery procedures, claiming Argentina's government overseas assets of commercial use. In this regard, the creditors will have the right to start recovery procedures that could not be enforced during the stays. We expect any possible request for a further stay of execution will be rejected by the judge, particularly as Argentina has not started any restructuring talks and has not shown any meaningful progress in this regard since previous stays were granted. So it is unlikely that Argentina's lawyer will attempt to extend the stay. Nevertheless, Argentina may file an appeal with higher instance courts to win time, but we believe the summary judgment granted by Judge Griesa will survive such appeals.

The issue of identification of assets

Yet, despite the stay of execution the plaintiffs have been granted the right to begin identification of Argentina's government assets that may be seized as a way of paying for the damages. The judge obliged the defendant (Argentina and its lawyers) to help identify such assets and warned that failure to cooperate would force the judge to appoint someone to supervise this process. Additionally, as procedure seemingly calls for, if the defendant is indicted of hiding such assets and/or information regarding such, the court can impose sanctions on the defendant and enforce relevant charges. So far the identification of assets was ordered in mid-January and the process seemingly is slowly taking off. Still, the identification process should accelerate upon expiration of the stay of the execution on January 30. A welcome to bite for plaintiffs. New law suits can also be expected when the hunt for Argentina's assets begins as other claimants may fear they will not get enough of a bite upon identification of Argentina's government assets overseas (in this case in US jurisdiction). Nevertheless, the task may be more difficult as Argentina's government may have an insufficiently small number of such overseas assets which claimants can attach. Hence, formal procedures may not reveal enough assets to satisfy the claims of the creditors. For this reason there has been talk of the possibility that some plaintiffs might seek to seize and attach not only Argentina's overseas assets but also payments Argentina is making or may make to other creditors including multilateral lenders such as the IMF or World Bank. Yet, the issue of attaching such payments is quite complicated and the odds are not clear as to whether or not creditors may succeed in this endeavour.

The "pari passu" clause

To understand the problem with attachment of Argentina's financial payments to other creditors we need to review the "pari passu" clause and its interpretation by lawyers and legal advisers. Indeed, this "pari passu" clause cited by some also

2 ''Vulture Culture'' is a song from an Alan Parson's Project album with the same title.
Song chorus begins with words: ''Vulture culture - Use it or you lose it
Vulture culture - Choose it or refuse it...''
For those who want to read all lyric (text of the song) we provide here a web link: http://www.songlyrics.com/song-lyrics/Alan_Parsons_Project/Vulture_Culture/Vulture_Culture/21235.html

as "equal treatment'' of creditors is now taking centre stage. Yet before we proceed, we have once again to warn our readers that we are not legal experts and that all our considerations of the legal issues are simply explanatory and serve merely to provide general information. Parties actively engaged in legal action against Argentina should seek a professional legal opinion and should not rely on our views. Now let us move to the topic itself.

The lawyers for Argentina presented a request to Judge Griesa, requesting an interpretation of the pari passu clause. The defendant had in mind a narrow definition which would effectively foil the threat of attachment of payments which Argentina will have to make to other creditors, including the IMF and other multilateral lenders. The defendant indicated that a plaintiff of Mr. Dart already cited the willingness to identify and attach those payments as a way of compensation. Still, the judge declined Argentina's motion, ruling that whereas none of the plaintiffs engaged in legal proceedings to clarify the pari passu clause for the purpose of preventing Argentina from making payments, the court would not consider the issue. He also ordered that plaintiffs must give the court a 30-day notice in case of their intent to attach such payments. Although the court did not rule, we believe that it is only a matter of time before the court will need to do so. The problem has just been delayed and will re-emerge if and when plaintiffs present a 30-day notice to the court as regards to their intention to attach the Argentinean government's payments.

Although Argentina's motion was denied, the issue of the "pari passu" clause has already generated heated debates. Adding to the fire, the Federal Reserve Bank of New York recently submitted an "Amicus Curiae Briefs" - a petition - asking the court to consider the risks involved in the case of defining the "pari passu" clause in a way which will allow litigious creditors to impound payments Argentina is supposed to make to other creditors. The Fed claimed that "availability of such injunctions would create uncertainty as to the finality of payments and settlements generally". In the Fed's opinion this might undermine payment systems including "Fedwire" system of international payments. The US government also filed a "Statement of Interests" in which it asked the judge to rule carefully on a reading of the "pari passu" clause included in Argentina's debt contracts, that in case of a broader definition could inhibit sovereign debtors from making other payments and would significantly complicate debt restructuring. There was a belief that if a broad ruling occurs it would create a disincentive for many creditors to seek settlement through the restructuring process as any small creditor objecting the restructuring could impound the payments of Argentina. A broader definition also seems to affect the US foreign policy interests as regards the role of International Financial Institutions. Although such a legal petition is non-binding, the US courts take this into account as far as the interests of the United States are concerned. To this end aforementioned petitions filed with the NY court have further complicated this already complex case.

Because the "pari passu" clause becomes an important landmark in this case we will try to explain what problems may emerge as regards its interpretation.

The pari passu clause is widely used and is included in many international debt covenants, particularly sovereign bonded contracts, as concerns unsecured obligations. It is commonly (although not exactly) understood as a clause that aims to preserve the rights of "equal treatment" of creditors holding such unsecured obligations. Furthermore, a simple interpretation of the clause goes further to the conclusion that an obligor under defaulted debt contracts containing such clause is prohibited from paying selected creditors without paying equally proportional (pro-rata) amounts also to the holders of defaulted contracts. Based on this understanding some people argue that "pari passu" can be applied to prevent Argentina from paying on non-defaulted debts and to multilateral creditors unless the obligor also pays pro-rata to the holders of the defaulted debt. Some also cite a possibility to attach such payments should Argentina fail to comply. So what are the merits of such statements? Because we are not legal experts most of our knowledge on the subject was derived from relevant papers and opinions issued on the subject. To this end we would recommend reading a legal study of Harvard Law School by Lee C. Buchheit and Jeremiah S. Pam which is called "The Parri Passu Clause In Sovereign Debt Instruments"[3] and which gives ample information on the subject. Although the authors favour a narrow definition of "pari passu", an alternative viewpoint is also presented.

3 You can download ''The Parri Passu Clause In Sovereign Debt Instruments'' - a working paper of the Harvard Law School (authors Lee C. Buchheit and Jeremiah S. Pam) - from EMTA web site: http://www.emta.org/keyper/Pari_Passu_Clause_in_Sovereign_Debt_Instruments%20_12_11_03_working_draft.pdf

As mentioned, the battle centres on the legal interpretation of the "pari passu" clause.[4] So far two interpretations - one narrow and another broad - have emerged.

Narrow interpretation (Harvard Law School)

From what we have read, it appears that the narrow interpretation would understand the clause as preserving equality as concerns legal ranking of unsecured debts of the issuer. It prevents the borrower from incurring new obligations or modifying old ones which would rank those debts as senior to the existing obligations containing such clause.[5] This is important during a process of liquidation of a company when holders of defaulted unsecured debt containing such clause would be given an equal bite of the obligor assets. So it prevents an obligor from earmarking its assets selectively to benefit specific creditors and it also prevents the obligor from suddenly changing the legal ranking of its debt.[6] Arguments for this stem from the liquidation procedures envisaged for corporations in bankruptcy (Chapter 11). To our knowledge no bankruptcy or liquidation procedure exists for sovereigns and in the absence of such procedure it is not clear how "pari passu" should apply to them. Furthermore, authors argue that a bankrupt company that is not in liquidation is allowed to make other payments provided it does not violate legal debt covenants. So far a sovereign should not and cannot be prohibited from making other payments or paying one creditor ahead of another.

The authors find it strange that such important clause as "pari passu" in sovereign debt covenants typically contains only three lines of text and does not address landmark issues such as enforcement procedure of the clause. Why is this so? Opinions range from that contract drafters possibly had the intention to prevent illegal earmarking of sovereign assets and international reserves to service a particular debt to a cynical view that ignorance or inattention of the drafters allowed this clause to migrate from cross-border corporate debt covenants to sovereign debt.[7] Whether we like it or not the authors have a point. The most obvious flaw is that absence of clear definition and of relevant procedures on how to enforce the clause create much ambiguity around the clause itself. It also raises a question as to why such important issues were not addressed in detail by the drafters till now. If "legal ranking" of unsecured debts is what "pari passu" is all about then it cannot be used to impound payments that an obligor must make under current contracts unless the obligor undergoes liquidation (yet no mechanism for sovereigns was ever devised) or is prohibited by additional clauses from making such payments unless defaulted contracts are settled on first place. So the pari passu clause might prohibit an obligor from legally discriminating against its creditors, but apparently it does not impose limitations on the obligor, who is not undergoing a liquidation process, to effect other payments and so such payments may not be attached by litigious creditors.[8]

Broad interpretation (Belgian Court of Appeals)

Broad interpretation of "pari passu" comes from the Belgian Court of Appeals in famous case of Elliot Associates v. Banco de la Nacion (Peru). In the opinion of the court, which ruled in favour of Elliot, the basic agreement governing the repayment of the foreign debt of Peru assumed "that creditors benefit from a "pari passu" clause that in effect provides that the debt must be repaid pro rata among all creditors."[9] Effectively the court granted Elliot Associates a right to impound payments that Peru was supposed to make to holders of current contracts (in that case via Euroclear) unless the country also would pay Elliot. Thus, Peru slipped into technical default on its current debt but the country decided to settle instead of filing an appeal. A similar case in which the same ruling was granted by the Belgian Court was the case of LNC LLP v.

4 A footnote from ''The Parri Passu Clause In Sovereign Debt Instruments'':
****Sub Specie Aeternitatis, supra note 3, at 11 ("The fact that no one seems quite sure what the clause really means, at least in the context of a loan to a sovereign borrower, has not stunted its popularity.").****
5 See page 2, ''The Parri Passu Clause In Sovereign Debt Instruments''
6 See page 5, ''The Parri Passu Clause In Sovereign Debt Instruments''
7 See page 4, ''The Parri Passu Clause In Sovereign Debt Instruments''

8 Footnotes from ''The Parri Passu Clause In Sovereign Debt Instruments''

****ENCYLOPAEDIA OF BANKING LAW, F1204 (Sir Peter Cresswell et al. eds., 2002) ("[A] pari passu clause in state credit is primarily intended to prevent the legislative earmarking of revenues of the government or the legislative allocation of inadequate foreign currency reserves to a single creditor and is generally directed against legal measures which have the effect of preferring one set of creditors over the others or discriminating between creditors.").****
****Eurocurrency Loan Agreements, supra note 3, at 83 ("Finally, a lender who remains unpaid at a time when other creditors are current on their loans may articulate his grievance in terms of liberty, equality or fraternity, but he should not invoke the pari passu covenant as the legal basis for his disappointment. This provision assures the creditor that its loan will not be subordinated to the claims of other creditors in the event of the borrower's bankruptcy, but it does not force the solvent borrower to make pro rata payments to all its creditors.").****

9 See page 7, ''The Parri Passu Clause In Sovereign Debt Instruments''

Nicaragua. Pursuant the injunctions, Nicaragua once again found itself in default on its debt as the country was unable to make payments to other creditors with money being blocked in Euroclear following the court verdict. Both cases raised the awareness among some market watchers that such injunctions would, if extended, force more sovereigns to find ways to by-pass Euroclear accounts, which in turn could undermine Euroclear position as the Settlement Centre for such contracts. Although Euroclear representatives defused such speculations they cited their awareness about particular matter and noted that the Nicaragua case is on appeal.

Recently the Emerging Market Creditors Association (EMCA) representing a group of 40 leading institutional investors in Emerging markets also came in support of EM Ltd. by allegedly indicating it favours a broader interpretation of pari passu. The EMCA literally also said that ''the court lacks power under Article III of the Constitution to receive briefs and evidence on the question, let alone to decide it''.

For disgruntled European creditors of Argentina the cases of Elliot and LNC were sweet deals with many creditors citing a possibility to seek similar injunctions against Argentina should it not settle on its defaulted debt. However while Peru never appealed, Nicaragua did and to this end we have to wait for the results. Meanwhile opponents of the Belgian Court's decision point to the fact that such injunctions were granted by the court without consulting the US courts in whose jurisdiction the aforementioned contracts fall. Further, as such precedent with sovereigns defaulters is absent in US and no US court has yet ruled in favour of a broad definition, some legal observers say that the Belgian Court mistakenly interpreted "pari passu" setting an improper precedent. Should the US courts rule to the contrary and the Belgian court decide to maintain its decision the dualism of interpreting the clause will become apparent. Yet, it is clear that EMCA representing market professionals in Emerging debt would support a broad definition of pari passu clause in sovereign debt covenants.

As the issue becomes really controversial we would abstain from any judgement as to whether narrow or broad definition may succeed in US courts.

Possible consequences from the "pari-passu" saga

As the US courts may still have to decide on "pari passu" interpretation we amateurishly suggest following possible outcomes in the courts:

1) The US court may deny a broad interpretation and rule on the basis of a narrow definition, which might deal a blow to the plaintiffs. In this case Argentina's negotiation position will be reinforced, while other disgruntled US creditors may be discouraged to seek legal remedies to the case.

2) The US court may admit a broad interpretation, but deny relevant motions on the grounds that the procedure to enforce the clause does not exist and sovereign bankruptcy precedents are absent. The courts may also to take into account petitions presented by the Fed of New York and the US government, which argue against a broad interpretation and warn that it might disrupt financial payments systems and affect US foreign policy interests.

3) The US court may take a broader interpretation instead of a narrow reading of the clause. Should this occur it will jeopardize Argentina's negotiation position because any disgruntled creditor may prefer to resort to litigation instead of restructuring. This may create avalanche of law suits against Argentina and discourage creditors who seek negotiation instead of litigation. Further, Argentina's payments to the IMF and other multilateral creditors will be jeopardized in a legal sense although their de-facto preferred creditor status would not disappear. Still, such a conclusion would create a better stimulus for Argentina to improve its debt offer as alternative to this would be litigation and perpetual chase of Argentina's assets by creditors.

4) The Belgian Court may continue to rule on the basis of broad definition of "pari passu" setting a precedent where litigious investors obtaining summary judgments from US courts will seek enforcement in European jurisdictions, namely in Belgium. If however the Belgian Court decides to defuse the broad definition it may undermine its rulings in cases of Elliot and LNC.

In any case, there is no clear evidence as to how things may develop as regards interpretation of "pari passu" by the courts. Let us note that the aforementioned conclusions as regards possible rulings by the courts on "pari passu" merely constitute our own humble opinion while there is no certainty as to what future may hold. For this reason we would caution readers against taking our revelations at face value: better use a discount.

Attaching IMF payments - a dream or a reality?

As far as Argentina's payments to the IMF are concerned, we believe there is little practical possibility to attach such payments unless Argentina makes a grave mistake. There are some ways how Argentina and the IMF can ensure that such payments would not be blocked and/or end in hands of angry creditors. For instance, Argentina can channel them via accounts with supra-national institutions like the Bank for International Settlements (BIS). In this case, creditors must be aware that supra-national institutions like the BIS, the IMF, the World Bank et al. enjoy sovereign immunity. This would make seizure or blocking of Argentina's payments at these institutions virtually impossible. As regards Euroclear accounts Argentina may seek a way to by-pass them by trying to devise a mechanism to make payments directly to the creditors. Yet, it is nearly impossible to assess today how such a mechanism would work. Practical ways may be numerous and we do not know many of them yet, but one thing is clear, it may be very difficult in reality to impound Argentina's payments to multilaterals.

The US judge finally certified a class action

Another interesting development in Argentina's debt saga was a decision by the same Judge Griesa to certify a "class action". Last summer, the judge rejected the class action arguing that the affected class was ill-defined. Yet the plaintiff specified the classes (two Argentina's Global Bonds due 2009 and 2017 respectively) and the judge finally endorsed the class action.

Once again, as we are not lawyers, we refer to the informed opinions of others. One such opinion was presented by Eugenio Bruno (Ambito Financiero columnist).

Class actions allow all lawsuits filed against specific defendant(s) to be merged together. The plaintiff appointed to represent such group of claimants gains strength by representing a vast number of affected parties while it allows smaller claimants to minimize legal fees by joining such actions.

Yet, those who elect to join class actions must bear in mind that by agreeing to class action they effectively delegate decision rights to the representation and effectively subordinate their own interests to a larger group of interests. So the results in this case will be binding for all parties forming such class action. Whether a creditor is uncertain as to whether his specific interests can be preserved via such class action it would be better to abstain from class action.

The benefit of class actions is that it allows small claimants to decrease litigation costs and increase effectiveness of litigation process. Class actions may also decrease an incentive for some smaller creditors to restructure although this will not affect position of larger institutional creditors as they are unlikely to join the class actions and will continue on their own.

We are unaware of any class action in Europe except maybe for a small group of Italian creditors represented by an attorney from Rome Claudio Pugelli. We do not know if this Italian group can be considered as class action.

ABRA+TFA+ABC= GCAB... good move

Finally, several large initiative groups uniting Argentina's creditors seeking to negotiate rather than litigate pulled together to coordinate their interests and unify negotiation positions.

According to a Bloomberg report, the U.S.-based Argentina Bondholders Committee (ABC), representing some 70 major institutional investors; the Argentine Bond Restructuring Agency (ABRA), representing retail investors in countries including Germany and Austria; the Task Force Argentina (TFA), representing Italian bondholders; and Bank of Tokyo Mitsubishi and Shinsei Bank, jointly representing Japanese holders of Argentine debt created the Global Committee of Argentina Bondholders (GCAB). The group holds altogether around USD 26bn of Argentina defaulted bonds and said GCAB will be a united front to negotiate with Argentina, which is laden with nearly USD 100 bn in defaulted debt. The head of TFA and co-chairman of the GCAB Steering Committee, Mr. Stock, stated that GCAB will for the time being abstain from litigation as its main philosophy targets negotiations on debt restructuring with Argentina in good faith. GCAB said it will form three sub-committees to deal with economic, financial and legal issues. The group allegedly requested a meeting with Argentinean government and said it would welcome other large creditor groups willing to join GCAB.

Pulling together interests of several large creditor groups represents a strong move which obviously aims to strengthen negotiation positions in restructuring talks with Argentina and gain negotiation power that Argentina will find difficult to defuse. We foresee GCAB becoming a negotiation body talking with Argentina while its members will preserve relevant autonomy as regards their organizational structures. Nevertheless, as we might estimate, such motion represents circa informal "class action" of big investor groups so their negotiation positions will be unified. Yet, we are less certain as to whether results negotiated by GCAB will be formally binding for all its members. We know that investors tendering their bonds with ABRA are effectively delegating powers to negotiate to ABRA and must accept the results when and if such are agreed. Hence, the final results will be binding for all ABRA members upon talks' completion, if we understood correctly. Yet we are unaware if such results will also be formally binding for members of other three large groups forming GCAB, namely the Italian TFA; the US ABC and the Japanese banks.

In conclusion, we see the news from a positive perspective whereas more details should emerge as regards GCAB development. In our opinion, the creation of GCAB was right thing to do and its members should gain good leverage in upcoming talks. Argentina will also find it much more difficult now to ignore such a huge investor representation. Of course, Argentina can try to bash GCAB but we believe it would be highly unwise to do so. Such a wrong attitude can put Argentina in a default grave forever should GCAB lose its patience and turn to the courts. If Argentina finally intends to get down to serious business instead of increasingly spending on travelling to various courts to answer plaintiffs, the government should finally see GCAB as relatively advantageous in its debt talks. Obviously it is always better to negotiate with one large creditor than with thousands of smaller ones (and furious ones at that!).

Signs that Argentina is waking up to reality, albeit very slowly!

Despite existing hurdles we believe that Argentina's attitude towards its creditors will be slowly changing to more a meaningful stance and we believe there are some evidences to that end. Let us call them ''signs of awakening of Argentina to reality''.

First sign of awakening was that Minister of Economy Lavagna surprisingly revealed that the Argentinean debt offer at Dubai assumed a 75% haircut including effects from disregarded (effectively refused) past due interest (PDI). Previously officials and Mr. Lavagna insisted that a 75% figure is what Argentina sees as haircut on principal value of its bonds only.

Second sign of awakening was Argentina's decision to appoint financial advisers for restructuring in the near future. It was said that after some battles Argentina has finally accepted a demand from banks bidding for advisory positions that any of them will retain a right to quit its job at its own discretion. Previously, Argentina had allegedly demanded that banks willing to advise it on restructuring should commit and tolerate whatever Argentina would offer and do in due course of restructuring talks.

Still, we perceive that Argentina's awakening is progressing too difficultly and too slowly. Nevertheless, hopefully, this process should accelerate this year.

Closing note

Although Argentina demonstrated a much worse-than-expected approach towards its creditors we believe that reality stands a bit differently and Argentina will be forced to modify its debt offer from Dubai. The requested 75% write-off or haircut is unprecedented by all measures. According to ABC presentation the maximum haircut applied ever to a sovereign reached 50% and the average haircut figure was around 35% based on former restructuring precedents for sovereigns. Economically speaking, Argentina does not qualify for large debt write-off although its harsh position may win it a larger one than it should benefit from. Suddenly, many creditors will not be able to recover all their money and will have to agree to meaningful compromise. Currently floated ideas by retail investors suggest maximum 35% loss on NPV basis although our estimates downshift to the area of 50%. Yet, we believe any better offer will depend on how creditors will conduct negotiations with Argentina. If enough pressure is applied on Argentina we believe its government will be able to pay more than just half without jeopardizing future of Argentina's "widows and orphans". Nevertheless, Argentina has showed the worst ever unwillingness to pay, so this assumes a rather difficult and lengthy process of squeezing money from Argentina.

Post Scriptum

As Argentina debt default is rather a legal matter we again repeat that our readers should seek and obtain legal advice in the event of direct involvement. Dissimilarities and differences may be found between various jurisdictions, so no definitive conclusions as regards legal matters should be derived from generalized case presented in this paper.

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Argentina

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