Argentina’s debt restructuring is likely to get approval, say lawyers

Fredrik Karlsson 06 August 2020

The Argentine congress in Buenos Aires (Credit: Shutterstock.com/Evgeniya Uvarova)

After months of talks, the Argentine government and bondholders have reached a breakthrough in negotiations over the country’s foreign bonds, which are worth US$65 billion. While bondholders’ assent is still pending, lawyers believe the deal will get the required approval numbers, marking the country’s return to the international capital markets.

The Alberto Fernández-led government announced a deal with three creditor groups and other significant bondholders, holding some 60% of the bonds, on Tuesday.

In the announcement, the government states that the agreement allows bondholders “to support Argentina’s debt restructuring proposal and grant Argentina significant debt relief.”

The accord enables Argentina to adjust certain payment dates “without increasing the aggregate amount of principal payments or interest payments that Argentina commits to make while enhancing the value of the proposal for the creditor community,” according to the press release. The deal means that existing debt will be swapped for new bonds, which Argentine does not have to start amortising until 2024.

Creditors will reportedly recover 55 cents on the dollar, which is below the 60 cents on the dollar initially requested, but significantly above the 40 cents on the dollar first offered by the government.

“It is a great success for the country,” says DLA Piper (Argentina) partner Marcelo Etchebarne, who highlights that the agreement will clear the road for pending provincial and corporate debt restructurings, which are currently on hold. Beccar Varela partner Javier Magnasco agrees, saying, “this agreement is very good news for the country’s struggling economy.”

The deal with creditors comes after Argentina descended into its ninth sovereign default in late May, after it failed to make US$503 million worth of interest payments. Shortly before, Buenos Aires province – the country’s most populated – entered default on 14 May after not meeting the deadline for a US$110 million interest payment.

While the country’s latest debt agreement will require no further legislative approvals in Argentina, bondholders must accept the deal before Argentina is on safe ground again – something most lawyers believe won’t be a problem. Before the new agreement, Argentina already had about 30% backing among creditors; now with the three creditor groups on board, another 60% is added. “I would expect that final approval numbers would be about 90% or 95%. This means that most collective action clauses will be triggered, minimising the chances for holdout litigation,” DLA Piper’s Etchebarne says.

Argentina now has to submit the new agreement, including some final terms and details yet to be decided, to the US Securities and Exchange Commission, which is likely to happen in the next few days. That should also include an extended accepting period until 24 August, before which bondholders must approve the agreement.

“I do not see any major complications on the horizon for the deal to be completed,” says Beccar Varela’s Magnasco.

Pérez Alati, Grondona, Benites & Arntsen (PAGBAM) partner Diego Serrano Redonnet believes that with the endorsement of the three creditor groups a deal with all bondholders should be reached successfully. “A good marketing of the transaction will hopefully achieve this in most, if not all, the series of bonds,” he says.

There are also legal tools to help reach an agreement, says Serrano, referring to the “re-designation” mechanism, which allows Argentina to rejig bond series and exclude an individual series from the aggregate amount to calculate the required majorities.

A potential obstacle, however, would be if some bondholders challenge the exchange or litigate against Argentina, Serrano says, but he adds that if the deal has an important level of support these potential problems could be mitigated, as reflected in the recent case of Ecuador. In the latter's case, a small group of bondholders tried to block a sovereign debt restructuring. “Any risk of a protracted litigation against Argentina should be avoided,” summarises Serrano.

If the agreement is approved, it would allow Argentina to avoid repeating its relatively recent experience with so-called vulture funds. Following its default in 2001, the government restructured most of its debt in two rounds in 2005 and 2010. But a small group of hedge funds did not agree to the restructuring and they did not settle their dispute with Argentina until 2016, which gave the country access to the international capital markets again.

The agreement with the three creditor groups comes several months after Argentina began negotiating a debt restructuring with bondholders. The government was meant to present an offer on 13 March, but with the covid-19 outbreak putting much of the world on hold, the Fernández administration shiftedits focus to combat the spread of covid-19 instead.

What’s next?

Argentina’s economy is far from stable and the country has not experienced economic growth since 2017, according to the IMF. And like most nations right now, its financial outlook does not look bright for 2020 either.

Some argue that reaching a deal with bondholders was the easy part – now the big challenge is to bring Argentina’s economy back on track. “The deal is very good news for Argentina, but not the end of all economic challenges; think of it as the required runway for the plane to take off,” says Beccar Varela’s Magnasco.

Argentina currently has a high inflation rate – hovering around 40% – a big fiscal deficit, and its strict exchange controls have propped up the peso, which has led to the currency trading far off the official rate on the black market.

Once bondholders approve the agreement, it opens Argentina's door to multilateral lenders again, but it also starts a new chapter – entering debt negotiations with the country's single largest creditor, the IMF. "The government must now agree on the restructuring of the existing loans with the IMF, while also formulating a sustainable economic plan," says Marval O'Farrell Mairal partner Fernando Hernández.

The previous government, led by President Mauricio Macri, reached a US$57 billion loan agreement with the IMF, from which the latter has lent the country some US$44 billion since 2018. With debt repayments due between 2021 and 2023, the government will likely seek to delay those. However, an agreement with the IMF will come with counterdemands from the bank, requiring a comprehensive economic plan in which Argentina will likely have to present a solution to its high inflation and fiscal deficit, as well as its overvalued official exchange rate.

Amid Argentina's ongoing financial instability, the covid-19 pandemic suddenly made things even more critical. "The covid-19 outbreak deepened the recession and forced the government to appeal to the only available resource of financing – currency emission – which fuelled already high inflation, while also increasing the fiscal deficit and tax pressure and the need of maintaining rigid foreign exchange restrictions," explains Hernández.

Once the debt agreement is approved and a deal is struck with the IMF, the government must deal with the issues that the country has failed to address in past decades, says Hernández, highlighting the need to control inflation, reduce the fiscal deficit and embrace required fiscal and labour law changes required to incentivise investment to promote sustainable growth.

Challenges lie ahead, but lawyers are hopeful that the debt agreement with bondholders is the first crucial step for Argentina's economic recovery. It will help increase financial market access for companies and provinces that have debt maturing in the near future, and bring long-term tranquillity. "If all goes well, we should expect a significant contraction of sovereign and corporate yield spread, [while] corporates and provinces should be able to tap the market under reasonable conditions in 2021," says Etchebarne.

Practice area: Capital markets, Restructuring & insolvency