International Corporate Rescue

ChaseCambria

3-4 SOUTH SQUARE
BARRISTERS

UCL
UCL LAW FACULTY
CENTRE FOR COMMERCIAL LAW

Published by:
Chase Cambria Company (Publishing) Ltd
4 Winifred Close
Barnet, Arkley
Hertfordshire EN5 3LR
United Kingdom

Annual Subscriptions:
Subscription prices 2008 (6 issues)
Print or electronic access:
EUR 665.00 / USD 799.00 / GBP 465.00
VAT will be charged on online subscriptions.
For 'electronic and print' prices or prices for single issues, please contact our sales department at:
+ 44 (0) 114 255 9040 or sales@chasecambria.com

International Corporate Rescue is published bimonthly.

ISSN: 1572-4638

ARTICLE

Argentine Corporate Rescue: Judicial and 'Out of Court' (Pre-Packaged) Reorganisation Proceedings

Gabriel Gómez Giglio (LLM Lond.), Partner, Baker & McKenzie, Buenos Aires, and Adjunct Professor, Universidad Torcuato Di Tella, Buenos Aires, Argentina

I. Overview

During the 1990s, Argentina opened up its economy to world trade and international capital. The implementation of privatisation programs, deregulation and private sector investments were common features of the Argentine economic agenda during the first part of the 1990s in a context of very low inflation and foreign exchange stability provided by the peg of the local currency (the 'peso') to the US dollar.

However, during the second part of the decade, such scenario was overshadowed by the federal government fiscal deficit, a growing recession, higher unemployment and a huge increase in the external debt, within an international context of financial unrest based on the Asian, Russian and Brazilian financial crises. By the end of 2001, the political crisis triggered off an unprecedented economic and social situation.

In the first three months of 2002, Argentina's economy contracted at its fastest pace in a century. The economy declined in such year by more that 12 per cent. In addition, a banking freeze plunged the country into a deeper crisis. After the government ended the peso's one-to-one peg to the US dollar in January 2002, the peso plummeted to 3.85 to the US dollar by the end of June.

Local companies that borrowed heavily in foreign markets saw their source of revenues devalued and converted into local currency, and requested for protection pressing the government to implement some amendments to the reorganisation and bankruptcy legislation in place. On 30 January 2002, the Senate and the House of Representatives approved Law No. 25.563[1] (hereinafter referred to as the 'Emergency Business and Production Law' or 'EBPL') amending Bankruptcy Law No. 24.522 ('BL'), which put creditors in a straight jacket and end with any and all expectations of foreign finance which would have survived the huge and messy devaluation of the local currency.

On 15 May 2002, the Senate and the House of Representatives enacted Law No. 25,589[2] ('Reinstatement Law') which repeals and amends certain aspects of the EBPL and introduced several changes to the BL in an attempt to mitigate some of the changes passed by the Emergency Business and Production Law.

Among other issues, the Reinstatement Law (a) repeals the suspension of filings of involuntary bankruptcy petitions; (b) amends the mandatory stay of foreclosure proceedings and suspension of injunctions, (c) amends the extension of the 'Exclusivity Period', (d) amends the suspension term of the repayment obligations under court-approved plans of reorganisations or payment proposals, (e) abrogates the limitation of guarantor's liability as regards debtors under reorganisation proceedings, (f) restores and amends the cram-down proceeding (i.e., creditors' or third parties' optional buy-out rights, which was repealed by Law No. 25,563), (g) increases court powers in connection with the approval of plans of reorganisation, (h) amends the provisions for out of court restructuring agreements to assimilate them to 'prepackaged' reorganisations, (i) regulates the rights and obligations of trustees to file proofs of claim on behalf of note and bondholders, and (j) establishes a procedure in connection with reorganisation proposals voting as per note and bondholders.

Moreover, Law No. 25,640, approved by Congress on 15 August 2002, suspended auction proceedings either carried at foreclosure proceedings or in any other manner for 90 days (in addition to the 180-day term provided by EBPD) as from its enactment (i.e., 10 September 2002).

All in all, the amendments passed by the Emergency Business and Production Law to the BL allowed local companies to renegotiate their debts not only with locals but also with foreign creditors as well as to get enough time to recover from the financial crises. Moreover, the 'Pre-Packaged' reorganisation procedure was amended in such a way that by imposing an 'out of court' deal

Notes

1 Published in the Official Gazette on 15 February 2002.
2 Published in the Official Gazette on 16 May 2002.

supported by the majority of the creditors, the debtor may enforce such 'Pre-Packaged' arrangement *vis-à-vis* any and all non-secured creditors. In spite of the criticism of local legal scholars to such amendment to the local bankruptcy legal framework, 'Pre-Packaged' deals became the most used legal tool to close corporate debt restructures.

This article provides the reader with an overview of the legal requirements for judicial and 'out of court' (Pre-Packaged) reorganisation proceedings under Argentine law. Section II of the article provides for the general consideration for reorganisation proceedings. Section III describes the local requirements for the reorganisation of economic groups. Section IV discusses the specifics of the 'Out of Court' (Pre-Packaged) reorganisation proceedings.

II. General considerations for reorganisation proceedings

1. Filing of reorganisation proceedings ('reorganisation')

The prerequisite to file for reorganisation set forth by the Bankruptcy Law No. 24.522[3] is the suspension of payments of current, due and outstanding debts, the payment of which was requested by any existing creditor, whichever the cause or nature of the debt may be.

Reorganisation includes the entire debtor's assets and estate. Nonetheless, the BL contains certain exception applied to lien credits.

Corporations must file for reorganisation through its legal representative. This resolution must be ratified by the shareholders' meeting within the term of 30 days following the filing.[4]

The requirements to file for reorganisation are the following:

(a) Evidence of (i) registration of the company with the Public Registry of Commerce ('PRC') and (ii) filing of its articles of incorporation and its by-laws and the amendments thereto.

(b) Comprehensive explanation of the current net worth or shareholders' equity status, date of suspension of payments and the facts that led to such suspension.

(c) Updated statement detailing and assessing the assets and liabilities, precisely stating its composition, assessment rules, location, condition and liens and encumbrances on such assets and any other information necessary to accurately assess the net worth or shareholders' equity. This statement must be annexed to a report prepared by a certified accountant.

(d) Copies of the financial statements including balance sheets and other legal or statutory accounting statements requested by law corresponding to the last three fiscal years, along with the report from the board of directors and from the supervisory committee.

(e) A list of the existing creditors indicating: their domicile, credit amount, cause, maturity date, co-debtors, guarantors, sureties or third parties liable and credit's preferences. An additional file for each creditor with a copy of the documents supporting the debt, along with a certified accountant's report on the relation between the statements of the company and its accounting registries and documentation, must be annexed to the filing, together with a detail of all existing judicial or administrative proceedings, informing the competent court having jurisdiction over those proceedings.

(f) A list of all commercial and other books kept by the company, which must be filed with the court.

(g) A declaration of the existence of any previous reorganisations.

Based on a preliminary analysis of the submitted documentation, and within five days as from the filing, the court should decide if it orders or rejects the commencement of the proceedings. said ruling of the court shall: (i) set a hearing for the appointment of the trustee; (ii) set a deadline for the filing of the creditors' request for acceptance of their credits; (iii) order the publication of notices in the corresponding newspapers; (iv) set a deadline for filing the commercial books of the company with the court; (v) order to register the commencement of the proceedings in the corresponding public registry; (vi) order a temporary restraining order to buy, sell, or levy any encumbrances on the assets of the company; (vii) order the payment of mailing expenses regarding the communications to be sent to the creditors reported by the company; (viii) specify the dates on which the trustee must submit his individual report on the petition for admission of each credit, and (ix) a general report describing the company's financial condition; (x) to set a date to hold an informative

Notes

3 As amended by Reinstatement Law No. 25,589, published on 16 May 2002 in the Official Gazette. BL provides for reorganisation – in and out of court – and bankruptcy proceedings. According to BL provisions, only debtors are entitled to request for their reorganisation whether by an in or and out of court proceeding.

4 Financial entities and insurance companies are subject to special liquidation proceedings under their own respective statutes. In the case of banks, Financial Entities Law No. 21,526, as amended, provides that the defaulting financial entity has to be liquidated if the Central Bank of the Republic of Argentina does not approve a reorganisation plan.

hearing and the appointment of a temporary creditors' committee.

2. Effects of the commencement of the reorganisation

(a) The managers of the company keep the administration of its assets under the supervision of the trustee and of the temporary creditors' committee. However, the administration is restricted and certain acts are forbidden, to wit:

  (i) the company may not dispose of its assets for no consideration or through any act adversely affecting or modifying the creditors' situation.

  (ii) previous court's authorisation is required to perform the following acts:

  – acts related to assets subject to registration,

  – the sale or lease of the going concern,

  – the issuance of bonds, secured negotiable debt,

  – the granting of liens,

  – acts beyond the ordinary administration of the business.

  The necessary authorisation must be requested from the court, which must previously discuss the request with the trustee and the creditors' committee. All acts performed in violation of the rules above shall become null and void *vis-à-vis* the creditors.

(b) The administration of the company may revert to the trustee, through a court order, if any violation of the above restrictions occur. Nevertheless and according to the circumstances, the court may limit the administration of the company by appointing a co-administrator or a controller.

(c) The filing for reorganisation automatically suspends the accrual of interest on any existing unsecured credit as from the date of the filing.

(d) The debtor may continue performing its obligations under any existing contract in which mutual obligations are still pending, with the court's previous authorisation. The counter party may request the company to fulfill those obligations that were due and outstanding on the date the reorganisation was filed. The counter party may terminate the contract, if it not given notice of the decision to continue with the contract within 30 days as from the commencement of the reorganisation.

(e) Supply of utility services to the company may not be suspended.

(f) Any and all lawsuits against the company for collection of any debt must be sent to, and subsequently heard and determined by the court having jurisdiction over the reorganisation. Some exceptions apply (e.g., family lawsuits, and expropriation of assets by the government).

(g) No new lawsuits for collection of debts incurred before the filing for reorganisation may be filed against the company.

(h) All preliminary injunctions pending against the company may continue in force, but all foreclosures are suspended.

  Any private agreement executed by the company and third parties in violation of the rules described above in (d), (e), (f), (g) or (h), shall become null and void.

(i) In cases of evident urgency or need of the company, the court may suspend auctions in mortgage or pledge foreclosure proceedings. This suspension may not exceed 90 days.

(j) Statutory managers and the officers of the company may not travel abroad without previous notice upon the court and for a period not to exceed 40 days. Longer periods require special court authorisation.

3. Proceedings up to the agreement with the creditors

(a) The court resolution authorising the commencement of the reorganisation shall be published for five days in the official gazette and in another major newspaper corresponding to the domicile of the company.

(b) Unsecured creditors must file a request for the acceptance of their credits,[5] submitting to the trustee the following documents supporting the existence and legitimacy of their credit, namely:

  (i) a power of attorney, authorising one or several local attorneys to represent the creditor before the argentine courts.

  (ii) originals or copies of the invoices and receipts related to the services and/or products delivered and/or sold to the company.

Notes

5 Section 4 of BL provides that the proof of the creditor's claim payable abroad, is conditioned upon the reciprocal demonstration that a creditor whose claim is payable in the Argentine Republic may be proved and collected – under the same conditions – in reorganisation proceedings opened in the country where such credit was payable.

(iii) original documents related to export transactions.

(iv) original bills of lading (in case of export transactions).

(v) original relevant correspondence and letters between the parties or any other documents in connection with the transactions (mortgages, pledges or any other liens, encumbrances or security interests).

(vi) affidavit executed by a foreign attorney stating that the foreign law does not discriminate against argentine creditors whose credits are payable in said foreign country.[6]

(vii) legal fee of ARS 50 to be paid by each creditor to the trustee for costs and expenses. This amount shall be added to the credit.

Those creditors who did not file a petition for the acceptance of their credits timely may do so afterwards within two years as from the date of the filing for reorganisation. In this case, the creditor shall most likely be ordered to pay the fees of the trustee's attorney, which range from 0.22 per cent to 5.4 per cent of the amount of the registered credit, taking into consideration (i) the amount of the claim; (ii) the nature and complexity of the claim; (iii) the merits and results of the attorney's performance, among others.

(c) The trustee is now able to submit proofs of claim on behalf of its note/bondholders in order to be admitted by the court as a creditor and exercise its rights representing all the note/bondholders, with power, inter alia, to approve any reorganisation plan.

(d) Once the petitions for acceptance of credits have been filed, they may be objected to by the company and/or any creditor within ten days as from the expiration date to file the petitions for acceptance of the credits.

(e) On or before the date fixed by the court to commence the reorganisation, the trustee should submit an 'individual report with the court' suggesting the court whether to accept or reject each of those credits, the petition for acceptance of which was timely filed. In order to prepare such a report, the trustee is authorised and allowed to examine the company's books (and in certain cases the creditors' books) and use all the elements that he may consider useful to determine the existence of the credits.

(f) Final acceptance of the credits is subject to court's decision. Such decision may be objected to by the creditors or the company within the term of 20 days as from its issuance through a special reconsideration proceeding.

(g) Creditors secured by a lien, pledge or any other security interest must also file a petition for the admission of their credits in the same way as the unsecured ones. However, such creditors may request at any time, the payment of their credits out of the sale of the assets that secure their credits. The court and the trustee must examine the document or documents supporting the request and order the auction sale of the assets that secure the creditor's credit. The court may request a security bond from the creditors to allow the public auction. After the auction sale, creditors are paid principal and interests accrued.

Pursuant to the EBPL, preliminary injunctions on assets crucial for the debtor's business were also suspended for a 180-day term (business days as from 14 February 2002). Although there are some exceptions to this provision (e.g., certain labour claims, claims related to liabilities incurred after the effective date of the EBPL, enforcement of rights on assets that are not related to the debtor's business, etc.), all judicial and extra-judicial foreclosures, including mortgage and pledge foreclosures, were also suspended for the same term.

The Reinstatement Law amended this provision. Accordingly, only the auction sale of assets ordered in the foreclosure proceedings were suspended for the above-mentioned term, but not the proceedings themselves. Therefore, foreclosure proceedings continued until the auction sale of assets itself was ordered by the court. The Reinstatement Law also limited the suspension only to auction sales of real property, should the latter be the home or dwelling house of the debtor and of the goods or facilities involved in the commercial and/or productive processes. Certain exceptions applied to the foregoing.

The EBPL also suspended all injunctions and attachments for a 180-day term as from its enactment. The Reinstatement Law amended this provision and suspended only the injunctions and attachments of those goods or facilities involved in the debtor's commercial or productive activities and that, if attached, could deprive the debtor from using them.

In addition, the Reinstatement Law clarified that the 180-day term should be counted on the basis of calendar days.

Notes

6 See footnote 5.

(h) The trustee should also file a second report (the 'general report') which shall mainly contain:

(i) an analysis of the causes of the economic unbalance.

(ii) a detail of assets, including intangible assets, and liabilities, with an estimation of their value for selling purposes.

(iii) a list of the accounting books, with a report of their defects.

(iv) references to the company's registrations with public registries, containing name and domiciles of the members of the board.

(v) date as from which the payments were no longer honoured, i.e., the date of suspension of payments.

(vi) statement as to whether the shareholders have regularly complied with their capital contributions and their duties.

(vii) list of acts that should be revoked. Please note that certain acts which occurred 2 years prior to the filing for reorganisation may not be enforced against the creditors.

(viii) in certain cases of reorganisation of an economic group (see point 2 below), the trustee must inform if notice to the antitrust authorities should be given.

(j) The company must file in court a proposal for ranking the registered creditors, who must be selected by the amount of their credits, the existence of securities, the nature and cause of the credits or any other elements useful to rank them. The proposal must have at least three creditor's ranks: (i) unsecured commercial creditors; (ii) unsecured labour creditors; and (iii) secured creditors.

(k) A court decision should finally decide the ranking of creditors, approving or modifying the proposal filed by the company. This court decision should also appoint the new members of the temporary creditors' committee, which must at least include the major creditor of each category.

(l) Within a period not to exceed 120 working days as from the court decision described in (k) above, the company shall have an exclusivity period to submit a plan of reorganisation or payment proposal ('proposal') to each class of creditors. The company must file the proposals with the court at least 20 days before the expiration of the exclusivity period (otherwise, the court should declare the company's bankruptcy upon failure of the reorganisation proceeding). The proposal may consist in a reduction in the payment of the debts or an extension of their maturity dates or both combined, issuance of negotiable debt notes, or others. the proposal must also include (i) an administration regime and restrictions to perform acts of disposition of assets, both applicable during the period of performance of the creditors' payment agreement, and (ii) the creation of the final creditors' committee, which shall act as controller of the due performance of the creditors' payment agreement by the company and shall replace the creditors' provisory committee (see (k) above). A minimum of three members is required, chosen among the major creditors. The final creditors' committee has full advisory and information capacity, being entitled to request all kinds of information and documentation to the company and trustee, as well as to submit all kinds of petitions to protect the creditors' rights. The final creditors' committee must file a quarterly report of its performance.

The EBPL provided that within a period not to exceed 360 business days and not less than 180 business days as from the court's decision approving the different classes of creditors, the debtor would enjoy an 'exclusivity period' to arrange a payment proposal or plan of reorganisation with each class of creditors. The Reinstatement Law reduced this term to a maximum of 120 days.

In addition, the Reinstatement Law also repealed the extension of the 'exclusivity period' for existing reorganisation proceedings set forth by the EBPL, which was 180 days as from the expiration of the original term.

(m) Before the end of the exclusivity period, the company must file the written approvals of the unsecured creditors whose credits were accepted by the court. The proposal must be approved by the majority of the unsecured creditors (that means, more than 50 per cent of the unsecured creditors accepted by the court included in each category), whose credits represent at least two thirds (2/3) of the registered credits of each creditors' category. Should the company obtain the above-mentioned legal majorities regarding each category, the court shall declare the existence of a creditors' payment agreement (the 'Agreement').

The Reinstatement Law established a procedure in connection with reorganisation proposals voting as per note/bondholders.[7]

Notes

7 Section 32 bis of BL (Text according to Law 25,589 published in the Official Gazette on 5/16/2002) provides that 'the proof of claims may also be requested by the trustee appointed in the issuance of debentures, convertible bonds, *obligaciones negociables* (debt notes), or any other securities issued in series; and also by any other individual who has been legitimated to do so by law or under a power of attorney granted by a

By such procedure each note/bondholder would vote for or against the proposal and, in order to compute the majorities in respect of admitted or proved claims, the claims of note/bondholders who voted in favour of the debtor's proposal shall be allocated to the aggregate claims of creditors who voted in favour of the proposal, and claims of note/bondholders voting against it, shall be allocated to the portion of claims of objecting creditors. For computing the majorities in respect of number of creditors, all note/bondholders voting favourably shall be computed as one creditor, irrespective of the number of bondholders, and note/bondholders voting negatively shall be computed as one creditor.

The Reinstatement Law also states that should there be an alternative procedure to determine the way the trustee shall exercise its voting rights on behalf of the note/bondholders (i.e., a procedure other than a holders meeting, e.g., the DTC system) in the relevant agreement, holding the note/bondholders' meeting shall be unnecessary.

(n) However, the Agreement may be objected to by any creditor, based on (i) mistakes in the consideration of the legal majorities; (ii) lack of representation of creditors; (iii) fraudulent exaggeration of the company's liabilities; (iv) fraudulent exaggeration or concealment of the company's assets; (v) lack of formal requirements. Should the objections filed by any creditor succeed, the company shall be automatically and immediately declared bankrupt by the court.

(o) The approved Agreement shall be mandatory for every unsecured creditor whose credit was originated before the filing, whether it has participated in the reorganisation proceedings or not.

The EBPL provided that all rescheduled payment obligations under court-approved plans of reorganisation were automatically extended for one (1) additional year as from the due dates originally agreed upon. The Reinstatement Law modified this provision shortening such period until 30 June 2002.

(p) In all the cases, the Agreement approved by the court implies the novation of all the obligations the origin or cause of which being prior to the reorganisation proceedings. Such novation does not bring about the discharge of the obligations of the surety or guarantor nor of the co-debtors who are jointly and severally liable for the total amount of the secured obligation, irrespective of the amount agreed upon with the debtor in a court-approved Agreement.

(q) Should the company not obtain the approval of the legal majorities described in (m) above, it shall be declared bankrupt by the court. The Reinstatement Law provided, inter alia, that when a proposal has not obtained the required majorities of all classes of creditors, the court would order nevertheless that said proposal is to be enforceable against the remaining creditors if: (i) the proposal was approved by at least one class of unsecured creditors and by at least the holders of three quarters (3/4) of the aggregate amount of unsecured claims; (ii) the court considered that the proposal was

Notes

group of creditors. The extent of the powers of the trustee, the legitimated or authorised individual or the attorney-in-fact shall arise from the agreements or instruments evidencing their respective capacities to act as such. No further ratification or filing of any other powers of attorney shall be required'.

Section 45 *bis* of BL (text according to Law 25,589 published in the Official Gazette on 05/16/2002) sets forth that 'the holders of debentures, convertible bonds, *obligaciones negociables* (debt notes), or other securities issued in series representing credits against the debtor under reorganisation proceedings, shall take part in obtaining the approvals as follows:

- they shall hold a meeting called by the trustee or the judge, as the case may be;
- the attendees shall approve or reject the pertinent proposal for a composition with creditors; and shall specify the alternative to which they adhere, should said proposal be approved;
- their acceptance shall be computed according to the principal amount represented by all of them who have approved the proposal, as if it were granted by only one individual; rejections shall also be computed in the same way;
- their approval shall be outwardly expressed by the trustee or the individual who shall have been appointed by the meeting and recorded on the minutes of said meeting which shall be considered as a valid instrument giving evidence thereof to all legal effects;
- the approval may be obtained without holding a meeting whenever the trust or the rules applicable thereto provide any other method to obtain the creditors' approval that the judge deems valid;
- the trustee may split his vote in those cases in which he has proved his claim or his claim has been declared admissible in compliance with the provisions of section 32 *bis*. In this case, his vote shall be computed as an acceptance for the principal amount held by the beneficiaries who have approved the creditors' composition proposal in compliance with the method set forth by the trust or by the applicable law; and as a rejection for the rest of them. It shall be computed in the majority of individuals as one approval and one rejection'.
- subsection 6) shall be applied to those votes cast by legitimated individuals or joint attorneys-in-fact whose claims have been proved or declared admissible under the terms of section 32 *bis*;

In all the above cases, the judge may order the pertinent measures to secure the participation of all the creditors and that all the approvals or refusals be attained according to the law.'

fair and that it did not unreasonably discriminate against any dissenting class of creditors, and (iii) the payments to be made pursuant to such payment proposal or plan of reorganisation were not lower than the ones that would have been received by the creditors who did not accept the proposal in the case of the debtor's bankruptcy. The court was not entitled to enforce such plan against secured creditors who did not accept it.

4. Conclusion of the reorganisation

Provided that (i) the Agreement is approved by the court; (ii) all measures directed to the fulfillment of the obligations under such Agreement are taken; (iii) the pertinent security interests are granted; and (iv) the general injunction to dispose of assets is maintained by the court (unless the creditors expressly agree to release it), the court must order the closing of the reorganisation proceedings. Therefore, the trustee shall end his participation and any individual appointed by the court to supervise the management of the company should also end his duties.

5. Restoration of the cram down proceeding

The EBPL repealed the possibility that creditors and any other interested parties moved for and obtain acceptance of a buy-out plan, should the debtor's payment proposal lack the required majorities of creditors' votes. In this regard, under the EBPL, the lack of approval of a plan of reorganisation at the end of the exclusivity period caused the automatic bankruptcy of the debtor.

The Reinstatement Law reinstates these proceedings and, therefore, should the debtor be a commercial company, the lack of approval of a payment proposal or plan of reorganisation shall not automatically cause the bankruptcy of the debtor. The proceedings set forth by the BL, as amended by the Reinstatement Law, for this optional buy-out plan, are basically ruled by the following general terms and conditions:

(1) the opening for the term of five days, of a registry of creditors and third parties interested in the acquisition of the company through the purchase of its stock. Should there be any registered interested parties, the court must assess the market value of the stock of the company based upon an appraisal to be conducted by an investment bank, a financial entity, auditing firm or by a similar expert appointed by the court at the proposal of the creditors' committee. Should no creditor or third party be interested, the debtor shall be declared bankrupt by the court;

(2) the registered interested parties must negotiate with the creditors and obtain their approval of the plan proposed by the interested parties to cancel the debtor's liabilities admitted by the court. The first interested party in obtaining the required creditors' approval must inform the court, and should the plan be approved by the court, such interested party shall be entitled to acquire the stock of the company at a price to be determined as follows:

(i) when, as a result of the valuation of the corporate debtor, the court establishes the non-existence of a 'positive value' of the stock (i.e., the company is worthless as is), the interested party shall be entitled to request the immediate transfer of title to the stock together with the approval of the plan so agreed upon with the creditors and without any other proceedings, payment or requirement.

(ii) in the event of a 'positive' valuation of the stock, its amount must be reduced in the same proportion as the debtor's unsecured liabilities are reduced at their present value as a consequence of the agreement reached with the interested party, at the court's discretion. To establish the actual value of the debtor's unsecured liabilities, the contractual interest rate of the claims, the interest rate in force on the Argentine market and the international market, if applicable, and the relative risk position of the corporate debtor shall be taken into consideration.

(iii) once the value has been judicially ascertained as per paragraph (ii) above, the interested party may:

(a) express that he/she shall pay the respective amount to the partners or shareholders of the company, by depositing 25 per cent thereof as security and part payment of the balance, within 10 (ten) days following the judicial approval of the agreement with the creditors; the title to the stock shall be transferred immediately thereafter; or

(b) within the following 20 (twenty) days, agree on the acquisition of the stock of the company for a value lower than the one determined by the court, to which effect the interested party must obtain the consent of the partners or shareholders representing two thirds of the capital stock of the company. Once such consents have been obtained, the interested party shall inform so to the court and pay the resulting balance, in the form and at the times indicated in paragraph (a) above; after complying with the above mentioned requirements, the interested party

shall acquire the title to the stock of the company.

(c) should none of the interested parties and/or the debtor obtain the required creditors' approvals, the court shall declare the bankruptcy of the debtor.

The main amendment introduced by the Reinstatement Law to these proceedings was that the interested parties were able to bid for the company, while at the same time, the debtor was given another chance to negotiate with its creditors, although, with no priority over the interested parties. Another substantial amendment is that now the company must not be appraised at book value as done in the past, but at fair market value and by an independent appraiser. In addition, the Reinstatement Law introduced some other clauses that seem to render the whole process more flexible.

III. Reorganisation of an economic group

Those companies forming part of an economic group may file for reorganisation as a group, provided that they evidence the existence of the economic group. The filing for reorganisation must include all the companies forming part of the group, with no exclusions. The court may reject the filing when the existence of the economic group is not duly evidenced. Such decision may be appealed.

Although the rules should be basically the same to those applied to a single company's reorganisation as set out in section II above, some particular issues must be taken into account:

- the court may appoint more than one trustee;
- there should be one proceeding for each company;
- the trustee should file a general report containing the general net worth/shareholders' equity/equity of the economic group;
- the companies of the economic group may file unified categorisation proposals and proposals of payment considering the liabilities of the economic group as a whole;
- even though the legal majorities to approve such proposals are the same described in section II 3 (m) above, the proposals should be considered duly approved provided that the economic group obtains (i) more than 75 per cent of the whole amount of credits accepted in all proceedings of the economic group, and (ii) more than 50 per cent of the amount of credits regarding each category;
- should the legal majorities not be obtained, the court shall declare the bankruptcy of all the companies forming part of the economic group.

IV. Out-of-court composition with creditors

This is a procedure whereby the debtor and creditors may agree and execute an out-of-court composition (*Acuerdo Preventivo Extrajudicial* 'APE') and submit it to a court for its approval, akin to prepackaged reorganisations under the US Bankruptcy Code.

The parties may include in said agreement any contents they consider suitable to their interests, and said agreement shall be binding on them although not confirmed by the court unless they otherwise expressly agree.

The APE may be executed by means of a private instrument, with the signature of the parties and the representation invoked by them being certified by a Notary Public. The documents authorising the executing parties, or an authenticated copy thereof, shall be attached to the instrument.

For the homologation of the APE, it shall be filed in the competent court having jurisdiction, along with such documents and information including a precise enumeration of the commercial and other books held by the debtor, an updated statement of assets and liabilities, a list of creditors, amount of their credits, co-debtors, guarantors, sureties or third parties liable as regards these credits, list of pending actions and administrative litigations, the amount of principal represented by the creditors who have signed the APE, and the percentage that the latter represents with respect to the total registered creditors of the debtor.

Then, to request court confirmation and make it enforceable, the APE must be signed by an absolute majority of unsecured creditors representing two thirds (2/3) of the debtor's unsecured liabilities.

To obtain court confirmation, the agreement must be published by legal notices in newspapers.

Within ten days after the publication of the notices, the debtor's creditors, whether or not they fall within the scope of the agreement, may object to its confirmation, only on account of omissions or exaggerations of the debtor's assets or liabilities or the non-existence of the majorities required by the BL.

The opposition shall be substantiated with the debtor. If necessary there shall be a ten-day term for the production of evidence and the judge shall issue a decision within ten days following the expiration of such term.

Should there be no objections, or should they have been decided upon by the court, and should all formalities requirements be met, the court shall proceed to the homologation. Once confirmed, the agreement and the actions taken or documents executed in compliance

with it, may be validly enforced against any unsecured creditor, even if the latter did not sign it and/or did not participate in the proceedings, and to those secured creditors who were a party to the agreement.

This special feature included at the time of the latest economic crisis as part of the BL has determined local companies to consider the APE as the initial alternative at the time of restructuring their corporate debt.

International Corporate Rescue

International Corporate Rescue addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialized enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

Alongside its regular features – Editorial, The US Corner, Economists' Outlook and Case Review section – each issue of *International Corporate Rescue* brings superbly authoritative articles on the most pertinent international business issues written by the leading experts in the field.

International Corporate Rescue has been relied on by practitioners and lawyers throughout the world and is designed to help:

- Better understanding of the practical implications of insolvency and business failure – and the risk of operating in certain markets.
- Keeping the reader up to date with relevant developments in international business and trade, legislation, regulation and litigation.
- Identify and assess potential problems and avoid costly mistakes.

For more information about *International Corporate Rescue*, please visit www.chasecambria.com