Sovereign-Debt Restructuring Update

January/February 2013

Mark G. Douglas

On January 10, 2013, the U.S. Court of Appeals for the Second Circuit denied a request by participating bondholders in 2005 and 2010 restructurings of the Republic of Argentina's defaulted bond debt to have New York State's highest court resolve a dispute with holdout bondholders regarding the meaning of an "equal treatment" or "*pari passu*" clause in the original bond indenture. *See NML Capital, Ltd. v. Republic of Argentina*, No. 12-105(L) (2d Cir. Jan. 10, 2013) (summary order). Participating bondholders had complained that the legal question concerning which debt takes precedence has provoked volatility in the bond markets and should be resolved by the state court whose law governs the contract. They argued that the meaning of a *pari passu* clause in a sovereign-debt case has not been decided by a New York state court and that if holdout bondholders—principally private-equity companies—are allowed to disrupt Argentina's sovereign-debt restructuring, countries may choose London or Singapore (rather than New York) as the base from which to issue debt.

On November 21, 2012, a U.S. district court ordered Argentina to pay $1.3 billion to holdout bondholders no later than December 15, 2012. *See NML Capital, Ltd. v. Republic of Argentina*, 2012 BL 329726 (S.D.N.Y. Nov. 21, 2012). The ruling came on the heels of the Second Circuit's ruling in *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246 (2d Cir. 2012), where the court upheld a lower-court order enjoining Argentina from making payments on its restructured debt without making comparable payments to holdout bondholders. Argentina received a temporary reprieve of its obligation to make payments to holdout bondholders on November 28,

2012, when the Second Circuit stayed the ruling until it has an opportunity to hear the merits of Argentina's appeal, scheduled for argument on February 27, 2013.