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The International Comparative Legal Guide to:

Lending & Secured Finance 2014

2nd Edition

A practical cross-border insight into lending and secured finance

Published by Global Legal Group, with contributions from:

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London SE1 3PL, UK
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Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
April 2014

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ISBN 978-1-908070-95-1
ISSN 2050-9847

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Editorial Chapters:

1	Loan Syndications and Trading: An Overview of the Syndicated Loan Market – Bridget Marsh & Ted Basta, The Loan Syndications and Trading Association	1
2	Loan Market Association – An Overview – Nigel Houghton, Loan Market Association	7
3	Asia Pacific Loan Market Association – An Overview – Janet Field, Asia Pacific Loan Market Association	11

General Chapters:

4	An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions – Thomas Mellor & Marc Rogers Jr., Bingham McCutchen LLP	15
5	Global Trends in Leveraged Lending – Joshua W. Thompson & Caroline Leeds Ruby, Shearman & Sterling LLP	20
6	Recent Trends in U.S. Term Loan B – Meyer C. Dworkin & Monica Holland, Davis Polk & Wardwell LLP	26
7	Yankee Loans – Structural Considerations and Familiar Differences from Across the Pond to Consider – R. Jake Mincemoyer, White & Case LLP	31
8	Issues and Challenges in Structuring Asian Cross-Border Transactions – An Introduction – Roger Lui & Elizabeth Leckie, Allen & Overy LLP	36
9	Acquisition Financing in the United States: Outlook and Overview – Geoffrey Peck & Mark Wojciechowski, Morrison & Foerster LLP	41
10	A Comparative Overview of Transatlantic Intercreditor Agreements – Lauren Hanrahan & Suhrud Mehta, Milbank, Tweed, Hadley & McCloy LLP	46
11	Oil and Gas Reserve-Based Lending – Robert Rabalais & Matthew Einbinder, Simpson Thacher & Bartlett LLP	52
12	Lending to Health Care Providers in the United States: Key Collateral and Legal Issues – Art Gambill & Kent Walker, McGuireWoods LLP	56
13	A Comparison of Key Provisions in U.S. and European Leveraged Loan Agreements – Sarah M. Ward & Mark L. Darley, Skadden, Arps, Slate, Meagher & Flom LLP	61
14	Financing in Africa: A New Era – Nicholas George & Pascal Agboyibor, Orrick, Herrington & Sutcliffe LLP	67
15	LSTA v. LMA: Comparing and Contrasting Loan Secondary Trading Documentation Used Across the Pond – Kenneth L. Rothenberg & Angelina M. Yearick, Andrews Kurth LLP	72
16	The Global Subscription Credit Facility Market – Key Trends and Emerging Developments – Michael C. Mascia & Kiel Bowen, Mayer Brown LLP	79
17	Majority Rules: Credit Bidding Under a Syndicated Facility – Douglas H. Mannal & Thomas T. Janover, Kramer Levin Naftalis & Frankel LLP	83

Country Question and Answer Chapters:

18	Albania	KALO & ASSOCIATES: Nives Shtylla	87
19	Angola	SRS Advogados in cooperation with Adjuris: Carla Vieira Mesquita & Gustavo Ordonhas Oliveira	94
20	Argentina	Marval, O'Farrell & Mairal: Juan M. Diehl Moreno & Diego A. Chighizola	101
21	Australia	Clayton Utz: David Fagan	109
22	Bermuda	MJM Limited: Jeremy Leese & Timothy Frith	117
23	Bolivia	Crales, Urcullo & Antezana - Abogados: Carlos Raúl Molina Antezana & Andrea Mariah Urcullo Pereira	127
24	Botswana	Khan Corporate Law: Shakila Khan	134
25	Brazil	TozziniFreire Advogados: Antonio Felix de Araujo Cintra	141
26	British Virgin Islands	Maples and Calder: Michael Gagie & Matthew Gilbert	147
27	Canada	McMillan LLP: Jeff Rogers & Don Waters	154
28	Cayman Islands	Maples and Calder: Alasdair Robertson & Tina Meigh	162
29	China	DLA Piper: Robert Caldwell & Peter Li	169
30	Costa Rica	Cordero & Cordero Abogados: Hernán Cordero Maduro & Ricardo Cordero Baltodano	177
31	Cyprus	Andreas Neocleous & Co LLC: Elias Neocleous & George Chrysaphinis	184

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Country Question and Answer Chapters:

32	Czech Republic	JŠK, advokátní kancelář, s.r.o.: Roman Šťastný & Patrik Müller	192
33	Denmark	Bruun & Hjejle: Jakob Echwald Sevel & Peter-Andreas Bodilsen	198
34	England	Skadden, Arps, Slate, Meagher & Flom LLP: Clive Wells & Paul Donnelly	205
35	France	Freshfields Bruckhaus Deringer LLP: Emmanuel Ringeval & Cristina Radu	215
36	Germany	Cleary Gottlieb Steen & Hamilton LLP: Dr. Werner Meier & Daniel Ludwig	224
37	Greece	KPP Law Offices: George N. Kerameus & Panagiotis Moschonas	235
38	Hong Kong	Bingham McCutchen LLP in association with Roome Puhar: Vincent Sum & Naomi Moore	242
39	India	Dave & Girish & Co.: Mona Bhide	253
40	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Theodoor Bakker & Ayik Candrawulan Gunadi	259
41	Italy	Chiomenti Studio Legale: Francesco Ago & Gregorio Consoli	266
42	Japan	Bingham Sakai Mimura Aizawa: Taro Awataguchi & Toshikazu Sakai	274
43	Korea	Lee & Ko: Woo Young Jung & Yong Jae Chang	282
44	Kosovo	KALO & ASSOCIATES: Vegim Kraja	289
45	Luxembourg	Bonn & Schmitt: Alex Schmitt & Philipp Mössner	297
46	Mexico	Cornejo Méndez Gonzalez y Duarte S.C.: José Luis Duarte Cabeza & Ana Laura Méndez Burkart	303
47	Morocco	Hajji & Associés: Amin Hajji	310
48	Mozambique	SRS Advogados in association with Bhikha & Popat Advogados: Momedé Popat & Gonçalo dos Reis Martins	317
49	Netherlands	Loyens & Loeff N.V.: Gianluca Kreuze & Sietske van 't Hooft	322
50	Nigeria	Ikeyi & Arifayan: Nduka Ikeyi & Kenechi Ezezika	330
51	Peru	Miranda & Amado Abogados: Juan Luis Avendaño C. & Jose Miguel Puiggros O.	337
52	Portugal	SRS Advogados: William Smithson & Gonçalo dos Reis Martins	346
53	Russia	White & Case LLP: Maxim Kobzev & Natalia Nikitina	352
54	Singapore	Drew & Napier LLC: Valerie Kwok & Blossom Hing	359
55	South Africa	Brian Kahn Inc. Attorneys: Brian Kahn & Michelle Steffenini	367
56	Spain	Cuatrecasas, Gonçalves Pereira: Manuel Follia & Héctor Bros	373
57	Switzerland	Pestalozzi Attorneys at Law Ltd: Oliver Widmer & Urs Klöti	381
58	Taiwan	Lee and Li, Attorneys-at-Law: Abe Sung & Hsin-Lan Hsu	390
59	Thailand	LawPlus Ltd.: Kowit Somwaiya & Naddaporn Suwanvajukkakij	398
60	Trinidad & Tobago	J.D. Sellier + Co.: William David Clarke & Donna-Marie Johnson	405
61	USA	Bingham McCutchen LLP: Thomas Mellor & Rick Eisenbiegler	414
62	Venezuela	Rodner, Martínez & Asociados: Jaime Martínez Estévez	425
63	Zambia	Nchito & Nchito: Nchima Nchito SC & Ngosa Mulenga Simachela	430

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in the Republic of Argentina?

The main issues at hand are those triggered by three current forces that have proved to be disruptive in the local financial market: (i) inflation; (ii) foreign exchange restrictions limiting the ability of local residents and non-Argentine residents to acquire foreign currency; and (iii) lack of long-term financing. In a nutshell, current interest rates in connection with secured financing in pesos (but also in dollars) are priced at a rate that, at some points, is even lower than inflation. In other words, inflation has trumped interest rates in terms of percentage and, therefore, interest rates have sometimes even proven to be negative.

In light of this issue, the most significant trends have been those aimed at structuring transactions that could mitigate the adverse effects of these situations. As an example of these features, we can mention:

- (i) dollar-linked transactions, i.e. financings which are denominated in foreign currency but for which disbursements and repayments are made in local currency. This feature has been included in most recently issued securities (by private entities but also by public owned companies) and in some syndicate and bilateral loans. In addition, there are specific regulations issued by the Central Bank of the Republic of Argentina (the “Central Bank”) that could be construed as supporting this mechanism;
- (ii) transactions on which the conversion of local currency into foreign currency and vice versa is made at a rate which does not reflect the official foreign exchange rate but an implicit rate arising from the quotation of dual currency securities trading in local currency and foreign currency; and
- (iii) transactions including terms which allow the lender to request payment of principal and interest in a foreign currency, local currency at a specific exchange rate, or payment in kind.

Finally, since the re-enactment of foreign exchange restrictions in 2001, most of the financings received by local companies are trade-related financings, the proceeds of which are used by local companies to either finance production of commodities or other exportable goods or finance the acquisition of equipment or other goods. This type of transaction is afforded preferential treatment from a foreign exchange perspective.

1.2 What are some significant lending transactions that have taken place in the Republic of Argentina in recent years?

- In 2014, Latin American development bank Corporación

Andina de Fomento granted Argentine oil and gas producer Pan American Energy a US\$ 238 million loan.

- During 2013 and 2014, the Provinces of Neuquén, Chubut, Mendoza, Buenos Aires, and Entre Ríos issued notes for US\$ 330 million, US\$ 264 million, US\$ 219.9 million, US\$ 200 million, and US\$ 63.7 million, respectively. The City of Buenos Aires also issued notes for US\$ 216 million.
- In 2013, Argentine downstream oil company, Axion Energy, secured two loans worth 800 million Argentine pesos (US\$ 150 million) in total.
- In 2013, Argentina’s local wheat and oilseed milling company, Molino Cañuelas SA, obtained a 200 million Argentine pesos (US\$ 38 million) loan from a syndicate of banks.
- In 2012, Exal Argentina S.A. and Exal Packaging S.A., together with other members of the Exal Group as borrowers, executed a secured loan agreement with Fifth Third Bank as lender and agent, and Equity Trust Company Argentina as Argentine collateral agent, for the amount of US\$ 250 million.
- In 2012, Synthon Argentina (and other subsidiaries) secured a US\$ 123 million revolving loan facility granted by ABN AMRO Bank, Rabobank, Deutsche Bank Nederland and ING Bank to Synthon International Holding.
- In 2011, Energía Argentina S.A. issued securities through two financial trusts, for the amounts of US\$ 690 million and US\$ 350 million.
- In 2011, NASA Trust launched the second bond offering, raising US\$ 407 million for financing the Atucha II nuclear power plant.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, it is possible to secure the borrowings of other members of the corporate group. The company acting as a guarantor should receive proper benefits or consideration in return. Otherwise, it may be considered that the granting of the guarantee derives no benefit for the securing company and, hence, other creditors could challenge such transaction.

Besides, the by-laws of the securing company should include the prerogative to grant borrowings to third parties or, alternatively, the main activity of the company should be financing.

These requirements should be strictly defined when the guarantee is up-stream (a controlled entity acting as guarantor of an obligation of its direct or indirect parent company or an affiliate).

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

In case the securing company does not have any financial corporate purpose, nor receives a consideration or benefit, the guarantee may be deemed out of the scope of the securing company's corporate purpose (*ultra vires*) and, consequently, may be declared void.

Besides, pursuant to Argentine law, directors must act loyally towards the company and its shareholders, loyalty which includes the director's responsibility to perform its duties with the diligence of a "good businessman" and in the interest of the company. Any failure to comply with these standards results in directors' unlimited liability for the damages arising therefrom.

To be released from any such liability, the director must timely file written objections to the company's resolution that caused the damages, and, if applicable, give notice thereof to the company's statutory auditors or file proceedings for challenging the decision.

Therefore, although it is not specifically provided, if a guarantee is deemed out of the scope of the securing company's purpose, it might be understood as a breach of the director's duties and, consequently, the director would be deemed responsible for negligence.

2.3 Is lack of corporate power an issue?

Yes. Corporate power is required to grant guarantees.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

No governmental authorisation, consent or approval is required to grant a guarantee. However, it is advisable that the Board of Directors or the shareholders' meeting previously approves the transaction, particularly if the guarantee is for a significant amount considering the net-worth of the guarantor and there is no specific provision in the by-laws of the guarantor. A unanimous approval of the shareholders' meeting is also advisable.

Also, if the security consists of a mortgage over real property located in a security zone (close to borders and other strategic zones), upon execution, transfer of land will require prior approval from the Security Zone Commission, unless the transferee is an Argentine individual.

Besides, third parties' consents may be required for the assignment of agreements to a trust. As a general rule, since contracts involve both rights and obligations, the transfer of the obligations is not allowed unless an express consent of the counterparty is obtained (see questions 3.1 and 3.4).

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

As long as the company operates within its corporate purpose, as explained in question 2.1, Argentine law does not provide limitations on the amount of a guarantee; however, deduction of interest may be limited under certain thin capitalisation rules. Please refer to question 6.5.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

Assuming that the enforcement of a guarantee implies an

international transaction (i.e. a payment from an Argentine resident to a non-Argentine resident), it will be subject to foreign exchange regulations.

Foreign exchange rules allow access to the Argentine Foreign Exchange Market (the "FX Market") to purchase foreign currency to make payments abroad under the items "*Commercial guarantees for export of goods and services*" and "*Financial guarantees*", subject to compliance with applicable requirements in each case. Argentine foreign exchange rules do not affect a foreign lender's ability to exercise its rights against a foreign guarantor.

If the guarantee is established over a local asset and its enforcement implies the collection of Argentine pesos, the foreign lender is able to purchase foreign currency for repatriation purposes, subject to compliance with certain specific requirements.

Also, proceeds obtained from a bankruptcy proceeding can be transferred abroad through the FX Market, provided that the creditor accessing the FX Market is the same creditor that filed for recognition of the credit in the insolvency proceeding.

Besides, although not expressly regulated, the Central Bank has been imposing certain *de facto* restrictions that may delay or, in certain cases, prevent access to the FX Market for means of purchasing foreign currency.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

In general terms, Argentine law recognises two kinds of guarantees: the "personal" guarantees; and the "asset-backed guarantees".

"Personal" guarantees are granted by a person or a legal entity committing its property to assure the performance of one or more obligations of the debtor. Upon the debtor's default, the creditor may eventually take legal action over the debtor's property and the guarantor's property. This guarantee, unlike asset-backed guarantees, does not create a lien or a privilege in favour of the creditor.

"Asset-backed" guarantees are granted over a specific property owned by the guarantor. In this kind of guarantee, either the debtor or a third party may be the guarantor. Unlike personal guarantees, asset-backed guarantees grant the creditor (i) the rights of "persecution" and "preference" over the asset in question, which means that the creditor has the right to pursue the guarantor's property, even if the guarantor sells or transfers his/her property, and (ii) the right to execute the guarantee and receive the corresponding payment with preference over other creditors, even in the event of insolvency or bankruptcy of the debtor or the guarantor.

The most common guarantees are:

- Mortgage: The mortgage is the most frequently used security over immovable property. Also for certain movable property which has significant value the law specifically demands the constitution of a mortgage instead of a pledge (i.e. airplanes). For further details, please refer to question 3.3.
- Pledge: A pledge may be constituted over movable property, including but not limited to, machinery, vehicles, patents and trademarks. For further details, please refer to question 3.3.
- Trust in Guarantee: A trust may secure both movable and immovable property. Goods held in trust form an estate separate from that of the trustee and the trustor. If the property given in trust is registered in a public registry, the relevant registry will record the property in the trustee's

name. Therefore, they should not be affected by any individual or joint actions brought by the trustee's or trustor's creditors, except in the case of fraud. The beneficiary's creditors may exercise their rights over the proceeds of the goods held in trust and be subrogated to the beneficiary's rights.

Any individual or legal entity may be appointed as a trustee of an ordinary trust. Although there is no ruling on the issue, it is advisable that the trustee be a different person from the secured creditor (although there is no obstacle if the trustee is a controlled or controlling entity of the secured party).

- d) **Security Assignments:** Assets may also be assigned as security. One of the differences with a trust is that, in the case of security assignments, assigned assets are typically limited to rights or credits including, without limitation, receivables.

The creditor may demand payment of the credit to either the assignor or the debtor of the assigned credit. If the assignor pays the amounts owed, then the assigned credit should be assigned back to the assignor.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Although it is not possible to execute a general security agreement, including different types of collateral securities, it is possible to execute a general agreement including more than one asset of the same type, for example, a pledge may include machinery and vehicles.

In relation to the procedure, a security is executed by means of an agreement between parties.

Besides, Argentine law allows the pledge over an inventory of goods ("floating pledge"). Please refer to question 3.3.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Collateral security can be taken over real property (mortgage) or over machinery and equipment (pledge).

- a) **Mortgage:** A mortgage generally secures the principal amount, accrued interest, and other related expenses owed by the debtor. To be valid, the following conditions should be met:
- (i) The mortgagor must own the property to be mortgaged.
 - (ii) The mortgagor must have the capacity to transfer its assets.
 - (iii) In certain cases, prior consent of the spouse is required.
 - (iv) The mortgage must be granted over a specific property and the amount and the obligation secured must be certain and determined. Conditional, future or undetermined obligations are permitted to be secured, provided that an estimated value of the obligation is determined upon creation of the mortgage. Additionally, the mortgage over real property extends to: (i) all its accessories as long as they are attached to the principal property; and (ii) the supervening improvements made to the property.

Mortgages must be executed in writing by means of a public deed, which must be registered with the Land Registry of the jurisdiction where the property is located to be valid *vis-à-vis* third parties.

A mortgage remains in full force and effect until all amounts secured have been paid or the mortgage is otherwise cancelled. The registration of a mortgage will automatically expire 20 years after the date upon which it was registered, unless renewed.

- b) **Pledges:** The debts secured by a pledge can be conditional, future or indeterminate, or otherwise uncertain in amount.
- (i) "Civil pledge": The pledged assets are delivered to the creditor or placed in the custody of a third party. Upon default, the creditor must sell the pledged asset through a court auction and, in principle, may not obtain ownership of the asset.
 - (ii) "Commercial pledge": The pledged assets are delivered to the creditor or placed in the custody of a third party and consist of chattels to be used as collateral for commercial obligations (for example, pledge granted over shares). The main difference with the civil pledge is that in a commercial pledge some creditors are entitled to a private sale (i.e., an out-of-court foreclosure). Unless the debtor and creditor agree upon a special sale proceeding, the pledged asset must be sold through a public auction.
 - (iii) "Registered pledge": There are two types of registered pledges: the "fixed pledge", used for specified assets; and the "floating pledge", used for a certain inventory of goods, with no precise identification of the goods. A floating pledge allows for the replacement of the goods of the pledged inventory.

The registration of a fixed pledge involves the filing of the petition to the Pledge Registry of the jurisdiction in which the personal property is located.

The pledge agreement is legally binding between the parties from the date of execution. Upon registration, the agreement is opposable *vis-à-vis* third parties. It shall be opposable *vis-à-vis* third parties from the execution date if the petition to register the pledge is filed before the corresponding Registry within 24 hours of its execution.

The registration of a pledge expires 5 years after the date on which it was registered, unless renewed. Once perfected, a pledge remains in full force and effect until all amounts secured have been fully paid or the pledge is otherwise cancelled.

The floating pledge may be created through a notarised private document, using the form provided by the Registry of Pledges for such purposes (a public deed is not required).

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes. Collateral security can be taken over receivables. In order to have effect *vis-à-vis* third parties, a private assignment agreement must be executed and the assigned debtor must be notified by a notary public.

Alternatively, a trust structure may be used. Please refer to question 3.1.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Argentine law recognises the validity of a pledge over cash. In this case, the pledge shall have full effects upon delivery of the amounts pledged to the pledgee. These guarantees are not usual, though.

As for the procedure, please refer to question 3.3.

3.6 Can collateral security be taken over shares in companies incorporated in The Republic of Argentina? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

Yes. To be valid, the shareholder must inform the company about the terms and conditions of the pledge and the Board of Directors must record the existence of the pledge (i) in the Registry of Shares Book, and (ii) with a notation at the back of the share certificate.

Pursuant to Argentine law, movable assets which are permanently situated in a place and are not intended to be moved to a different jurisdiction are governed by the rules of the place where they are located. Thus, a guarantee agreement over the shares of a local company shall be governed by the rules of Argentina.

Parties in a loan agreement may freely agree on the law applicable to the contract (see question 7.1), but Argentine law must rule the content, conditions and effects of a security over the shares of the company.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes, under a "floating pledge".

Please refer to question 3.3.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

- (i) Yes, debtors may guarantee their own obligations. Please refer to questions 3.1 and 3.3 above.
- (ii) Yes. It is a guarantee of a third party, different from the debtor. Please refer to questions 3.1 and 3.3 above.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Notarisation, registration and other fees vary depending on the jurisdiction in which the agreement is executed.

The following chart details the main costs applicable to different securities:

Security	Fees
Real Property (Mortgage)	Notary Fees: 1% of the principal amount. Stamp Tax: 1% of the economic value of the agreement. Registration Fees: 0.2% to 0.3% of the guaranteed obligation.
Chattel/Personal Property (Pledge)	Notary Fees: low, depending on the characteristics of the pledge. Registration Fees: 0.2% of the guaranteed obligation. Stamp Tax: 1% of the economic value of the agreement.
Accounts Receivable/Debt Securities	Notary Fees: low, depending on the characteristics of the security. Registration Fees: 0.2% of the guaranteed obligation. Stamp Tax: 1% of the economic value of the agreement.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Registration before the applicable registry may take approximately 1 to 6 months, depending on the type of assets involved.

As to expenses, please see the chart in question 3.9.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

There are no explicit statutory restrictions on the ability of Argentine companies to create pledges on their assets to secure their own obligations. However, certain limitations to, or special requirements on, the ability of an Argentine company to create pledges in its assets may be included in the by-laws of the company.

In addition, the by-laws may require express approval for the creation of any pledge on the assets of a company by its Board of Directors, in which case a resolution of the Board would be needed. In the absence of such requirement, the pledge may be created by any representative acting pursuant to an adequate power of attorney or, in the case of a corporation, by the president of the company.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No special priorities are provided for revolving credit facilities. In this kind of loan, careful drafting should be taken into account. The guarantee granted at execution of the agreement may secure the subsequent renewals of the loan.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

For documentary requirements, please refer to question 3.3.

When a public deed is required, signing in counterparts, although not expressly prohibited, is not advisable since it could create certain issues in terms of proof.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; (c) or shares in a sister subsidiary?

The limitations referred to above with respect to guarantees also apply here. In addition, there might be a tax impact related to a leverage buy out operation.

It should be noted that Income Tax Law does not provide clear parameters to distinguish between "debt" and "capital". Guidelines can be found in the Income Tax Law and its Regulating Decree, when they require – for irrevocable contributions – that "in no case shall there accrue interest or any accessories for the contributor".

As explained in question 6.1, a borrower is able to deduct interest (for income tax purposes) as long as the expenses were incurred to generate taxable income.

The Argentine Tax Authority has challenged the deduction of interest in cases of a leverage buy out to acquire shares of local companies. The National Tax Authority considered that such expense is not necessary to obtain taxable income or to keep or maintain its source. In certain cases, the resolution of the Tax Authority was confirmed by the Tax Court.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will the Republic of Argentina recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

In Argentina, the role of the agent or trustee is governed by the rules of contract. Therefore, the parties in a syndicated lending may freely determine the functions and powers of the agent; such powers might include calculating the due amount of principal and interest, calculating financial ratios, informing the compliance or defaults of the debtor's obligations under the agreement, and keeping and guarding the loan documentation.

The figure of the agent in a syndicated loan is different from the figure of a collateral agent. Since in Argentina the guarantees must be linked to the credits which are guaranteed, it is not possible to split the holder of the credit from the holder of the guarantee. Thus, if a collateral agent is appointed, it might act as representative of the creditors but not as the holder of the rights arising from the guarantee.

5.2 If an agent or trustee is not recognised in Republic of Argentina, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

- The credits and the guarantee might be transferred to a trustee, who will be committed to enforcing the security if the debtor fails to comply with the agreement and applying the proceeds from the security among the grantors-beneficiaries.
- A real property might be transferred to a trustee, who might constitute a guarantee trust over such property in favour of the creditors.
- The guarantee might be granted in favour of one creditor, who commits to act as a collateral agent based on an intercreditor agreement.

5.3 Assume a loan is made to a company organised under the laws of the Republic of Argentina and guaranteed by a guarantor organised under the laws of Republic of Argentina. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

The assignment of credits must be documented in an agreement. A debtor's intervention in the agreement is not required.

The enforceability of the credits by the new lender is subject to two requirements: (i) the transfer of the credit; and (ii) the debt being payable.

Debtors should be given notarised notice of the assignment to be

effective *vis-à-vis* third parties and the debtor itself, in case of a judicial claim.

Upon assignment of the credit, the local debtor must inform the details of the new creditor to the Central Bank, pursuant to a certain foreign debt information regime.

6 Withholding, Stamp and other Taxes; Notarial and other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Deduction is allowed only for expenses incurred to generate taxable income.

Interest is deductible for the borrower. Interest deduction is limited by thin capitalisation rules (see question 6.5).

In addition, if the loan is made with a related party or with a party located in a low tax jurisdiction (regardless if it is related or not), interest is deductible only when paid and transfer-pricing rules apply. If the loan is made with a non-related party which is not located in a tax haven jurisdiction, interest is deductible on an accrual basis and no transfer pricing rules apply.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are no tax incentives to foreign lenders. Non-Argentine residents without a permanent establishment in Argentina are only subject to income tax on their Argentine-source income.

Foreign lenders will be taxed by income tax only on their profits from Argentina. When the lender is a bank or financial institution incorporated or located in a country not deemed to be a low tax jurisdiction or in a jurisdiction that has entered into agreements of exchange of information with Argentina and, also, is a jurisdiction where the relevant governmental authority has adopted the international standards approved by the Basel Committee on Banking Regulations and Supervisory Practices, the presumed net income in case of cross-border interest payments is 43% and, deriving from that, a 15.05% effective withholding rate. In all other cases of cross-border interest payments, the presumed net income is 100% and, therefore, the effective withholding rate is 35%. The Argentine debtor is responsible for the withholding and payment of the tax.

Value Added Tax ("VAT") applies to the sale of goods, the provision of services and the importation of goods and services. Under certain circumstances, services rendered outside Argentina, which are effectively used or exploited in Argentina, are subject to VAT.

Interest arising from a loan granted by a foreign entity is subject to VAT and the Argentine debtor is responsible for the payment of the tax.

The tax is levied on the interests paid and the current general rate is 21%. However, interests arising from loans granted by foreign banks are subject to a 10.5% rate when the central banks of their countries of incorporation have adopted the regulations provided by the Basel Committee.

Argentine Provinces and the City of Buenos Aires apply the Turnover Tax (Tax on Gross Income), levied on gross income

obtained from the exercise of onerous and habitual activity within each relevant jurisdiction. The tax rate varies in each jurisdiction.

For tax purposes, the activity of lending money is presumed to be carried out on a habitual basis, even if carried out once, and therefore is subject to Turnover Tax. The amount of returned capital is excluded from the taxable base. Thus, only the total amount of interest will be subject to Turnover Tax. Notwithstanding, it is not clear if interest collected by a foreign lender is subject to Turnover Tax.

Stamp tax is a local tax levied on public or private instruments executed in Argentina, or documents executed abroad with effect in one or more relevant jurisdictions within Argentina. In general, this tax is calculated on the economic value of the agreement. Each jurisdiction applies different tax rates to different types of agreements, but the most common rate is 1%. Certain ways of entering into contracts do not trigger this tax.

Finally, a tax imposed on credits and debits in bank accounts (the "TDC") must be paid in the case of credits and debits in Argentine bank accounts at a rate of 0.6%. However, the credit of the borrower in an Argentine bank account arising from the disbursement of principal of the loan would not be subject to the TDC since the disbursement of principal under a "banking loan" is exempt from the TDC.

6.3 Will any income of a foreign lender become taxable in the Republic of Argentina solely because of a loan to or guarantee and/or grant of security from a company in the Republic of Argentina?

Non-Argentine residents without a permanent establishment in Argentina are only subject to Income Tax on their Argentine-source income. Only incomes from Argentina will be taxed by Argentine Income Tax.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

For notarisation, registration and other fees, please refer to question 3.9.

Also, the loan and the guarantees will generally be taxed by Stamp Tax. For the purposes of the Stamp Tax, the loan and the guarantees could be considered independently even if they were agreed in the same document. Then, the transaction might be doubly taxed in certain jurisdictions.

6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

When the loan is granted by a related party, interest payments are subject to thin capitalisation rules. According to these rules, the percentage of the interest payments equal to the percentage of the debt exceeding two times the net worth will not be deductible for the borrower, and will be treated as a dividend. This limitation will not apply if the recipient of the interest payments is a non-related party.

If the lender is located in a low tax jurisdiction (regardless whether it is related or not) interest is deductible only at the moment it is paid and transfer-pricing rules apply. If the loan is made with a

non-related party which is not located in a tax haven, interest is deductible on an accrual basis and no transfer pricing rules apply.

7 Judicial Enforcement

7.1 Will the courts in the Republic of Argentina recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in the Republic of Argentina enforce a contract that has a foreign governing law?

Yes. Parties are able to choose the laws that will govern the agreement as long as some connection to the system of the chosen law exists. Further, foreign law will only be valid to the extent that it does not contravene Argentine international public policy (e.g. criminal, tax, labour and bankruptcy laws). Also, rights associated with real estate are governed exclusively by local laws.

7.2 Will the courts in the Republic of Argentina recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

Yes. In principle, the courts of Argentina will recognise as valid and will enforce judgments of foreign courts if they refer to monetary transactions, subject to compliance with certain procedural conditions.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in the Republic of Argentina, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in the Republic of Argentina against the assets of the company?

In Argentina, the length of litigation disputes depends on the complexity of the case.

Assuming the lender's creditor is unsecured, it might take between 3 and 6 years to obtain and enforce a final judgment. The rendering of a final decision might be delayed if foreign legislation governs the relationship between the parties.

Argentine procedural rules provide a fast-track proceeding called "exequatur" for the recognition and enforcement of a foreign judgment, which might last between 1 and 3 years. Exequatur proceedings do not require the re-examination of the merits of the case.

Despite the estimation above, freezing injunctions might be granted by Argentine courts if procedural requirements are met.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or (b) regulatory consents?

In principle, there are no restrictions in order to enforce collateral security. Nevertheless, if the guarantor does not comply with its obligations, the creditor would have to file a suit in court.

Please refer to questions 2.6 and 7.3.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in the Republic of Argentina or (b) foreclosure on collateral security?

In order to file a suit against a company in Argentina, the foreign lender must prove, if it is a company, that it is duly incorporated under the legal rules of its country.

As foreign exchange restrictions may apply, please refer to question 2.6.

7.6 Do the bankruptcy, reorganisation or similar laws in the Republic of Argentina provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

The Bankruptcy Law does not provide any kind of moratorium on enforcement of lender claims.

Please refer to question 8.1.

7.7 Will the courts in the Republic of Argentina recognise and enforce an arbitral award given against the company without re-examination of the merits?

Yes. Arbitral tribunals are competent in monetary disputes. The enforcement of the arbitral award will be as equal as the enforcement of a judgment.

Arbitral tribunals may not solve cases in which Argentine tribunals have exclusive jurisdiction, nor when there is an express prohibition against arbitration (e.g. certain provincial matters).

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Although the creditor does not have to wait until the credit filing procedure is finished before requesting the liquidation of the asset, the court will perform a summary examination of the documentation evidencing the creditor's preference and request the opinion of the trustee before carrying out the liquidation of the asset.

A credit with a special preference has priority over credits with general preferences and unsecured credits. However, the recognition of these credits must be verified and accepted by the court.

Credits with special preferences will have priority on a specific asset, such as mortgages and pledges. This kind of preference can be enforced exclusively on the relevant assets and up to the proceeds of the liquidation of such asset.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

The court may determine a preference period of up to 2 years prior to the bankruptcy proceedings, depending on the date when insolvency was first evidenced.

Certain acts which occur during that preference period may be ineffective, such as: acts for which no consideration is given; debts paid prior to its maturity; and security interests obtained for a debt which is un-matured and which was originally unsecured.

There are two types of preferences:

- (i) Special preferences, which are granted exclusively over certain specific assets of the debtor. E.g.: securities over the proceeds from the sale of the secured asset; expenses related to the assets that continue to be in debtor's possession; salaries; etc.
- (ii) General preferences, which are granted over all of the debtor's assets. E.g.: labour credits not subject to a special preference; social security debts; certain personal expenses (as funeral or medical costs); etc.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Yes. Among others, insurance companies, cooperative associations and public entities, such as the Nation, Provinces and Municipalities, the Catholic Church and embassies.

Financial institutions are, with a few exceptions, subject to general bankruptcy law. However, the Central Bank's cancellation of their banking licence is required and they may not voluntarily enter into a reorganisation or bankruptcy proceeding.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

Yes. The debtor may enter into out-of-court agreements with all or part of the creditors. A certain majority of unsecured creditors is required.

These agreements imply a debt restructure and are enforceable against all the unsecured creditors who executed it, including those that did not approve its content or voted against it.

To be enforceable against all unsecured creditors, the out-of-court agreement must be endorsed or validated by a competent court. Companies that are regulated by special insolvency rules (e.g., banks and insurance companies) cannot enter into this kind of proceeding.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of the Republic of Argentina?

In principle, Argentine law allows parties of an international contract to submit to a foreign jurisdiction in matters of an economic content.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of the Republic of Argentina?

Yes. The waiver of sovereign immunity is valid under Argentine law (it should be expressly provided in the underlying agreement).

10 Other Matters

10.1 Are there any eligibility requirements in the Republic of Argentina for lenders to a company, e.g. that the lender must be a bank, or for the agent or security agent? Do lenders to a company in the Republic of Argentina need to be licensed or authorised in the Republic of Argentina or in their jurisdiction of incorporation?

There are no eligibility requirements in Argentina for lenders, agents or security agents. A loan may be granted by, and the agent may be, an individual, a company, a bank, or any other entity.

In the case of loans granted by banks, the role of an agent is generally performed by a financial entity.

In principle, lenders do not need to be licensed or authorised to grant loans, provided that the financing activity is not performed on a regular basis. Otherwise, certain corporate and regulatory issues should be considered.

From a corporate standpoint, foreign companies are able to perform isolated acts in Argentina but if they want to perform their activities on a regular basis, a branch or a subsidiary must be established. For such purpose, foreign companies must: (i) evidence before the

Registry of Commerce the existence of the company; (ii) establish a domicile in Argentina; and (iii) justify the decision of establishing such branch or subsidiary and appoint a legal representative.

From a regulatory perspective, if the activities performed by the lender fall under "financial intermediation" (intermediation between the supply and demand of financial resources on a regular basis), prior authorisation of the Central Bank is required. An activity shall be deemed financial intermediation if it combines both raising local or foreign funds and granting financing to third parties with such funds.

The activity in Argentina of the subsidiaries or representation offices of foreign financial entities is subject to regulation by the Central Bank, who will grant the required authorisation subject to the analysis of the backgrounds and responsibility of the foreign entity and its local office.

10.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in the Republic of Argentina?

There are no other material considerations which should be taken into account.

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