

December 11 2009

Issued by Mattison Public Relations on behalf of Sweet & Maxwell

What can creditors do when a sovereign nation defaults?

- The market has managed to find solutions for almost all sovereign defaults
- Centralised approach to deal with default have lacked support from all parties

The only practical solution for the vast majority of creditors faced with a sovereign debt default will be to enter into a restructuring proposed by the sovereign debtor warns Dr Rodrigo Olivares-Caminal, in his new book *Legal Aspects of Sovereign Debt Restructuring*, (published Sweet & Maxwell).

In his book Dr Rodrigo Olivares-Caminal explains that although debt holders may obtain favourable court rulings to collect money owed by a sovereign actually trying to enforce the ruling to gain assets through litigation may be a “futile and hopeless labour”.

Most sovereign assets held outside a sovereign debtor’s own jurisdiction are protected by sovereign immunity or other legislation. Protected assets include:

- Diplomatic missions such as embassies
- Payments to and from multilateral organisations such as the IMF
- Central bank reserves and
- Military assets

In the case of a default other sovereign assets will be quickly repatriated.

Sovereign debt expert Dr Rodrigo Olivares-Caminal says that the risks involved with funding years of litigation, often across several jurisdictions, makes legal action appropriate only for the most sophisticated distressed debt traders.

Is China a wildcard?

Dr Olivares-Caminal says that a wild card in any sovereign defaults of the future will be the role played by new debt holders such as China, India or Middle East countries (particularly in the area of bilateral debt).

Comments Dr Olivares-Caminal: “Countries like China, India or Middle East countries and their sovereign wealth funds are now huge providers of debt but because their status as major creditors is new they have not been active participants in a sovereign debt restructuring before. There is the frequently voiced concern that China’s policy on lending is partly driven by geopolitics. That may bring any future debt restructuring into completely uncharted territory.”

Market solution only foreseeable approach

Dr Olivares-Caminal explains in *“Legal Aspects of Sovereign Debt Restructuring”* (Sweet & Maxwell) that opposition from both low and high income countries (including the US) to IMF proposals to create a statutory framework for sovereign defaults means there is no statutory or otherwise regulated approach to dealing with a sovereign debt restructuring.

Dr Olivares-Caminal says that although the UN (assisted by Dr Olivares-Caminal) is working on voluntary guidelines these are likely to be years away.

Dr Olivares-Caminal says that although a statutory method for dealing with a sovereign default might seem superficially attractive a market based solution by negotiation between the debtor nation and its creditors is likely to be the best way forward.

Adds Dr Olivares-Caminal: “So far the market has managed to find solutions for almost all sovereign defaults. Even if a statutory approach did exist there are very few sanctions available to force a sovereign nation not to default again, i.e. a sovereign cannot be liquidated or have its ‘management’ replaced.”

Under negotiations between Argentina and its bondholders over its 2001-2002 debt restructuring creditors saw their 92% “haircut” reduced to 75% in net present value.

With no statutory route likely to appear on the horizon to guide sovereign debt restructurings bondholders will have to enter negotiations under “collective action clauses” (CACs) of the relevant bonds. A CAC allow a majority of bondholders to agree a debt restructuring that then becomes binding on all bondholders. This stops a minority of bondholders endlessly preventing a restructuring from going ahead – often in the hope of getting better terms for their portion of the debt.

However, Dr Olivares-Caminal says that based on IMF data close to half of tradeable bonds do not have “collective action clauses” (55.8% in 2005).

Dr Olivares-Caminal also says that one obstacle to bondholders getting a relatively swift resumption of payments (albeit with a substantial haircut) through an agreed restructuring is where a distressed debt fund (vulture fund) acquires a large enough holding in a smaller issue of debt to constitute a blocking holding.

Legal Aspects of Sovereign Debt Restructuring is available from www.sweetandmaxwell.co.uk. Sweet & Maxwell is part of Thomson Reuters.

Notes to Editors:

Sweet & Maxwell (www.sweetandmaxwell.co.uk) is a leading provider of information and solutions to the legal and professional markets in the UK and Ireland. With over 200 years of history and heritage in legal publishing, Sweet & Maxwell offers detailed and specialist knowledge, understanding, interpretation and commentary across a wide range of subjects in a variety of formats to meet customers' needs - books, journals, periodicals, looseleaves, CD-ROMs and the market leading online services, Lawtel and Westlaw UK. Sweet & Maxwell is part of Thomson Reuters.

About Thomson Reuters

Thomson Reuters is the world's leading source of intelligent information for businesses and professionals. We combine industry expertise with innovative technology to deliver critical information to leading decision makers in the financial, legal, tax and accounting, scientific, healthcare and media markets, powered by the world's most trusted news organization. With headquarters in New York and major operations in London and Eagan, Minnesota, Thomson Reuters employs more than 50,000 people in 93 countries. For more information, go to www.thomsonreuters.com.

Press enquires

Dr Rodrigo Olivares-Caminal
Tel: 07733 066177

Peter Wylie
Corporate Communications Manager
Sweet & Maxwell
Tel: 020 7393 7123

Nick Mattison or Tom Yazdi
Mattison Public Relations
Tel: 020 7645 3636