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ARGENTINA : CREDITOR RIGHTS AND ENFORCEMENT

GORDON JOHNSON, ADOLFO ROUILLON

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ARGENTINA: CREDITOR RIGHTS AND ENFORCEMENT

1. **In Argentina, the Civil and Commercial Procedure Codes govern enforcement of unsecured claims.** There is a “national” Civil and Commercial Procedure Code, applicable to cases under the federal judiciary, and the civil and commercial courts of Buenos Aires. Civil and Commercial Procedure Codes also exist for each of the 23 Argentine provinces. Nevertheless, the provisions regarding enforcement actions of unsecured rights are not significantly different throughout the 24 codes.
2. **Unsecured claims fall into two categories for purposes of execution:** those by law entitled to an executory process (*proceso ejecutivo*) and those devoid of such rights. The executory process (*proceso ejecutivo*) has a number of advantages for qualifying claims, including access to expedited summary proceedings¹. Creditors not entitled to execution are obliged to pursue recovery by a more protracted process of full cognizance (*proceso de conocimiento pleno*), wherein all defenses and all types of evidence are made readily available to the debtor. The processes typically averages 1½-3 years (longer in some jurisdictions), although procedures exist for accelerated decision-making, resolution and arbitration.
3. **The legal framework for secured rights is largely complete, although laws applicable to pledges are somewhat outdated for securities on intangible property.** Argentine law provides for a variety of secured rights – all of which are *in rem* rights – that entitle the claimant to “special” priority and access to an accelerated recovery process (*procesos ejecutivos*). The most commonly utilized security devices include: (i) mortgage or hypothecary right on immovable property; (ii) pledge on movable assets, comprising both the common pledge (*prenda común*) and the registered pledge (*prenda con registro*); (iii) warrants, that is a security interest on merchandise deposited in specifically licensed warehouses; (iv) debentures containing a right *in rem*, which are regulated both in the *Ley de Sociedades* (Partnership and Corporations Law) 19.550, and in the *Ley de Obligaciones Negociables* (Negotiable Obligations Law) Laws 23.576 and 23.962; (v) naval mortgage or hypothecary right on ships; (vi) aeronautical mortgage or hypothecary right on aircrafts. In addition, security can take the form of lease transactions (Law 25.248) or a fiduciary guarantee (*fideicomiso de garantía*) under Law 24.441.
4. **The system for recording and registering mortgages is expensive, especially in jurisdictions where the local (provincial) authorities levy stamp taxes. The absence of a single national Land Office Registry, as well the plurality of Public Commercial Registries, make the access to information difficult and costly.** To be legally valid, a mortgage must (i) be memorialized by public deed executed by the debtor and the

¹ The executory process has some advantages to the claimant: (i) a right to obtain attachment or garnishment orders on the debtor’s assets without posting a bond (art. 531); (ii) a severe restriction on the availability of defenses (art. 544); (iii) the debtor bears the burden of proof on facts regarding redemption of the debt (art. 549); (iv) the right of appeal is restricted (art. 554); and, (v) the claimant can obtain immediate execution on a debtor’s assets of a judgment under appeal if a sufficient bond is furnished (art. 555). The final judgment rendered in an executory process has a preliminary nature; the debtor being able to introduce a further procedure (*juicio ordinario posterior*) wherein all defenses not arguable under the restrictive executory process rules may be alleged (art. 553).

creditor before a Notary Public in Argentina; (ii) fully describe the property and its registration number given by the Land Office Registry (*Registro de la Propiedad*) having jurisdiction over the property; and (iii) be recorded in the property registration with the competent Land Office Registry. If additions or changes are made to the mortgaged property, the mortgage deed must be amended, signed by both parties before a Notary Public, and recorded with the competent Land Office Registry. Registries are local and each province has its own office, as does the Federal Capital (*Ciudad de Buenos Aires*).

5. **Pledges of movable property are registered in a centralized national registry, called the National Pledges and Cars Registry (*Registro Nacional de la Propiedad Automotor y de Créditos Prendarios*).** The National Pledges registry has offices in all important cities in Argentina (some 270 offices for pledges and some 700 hundreds offices for autos). Pledge agreements for patents or trademarks must be further recorded in the Argentine National Registry of Intellectual Property. Stock pledges are registered with the Public Commercial Registry (*Registro Público de Comercio*) and also must be recorded in the corporate books of the company. Mortgages on aircraft and ships are recorded in their particular registry.

6. **Rights *in rem* are entitled to accelerated execution (*procesos ejecutivos*).** Judicial foreclosure proceedings previously averaged 12-15 months, but now averages 3-6 months under a new special regime supporting non-judicial foreclosure. In insolvency proceedings, creditors holding a right *in rem* have: (a) the right to force the sale of the debtor's specific property involved under particularly strict procedures; (b) a special priority on the proceeds of that sale; and, (c) the *ius perseguendi* whenever that property has been transferred to third parties. In principle, these creditors may not take title to the debtor's property. Secured creditors and creditors with rights *in rem* are particularly protected under the LCQ, and jurisprudence has consistently recognized these rights. In the periods of heavy inflation (before 1991), secured creditors were first to be granted indexation, both by the law and by the courts. LCQ grant a special priority for debts secured with: (i) a hypothecary right; (ii) a pledge; (iii) a warrant; (iv) a debenture with a right *in rem*; (v) a naval hypothecary right; and, (vi) an aeronautical hypothecary right.