The Restructuring and Resolution of External Sovereign Debt

Concerns about sovereign debt default in Europe and elsewhere continue unabated, generating much market instability and contributing to the world economy’s sluggishness. Efforts to restore market confidence and economic growth must include the resolution of such sovereign debt concerns. This in turns calls for a stable legal mechanism to manage actual and possible sovereign default.

While over the years there have been many proposed sovereign debt restructuring mechanisms (some of which are merely theoretical), there is little consensus on the optimum restructuring technique. Moreover, restructuring techniques used in recent practice often respond merely to ad hoc exigencies, suit merely particular systems of national law and due to their relative novelty can achieve legal stability only through the accidents of litigation. As a result, legal uncertainty abounds, further exacerbating market uncertainty.

It is thus high time to take stock, review recent developments (in particular the European debt crisis), and assess possible ways forward with an eye on the implications of any proposed solution for the financial markets and the world economy at large.

In this two-part session, an expert panel of speakers will consider, inter alia, the following:

- Key problems in restructuring sovereign debt.
- A review of various sovereign debt restructuring techniques, whether proposed or implemented in practice.
- The need to tailor restructuring techniques to contemporary sovereign debt financing methods.
- The evolving characteristics of the constituency of holders of sovereign debt (in part due to the prevalence of vulture funds) and their impact on the feasibility of restructuring.
- By reference to case-studies, an evaluation of the effectiveness of recent restructuring methods (such as exchange offers, collective action clauses (CACs) and exit consents).
- The use of sovereign credit default swap and its implications for restructuring choices.
- Potential contractual obstacles to sovereign debt restructuring (eg pari passu clauses).
- Sovereign debt dispute resolution framework.
- Sovereign immunity jurisprudence in the context of distressed sovereign debt.
- The regulation of sovereign debt issuance and the proposed model CACs in new Euro area government securities.
- The economic implications of various restructuring techniques (such as the future of sovereign debt markets).
- Suggestions for reform.

Part 1 – Key obstacles to sovereign debt restructuring, the practice of various restructuring techniques, and their effectiveness

Panelists
Carlos Hurtado, World Bank
Sean Hagan, General Counsel and Director International Monetary Fund
Jón Sigurgeirsson, Director, Central Bank of Iceland
Lee C. Buchheit, Partner, Cleary Gottlieb Steen & Hamilton LLP, New York

Discussants
Yuefen Li, Head, Debt and Development Finance Branch United Nations Conference on Trade and Development
Pablo Pereira, Advisor to the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development

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Biographies

Carlos Hurtado has served as the Principal Economic Advisor (Research Department) at the Inter-American Development Bank, and is currently a Consultant at the World Bank (Poverty Reduction and Economic Management, Latin America and the Caribbean). He served as the General Manager, Southern Cone Department at the Inter-American Development Bank (IDB); and was the Vice-president for Finance and Administration for the IDB. He received his Ph.D. in Economics from the University of Chicago, Illinois, USA and his BA in Economics from Instituto Tecnológico Autónomo de México (ITAM), Mexico City.

Yuefen Li is currently Head (Director) of Debt and Development Finance Branch & Manager of United Nations Conference on Trade and Development (UNCTAD) Project on Promoting Responsible Sovereign Lending and Borrowing. She is also a guest professor at Tsinghua University in China. She has published books, papers and articles in professional journals and newspapers, and contributed extensively to UNCTAD publications and documents. She was educated at the Beijing Foreign Studies University (BA) and London School of Economics. She received her Master’s degree from American Graduate School of International Management.

Pablo Pereira is Advisor to the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24) on technical and substantive issues. He received his economics degree from the Universidad de Buenos Aires, cum laude, where he also completed a post-graduate program on Capital Markets. In 2000, he received his MS in Project Analysis, Finance and Investment at the University of York (United Kingdom) with honors. Pablo has also been a distinguished Professor of Project Analysis at La Plata National University in Argentina.

Jón Sigurgeirsson is the Director of International Relations and the General Secretariat of the Central Bank of Iceland. Prior to his appointment in 2008, he served as Alternate Executive Director for the Nordic and Baltic Countries at the IMF. He has headed Reserve Management Operations for the CBI and, for a number of years, was Director of External Debt Management Operations for the Republic of Iceland. He served as a member of the Board of the Icelandic Financial Supervisory Authority in the aftermath of the recent financial crisis, and as a member of the Institute of International Finance’s Principles Consultative Group. He holds a Cand Oecon degree from the University of Iceland.

Sean Hagan is General Counsel and Director of the Legal Department at the International Monetary Fund. He has published extensively on both the law of the Fund and a broad range of legal issues relating to the prevention and resolution of financial crisis, with a particular emphasis on insolvency and the restructuring of debt, including sovereign debt. Prior to beginning work at the IMF, Mr. Hagan was in private practice, first in New York and subsequently in Tokyo. He received his Juris Doctor from the Georgetown University Law Center and a M.Sc. in International Political Economy from the London School of Economics and Political Science.

Lee C. Buchheit is a partner at Cleary Gottlieb. His practice focuses on international and corporate transactions, including Eurocurrency financial transactions, sovereign debt management, privatization and project finance. He is a Visiting Professorial Fellow in the Centre for Commercial Law Studies at the University of London. In 2010, he received the International Financial Law Review’s inaugural Lifetime Achievement Award for his contributions to international finance. He received his JD from the University of Pennsylvania Law School and a Diploma in International Law from Cambridge University.