INSOL INTERNATIONAL

DISTRESSED INVESTING ACROSS JURISDICTIONS

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PRESIDENT'S INTRODUCTION

With rising debt levels in the midst of turbulent economic conditions – higher interest rates, tight liquidity, weakening consumer and business confidence and a volatile geopolitical landscape, not to mention tariff wars, all posing significant downside risks – opportunities for distressed debt investment in the private capital market have increased in tandem. Loan-to-own strategies have become particularly prevalent, as lenders in many, but not all, jurisdictions seek to identify creative means to maximise value in distressed scenarios.

Alternative lenders and private capital providers have emerged as a critical source of funding for distressed companies, which often encounter difficulties in seeking additional finance (or funding extensions) from more risk-averse traditional bank lenders. This can take the form of "rescue finance", which – in tandem with substantive insolvency laws – may enhance the likelihood of a successful restructuring for a distressed entity, averting a premature liquidation or bankruptcy scenario. This has been demonstrated to be in the interests of long-term economic and financial stability and can be a key driver of growth. But while this message has been delivered globally, it has not been universally understood and acted upon, in part due to cultural differences and political will to make changes.

This landmark new publication, "Distressed Investing Across Jurisdictions", is therefore very timely. The publication was led by Professor Omar Salah, Partner of Norton Rose Fulbright LLP in the Netherlands. It comprises chapter contributions from 22 jurisdictions across Asia, Africa, Europe, the United States, Latin America and the Middle East.

Each chapter explores the legal and institutional framework for distressed investing in these jurisdictions, including the regulatory requirements and practical risks faced by investors purchasing distressed debt and non-performing loans. There is also an analysis of the key restructuring tools available in each jurisdiction to incentivise distressed debt investment – including informal workout mechanisms, pre-packs and formal processes such as schemes of arrangement and restructuring plans.

Many of these processes – including the United Kingdom's restructuring plan and the WHOA process in the Netherlands, have had considerable (but not universal) success in encouraging distressed debt investment in support of a restructuring attempt. These processes, when linked to strong bank capital adequacy requirements, have created the conditions necessary to allow new, very significant, capital providers to access the markets. In jurisdictions such as Singapore and the United States, DIP finance (which can lead to the priming of senior debt as a means to encourage new funding to a debtor) offers an additional incentive and has resulted in the building of an active distressed debt market. Key is predictability of outcome. The vast quantity of secondary trading (and therefore investment) in the French market, for example, shows that countries can adapt and attract funders, where previously there were few options outside of local banks.

In drawing together the key regulatory issues, recent investment trends and the risks and opportunities for distressed debt investment in each of the covered jurisdictions, this publication is a valuable resource for INSOL's members, particularly those who work in complex cross-border restructuring matters.

I extend my sincere thanks and appreciation to Professor Salah and each of the country authors for their time, expertise and dedication in bringing this publication to fruition. I also extend my appreciation to the INSOL Technical Team for their commitment and sustained work on this book over the last 2 years. Congratulations and enjoy the read.

Alastair Beveridge
President, INSOL International

January 2026

FOREWORD

This book is a special INSOL International publication which explores the legal considerations for distressed investing across various jurisdictions. The global landscape for the investor base of companies in financial distress has changed significantly in recent years, with investors in distressed assets setting their mark on restructurings.

These investors may be special situations and distressed debt funds that are providing rescue financing to companies in financial distress or buying non-performing loans from the existing lenders of those companies, in some cases with a loan-to-own strategy. They can also be hedge funds or private equity funds specialising in investing, owning and managing companies in financial distress with a value-add strategy. In some cases, they have particular expertise in a specific asset class, such as distressed real estate.

Importantly, distressed investors have been able to raise significant amounts of capital in the last few years, which means they have a great deal of "dry powder" to deploy.

Companies in financial distress are no longer seen as a threat only for investors. Rather, they may pose significant opportunities for certain investors that are ripe for the taking. Likewise, the involvement of and engagement with distressed investors is not only deemed a threat in a financial restructuring, but it can instead also pose opportunities for different stakeholders involved in a financial restructuring to collaboratively work together to achieve a creative solution that maximises all of their interests. For example, existing lenders of a company in financial distress that are seeking an exit may find that exit through a trade of their debt to distressed debt investors.

From the perspective of a company in financial distress, distressed investors may provide liquidity either through a rescue financing or through an equity injection. They could also provide a solution in other ways. For example, the involvement of a distressed investor may lead to a breakthrough in restructurings. Where the existing financial creditors may not able or willing to accept a debt write-off, a distressed investor may accept a haircut on the nominal value of its claim provided that the haircut is lower than the discount against which the distressed debt is purchased from the exiting lender.

Geographically, distressed funds (investing in distressed debt, equity or a specific asset class) predominantly were based in, and invested across, the United States. While the United States – and more broadly, North America – still remains one of the most important jurisdictions for investors in distressed companies, we have seen increased activity across other jurisdictions in Latin America, Europe, Asia, Australia and Africa in recent times. Hence, an understanding of the legal regimes in jurisdictions across the world has become increasingly relevant for investors of companies in financial distress.

This book aims to provide exactly that – a comprehensive analysis of the legal regime for distressed investing in 22 jurisdictions across the United States, Latin America, Asia, Europe, Africa and the Middle East, and the practical risks and issues relevant to debtors, investors, practitioners and other stakeholders.

Each chapter of the book addresses the legal framework for distressed investing across a specific jurisdiction. In each chapter, the contributors discuss: (1) distressed M&A and debt investing outside of formal insolvency processes; (2) enforcement processes; (3) pre-insolvency processes; and (4) pre-pack sales.

We have chosen this set-up to provide an overview for the entry and exit strategy of investors. While distressed investing may take place outside of any formal insolvency processes, most distressed investors step in with an exit strategy already mapped out. This strategy may entail an enforcement process whereby, through the enforcement of security rights, assets may be sold or possibly acquired through credit bidding and / or a debt-for-equity swap (in jurisdictions where these concepts are permitted), but it may also entail a more intense restructuring through a pre-insolvency regime or a pre-pack sale. Therefore, we have aimed to describe these considerations for each of the jurisdictions that are covered by this book.

FOREWORD (CONTD.)

We have aimed to provide a global overview that will aid investors, funds, financiers, practitioners and academics in getting an understanding of the legal framework and key considerations for distressed investing. Our objective was to present a book that will be useful for investors in practice – such as distressed investors, debt funds, hedge funds, private equity funds and litigation funders – as well as for companies in distress searching for a financial solution or their existing lenders (banks or direct lenders). The chapters in this book will give them a basic understanding when making an assessment of the legal framework for investing in companies in financial distress in a specific jurisdiction.

The publication of this book would not have been possible without the significant efforts of many others who have contributed to this project. I would like thank the Technical Research Committee of INSOL International and the Technical Team, in particular Dr. Sonali Abeyratne, Dr. Kai Luck and Ms. Waheeda Lafir. I owe them much gratitude for their wonderful collaboration on this project.

A special thanks also goes to all the excellent authors who have contributed to the chapters of this book, as the project simply would not have been possible without their contributions.

Last but certainly not least, I would like thank and acknowledge the assistance of various team members of the restructuring group of Norton Rose Fulbright LLP, Amsterdam, that assisted me while editing this book: Bas van Hooijdonk (associate), Sven Stommels (student intern) and Alexandra Komorek (student intern).

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ARGENTINA

1. Distressed M&A and debt investing outside of formal processes

1.1 Are there specific legal requirements that apply for purchasing distressed equity?

There are no specific rules in Argentina for purchasing shares or other equity interests of distressed companies. The rules that govern the sale and purchase of non-distressed shares would apply to a sale and purchase of distressed equity. Such rules are contained in the Civil and Commercial Code (CCC), the General Companies Law N° 19,550 as amended (GCL) and, in the case of listed companies, the Capital Markets Law N° 26,831 as amended (the Capital Markets Law).

In the case of the sale of distressed equity of public utilities subject to government regulation, either an authorisation of, or a notification to, the federal or provincial government is normally required, depending on the applicable regulatory framework. Further, in the case of change of control and provided certain thresholds are met, anti-trust authorisation may also be required and, in the case of listed companies, a mandatory tender offer may be triggered.

1.2 Is there a special legal regime to purchase distressed debt or non-performing loans?

The purchase of a claim stated in a loan (either a performing or non-performing loan) may take place through the assignment of rights, assignment of debts or assignment of the "contractual position". Except in the case of assignment of portfolio loans by financial entities (see below), there are no specific rules that apply to the assignment (or sale and purchase) of non-performing loans.

The assignment of rights is regulated in article 1614 et seq. of the CCC. It must be concluded in writing and, to produce effects *vis-à-vis* third parties, the assignment must be notified to the debtor by public instrument (normally, through a notary) or private instrument with a certain date (*fecha cierta*). When the assignment involves loans which are part of a portfolio and which guarantee debt securities listed in the public markets (or would constitute the assets of a mutual fund) – and when there is an applicable contractual provision on assignment – Law 24,441 grants full effects to the assignment of portfolio loans without the need to serve notice to the debtors. If no contractual provision is included, article 72 of Law 24,441 provides that the assignment can be notified to third parties by means of a public notice to be published on the website of *Comisión Nacional de Valores*, which is the governmental agency that supervises publicly traded securities and listed companies.

The assignment of debts (article 1632 of the CCC) and the assignment of contractual position (article 1636 of the CCC) are consensual contracts governed by the autonomy of the parties. In practice, they require the creditor's express consent to release the original debtor. Otherwise, the original debtor and the assignor would remain as obliged parties vis-à-vis the creditor. The creditor's consent may be granted prior, simultaneous to or after the assignment.

In case of an assignment of a loan portfolio owned by financial entities, Communication "A" 3337, as amended, of the Argentine Central Bank (BCRA) must also be followed regardless of whether the assignment is with or without recourse to the assignor. BCRA Communication "A" 3337, as amended, sets forth that an assignment of a loan portfolio to an affiliated entity requires prior authorisation from the BCRA. In all cases, payment by the assignee must be deposited in an account of the financial entity assignor opened at the BCRA. Failure to comply with the requirements set forth in the BCRA Communication will result in the application of sanctions foreseen in the Financial Institutions Law.

1.3 Other than regulatory requirements for specific industries, what are the general regulatory requirements that need to be considered in the case of distressed investments (e.g. work council requirements)?

There are no further regulatory requirements. Work councils are not regulated under Argentine law.

1.4 What risks exist for an investor of a distressed business?

There are several risks that any investor in an Argentine distressed business must be aware of. The main risk is that the transaction would be deemed without effects *vis-à-vis* the debtor (*inoponible*) under the "*pauliana actio*", regulated in the CCC, or, if the seller ends up in bankruptcy liquidation (*quiebra*), the fraudulent conveyance and preference rules of the Argentine Bankruptcy Law N° 24,522 as amended (ABL). The applicable rules regarding the avoidance actions both in bankruptcy and outside of bankruptcy are described below.

Further, investors should also be aware of the risks relating to successor liability, notably labour risks. When the acquisition of the distressed business is structured as a "transfer of establishment" (instead of a sale of shares of the distressed company owning the business), article 225 of the Argentine Labor Law N° 20,744 provides that the purchaser or successor will assume all the labour obligations that the seller would have, with the employees as of the time of the transfer, including those that originates as a consequence of the transfer. Further, the labour contracts and any right that the employee may have had – including the seniority – will continue with the successor or purchaser.

1.4.1 What risks exist for the transaction to be challenged and overturned outside of bankruptcy?

Outside of a bankruptcy proceeding, this type of transaction may be challenged under the revocatory action, known as "*pauliana actio*", which is set forth in article 338 and subsequent of the CCC. The "*pauliana actio*" entitles any creditor to petition the court to declare that an act performed by the debtor shall have no effects vis-à-vis such creditors. In practice, this action aims to restore assets that were taken out of the debtor's assets by the defendants, and therefore making them once again available for attachment by unsatisfied creditors of the debtor.

The requirements for the "*pauliana actio*" to proceed are the following:

1. the creditor's claim pre-dates the act that is being contested;
2. the act either caused or aggravated the insolvency of the debtor; and
3. the third party (or parties) to the act that is being contested knew, or should have known, that the act was causing or aggravating the insolvency of the debtor.

The statute of limitation of the "*pauliana actio*" is 2 years from the date the creditor knew, or should have known, the act took place.

In case the debtor ends up in bankruptcy liquidation (*quiebra*), normally the receiver, or any creditor if the receiver fails to act, would prefer to initiate bankruptcy avoidance actions and not the "*pauliana actio*", because in bankruptcy avoidance actions the burden of the proof shifts to the defendants, who must prove that the act has not caused any prejudice to creditors. This is normally difficult when the transaction involves dealing with an affiliate or causes the debtor to transfer a registered asset to a third party.

1.4.2 What risks exist for the transaction to be challenged and overturned in subsequent formal bankruptcy proceedings?

Bankruptcy avoidance actions (*acciones de ineficacia concursal*) are broadly regulated in articles 118 to 120 of the ABL. Generally, the ABL allows the receiver (or any admitted creditor, upon failure to act by the receiver) to demand the avoidance of any act performed by the bankrupt debtor during the "suspicious period".

The "suspicious period" is the term running from the date when the cessation of payment starts until the filing of the reorganisation proceedings (*concurso preventivo*) or the declaration of bankruptcy liquidation (*quiebra*), as applicable, and for the purpose of the avoidance actions cannot extend beyond 2 years as from such dates, whichever is prior (normally, the reorganisation proceeding filing date).

These actions are admitted only in a bankruptcy liquidation proceeding (*quiebra*) and the applicable statute of limitation is 2 years from the date of the bankruptcy liquidation decision.

The following acts performed by the debtor during the suspicious period are recognised as avoided acts as a matter of law, without any proof-taking process:

(i) any gratuitous act performed by the debtor;

(ii) advance payments of debts scheduled to mature on the date of the bankruptcy decision or thereafter; and

(iii) the granting of mortgages, pledges or any other kind of priority right as security for obligations that are not due and which originally were not entitled to such priority rights.

Additionally, the ABL provides that any other transaction executed by the debtor within the suspicious period may be subject to avoidance by the court if the following conditions are met: (i) at the time the act was executed, the third party was aware of the cessation of payment status of the debtor; and (ii) the act is detrimental to the debtor's creditors. The defendant must prove that the act has not caused any prejudice to creditors, which is normally difficult when a valuable asset was transferred by the debtor to a third party and the debtor ends up in insolvency.

The avoidance power rules have been criticised for covering a long period of time before filing without distinguishing between affiliates (or insiders) and non-affiliates, which tends to provide uncertainty to third parties when dealing with distressed companies that afterwards end up in bankruptcy. Likewise, the fact that the initial date of cessation of payment needs to be determined by the court prior to reaching a decision on these cases normally provides an incentive to the debtor and any prospective defendant to challenge the proceeding when the initial date of cessation is determined by the court, which normally increases the litigation costs and reduces the actual recovery for creditors.

1.4.3 What risks exist for a new lender investing in a distressed business?

There are no specific rules for lenders investing in distressed businesses. The loans made by a lender in a distressed business that ends up in bankruptcy liquidation would be subject to the risk of avoidance actions, as described in paragraph 1.4.2 above.

Argentine courts have decided several cases deeming acts performed by the debtor to be without effect (*ineficaz*) in circumstances where a security interest or any other type of guarantee is granted by the debtor for the benefit of a financial entity or any other lender.

The act remains valid, but it is unenforceable against the bankruptcy estate and creditors. In other words, for bankruptcy purposes, the court treats the act as if it had never been performed, but only *vis-à-vis* creditors. For example, an insolvent debtor may grant a mortgage to a lender shortly before bankruptcy. The mortgage remains valid, but the bankruptcy court may declare it unenforceable against the creditors, so the lender cannot rely on that mortgage to obtain priority in the liquidation. In turn, the bankruptcy estate effectively takes the place of the original creditor. As a result, if there were lower-ranking mortgages, they would not move up in priority when the first mortgage is deemed unenforceable; rather, because of that substitution, the proceeds of the sale of the asset would first be allocated to the bankruptcy estate and only, if anything remains, to the second-ranking mortgagee.

Further, in certain specific cases in which the lender has a day-to-day involvement with the debtor so that the debtor cannot adopt any management decisions without the lender's authorisation, the lender might incur a responsibility as a de facto director, in which case the provisions regulated in the GCL or ABL, as applicable, would apply.

Articles 59 and 274 of the GCL provide that directors may be liable in case of violation of their duty of loyalty or their duty of care. Article 173 of the ABL provides that any representative, manager, attorney-in-fact or agent of the debtor that has – with malice – "contributed, facilitated, permitted or worsened the debtor´s economic situation or its cessation of payment status" shall be responsible for any prejudice to creditors.

1.4.4 What risks exist for a new shareholder investing in a distressed business?

In addition to the risks described above (avoidance actions risks and liability actions risks), in the case of a subsequent bankruptcy liquidation (*quiebra*) proceeding of the distressed debtor, controlling shareholders might face the risks of bankruptcy extension actions, regulated in articles 161 et seq. of the ABL, concerning abuse or commingling of assets with the debtor.

The ABL distinguishes three situations in which the debtor's bankruptcy liquidation (*quiebra*) may be extended to a third party, each of them subject to different legal requirements, as follows:

(i) *the "maittre d´affaire" extension*. Bankruptcy liquidation shall be extended to any person that, under the appearance of the operation of the bankrupt entity, has undertaken actions in their own personal interest and disposed of the debtor's assets as if they were the person's own property in fraud to the creditors;

(ii) *the "abuse of dominant position" extension*. Secondly, bankruptcy shall be extended to any controlling entity that has unduly deviated the corporate interest of the debtor and has applied it to a unified management for the benefit of the controlling entity or economic group to which it belongs;[1] and

(iii) *the "commingling of debts and assets" extension*. Finally, the third situation entitles the bankruptcy extension to a third entity whenever there is a commingling of assets and debts situation between the debtor and the third entity that impedes the clear delimitation of all, or almost all, assets and debts.

2. Enforcement processes

2.1 What enforcement processes are available to distressed debt investors and M&A investors?

The CCC contains a specific Title (Title XII) regulating security interests (*derechos reales de garantías*) created on any type of claims, existing or contingent.

This Title establishes several common rules (i.e. not specifically applicable to distressed debt investors and M&A investors) regarding all types of security interests, such as mortgages and pledges. It sanctions as null and void any provision of an agreement that allows the creditor to acquire or dispose of the collateral in a different way or through a different modality to those stated in the law for each particular security interest (article 2198 of the CCC).

Except for non-possessory pledges, which are subject to special legislation (Decree 897/1995), the CCC provides that the rights arising from the pledge subsist only as long as the pledged property is in possession of the creditor or the designated third party.

Generally, creditors holding a security interest would be entitled to the following foreclosure actions:

a) Mortgages

(i) non-judicial enforcement according to the special regime set forth by Law 24,441[2] when expressly agreed upon in the mortgage agreement;

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1 For these purposes, "controlling entity" shall be considered: (a) any such company that either in a direct way or by means of a subsidiary holds a participation by any title that conferred the necessary votes to form the corporate will; and (b) each of the entities that, acting jointly, holds participation in the proportion mentioned in (a) and is responsible of the relevant contravening conduct (article 161 of the ABL).

2 The main characteristics of this regime are the following: (i) upon default, the debtor must be notified to pay the debt within 15 days under threat of enforcement,; (ii) if the deadline passes without payment, the creditor can request judicial verification of the occupancy status of the property and demand possession; (iii) the defences that the debtor can raise against this request are extremely limited; (iv) if no defences were opposed by the debtor or those opposed were dismissed by a final ruling, the debtor will be ordered to vacate the property within 10 business days under threat of eviction; (v) once the property is vacated, possession is handed over to the creditor who may then sell it at a public auction without judicial

(ii) enforcement through the specific mechanism expressly agreed upon in the mortgage agreement;[3] or

(iii) judicial enforcement through the proceeding provided by the applicable procedural code.

b) Pledges

(i) sale of the collateral (as pledged shares or other tangible objects) according to a public auction announced with at least 10 days' notice in the Official Gazette;

(ii) sale of the collateral through a special proceeding agreed by the parties in the pledge agreement, which may consist of the appointment of a third party to perform the sale pursuant to the market price set forth by certain institutions at the time of the sale; or

(iii) direct acquisition of the collateral by the creditor at a stated value to be set by an expert appointed by the parties, by the courts or by the procedure specified on the pledge agreement.[4]

2.2 What involvement does the court have in these processes?

If the mortgage foreclosure is carried out under Law No. 24,441 or through a similar non-judicial mechanism provided for in the constitutive instrument of the guarantee, the involvement of the court is minimal and typically includes:

(i) notifying the debtor of the creditor's request to verify the occupancy status of the property as well as the demand for possession;

(ii) resolving any potential defence raised by the debtor;

(iii) ordering the vacation of the property and delivering possession to the creditor;

(iv) ordering the auction of the property (which shall be conducted extrajudicially); and

(v) approving the rendering of accounts by the creditor.

If the foreclosure is carried out under the judicial process provided for in the respective procedural code, a court's decision shall be required to foreclose the collateral.

Likewise, if the pledge enforcement is carried out in accordance with the procedure set forth in the pledge agreement, the involvement of the court (and the eventual need for its approval to enforce) will depend on what has been agreed upon. Generally, involvement is minimal and does not include the court's approval to enforce, but its intervention is merely foreseen: (i) to resolve any conflict that may arise during the enforcement process; and (ii) to appoint a third party to carry out the sale process if the parties have failed to include any provision regarding this process, which is rarely the case.

If the pledge enforcement is carried out judicially, the court's approval will be required to enforce the collateral.

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intervention, through a designated auctioneer under usual market conditions; and (vi) after the auction, the creditor must submit a statement of the amount owed and the execution costs to the court, retaining the sale proceeds to cover the credit amount and depositing any surplus for the debtor's withdrawal.

[3] This procedure generally involves the participation of a security agent who may, at its sole discretion, choose to carry out either a judicial or a non-judicial enforcement. For the case of a non-judicial enforcement, it is typically established that: (i) it may be carried out by the security agent itself or by an agent or brokerage firm according to the agreed procedure; (ii) all expenses, costs, fees, and / or taxes related to the auction are paid by the shareholders; and (iii) the pledged shares can be purchased by the lender or by the security agent for the benefit of the lenders, in which case the net price is usually set off up to the sum equivalent to the outstanding secured obligations.

[4] Article 2229 of the CCC.

2.3 How does the enforcement of a pledge on the shares of a legal entity work?

2.3.1 Is it possible to implement a debt-for-equity swap as part of a share pledge enforcement?

Yes. Article 2229 of the CCC states that the share pledge agreement includes a provision that authorises the creditor to adjudicate the collateral (pledge shares) for the amount owed by the debtor, estimated by the expert appointed by the parties or pursuant to the proceeding stated by the parties or appointed by the courts at the request of the creditor.

2.3.2 Is a public auction mandatorily required or are private sales possible?

A public auction is not mandatorily required. The share pledge agreement may include public (judicial or non-judicial) or private auctions, or other sale mechanisms not involving auctions. For example, if the pledged shares are listed on capital markets, the sale can be made in the usual way applicable in those markets, at the market price. Further, the share pledge agreement may also set forth that the shares be adjudicated to the creditor at a price determined by an expert appointed by the parties or by the competent judge.

2.3.3 Is it possible to set aside transfer restrictions in the constituent documents of a legal entity as part of a share pledge enforcement?

No, restrictions regarding transfer of shares stated in the bylaws shall supersede and prevail over any terms included in the share pledge agreement.

2.3.4 Is "market testing" mandatorily required?

No. Market testing is not mandatory, but as a market practice it may be implemented through:

(i) public auction;

(ii) if agreed by the parties, the appointment of a third party to sell the pledged assed pursuant to the market price set forth by certain institutions at the time of the sale; or

(iii) direct acquisition of the collateral by the creditor at a stated value to be set by an expert appointed by the parties, by the courts or by the procedure specified in the pledge agreement.

2.3.5 Are valuation reports mandatorily required?

Yes, in the following cases:

(i) if the share pledge agreement sets forth a sale procedure which contemplates a report;

(ii) if the share pledge agreement provides for the direct acquisition of the shares by the pledgee at a value to be determined by an expert appointed by the parties, or by the procedure established in the share pledge agreement or by the competent judge; and

(iii) in the case of judicial execution, once the auction of the shares is ordered.

3. Pre-insolvency processes

3.1 What pre-insolvency processes are available to distressed debt and M&A investors?

In Argentina, there are two alternatives to complete out-of-court restructuring agreements during a pre-insolvency situation, which the ABL defines as "general economic and financial difficulties", as follows:

a) workout agreements, which are negotiated and signed completely out-of-court and are binding only between the signing parties. Like any other contract, they are subject to and governed by the terms of the agreement and the CCC;

b) *acuerdo preventivo extrajudicial* (APE), which in essence is a workout agreement judicially filed, which – provided certain requirements are satisfied and court homologation is issued – is binding not only on consenting but also on non-consenting pre-petition creditors. However, it is possible for a debtor to sign an APE with its creditors, without requiring court homologation (in which case the APE would be binding only among its signing parties, as is the case with any workout agreement).

There is no limitation in the ABL on the terms of the debtor's proposal to its creditors under an APE. In general, the debtor and creditors are free to negotiate and agree on any restructuring terms they deem appropriate.

After the debtor obtains the required consent from its creditors, it files the APE agreement with certain documentation related to its economic and financial situation with the relevant commercial court seeking judicial confirmation of the plan. Upon filing of the APE, provided the legal requirements are met, the court shall mandate that the notices be published in the Official Gazette and in an Argentine major newspaper for the duration of 5 business days. Once the court mandates the publication of the APE notices, all creditors holding pre filing claims are prevented from taking any legal action against the debtor.

In order to receive court homologation, the restructuring plan included in the APE must have been approved by: (i) an absolute majority of unsecured creditors; and (ii) a 2/3 majority of the total outstanding amount of the unsecured indebtedness being restructured under the APE. Although not expressly stated in the law, courts have permitted the debtor's aggregate unsecured indebtedness to be calculated only taking into account such liabilities which are included in the debtor's proposal, leaving aside claims which are not impaired.

Unless they agree, secured creditors are not impacted by the APE.

During a 10-day term counted as from the last publication of notices, affected creditors may object to the court's confirmation of an APE based on:

(i) the inaccuracy of the company's statements of assets and liabilities;

(ii) the failure to obtain the required consents needed for approval; or

(iii) on the ground that the proposal made by the debtor is abusive and / or fraudulent.

Once any opposition has been determined, the court shall consider whether to grant judicial approval or homologation to the APE, which if granted shall make the APE binding on all unsecured creditors included in the plan, even those that did not agree to the debtor's proposal.

During the following 6months after confirmation, the APE may be declared null and void if it is proved that: (i) the debtor intentionally altered the amount of its assets or liabilities, whether by exaggerating its liabilities or by hiding assets; and (ii) the debtor's wrongdoing was discovered only after the opposition period.

Further, and although it is not a pre-insolvency proceeding as it is operative upon the failure of a reorganisation proceeding of certain eligible debtors (notably, corporations and limited liability companies, among others), article 48 of the ABL regulates a so-called "Argentine cramdown". This authorises third parties to present their offers to acquire the equity interests of the debtor, prior to initiating a liquidation proceeding of the debtor.

Article 48 works as a last chance to avoid liquidation, with the goal of preserving the business, when the debtor's plan did not get the required consents.

In essence, it opens a "second round" proceeding, during which any third party (including the debtor) is entitled to propose a new plan to the admitted creditors. The first party that obtains the required consents from the creditors is entitled to take control of the debtor, with the current equity holders being obliged to transfer to such party the equity interests of the company.

In the event the court concludes that the equity interests have a positive value, the third party will have to pay (or guarantee) such positive value diminished in the same proportion as the debtor's liabilities, as per the terms of the plan to be approved. If the court concludes that, due to the amount of liabilities, the equity interests have a negative value, then the third party that has obtained the consents from the majority of the creditors representing 2/3 of the unsecured liabilities has the right to receive the shares without any further payment or consideration to the equity holders.

3.2 What involvement does the court have in these processes?

In a private workout agreement, there is no intervention of the courts, as this type of agreement is negotiated and signed completely out-of-court and binds only its signing parties.

In an APE, the court intervenes if and when the debtor files the restructuring plan – drafted as an agreement – with the required consents granted by its creditors and asks for judicial homologation, upon completion of the restructuring. Prior to the filing, there is no court intervention.

However, in a few cases involving a debtor with a relevant part of its liabilities as debt securities (*obligaciones negociables*) – in which the trustee had failed to call a bondholders' meeting or when the court considered that the consents provided by bondholders out-of-court needed to be ratified – prior to deciding on the homologation of the plan, the court summoned a bondholders' meeting to vote (or ratify, if already voted) the debtor´s proposal under the APE.[5]

The main task of the court is to verify that the debtor is an eligible debtor and that the requirements to grant judicial approval (homologation) to the restructuring plan agreement have been met. Any opposition must be grounded on:

(a) the inaccuracy of the company's statements of assets and liabilities;

(b) the failure to obtain the required consents needed for approval; or

(c) the debtor's proposal being abusive and / or fraudulent.

Finally, in a sale conducted under the procedure set forth by article 48 of the ABL (normally referred to as Argentine cramdown) – which as mentioned is not a pre-insolvency process as such – the proceeding is fully led by the court, which plays a relevant role. These transactions only involve equity interests of the corporate debtor, not assets. They are extremely rare in Argentina mainly due to the fact that the proceeding can only be initiated after the debtor´s failure to obtain the required consents to its proposal presented during the exclusivity period of the reorganisation proceeding, which may happen 2 years (or more) after the filing for reorganisation.

3.3 Who are the main players in these processes and are there any court-appointed insolvency practitioners?

In the APE, the main players are the debtor and its creditors and, in contested APEs, also the court.[6] There is no court-appointed receiver. Typically, when the debtor is a large company, financial advisors would be involved, with the main task of negotiating the economics of the deal with the main creditors' financial advisors.

In the case of sales of assets of debtors undergoing a reorganisation (*concurso preventivo*) or bankruptcy liquidation (*quiebra*) proceedings, as well as in the case of the transfer of shares due to article 48 of the ABL, receivers also play a relevant role in addition to the court.

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5 *See in re "Cablevisión S.A. s/ Acuerdo preventivo extrajudicial"*, SAIJ National Court of Appeals on Commercial Matters, Chamber D, 31 March 2008.

6 In the city of Buenos Aires – where the commercial courts are located and which is the natural forum for the APEs of large debtors – there are 31 Commercial Courts and 6 Court of Appeals.

3.4 Is there a typical due diligence process followed?

There is no typical due diligence process followed by distressed investors that decide to invest in a debtor which has undergone (or has successfully concluded) an APE with its main creditors. While the scope of the due diligence will ultimately depend on the industry involved as well as the type of company, the matters which are normally reviewed in depth are labour, environmental and tax matters, particularly due to successor liability concerns.

3.5 What is the typical timeline of an M&A sale under a pre-insolvency process and how does the process work?

M&A sales of companies undergoing pre-insolvency proceedings are not common in Argentina and therefore it is not possible to state a typical timeline of distressed sales.

The timeline will be highly impacted by whether the selling party would be in the vicinity of insolvency (or directly in reorganisation proceedings or APE). If the selling party is in the vicinity of insolvency, the purchaser may require that the seller files for reorganisation and asks for court authorisation to sell the assets, in order to avoid claw back actions.

If the seller is already in reorganisation (*concurso preventivo*), the transaction could not be completed without prior court authorisation. While there is not a standard proceeding, normally the third party would present an offer to buy certain assets from the debtor, which would in turn present a writ to the reorganisation court asking for permission to accept the offer. The court would require the opinion of the court-appointed receiver and of the creditors' committee and would then make a determination, taking into account the benefit of the offer for the continuance of the debtor's activity and the protection of creditors' rights. Although not mandatory, the court may also resolve to publish notices in a newspaper or the Official Gazette asking third parties to present offers.

3.6 Are M&A sales / asset sales protected under the pre-insolvency processes?

M&A sales or asset sales under pre-insolvency process are not *per se* protected in Argentina. Therefore, they are subject to avoidance actions in case the seller, after the sale is completed, ends up in bankruptcy liquidation (*quiebra*).

Notwithstanding that, the parties may decide to implement these transactions with court authorisation, either by including the sale offer presented by the third party as part of the debtor´s restructuring plan presented to the creditors during the reorganisation proceeding or by requiring the court to authorise the sale of assets of the debtor pursuant to article 16 of the ABL.

On the basis of article 121 of the ABL, which limits avoidance actions against transactions performed during the reorganisation proceeding upon court approval, the doctrine has traditionally concluded that these court-approved transactions are safe from claw-back actions in case the seller subsequently ends up in bankruptcy liquidation.

3.7 Are "pre-pack" processes (i.e. pre-packaged restructuring plans) permitted and how do they work?

Pre-pack processes in which the debtor agrees to transfer most (or directly all) of its assets to a third party purchaser and then file for court approval (either through a restructuring plan approved under an APE or *concurso preventivo*) – while not strictly prohibited under the ABL – are not commonly used in Argentina.

Nothing restricts a debtor from negotiating with a third party an agreement to sell some or most of its assets, subject to court authorisation. Once the commercial terms are agreed, the debtor may either: (i) include the proposed sale as part of the restructuring plan, seek consents from its creditors and then – once such consents are obtained – require that the court homologates the plan under an APE; or (ii) file for reorganisation and simultaneously require court authorisation to complete the deal under article 16 of the ABL.

The court will make a decision after hearing the opinions of the receiver and of the creditors' committee and should take into account the benefit of the transaction for the continuance of the debtor's activity and the protection of the creditors' rights.

Alternatively, a debtor which is already undergoing a reorganisation proceeding may include the sale of some, or most, of its assets as part of the plan presented to its creditors. In this case, for the plan to be approved, it must – as with any other plan – receive consents from an absolute majority of unsecured creditors that represent at least 2/3 of the total outstanding amount of the unsecured indebtedness affected by the plan.

4. Pre-pack sales

4.1 Are "pre-pack" sales (i.e. pre-packaged sales of all or parts of the business) permitted and how do they work?

Argentine insolvency law does not expressly regulate "pre-pack" sales in the strict sense in which they are understood in certain common law jurisdictions (notably the United Kingdom) – that is, pre-negotiated sales of all or a substantial part of the debtor's business implemented immediately upon, or very shortly after, the commencement of formal insolvency proceedings.

Notwithstanding the absence of an explicit statutory framework, however, pre-packaged sales are not prohibited under Argentine law and, in practice, may be structured and implemented through different legal mechanisms available under the ABL.

In broad terms, a pre-pack sale in Argentina may be defined as a transaction where the debtor negotiates in advance, outside of court, the commercial terms of a sale of assets or business units with a third party purchaser and subsequently seeks to implement that transaction with some degree of judicial involvement or approval. The objective is to preserve the going concern value of the business and minimise value destruction associated with prolonged insolvency proceedings.

From a structural standpoint, Argentine law allows pre-pack-like transactions to be implemented mainly through the following avenues:

- ***Inclusion of the sale as part of an APE restructuring plan***

  A debtor may negotiate with a third party purchaser the sale of all or a substantial part of its assets and incorporate this transaction into the terms of an APE. In this scenario, the sale is embedded in the restructuring plan presented to creditors, who are requested to grant their consent not only to the financial restructuring but also, indirectly, to the contemplated transfer of assets.

  Once the required majorities are obtained and the plan is judicially homologated, the transaction benefits from the effects of court approval, which, according to prevailing doctrine, significantly reduces the risk of subsequent avoidance actions in a later bankruptcy liquidation.

- ***Court-authorised sale under article 16 of the ABL in a reorganisation proceeding***

  Alternatively, the debtor may file for reorganisation proceedings and, either simultaneously with the filing or shortly thereafter, request court authorisation to complete a pre-negotiated sale of assets pursuant to article 16 of the ABL. This provision allows the court to authorise acts outside the ordinary course of business, including the sale of registered assets or business units, provided the transaction is deemed beneficial for the continuation of the debtor's activity and the protection of creditors' rights. In this context, the court must hear the opinion of the court-appointed receiver (*síndico*) and, if applicable, the creditors' committee, before issuing a decision.

- ***Incorporation of the sale into a reorganisation plan submitted during the exclusivity period***

  A debtor already undergoing reorganisation proceedings may also structure a pre-packaged sale as an integral component of the reorganisation plan submitted to creditors during the exclusivity period. In this case, the approval of the plan by the required majorities and its subsequent judicial homologation effectively validates the transaction, subject to compliance with general insolvency principles.

While these mechanisms allow for the practical implementation of pre-pack sales, Argentine practice shows that such transactions remain exceptional rather than standard. This is largely due to structural features of the Argentine insolvency system, including the absence of a statutory safe harbour for pre-pack transactions, the broad scope of avoidance actions, and a judicial culture traditionally cautious with respect to transactions negotiated prior to court involvement.

Nevertheless, landmark cases demonstrate that Argentine courts are willing to authorise and uphold pre-negotiated sales of substantially all of the debtor's assets at an early stage of insolvency proceedings when the transaction clearly maximises value, preserves employment and offers better recovery prospects for creditors than a piecemeal liquidation. These cases suggest that, although not formally codified, pre-pack sales are functionally feasible under Argentine law when properly structured and supported by compelling economic and social considerations.

4.2 Who are the main players in these processes and are there any court-appointed insolvency practitioners?

Given the absence of a formally regulated pre-pack regime under Argentine law, the identification of the main players involved in pre-pack sales necessarily depends on the legal mechanism through which the transaction is structured. In all cases, however, pre-pack sales in Argentina involve a combination of private actors and, at some stage, judicial oversight.

At a minimum, the core participants in a pre-pack sale are:

- ***The debtor and its management***

  The debtor, acting through its management and corporate bodies, plays a central role in the negotiation and structuring of the pre-pack sale. As the transaction is typically negotiated prior to court involvement, management is responsible for identifying potential purchasers, negotiating the commercial terms of the sale and assessing whether the proposed transaction maximises the value of the business as a going concern. In distressed scenarios, directors' duties are heightened and management must balance the interests of shareholders with those of creditors, particularly where the sale may result in a change of control or the transfer of substantially all of the debtor's assets.

- ***The purchaser or investor***

  The purchaser is usually a strategic investor or a financial sponsor with the capacity to assume operational, labour and, in certain cases, environmental contingencies associated with the business. In Argentine practice, successful pre-pack transactions have generally involved purchasers willing not only to pay a competitive price, but also to assume employment-related obligations and ensure continuity of operations, which courts tend to view as a decisive factor when authorising early-stage asset sales.

- ***Creditors and, where applicable, ad hoc creditor committees***

  Although creditors are not directly involved in the negotiation of the sale in purely out-of-court stages, they play a critical role when the transaction is embedded in an APE or a reorganisation plan, as their consent is required for approval. In practice, financial creditors – particularly banks and bondholders – often exert significant influence over the structure of the transaction, either through restructuring support agreements or informal negotiations conducted in parallel with the debtor and the purchaser.

- ***The court***

  Judicial involvement arises once the transaction requires approval or homologation, either through an APE, a reorganisation plan or a request under article 16 of the ABL. Unlike jurisdictions with formal pre-pack regimes, Argentine courts do not supervise the negotiation phase, but they retain broad discretion at the approval stage to assess whether the transaction is compatible with insolvency principles, including the preservation of the business, the protection of creditors' rights and the absence of fraud or abuse.

- ***Court-appointed insolvency practitioners***

  There are no court-appointed insolvency practitioners involved in pre-pack sales structured exclusively through an APE prior to court filing. However, once the debtor is subject to a reorganisation proceeding, a court-appointed receiver (*síndico*) becomes a key participant. The *síndico* is required to issue a reasoned opinion on the proposed sale, focusing on whether the transaction benefits the continuation of the debtor's activity and improves creditors' recovery prospects when compared to alternative scenarios, such as liquidation.

  Although the *síndico* does not negotiate the transaction and has no decision-making authority, its opinion carries significant weight in the court's assessment. In practice, adverse opinions by the *síndico* substantially reduce the likelihood of court approval, while favourable opinions often facilitate an expedited decision.

  Unlike some foreign pre-pack regimes, Argentine law does not allow creditors or investors to influence the appointment of the *síndico*. The practitioner is appointed by the court pursuant to statutory rules, and parties have a limited ability to challenge the appointment, except on general grounds of conflict of interest or lack of independence.

  In summary, pre-pack sales in Argentina are characterised by a hybrid governance structure: negotiations are led by private actors outside of court, while judicial authorities and court-appointed insolvency practitioners intervene at the approval stage, primarily as ex-post reviewers of the transaction rather than as active participants in its design. This structural feature distinguishes Argentine pre-pack practice from more institutionalised models and partially explains both the limited use and the cautious judicial scrutiny of such transactions.

4.3 Can M&A or debt investors influence the appointment of insolvency practitioners?

As a general rule, M&A or distressed debt investors have no ability to control or influence the appointment of court-appointed insolvency practitioners in connection with pre-pack sales under Argentine law.

This is a direct consequence of two structural features of the Argentine insolvency framework: (i) the absence of a formally regulated pre-pack regime; and (ii) the mandatory and court-driven system for the appointment of insolvency practitioners once formal insolvency proceedings are commenced.

In Argentina, insolvency practitioners are appointed exclusively by the competent commercial court from officially approved lists, pursuant to the rules in the ABL and the applicable procedural regulations. The appointment is based on objective criteria, including rotation systems and professional qualifications, and is not subject to party nomination or contractual agreement. As a result, neither the debtor nor its creditors – and, *a fortiori*, third party investors – may designate, propose or veto a particular practitioner in advance.

This lack of influence applies equally to all scenarios in which a *síndico* becomes involved in a transaction that may qualify, in economic terms, as a pre-pack sale, including sales of assets authorised under article 16 of the ABL during a reorganisation proceeding, as well as transactions embedded in a reorganisation plan subject to judicial approval.

The only limited exception arises after the appointment has taken place, where parties may seek the removal or replacement of the *síndico* on general legal grounds, such as lack of independence, conflict of interest or serious breach of duties. However, these challenges are exceptional. They are subject to a high evidentiary threshold and cannot be used as a mechanism to appoint a preferred practitioner.

From a practical standpoint, this structural feature has relevant implications for distressed investors. Unlike jurisdictions where pre-pack regimes allow a high degree of investor influence over the appointment of insolvency professionals – often as a means of ensuring speed and transactional certainty – Argentine law prioritises institutional neutrality and judicial control over efficiency considerations. While this approach reinforces the perception of procedural fairness, it may also limit the predictability of outcomes from the investor's perspective, particularly in complex or time-sensitive transactions.

In this context, experienced investors typically mitigate this limitation by focusing their efforts on structuring transactions that are robust on their merits, economically sound and clearly aligned with the interests of creditors and the continuity of the business. In practice, transactions that demonstrate these characteristics are more likely to receive favourable opinions from court-appointed practitioners, regardless of the identity of the *síndico* involved.

4.4 Is there special protection for certain types of creditors in "pre-pack" sales?

Argentine law does not provide a specific or bespoke statutory regime granting special protection to certain categories of creditors exclusively in the context of pre-pack sales. Instead, the protection of particular creditors – most notably employees – derives from general labour and insolvency rules, which remain fully applicable regardless of whether the transaction is structured as a pre-pack sale or as a traditional asset sale during insolvency proceedings.

From a labour law perspective, employee protection constitutes the most significant constraint in the structuring of pre-pack sales in Argentina. Pursuant to article 225 of Argentine Labour Law No. 20,744, when a transaction qualifies as a "transfer of establishment" (*transferencia de establecimiento*), the purchaser is deemed to be the successor employer and automatically assumes all labour obligations existing at the time of the transfer. This includes not only accrued salaries and benefits, but also seniority, ongoing employment relationships and liabilities arising as a consequence of the transfer itself.

As a result, pre-pack sales involving the transfer of a going concern – rather than isolated assets – typically entail the automatic continuation of employment contracts with the purchaser, unless specific agreements are reached with employees or labour authorities. This regime operates independently of court approval and applies even where the sale is authorised under article 16 of the ABL or embedded in a court-approved restructuring plan.

From an insolvency law standpoint, labour claims enjoy a high level of statutory protection. The ABL grants employees special privileges over certain categories of assets and establishes priority rules that remain applicable in any insolvency scenario. However, these privileges do not translate into a distinct procedural role for employees in pre-pack sales, nor do they grant employees veto rights over transactions. Instead, employee interests are typically represented indirectly through the court's assessment of whether the transaction preserves employment and maximises value for the estate.

In practice, Argentine courts have shown a strong inclination to favour pre-pack-like transactions that preserve jobs and maintain business continuity. Landmark cases illustrate that judicial authorisation of early-stage asset sales has been significantly influenced by the purchaser's commitment to retain employees, assume labour liabilities and ensure uninterrupted operations. While these commitments are not formally mandated by insolvency law, they have become a de facto condition for court approval in transactions involving substantial workforces.

In contrast, other categories of creditors do not benefit from special statutory protections tailored to pre-pack sales. Secured creditors retain their rights in accordance with the general rules governing security interests and unsecured creditors' protection is limited to the safeguards inherent in the applicable insolvency mechanism, such as majority approval requirements and judicial scrutiny for abuse or fraud. There is no equivalent to a "ring-fencing" regime or statutory carve-outs designed specifically for pre-pack transactions.

In summary, while Argentine law does not establish a pre-pack-specific creditor protection framework, employee rights and labour liabilities operate as a central structural constraint in the design and execution of pre-pack sales. The combination of strict successor liability rules and a judiciary traditionally protective of employment has shaped market practice, effectively requiring that successful pre-pack transactions address labour continuity as a core element of their economic and legal rationale.

4.5 Is there a typical due diligence process followed?

Argentine law does not impose a mandatory or court-supervised due diligence process in connection with pre-pack sales. As pre-pack transactions are negotiated primarily outside of court and only later submitted for judicial approval, the scope, depth and methodology of due diligence are determined by market practice rather than by statutory or procedural requirements.

In practice, however, pre-pack sales in Argentina are characterised by highly targeted and risk-driven due diligence exercises, shaped by the legal risks inherent in acquiring assets or a going concern from a distressed debtor. Unlike standard M&A transactions, where comprehensive due diligence across all areas is customary, distressed investors tend to prioritise specific risk areas that may materially affect value or generate post-closing liabilities.

The areas most commonly subject to enhanced scrutiny include:

- ***Labour and employment matters***

  Given the automatic successor liability regime applicable to transfers of establishments, labour due diligence is invariably the most critical component of the process. Investors typically focus on the number of employees, seniority, collective bargaining agreements, outstanding wage claims, social security contributions and the existence of pending or threatened labour litigation. Particular attention is paid to identifying contingent liabilities that may crystallise upon transfer, as well as to the feasibility of workforce continuity in operational and economic terms.

- ***Tax and social security exposure***

  Distressed investors routinely conduct in-depth reviews of federal, provincial and municipal tax liabilities, including audits, assessments and enforcement proceedings. While asset purchases may allow for some degree of ring-fencing, tax authorities in Argentina have historically sought to assert successor liability claims in certain circumstances, making this area a key focus of diligence.

- ***Environmental liabilities***

  Environmental due diligence has gained increasing relevance in recent years, particularly in transactions involving industrial assets, energy infrastructure or regulated activities. Investors seek to assess not only existing contamination or remediation obligations, but also ongoing compliance with environmental permits and the potential exposure to administrative sanctions or civil claims. This area is especially relevant in pre-pack contexts, as environmental liabilities may survive insolvency proceedings and materially affect the economics of the transaction.

- ***Title, regulatory and operational matters***

  Investors typically verify title to key assets, the existence and enforceability of material contracts and compliance with sector-specific regulatory regimes. In regulated industries, the ability to transfer licences or obtain regulatory approvals may be a condition precedent to closing and is therefore analysed early in the process.

As regards ESG considerations and energy transition targets, Argentine practice remains at an early and uneven stage when compared to more developed markets. While ESG-focused due diligence is not yet standard in domestic distressed transactions, international investors and strategic buyers – particularly those subject to foreign regulatory or reporting obligations – are increasingly incorporating ESG-related assessments into their diligence processes. This trend is more pronounced in sectors such as energy, natural resources, agribusiness and infrastructure.

Notwithstanding this evolution, ESG diligence in Argentina remains largely pragmatic rather than normative. It is driven by risk mitigation and future compliance considerations rather than by formal insolvency or M&A requirements. Courts do not currently require ESG disclosures or assessments as a condition for approving pre-pack sales. Such considerations typically influence the transaction indirectly, through pricing adjustments or purchaser commitments, rather than through procedural safeguards.

In summary, while there is no typical or mandated due diligence process for pre-pack sales in Argentina, market practice reflects a selective but intensive approach, focused on labour, tax and environmental risks. The scope of diligence is closely aligned with the specific risk profile of distressed acquisitions and continues to evolve as international standards and investor expectations gradually permeate the local market.

4.6 Is "market testing" mandatorily required?

Argentine law does not mandate "market testing" as a formal or procedural requirement for pre-pack sales. The ABL does not impose an obligation to conduct competitive bidding processes, public tenders or other market-testing mechanisms as a condition for the validity or enforceability of pre-negotiated asset sales implemented through an APE or authorised under article 16 of the ABL.

That said, the absence of a statutory requirement does not mean that market testing is irrelevant in practice. On the contrary, market exposure operates as an implicit and highly relevant factor in the judicial assessment of pre-pack transactions, particularly when the sale involves substantially all of the debtor's assets or a going concern.

In cases where court authorisation is required – most notably sales approved under article 16 of the ABL during reorganisation proceedings – courts routinely assess whether the agreed price and terms reasonably reflect market value. While the court is not bound to require a competitive process, it retains broad discretion to do so if it considers that the lack of market exposure may prejudice creditors' interests. In this context, courts may request the publication of notices inviting third parties to submit competing offers or may condition approval on the absence of better proposals within a certain period.

From a practical perspective, debtors and purchasers often proactively incorporate elements of market testing into the transaction structure to mitigate judicial scrutiny and reduce the risk of subsequent challenges. These elements may include:

- informal canvassing of potential buyers prior to entering into exclusivity with the selected purchaser;
- submission of evidence demonstrating that other potential purchasers were approached but did not submit binding offers; or
- acceptance of a limited "overbid" process following the filing of the request for court authorisation.

However, these practices are not standardised and vary significantly depending on the court, the complexity of the case and the economic relevance of the assets involved. Unlike jurisdictions with formal pre-pack regimes, Argentine law does not provide a framework to balance speed against transparency through predefined market-testing protocols.

The lack of mandatory market testing has been one of the main sources of doctrinal criticism of pre-pack-like transactions in Argentina. Critics argue that pre-negotiated sales without adequate market exposure may facilitate undervaluation, favour insiders or undermine creditor confidence. Conversely, proponents emphasise that excessive market testing may erode going concern value, delay transactions and ultimately reduce recoveries.

In practice, Argentine courts have tended to adopt a case-by-case approach, weighing the urgency of the transaction and the risk of value destruction against the benefits of broader market exposure. Transactions that convincingly demonstrate that speed is essential to preserve value – particularly where operations have effectively ceased or liquidity has been exhausted – are more likely to be approved without extensive market testing.

In summary, while market testing is not mandatorily required for pre-pack sales under Argentine law, it plays a de facto evidentiary role in judicial decision-making. Parties structuring pre-pack transactions must carefully assess whether, and to what extent, some form of market exposure is advisable to support the legitimacy and robustness of the transaction.

4.7 Are valuation reports mandatorily required?

Argentine law does not impose a general or automatic requirement to obtain valuation reports in connection with pre-pack sales. The ABL does not establish mandatory valuation standards or appraisal obligations specifically applicable to pre-packaged transactions, nor does it require that an independent valuation be conducted as a condition precedent for court approval of a pre-negotiated sale.

As with market testing, the role of valuation in pre-pack sales is governed by judicial discretion and market practice, rather than by statutory mandate. Whether a valuation report is required – formally or in practice – depends on the legal mechanism used to implement the transaction and on the particular circumstances of the case.

In transactions structured through an APE, valuation reports are not legally required. Since the sale is embedded in a restructuring agreement approved by the requisite creditor majorities, courts tend to focus on the existence of informed creditor consent and the absence of abuse or fraud, rather than on the formal production of valuation evidence. In this context, creditors are presumed to have assessed the economic rationale of the transaction when granting their consent.

By contrast, where a pre-pack sale is submitted for court authorisation under article 16 of the ABL during a reorganisation proceeding, valuation considerations become more relevant. While the court is not obliged to require an independent valuation, it must assess whether the transaction is reasonably aligned with the interests of the estate and creditors. To that end, the court-appointed receiver is required to issue an opinion on the proposed sale, which typically includes an assessment – explicit or implicit – of whether the price offered reflects market conditions and exceeds expected liquidation value.

If the court considers that the receiver's opinion is insufficient, incomplete or inconclusive, it may request additional evidence, including the appointment of a financial expert to issue a valuation report. This power is discretionary and is exercised primarily in cases involving significant assets, related-party transactions or allegations of undervaluation raised by creditors.

In practice, parties to pre-pack transactions often voluntarily produce valuation materials – such as fairness opinions, liquidation value analyses or comparative transaction benchmarks – to support the court's review and pre-empt objections. These materials are not required by law, but they do serve an important evidentiary function, particularly where the transaction lacks extensive market testing or is negotiated with a limited pool of potential purchasers.

From a policy perspective, the absence of mandatory valuation requirements has been both defended and criticised. Proponents argue that flexibility allows courts to adapt their level of scrutiny to the urgency and complexity of each case, avoiding rigid procedures that may delay value-preserving transactions. Critics, however, contend that the lack of formal valuation safeguards increases uncertainty and may undermine transparency, particularly in transactions involving insiders or accelerated timelines.

In summary, valuation reports are not mandatorily required for pre-pack sales under Argentine law. Nevertheless, valuation evidence plays a material practical role in judicial decision-making and risk mitigation. In the absence of statutory requirements, parties must assess, on a case-by-case basis, whether the production of valuation materials is advisable to support court approval and enhance the robustness of the transaction.

4.8 What is the typical timeline of "pre-pack" sales?

There is no typical or standardised timeline for pre-pack sales in Argentina. The absence of a formally regulated pre-pack regime, combined with the discretionary nature of judicial intervention, means that the duration of such transactions varies significantly depending on the legal structure adopted, the complexity of the business and the degree of court involvement required.

From a practical standpoint, it is useful to distinguish between the negotiation phase and the implementation phase.

The negotiation phase of a pre-pack sale – during which the debtor and the purchaser agree on the commercial terms of the transaction – takes place entirely out of court and may be relatively swift, particularly where the pool of potential buyers is limited or where liquidity constraints require urgent action. Depending on the circumstances, this phase may range from a few weeks to several months and is largely driven by commercial considerations rather than legal constraints.

The implementation phase, by contrast, is subject to procedural timelines that tend to reduce the speed advantages typically associated with pre-pack regimes in other jurisdictions. Where the transaction is embedded in an APE, the overall timeline is influenced by the time required to obtain creditor consents, file the agreement, complete the notice period, resolve any objections and obtain judicial homologation. In practice, this process may take several months, even in relatively straightforward cases.

Where the pre-pack sale requires court authorisation under article 16 of the ABL during a reorganisation proceeding, timelines are similarly uncertain. While courts may act expeditiously in cases involving imminent value destruction, the need to hear the opinion of the court-appointed receiver and, where applicable, the creditors' committee, combined with the possibility of objections or appeals, often extends the timeframe. First-instance decisions may be obtained within a few months, but appellate review can significantly lengthen the process.

As a result, Argentine pre-pack sales do not typically achieve the near-immediate execution seen in jurisdictions with formal pre-pack mechanisms. Instead, they represent an intermediate solution, offering greater speed and flexibility than traditional insolvency asset sales, but falling short of the efficiency associated with fully codified pre-pack regimes.

Notwithstanding these limitations, judicial practice shows that courts are willing to accelerate timelines in exceptional cases where delay would materially erode value, jeopardise employment or render the business non-viable. In such cases, courts have demonstrated a pragmatic approach, prioritising substance over form and authorising transactions within compressed timeframes.

In summary, while pre-pack sales in Argentina can be faster than conventional asset sales conducted during liquidation, they remain subject to procedural uncertainties and judicial discretion. The lack of a predictable and expedited timeline underscores the broader debate on the need for legislative reform to introduce clearer and more efficient pre-pack mechanisms aligned with international best practices.

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Member Associations

AAESI Asociación Argentina de Estudios Sobre la Insolvencia
ABI American Bankruptcy Institute
AKPI Asosiasi Kurator Dan Pengurus Indonesia
APACSA Asociación Profesional de Administradores Concursales Sainz de Andino
APDIR Associação Portuguesa de Direito da Insolvência e Recuperação
ARIES Association of Restructuring and Insolvency Experts (Channel Islands)
ARITA Australian Restructuring, Insolvency and Turnaround Association
ATIK Association of Turnaround and Insolvency Kenya Ltd
AUAIRE Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales
BLRRC-CUPL Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law
BRIPAN Business Recovery and Insolvency Practitioners Association of Nigeria
BRP Business Recovery Professionals (Mauritius) Ltd
CAIRP Canadian Association of Insolvency and Restructuring Professionals
CIRIP Ghana Chartered Institute of Restructuring and Insolvency Practitioners Ghana
CLLA Commercial Law League of America (Bankruptcy and Insolvency Section)
DRA Dutch Restructuring Association
EISAR Bankruptcy Commission (Saudi Arabia)
FILA Finnish Insolvency Law Association
GDABA Guangdong Association of Bankruptcy Administrators
HKICPA Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)
IAIR International Association of Insurance Receivers
IBR Instituto Brasileiro de Estudos de Recuperação de Empresas
IIDC Instituto Iberoamericano de Derecho Concursal
IIDC Colombia Instituto Iberoamericano de Derecho Concursal – Capitulo Colombiano
IIIPI-ICAI Indian Institute of Insolvency Professionals of the Institute of Chartered Accountants of India
INSOL Europe
INSOL India
INSOLAD Vereniging Insolventierecht Advocaten
IPAM Insolvency Practitioners Association of Malaysia
IPAS Insolvency Practitioners Association of Singapore
IWIRC International Women's Insolvency and Restructuring Confederation
JFIP Japanese Federation of Insolvency Professionals
LCA Law Council of Australia (Business Law Section)
MIA Malaysian Institute of Accountants
MICPA Malaysian Institute of Certified Public Accountants
NAFER National Association of Federal Equity Receivers
NIVD Neue Insolvenzrechtsvereinigung Deutschlands e.V.
R3 Association of Business Recovery Professionals
RISA Bahamas Restructuring and Insolvency Specialists Association (Bahamas)
RISA Bermuda Restructuring and Insolvency Specialists Association of Bermuda
RISA BVI Recovery and Insolvency Specialists Association (BVI) Ltd
RISA Cayman Recovery and Insolvency Specialists Association (Cayman) Ltd
RITANZ Restructuring Insolvency & Turnaround Association of New Zealand
SARIPA South African Restructuring and Insolvency Practitioners Association
SBLA Serbian Bankruptcy Law Association
TMA Turnaround Management Association (INSOL Special Interest Group)
TMA Brasil Turnaround Management Association Brasil
XMABA Xiamen Association of Bankruptcy Administrators

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