Global Restructuring and Insolvency Guide - Argentina

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# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Extrajudicial voluntary agreement**

Generally yes, before filing for the reorganization or the ruling setting forth the start of the liquidation bankruptcy.

**Reorganization proceedings**

Once reorganization proceedings begin, no further security interests can be granted over the debtor's assets for credits due before the beginning of the reorganization proceedings.

The debtor can grant security interests for new creditors after reorganization proceedings commence.

**Liquidation bankruptcy**

As from the start of the liquidation proceeding, no further security interests can be granted over the assets of the debtor.

## What is the nature of the insolvency process?

**Extrajudicial voluntary agreement**

Insolvency is an alternative to reorganization proceedings, by means of which the debtor enters into an out-of-court settlement with its creditors. The settlement is filed with a court for its approval. Once the approval is granted, the agreement shall be enforceable vis-a-vis all creditors, even those who did not participate in it.

**Reorganization proceedings**

The court process leads to a composition agreement with creditors to avoid the debtor's liquidation — The debtor is allowed to restructure its debt if the appropriate requirements are met.

**Liquidation bankruptcy**

Bankruptcy basically means judicial liquidation of the legal entity. Bankruptcy is only reached through the intervention of the commercial court corresponding to the jurisdiction where the company is registered. There is no minimum number of creditors. For bankruptcy declaration purposes, just one unpaid creditor is enough; the debtor's company may even file for bankruptcy.

Upon bankruptcy declaration, all the debtor's assets are liquidated and funds are duly distributed among the creditors. The bankrupt entity shall be managed by the "síndico" or "bankruptcy liquidator" under the supervision of the competent court.

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Extrajudicial voluntary agreement**

The debtor shall evidence either financial-economic difficulties of a general nature, or the suspension of payments of current, due and outstanding debts regardless of the cause or nature of the debt.

**Reorganization proceedings**

The prerequisite to file for reorganization proceedings set forth by Bankruptcy Law No. 24,522 (BL) and its amendments is the suspension of payments of current, due and outstanding debts regardless of the cause or nature of the debt. The reorganization includes all assets of the insolvent company (i.e., the debtor's whole estate), with few exceptions outlined in the BL. Corporations must file for reorganization through their legal representative, and a shareholders' meeting must ratify such resolution within the following 30 days of the filing.

**Liquidation bankruptcy**

In general terms, the basis for becoming bankrupt is that liabilities exceed the amount of assets and that the debtor has a so-called "cessation of payments" status ("estado de cesación de pagos"). The court shall declare the bankruptcy and determine the starting date of the cessation of payment status ("Insolvency Date"), which shall precede the bankruptcy declaration date. The debtor is able to declare its own "cessation of payments" status.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Extrajudicial voluntary agreement**

In the case of debtors domiciled abroad, the competent court to intervene in the approval of the extrajudicial voluntary agreement shall be that of the place of its administration, or otherwise, the place of its main activity, as the case may be.

**Reorganization proceedings**

In the case of debtors domiciled abroad, the competent court to intervene in the reorganization proceedings shall be that of the place of its administration, or the place of its main activity, as the case may be.

**Liquidation bankruptcy**

In the case of debtors domiciled abroad, an Argentine court will be entitled to declare bankruptcy on a foreign entity only regarding the assets existing within the territory of the Argentine Republic.

## Is restructuring of both secured and unsecured claims possible?

**Extrajudicial voluntary agreement**

Only if all unsecured creditors approve the proposal agreement.

**Reorganization proceedings**

Only if all unsecured creditors approve the proposal agreement.

**Liquidation bankruptcy**

N/A

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Extrajudicial voluntary agreement**

The debtor must file with the court a categorization proposal of registered creditors, which must be made considering the amount of their credits, the existence of security interests, and the nature and cause of the credits. The proposal must have at least three categories: (i) unsecured commercial creditors, (ii) unsecured labor creditors, and (iii) secured creditors.

**Reorganization proceedings**

The same as the extrajudicial voluntary agreement process.

**Liquidation bankruptcy**

N/A

## Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?

**Extrajudicial voluntary agreement**

Shareholder approval is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing with the court of the extrajudicial voluntary agreement.

After filing the trustee's report, the judge will render a decision taking into account the origin of the creditors' claims. Shareholders whose credits have been approved can vote, with the exception of those shareholders who are the main controllers of the company. The main controllers are, for example, those shareholders who can directly or indirectly control the debtor (e.g., those who own more than 50% of the shares).

**Reorganization proceedings**

The approval of the shareholders is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing with the court of the reorganization proceeding.

Shareholders' creditors, whose credits have been approved by the judge, can express their approval of the proposal, with the exception of those shareholders who are the main controllers of the company. The main controllers are, for example, those shareholders who can exercise the social will by themselves (e.g., those who own more than 50% of the shares).

**Liquidation bankruptcy**

If the debtor files for its own bankruptcy, the same approval as in the reorganization proceedings is required.

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Extrajudicial voluntary agreement**

If the court approves the agreement, it will be enforceable vis-a-vis all unsecured creditors of the debtor, including dissidents or those who were not involved in the agreement.

**Reorganization proceedings**

If the court approves the agreement, it will be enforceable vis-a-vis all unsecured creditors of the debtor, including dissidents or those who were not involved in the agreement.

**Liquidation bankruptcy**

N/A

# Commencing the Process

## Who can commence?

**Extrajudicial voluntary agreement**

The debtor's legal representative can commence the process with the previous order of the board of directors or the administrative body of the company.

**Reorganization proceedings**

The debtor's legal representative can commence the process with the previous order of the board of directors or the administrative body of the company.

**Liquidation bankruptcy**

The bankruptcy of the debtor could be declared: (i) based on the failure of the reorganization proceeding, (ii) upon request of the debtor, (iii) upon request of any creditor.

In case the debtor requests its own bankruptcy, the same provisions as in the case of the reorganization proceedings shall apply.

## Is shareholder's consent required to commence proceeding?

**Extrajudicial voluntary agreement**

Shareholders' approval is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing of the extrajudicial voluntary agreement with the court.

**Reorganization proceedings**

Corporations must file for reorganization through their legal representative, and such resolution must be ratified by a shareholders' meeting within the following 30 days as of the date of filing.

**Liquidation bankruptcy**

Corporations that file for voluntary bankruptcy proceedings through their legal representative require ratification by a shareholders' meeting within the following 30 days as of the date of filing.

## Is there an ability to consolidate group estates?

**Extrajudicial voluntary agreement**

Yes. When two or more natural or legal persons permanently integrate an economic group, they can jointly file the extrajudicial voluntary agreement with the court by stating the facts on which they base the group's existence and its externalization.

The request must include all the members of the group without exclusions. The judge may dismiss the petition if it considers that the existence of the group has not been proved.

**Reorganization proceedings**

Yes. When two or more natural or legal persons permanently integrate an economic group, they can jointly request reorganization proceedings by stating the facts on which they base the group's existence and its externalization.

The request must include all the members of the group without exclusions. The judge may dismiss the petition if it considers that the group's existence has not been proved.

**Liquidation bankruptcy**

No. However, the liquidation bankruptcy can be extended to the group estates in case of fraud.

## Is there any court involvement?

**Extrajudicial voluntary agreement**

The court does not intervene until the debtor files the agreement with its creditors for approval.

**Reorganization proceedings**

Yes. Once the legal requirements are fulfilled in due time, the court must enter a judgment stating the opening of the reorganization proceedings and set all the corresponding dates for the different stages of the process.

**Liquidation bankruptcy**

Yes. Bankruptcy is only declared with the intervention of the commercial court.

## Who manages the debtor?

**Extrajudicial voluntary agreement**

The debtor retains the administration of the estate.

**Reorganization proceedings**

The debtor retains the administration of the estate, under the supervision of the trustee.

**Liquidation bankruptcy**

The bankruptcy liquidator retains the administration of the estate.

## What is level of disclosure of process to voting creditors?

**Extrajudicial voluntary agreement**

Notices are published in the official gazette stating that the debtor has filed an extrajudicial voluntary agreement for judicial approval in this regard.

Based on the information creditors have about the debtor, they can negotiate the agreement before signing it.

**Reorganization proceedings**

Notices are published in the official gazette stating that the debtor has requested a reorganization proceeding.

Based on the information creditors have about the debtor and that provided by the debtor, the trustee has to file its report before appointing the agreement so that creditors know the debtor's financial situation.

**Liquidation bankruptcy**

Notices are published in the official gazette stating that the debtor has filed for a liquidation bankruptcy.

There is no agreement in this case; nevertheless, the trustee has to file its report regarding the debtor's financial situation.

## What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?

**Extrajudicial voluntary agreement**

Insurance companies and financial institutions are not eligible for reorganization proceedings, nor can they enter into an extrajudicial voluntary agreement.

**Reorganization proceedings**

Insurance companies and financial institutions are not eligible for reorganization proceedings.

**Liquidation bankruptcy**

Although financial institutions are not eligible for reorganization proceedings, they can go into liquidation bankruptcy.

## How long does it generally take for a creditor to commence the procedure?

**Extrajudicial voluntary agreement**

The time to request judicial approval will depend on the time spent obtaining the consent of all creditors pursuant to the agreed specifications. It will also depend on the time spent complying with all the requirements to file the agreement in court.

Once the agreement is filed, edicts must be published for five days in a widely published newspaper, according to the specific requirements. The creditors listed by the debtor and those who summarily prove to have been omitted from the list may oppose the agreement within the following ten days from the last day of publication of the edicts.

**Reorganization proceedings**

It depends on the time spent complying with all the requirements to file the agreement with the court. Generally, a few weeks.

**Liquidation bankruptcy**

It depends on the time spent complying with all the requirements to file the agreement with the court. Generally, a few weeks.

If requested by a creditor, it can take between six months to three years until the liquidation bankruptcy is declared.

# Effect of Process

## Does debtor remain in possession with continuation of incumbent management control?

**Extrajudicial voluntary agreement**

Yes. The debtor retains the administration of its estate.

**Reorganization proceedings**

Yes. The debtor retains the administration of its estate under the supervision of the trustee.

**Liquidation bankruptcy**

No. The trustee retains the administration of the company's estate.

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Extrajudicial voluntary agreement**

There is no stay protection as the extrajudicial voluntary agreement is entirely private until the request for judicial approval. However, as explained above, once the approval is granted, the agreement shall be enforceable vis-a-vis all creditors, even those who did not participate in the process or did not agree on the extrajudicial voluntary agreement term.

**Reorganization proceedings**

Once the judge declares the beginning of the reorganization proceeding, the debtor obtains immediate protection from actions against its assets and operations. By operation of the automatic stay, creditors are prohibited from attempting to collect pre-petition debts of the debtor, seize its assets or otherwise exercise control over its property. For example, the automatic stay prohibits the commencement or continuation of litigation against the debtor or an attempt by a creditor to foreclose the property of the debtor.

**Liquidation bankruptcy**

N/A

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Extrajudicial voluntary agreement**

No

**Reorganization proceedings**

No

**Liquidation bankruptcy**

No

## Can procedure be used to implement a debt-to-equity swap?

**Extrajudicial voluntary agreement**

Yes. The proposal of the debtor can entail the possibility of offering shares to the creditors to cancel the debt.

**Reorganization proceedings**

Yes. The proposal of the debtor can entail the possibility of offering shares to the creditors to cancel the debt.

**Liquidation bankruptcy**

N/A

## Are third party releases available?

**Extrajudicial voluntary agreement**

No

**Reorganization proceedings**

No

**Liquidation bankruptcy**

No

## Are the proceedings recognised abroad?

**Extrajudicial voluntary agreement**

No

**Reorganization proceedings**

No

**Liquidation bankruptcy**

No

## Has the UNCITRAL Model Law been adopted?

**Extrajudicial voluntary agreement**

No

**Reorganization proceedings**

No

**Liquidation bankruptcy**

No

## Can a debtor continue to carry on business during insolvency proceedings?

**Extrajudicial voluntary agreement**

Yes, as it retains the administration of its estate.

**Reorganization proceedings**

Yes, as it retains the administration of its estate.

**Liquidation bankruptcy**

No. However, there are two exceptions to this rule. First, provided that the continuation of business is extremely necessary to protect the debtor's assets, the liquidator will continue managing the business for a limited period of time. Second, if two-thirds of the employees create a "workers cooperative," they can request the judge to allow them to continue with the business.

# Other Factors

## Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

**Extrajudicial voluntary agreement**

There are no restrictions during the extrajudicial voluntary proceedings.

**Reorganization proceedings**

The debtor keeps the administration of its assets under the trustee's surveillance and the provisory creditors committee. However, the administration is restricted and certain acts are forbidden, as follows:

The debtor shall not dispose of its assets without consideration or perform an act that affects or modifies the creditors' situation.

Judicial authorization is required for the following:

Acts related to goods or assets subject to registration

The sale or lease of the debtor's property under concern

The issuance of bonds, guaranteed negotiable debt

The grant of liens

Acts beyond the ordinary administration of the business

Said authorization shall be requested by the court, which must first discuss the request with the trustee and the creditors' committee. All acts performed in violation of the above-mentioned rules shall become null and void vis-a-vis the creditors.

The administration of the company may revert to the trustee by means of a court order should any of the above-mentioned limitations be violated. However, depending on the circumstances, the court may restrict the administration of the company by appointing a co-administrator or a controller.

**Liquidation bankruptcy**

There is a general loss of the ability to perform commercial acts. Any commercial act performed by the debtor or on its behalf after the bankruptcy ruling shall be considered null and void.

## What is the order of priority of claims?

**Extrajudicial voluntary agreement**

N/A

**Reorganization proceedings**

In general, there are two different priorities: (i) over a specific asset; and (ii) over the general estate of the debtor.

With regard to (i), priority is given to: (a) creditors related to the preservation of such specific asset; (b) labor creditors over the machines and goods that the employees used and produced; (c) the taxes owed over such assets; (d) mortgages and pledges over the assets they secure, etc.

With regard to (ii), priority is given to: (a) labor credits in general; (b) social security system credits; and (c) tax authorities' credits.

All other unsecured creditors have no priority.

**Liquidation bankruptcy**

The same as reorganization proceedings.

## Do pension liabilities have any priority over other unsecured claims?

**Extrajudicial voluntary agreement**

No

**Reorganization proceedings**

No

**Liquidation bankruptcy**

The bankruptcy declaration by itself does not imply the termination of employment agreements.

Termination will occur 60 days after the bankruptcy declaration, provided the business is no continuation as explained above.

If termination occurs, workers will only receive payment of regular compensation under the Labor Act, but with the priority explained above.

## Is it possible to challenge prior transactions?

**Extrajudicial voluntary agreement**

N/A

**Reorganization proceedings**

Yes. The trustee and the creditors can challenge prior transactions if the third party knew the "cessation of payment status" of the debtor at the time of the transaction and if said transaction was to the detriment of the creditors' interests.

**Liquidation bankruptcy**

The same as reorganization proceedings.

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