

## Americas Credit Derivatives Determinations Committee Statement - April 8, 2020

### The Argentine Republic

#### DC Issue Number 20200032001

The Americas DC considered the General Interest Question relating to the Argentine Republic (**Argentina**) (DC Issue Number 20200032001) (the **DC Question**) under (a) the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) and (b) the 2003 ISDA Credit Derivatives Definitions, as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement (the **Updated 2003 Definitions**, and together with the 2014 Definitions, the **Definitions**), each as published by the International Swaps and Derivatives Association, Inc. (**ISDA**), and Resolved that a Potential Repudiation/Moratorium has not occurred with respect to an Obligation of Argentina under both the 2014 Definitions and the Updated 2003 Definitions.<sup>1</sup>

The Americas DC is providing the following statement in connection with its determination.

#### 1. PUBLICLY AVAILABLE INFORMATION

The submission relating to the DC Question included the following Publicly Available Information:

- (a) Law 24.156 of the Argentine Republic (the **Act**)<sup>2</sup>;
- (b) Decree 250/2020 of the Province of Buenos Aires, dated March 9, 2020 (the **Decree**)<sup>3</sup>;
- (c) A press release published February 11, 2020, from the Argentine Ministry of Economy on the treatment of the dual currency AF20 bond (the **AF20 Bond Press Release**)<sup>4</sup>;
- (d) A video of a press conference with the Minister of Economy, Martín Guzmán (the **Press Conference**)<sup>5</sup>; and
- (e) An article published on January 12, 2020 by the website Clarín.com (in the economy section), which discusses remarks made by Argentina's Minister of Economy at a press conference on January 11, 2020 (the **January 12, 2020 Article**)<sup>6</sup>.

#### 2. POTENTIAL REPUDIATION/MORATORIUM

The definition of Repudiation/Moratorium for the purposes of the 2014 Definitions states as follows:

Repudiation/Moratorium means the occurrence of both of the following events:

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<sup>1</sup> Each capitalized term used but not defined in this Statement has the meaning given to such term in (a) the DC Rules or (b) the Definitions, as applicable.

<sup>2</sup> The Act does not refer to any specific bond or loan of the Argentine Republic (see: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/554/texact.htm>). Article 65 of the Act grants the Minister of Economy of the Argentine Republic the authority to renegotiate certain public debt.

<sup>3</sup> The Decree identifies the maximum nominal amount of foreign law public securities of Argentina that may be subject to restructuring.

<sup>4</sup> The Statement refers to the dual currency AF20 4.5% bond due February 13, 2020 issued by the Argentine Republic (ISIN: ARARGE320622) (see: <https://www.argentina.gob.ar/noticias/comunicado-del-ministerio-de-economia-de-la-nacion-sobre-el-tratamiento-del-bono-af20>). These bonds are governed by Argentine law; see Section 3(a) below (discussing "Not Domestic Law").

<sup>5</sup> In the Press Conference, reference is made to a national treasury bond due August 31, 2020 (ISIN: ARARGE5206X0), a 10.875% bond issued by the Province of Buenos Aires due January 2021 (ISIN: AR058449334) (a USD 250mm amortization payment was due to be paid on January 26, 2020) and a draft law that was being introduced to restructure government bonds which had been issued under New York Law. A video of the press conference is available here: <https://www.youtube.com/watch?v=lgL3PtCa9I>.

<sup>6</sup> See FN 5 above. The article is available here: [https://www.clarin.com/economia/martin-guzman-nacion-contempla-salvataje-financiero-provincia-buenos-aires-deuda\\_0\\_9zNo6RXC.html](https://www.clarin.com/economia/martin-guzman-nacion-contempla-salvataje-financiero-provincia-buenos-aires-deuda_0_9zNo6RXC.html).

- (i) an authorized officer of the Reference Entity or a Governmental Authority (A) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, one or more Obligations in an aggregate amount of not less than the Default Requirement or (B) declares or imposes a moratorium, standstill, roll-over or deferral, whether de facto or de jure, with respect to one or more Obligations in an aggregate amount of not less than the Default Requirement; and
- (ii) a Failure to Pay, determined without regard to the Payment Requirement, or a Restructuring, determined without regard to the Default Requirement, with respect to any such Obligation occurs on or prior to the Repudiation/Moratorium Evaluation Date.<sup>7</sup>

A "Potential Repudiation/Moratorium" under the 2014 Definitions means the occurrence of an event described in clause (i) above.<sup>8</sup>

### 3. ANALYSIS UNDER THE DEFINITIONS

In resolving that no Potential Repudiation/Moratorium had occurred, the Americas DC considered the following provisions of the Definitions.

- (a) *"one or more Obligations"*

At the outset, the Americas DC noted that by definition a Potential Repudiation/Moratorium must occur with respect to an "Obligation" of the Reference Entity.

An "Obligation" under the 2014 Definitions is defined as "(a) any obligation of the Reference Entity ... determined pursuant to the method described in Section 3.13 (Method for Determining Obligations)...".<sup>9</sup>

Section 3.13 of the 2014 Definitions<sup>10</sup> provides that an "Obligation" includes an obligation that satisfies the relevant "Obligation Category" (for purposes of the Standard Latin America Sovereign Transaction Type, "Bond")<sup>11</sup> and that has each of the "Obligation Characteristics" specified in the related Confirmation (for purposes of the Standard Latin America Sovereign Transaction Type, "Not Subordinated", "Not Domestic Currency", "Not Domestic Law" and "Not Domestic Issuance")<sup>12</sup>.

The Americas DC determined that the Publicly Available Information in the "AF20 Bond Press Release" and "January 12, 2020 Article" did not expressly refer to Bonds that satisfied the Obligation Characteristics and instead referred to Bonds that were either governed by Argentine law<sup>13</sup> and/or denominated in the lawful currency of Argentina.<sup>14</sup>

- (b) *"disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of"*

The Press Conference includes a series of general statements from an authorized officer of Argentina, Martín Guzmán, the Minister of the Economy, which relate to a potential restructuring in respect of Argentina's foreign

<sup>7</sup> See Section 4.6(a) of the 2014 Definitions. Note that Section 4.6(a) of the Updated 2003 Definitions is substantively identical.

<sup>8</sup> See Section 4.6(c) of the 2014 Definitions. Note that Section 4.6(c) of the Updated 2003 Definitions is substantively identical.

<sup>9</sup> See Section 3.1 of the 2014 Definitions. Note that Section 2.14 of the Updated 2003 Definitions is substantively identical.

<sup>10</sup> Note that Section 2.19 of the Updated 2003 Definitions is substantively identical.

<sup>11</sup> See the Credit Derivatives Physical Settlement Matrix for Standard Latin American Sovereigns published on the ISDA website on January 27, 2020.

<sup>12</sup> *Id.*

<sup>13</sup> Thereby failing the "Not Domestic Law" Obligation Characteristic. See Section 3.13(b)(v) of the 2014 Definitions and Section 2.19(b)(v) of the Updated 2003 Definitions.

<sup>14</sup> Thereby failing the "Not Domestic Currency" Obligation Characteristic. See Section 3.13(b)(iv) and Section 3.17 of the 2014 Definitions and Section 2.19(b)(iv) and Section 2.29 of the Updated 2003 Definitions.

debt. The Decree and the Act contemplate issuance and potential refinancing of Argentina's public debt. The Americas DC determined that none of this Publicly Available Information was sufficiently detailed or conclusive to rise to the level of disaffirming, disclaiming, repudiating or rejecting, in whole or in part, or challenging the validity of Obligations of Argentina.

The Americas DC considered the statements of Minister Guzman described in the Publicly Available Information to be statements made in the context of a potential financial restructuring, and the Act and Decree to provide legislative authority for a potential financial refinancing. Therefore this Publicly Available Information does not disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of any of the Obligations of Argentina.

(c) *"declares or imposes a moratorium, standstill, roll-over or deferral, whether de facto or de jure"*

For the same reasons stated above, the Americas DC determined that the statements of Minister Guzman described in the Publicly Available Information did not constitute a moratorium, standstill, roll-over or deferral with respect to Argentina's payments on its Obligations. Similarly, the Decree and Act included as Publicly Available Information do not as a matter of law declare or impose a moratorium, standstill, roll-over or deferral (though these instruments contemplate the possibility that later legislation or government action may effect this).

#### **4. EFFECT OF DC RESOLUTION**

As a result of the above DC Resolution, the Americas DC notes that for purposes of the definition of "Repudiation/Moratorium Evaluation Date"<sup>15</sup>, the Repudiation/Moratorium Extension Condition is not satisfied.<sup>16</sup>

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<sup>15</sup> See Section 4.6(b) of the 2014 Definitions and Section 4.6(b) of the Updated 2003 Definitions.

<sup>16</sup> See Section 4.6(d) of the 2014 Definitions and Section 4.6(d) of the Updated 2003 Definitions.