

G-24 AND INTERNATIONAL EXPERTS HOLD DIALOGUE HIGHLIGHTING IMPORTANCE OF RECENT INNOVATIONS IN USE OF COLLECTIVE ACTION CLAUSES IN SOVEREIGN DEBT RESTRUCTURING

WASHINGTON, DC, August 18, 2020 — Today, the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24) in partnership with the Global Development Policy Center of Boston University hosted a virtual webinar entitled, “Collective Action Clauses in Motion: Lessons and Challenges for Covid-19 Era Sovereign Debt Restructurings.” The virtual event featured a panel of renowned international legal and economic experts who reflected on how enhanced international standards are today being applied in sovereign debt restructurings.

This timely dialogue on the use of enhanced Collective Action Clauses (CACs) comes at a critical moment as a growing number of governments could potentially face debt restructurings as they contend with the unprecedented conditions of the Covid-19 pandemic. During the discussion, experts underscored that Ecuador’s debt restructuring and Argentina’s announced agreement on terms with its three larger creditor groups and certain other creditors suggest that CACs are effectively assisting sovereigns and creditors in creating conditions for more orderly and expedient debt restructurings.

“Lack of a comprehensive sovereign debt restructuring framework is a longstanding issue in the international financial architecture. Time is clearly of the essence, which makes processes that enable orderly, fair and meaningful sovereign debt restructuring essential. In this context, a key innovation in the past decade has been on market-based approaches to debt resolution. The recently concluded Ecuador bond restructuring and the ongoing effort on Argentina’s illustrate the successful implementation of the enhanced CACs, and the potential of reaching deals more expeditiously, especially as debt vulnerabilities in developing countries rise with the devastating impact of Covid-19,” said **Marilou Uy, Director of G-24 Secretariat**.

“The goal of CACs is to allow a decisive restructuring with no or minimal holdouts that lets the world move on. That empowers a critical mass of creditors. These examples prove that aggregation on its own doesn’t mean that debtors will walk away or fail to deliver terms that are still attractive to bondholders...It was striking to me that the embrace of these new aggregation clauses by the international community became a factor that enabled Argentina to hold on to the clauses and argue that they would not move away from an approach that had broad international agreement and support, enhanced their bargaining position and helped to preserve some of the innovations,” said **Brad Setser, Senior Fellow at the Council on Foreign Relations**.

“Words matter. I would argue that a lot of the controversy in this case is about two words, that and each. That is what opened the door to the entire bruhaha over redesignation and serial restructuring and the creative solutions that the parties ultimately came to. The lesson here is read your contracts and the better you read the farther ahead you are...Ultimately the revisions

to the 2016 indenture, created more safeguards and options for both debtors and creditors, “ said **Anna Gelpern, Professor of Law at Georgetown University Law Center.**

“From an economist’s perspective this is a coordination problem, that is, one of the classic collective action problems. It arises where there is a wedge between the interests of individual players and those of the group. So, if the group acted collectively, a better outcome would be possible compared to where individual players go after their own interests...CACs work in a positive way, helping coordinate the actions of creditors,” said **Augusto de la Torre, Adjunct Professor of International and Public Affairs at Columbia University.**

“Ecuador’s and Argentina’s reliance on the contractual rights fell within the framework of the Collective Action Clauses endorsed by the G20. In both cases, once the majorities had been assembled, the existence of the aggregation features shows how more orderly and expedient debt restructurings will work in practice. Of course, because these clauses were first being tested, the international financial community followed these processes closely, including the adjustments proposed to deal with perceived imbalances in their deployment to a specific set of facts. International consensus on the success of CACs in Ecuador and Argentina will have repercussions for other economies where governments can be expected to seek debt relief or restructuring,” said **Andrés de la Cruz, Partner, Cleary Gottlieb Steen and Hamilton.**

“Today’s discussion has helped to illustrate how enhanced international standards are helping sovereigns and diverse creditors resolve their shared debt restructuring challenges. CACs were adopted on a system wide basis to avoid repeating some of the debt restructuring experiences of the past, assemble a sufficient mass of creditors to support an acceptable proposal, and prevent holdouts from hijacking the process. Ecuador, and hopefully also Argentina, are real-world success stories of how CACs, including the use of the aggregation feature now common in new indentures, can lead to positive outcomes for sovereigns and creditors. Even the use of the uniformly applicable method, which has been the subject of debate, is consistent with the black letter of the CACs. The international financial community should interpret recent events in Ecuador and Argentina as proof of concept that the system is working as designed. From a policy perspective, redesignation and sequential application of aggregation should be understood as appropriate strategies, because they create flexibility and address the problem of information asymmetries. Early indication suggests that a proposal that relies on the flexible use of the various contractual options and attracts meaningful bondholder support will lead to more orderly sovereign debt restructurings,” said **Robert Howse, Professor of International Law at New York University School of Law.**

“From the comments of our panelists, it is clear that this new instrumentation is taking us one step forward in these latest episodes involving Ecuador and Argentina. Let’s hope we continue to advance in innovation and let’s hope that they prove as resilient in the restructurings to come in the COVID era,” concluded moderator **Kevin Gallagher, Professor and Director of Boston University’s Global Development Policy Center.**

Over the past decade, the broader international financial community has increasingly supported the use of CACs with aggregation features as an effective contractual framework that addresses collective action problems in sovereign debt restructuring and reduces the overall costs to both sovereigns and their creditors. Today's event underscored the view that the application of CACs by Ecuador and Argentina further enhances the tools available to governments seeking more orderly, expedient and constructive negotiations with creditors.

To watch a full video recording of the webinar, please visit [here](#).

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About G-24

The Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24) coordinates the position of developing countries on monetary and development issues in the deliberations and decisions of the Bretton Woods Institutions (BWI). In particular, the G-24 focuses on issues on the agendas of the International Monetary and Financial Committee (IMFC) and the Development Committee (DC) as well as in other relevant international fora.

About Boston University's Global Development Policy Center

The Global Development Policy Center's mission is to advance policy-oriented research for financial stability, human well-being, and environmental sustainability. To fulfill our mission, we conduct rigorous policy research; provide a convening place for scholars and stakeholders; engage in policy dialogue with policy-makers, civil society, and media; and offer experiential learning for Boston University students.