# SOVEREIGN DEBT MANAGEMENT

Edited by
Rosa M. Lastra
Lee Buchheit



### **CONTENTS**

Table of Cases	xxxv
Table of Legislation	xxxix
List of Contributors	xlvii
List of Abbreviations	li
I SOVEREIGN DEBT RE	STRUCTURING
1. Minimizing Holdout Creditors: Carrots Lee C. Buchheit and Elena L. Daly	
1. Introduction	1.01
2. The Context	1.02
3. Techniques to Encourage Creditor Participat	ion 1.11
4. Implications	1.35
2. Minimizing Holdout Creditors: Sticks  Lee C. Buchheit and Elena L. Daly	
1. Introduction	2.01
2. The Context	2.02
3. Techniques to Discourage Holdouts	2.10
4. Conclusion	2.35
3. Managing Holdouts: The Case of the 2012 Gree Jeromin Zettelmeyer, Christoph Trebesch, and G. M.	<del></del>
1. Introduction: Argentina versus Greece	3.01
2. The Basics	3.04
3. Why Did the Restructuring Succeed? Credito	or Incentives 3.24
4. Conclusions	3.54
4. Revisiting the <i>Pari Passu</i> Clause Georges Affaki	
1. Introduction	4.01
2. Equal Ranking	4.02
3. Earmarking of Assets	4.10
4. Equal Payment	4.15
5. The Elliott–Peru Saga	4.17
6. Targeting Third Parties	4.27
7. The Ouest for the Origins of the <i>Pari Passu</i>	4.32

	8. Chaos in the Market	4.46
	9. Conclusion	4.50
5.	. The Role of the International Monetary Fund  Rosa M. Lastra	
	1. Introduction	5.01
	2. The History	5.03
	3. The Tools	5.14
	4. Sovereign Debt and the IMF	5.23
	5. Conclusions	5.64
6.	. Debt Relief for Low-Income Countries  Thomas A. Duvall, III	
	1. Introduction	6.01
	2. The Initial HIPC Debt Initiative	6.03
	3. The Enhanced HIPC Debt Initiative	6.12
	4. The Multilateral Debt Relief Initiative	6.25
	5. Conclusions	6.29
7.	The Longer-Term Consequences of Sovereign Debt Restructuring  Odette Lienau	
	1. Introduction	7.01
	2. Avoiding Conflation in Key Terms	7.04
	3. The Possible Consequences of Selective Emphasis	7.08
	4. A Focus on the Longer-Run Ramifications of Debt Restructuring	7.15
	5. Conclusion	7.29
	II ENFORCEMENT OF SOVEREIGN DEBT	
8.	Defences	
	Carmine D. Boccuzzi, Jr, Michael M. Brennan, and Jacob H. Johnston	0.01
	1. Introduction	8.01
	2. Sovereign Debt Litigation Defences	8.04
	3. Conclusion	8.46
9.	Special Immunities: Central Bank Immunity Thomas C. Baxter, Jr, and David Gross	
	1. Introduction	9.01
	2. Argentina I	9.08
	3. Argentina II	9.19
	4. Conclusion	9.33

10.	. Special Immunities: Bank for International Settlements  Diego Devos	
	1. Introduction	10.01
	2. The Bank for International Settlements and its Immunities	10.03
	3. BIS Immunities Challenged by Holdout Bondholders Creditors of Argentina	10.12
	4. Conclusions	10.28
11.	Creditors' Remedies	
	W. Mark C. Weidemaier and Ryan McCarl	
	1. Introduction	11.01
	2. The Implications of NML v. Argentina: A Pessimist's View	11.09
	3. An Alternative Story: NML Capital as an Outlier	11.27
	4. Conclusion	11.43
12.	Sovereign Arbitration Karen Halverson Cross	
	1. Introduction	12.01
	2. Arbitration Clauses in Sovereign Debt Contracts	12.02
	3. Investor—State Arbitration of Sovereign Debt Disputes	12.08
	4. Conclusion	12.52
	III COMPLICATING FACTORS	
13.	Restructuring in a Monetary Union: Legal Aspects	
	Antonio Sáinz de Vicuña	
	1. Introduction	13.01
	2. Sovereign Debt Restructuring in the Case of a State Participating in the European Monetary Union: Elements of Differentiation	
	Vis-à-Vis other Sovereign Debt Restructurings	13.06
	<ol> <li>Analysis of Some Legal Issues Arising in the Restructuring of the Sovereign Debt of the Hellenic Republic in 2012</li> </ol>	13.20
	4. Legal Framework for Debt Issuance by States Participating in the European Monetary Union	13.34
	5. Idea of Establishing a Statutory Framework for Debt Restructuring within a Regional Monetary Union	13.47
	6. Conclusions	13.50
	Restructuring in a Monetary Union: Economic Aspects  Daniel Gros	
	1. Introduction	14.01
	2. Sovereign Debt in a Monetary Union	14.10
	3. Who Holds Sovereign Debt in Europe?	14.21

	4. Strengthening Financial Market Resilience	14.30
	5. Concluding Remarks	14.52
15.	Sovereign Debt and Banking Crises: An 'Arial View'	
	Anna Gelpern	
	1. Introduction: Font Matters	15.01
	2. Far from Europe	15.05
	3. Banks or Governments	15.09
	4. Governments or Banks	15.24
	5. Back to Europe (the Doom Loop)	15.39
	6. Conclusions	15.43
16.	International Lender of Last Resort: A Floor of Support for	
	Troubled Sovereign Debt  Adam Lerrick	
	1. Introduction	16.01
	2. A Third Party in a Two-Party Game	16.08
	3. For an International Lender of Last Resort: Incentives, Discipline, and Control of Risk	16.15
	4. A Floor of Support to Preserve the Flow of Private Sector Funds	16.21
	5. A Floor of Support to Restore Private Sector Investment Flows	16.33
	6. A Floor of Support to Underpin an Orderly Restructuring	16.42
	7. Toward a Credible International Lender of Last Resort	16.49
17.	Odious Debt	
	Sir William Blair	
	1. Introduction	17.01
	2. The Position of an Assignee of the Debt	17.09
	3. Turning Metal into Gold: A Case of Alchemy	17.20
	4. The Lessons to Be Learned	17.34
	5. The Debt Relief (Developing Countries) Act 2010	17.38
	6. Postscript	17.42
18.	Sovereign Contingent Liabilities Lee C. Buchheit and G. Mitu Gulati	
	1. Introduction	18.01
	2. Sovereign Comfort	18.03
	3. Contingent Charms	18.09
	4. The Explosion of 2008–12	18.12
	5. Precedents	18 18

	6. The Restructurer's Dilemma	10.24
		18.24
	7. Restructuring Sovereign Contingent Obligations	18.33
	8. Conclusions	18.51
	IV ECONOMICS OF SOVEREIGN BORROWING	
19	. Why Governments Default Willem H. Buiter and Ebrahim Rahbari	
	1. Introduction	19.01
	2. Enforcement of Private Debt Contracts	19.03
	3. Sovereign Default	19.08
	4. So Why Do Governments Default?	19.26
	5. The Political Economy of When and How to Default as a Sovereign	19.71
	6. Conclusions	19.80
20.	Sovereign Debt Markets Gene Frieda	
	1. Introduction	20.01
	2. Sovereign Borrowing: The Last Thirty Years	20.01
	3. Macro Drivers of Demand for Sovereign Debt	20.11
	4. Emerging Market Self-Insurance and the Rise of China	20.13
	5. Surfing the China Wave	20.29
	6. The Apparent End of 'Original Sin'	20.35
	7. Sovereign Debt Demand Dynamics	20.43
	8. Financial Weapons of Mass Destruction	20.57
	9. Europe: A Microcosm of Past, Present, and Future Crises	20.68
	10. Lessons Learned, Ignored, and Forgotten	20.86
	11. The Fallen Saints of Original Sin	20.88
	12. The Limits of Conflict Resolution	20.100
	13. Hostages to Benchmarks and Ratings	20.106
	14. Conclusion	20.109
21.	Borrowing and Debt: How Do Sovereigns Get into Trouble?  Arturo C. Porzecanski	
	1. Introduction	21.01
	2. Budgetary Outcomes	21.07
	3. Contingent Liabilities and Currency Mismatches	21.12
	4. Maturity Mismatches and High Coupons	21.24
	5. Access to Financing	21.35
	6. Indicators of Debt Sustainability	21.44
	7. Conclusions	21.55

## V PROPOSALS TO REFORM SOVEREIGN DEBT SYSTEMS

22.	Statutory Sovereign Debt Resolution Mechanisms Rodrigo Olivares-Caminal	
	1. Introduction	22.01
	2. The Sovereign Debt Restructuring Mechanism (SDRM)	22.04
	3. The European Stability Mechanism: An Institution Designed to	
	Avert Financial Crises	22.36
	4. Perfecting the Status Quo	22.69
	5. Concluding Remarks	22.77
	6. Corollary	22.81
23.	Debt Restructuring and Economic Recovery Sean Hagan	
	1. Introduction	23.01
	2. Corporate Debt Restructuring in the Context of a Systemic Crisis	23.05
	3. The Resolution of Financial Institutions in a Cross-Border Context	23.21
	4. Household Debt and its Systemic Implications	23.44
	5. Restructuring Sovereign Debt: An Unresolved Problem	23.53
	6. Conclusion	23.77
24.	Corporate Bankruptcy Law and State Insolvencies  Philip R. Wood QC (Hon)	
	1. Introduction	24.01
	2. How Do Sovereign Bankruptcies Work?	24.05
	3. What Rights Do Creditors Have?	24.12
	4. Moratorium on Payments and Attachments	24.22
	5. Bankruptcy Ladder of Priorities	24.27
	6. Control of the Debtor's Financing	24.43
	7. Reorganization Plans	24.54
	8. Discharge of a Debtor	24.65
	9. Other Differences between Corporate and Sovereign Insolvencies	24.67
	10. International Bankruptcy Court	24.68
	11. General Differences in Status	24.72
	12. Conclusion	24.73
	European Collective Action Clauses  David Billington	
	1. What is a Collective Action Clause?	25.01
	2. The Holdout Creditor Problem	25.03
	3. Are CACs the Only Way?	25.07

	4. Collective Action Clauses in Sovereign Debt	25.10
	5. The Move towards Standardization: Model CACs pre-2013	25.17
	6. The European Sovereign Crisis and Response	25.21
	7. The Model Clause in Detail	25.25
	8. Conclusion	25.73
26.	Eurozone Financial Rescue and Stabilization Measures, and their Legal Foundations Andrew Yianni and Nikita Aggarwal	
	1. Introduction	26.01
	2. Background to the Crisis	26.04
	3. EU Financial Rescue and Stabilization Measures, and Legal Foundations	26.20
	4. Future Financing Measures: Longer-Term Solutions	26.69
	5. Concluding Observations	26.76
27.	UNCTAD Principles on Responsible Sovereign Financing Juan Pablo Bohoslavsky and Yuefen Li	
	1. Introduction	27.01
	2. The Need for Global Principles to Promote Responsible Sovereign Financing	27.06
	3. The PRSLB Tackle Global Debt Problems with Well-Rooted and Tested Principles	27.19
	4. Injecting Legitimacy into the PRSLB through its Decision-Making Process: Representation, Consultation, and Deliberation	27.32
	5. Soft Law Facilitates Endorsement and Implementation	27.37
	6. The Role of the United Nations in the Global Economic Agenda and the PRSLB	27.47
	7. Concluding Remarks. The PRSLB in the Progression of International Law	27.57
28.	Sovereign Debt in the Light of Eternity  Lee C. Buchheit	
	1. Introduction	28.01
	2. The Moral Element	28.03
	3. The Legal Element	28.10
	4. The Financial Element	28.15
	5. The Political Element	28.20
Арр	pendix	471
Inde	ex	473