

The century in a crisis

The region's 100 leading insolvency & restructuring lawyers

Financial difficulties, whether they originate domestically or from a global source can be a feature of the Latin American corporate landscape. In the following pages, leading professionals in the region's large and mid-sized economies detail the main features of their respective jurisdiction's insolvency and restructuring regimes, and how these regimes have evolved in response to previous corporate failures. Jonty Rushforth profiles the leading names and firms who have been at the forefront of representing corporates in insolvency and related transactions in Latin America

Argentina

Héctor Alegria

Estudio Alegria, Buey Fernández, Fissore & Montemerlo

In Argentina, a civil law country, the restructuring and insolvency proceedings are governed by Law No. 24,522 (as amended) (the 'ABL'), enacted in 1995. The ABL was drafted over the foundations of the former Law No. 19,551 and includes innovations such as the simultaneous restructuring of the entities member of a group, the possibility of a debtor to seek an out-of-court restructuring agreement (*acuerdo preventivo extrajudicial*) and a special provision allowing creditors and third parties to acquire control of the debtor if the proposed reorganisation plan fails (the 'crashdown' provision).

The ABL provides for three types of solutions for a debtor's insolvency problem: the *concurso preventivo*, the *acuerdo preventivo extrajudicial* and the *quiebra*.

The *concurso preventivo* basically consists of a judicial proceeding before a commercial judge where a debtor seeks to restructure its liabilities by proposing a restructuring plan for which it has to obtain the approval of at least a requisite majority of its creditors. Usually, the debtor remains in possession of its assets and can use and dispose of them in the ordinary course of business without seeking an authorisation from the Court. Additionally, the running of interest and all judicial actions with an economic content are automatically stayed from the day of the filing of the *concurso*.

The *acuerdo preventivo extrajudicial*, commonly known as 'APE', was included in the original version of the ABL but was improved and expanded by Law N° 25,589, enacted in 2002. The APE is an out-of-court negotiated agreement (similar to the US prepackaged plan) that, upon approval by the commercial judge, is binding also on the non-consenting creditors. Hence, the APE is widely used by companies since it is less costly, cumbersome and time consuming than the *concurso*. Due to its recent rebirth, the APE is 'creating its way through', as there are certain issues about the APE process that yet remain untested or unresolved by the courts. The effects of a judicially

approved APE are the same as those of a *concurso*; hence, among other consequences, the debtor obtains the novation of its existing obligations that get restructured by the APE. Moreover, in a recent leading case, a US court ruled in a Section 304 proceeding initiated by an Argentine company that APE proceedings generally deserve Section 304 recognition.

Last but not least, the ABL provides for the *quiebra*, which is a liquidation proceeding. The debtor loses administration and control over its assets, which are sold to third parties and the proceeds used to pay off debtor's indebtedness. It is worth mentioning that upon the declaration of *quiebra*, there are certain actions that can be initiated by the bankruptcy trustee in order to repair the status quo. These actions are subject to certain procedural and evidence requirements, and include: the extension of the debtor's bankruptcy to certain persons described in the ABL, action for damages against shareholders, directors, officers or third parties, and actions intending to claw-back certain transactions entered into between the debtor and third parties up to two years prior to the declaration of bankruptcy. In the case of a *quiebra*, the business of a debtor could continue only under certain exceptional circumstances in which the bankruptcy trustee tends to sell the entity as a going concern in order to preserve its value.

It is also worth noting that there are certain entities that are not subject to the remedies provided for in the ABL. Banks and other financial institutions, pension funds (*administradoras de fondos de jubilaciones y pensiones*) and insurance companies have, among others, their own legal framework and are excluded, in principle, from the remedies of the ABL.

Argentina has an advanced legal framework for insolvency and restructuring proceedings that brings adequate solutions to debtors with financial difficulties and permits a healthy bargaining between them and their creditors. LL

Probably the most respected practitioner in Argentina is **Héctor Alegría**, founding partner of Estudio Alegría, Buey Fernández, Fissore & Montemerlo. Along with his partner **Pablo A Buey Fernández**, he has worked on many of the most important restructurings of recent years, particularly those involving the *acuerdo preventivo extrajudicial* (APE). The firm advised: Autopistas del Sur SA in its US\$500 million APE restructuring; Acindar SA, in its US\$350 million APE restructuring; and Telecom Argentina SA and Telecom Personal SA, in their US\$2.7 billion APE restructuring.

Alegría was a member of the drafting committees for the amendment of the Argentine Commerce Code and Bankruptcy Law (1968-1972; 1982-1983), president of the Comisión Nacional de Valores—the Argentine securities commission (1969-1975), and a justice at the Supreme Court of Justice of Argentina (1995-1999). He has an LL.M. and is currently Professor of Commercial Law at the University of Buenos Aires Law School. Buey Fernández is also no stranger to studies; he has an LL.M. from Harvard, and has worked at various universities on the business law side. Also at the firm are partners **Gabriel H Fissore** and **Miguel A Montemerlo**, the latter also a trained accountant.

"Dr Héctor Alegría is undoubtedly the most renowned specialist in insolvency matters in Argentina and one of the most prestigious lawyers in our country. He has participated actively in the elaboration of many laws, has led many of the most important bankruptcy proceedings and has written valuable books and articles in this area. The excellence of his professional counsel and his experience have been of great help for our company," asserts **Maria Della Carrera**, corporate legal counsel of Telecom Argentina SA.

Estudio O'Farrell boasts the services of partner **Carlos Oteiza**, who is head of the firm's capital markets, banking and restructuring group. After studying at the Academy of American and International Law in Dallas, Texas, he worked in New York as a foreign associate with Milbank, Tweed, Hadley and McCloy, and later with Kelley Drye & Warren. Also in the firm's group is respected

associate **Alejandro Anderlic**, who is similarly US-trained, while partner **Santiago Artagaveytia** participates on the litigation side.

The firm advised Telefónica de Argentina SA (TASA), and its holding company Compañía Internacional de Telecomunicaciones SA (Comtel), for the restructuring of a total of US\$536.6 million of debt through a bond exchange offer. Oteiza also advised on Telefónica Comunicaciones Personales restructuring of US\$130 million of debt with Ericsson, and Cablevisión's 1995 US\$1 billion debt restructuring. Current work includes advising Merrill Lynch, as financial adviser to Transportadora de Gas del Sur in the refinancing of its debt, and Transener on the restructuring of its US\$460 million of debt.

"I have been working with Carlos for more than 10 years, both during 'peaceful' periods as well as 'stormy' times. Carlos and his team have always been responsive to our company's needs, providing value and expertise on the different subjects we have dealt with. In 2003, we restructured our debt and his response was timely and of high quality," says Juan López Saseybaso, CFO of Telefónica de Argentina.

Partner **Roberto Silva Jr.**, of Marva, O'Farrell & Mairal, was marked out by *LatAm* in its "Under 40" survey of young Argentine lawyers, and is widely respected for his insolvency and restructuring work. An LL.M. graduate from the University of Illinois, he also worked as a foreign associate in Shearman & Sterling's International Finance Group in New York. Other notable members of the firm are partner **Luciano Ojea Quintana**, and associates **Sonia F Salvatierra** and **Cecilia Roudé**.

Silva's work has covered several restructurings of failed financial institutions, including Banco General de Negocios SA, Scotiabank Quinnes SA and Banco Velox SA. The firm has also worked on many of the recent high profile debt restructuring transactions such as Banco Hipotecario's US\$1.2 billion exchange, in which they advised ABN AMRO, as trustee of the guarantee, and Banco de Galicia y Buenos Aires's US\$1.4 billion debt restructuring, advising the bank

steering committee.

James Scriven, Head - Regional Coordinator for Latin America and Caribbean at the International Finance Corporation, says: "Roberto has a strong business judgment complemented with a deep knowledge of financial matters and has superb negotiation skills. He has experience and knowledge in diverse areas of financial markets as result of many years of experience in the firm and an excellent ability in providing creative and innovative solutions."

Another insider of the legislative process is managing partner **Julio César Rivera**, of **Julio César Rivera Abogados**. He participated in the drafting of the Business Reorganization and Insolvency Law, and was a member of the committee appointed to draft a new version of that law in 2002. He has an LL.M. and was formerly a justice of the National Court of Appeals in commercial matters. The firm has gained wide acclaim for its work in this sector, and also boasts the membership of partners **Beltrán Fernando Louge**, **Gustavo Javier Giatti** and **Julio César Rivera Jr.**

Recent work has included advising several sectors, such as Azurx Buenos Aires SA, Havanna SA and Messuh SA, and on the creditor side banks (Bank Boston, Banca Nazionale del Lavoro, Banco Bursud) and trust funds (Fideicomiso Saneos, managed by Citibank and Fideicomiso de Recuperación Crediticia, Ley 12,746). The firm is currently representing The Bank of New York, as indenture trustee, in the reorganization proceedings of Supercanal Holding SA and Supercanal SA. Rivera also has experience in insolvency proceedings, acting as counsel for the court-appointed trustee in the cases of Correo Argentino and Grupo Yoma.

Gabriel Bertolini, Credit Recovery Manager at Banca Nazionale del Lavoro, recounts: "Dr Julio Rivera has developed a recognised career in Argentine advising companies in collections, debt restructuring and bankruptcy matters and we are proud to have him as part of our external staff of attorneys."

At insolvency and restructuring boutique Laporta & López, the leading names are partners **Jorge López** and **Mario Laporta**. Widely



Pablo A Buey Fernandez



Carlos Oteiza



Julio César Rivera



Roberto A Fortunati

respected, López has been practising in bankruptcy law independently since he graduated from law school at the age of 20. Also at the firm are associates **Marcelo Guillermo Thomann** and **Roxana Browczuk**. The firm's recent work has taken in a full range of restructuring transactions, in which López himself is invariably chief legal counsel. The companies involved have included Argentina Televisora Color, Supercanal Holding SA, Correo Argentino SA, Peñafiel SA, Organización Coordinadora Argentina and Sociedad Comercial del Plata SA. The last of these involved a total consolidated debt of US\$900 million.

"Dr López is an excellent lawyer, very intelligent and creative, who has always demonstrated the highest professionalism and commitment in managing all the legal aspects related to the restructuring process," said Jorge C Morón, director of Sociedad Comercial del Plata.

Founding partners of Richards, Cardinal, Tützer, Zabala & Zaefferer—Jorge E Tützer and Ricardo Matías Richards—are both well-respected practitioners in the field of insolvency and restructuring. Tützer has an LL.M. from Columbia University, New York, and is praised by colleagues for his work on leading transactions. Local practitioners also praised Richards for his broad experience. Whilst the former has spent his time in private practice, Richards worked for a while in the courts, acting as a national commercial judge in Buenos Aires for almost a decade. Other members of the firm who work in the field include partners **Calixto Miguel Zabala** and **Oscar Matías Zaefferer**.

The firm's insolvency and restructuring team advised Alpargatas SAIC and its affiliates in its concurso preventivo (Chapter 11) proceedings, and Aguas Argentinas SA, and its shareholders, for a debt reduction agreement with creditors. The firm has also been busy in the APE field, advising Cablevisión SA and MetroGas SA in their negotiations with creditors.

"What is remarkable about Jorge is his constant availability to answer one's doubts with accurate, precise and practical responses. He is eager to learn new things on the subject and try to find comfortable solutions. In addition to his professional skills, he is an excellent person, with whom work is not difficult, but enjoyable,"

asserts **Mariana Vázquez**, general counsel of Cablevisión.

Working in a leading financial institution no doubt gives a lawyer a unique perspective on debt-funding partner **Roberto A Fortunati**, of Fortunati & Lucero, was general counsel of Citibank prior to setting up the firm, and enjoys a healthy reputation for managing difficult transactions. His fellow founding partner **Luis E Lucero** is also recognised this among other areas of practice. Associates **Esteban Leccese** and **Tomás Florito** complete the team at the firm.

The firm has advised a significant number of creditors in workouts, and several debtors in restructuring transactions, including BAESA, Compañía General de Combustibles, Frigorífico Rioplatense, Sociedad Comercial del Plata and Alpargatas. On the public side, the team worked on the debt restructurings of the Province of San Juan, as counsel to Bear Stearns, and the Province of Salta, as counsel to Ritch.

"With Roberto, I know that I am in the hands of a very capable, seasoned veteran of corporate and financial restructuring with high standards and integrity to match. He delivers on time, in top form, and with style, and he applies his intellect to developing innovative solutions. A fast learner and pleasure to work with, he is routinely one of my first choices when doing work in Argentina and other countries in Latin America," asserts **Gordon Johnson**, lead counsel at The World Bank.

Another member of the committee appointed to look at developing the Insolvency Law is partner **Javier Lorente**, of Estudio Nevela-Truffat & Asociados, who is a professor of Insolvency Law at the University of Buenos Aires. The firm's founding partners **Edgardo Daniel Truffat** and **Gustavo Adolfo Naveira** are also recognised in the field. Truffat focuses mainly on arbitration, and is a founder member of the Latin American User's Council of the London Court of International Arbitration. Naveira comes from a background in the judiciary, and was formerly Secretary of Technical and Legislative Affairs of the Ministry of Justice.

As have many others in this listing, Lorente has participated in the tidal waves of APEs in recent

years, advising Autopistas del Sol SA and Lator SA for theirs, and advising the creditors in Transportadora Gas del Sur's APE negotiations. He's also acted as an expert witness in two of the year's leading transactions: Multicanal SA and Cablevisión SA. On the more traditional front of concurso preventivo, he advised the trustees for Aerolíneas Argentinas SA, and the creditors for Compañía Azucarera Concepción SA.

Carlos Lorenzo, CEO of Softnet Logical SA, says of Lorente: "I have known him for the last six years. He is an excellent professional, and recently worked with my company to renegotiate our debt with EximBank—he did a very good job of it."

At Eruchou, Fernández Madero, Lombardi & Mitran, one of the up-and-coming stars of the capital markets and banking department is associate **Mariano Juárez Goni**, who has worked as a foreign associate at Simpson, Thacher & Bartlett in New York. He led the firm's team advising the committee of banks in Banco Río de la Plata SA's restructuring of US\$554 million of its debt, and also advised Citibank NA, Buenos Aires Branch, as financial adviser to Siderar SAIC in a US\$460 million restructuring transaction.

"We have been very satisfied with his professionalism, proactive approach, deep understanding of financial matters, and extensive knowledge of Argentina's complex and ever-changing legal and regulatory environment. Mariano's excellent work in Tecpetrol's 2002 US\$230.7 million liability management transaction was key to making it Argentina's first Central Bank-approved restructuring since the "Morileta crisis," observed Rodrigo Varanjo, assistant vice-president for Credit Markets in Latin America at ASV AMRO Bank.

Fargos & Asociados is known primarily for its founding partner **Horacio Fargosi**, who is held in high esteem by local practitioners. Having gained an LL.D in 1956, he participated in the drafting of many of the local laws, and gained a solid reputation for his private practice. The firm continues to have a presence in the area of insolvency and restructuring, and younger partners such as **Héctor Alonso** carry on the traditions of the senior founder. One colleague says of



Diego Salaverri



Fernando Muñoz de Toro



Diego Serrano Redonnet

Fargosi: "He has handled complex matters related to Aerolíneas Argentinas and other significant companies and, along with Héctor Alegría, they have the most longstanding prestigious firms in this area."

The ever-changing legal market of Latin America has seen some significant changes over the last year, not least of which was the establishment of Erecondo.

Salaverri, Dellatorre, González & Burgio Abogados by five former partners from Bruzon, Fernández Madero, Lombardi & Mirani. One of these, **Diego Salaverri**, is highly respected for his work in this area, and has already graced the pages of

in the 'Under 40' survey of young Argentine lawyers. Having worked at Sidley, Austin, Brown & Wood in New York in the early nineties, he returned to Argentina and built a strong record in finance, before cementing that experience in several complex restructuring transactions. Other names at the firm include partner **Damián Burgio**, and associates **Germán Wetzel Malbran** and **Gabriel Angel Vázquez**.

Salaverri's track record notably includes work on the recovery of debts from companies that were formerly owned by the Exel Group, involving an aggregate of approximately US\$400 million. Other restructuring transactions he has worked on include those of Pocom Energía SA, Industrias Metalúrgicas Pesquera SA, Camacillo Latinoamericana de Inversiones y Servicios SA and Clann.

Gustavo Munk, managing director of the Special Assets Group at Bank of America, was involved in some of the work recovering the debts of ex-Exel companies: "Mr Salaverri provided clear direction to the group and was key in aligning the sometimes divergent interests of the banks, allowing us to find a reasonable solution to our problem. He was always responsive to our needs, focusing on finding solutions and being creative when necessary. We consider him to be one of the top debt restructuring lawyers in Argentina; we often seek his advice, particularly in complex situations."

M & M Borchi is a respected firm in this jurisdiction, no less for its

work in the field of insolvency and restructuring. Head of the financial services department is partner **Néstor J. Belgrano**, while partner **Rafael M. Manóvil** provides strong support from the corporate side. Associate **Tomás Araya** received particular acclaim in our research. He is a Fulbright scholar with an LL.M. from New York University, and another in Business Law from Universidad Austral.

Belgrano led the team, which included Araya, that advised three local banks in restructuring processes that included the first ever reorganisations of former financial entities, under Section 35 bis of the Argentine Financial Entities Law. Another team from the firm, led by Manóvil, advised on the acquisition of Havana SA in the midst of its concurso preventivo, involving negotiations between acquirer, debtor and creditors, which led to a successful outcome. Other work has included advising an electric power utility company in the restructuring of a US\$95 million syndicated loan with a group of international banks.

"Mr Araya has always resolved our problems with competence and diligence; he is a very qualified financial lawyer with solid expertise in the insolvency and restructuring field. He is very competent at dealing with cases involving international insolvency issues," opines Thomas von Hesser, president of Banco Bisi SA and vice president of Banco Suquia SA.

Another former Fulbright scholar who has an impressive record in both academia and private practice is partner **Fernando Muñoz de Toro**, of Muñoz de Toro & Muñoz de Toro. He has an LL.M. from Columbia University, New York, and a specialisation in the Economics of the European Economic Community from the Centre of European Studies in Madrid. Also at the firm are partners **Fabián D'Aiello** and **Guillermo Casir**, and associates **Sebastián Cordova Moyano**, all of whom have contributed to the firm's solid reputation in this area. Work has included advising debtors (Arcor, Coca, La Anónima and Sociedad Comercial del Plata), creditors for company restructurings (Siderco—advising the bondholders' committee, Multicanal—advising Crédit Lyonnais, and AGEA—also advising Crédit

Lyonnais), and creditors for bank restructurings (Banco Suquia—advising American Express Bank, and Banco Elise—advising Nadeis).

Alejandro Vivanco, CEO of Coca, describes Muñoz de Toro as having "the highest level of professionalism and legal expertise, and particularly remarkable negotiation skills, coupled with a financial knowledge uncommon among lawyers. We are really satisfied with his representation and his dedication to helping the client to close the deal and adding value to the process."

In the 'Under 40' survey also listed partner **Diego Serrano Redonnet**, of Pérez Alati, Grandone, Denites, Arntsen & Martínez de Hoz (P), who appears here again as a leading light in the restructuring community. An LL.M. from Harvard University, Massachusetts, and a significant record of transactions have provided the foundation for his reputation. Partners **Santiago Daireaux** and **Gabriela Grigioni**, and associates **Florencia Celasacco** and **Hugo Juárez Weigandt**, are part of the firm's respected team.

Redonnet advised Citigroup, as senior manager and financial adviser for Banco de Galicia y Buenos Aires's US\$1.6 billion debt restructuring; MetroGas in its US\$454 million restructuring and APE solicitation; Morgan Stanley, as dealer manager and solicitation agent for the exchange offers of Telefonos de Argentina SA, and its holding company Cointel SA, for a US\$630 million restructuring; Telecom Italia SpA, as majority shareholder of Telecom Argentina SA and Telecom Personal SA, for their US\$2.6 billion transactions; and creditors in the restructuring of US\$121 million floating rate notes issued by BBW Banco Francés SA.

"He is one of the best that I have seen in Argentina. His work quality, professionalism and ethics are impeccable. He is very knowledgeable on capital markets legal issues. He is very good at dealing with clients and was instrumental in contrasting U.S. legal issues with Argentine legal issues," notes Laurent Massart, executive director at the Investment Banking Division of Morgan Stanley. **LL**