



C L I F F O R D
C H A N C E

OUR SOVEREIGN DEBT RESTRUCTURING AND ADVISORY CAPABILITIES

MARCH 2019

OUR SOVEREIGN DEBT RESTRUCTURING AND ADVISORY PRACTICE

We have an internationally recognised leading practice coupled with a reputation for innovation, having dealt successfully with a number of the world's most high profile, novel and sensitive sovereign debt restructurings often during financial crises. We are one of few firms to have a sovereign debt restructuring practice with close to 40 years of experience.

Selected examples of innovative transactions over this period include:

- acting on all of South Africa's external debt arrangements – 1985-1994 (where exchange controls and the position of the state resulted in the inability of all private sector debtors to honour their claims);
- Poland's unprecedented debt reduction in the early 1990s which led to its EU Accession;
- debt transactions arising from the collapse of the former Soviet Union and resulting state succession to the Russian Federation;
- Indonesia (in the 1997 Asian debt crisis, where there was a state debt problem coupled with a private sector debt problem resulting from state conduct);
- the August 1998 GKO Russian debt crisis;
- the first bond sovereign restructuring in modern times in 1999 (by Pakistan);
- the Republic of Serbia, where state succession issues from the Former Yugoslavia needed to be addressed together with a debt reduction exercise in 2004;
- advising the Republic of Ecuador on its debt buyback of 2009 and its sovereign debt restructuring matters until 2017; and
- restructuring advice for Greece's debt restructuring process between 2011 and 2015.

We have acted on sovereign debt restructurings in more than thirty countries, which we believe to be more than any other law firm. We dominate the English law governed work in this field having had the lead role on every single Brady deal written under English law.

By way of further example, we were the Lead law firm in connection with all aspects of the Eurozone debt crisis and acted for the Eurozone's rescue vehicles in all Eurozone restructurings and rescue arrangements. This work includes:

- in spring of 2010, advising the European Commission in relation to the coordination and negotiation of the EUR 80 billion stability support loan provided by euro area Member States to Greece; in June 2010, on the creation and the incorporation of the EFSF, the Framework Agreement which sets out the operational framework for the EFSF and subsequent amendments to it and in relation to the credit ratings processes; on subsequent loan facility agreements and public bonds issues in respect of the financial assistance programmes granted to Ireland, Portugal, Greece, Spain and Cyprus;
- advising on the Institute of International Finance Task Force on Greece on the private sector negotiations with the public sector in respect of a proposed voluntary restructuring of Greek sovereign bonds (Private Sector Involvement - PSI) (June-July 2011);
- advising EFSF on the second phase of the Greek PSI Transaction;
- advising the European Stability Mechanism; the firm's work is ongoing;
- advising EFSF/ESM on Greece's debt buy backs;

- advising the International Capital Market Association on its response to the EU consultation on the adoption of collective action clauses in all euro area government debt securities from January 2013; and
- in summer of 2015, advising the euro area in relation to the negotiation of the EUR 7 billion bridge loan provided by euro area Member States to Greece following Greece's falling into arrears with the International Monetary Fund.

Our sovereign debt restructuring expertise includes documenting:

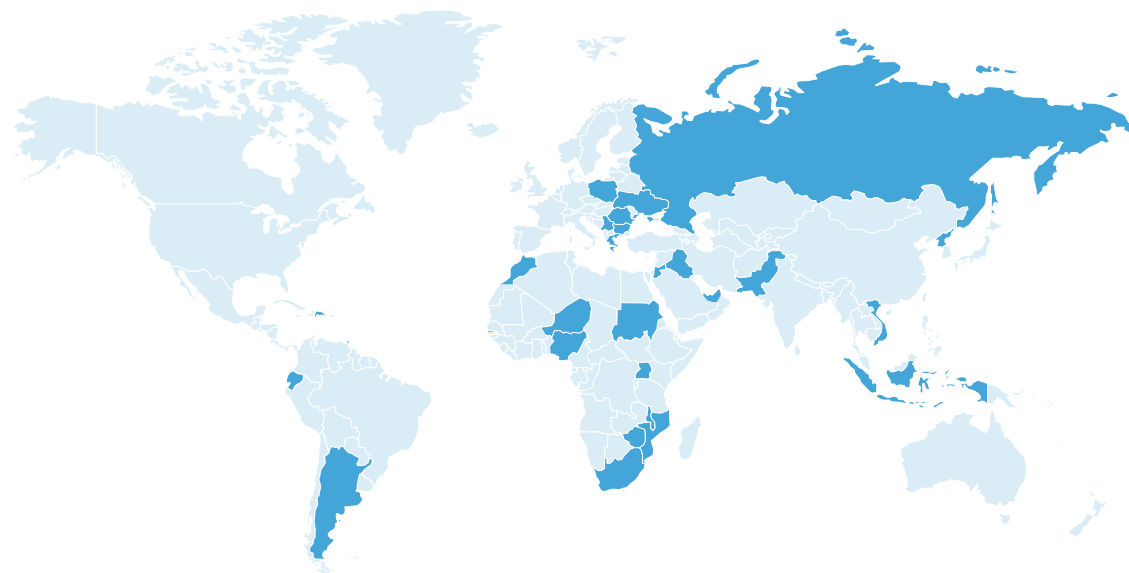
- Consent solicitations
- Exchange offers
- Liability management
- Reprofitting of claims
- Conversion of debt techniques
- Debt buy-backs

ADVISING ON SOVEREIGN DEBT RESTRUCTURING ACROSS THE GLOBE

We believe we are the only law firm with extensive experience of advising both debtors and creditors, with our clients including sovereigns, sub-sovereigns, state-owned enterprises, multilateral development banks, insurance companies, major international commercial and investment banks and industry bodies in addition to the Eurozone rescue work and this combination give us unique insights into relevant issues in this context.

Examples of our experience on sovereign debt restructuring transactions are set out below. In the overwhelming majority of cases we had the lead counsel role. These include transactions which were brought to market in the absence of any default.

- Albania (1995)
- Argentina (acted for ABRA grouping of retail holders 2004/5)
- Bulgaria (1994)
- Croatia (2018- road sector debts)
- Dominican Republic (2006)
- Dubai World (2010)
- Ecuador (2009/2010) and on holdout claims settlements 2010-2018
- Greece (2010-2015)
- The Gambia (1988)
- Indonesia (1998 and 1999)
- Iraq (2005 acted for London Club Co-ordinating Creditor Group)
- The Islamic Republic of Pakistan (1999)
- Jordan (1993)
- Malawi (1983 and 1988)
- Morocco (1983, 1985 and 1990)
- Mozambique (1984-1991)
- Nigeria (1983, 1987 and 1989 to 1992)
- Nigeria Trade Debt (1984 and 1988)
- Niger (1991)
- North Korea (unresolved)
- Poland (1981 to 1984, 1988 and 1991)
- Romania (1983 and 1985)
- Russian Federation (GKO/OFZ – internal debt)
- Russian Federation (former USSR debt – 1992 - 2000)
- The Republic of Serbia (2001 - 2005)
- Seychelles (2008 - 2010); Paris Club debt for nature swap (2017-2018)
- São Tomé e Príncipe (1994)
- South Africa (First, Second, Third Interim Arrangements and 1994 Debt Arrangements)
- St Kitts & Nevis (2012 - 2015)
- Sudan (1981 onwards)
- Trinidad and Tobago (1989)
- Uganda (1992)
- Ukraine (2009)
- Vietnam (1984)
- Zambia (1983)



ADVISING ON SOVEREIGN DEBT RESTRUCTURING ACROSS THE GLOBE (CONT.)

Further, we have had some role in most sovereign debt restructurings since the 1980s. These roles include advising individual affected participants, providing legal opinions and preparing bilateral agreements for export credit agencies pursuant to Paris Club arrangements. The resulting field of vision is therefore very broad indeed. Instances where we acted for the sovereign debtor include Croatia, Dominican Republic, Ecuador, Serbia, Seychelles, St. Kitts & Nevis and Vietnam.

We have also advised and have ongoing work with many sovereign clients, including in the areas of the capital and loan markets, litigation and arbitration, sanctions, market design and regulation.

Litigation risk is a reality of the current environment and, as a result of having a leading global litigation and arbitration practice, we are able to provide extensive cross border advice in this context and this has extended to both sovereigns and the official sector on litigation related issues. Further, in dealing with sovereign debt restructurings, particularly where public listed instruments are involved there is a need to cover market abuse and related considerations which we have done through specialist regulatory partners working closely with our sovereign debt restructuring experts.

Our sovereign debt advisory work requires us to engage with international financial institutions such as the IMF, the World Bank Group, other multilateral development banks and the Paris Club and we therefore have extensive experience advising on the implications of their policies, requirements and funding instruments.

Separately, we regularly advise clients in bilateral lending negotiations where one or both of the parties is a sovereign, sub-sovereign or state-owned entity, including on transactions where a third party multilateral development bank, insurer or ECA is providing full or partial credit coverage. We also advise on the repackaging of sovereign claims. Furthermore, we have leading capital markets, banking and project finance capabilities on which we would be pleased to provide further details.

We regularly act on transactions involving the Chinese policy banks.

Credit derivatives are now typically a significant factor in relation to all sovereign debt exposure where there is significant debt issued in the public markets. Clifford Chance has a global derivatives practice with experts accustomed to analysing the implications of such instruments. We advise on a full range of financial market products, sovereign CDS and the related settlement procedures following the determination of a credit event, OTC fixed income derivatives, all types of debt securities and repos (including for sovereigns, sub-sovereigns and central banks).

In addition, as an important adjunct to both our sovereign debt restructuring and sovereign derivatives expertise, we have a world leading financial regulatory practice and are well placed to advise on the implications of the interconnectedness between a sovereign debt crisis and the fragility of the domestic or other banking sector. Partners in the firm are heavily involved on work related to bank resolution regimes in a number of jurisdictions. We are often called upon to provide guidance in times of crises to the official sector, including G8 central banks.

Sanctions often feature in this field and our dedicated teams of partners in the US and Europe regularly advise clients on sanctions related issues.

We have built strong relationships at all levels with international regulators and trade associations in Europe and the Americas.

We have published widely in the sovereign debt restructuring field and are often called upon to join specialist working groups.



POLICY WORK



We assist in shaping policy as it relates to sovereign debt internationally; one notable example is the firm's participation on the US Treasury Staff Sovereign Debt Roundtable on Sovereign Bond Contracts which followed our advice to ICMA on a number of consultation papers on collective action clauses and on their engagement with the euro area on its euro area model CAC. The work on the US Treasury Roundtable underpinned the publication by ICMA of the enhanced *pari passu* clause and aggregated Collective Action Clauses (CACs) for inclusion in sovereign bonds. These latest sovereign debt contract reforms have been endorsed on the private sector side by ICMA and the IIF and on the official sector side by the IMF Executive Board and the G-20. In terms of take-up, according to the latest IMF staff report, published in December 2017, excluding euro area debt securities, approximately 87 per cent (in nominal principal amount) of international sovereign bonds issued after 1 October 2014 included aggregated CACs, with the vast majority also including the new enhanced *pari passu* provision. Take up in Latin America is even higher and this evolution has been based around sovereign bonds issued through a Trust Indenture structure which serves to dampen litigation risk in times of crises. We assisted in updating Annex VI of the IIF's Principles for Stable Capital Flows and Fair Debt Restructuring, dealing with best practice for the formation and operation of creditor committees and are currently assisting the IIF in its work on sovereign debt transparency principles. We are currently advising on the proposed IIF Principles on Debt Transparency and ESM on the updating of the euro area model CAC.

Partners have, *inter alia*, also participated in:

- The International Capital Market Association Ad Hoc Sovereign Bond Working Group
- The International Law Association Sovereign Insolvency Study Group
- The UK Financial Markets Law Committee (FMLC) Working Groups on collective action clauses and *pari passu* provisions
- The FMLC Sovereign Bond Scoping Forum
- The Advisory Group of experts established by the Netherlands Government and the Permanent Court of Arbitration on the resolution of disputes involving sovereign debts
- The Expert Group on Sovereign Debt Restructuring established in May 2012 by the Financing for Development Office of the United Nations Department of Economic and Social Affairs and the Centre for International Governance Innovation
- The Institute of International Finance's Sovereign Risk Management Committee (and previously its Special Committee on Financial Crisis Prevention and Resolution)
- Paris Club/Private Sector annual forum
- The Legal Expert Group advising IMF Staff on the need for an international resolution regime for cross border financial institutions
- The Bretton Woods Committee

RECOGNITION

// The firm is absolutely outstanding. I found the team at Clifford Chance to be responsive and highly informed, performing well in both complex and less sophisticated transactions. //

[Chambers Latin America 2018: Latin America Wide – Capital Markets](#)

// Clifford Chance is in the global elite with a highly rated service offer across the board.

Global experience and manpower makes it well positioned for doing cross-border mega-deals and partners from around the world are often found working on transactions in the region.

Landmark, innovative deals are their specialty. //

[LatinLawyer 2018](#)

IFLR Europe Awards 2013 – "Debt and Equity – Linked Team of the Year"

Advising the European Financial Stability Facility (EFSF), on the second phase of the Greek PSI Transaction and on Greece's €10bn debt buy back

IFLR Europe Awards 2013 - "Financial Regulation Team of the Year"

Advising the European Financial Stability Facility, in relation to the Greek PSI debt buy-back transaction and advising the European Stability Mechanism (ESM) on its Debt Insurance Programme and inaugural issue to finance bank recapitalisation in Spain

The American Lawyer Global Awards 2013 - "Global Finance Deal of the Year:" Strategic Advice

Advising on the structuring of the European Financial Stability Facility, back-by sovereign guarantees of €780 billion which supports and stabilises the euro zone

The America Lawyer Global Awards 2013 - "Global Finance Deal of the Year:" Public Restructuring

Restructuring advice for Greece's debt restructuring process

KEY CONTACTS



Deborah Zandstra
Partner, London
T: +44 20 7006 8234
E: deborah.Zandstra@cliffordchance.com



Jonathan Zonis
Partner, New York
T: +1 212 878 3250
E: jonathan.zonis@cliffordchance.com

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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