

Collective action clauses: how the Argentina litigation changed the sovereign debt markets

Antonia E. Stolper and Sean Dougherty*

Key points

- This article summarizes the current state of documentation for collective action clauses in sovereign debt documentation.
- In addition, the article summarizes various milestones in the development of collective action clauses beginning after the 2002 Argentina default and compares the collective action clauses of certain sovereigns and sub-sovereigns.

1. Single-limb collective action clauses

Following a lengthy process, including two consultations among members and a round table convened by the US Treasury staff in 2013,¹ focused on minimizing the risks of market dislocations such as those associated with Argentina's prolonged restructuring, the International Capital Markets Association (ICMA) in August 2014 published, and then in May 2015 revised,² standard form collective action clauses (CACs). While the provisions contain three options for addressing the problem of holdout creditors in sovereign debt restructurings as described in more detail below, the 'single limb' voting option is the most innovative and could be the provision that has the most lasting impact on future sovereign debt restructurings.

The theory behind the single-limb option is that it materially raises the cost of becoming a holdout creditor in a sovereign debt restructuring thereby allowing issuers and other investors to better manage sovereign restructurings and providing an increased level of predictability.³ In addition to endorsement by the International Monetary Fund

* Many thanks are due to Roberto Rodriguez Allen for his significant contribution to the research and writing of this chapter. Antonia E. Stolper is a Partner and Sean Dougherty is an Associate at Shearman & Sterling LLP.

1 Mark Sobel, 'Strengthening Collective Action Clauses: Catalyzing Change—The Back Story' (2016) 11(1) Capital Markets Law Journal; Anna Gelper, Ben Heller and Brad Setser, 'Count the Limbs: Designing Robust Aggregation Clauses in Sovereign Bond' in *Too Little, Too Late: The Quest To Resolve Sovereign Debt Crises* (Columbia UP 2016) 109–43.

2 The revised May versions include both an English law and a New York law set of standard provisions to take into account the different stylistic preferences of the two markets and other minor amendments. The provisions, with a blackline against each other and other materials (including model *pari passu* provisions), are available at <<http://www.icmagroup.org/resources/Sovereign-Debt-Information>> accessed 15 February 2017.

3 Gregory Makoff and Robert Kahn, *Sovereign Bond Contract Reform: Implementing the New ICMA Pari Passu and Collective Action Clauses*. Centre for International Governance Innovation. (CIGI Papers No 56, 2015).

(IMF),⁴ the International Monetary and Financial Committee (IMFC) and the G20 have both called for the inclusion of these enhanced CACs in new international sovereign bond issuances.⁵

The ICMA standard form CAC provisions contemplate issuers structuring a bondholder vote or consent on changes to material terms, known as ‘reserve matters’,⁶ in one of three ways:

First is voting by series, known as ‘series-by-series’, whereby if holders of three-quarters of the bonds of a series agree to the new terms, the remaining holders would be bound. This was the common structure of CACs in place before the innovations of 2015.

Second is voting by two or more series, known as ‘dual limb’, whereby two or more series are aggregated for purposes of amendments. For bonds that have these provisions, the ICMA form provides that two-thirds in total principal amount of the series being aggregated and at least 50 per cent of each voting series is required to amend the reserve matters. Countries which had dual limb clauses, known as aggregation, before the standard form ICMA clauses were adopted, including Argentina and Uruguay, had higher voting thresholds so the ICMA standard dual limb clause represents a substantial easing of the terms.

Third is voting by multiple series of bonds, known as single limb, whereby voting across multiple series is aggregated. For bonds that have single limb voting, three-quarters of the total amount outstanding have to approve the new terms, provided that the amendments to the bond terms must be ‘uniformly applicable’.⁷

4 IMF, Strengthening the Contractual Framework to Address Collective Action Problems in Sovereign Debt Restructuring (October 2014). <www.imf.org/external/np/pp/eng/2014/090214.pdf>; Progress Report on Inclusion of Enhanced Contractual Provisions in International Sovereign Bond Contracts (September 2015). <<http://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Progress-Report-on-Inclusion-of-Enhanced-Contractual-Provisions-in-International-Sovereign-Bond-Contracts-PP4983>>; Second Progress Report on Inclusion of Enhanced Contractual Provisions in International Sovereign Bond Contracts (December 2016). <<http://www.imf.org/en/Publications/Policy-Papers/Issues/2017/01/13/PP5085-Inclusion-of-Enhanced-Contractual-Provisions-in-intl-Sovereign-Bond-Contracts>>

5 IMFC, ‘Communiqué of the Thirtieth Meeting of IMFC’ (Washington, DC, 11 October 2014). <<http://www.imf.org/en/News/Articles/2015/09/28/04/51/cm101114>>; G20, ‘G20 Leaders’ Communiqué’ (Brisbane, 16 November 2014). <http://www.g20australia.org/sites/default/files/g20_resources/library/brisbane_g20_leaders_summit_communique.pdf>

6 A ‘Reserve Matter’ means any modification to the terms and conditions of the bonds of any series, or to the governing instrument insofar as it affects the bonds of such series, that would: (i) change the date on which any amount is payable on the bonds; (ii) reduce the principal amount (other than in accordance with the express terms of the bonds and the governing instrument) of the bonds; (iii) reduce the interest rate on the bonds; (iv) change the method used to calculate any amount payable on the bonds (other than in accordance with the express terms of the bonds and the governing instrument); (v) change the currency or place of payment of any amount payable on the bonds; (vi) modify the issuer’s obligation to make any other payments on the bonds (including any redemption price thereafter); (vii) change the identity of the obligor under the bonds; (viii) change subsection __ below (Outstanding Bonds) or the percentage of affirmative votes required for the taking of any action pursuant to this section __ (Modifications); (ix) change the definition of ‘Uniformly Applicable’, ‘Reserve Matter’ or ‘Reserve Matter Modification’; (x) authorize the Trustee, on behalf of all holders of the bonds, to exchange or substitute all the bonds for, or convert all the bonds into, other obligations or securities of the issuer (including bonds of any other series) or any other person; or (xi) change the legal ranking, governing law, submission to jurisdiction or waiver of immunities provisions of the terms and conditions of the bonds of this series.

7 ‘Uniformly Applicable’, in the context of a proposed cross-series modification, means a modification by which holders of bonds of all series affected by that modification are invited to exchange, convert or substitute their bonds on the same terms for (x) the same new instruments or other consideration or (y) new instruments or other consideration from an identical menu of instruments or other consideration. It is understood that a modification will not be considered to be uniformly applicable if each exchanging, converting or substituting holder of bonds of any series affected by that modification is not offered the same amount of consideration per amount of principal, the same amount of consideration per amount of interest accrued but unpaid and the same amount of consideration per amount of past due interest, respectively, as that offered to each other exchanging, converting or substituting holder of bonds of any series affected by that modification (or, where a menu of instruments or other consideration is offered, each exchanging, converting or substituting holder of bonds of any series affected by that modification is not offered the

The single-limb voting procedures allow bonds to be restructured on the basis of a single vote across all series or a sub-aggregation of series. The basic theory behind aggregated voting is to minimize the risk that, for a sovereign issuer with multiple series of bonds outstanding, holdout creditors can obtain a blocking position in any one series and thereby defeat a restructuring that otherwise has garnered substantial support from the creditor community. In general, aggregated voting should serve to raise the cost of creating such a blocking position, as it would have to be assembled from the totality of the sovereign's outstanding bonds. To safeguard the interests of creditors against unfair terms or abuse of power when using the single-limb voting procedure, ICMA and the IMF urge, and the standard form provides, that single-limb CACs should require all affected bondholders to be offered the same terms or an identical menu of terms, the uniformly applicable condition, and include a voting threshold of at least 75 per cent of the aggregated outstanding principal of all affected series.⁸ In theory, if single-limb voting is used, it would prevent offering par bonds to small holders and discount bonds to institutional holders, as has been done in other restructurings. It is important to note, however, that the uniformly applicable condition does not guarantee the same economic impact to different series and in fact normally will result in different net present value outcomes for different series being restructured on the same terms.⁹

The ICMA standard form CAC provisions also include a covenant requiring sovereign issuers to publish information relevant to any restructuring proposal prior to or at the same time as the proposal. This information includes a description of: (i) the economic and financial circumstances that led to the proposal, (ii) the sovereign's existing debts, (iii) its policy reform programme, (iv) any arrangements with multilateral lenders or other creditor groups and (v) how the sovereign proposes to address any series of bonds not included in the proposed restructuring, if applicable.

Adoption of the ICMA standard form CACs has been fairly broad. The IMF has been tracking the uptake of the ICMA standard form CACs and reports that between 1 October 2014 and 31 October 2016 there were approximately 228 international sovereign bond issuances, comprising a total principal amount of approximately US\$262 billion,¹⁰ of which 154 issuances, or 74 per cent, included the ICMA CACs.¹¹ The percentage jumps to

same amount of consideration per amount of principal, the same amount of consideration per amount of interest accrued but unpaid and the same amount of consideration per amount of past due interest, respectively, as that offered to each other exchanging, converting or substituting holder of bonds of any series affected by that modification electing the same option under such menu of instruments); Anna Gelper, 'A Sensible Step to Mitigate Sovereign Bond Dysfunction' (*RealTime Economic Issues Watch*, blog of the Peterson Institute for International Economics, 29 August 2014). <<http://blogs.piie.com/realtime/?p=4485#.VBlnUiofqW8.email>>

8 The ICMA standard form provisions include, and ICMA and the IMF urge drafters to allow for, flexibility to differentiate among creditors by including the 'menu of voting procedures', eg a single-limb voting procedure, a two-limb aggregated voting procedure and a series-by-series voting procedure, all of which are included in the ICMA standard form provisions described above; IMF, *Progress Report* (n 4).

9 See Gelper, Heller and Setser (n 1).

10 Data does not include European Union (EU) sovereign issuances, as they are required by law to include CACs, China's domestic issuances under Hong Kong Law or GDP warrants. The EU required CACs to contain a dual-limb aggregation CAC, but no single-limb CAC. However, the EU dual-limb CAC had lower voting thresholds than the original aggregation provisions (two-thirds of the principal outstanding for all series affected and half of the principal outstanding for each series affected) and a more flexible disenfranchisement provision, making holdout positions harder to obtain. See Gelper, Heller and Setser (n 1).

11 IMF, *Second Progress Report* (n 4).

86 per cent of the total principal amount if only new issuances are included, leaving out bond re-openings and medium-term note and other shelf takedowns.¹² These 154 issuances that include the ICMA CACs were made by 49 different sovereign issuers.¹³

Practitioners initially questioned whether investors would require a premium or other compensation in exchange for the acceptance of the ICMA CACs in bond issuances. Although the long-term impact of implementation of the CACs is yet to be determined and no studies on the short-term impact have been made, the sheer ubiquity of the new CACs seem to indicate widespread acceptance by investors and we are not aware of any specific demands for price concessions driven by the addition of single-limb CACs. Further, given that ICMA CACs are now the market standard, they are familiar to, and understood by, the market.¹⁴ Commentators have suggested that there has been no observable pricing impact from the adoption of the CACs,¹⁵ and that bonds both with and without CACs sit on the same yield curve of the relevant sovereign issuer.¹⁶ While it is unclear what drove this minimal economic impact, if that is in fact what we are seeing, it could be that Argentina's holdout difficulties, on both the issuer's and creditor's side, led to the realization that free riders do not necessarily serve the interests of all creditors and that predictability and clarity are more valuable than a unanimous yes or no vote.¹⁷

In parallel with the rapid implementation of single-limb CACs, New York law issuances have in large part adopted a trust indenture structure in lieu of fiscal agency agreements (FAAs). Historically, and dating back to the era of the dominance of Eurobonds, sovereigns issuing New York law bonds used FAAs. The litigation against Argentina, which under Argentina's New York law FAA rose to over 1,500 individual suits, highlighted the dangers to sovereigns of uncoordinated enforcement and the serious risk to creditors of disparate outcomes based on the timing of enforcement actions. Going forward we would expect an indenture trustee structure in a default scenario to benefit both issuers and creditors by minimizing free riding and maximizing inter-creditor equity.¹⁸

2. History and legal roots

Going back to the beginning, the need to develop a mechanism for negotiating with bondholders, when economic circumstances change for issuers of public debt, is a

12 *ibid.*

13 *ibid.*; issuers that have adopted the ICMA standard form CACs include, under New York Law, Argentina, Bermuda, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Grenada, Guatemala, Honduras, Indonesia, Israel, Jamaica, Mexico, Panama, Paraguay, Peru, Qatar, South Africa, Suriname, Trinidad and Tobago, Turkey, Uruguay and Vietnam and, under English law, Albania, Angola, Armenia, Bahrain, Bulgaria, Cameroon, China, Croatia, Egypt, Ethiopia, Fiji, Gabon, Ghana, Jordan, Kazakhstan, Montenegro, Mozambique, Namibia, Oman, Pakistan, Romania, Tunisia, Ukraine, Saudi Arabia and Zambia.

14 IMF, *Progress Report* and *Second Progress Report* (n 4); practitioners have also noted that the use of a CAC will, in most cases, make the occurrence of a 'restructuring' credit event pursuant to credit default swap (CDS) contracts more likely, because assuming all other conditions to the occurrence of a restructuring credit event are satisfied, the use of a CAC may be one of a limited number of ways that a sovereign issuer can achieve a restructuring that 'binds all holders' of its debt obligations. See Gelpert, Heller and Setser (n 1).

15 Sobel (n 1); IMF, *Second Progress Report* (n 4).

16 IMF Report, *ibid.*

17 Gelpert, Heller and Setser (n 1).

18 IMF, *Progress Report* and *Second Progress Report* (n 4).

necessity. Volatile markets and political situations can drive issuers to attempt to utilize out-of-court restructurings and negotiations to adequately and efficiently amend and adapt their debt obligations to their current market realities.

English law-governed bond documentation typically included provisions that permitted issuers and specified majority percentages of bondholders to agree to modify the fundamental terms of a series without unanimous consent. These CACs were designed to facilitate negotiations between issuers and bondholders, and more importantly, to prevent situations where a holdout could block actions (such as a debt restructuring) planned to improve an issuer's capital structure.¹⁹

Bond instruments governed by New York law historically did not include CACs. Agreements governing bond offerings in the USA traditionally included unanimous action clauses (UACs). In order for a modification of money terms to be effected under these provisions, the affirmative vote of each affected bondholder is required. In New York law-governed bonds subject to the Trust Indenture Act of 1939 (the TIA), UACs are included because, pursuant to Rule 316(b) of the TIA,²⁰ each holder must have the right to vote in respect to any changes to money terms. The basic TIA requirements migrated to non-TIA-qualified indentures, for the most part probably without much thought and in reliance on the well-developed judicial reorganization mechanism provided by the US bankruptcy code.²¹ The US bankruptcy process, by which a supermajority of creditors may exert control over a dissenting minority under the supervision of the court, is seen as an effective and fair process for effectuating corporate reorganizations.

In hindsight, the migration of the unanimity requirements common to New York law-governed sovereign bonds, turned out to be ill advised, because sovereign bonds have no bankruptcy mechanism by which to effectuate a cram down, resulting in holdouts remaining in every sovereign restructuring done since the Brady bonds were first issued in the late 1980s. Whether the difficulties in restructuring the Brady Bonds and their successor Global Bonds were intentional, that was the result, as the 15-year saga of the holdout litigation against Argentina proved. Only a few New York law bonds included CACs before 2003.²² Over the past 14 years, CACs have been shaped by experiences such as that of Argentina and other sovereigns with a history of default and/or restructuring.²³

19 W. Mark C. Weidemaier and Mitu Gulati, 'A People's History of Collective Action Clauses' (2001) 54 *Virginia Journal of International Law* 51.

20 See 15 USC s 77ppp(b) (2012). "Prohibition of impairment of holder's right to payment: Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security . . . shall not be impaired or affected without the consent of such holder."

21 Weidemaier and Gulati (n 19).

22 These few include Kazakhstan, Lebanon, Bulgaria, Egypt and Qatar. The use of CACs by these issuers has been attributed by some to reliance on European precedents rather than an intentional decision. See Weidemaier and Gulati (n 19).

23 *ibid.*

In 2003, Mexico, overcoming the first mover problem, added the series-by-series CACs to their bonds and, in light of the market's acceptance of their bonds, seemingly overnight other sovereign issuers almost without fail followed suit.²⁴ However, witnessing the problem of holdouts in a single series, the market and the IMF and ICMA continued to look for other viable solutions. With the publication of the ICMA standard form CACs in 2014 and the related drive by ICMA and the IMF to encourage sovereign issuers to incorporate the aggregation CACs, dual limb and single limb, into their documentation, in addition to the series-by-series CACs, the market began its second evolution. For more details on the progression of the use of CACs please see the timeline in Table 1 below.

The acceptance of CACs and their inclusion in sovereign offerings has grown. CACs are now commonly appearing in most recent offerings, as noted above. From January 2005 to 2012, 99 per cent of the aggregate value of New York law bonds included some form of CACs.²⁵ In that period, only 5 of 211 issuances did not include CACs, and all of those issuances came from a single nation, Jamaica.²⁶ For a comparison of the CACs of certain sovereigns please see Table 2 below. As discussed further below, following the growth in the use of CACs in sovereign offerings, recent evidence shows that CACs are heading a step further, by appearing in sub-sovereign (governmental instrumentalities, entities or controlled corporations below the national government level) offering instruments.

In an effort to push the benefits of the CACs into the large outstanding stock of previously issued bonds,²⁷ some sovereigns have added a sweep in provision that purport to permit series-by-series CACs in such bonds to nonetheless vote and be bound by the single-limb procedures 'regardless of when they were issued',²⁸ provided that the bonds with series-by-series CACs are successfully restructured pursuant to their own terms.

24 Sobel (n 1).

25 *NML Capital, Ltd v Republic of Argentina*, 699 F 3d 246 (2nd Cir 2012).

26 Datalogic, Bloomberg and other publicly available sources. Although these sources identified 221 issuances, data on the presence of CACs was available only for 211 of those issuances. See also Michael Bradley and Mitu Gulati, *Collective Action Clauses for the Eurozone: An Empirical Analysis* 11–12 (24 October 2011) (unpublished manuscript) <<http://ssrn.com/abstract=1948534>>

27 In January 2016, this existing stock was estimated at approximately US\$900 billion with approximately 70% maturing in the next 10 years. See Sobel (n 1).

28 See eg the Republic of Peru's February 2016 prospectus supplement <https://www.sec.gov/Archives/edgar/data/77694/000119312516476149/d147643d424b5.htm#supprom147643_12>

As further noted below, in sub-sovereign offerings, where a sub-sovereign entity is not subject to any insolvency regime, minority holdout concerns can be managed by including CACs in bond offering documents as with sovereign issuances. This phenomenon has only recently begun, but as outlined in the table below a number of sub-sovereigns have already followed their sovereign issuers (Table 3).

Table 1. Timeline—CAC's and Sovereign Offerors

Timeline—CAC Development	
1994	Argentina issues FAA bonds. Argentina begins issuing debt securities pursuant to its FAA.
2001	Argentina defaults on FAA bonds. President Adolfo Rodriguez Saá issues 'temporary moratorium' on principal and interest payments on its debt, which is renewed yearly until 2016.
2002	The G-10 Working Group issued recommendations to strengthen clauses in sovereign bonds. The recommendations include a set of model CACs for use under New York law-governed sovereign bonds.
2003	IMF-World Bank issues Guidelines for Public Debt Management. Guidelines suggest that debt managers consider including CACs in new international sovereign issuances. Mexico issues New York law bonds with a CAC. Brazil issues New York law bonds with a CAC. Uruguay issues New York law bonds with the first aggregation CAC. ²⁹
2004	ICMA publishes a recommended model CAC for use in sovereign bonds governed by English law.
2014	ICMA publishes a standard form CACs with aggregation features, allowing holder votes to be aggregated across series of bonds that can be used by any sovereign issuer.
2015	ICMA publishes updated standard form CACs in both a New York law and English law form.

29 See Gelpern, Heller and Setser (n 1).

Table 2. Comparative Chart—Sovereigns

Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
1. Argentina ³⁰	December 2010	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of 75% of that series. 2. Dual limb: consent of holders of 85% of all affected series and 66 2/3% of each affected series.
2. Belize ³¹	March 2013	Yes—Trustee	Yes	Only one series outstanding: consent of holders owning at least 75% of the bonds
3. Brazil ³²	March 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: consent of more than holders of 75% of all affected series. 3. Dual limb: consent of holders of more than 66 2/3% of all series affected, and holders of more than 50% of each series affected, taken individually.
4. Chile ³³	January 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of 75% of that series. 2. Single limb: consent of holders of 75% of all affected series if modification is uniformly applicable. 3. Dual limb: consent of holders of 66 2/3% of all series affected and 50% of each affected series.
5. Colombia ³⁴	January 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: consent of holders of more than 66 2/3% of all series affected, and holders of more than 50% of each series affected, taken individually.

(continued)

Table 2 Continued

Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
6. Dominican Republic ³⁵	January 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: Consent of holders of more than 66 2/3% of all series affected, and holders of more than 50% of each series affected, taken individually.
7. Guatemala ³⁶	April 2016	No—Fiscal Agent	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% affected 3. Dual limb: With respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
8. Mexico ³⁷	February 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: with respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of

(continued)

Table 2 Continued

Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
				more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
9. Panama ³⁸	March 2016	No—Fiscal Agent	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: If certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: With respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
10. Peru ³⁹	February 2016	No—Fiscal Agent	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: If certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: with respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.

(continued)

Table 2 Continued

Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
11. Uruguay ⁴⁰	October 2015	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: with respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.

Table 3. Comparative Chart—Sub-Sovereigns

Sub-Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
1. Bancomext ⁴¹	October 2015	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: With respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.

(continued)

Table 3 Continued

Sub-Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
2. Buenos Aires Province, Argentina ⁴²	June 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: If certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: With respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
3. Cordoba Province, Argentina ⁴³	June 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: with respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
4. NAFIN ⁴⁴	April 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: consent of holders of more than 75% of all series affected. 3. Dual limb: consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.

(continued)

Table 3 Continued

Sub-Sovereign	Date of offering	Bondholder's representative (trustee or other)	CACs included	Description of clause
				(Indenture: 5 November 2015)
5. Naftogaz ⁴⁵	November 2009	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Certain proposals may only be sanctioned by an extraordinary resolution passed at a meeting of noteholders at which persons holding not less than two-thirds or, at any adjourned meeting, one-thirds of the aggregate principal amount of the bonds for the time being outstanding form a quorum. 2. In addition, a resolution in writing signed by holders of at least 75% will take effect as if it were an extraordinary resolution.
6. Panama Canal ⁴⁶	October 2015	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single Series: Consent of holders of more than 75% of that series. 2. Single Limb: Consent of holders of more than 75% of all series affected. 3. Dual Limb: consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.
7. Tocumen	May 2016	Yes—Trustee	Yes	<ol style="list-style-type: none"> 1. Single series: consent of holders of more than 75% of that series. 2. Single limb: if certain 'uniformly applicable' requirements are met, consent of holders of more than 75% of all series affected. 3. Dual limb: with respect to two or more series of debt securities issued on or after the date of this offering circular, consent of holders of more than 66 2/3% of all series affected, and consent of holders of more than 50% of each series affected, taken individually.

3. Conclusion

Although CACs, and particularly single-limb CACs, in sovereign and sub-sovereign debt transactions mostly remain untested and are thus unpredictable, CACs have been successful in distinct cases. In the recent Belize, Ukraine, Greece and Naftogaz debt restructurings,⁴⁷ CACs contained (or added later by amendment or local law) in the debt instruments were essential to overcome, at least in part, minority holdout problems. In the end, the key question remains: would a CAC, in particular a single-limb CAC, have prevented or lessened the dislocations experienced as a part of the experience in Argentina.

30 Argentina: Prospectus Supplement (to Prospectus dated 13 April 2010). <https://www.sec.gov/Archives/edgar/data/914021/000090342310000684/roa-424b5_1203.htm>

31 Belize: Offering Memorandum dated 15 February 2013. <<https://www.mof.gov.bz/index.php/downloads/finish/17-belize-2013-debt-restructuring/47-belize-offering-memorandum-final>>

32 Brazil: Prospectus Supplement (to Prospectus dated 16 September 2015). <<https://www.sec.gov/Archives/edgar/data/205317/000119312516499432/d97168d424b5.htm#toc>>

33 Chile: Prospectus Supplement (to Prospectus dated 12 January 2015). <<https://www.sec.gov/Archives/edgar/data/19957/000090342316000754/usd424b5-204289.htm>>

34 Colombia: Prospectus Supplement (to Prospectus dated 21 September 2015). <<https://www.sec.gov/Archives/edgar/data/917142/000119312516510229/d105381d424b5.htm>>

35 Dominican Republic: Offering Memorandum dated 22 January 2016. <<http://www.creditopublico.gov.do/ingles/Bonds%20Issues/external/prospectus/Final%20OM%202026%20Bonds.pdf>>

36 Guatemala: Offering Circular dated 28 April 2016.

37 Mexico: Prospectus Supplement (to Prospectus dated 8 February 2016). <<https://www.sec.gov/Archives/edgar/data/101368/000119312516466198/d124275d424b2.htm>>

38 Panama: Prospectus Supplement (to Prospectus dated 27 February 2015). <<https://www.sec.gov/Archives/edgar/data/76027/000119312516501631/d158474d424b5.htm>>

39 Peru: Prospectus Supplement (to Prospectus dated 18 August 2015). <<https://www.sec.gov/Archives/edgar/data/77694/000119312516476149/d147643d424b5.htm>>

40 Uruguay: Prospectus Supplement (to Prospectus dated 19 October 2015). <https://www.sec.gov/Archives/edgar/data/102385/000090342315000598/rou424b5_1020.htm#a_009>

41 Bancomext: Offering Memorandum dated 6 October 2015.

42 Province of Buenos Aires: Offering Memorandum dated 8 June 2016.

43 Province of Cordoba: Offering Memorandum dated 3 June 2016.

44 Ecopetrol: Prospectus Supplement (to Prospectus dated 23 June 2015).

45 Naftogaz: Prospectus dated 5 November 2009. <http://www.ise.ie/debt_documents/0_0_41161_SD_05112009_15775.pdf>

46 Panama Canal: Offering Memorandum dated 24 September 2015.

47 See Gelpern, Heller and Setser (n 1).