

**RULES OF INTERNATIONAL PRIVATE LAW, PRIORITIES
ON INSOLVENCY AND
THE COMPETING RIGHTS OF FOREIGN AND DOMESTIC
CREDITORS, UNDER THE
ARGENTINE INSOLVENCY LAW**

By

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I. INTRODUCTION

Cross-border insolvencies, and their court-supervised proceedings in Argentina, give rise to numerous controversial questions which are real headaches for people involved with them. This situation seems to be common all over the world. The difficulty in identifying, comparing and harmonizing the rules of International Private Law seems to be an equally worldwide phenomenon. The study of Conflict of Law rules concerning insolvency with foreign elements, resembles the task of putting together a jig-saw puzzle, some of whose pieces are invariably missing and whose final design is unknown.

Argentine law of cross-border insolvencies is no exception, being likewise difficult and somewhat obscure. For these reasons, some preliminary warnings are necessary:

a. Many problems of cross-border insolvencies do not have specific provisions in the law (statutory laws or international treaties), and they have never been decided by judgments that could serve as judicial precedents.

b. Some other problems have specific provisions in Argentine legislation but, frequently, the interpretation of those rules remains within the field of doctrinal or theoretical controversy, due to the absence of judicial precedents regarding those problems.

c. Finally, and quite the contrary, other problems of cross-border insolvencies do have legal provisions that have been applied by the courts. Thus, considering these rules have already been tested, it is possible to predict about its construction hereafter¹.

In brief: only a few controversial questions of cross-border insolvencies have an approximate predictable solution at present in Argentina. On the contrary, the solution of many others is still uncertain. Consequently, this report will provide an outline solely of the former.

II. ARGENTINA HAS TWO REGIMES OF INTERNATIONAL PRIVATE LAW FOR CROSS-BORDER INSOLVENCIES

There are two different Argentine regimes for cross-border insolvencies: one, deriving from international sources, contained in the Montevideo Treaties of 1889 and 1940 and the other, from national statutory sources, contained in the provisions of the Argentine Bankruptcy Law (ABL, hereinafter).

The Montevideo Treaties of 1889 and 1940 do not unify the insolvency laws of the countries that are parties to them. What these treaties do is the unification of numerous rules of International Private Insolvency Law.

¹ Argentina is a country whose legal tradition and rules belong to the Civil or Roman Law system. In principle, judgments are not binding precedents for future cases: the "stare decisis" rule is not applicable. However, in Argentina, judicial precedents are the most valuable auxiliaries for interpretation, and legal forecasts are usually based on them.

The experience to be culled from the Montevideo Treaties and their application in various cases is an interesting field of observation. It allows empirical conclusions to be reached, specially about ineffective provisions and systems, which do not provide quick and efficient solutions to cross-border insolvency problems.

The Montevideo Treaty of 1889 is binding in cross-border insolvencies involving the following countries: Perú, Colombia, Bolivia, Paraguay, Uruguay and Argentina, whereas the Montevideo Treaty of 1940 binds solely Argentina, Paraguay and Uruguay. Cross-border insolvencies with international elements from any other country of the globe, are dealt with in Argentina by the rules contained in various provisions of the ABL, (chiefly, arts. 2, 3 and 4).

This report provides an outline solely of the controversial questions of cross-border insolvencies ruled by the ABL.

III. A SCHEMATIC APPROACH TO THE REGIME OF ARGENTINE INSOLVENCY PROCEEDINGS (ABL)

The ABL regime is applied to both natural persons and artificial persons. ABL is also applied to government owned corporations and other state companies; however, it does not fully apply to financial institutions and insurance companies, which are generally dealt with under other laws. Pension fund companies and trusts are completely excluded from the ABL regime.

There are basically two types of insolvency proceedings, which are regulated by the ABL:

A. Reorganization ("*concurso preventivo*")

The "*concurso preventivo*", tending to the business reorganization of the insolvent debtor (reorganization or reorganization proceeding, hereinafter). Its principal features are:

a. Only the debtor, or the management of the insolvent company, is entitled to initiate a reorganization. The authority to make the filing decision lies solely with the debtor and his management team. Creditors are not able to initiate the reorganization formally. However, indirectly they may force the debtors' decision, filing a petition for liquidation proceedings.

b. During the reorganization proceeding, the authority to make business decisions lies with the debtor and its management, who naturally remain in control of the company's assets. However, there are some limits, and a functionary called a "*síndico*" is appointed by the court from a list of independent accountants. The acts of ordinary business administration are subject to the supervision of the "*síndico*"; some other acts are prohibited, for example: gratuitous transactions; finally, the acts that exceed the ordinary business administration are subject to previous authorization of the court. The ABL also establishes "*comités de acreedores*" (creditors' committees).

c. Debts are usually paid with adjustments made as to their amounts, deadlines, etc, according to an agreement or plan approved by the creditors and by the court. Normally the

agreement is carried out solely with the general or ordinary creditors, ("*acreedores quirografarios*"; see: item IV.); the plan must be approved by a majority of the latter and by the judge. The debtor must satisfy the agreed terms, paying the obligations he has undertaken to meet. Usually, the payment is agreed to be carried out in money, (local or foreign currency), bonds or shares; on the rare occasion, by means of fixed assets.

d. The ABL tends to facilitate the rehabilitation allowing the debtor to propose different terms of agreement to its creditors. It also enables the creditors to be grouped in different classes, so as to offer different proposals for agreement to each class.

e. A significant feature in large reorganization cases is the so called "*salvataje de la empresa*" (business salvage, also known as "*Argentine cramdown*") by the creditors or by any other third party interested in the acquisition of the firm. This mechanism may be used in the reorganization proceedings of certain companies (i.e.: corporations, limited liability companies, government owned companies and cooperative companies), after the failure of the debtor's attempts to arrive at an agreement with its creditors during the first period of the reorganization proceedings ("*período de exclusividad*"). Once it is clear that the debtor has not arrived at an agreement with its creditors, instead of converting the reorganization proceedings into liquidation proceedings, the judge opens a new period ("*período de salvataje*") in an attempt to preserve the business as a going concern. During this period, some creditors and/or third parties may offer proposals for agreement to the company's creditors. If the offerers obtain the majorities (from the ordinary creditors first, and -in some cases- from the shareholders, later on) required by the law, and the judge approves the plan, liquidation is avoided and the offerers become the owners of the company.

B. Liquidation ("*quiebra*")

The chief purpose of the "*quiebra*" is the liquidation of the debtors' assets, in order to distribute the money thereby obtained among the creditors (hereinafter the term liquidation or liquidation proceeding will be used for this instance). Its principal features are:

a. The liquidation petition may be filed either by the debtor or by a creditor. It may also be adjudged by the indirect conversion of a reorganization attempt. For example, the debtor loses the voting session or if the plan is approved its terms are not fulfilled (the debtor does not meet his obligations). Consequently, reorganization is converted into liquidation. There are other less frequent hypotheses that also bring about liquidation (e. gr.: by the spreading or extension [*"extensión"*] of prior bankruptcy proceedings).

b. The company's management loses the control of its assets, transferred to the "*síndico*" who takes over its liquidation in order to distribute the proceeds among the creditors. The company itself ceases to exist.

c. The personal liabilities of the company's administrators are severely increased when reorganization attempts fail. In liquidation, the administrators of the insolvent company may face the following risks: (i) Personal disqualifications (for example: the prohibition to be administrators in other companies, or to operate businesses as sole proprietors), which last one year, except if they are considered to have been involved in criminal acts (in this case, disqualifications could last for several years); (ii) Legal obligation to compensate losses with their personal assets, when, acting with malice, have produced, facilitated, permitted or

aggravated the insolvency or the reduction of the company's estate; (iii) Personal bankruptcy of the administrators, by extension of the company's bankruptcy liquidation, in some extreme cases of abusive acts.

d. In the event of liquidation, payments are made according to a distribution statement, a balance sheet with different classes of creditors ranked according to their priorities. These priorities determine the percentages that are to be collected. Generally, the creditors lower down on the list obtain very poor distribution rates, if indeed anything at all.

e. Payments are made in court and in a standardized form, in the so called "*moneda de quiebra*" (literally, bankruptcy money). This is the local currency which creditors receive at different distribution rates according to their priorities (an outline of the regime of priorities is provided in the next item).

The differences between reorganization and liquidation proceedings are important under the Argentine rules of Conflict of Laws for cross-border insolvencies. Notably, the rule of local preference, which subordinates the credit payable abroad belonging to foreign bankruptcy proceedings, only applies in liquidation cases.

IV. A SCHEMATIC APPROACH TO THE ARGENTINE REGIME OF PRIORITIES IN INSOLVENCY PROCEEDINGS: CREDITORS' PREFERENCES

A. Priorities under Argentine Law

The Argentine law regime of priorities has always been somewhat complicated. There are -and there have always been- different classes of creditors according to their rank or degree.

The ABL No. 24522 contributed two important provisions to this issue:

a. After its enactment in 1995, the ABL is the solely comprehensive source for the identification of all the priorities in bankruptcy proceedings (ABL, art. 239). Other statute laws are no longer sources of creditors' preferences in the event of debtors' bankruptcy.

b. A super-priority in favor of the Argentine Security System in reorganization cases – existent under former ABL No. 19551, art. 11 inc. 8- has been repealed.

An outline of the regime of priorities follows, avoiding details that would make its comprehension difficult for an observer not familiar with Argentine law.

What is the rank of credits in Argentine bankruptcy proceedings?

First, the "*créditos con privilegio especial*" (especially privileged credits).

These are secured credits with rights over specific property. Creditors of this kind have the priority over all other creditors to collect from the product of the liquidation of the goods assigned to their priority.

In the event of various creditors with special privileges on the same goods, there are

different rules for competing, which establish degrees among some of them, and impose the proportional distribution in a few cases. The unpaid percentage of a specially privileged credit, in principle, becomes ordinary credit ("*crédito quirografario*").

The most frequent credits with special privileges are: mortgage credits, loans secured by a pledge, certain credits regarding work or labor, mechanics' lien, right of retention and some property taxes.

Second, the "*gastos de conservación y de justicia*" (administrative expenses).

These are preferred creditors who have a right which is enforceable against the insolvency estate, due to their actions on behalf of -or in order to benefit- the rest of the creditors, after the inception of bankruptcy proceedings.

After being paid the specially privileged credits, the administrative expenses have the subsequent priority over all other creditors, which is enforceable over the debtors' unsecured property as a whole.

The principal credits of this type are the fees of various bankruptcy functionaries and the credits of suppliers of goods or services to the debtors' business after the commencement of insolvency proceedings.

In the event of insufficient product, the latter is shared among them proportionally.

Third, the "*créditos con privilegio general laboral*" (ordinarily privileged labor claims).

They are paid after the former two classes. The total amount of these credits may be satisfied in this degree. In the event of insufficiency, the concurrence within the class is proportional.

Fourth, the "*créditos con privilegio general, no laboral*" (the rest of not labor ordinarily privileged credits).

After the satisfaction of the former classes, 50% of the remaining money (if there be any, of course), is assigned to the payment of the ordinarily privileged creditors. If that 50% is not sufficient to satisfy the total amount of credits of this type, they receive proportional shares according to the amount of each credit, and the unpaid percentage becomes an ordinary credit.

The most frequent credits of this class are security systems' credits and the most relevant tax claims.

Fifth, the "*créditos quirografarios o comunes*" (ordinary credits).

The remaining 50% of money not distributed among the former classes is destined to paying, proportionally, the general credits. These are all the credits without special or ordinary preference, and the credits that having those preferences have lost them or have not been able to fully collect according to their original preference.

Sixth, the "*créditos subordinados*" (conventionally subordinated debts).

Only in the event of total payment of the former five prior classes, can the subordinated debts be satisfied. They are credits whose owners have agreed to collect after the payment of all other debtors' obligations. This is a class which is not very frequent to date, but it will be usual in the future, due to the employment of subordination clauses in present-day debt instruments such as "*obligaciones negociables*" (negotiable obligations or bonds). The amendment of the Argentine Civil Code, art 3876, by law No. 24441, passed by in January '95, recognized the possibility of subordination by agreement, an already existing commercial practice. The ABL regime also recognizes this category, establishing that the subordinated debts will be ruled by the terms of the subordination agreement.

In liquidation cases, the possibilities of this class of creditors collecting any money are remote.

Seventh, the "*créditos extranjeros postergados al saldo*" (foreign credits payable after all others have been settled or foreign credits subordinated by the ABL, art. 4).

In Argentine liquidation proceedings, this class is composed of credits that, being payable outside Argentina, belong to foreign insolvency proceedings. These creditors are entitled to collect from the remaining money, after all the claims from the prior classes have been settled. In point of fact, in liquidation there rarely, if ever, exists any remaining money. The possibility of collecting is, therefore, for all practical purposes virtually non-existent. This rule of subordination of some foreign credits is not applied in reorganization proceedings.

Eighth, the "*accionistas*" or "*socios*" (shareholders or partners) of the bankrupt company.

If after the satisfaction of all the prior classes (this being strictly hypothetical and never actually happening) and where the debtor is a company, the remaining money must be distributed among the partners or the shareholders. In the case of bankruptcy liquidation, the company ceases to exist.

B. Priorities Ruled by Foreign Law, when Claimed in Argentine Insolvency Proceedings

In the event of a credit whose privilege is ruled by a foreign law, and which is recognized in Argentine bankruptcy proceedings but which is not submitted to the rule of local priority (see: item VII. D.) the question arises of which law should be applied to the privilege itself, Argentine law or the foreign law?

Although the ABL has no provision on this issue, the question was treated *in re "Arthur Martin SA"*², where the court stated that the ranking of all priorities -whether domestic or foreign- should be governed by the *lex fori*, and this is the Argentine law when the proceedings have been commenced by a judge in Argentina. This is also the prevalent opinion of Argentine insolvency specialists³. In my opinion, priorities of foreign claims should be recognized in

² *Juzgado Nacional de Primera Instancia en lo Comercial No. 7*, September 11, 1989, cited by María Blanca Noodt Taquela, *Derecho Internacional Privado*, Ed. Astrea, Buenos Aires, 1992, p. 400.

³ Antonio Boggiano, *Derecho Internacional Privado*, Ed. Abeledo-Perrot, Buenos Aires, 1991, t. II, p. 1005; María Elsa Uzal, *El art. 4 de la ley 19.551. Algunas reflexiones sobre su filiación sistemática*, RDCO 1985-527;

Argentine bankruptcy proceedings according to the so called "rule of reciprocity"; however, the ranking of all priorities -whether domestic or foreign- should be governed by the *lex fori*, and this is the Argentine law when the Argentine court is dealing with the insolvency case.

V - THE DEBTOR DOMICILED OUTSIDE ARGENTINA WITH ASSETS IN ARGENTINA

A. The Argentine Courts' Jurisdiction over Insolvent Debtors Domiciled Abroad: General Principle and Special Rule

Argentine insolvency law applies, in principle, to debtors domiciled in Argentina. Citizenship or nationality of the debtor are of no consequence, given that the National Constitution establishes equality under the law for all inhabitants (those who have fixed their residence in Argentina).

There is a general rule according to which Argentine courts may adjudge bankrupt any person or entity whose domicile is fixed in Argentina. Thus, in principle, Argentine courts have no jurisdiction over debtors domiciled abroad.

However, a special rule (ABL, art. 2 inc. 2) establishes an exception to the latter: in the case of a debtor domiciled outside Argentina who has assets in Argentina and obligations payable in this country. Such being the case, local creditors (the owners of credits payable in Argentina, whatever their nationality, citizenship or domicile) may file a petition to initiate the bankruptcy liquidation proceedings of their debtor. The Argentine court may declare the bankruptcy judgement, but with limited effects:

- a. The effects of this type of bankruptcy remain within Argentine territory (territoriality)
- b. Assets in Argentina are submitted to bankruptcy rules, but the status of the debtor is not affected, and there is no disqualification for the bankrupt person.
- c. The sole purpose is the liquidation of assets placed in Argentina in order to distribute the proceeds among local creditors, according to the rules of Argentine insolvency law.

Applying this special rule (ABL, art. 2 inc. 2), Argentine courts have declared bankrupt corporations domiciled outside Argentina⁴.

B. Assets in Argentina of Insolvent Debtors Domiciled Abroad Without Credits Payable in Argentina

In Argentina, there are hardly any judicial precedents for the case of debtors domiciled abroad, with assets in Argentina, but without credits payable in this country.

Inés Weinberg de Roca, *Concursos internacionales en la ley 24.522*, ED, December 5, 1996; Adolfo A.N. Rouillon, *Cuestiones de Derecho Internacional Privado en la ley concursal argentina 24.522*, Anales de la Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires, Año XLIII, Segunda época, No. 37, p. 1.

⁴ *In re: "Pacesetter Systems Inc"*, CNCom, sala C, 10/2/93, following the opinion of the "*Fiscal de Camara*" Raúl Calle Guevara No. 66844/92; CSJN, 9/6/94, ED 159-59.

It is clear that these debtors may not be adjudged bankrupt in Argentina; the opinion of legal authors (what is called "*doctrina*") is unanimous on the subject.

However, there are controversial opinions among legal authors about how Argentine courts should decide in the event of a foreign insolvency administrator's claim regarding the assets placed in Argentina. The principal problems to encounter would be the following :

- a. How would an Argentine court arrive at the conclusion that there are no local creditors, and how should it handle the foreign claim?
- b. The recognition of foreign trustees, receivers and other insolvency administrators.

To date there are still no clear answers to these issues. The sole reported precedent, in re "Panair do Brasil SA", is an old case and the judgments pronounced on it were so unusual that it is highly unlikely that they would be followed by Argentine courts at present⁵.

⁵ The chief judgments in re "Panair do Brasil SA" were: CNCom, sala B, 18/11/70, LL, 143-146 y JA, 12 [1971] 217; CSJN, 5/7/72; Juzg Nac 1a. Inst Com, 29/12/75, ED, 70-387; CNCom, sala B, 13/9/76, ED, 70-390; there are full transcriptions in Boggiano, A., op. cit., tomo II, p. 936 and p. 951. In the doctrinal field: Radzimirski, Alejandro P., "Sistema de Derecho Internacional Privado Argentino", RDCO, 1990-A-222, esp. note 61.

VI. THE INFLUENCE AND EFFECTS OF FOREIGN INSOLVENCY PROCEEDINGS IN ARGENTINA, WHEN THERE ARE ASSETS AND LOCAL CREDITORS IN THIS COUNTRY, BUT NO INSOLVENCY PROCEEDINGS HAVE BEEN OPENED IN ARGENTINA

A. First Rule: Territoriality of the Foreign Bankruptcy Order

In ABL, art. 4, there is a first rule for this situation: the foreign bankruptcy proceedings may not be invoked, in Argentina, in order to dispute the rights of local creditors, enforceable on assets in Argentina. Neither may the foreign bankruptcy proceedings be invoked to set aside or make voidable the acts carried out in Argentina by the debtor.

For example, in principle the acts carried out by the debtor with creditors in Argentina, that would be considered submitted to revocation (or voidable) in the country where bankruptcy proceedings have been opened, remain valid in Argentina. On the other hand, it is hard to predict as to what extent a foreign ordered stay of proceedings regarding local assets would be recognized and applied in Argentina.

B. Second Rule: Limited Extraterritoriality of the Foreign Order for Commencement of Insolvency Proceedings

In the same art. 4 of the ABL, there is another rule for the situation under analysis. The foreign insolvency judgment -the order opening the "*concurso*" (insolvency proceedings in general) in another country- may be used by local creditors, and by the debtor himself, in order to obtain the commencement of a "*quiebra*" (liquidation proceeding) in Argentina. In this case, evidence of the debtors' insolvency need not be produced. The foreign insolvency judgment has, in this way, extraterritoriality, i.e., validity beyond the border of the country where bankruptcy has been ordered. This validity is limited: it may only be used as an act of bankruptcy in Argentina. Now this is a curious state of affairs, indeed, given that the general rule under ABL is that creditors who file for the liquidation of their debtor, must prove the "inability of the debtor to meet obligations as they come due" (this is the meaning of insolvency in the ABL sense).

The rule under comment has posed a problem of interpretation namely how to identify which foreign proceedings regarding insolvency may be considered equivalent to the Argentine term "*concurso*".

In re "Pan American", the Argentine judge considered that US Chapter 11 (American Bankruptcy Code, 1978) could be subsumed in the terms "*concurso declarado en el extranjero*" (ABL, art. 4). Thus, Pan American liquidation proceedings ("*quiebra*") were commenced in Buenos Aires courts, to realize the assets of that company in Argentina.

VII. THE SITUATION OF FOREIGN CREDITORS IN ARGENTINE INSOLVENCY PROCEEDINGS: RECOGNITION OF CLAIMS, PRIORITIES, SUBORDINATION

A. Present Trend

After the 1983 amendment of the former ABL No. 19551, art. 4, by the law No. 22917, the discrimination of foreign creditors in Argentine bankruptcy proceedings has been significantly reduced. The ABL 24522 follows the same trend.

The rule of reciprocity, in force since 1983, tends to eliminate the differences between domestic and foreign creditors within Argentine insolvency proceedings. However, some discrimination still remains.

It may be pointed out that the tendency to equalize foreign and domestic creditors was not popular twenty years ago. Nowadays, on the contrary, winds in favour of the elimination of postponement seem to be blowing. It is desirable that a reform of the insolvency legislation be carried out to that effect. It also seems probable that future judicial construction will minimize the discrimination rules. This will be the case, provided that Argentine public opinion and government policy remain in favour of international free trade, open economics, and integration of the country into international tariff agreements and/or international common markets⁶.

B. Foreign and Domestic Creditors

According to the ABL, the difference between foreign and domestic **credits** (rather than foreign and domestic **creditors**), lies in the following criteria:

- a. Foreign credit is the credit payable solely outside Argentina.
- b. Domestic or local credit is the credit payable in Argentina.
- c. Credit with two or more alternative domiciles of payment, even when the option is with the creditor (the right to choose the country of enforcement), should be considered domestic credit. Upon the enactment of the insolvency legislation reform of 1983, courts have not rendered judgment on such cases to date. But a former precedent did exist, the "Trading Americas SA"⁷ judicial decision, construed under the partially reformed art. 4 of the former ABL No. 19551 of 1972. This was more discriminatory than the present-day version (ABL No. 24522, art. 4). It is highly probable, therefore, that the cited judicial interpretation will be used (*a fortiori*) in future cases⁸.

C. Proof and Acceptance of Foreign Credits: Rule of Reciprocity

The acceptance of foreign credits in Argentine insolvency proceedings makes it essential to produce evidence that a similar but domestic credit should be recognized, accepted, and could be collected, in the same conditions, in insolvency proceedings in the country where the foreign credit is payable (reciprocity).

The principal problem of the construction of this rule has been to determine the onus of

⁶ *Vide*: CSJN, 9/6/94, "Luis de Ridder Ltda SA", JA 1995-I-646; CCC San Isidro, 4/3/93, "Clement, Jorge"; CCC Mar del Plata, 17/11/94, "Emiliani S.P.A. en Ventura, quiebra".

⁷ CNCom, sala E, 15/9/83, JA, 1983-IV-186.

⁸ *Vide*: Boggiano, A., op. cit., tomo II, p. 1030.

proof of the foreign law: who has the burden of proof of the foreign law?

Although the terms of the ABL, art. 4, are imprecise, it may be observed that the judicial construction of this topic tends to be broad and flexible. This has become specially true since the Argentine ratification of the CIDIP II "Interamerican Convention on the General Rules of International Private Law", approved by the "Specialized Interamerican Conference on I.P.L.", Montevideo 1979 (ratified by Argentine statute law No. 22921, December 1, 1983).

Even in cases involving foreign laws of countries that are not parties to the cited International Convention, Argentine courts have applied its principles. For example, *in re* "Cacace, Horacio / Inc de impugnación por Sherrant SA", the court decided it had the power to order the parties -the creditor, the debtor and the trustee- to identify and produce evidence of the foreign law involved in the rule of reciprocity; thus meaning that the burden of proof was not solely with the creditor⁹.

The proof of foreign law was admitted with latitude, *in re* "D'Angelo, Lydia v. Paino, Myriam", where the court considered sufficient a copy of the American Bankruptcy Code of 1978, in order to produce evidence satisfying the rule of reciprocity, and accepted a credit of the holder in due course for a check payable in U.S.A.¹⁰.

In another case, an Argentine judge considered that the rule of reciprocity was satisfied when the creditor, with domicile of payment in England, exhibited the opinion of a British expert explaining that there were non-discrimination rules for foreign creditors according to the bankruptcy law of the United Kingdom¹¹.

The principal reform introduced by the ABL No. 24522, art. 4, on this subject is that the secured creditors are excluded of the rule of reciprocity hereinafter. The creditors with "*garantía real*" (securities with a right in rem; i.e.: mortgages, pledges) do not have to produce evidence of the foreign law as the unsecured creditors must to.

D. Collecting a Foreign Credit: Rule of Local Priority

Once the foreign creditors' claim has been accepted in Argentine insolvency proceedings, and the rule of reciprocity has been satisfied, different situations arise regarding the collection of these credits:

a. Where the Argentine proceeding is a reorganization ("*concurso preventivo*"), there is no discrimination¹².

b. Where the Argentine proceedings is a liquidation ("*quiebra liquidativa*"):

⁹ CNCom, sala B, 22/8/90, following the opinion of the "Fiscal de Camara" Raul Calle Guevara, No. 62710/90.

¹⁰ JCCRosario, 1a. Nom., 11/12/87, RJVS, II-201, commented on by Alejandro Menicocci.

¹¹ JCCRosario, 13a. Nom., 26/2/96, "Massey Ferguson SA", DYE 5-306, commented on by Mario Eugenio Chaumet.

¹² CSJ Buenos Aires, 19/10/93, "Alfredo Alejandro Scola y Cía. SCA", JA 1994-II-256.

1. There is no discrimination when the foreign credit does not belong to other foreign bankruptcy proceedings¹³;

2. The rule of local priority applies when the foreign credit, (payable solely outside Argentina), also belongs to foreign bankruptcy proceedings. The exact legal meaning of "belonging" to foreign bankruptcy proceedings is not clear and there is no judicial construction of the rule.

The effect of the rule of local priority is the subordination of this type of foreign credit ("payable abroad **and** belonging to foreign bankruptcy proceedings"), ranking it behind all other classes of credits (see: item IV. A.). In liquidation proceedings, this type of foreign credit could be collected solely in case of surplus proceeds ("*saldo*"), i.e., after the total amount of credits of all prior classes and degrees has been satisfied. In fact, in liquidation proceedings money never remains for this type of foreign credits. When this subordination rule is applicable, the collecting possibilities are in fact non-existent.

E. Conclusions

In brief:

- a. Credits payable solely abroad, and only these, are considered foreign credits;
- b. When claimed in Argentine insolvency proceedings, foreign credits must satisfy the test of reciprocity;
- c. In principle, after being accepted, there is no discrimination regarding foreign credits with respect to their collecting position; except:
- d. In case of liquidation , when some foreign credits are postponed to the lowest degree. This rule of subordination is applicable only to credits payable solely outside Argentina and if they also belong to foreign bankruptcy proceedings.

¹³ CCC Mar del Plata, 17/11/94, "Emiliani SPA en Ventura, quiebra"