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LATHAM & WATKINS LLP

March 3, 2015

VIA ECF

Hon. Thomas P. Griesa
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *NML Capital, Ltd. v. The Republic of Argentina*, No. 08-cv-6978 (TPG) and related cases

Dear Judge Griesa:

We write to update the Court regarding the action entitled *Knighthead Master Fund LP v. The Bank of New York Mellon* (2014), HC-2014-000704, initiated by certain Euro Bondholders[1] in the English High Court of Justice, Chancery Division (the "English Court"), in London, England. As explained in our letters dated November 7, 2014, Dkt. # 709, and November 25, 2014, Dkt. # 723, the action concerns the status of payments remitted by the Republic of Argentina to the Bank of New York Mellon ("BNY") in its capacity as indenture trustee for the Euro Bondholders. During the course of that proceeding, BNY took the position that as trustee, it could be relied upon by the English Court to bring to Your Honor's attention any rulings issued by the English Court; however, because BNY has failed to take any steps to timely inform the Court of such rulings, the Euro Bondholders are compelled to do so themselves.

Following detailed written and oral submissions by the parties, and after providing additional potentially interested parties an opportunity to be heard, on February 13, 2015, Mr. Justice Richards issued the English Court's judgment (the "English Judgment") and order, attached hereto as Exhibits A and B. In his judgment, Mr. Justice Richards reaffirmed that the Euro Bonds are governed by English law, and that under English law, the payments made pursuant to those bonds are held by BNY on an English law trust for the benefit of the Euro

[1] The Euro Bondholders are a group of investors holding euro-denominated bonds issued by the Republic of Argentina (the "Republic") pursuant to 2005 and 2010 exchange offers (the "Euro Bonds"). The Euro Bondholders are Knighthead Capital Management, LLC; Perry Capital, LLC, Monarch Master Funding 2 (Luxembourg) S.á.r.l.; QVT Fund IV LP; QVT Fund V LP; Quintessence Fund L.P.; and Centerbridge Partners LP (each on behalf of itself or one or more investment funds or accounts managed or advised by it). The claimants in the proceedings before the English Court are Knighthead Master Fund LP, RGY Investments LLC, Quantum Partners LP, and Hayman Capital Master Fund LP.

Bondholders. Ex. A ¶¶ 36-47. Mr. Justice Richards left open the second issue raised by the Claimants, namely, whether under English law, BNY's obligations and liabilities under the trust indenture for the Euro Bonds are affected by the Court's Amended Injunction dated November 21, 2012. *Id.* ¶¶ 35(2), 48-49.

Mindful "not to intrude improperly into matters which are before the US courts," Mr. Justice Richards concluded that his ruling was "peculiarly within the jurisdiction of [the English Court]" because it established "the status of the funds held by [BNY] as a matter of English law." *Id.* ¶ 44. In that regard, Mr. Justice Richards observed that the Euro Bonds "involve no connection at all with the United States" and are indisputably governed by English law, *id.* ¶ 13, but that "issues of English law have not been raised before the District Court," *id.* ¶ 44.

Finally, Mr. Justice Richards expressed some concern regarding the "problematic . . . state of 'paralysis' . . . in the operation of the trust caused by the injunction," *id.* ¶ 46, and posited that "international cooperation in international disputes . . . has proved to be helpful," *id.* ¶ 44. We respectfully request that in the spirit of such international cooperation and in light of the respect to this Court shown by Mr. Justice Richards, Your Honor consider the guidance provided by the English Court in its judgment – the only court that has ruled on issues specific to the Euro Bonds, which are indisputably governed by English law and lack a nexus to the United States.

In light of the above, we respectfully request that the Court reconsider its prior rulings as they apply to the Euro Bonds. In the meantime, the Euro Bondholders, as fiduciaries, will continue to pursue any remedy available to them in connection with their property rights relating to those bonds in all appropriate forums.

Sincerely yours,

/s/ Christopher J. Clark
Christopher J. Clark
of LATHAM & WATKINS LLP

cc: Counsel of Record (via ECF)

Encl.

EXHIBIT A

Neutral Citation Number: [2015] EWHC 270 (Ch)

Case No: HC-2014-000704

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 13 February 2015

Before :
MR JUSTICE DAVID RICHARDS
- -
Between :

(1) Knighthead Master Fund LP **(2) RGY Investments LLC** **(3) Quantum Partners LP** **(4) Hayman Capital Master Fund LP**	**Claimants/ Applicants**
- and -	
(1) The Bank of New York Mellon **(2) The Bank of New York Depositary (Nominees) Limited**	**Defendants/ Respondents**

- -
- -

Mark Hapgood QC, David Quest QC and David Simpson
(instructed by **Reynolds Porter Chamberlain LLP**) for the **Claimants/Applicants**
Robert Miles QC and Andrew de Mestre
(instructed by **Allen & Overy LLP**) for the **Defendants/Respondents**

Hearing date: 18 December 2014
- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Justice David Richards:

Introduction

1. The claimants in these proceedings are four investment funds which hold or are interested in euro-denominated debt securities issued by the Republic of Argentina (the Republic) in 2005 and 2010. These securities are subject to the terms of a trust indenture dated as of 2 June 2005 (as amended) (the trust indenture) and both the securities and the trust indenture, as it applies to the securities, are governed by English law.

2. The first defendant, The Bank of New York Mellon (the trustee), is the trustee with respect to the relevant debt securities. It is a company formed under the laws of the State of New York and its registered office is in New York. It has a registered place of business in England. The second defendant, The Bank of New York Depository (Nominees) Limited, is a company incorporated under the laws of England and Wales and is a wholly-owned subsidiary of the trustee. It is the registered holder of the global securities issued in respect of each series of the relevant debt securities.

3. On the present application, the claimants seek two interim declarations, as to the status of funds held by the trustee and as to the obligations under English law of the trustee, and also a direction to the trustee to bring the terms of such declarations, if made, to the attention of courts in the United States.

The exchange bonds

4. The securities held by the claimants are among the debt securities (the exchange bonds) issued in exchange for securities previously issued by the Republic under a Fiscal Agency Agreement made in 1994 and governed by New York law (the FAA bonds). The Republic defaulted on the FAA bonds in 2001 when it declared a "temporary moratorium" on the payment of principal and interest on debt in excess of US $80 billion. Since then, the Republic has not made any payments on the FAA bonds.

5. In 2005 the Republic made an offer to the holders of FAA bonds to exchange those bonds for new unsecured bonds at a very significant discount. Some 76% of the holders of the FAA bonds with an aggregate par value of some US $62.3 billion accepted the offer. A second exchange offer was made on materially the same terms in 2010 and was accepted by the holders of a further 15% of the original FAA bonds. Accordingly, some 91% of the FAA bonds have been exchanged. The terms of the FAA bonds did not include a collective action clause enabling a majority to bind the minority, so the holders of the remaining FAA bonds are not bound by the restructuring and they have become known as the Holdout Creditors.

6. The exchange bonds were issued in a number of different series and in three different currencies: Argentine pesos, euros and US dollars. So far as relevant for present purposes, they are governed by the trust indenture and by the terms endorsed on the relevant global securities.

7. The present proceedings are concerned only with the euro-denominated exchange bonds (euro debt securities). As noted above, the euro debt securities are governed by English law and section 12.7 of the trust indenture (as amended in 2010) provides, so far as relevant:

> *"In respect of Debt Securities of a Series governed by English law, this Indenture, such Debt Securities* ***and any non-contractual obligations arising out of or in connection therewith*** *shall be governed by and construed in accordance with the laws of England and Wales without regard to principles of conflicts of laws, except with respect to authorisation and execution by the Republic, which shall be governed by the laws of the Republic."*

The words in bold were added in 2010.

8. By section 12.8, so far as relevant, the Republic irrevocably submits to the jurisdiction of the courts of England and of the Republic with respect to any proceedings arising out of or in connection with the indenture as it relates to debt securities governed by English law.

9. By section 3.1 of the trust indenture, the Republic covenants to pay the principal of and interest on the exchange bonds to the trustee, at the places and times and in the manner provided in the debt securities and the trust indenture. Section 3.1 continues:

> *"All monies (save for its own account) paid to the Trustee under the Debt Securities and this Indenture shall be held by it in trust for itself and the Holders of Debt Securities in accordance with their respective interests to be applied by the Trustee to payments due under the Debt Securities and this Indenture at the time and in the manner provided for in the Debt Securities and this Indenture."*

10. Section 3.5 provides that any sums due are to be paid to the trustee no later than the business day prior to each interest payment date or principal payment date. It continues by providing that the trustee shall apply the amounts so received in payment of the sums due on the relevant payment date and:

> *"Pending such application, such amounts shall be held in trust by the Trustee for the exclusive benefit of the Trustee and the Holders entitled thereto in accordance with their respective interests and the Republic shall have no interest whatsoever in such amounts."*

11. In the case of the euro debt securities, payment is made in euros to an account in the name of the trustee at Banco Central de la República Argentina (the Central Bank) in Buenos Aires.

12. The structure created by the trust indenture and the terms of the euro debt securities are therefore clear and straightforward. Payments made by the Republic to the trustee in respect of the euro debt securities are to be held by the trustee on the trusts

of the trust indenture and for the purpose of making payments due on the euro debt securities of principal and interest. Once received by the trustee, the funds are held on those trusts and the Republic has no interest in them. It may however be noted that payment is not deemed to be made on the euro debt securities until the relevant sums are received by the Holder: paragraph 2 of the terms and conditions of the euro debt securities.

13. In the context of the present proceedings, it is also relevant to note that save in one respect, these arrangements involve no connection at all with the United States. The euro debt securities, and the trust indenture so far as it relates to them, are governed by English law, and the Republic has submitted to the jurisdiction of the English courts. Payments are made in euros and are made to an account in the Republic for onward transmission to those ultimately entitled to them, through the systems operated by Euroclear Bank SA/NV (Euroclear) and Clearstream Banking SA (Clearstream) under Belgium and Luxembourg law respectively. The one connection with the United States is that the trustee is incorporated under New York law and has its registered office in New York. This is not a coincidence. The criteria for appointment as trustee are set out in section 5.8 of the trust indenture and include requirements that the trustee:

> *"has its Corporate Trust Office in the Borough of Manhattan, the City of New York and is doing business in good standing under the laws of the United States or of any State or territory thereof or the District of Columbia that is authorised under such laws to exercise corporate trust powers (including all powers and related duties set forth in this Indenture), and subject to supervision or examination by federal, or state authority."*

14. Any trustee that ceases to be eligible in accordance with the provisions of section 5.8 is required to resign immediately. No successor trustee may accept appointment unless at the time of such acceptance it is eligible under the terms of Article 5.

The US proceedings

15. The background to the present proceedings, and the reason for them, are the proceedings brought by some Holdout Creditors in the United States and orders made in those proceedings.

16. Proceedings were brought by different groups of Holdout Creditors in the US District Court for the Southern District of New York (the District Court). As a result of the failure of the Republic to pay interest due under the FAA bonds, events of default were declared and the full amount of the principal of those bonds became due and payable. Judgments have been entered in the District Court in favour of Holdout Creditors for the full amount of their bonds.

17. For example, NML Capital Limited commenced proceedings in November 2003 in the District Court to recover the principal and interest due under the FAA bonds held by it. The Republic appeared and defended the proceedings. On 18 December 2006, NML obtained judgment in a sum of a little over US $284 million on a motion for summary judgment. NML has brought proceedings in England for judgment on the

District Court's judgment and the Supreme Court has held that the Republic is not entitled to rely on state immunity: *NML Capital Ltd v Republic of Argentina* [2011] UKSC 31; [2011] 2 AC 495.

18. The Holdout Creditors have relied on a term of the FAA bonds to argue that no payment of interest may be made on the exchange bonds without making a rateable payment of the amount due on the FAA bonds. As the full amount of principal of the FAA bonds is due and payable, this means that if, for example, the Republic wishes to pay the full amount of interest due on the exchange bonds on a particular interest payment date, it must simultaneously pay the full amount due on the FAA bonds. The provision in question, known as a pari passu clause, reads so far as relevant as follows:

> *"The Securities will constitute (except as provided in Section 11 below) direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank pari passu and without any preference among themselves. The payment obligations of the Republic under the Securities shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness (as defined in this Agreement)."*

19. In 2012, the District Court held in favour of the Holdout Creditors' construction of the pari passu clause, a decision which was subsequently upheld on appeal by the Court of Appeals for the Second Circuit (the Court of Appeals). The US Supreme Court has declined to hear an appeal against this. This construction is controversial but, as Newey J said in a judgment to which I will later refer, this is of little or no significance because the clause has been definitively interpreted in accordance with its governing law by a court of competent jurisdiction.

20. On 23 February 2012, on an application by NML Capital Limited and other Holdout Creditors, and having heard the Republic in opposition, the District Court granted an injunction (the injunction) that enjoined the Republic from making payment of any percentage of the amount due under the exchange bonds without concurrently or in advance making payment of a similar percentage of amounts due under the FAA bonds. The Republic was also required to provide copies of the order to all persons and entities who act in active concert or participation with the Republic to assist the Republic in fulfilling its payment obligations under the exchange bonds, who "shall be bound by the terms of this order" and who were prohibited from aiding and abetting any violation of the order.

21. On 26 October 2012, the Court of Appeals affirmed the order but remanded the case to the District Court for more precise definition of the third parties to which the injunction would apply. That clarification was provided by the District Court on 21 November 2012, specifically identifying certain third parties including the trustee who were subject to the terms of the order. Other third parties include the registered owners of the exchange bonds and nominees of the depositories for the exchange bonds (including the second defendant in these proceedings), Clearstream and Euroclear, trustee paying agents and transfer agents for the exchange bonds. The order provides that any non-party that has received proper notice of the order and that requires clarification as to its duties, if any, under the order may apply to the District

Court on notice to the Republic and NML. On 23 August 2013, the Court of Appeals affirmed the order and refused leave to appeal to the US Supreme Court. On 16 June 2014, the US Supreme Court denied the Republic's petition for a writ of certiorari, thus lifting the previously ordered stay of the injunction.

22. On 26 June 2014 the Republic transferred the funds necessary to make the payment of interest due on the exchange bonds on 30 June 2014 to the trustee's account at the Central Bank. This included €225 million for interest on the euro debt securities (the euro funds). The following day the Republic published a notice addressed to holders of its bonds stating that it had made this payment. On the same day NML and other Holdout Creditors filed a motion before the District Court alleging that the payment was a breach of the injunction. A hearing took place that day at which other parties, including the trustee and the claimants in the present proceedings and other holders of euro debt securities, were represented and made submissions. The judge stated that the funds should "simply be returned" to the Republic and invited counsel for NML to draft an order.

23. On 29 June 2014, the claimants and other holders of euro debt securities (euro bondholders) filed an emergency motion seeking clarification of the injunction. The clarification sought was that the injunction does not apply to the third parties that processed payments on the euro debt securities.

24. On 6 August 2014 the District Court entered an order in terms which had been submitted by Holdout Creditors on 1 August 2014. By the order, the court declared that the payment by the Republic of funds, including the funds in euros, made to the trustee on 26 June 2014 "was illegal and a violation of" the injunction. The trustee was ordered to retain the funds in its account at the Central Bank pending further order of the court and was restrained from making or allowing any transfer of the funds unless ordered by the court. The Republic was restrained from taking any steps to interfere with the trustee's retention of the funds in accordance with the order. The order further provided that the trustee's retention of the funds pursuant to the terms of the order should not be deemed a violation of the injunction and that the trustee "shall incur no liability under the Indenture governing the Exchange Bonds or otherwise to any person or entity for complying with this Order" and the injunction.

25. On 15 August 2014 the euro bondholders issued an appeal against this order but on 22 October 2014 the Court of Appeals declined jurisdiction to hear the appeal.

26. In August 2014, two groups of Holdout Creditors filed motions in the District Court seeking orders that the trustee pay over to them the funds transferred to the trustee by the Republic on 26 June 2014, including the euro funds, or so much of them as was sufficient to satisfy their judgments together with post-judgment interest (the turnover motions). In September 2014, the trustee filed briefs in opposition to the turnover motions, as did NML and other Holdout Creditors.

27. By an order issued on 27 October 2014, the District Court denied the Turnover Motions on the grounds that the euro funds were located outside the United States. The court's reasoned judgment stated that even if the plaintiffs could show that the Republic maintained an interest in the euro funds, a point "which the court does not reach", a turnover order would constitute an attachment or execution of the property

of a foreign sovereign located outside the United States, which is not authorised under the terms of the Foreign Sovereign Immunities Act.

28. In early November 2014, appeals were filed with the Court of Appeals against the order denying the turnover motions. The trustee filed with the Court of Appeals a motion for leave to intervene as a non-party appellee, although the attorneys for some of the Holdout Creditors stated that such leave was not necessary. In any event on 28 January 2015, the Court of Appeals granted this motion. A similar motion filed by the euro bondholders was denied by the Court of Appeals which instead granted them leave to file amicus curiae briefs. As I understand it, reasons were not given for the denial of the euro bondholders' motion.

29. I have been supplied with the appellants' briefs in the appeals against the refusal of the turnover motions in two sets of proceedings, both briefs being dated 22 December 2014. The foundation of the turnover motions is that the payment of sums to the trustee by the Republic on 26 June 2014 was in breach of the injunction issued by the District Court and was therefore "illegal". This, it is said, gives the Holdout Creditors with judgments a better claim to the funds than the trustee or those for whom it otherwise holds the funds. In the brief submitted on behalf of the appellant in *Dussault v Republic of Argentina*, the plaintiff's submission in support of the turnover motion is summarised as follows:

> *"the plaintiff maintained that because the transfer of funds to BNY was in direct contravention of the February 23, 2014 order, the transfer gave BNY possession and custody, but not title to or control of the funds. The Republic thus undoubtedly had an interest in the funds. ... The Republic is thus effectively entitled to possession and control of the funds which, as the District Court acknowledged, will have to be returned to the Republic. In addition, the plaintiff maintained that as a judgment creditor its rights to the funds were greater than BNY's rights to the funds as a mere trustee or custodian."*

30. The brief records the basis of the trustee's opposition, being that the trust indenture provided that the funds were held for the benefit of the bondholders and the trustee. The Republic had opposed the motion on the grounds that it had no interest in the funds held in the trustee's accounts, which belonged to the bondholders. The euro bondholders who had submitted opposition as non-parties had claimed title to that portion of the funds held for payment of interest on the euro debt securities, the ownership of which was governed by English law.

31. In reply, the plaintiff had submitted that since the transfer of funds to the trustee was illegal, the Republic retained an interest in the funds. She disputed that the euro funds belonged to or were held ultimately for the benefit of the euro bondholders, noting that by its terms the Indenture Trust does not apply to illegal transfers of money. In any event, relying on relevant provisions of US law, she submitted that where funds have been transferred from or by the judgment debtor, the judgment creditor's rights to the property are superior to those of the transferee.

32. By way of summary of her position on the appeal the plaintiff's brief states:

> *"Finally, although the district court did not reach this issue, it is clear that the funds currently on deposit in BNY's account are subject to execution within the scope of the provisions of New York Civil Practice Law and Rules ("CPLR") §5225(b) because the Republic retains actual control of the funds. Indeed, only the Republic can give the directive for the funds to be paid out in accordance with the district court's and this Court's directives, failing which, as the district court has indicated, the funds will have to be returned to the Republic. In any event, as a judgment creditor, Plaintiff's right to the funds is greater than BNY's right to the funds as a trustee on behalf of bondholders. Accordingly, BNY should be directed "to pay the money, or so much of it as is sufficient to satisfy the judgment to the judgment creditor." CPLR §5225(b). (Point III)."*

33. In her brief, the plaintiff repeats and expands on the submissions made to the District Court. She submits that "[t]here is no question that the Republic has an interest in the funds currently being held by BNY." The brief goes on to state that "[i]t is also clear that the Republic is entitled to possession of the funds currently being held by BNY. During the June 27, 2014 and July 22, 2014 hearings before the district court it was made clear that the transfer made by the Republic was illegal and the transferred amount should be returned to the Republic." It is further submitted that "it cannot be gainsaid that as a judgment creditor the Plaintiff's right to the funds are superior to those of BNY, which as a trustee has no personal right to the funds, but rather has possession of the fund for the benefit of others." Specifically addressing submissions made by the euro bondholders, it is submitted:

> *"First, the district court's order precluding a distribution of the funds to the bondholders raises serious questions as to whether or not they have any right or claim to the funds improperly transferred to BNY. The plaintiff's rights as a judgment creditor are certainly superior to the bondholders' rights to receive an interest payment under the bonds. This is particularly true since any payment to the bondholders would violate the injunction issued by the district court."*

34. I have cited at some length from this appeal brief because it gives some idea of the nature of the claims being made by Holdout Creditors with judgments as regards the euro funds currently held by the trustee and the basis on which it is said that those claims are superior to the claims of the beneficial owners of the funds under the terms of the trust indenture.

Declarations

35. The terms of the declarations sought by the claimants have undergone a number of changes but I take them now to be in the following form:

    1) A declaration that the sum of €225 million transferred by the Republic of Argentina to the account of the trustee with Banco Central de la República Argentina and still held to the credit of that account is held on the trusts

declared by a Trust Indenture between the Republic as Issuer and The Bank of New York as trustee dated as of 2 June 2005 and subsequently amended, such trust being governed by English law, (as would be any other funds paid to it in attempted satisfaction of the Republic's payment obligations under the Euro Debt Securities).

2) Subject to the terms of the Trust Indenture, and any other defences available under English law, the obligations and liabilities of the Bank of New York Mellon under the Trust Indenture and the Euro Debt Securities (including the obligation under clause 3.5(a) of the Trust Indenture and clause 2 of the Euro Debt Securities to transfer the Euro Funds to the Second Defendant) are unaffected by the New York Injunction, whether or not the First Defendant is subject to that injunction as a matter of US law.

The first declaration

36. As regards the first interim declaration which is sought on this application, the trustee does not dispute that it holds the funds received by it on 25 June 2014 on the trusts of the trust indenture and it does not oppose the making of such declaration, provided that the court is satisfied in accordance with well-established principles that it is appropriate to make a declaration in these circumstances.

37. Whether in the circumstances it is appropriate to make this declaration was an issue addressed by Newey J when this application was before him in November 2014. Having considered the relevant authorities, he concluded that it would be appropriate to do so: see [2014] EWHC 3662 (Ch) at [21]-[26]. It is not necessary for me to consider this question afresh but in any event I agree with the conclusion of Newey J and, in circumstances where there is so much dispute surrounding the attempt by the Republic to pay sums due on the exchange bonds, I consider that a declaration, authoritatively stating the position under the governing law of the trust indenture and the euro debt securities, is helpful.

38. It was a matter of concern to Newey J that the Holdout Creditors had not had an opportunity to challenge the proposed declaration. As he observed, it is they who might want to dispute the existence or terms of a trust and contend that the Republic had a continuing interest in the funds held by the trustee. He therefore adjourned the application to give the Holdout Creditors the chance to put forward any arguments that they might wish to make in opposition. He directed that notice should be given to the attorneys acting in the US proceedings for the Holdout Creditors that it was open to them to intervene in these proceedings. As he observed, if any of the Holdout Creditors were to argue that the funds were not subject to the trust asserted by the claimants, the court hearing the matter would be reassured that both sides of the argument had been fully ventilated.

39. Notice was duly given to the attorneys acting for the Holdout Creditors in proceedings before the District Court and nine firms requested copies of the documents filed in these proceedings. No Holdout Creditors have applied to intervene and to make representations to the court.

40. Nonetheless, attorneys acting for a number of Holdout Creditors sought to make their views known to the court. A letter dated 5 December 2014 from Dechert LLP and

three other firms to the claimants' solicitors was copied to the court. Duane Morris, attorneys acting for another group of Holdout Creditors, wrote directly to the court on 19 November 2014.

41. There are difficulties in this way of proceeding. First, it is clear that the opportunity provided by the order of Newey J was to enable Holdout Creditors wishing to make submissions to intervene in the English proceedings and make submissions to the court. In this way, the court would have the benefit of submissions from different parties responding to each other and would have the opportunity of probing those submissions with counsel advancing them.

42. Secondly, the claimants and the trustee are agreed that, at any rate, the letter from Duane Morris contains some important errors. The claim made by them that the issue of the exchange bonds has been ruled illegal by the US courts is wrong. The US courts have never ruled or even suggested that the exchange bonds were illegal. The injunction granted by the District Court is concerned with compelling payments to Holdout Creditors in conjunction with payments under the exchange bonds, not in any sense with the legality or otherwise of the exchange bonds themselves. Further, it is wrong to suggest that the trust indenture has been "abrogated or suspended" by the injunction granted by the District Court or that the injunction created a constructive trust which superseded the trust indenture.

43. The fundamental point made in both letters is that the English court is not the proper forum to determine the matters raised by the claimants' application. It is pointed out that the claimants and other persons entitled to the benefit of euro debt securities have appeared in the proceedings in the District Court and the Court of Appeals and have made submissions to the effect that the injunction granted by the District Court does not or should not extend to payments on the euro debt securities, albeit not as parties to the proceedings in the United States. They further point out, as is obviously the case, that the District Court is well able to determine issues of foreign law, including the English law of trusts, and that the claimants could have introduced evidence of English law in the District Court.

44. This court is, of course, very concerned not to intrude improperly into matters which are before the US courts. But the making of a declaration in the terms sought by the claimants would not, in my judgment, do so. The declaration would establish the status of the funds held by the trustee as a matter of English law. As the letter dated 5 December 2014 states, issues of English law have not been raised before the District Court. A declaration as to the effect of a trust indenture governed by English law is in my view peculiarly within the proper jurisdiction of this court.

45. The declaration sought by the claimants does not in any way interfere with or impede the US courts in their consideration of the issues before them. They are concerned with the effect of the breach by the Republic of the injunction granted by the District Court. Because the trustee is subject to the personal jurisdiction of the District Court, it can properly be the subject of any orders which that court considers appropriate. It would be quite wrong for this court to make, and I do not make, any comment on such orders as may be appropriate and their effect as a matter of US law. The only comment I would make is that, *as a matter of English law*, I can see no basis on which any such order could of itself give either the Republic or the Holdout

Creditors any proprietary interest in the funds held by the trustee with the Central Bank.

46. More problematic is the state of "paralysis", as leading counsel for both the claimants and the trustee described it, in the operation of the trust caused by the injunction. A continuing state of paralysis may have a number of consequences in English law. Such consequences may not arise, at this time at any rate, and they have not been the subject of any submissions to the court. They are at most issues which may arise in the future. For the present, I consider that the first proposed declaration accurately sets out the position under English law.

47. Accordingly, I consider that it is appropriate for the court to make the first declaration sought by the claimants.

The second declaration

48. The second declaration raises rather different issues. The main purpose of the declaration is to establish that the injunction provides no defence to a claim to enforce the terms of the trust indenture, including the obligation under clause 3.5(a) to transfer the euro funds to the second defendant. At the same time the opening words of the proposed declaration, referring to the terms of the trust indenture and any defences under general trust law, keep open the position that, because the trustee is subject to the personal jurisdiction of the US courts, it may as a matter of English law be able to rely on the injunction as a proper ground for non-compliance with what would otherwise be its obligations under the trust indenture.

49. It is clearly right to keep those matters open. It is highly arguable that the terms of section 5.2(xvi) and (xx) would relieve the trustee of its obligations under the trust indenture to the extent that they were prohibited from performing them by the injunction. It is also arguable that where a trustee is subject to a legal inhibition, preventing it from performing its obligations as trustee, that too can provide a defence to a claim for breach of trust under general principles of law: see *Concord Trust v The Law Debenture Trust Corporation Plc* [2004] EWHC 1216 (Ch) at [33]. In my judgment, a declaration which is qualified in these terms, as this declaration must be, serves no useful purpose. It would be, in short, a declaration that the trustee would be in breach of trust unless it had a defence. No-one is assisted by a declaration in those terms. Accordingly, I shall decline to make the second proposed declaration.

Direction to the trustee

50. Finally, the claimants seek an order that the trustee bring the declaration that I have made to the attention of any relevant court before which it appears in the United States. The claimants are critical in some respects of the conduct of the trustee in the US proceedings. I do not propose to enter into a discussion of those criticisms. I am in no doubt that the trustee is conscious of its obligations as trustee but equally it is conscious, as it must be, of the delicate position in which it finds itself as a trustee subject to the personal jurisdiction of the US courts. In presenting its case on behalf of itself and those interested in the exchange bonds, the trustee and its attorneys have to take fine decisions as to the most effective way of dealing with it. No doubt there can be different views as to the best way in which the case can be presented, but I am

not satisfied that the trustee's conduct of the litigation has been outside the reasonable range of possible approaches.

51. I do not think that it would assist if I were to give the direction sought. It is a matter for the trustee to decide, with its attorneys, the proper time and way, if at all, to bring this judgment and order to the attention of the US courts. In any event, it is of course open to the claimants, who have permission to file non-party briefs in the Court of Appeals, to bring the judgment and order to the attention of that court.

Conclusion

52. Accordingly, for the reasons given in this judgment, I shall make the first interim declaration sought but I shall not make either the second interim declaration or a direction that the trustee bring this judgment and order to the attention of the US courts.

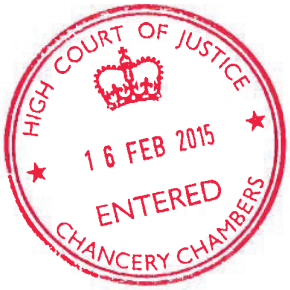
EXHIBIT B

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO: HC-2014-000704

MR JUSTICE DAVID RICHARDS

13 FEBRUARY 2015



B E T W E E N:

(1) KNIGHTHEAD MASTER FUND LP
(2) RGY INVESTMENTS LLC
(3) QUANTUM PARTNERS LP
(4) HAYMAN CAPITAL MASTER FUND LP

Claimants

AND

(1) THE BANK OF NEW YORK MELLON
(2) THE BANK OF NEW YORK DEPOSITARY (NOMINEES) LIMITED

Defendants

ORDER

UPON the adjourned hearing of the parts of the Claimants' application issued on 9 October 2014 identified in paragraph 1 of the Order of Mr Justice Newey dated 6 November 2014;

AND UPON notice of the Claimants' application having been provided to specified third parties in accordance with paragraph 2 of the said Order of Mr Justice Newey;

AND UPON no person applying to be heard at the adjourned hearing of the Claimants' application;

AND UPON hearing Mark Hapgood QC, David Quest QC and David Simpson for the Claimants and Robert Miles QC and Andrew de Mestre for the Defendants

IT IS DECLARED THAT:

1. The sum of €225,852,475.66 transferred by the Republic of Argentina to the account of the First Defendant with Banco Central de la República Argentina and still held to the credit of that account is held on the trusts declared by a trust indenture between the Republic of Argentina as Issuer and the First Defendant as trustee dated as of 2 June 2005 and subsequently amended (as would be any other funds paid to the First Defendant in attempted satisfaction of the Republic of Argentina's payment obligations under the euro-denominated debt securities issued under the said trust indenture), such trusts being governed by English law.

IT IS ORDERED that:

1. Save as set out in the declaration at paragraph 1 above, there be no further order on the Claimants' application.

2. The Claimants' application for permission to appeal is refused.

3. Costs reserved to the Judge hearing the trial of the proceedings.

4. This order shall be served by the Claimants on the Defendants.

Service of the order
The court has provided a sealed copy of this order to the serving party:

Reynolds Porter Chamberlain LLP
Tower Bridge House, St Katharine's Way
London, E1W 1AA
Ref: THY/JSH/KNI49.1
Email: Tom.Hibbert@rpc.co.uk and Jake.Hardy@rpc.co.uk