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Puerto Rico Confirms a Plan of Adjustment under PROMESA

January 26, 2022

On January 18, 2022, Judge Laura Taylor Swain of the United States District Court for the District of Puerto Rico entered an order under PROMESA (as defined below) confirming a Plan of Adjustment (the *"Plan"*) of the Commonwealth of Puerto Rico (the *"Commonwealth"*), the Employees Retirement System of the Government of Puerto Rico (the *"ERS"*), and the Puerto Rico Public Buildings Authority (the *"PBA"*).[1] The Plan's confirmation is a major milestone for the Commonwealth and its creditors. The Commonwealth's restructuring proceeding under Title III of PROMESA is the largest municipal restructuring in United States history.

Background

In 2017, the Commonwealth, through the Financial Oversight and Management Board for Puerto Rico (the *"Board"*), initiated proceedings under the then newly-enacted Puerto Rico Oversight, Management, and Economic Stability Act (*"PROMESA"*) to restructure the debts of the Commonwealth and certain of its instrumentalities.[2] PROMESA was enacted to help the Commonwealth combat its well-documented public debt crisis.[3] Title III of PROMESA creates a bankruptcy scheme modeled on the reorganization process for municipalities that is codified under Chapter 9 of the Bankruptcy Code.

Plan Details

The Plan reduces over $30 billion of the Commonwealth's pre-restructuring general obligation and guaranteed debt, and eliminates all ERS and PBA debt.[4] Under the Plan, Commonwealth creditors will receive $7.4 billion in new debt, over $8 billion in cash on the Plan's effective date and over time, as well as securities designated as "contingent value instruments" that pay-out based on actual revenues.[5] The Plan cuts the Commonwealth's annual debt service obligations from $2.1 billion to $666 million during the first ten years after the Plan's effective date.[6] The aggregate recovery under the Plan for all Commonwealth claimholders is approximately 69%, exclusive of certain claims and payments.[7] Benefits to current Commonwealth retirees are not cut but the Plan freezes the accumulation of defined benefits for some or all employees of the Teachers Retirement System and the Judicial Retirement System, as well as eliminating certain cost of living adjustments.[8] The Board remains in place until the Commonwealth has four consecutive balanced budgets.[9] Notwithstanding the Plan's confirmation, the Puerto Rico Electric Power Authority's and the Puerto Rico Highways and Transportation Authority's restructuring cases under PROMESA remain active.

Conclusion

The Plan's confirmation is a significant and commendable step toward solving the Commonwealth's and its instrumentalities' on-going financial crises. The Board, however, stated that the Commonwealth "needs to continue to reform itself to ensure a prosperous future for and determined by its people."[10] As such, the Commonwealth must exercise long-term fiscal discipline for a complete fiscal recovery. The confirmation of the Plan, however, provides optimism that such recovery is possible.[11]

For More Information

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1 *In re Financial Oversight and Management Board for Puerto Rico*, Case No. 17 BK 03283-LTS (Bankr. D.P.R. Jan. 18, 2022), ECF 19813. Judge Swain, Chief United States District Judge for the Southern District of New York, sits by designation in the United States District Court for the District of Puerto Rico for relevant PROMESA proceedings.

2 48 U.S.C. § 2101 *et seq*.

3 The Commonwealth and its instrumentalities are ineligible for relief under the United States Bankruptcy Code (the *"Bankruptcy Code"*). 11 U.S.C. § 101 *et seq*.

4 ECF 19812, ¶ 206.

5 ECF 19812, ¶¶ 194-197.

6 ECF 19812, ¶ 206.

7 ECF 19812, ¶ 214.

8 ECF 1912, ¶ 232; 19813, ¶ 200.

9 48 U.S.C. § 2149.

10 Financial Oversight and Management Board for Puerto Rico, Statement, dated January 18, 2022, available at https://drive.google.com/file/d/1mqLqmnwty0ZrOUafqdvmCOnxylJZqNw9/view (last visited Jan. 19, 2022).

11 The Plan's confirmation also may evidence that PROMESA provides a viable insolvency framework that may serve as a blueprint for any future federal solution to a state's financial distress. We, however, note that various Constitutional concerns and political barriers would need to be overcome before any federal insolvency scheme applicable to a state would be viable. Like the Commonwealth, states are not eligible for relief under the Bankruptcy Code.