

New Fiscal Emergency Statutes Approved

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PRACTICE AREAS

- Bankruptcy & Debt Restructuring
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On January 29, 2017, Governor Ricardo Rosselló signed into law the “Puerto Rico Financial Emergency and Fiscal Responsibilities Act” (“FEFRA”), which is aimed mainly at amending and repealing portions of the “Puerto Rico Emergency Moratorium and Financial Rehabilitation Act” (the “Moratorium Act”), in order to harmonize it with the requirements of the “Puerto Rico Oversight, Management, and Economic Stability Act”, 48 U.S.C. §§ 2101 *et seq.* (“PROMESA”), as well as to address litigation that ensued since the Moratorium Act’s approval.

The key points of FEFRA are to:

- Declare the Commonwealth of Puerto Rico in a state of financial emergency and extend the moratorium period from January 29, 2017 to May 1, 2017, which term may be extended by the Governor pursuant to executive order for an additional period of three (3) months (defined as the “Emergency Period”)
- Recognize that the Commonwealth is bound to certain duties and obligations pursuant to the United States Constitution, the Constitution of Puerto Rico, and PROMESA, as well as other statutory requirements, and that the Commonwealth must exercise its police power in a manner that recognizes the responsibility to satisfy its financial obligations and those of its instrumentalities, while continuing to provide essential governmental services to the health, safety and welfare of the residents of Puerto Rico
- Modify the Moratorium Act’s provisions in the distribution of the Commonwealth’s available resources. FEFRA provides that debt service shall be paid to the extent possible after (i) all “essential services” have been provided for; or (ii) ordered to do so by the Fiscal Oversight and Management Board enacted by PROMESA (or any other federal board)
- Authorize the Governor to designate “essential services” and to identify the priority scheme for payment of these services
- Authorize the Governor to issue the executive orders necessary to guarantee the payment of debt obligations of the Commonwealth or its instrumentalities
- Allow any Commonwealth entity from issuing evidence of debt with consenting debt holders in payment, renewal, or refunding of, or in exchange

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for, such consenting debt holder's obligation, so long as such evidence of debt is not considered new debt.

- Create certain emergency measures to ensure the operations of the Economic Development Bank of Puerto Rico and the Governmental Development Bank for Puerto Rico (jointly, the "Bank"), including the suspension of payment of any Bank obligation to address the Bank's liquidity, to suspend the disbursement of any loans or credit, and to honor requests for withdrawals or transfers of deposits made by the Commonwealth
- Provide the Governor with broad emergency receivership powers over Commonwealth agencies and instrumentalities;
- Provide civil and criminal immunity to any person for actions taken under FEFRA, so long as such person did not engage in willful misconduct for personal gain or gross negligence comprising reckless disregard of applicable duties
- Create an "automatic stay" of any litigation that may arise under FEFRA during the same period that the stay in PROMESA is in effect

FEFRA comes on the heels of Puerto Rico Act 3-2017, pursuant to which cost savings measures were imposed on government agencies and instrumentalities in order to ensure the functioning of the government and the continued availability of essential services. Among the measures, Act 3-2017 imposes a hiring freeze for new employees, freezes vacant positions, and orders a 20% reduction in positions of trust (political appointees). Act 3-2017 also orders a 10% reduction of operational expenses; limits and/or prohibits the use of government vehicles, credit cards, trips outside of Puerto Rico, cellphones and other technological services; limits vacation and sick leave; and requires a review of all lease agreements with a view towards terminating or renegotiating them.

Act 3-2017 also requires the approval of the Governor (or his designee) for any contract for professional services exceeding ten thousand dollars (\$10,000) and extends the 4% excise tax imposed by Act 154-2010 on certain foreign affiliates of corporations doing business in Puerto Rico until December 31, 2027. Finally, the Governor is given authority to fire any member of any board or governing body of a public corporation or instrumentality if he or she does not have the Governor's trust to formulate and implement his public policy or the Fiscal Plan approved pursuant to PROMESA.

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