

## General Guidelines to PROMESA Title III

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### PRACTICE AREAS

- Bankruptcy & Debt Restructuring
- Government Affairs
- PROMESA Task Force

### An McV Bankruptcy & Debt Restructuring Alert

May 5, 2017

On May 3, 2017 (the “Petition Date”) the Financial Oversight and Management Board for Puerto Rico (the “Board”), appointed pursuant to the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), filed a proceeding for adjustment of debts against the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) under Title III of PROMESA. The filing only covers what are generally known as the Commonwealth’s central government agencies.

The filing has generated several questions regarding: (a) the continued management of the Commonwealth’s operations; (b) the effect that the filing will have on existing debts by creditors at the time of the filing (“Pre-Petition Debts”), and (c) the status of the relationship between various Commonwealth suppliers, vendors and creditors during Title III (“Post-Petition”).

Below you will find some guidance as to these and other issues:

#### What is Title III?

- The provisions in PROMESA that allow for proceedings to adjust debts, which proceedings follow a similar framework as a municipality bankruptcy under Chapter 9 of the Bankruptcy Code but is broader in scope
- The goal is to file and confirm a Plan of Adjustment of Debts (the “Plan”). The confirmed Plan will be binding upon all creditors and the Commonwealth
- The Commonwealth will be able to obtain a discharge prohibiting creditors from collecting on any amounts, or debts, beyond those contemplated in the Plan

#### When will the proceeding begin and how long will it last?

- The Title III petition was filed on May 3, 2017 before the United States District Court for the District of Puerto Rico
- The Chief Justice of the United States Supreme Court designated today the Honorable Judge Laura Taylor Swain of the United States District Court for the Southern District of New York to preside over the Title III case

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- PROMESA does not contain a specific timetable for the conclusion of the Title III proceeding

### **How will the Commonwealth continue to operate?**

- The Commonwealth will continue to operate on a daily basis, and the Title III filing will not interfere with any of the properties or revenues of the Debtor; or the use or enjoyment of the Debtor of any income-producing property
- The Commonwealth will still be able to use, sell or lease its property subject to certain limitations, and possible Court-approval under certain circumstances
- The Commonwealth may seek Post-Petition financing
- The Board will be the authorized representative of the Debtor on several Title III proceedings before the Court

### **What happens to my Pre-Petition Debt?**

- Will be classified as secured or unsecured, depending on whether the creditor possesses a lien or security interest over property of the Debtor
- Will be paid subject to the priorities outlined in the Bankruptcy Code and PROMESA.

### **When will my debt be paid?**

- Pre-Petition Debts, as allowed by the Court, are generally paid upon the confirmation of the Plan
- Certain priority status may be requested for qualifying claims and, if applicable, may be paid before Plan confirmation

### **How are outstanding contracts affected by Title III?**

- The Board/Debtor has the election of assuming or rejecting executory contracts and unexpired leases
- Upon assumption, the Debtor must (a) cure, or provide adequate assurance that it will promptly cure, any defaults; (b) compensate, or provide adequate assurance that it will promptly compensate, any pecuniary loss as a result of the default; and (c) provide adequate assurance of future performance of the contract
- Upon rejection, the counter-party may file a claim for any damages or loss suffered as a result of the rejection

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- Depending on the type of contract, the Board/Debtor has certain deadlines to make an election of rejection or assumption

### **Do I have to continue to provide services to the Commonwealth while in Title III?**

- Depends on a number of circumstances, including whether a Pre-Petition contract existed between the parties, the type of vendor and services provided to the Commonwealth, as well as other factors
- Priority status may be sought to those essential and necessary services provided to the Commonwealth during the Title III proceeding

### **Can I pursue collection efforts or actions against the Commonwealth?**

- The automatic stay generally precludes any actions aimed at collecting a debt, harassing to collect the debt, or create or enforce a lien against the Commonwealth, among other actions
- The automatic stay came into effect as of May 3, 2017

### **What defenses do I have available to protect my interests in a Title III proceeding?**

- Depending on the nature of the claim, the type of creditor, and other factors, there are various vehicles available to protect a creditor's interest in a Title III proceeding, including among others:
  - Relief from the automatic stay
  - Objection to use of cash collateral
  - Requests for adequate protection on secured interests
  - Obtain a preferential treatment for Post-Petition loans
  - Request administrative status on certain services provided during the course of the Title III proceeding
  - Possible critical vendor considerations
  - Objection to the Disclosure Statement and confirmation of the Plan
  - Objection to Proof of Claims

Please be advised that the above is a guideline on many of the frequently asked questions surrounding the uncertainties following the filing of a Title III petition by the Commonwealth, and is not meant to serve as legal advice or opinion. Many of these issues will depend on the consideration of multiple facts and

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circumstances and will require the assistance of a qualified legal professional.

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