
Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”)

Overview and Restructuring Issues

August 9, 2016

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A. Necessity Of PROMESA:

Fiscal and Humanitarian Crisis⁽¹⁾

- Puerto Rico is in the midst of a fiscal and humanitarian crisis.
- GNP growth has been negative nearly every year since FY 2007; in the prior decade, only minimal growth was recorded. Per capita income growth has also failed to keep pace with cumulative inflation.
- Notwithstanding the Commonwealth's efforts, tax revenues continue to fall short of expectations and projections, while the Commonwealth continues to allocate a large amount of resources in order to provide essential services to Puerto Rico's residents.
- Deteriorating economic conditions have therefore led many Puerto Ricans to emigrate to the mainland.
- The Commonwealth average net outmigration was approximately 48,000 residents per year from 2010 to 2013, with 42% of emigrants citing their primary reason for moving as job-related; in 2013, approximately 74,000 residents emigrated to the mainland.⁽²⁾
- The majority of the individuals leaving the island are working-age individuals that are needed to make Puerto Rico's economy competitive.
- The remaining population is also becoming increasingly elderly and, as a result, a higher percentage of the population is outside the productive labor force.
 - Puerto Rico's public pension system is extremely underfunded to the point that it is nearly unfunded.
- Puerto Rico is also in the midst of a Zika epidemic, which the Center for Disease Control has referred to as "very dire."

(1) For more information on relevant economic indexes and indicators, please visit: http://www.bgfpr.com/investors_resources/gdb-annual-report.html

(2) Puerto Rico Statistics Institute, "Perfil del Migrante 2013", February 8, 2015.

A. Necessity Of PROMESA: Complex Debt Profile⁽³⁾

- Puerto Rico and its various government instrumentalities owe nearly \$72 billion in debt.
- The debt profile of the Commonwealth and its instrumentalities is extraordinarily complex:
 - The island has 18 different issuers, including the Commonwealth itself, financing entities, and operating entities that provide essential public services.
 - The debt is held by countless and diverse creditors, including retail holders (both on- and off-island), hedge funds, mutual funds, local credit unions and mainland institutional investors, each with remarkably different interests and motivations in a potential restructuring.
- Even if a deal could potentially be reached between the Commonwealth and its creditors, with certain exceptions, given the complicated web of inter-creditor and inter-debtor issues, absent comprehensive federal legislation, it would have been extraordinarily difficult to reach a comprehensive deal that provided a sustainable level of debt for the Commonwealth and its instrumentalities going forward.

(3) For more information the Commonwealth's debt profile, please visit: http://www.bgfpr.com/investors_resources/exempt-securities.html

A. Necessity Of PROMESA: Complex Debt Profile (cont'd)

- PROMESA also has a number of features without which a comprehensive restructuring deal would be extraordinarily difficult, including:
 - An independent oversight board to ensure fiscal responsibility and oversee restructuring efforts,
 - The ability to have joint proceedings,
 - An automatic stay on litigation (first upon enactment and then upon a Title III filing),
 - A judicial arbiter to resolve inter-creditor and other issues,
 - Multiple mechanisms through which to bind holdout creditors,
 - Debt discharge provisions, and
 - A mechanism for “debtor-in-possession” or “DIP” financing.

A. Necessity Of PROMESA:

Chapter 9 Is not Enough

- Early Congressional proposals to solve Puerto Rico’s problem involved amending the U.S. Bankruptcy Code to include Puerto Rico so that its municipalities would become eligible.
- But amending the U.S. Bankruptcy Code – that is, to redefine “state” to include Puerto Rico – would not have been sufficient to provide the Commonwealth and its instrumentalities with access to necessary debt restructuring relief:
 - A simple amendment would not include the Commonwealth itself (as opposed to only “municipalities”), which would have made it quite difficult to resolve many inter-debtor and inter-creditor issues (*e.g.*, if an instrumentality issued bonds with a Commonwealth guarantee and the issuer became a Chapter 9 debtor but the Commonwealth could not).
 - Creditors would likely have made arguments that many Commonwealth instrumentalities were not eligible for Chapter 9 relief, either because they did not fit the restrictive definition of “municipality” under the Bankruptcy Code or because they did not meet the other somewhat cumbersome eligibility requirements.
 - This litigation could have persisted for months, if not years, and if successful, would have kept much of Puerto Rico’s debt outside of the Chapter 9 proceedings.

B. Structure of PROMESA:

- Title I: Establishment and Organization Of The Oversight Board (48 U.S.C.A. §§ 2121-2129)
- Title II: Responsibilities of Oversight Board (48 U.S.C.A. §§ 2141- 2152)
- Title III: Adjustments of Debts (48 U.S.C.A. §§ 2161-2177)
- Title IV: Miscellaneous Provisions (48 U.S.C.A. §§ 2191-2200)
- Title V: Puerto Rico Infrastructure Revitalization (48 U.S.C.A. §§ 2211-2217)
- Title VI: Creditor Collective Action (48 U.S.C.A. §§ 2231-2232)
- Title VII: Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms (48 U.S.C.A. § 2241)

C. Oversight Board:

Creation and Composition (1 of 2)

- PROMESA established a Financial Oversight and Management Board (the “Oversight Board”) over Puerto Rico on June 30, 2016. § 101(b)(1).
- The Oversight Board exists as an entity within Puerto Rico’s government, and it is not considered to be a part of the U.S. government. § 101(c).
- The Oversight Board will be comprised of seven members appointed by the President in accordance with the following rules (§ 101(e)):
 - Two members selected, one from each of two separate lists of individuals submitted by the Speaker of the House of Representatives, one of which must have a primary residence or primary place of business, in Puerto Rico;
 - Two members selected from a list of individuals submitted by the Majority Leader of the Senate;
 - One member selected from a list of individuals submitted by the Minority Leader of the House of Representatives;
 - One member selected from a list of individuals submitted by the Minority Leader of the Senate; and
 - One member selected at the President’s sole discretion.
- It is anticipated that the Oversight Board will be appointed before September 1, but PROMESA provides that the Oversight Board will be appointed by September 15 at the latest. § 101(e)(2)(F).

C. Oversight Board:

Creation and Composition (2 of 2)

- The advice and consent of the Senate is not required unless the President wishes to appoint an individual outside one of the categories discussed on the previous slide.
 - The advice and consent of the Senate is never required for the member that the President can appoint in his or her discretion. § 101(e)(2)(E).
- Each appointee (§ 101(f)):
 - Shall have knowledge and expertise in finance, municipal bond markets, management, law, or the organization or operation of business or government, and
 - Prior to appointment, shall not be an officer, elected official, or employee of the Commonwealth or any instrumentality, nor shall such individual be a candidate for elected office or a former elected official in the Commonwealth or any instrumentality.
- In addition, the Governor or his designee shall be a non-voting *ex officio* member of the Oversight Board. § 101(e)(3).

C. Oversight Board: Functionality and Funding

- The primary function of the Oversight Board (other than its functions in a debt restructuring, as described in subsequent slides) is to provide fiscal oversight through the joint development and approval of fiscal plans and budgets for the Commonwealth and any covered territorial instrumentalities (covered territorial instrumentalities are Commonwealth instrumentalities that the Oversight Board “designates” as falling within its jurisdiction).
- While the development of fiscal plans and budgets are iterative processes with the Governor and Legislature, the Oversight Board ultimately has the last word.
 - No fiscal plan or budget for the Commonwealth or any covered territorial instrumentality will become effective without the Oversight Board’s approval.
- Puerto Rico is financially responsible for the cost associated with the management and operations of the Oversight Board, through designation of a permanent funding source, not subject to subsequent legislative appropriations, in an amount “sufficient to support” the annual expenses of the Oversight Board. § 107(b)(1).
- The Congressional Budget Office has estimated that the Oversight Board will cost \$350 million in the first two years.

C. Oversight Board: Fiscal Plan Approval Process

- Developing a fiscal plan for the Commonwealth (including any covered territorial instrumentality) involves an iterative process that starts when the Oversight Board (shortly after all the members have been appointed) delivers a notice to the Governor providing a schedule for the process of development, submission, approval and certification. § 201(a).
- After the Governor submits the fiscal plan to the Oversight Board, the Oversight Board will evaluate the fiscal plan for compliance with § 201(b), which sets forth the requirements for approval. § 201(c)(2)-(3).
 - If the Oversight Board finds the fiscal plan to be compliant, it will approve it; if not, it will issue a notice of violation and provide an opportunity to correct non-compliant portions. § 201(c)(3).
 - This iterative process will continue for as long as allowed by the Oversight Board, but if the Governor fails to submit a compliant fiscal plan in the timeframe set forth by the Oversight Board, the Oversight Board can develop and submit to the Governor and the Legislature a compliant fiscal plan, which shall be deemed approved by the Governor and be effective. § 201(d)-(e).

C. Oversight Board:

Fiscal Plan Requirements (1 of 2)

- PROMESA requires that an approved fiscal plan shall “provide a method to achieve fiscal responsibility and access to the capital markets,” and specifically provides that such fiscal plan shall (§ 201(b)(1)):
 - Provide for estimates of revenues and expenditures in conformance with agreed accounting standards and be based on (i) applicable laws or (ii) specific bills that require enactment in order to reasonably achieve the projections of the fiscal plan;
 - Ensure the funding of essential public services;
 - Provide adequate funding for public pension systems;
 - Provide for the elimination of structural deficits;
 - For fiscal years covered by a fiscal plan in which a stay under Titles III or IV is not effective, provide for a debt burden that is sustainable;
 - Improve fiscal governance, accountability, and internal controls;
 - Enable the achievement of fiscal targets;
 - Create independent forecasts of revenue for the period covered by the fiscal plan;
 - Include a debt sustainability analysis;
 - Provide for capital expenditures and investments necessary to promote economic growth;

C. Oversight Board:

Fiscal Plan Requirements (2 of 2)

- Continued fiscal plan requirements:
 - Adopt appropriate recommendations submitted by the Oversight Board (as discussed further elsewhere herein – see Oversight Board: Ongoing Oversight and Governance Recommendations);
 - Include such additional information as the Oversight Board deems necessary;
 - Ensure that assets, funds, or resources of a territorial instrumentality are not loaned to, transferred to, or otherwise used for the benefit of a covered territory or another covered territorial instrumentality of a covered territory, unless permitted by the constitution of the territory, an approved plan of adjustment under Title III, or a Qualifying Modification approved under Title VI; and
 - Respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements of a covered territory or covered territorial instrumentality in effect prior to the date of enactment of this Act.
- The Oversight Board shall deliver a certification of a fiscal plan over which it approves. § 201(e).
- The Oversight Board has substantial flexibility to structure the fiscal plan in the manner it believes best for the Commonwealth and its instrumentalities within the parameters of these guidelines because the federal courts are generally deprived of jurisdiction to hear challenges to the Oversight Board’s certification determinations under PROMESA. § 106(e).

C. Oversight Board: Budget Approval Process

- The budgeting process is similarly iterative, except that in the case of a Commonwealth budget (as opposed to an instrumentality budget), the process involves the Legislature as well as the Governor. § 202.
- The consequence of failing to provide a compliant budget is the same:
 - If the Governor and the Legislature (or just the Governor, in the case of an instrumentality budget) fail to develop and approve a budget that complies with the fiscal plan by the first day of the fiscal year for which the budget is being developed, the Oversight Board shall submit a compliant budget to the Governor and the Legislature, which shall be deemed approved and shall be in effect. § 202(e)(3)-(4).

C. Oversight Board:

Ongoing Oversight, Fiscal Plans, and Budgets

- Once the fiscal plan and budget are approved, the Oversight Board has the responsibility for ongoing oversight of the financial affairs of the Commonwealth and its covered territorial instrumentalities.
- The Oversight Board shall review quarterly reports submitted by the Governor to determine compliance with approved budgets (either a Commonwealth budget or instrumentality budget). § 203(a).
- The Oversight Board may ask for further explanation and demand corrections, § 203(b)-(c), and may make unilateral reductions in non-debt expenditures to ensure compliance with approved budgets. § 203(d)(1), (2)(A).
- In the event of noncompliance with an instrumentality budget, the Oversight Board may institute automatic hiring freezes in such covered territorial instrumentality and prohibit the covered territorial instrumentality from entering into any contract or transaction without the prior approval of the Oversight Board. § 203(d)(2)(B).

C. Oversight Board:

Ongoing Oversight, Legislation, and Contracts

- The Oversight Board has significant power over the legislative process in the Commonwealth.
- For laws enacted *prior to the full appointment of the Oversight Board*, the Oversight Board can retroactively rescind portions of any law that alters creditor priorities if:
 1. The law was enacted between May 4, 2016 and the date all members of the Oversight Board are appointed, and
 2. The law alters the pre-existing priorities of creditors (i) in a manner outside the ordinary course of business or (ii) in a way inconsistent with Puerto Rico’s constitution or laws. § 204 (c).
- For laws enacted *after the full appointment of the Oversight Board*, the Governor shall submit each newly enacted law to the Oversight Board with a report that analyzes its impact on expenditures and revenues and whether the new law is “significantly inconsistent” with the fiscal plan. § 204(a)(4), (5).
 - If the Oversight Board finds the law to be “significantly inconsistent” with an approved fiscal plan, and no remedy or satisfactory explanation is made, the Oversight Board may take such actions as it considers necessary to ensure that the enactment or enforcement of the law will not adversely affect the government’s compliance with the fiscal plan (this includes preventing its enforcement).
- The Oversight Board also has broad authority to:
 - Establish policies to require prior approval by the Oversight Board of a contract, rule, executive order or regulation to ensure they promote market competition and are consistent with the fiscal plan; and
 - Prevent the execution or enforcement of a contract, rule, executive order or regulation to the extent that it is inconsistent with the approved fiscal plan. § 204(b).

C. Oversight Board:

Ongoing Oversight and Governance Recommendations

- At any time, the Oversight Board may submit recommendations to the Governor to ensure compliance with the fiscal plan or to otherwise support financial stability, economic growth, management responsibility, and service delivery efficiency of the Commonwealth and its covered territorial instrumentalities. § 205(a).
 - The Commonwealth and its covered territorial instrumentalities can refuse to implement such recommendations, but a refusal must be accompanied by a detailed explanation. § 205(b)(3).
 - However, fiscal plans must adopt any “appropriate” recommendations submitted by the Oversight Board. § 201(b)(1)(K).

C. Oversight Board: Termination

- The Oversight Board will terminate only when its members are able to certify that certain conditions have been met pursuant to § 209:
 1. The Commonwealth and its covered territorial instrumentalities have adequate access to short-term and long-term credit markets at reasonable interest rates to meet their borrowing needs, and
 2. For at least four consecutive fiscal years, (i) the Commonwealth and its covered territorial instrumentalities have developed budgets in accordance with modified accrual accounting standards, and (ii) revenues equal or exceed expenditures as determined according to modified accrual accounting standards.

D. Miscellaneous Key Provisions:

Automatic Stay (1 of 2)

- Upon enactment, PROMESA imposed a stay on the enforcement of creditor rights (*e.g.*, lawsuits, attaching property) on financial debt (*e.g.*, bond, loans, insurance claims or bank debt) issued before PROMESA's enactment:
 - Applicable to all Issuers (and their officers or directors),
 - Except for actions that were commenced on or prior to December 18, 2015 or actions by governmental units to enforce their police and regulatory powers. § 405(b), (c).
- The automatic stay also provides broad protections against provisions in contracts that allow for termination and the exercise of remedies based on the financial condition of the government entity, non-payment of financial obligations, and other conditions. § 405(j).
 - For example, an entity's default or bankruptcy will no longer be grounds for terminating a contract or accelerating the payment obligations thereunder.
- The stay remains in effect until February 15, 2017, which date may be extended up to 60 days by a Title VI court (discussed on later slides) or 75 days by the Oversight Board if either finds that additional time is needed to complete a voluntary restructuring process under Title VI. § 405(d).
 - The stay terminates if an Issuer proceeds with a Title III restructuring (discussed on later slides), which itself imposes a different (and even broader) stay on creditor remedies. § 405(d)(2).

D. Miscellaneous Key Provisions:

Automatic Stay (2 of 2)

- One critical feature of the automatic stay imposed by the enactment of PROMESA is that it prevents actions against *all* government instrumentalities in Puerto Rico, which includes political subdivisions like towns and cities, including those that may not be immediately within the jurisdiction and purview of the Oversight Board. § 405(b).
- Government entities in Puerto Rico are not prohibited from paying principal and interest on their financial debt, but entities subject to the stay can be required to pay interest if the Oversight Board determines that such payments are feasible. § 405(l).
- PROMESA also provides a procedure to lift the stay and permits relief “for cause shown” (the statute does not clearly define “for cause shown”) and permits interim relief for creditors with an interest in property to prevent “irreparable damage.” § 405(e), (g).
 - These sorts of actions are known as “lift stay” actions, and in analyzing requests to lift the stay, the U.S. District Court for the District of Puerto Rico may look to established and analogous principles of bankruptcy law.

D. Miscellaneous Key Provisions:

Minimum Wage and Other Changes

- The Governor is authorized to designate, subject to Oversight Board approval, a period not exceeding 4 years during which employers in Puerto Rico may hire new employees that have not attained the age of 25 and pay them at a rate less than the federal minimum wage. § 403.
- In addition to the change in the minimum wage, PROMESA also (i) Authorizes Puerto Rico to make purchases through the General Services Administration like all other territories (§ 406), and (ii) Creates a congressional task force that is required to report to Congress in September 2016 regarding matters the Task Force deems urgent for consideration by Congress, and by the end of 2016, regarding impediments under federal law to economic growth, and to recommend changes that would spur sustainable long-term economic growth (§ 409).

D. Miscellaneous Key Provisions:

Infrastructure Revitalization (1 of 2)

- Title V of PROMESA establishes the position of “Revitalization Coordinator,” who will operate under the Oversight Board and who is charged with evaluating infrastructure projects that will provide direct and substantive benefits to Puerto Rico. § 502.
- Infrastructure project sponsors may submit any existing, ongoing, or proposed projects to the Revitalization Coordinator accompanied by an analysis of the project on Puerto Rico’s infrastructure, the project’s estimated cost, and available funding for the project. § 503(1).
- After receiving a proposal, the Revitalization Coordinator shall identify all Puerto Rico agencies that will have a role in permitting, approving, or authorizing the proposed project, and those agencies will be required to submit to the Revitalization Coordinator an expedited permitting process, with the goal of ensuring that selected projects—known as “critical projects”—can be given priority to the maximum extent possible. § 503(a)(2), (3).
- The Revitalization Coordinator will then develop a critical project report that assesses the strength and viability of the relevant proposal. § 503(b).

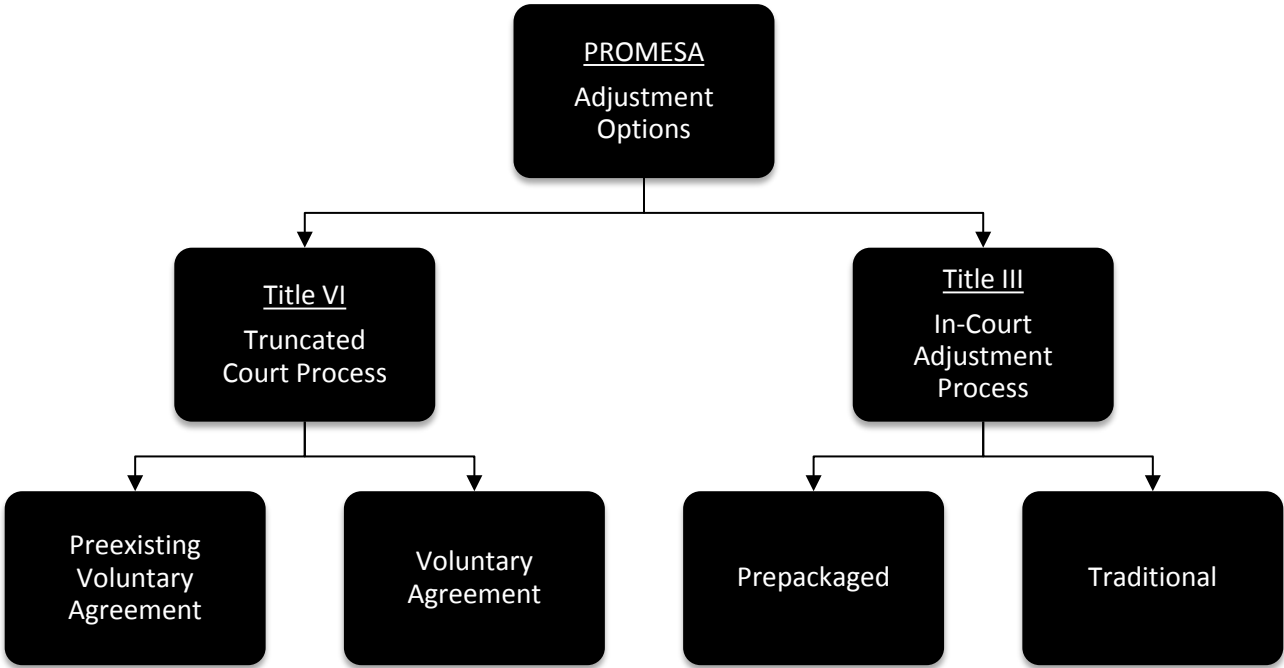
D. Miscellaneous Key Provisions:

Infrastructure Revitalization (2 of 2)

- The critical project report will include recommendations by both the Governor and the Revitalization Coordinator as to whether the project should be considered a critical project (*i.e.*, a project whose approval and implementation should be expedited). § 503(b)(1)(B), (E).
- After a period of public comments, the Revitalization Coordinator must submit the report to the Oversight Board. § 503(b)(3).
- The Oversight Board, in turn, shall approve or disapprove the project, by majority vote, as a critical project, and subsequent to such approval, expedited work on critical projects will begin. § 503(c).
- Beyond this process, Title V also creates an interagency subcommittee to evaluate environmental documents required under Puerto Rico law to facilitate the expedited permitting process, and the Oversight Board shall have the power to review Puerto Rico laws that may impede the expedited permitting process. § 504.
- Finally, Title V requires federal agencies to provide a point of contact and to expedite review of projects to the extent possible. § 505.

Debt Adjustment Options Under PROMESA:

Summary Overview



E. Title VI:

Creditor Collective Action – Overview

- Title VI creates a streamlined process for achieving modifications of financial debt of Puerto Rico or a covered territorial instrumentality (known as “Bonds”) with the consent of a super-majority of those voting in any affected class—or “Pool”—of creditors, provided that such super-majority of those voting also constitutes a majority of the Bonds outstanding in such Pool.
 - Importantly, if the voting thresholds are met, the terms of such a restructuring will apply to everyone else within the same Pool, including those who did not vote or who voted against the proposed modification.
 - The importance of Title VI is its potential speed relative to restructuring through a plenary court process (as under a Title III proceeding).

E. Title VI:

Creditor Collective Action – Pooling of Bonds

- Title VI also sets forth extensive requirements for the composition of any “Pool” and the treatment of any pooled Bond.
 - Title VI directs the Oversight Board to establish separate Pools for Bonds distinguished by specific provisions governing priority or security arrangements, including for general obligation Bonds; for senior and subordinated Bonds according to the relative priority or security arrangements; for guaranteed and non-guaranteed Bonds; and for Bonds for which revenue streams have been pledged, with separate Pools for Bonds of differing priority in such pledges. § 601(d).
 - Title VI requires that all Bonds in the Pools subject to a proposed Modification receive the same amount of consideration per amount of principal, the same amount of consideration per amount of interest accrued but unpaid and the same amount of consideration per amount of past due interest. § 601(g).
 - Title VI has no provision for cram-down of non-consenting Pools, and non-consenting secured holders within a consenting Pool must either retain their liens or receive the lesser of the value of their Bond claims or the collateral securing such claims. § 601(m).
- There are no fixed deadlines or timeframes within Title VI, and there is no requirement that an Issuer attempt a Title VI process prior to undertaking a Title III process.

E. Title VI:

Creditor Collective Action – Voting

- The threshold for achieving a binding modification, amendment, supplement, or waiver affecting a Pool of Bonds (known as a “Modification”) is consent of two-thirds of the outstanding principal amount of Bonds that voted on such Modification, provided that such two-thirds also represents a majority of the outstanding principal amount of Bonds in the Pool. § 601(j).
- PROMESA also provides that insurers may vote insured Bonds for the purposes of a Title VI adjustment (to the extent such insurers are granted the right to vote such Bonds for purposes of directing remedies or consenting to proposed amendments or modifications as provided in the applicable contracts). § 601(j).

E. Title VI:

Role Of The Oversight Board

- The Oversight Board possesses control during the Title VI process.
- No entity may consummate a Modification without the Oversight Board’s first certifying that the proposed agreement is in conformance with the fiscal plan (also controlled by the Oversight Board) or, if no fiscal plan has been adopted, that the agreement provides for a sustainable level of debt. § 104(i)(1), (2)(A).
- The Oversight Board also has the power to:
 - Grant (or deny) any instrumentality access to Title VI altogether, § 601(e),
 - Establish the Pools for voting, § 601(d),
 - Accept a modification proposed by creditors on behalf of any “Issuer,” § 601(i), and
 - Issue successive certifications that the proposed Modification meets relevant requirements: (i) to become a “Qualifying Modification” and (ii) to have binding effect. § 601(g), (m)(1)(B).

E. Title VI:

Process (1 of 2)

1. An “Issuer,” which includes the Commonwealth and any covered territorial instrumentality of the Commonwealth that is specifically authorized by the Oversight Board to proceed under Title VI (§ 601(a)(8)), proposes a modification (or the Oversight Board proposes a modification for such Issuer upon the request of creditors).
2. The Issuer provides certain financial and economic information, and its fiscal plan, if any. § 601(f).
3. The Oversight Board certifies that the Modification is a “Qualifying Modification,” which requires that (§ 601(g)):
 - The Issuer has consulted with creditors (“Consultation Process”) or the Modification is consistent with a restructuring support or similar agreement with a majority in amount of affected claims (“Voluntary Agreement Process”);
 - The Modification offers equal treatment within each creditor Pool; and
 - The Modification (i) is consistent with the Issuer’s fiscal plan, (ii), if no fiscal plan then exists, provides for a sustainable level of debt, or (iii) is limited to extending maturities and interest payment dates for a period of up to one year (collectively, the “Modification Options”).⁽⁴⁾

⁽⁴⁾ Issuers that enter into “Preexisting Voluntary Agreements” with their creditors, which are defined to include only those agreements consummated prior to May 18, 2016, are exempted from the requirement of receiving certification that the agreement achieves one of the Modification Options. § 104(i)(3).

E. Title VI:

Process (2 of 2)

4. The Oversight Board approves Pools for voting purposes. § 601(d).⁽⁵⁾
5. The Issuer solicits each Pool affected by the Qualifying Modification. § 601(h).
6. Holders of two-thirds in amount of qualifying Bonds voting in each Pool, provided that that two-thirds represents a majority of the outstanding amount of such qualifying Bonds, vote to approve the Qualifying Modification. § 601(j).
7. The Oversight Board Certifies that (§ 601(m)(1)(B)):
 - The voting standard has been satisfied;
 - The Qualifying Modification achieves one of the Modification Options; and
 - All conditions have been satisfied or waived.
8. The U.S. District Court for the District of Puerto Rico, upon review of an application by the Issuer, enters an order that the requirements of Title VI have been satisfied. § 601(m)(1)(D).

⁽⁵⁾ Issuers that enter into Preexisting Voluntary Agreements with their creditors may also classify insured and uninsured Bonds differently for pooling purposes. § 601(d)(4).

F. Title III:

Adjustment Of Debts – Overview

- Title III creates a court-supervised debt-adjustment mechanism for the central government and Puerto Rico’s government instrumentalities.
- Title III imports heavily from the U.S. Bankruptcy Code, including its classification and cram-down provisions, which potentially will provide Puerto Rico and its instrumentalities with significantly greater flexibility in restructuring debts than under Title VI.
- Unlike the Bankruptcy Code, Title III gives the Oversight Board significant control in the proceeding and creates carve-outs from familiar standards to preserve certain creditors’ positions.
- Title III begins by incorporating various provisions of the U.S. Bankruptcy Code that are to be applicable in a Title III proceeding. These provisions are largely the same provisions made applicable to cases under Chapter 9 of the U.S. Bankruptcy Code in addition to many of the provisions of Chapter 9 itself.
- Relevant provisions include, among others, the automatic stay; standards for adequate protection, for obtaining post-petition credit, and for filing, allowance, and priority of claims; fraudulent transfer, preference, and avoidance and recovery statutes; and most of the plan formulation and confirmation requirements that exist in Chapter 9, including requirements for claims classification and for cram-down of non-consenting classes. § 301.
- To the extent that Title III adopts provisions of Chapter 9 and makes them available to Puerto Rico and its instrumentalities, some might consider Title III a helpful and relatively efficient restructuring tool.

F. Title III:

Jurisdiction and Venue

- Title III also provides for jurisdiction in federal district courts, § 306, with venue in the district of the territory or district of the territory of the covered territorial instrumentality or in a district where the Oversight Board is located outside of the territory, § 307, and a district judge chosen to sit by designation, § 308.
- The Federal Rules of Bankruptcy Procedure apply in their entirety to Title III proceedings. § 310.

F. Title III:

Role Of The Oversight Board

- Unlike Chapter 9 of the U.S. Bankruptcy Code, PROMESA grants the Oversight Board (as opposed to the debtor) power over key milestones in the Title III restructuring process.
- The Oversight Board controls access to Title III because the Oversight Board must issue a “restructuring certification,” approved by at least five members of the Oversight Board, which is a prerequisite to filing under Title III. § 206. The restructuring certification requires that the Oversight Board determine that the prospective debtor has (a) made good-faith efforts to reach a consensual restructuring, (b) adopted procedures necessary to deliver timely audited financial statements, and (c) made public draft financial statements and other information necessary to make an informed decision with respect to possible restructuring. § 206(a)(1)-(2).
- The Oversight Board is the “representative” of any and all debtors, § 315, and has the power to file petitions on behalf of debtors and to file and modify plans of adjustment, §§ 104(j), 304, 312, 313, 315.
- The Oversight Board is also empowered to file any other pleadings it deems appropriate. § 315.

F. Title III:

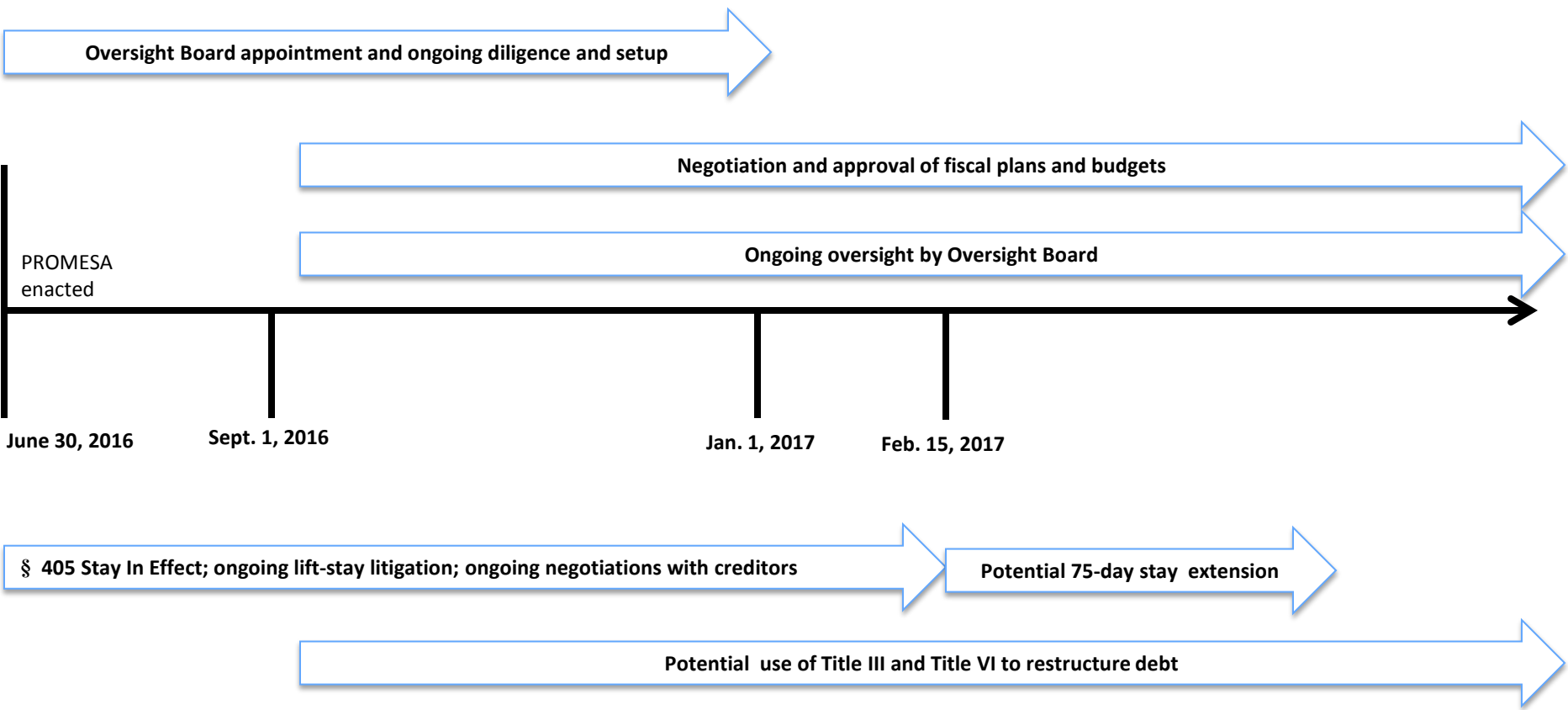
Modified Confirmation Standards

- Although Title III largely imports plan confirmation standards from Chapter 9, there are two noteworthy departures:
 - *First*, Title III includes a modified “best interests of creditors” test, which states that a plan will only be confirmed if it is “feasible and in the best interests of creditors, which shall require the court to consider whether available remedies under the non-bankruptcy laws and constitution of the territory would result in a greater recovery for the creditors than is provided by” the plan to which the court is applying the confirmation analysis. § 314(b)(6). Chapter 9 confirmation standards include a shorter formulation such that a plan will be confirmed only if the plan is in the best interests of creditors and is feasible. 11 U.S.C. § 943(b)(7).
 - *Second*, Title III adds a requirement that both the court and the Oversight Board must determine that the plan is consistent with the applicable fiscal plan certified by the Oversight Board. *See* §§ 314(b)(7), 104(j)(3). A fiscal plan must, in turn, respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements of a covered territory or covered territorial instrumentality in effect prior to the date of enactment of the Act. § 201(b)(1)(N).

Title VI and Title III Overview Comparison Chart

	Title VI	Title III
Application	<ul style="list-style-type: none"> Bonds, loans, or other borrowings predating enactment of the Act. 	<ul style="list-style-type: none"> Substantially all liabilities predating the petition.
Eligible Issuers	<ul style="list-style-type: none"> The Commonwealth and also any covered territorial instrumentality explicitly authorized by the Oversight Board. 	<ul style="list-style-type: none"> The Commonwealth or covered territorial instrumentality for which Oversight Board files a petition.
Prerequisites To Relief	<ul style="list-style-type: none"> There is no prerequisite to entry, but a successful Title VI modification requires that the modification satisfy certain conditions. 	<ul style="list-style-type: none"> Oversight Board determines, among other things that the debtor made good-faith efforts at consensual restructuring, adopted procedures to provide timely audited financials, published draft financial statements and other information required to assess restructuring, and adopted a fiscal plan.
Proposals	<ul style="list-style-type: none"> The debtor or the Oversight Board makes the restructuring proposal. 	<ul style="list-style-type: none"> Only the Oversight Board may file a petition or a plan of adjustment.
Process	<ul style="list-style-type: none"> Issuer or holders propose a Modification and the Oversight Board places affected Bonds in Pools based on their priority and security features; with limited exceptions, the proposed Modification must provide all holders in all Pools the same consideration pro rata. The Oversight Board certifies that the Modification is consistent with the fiscal plan or, if no fiscal plan exists, that it provides sustainable debt. In order to become effective and bind non-consenting holders, holders of at least two-thirds in amount of the outstanding principal amount of the Bonds that vote consent, provided further that such two-thirds must also constitute a majority in outstanding principal amount (for any secured Bonds, non-consenting holders either retain their liens or receive property of a value at least equivalent to the value of the lesser of their Bond claims or the collateral securing such Bond claims). A federal court approves the binding modification. 	<ul style="list-style-type: none"> Oversight Board files petition and plan. The process and substance otherwise generally follows Chapter 9 of the U.S. Bankruptcy Code, except that confirmation standards include a modified “best interests of creditors” test and require that the plan of adjustment must be consistent with the fiscal plan (which must “respect” priorities and liens existing under relevant constitution, law or agreement, but such determination will be made by the Oversight Board).

G. PROMESA In Practice: Indicative Timeline



G. PROMESA In Practice:

July 2016 – August 2016

- Oversight Board appointment
 - The Oversight Board will be appointed according to the criteria set forth in slides 9-10.
- § 405 stay in effect
 - The § 405 stay took effect upon enactment of PROMESA on June 30, 2016.
 - The § 405 stay remains in effect until February 15, 2017, unless further extended by either a Title VI court (up to 60 days) or the Oversight Board (up to 75 days).
 - Several lawsuits attempting to lift or invalidate the § 405 stay are already pending.
- Ongoing negotiations with creditors
 - In the period before the Oversight Board is up and running, the Commonwealth and its instrumentalities have indicated that they may seek to continue to negotiate with creditors with the goal of achieving a consensual resolution that could be effectuated through a Title VI voluntary agreement or a Title III prepackaged restructuring.

G. PROMESA In Practice:

September 2016 – January 2017 (1 of 2)

- Oversight Board startup period
 - In the months that follow its appointment, the Oversight Board will need to educate itself on the intricacies of the issues faced by the Commonwealth and its instrumentalities. Given the multitude of complex issues, this will likely be a lengthy process.
- Fiscal plan and budget negotiation process
 - The exact schedule will be established by the Oversight Board, but it is likely that during the fourth quarter of 2016, the Oversight Board will attempt to make substantial progress toward finalizing an approved fiscal plan and budget in accordance with PROMESA's requirements.

G. PROMESA In Practice:

September 2016 – January 2017 (2 of 2)

- § 405 stay in effect
 - The § 405 stay remains in effect until February 15, 2017, unless further extended by either a Title VI court (up to 60 days) or the Oversight Board (up to 75 days).
- Ongoing negotiations with creditors
 - With Oversight Board approval, the Commonwealth and/or its instrumentalities may utilize Title VI or Title III to effectuate a debt restructuring.
 - Title VI will be possible in the case of a consensual deal, but absent a consensual deal, Title III will be the only option.
- Fiscal and Economic Growth Plan
 - The Commonwealth will likely attempt to update and refresh its Fiscal and Economic Growth Plan with respect to expenses, revenue forecasts and the expected impact of potential measures taken by or at the direction of the Oversight Board.

G. PROMESA In Practice:

February 2017 and beyond

- Fiscal plan and budget negotiation process
 - To the extent not finalized, negotiations over the fiscal plan and budget(s) will continue.
- Oversight Board engages in ongoing oversight until its termination
- § 405 stay no longer in effect after February 15, 2017 (unless extended)
- Ongoing negotiations with creditors
 - As the February 15 stay termination deadline approaches, the Commonwealth and its instrumentalities, as well as their creditors, will be incentivized to intensify negotiations.
 - If no deal is reached, the Commonwealth and many of its instrumentalities may be incentivized (with Oversight Board permission) to file under Title III, since Title III provides a replacement stay that will allow negotiations to continue in an orderly manner notwithstanding the expiration of the § 405 stay.
- Title III restructuring
 - Though Title III imposes a relatively orderly process upon debtors and creditors alike, the process is unlikely to be quick (absent a prepackaged deal); if the Commonwealth and/or its instrumentalities ultimately file for Title III relief, the proceedings are likely to continue through 2017 and beyond.