

PUERTO RICO WATCH



Recent Publications

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For the last decade, the Commonwealth of Puerto Rico has been in the midst of a growing fiscal and humanitarian crisis. GNP growth has been negative nearly every year since FY 2007, and notwithstanding the Commonwealth's efforts, tax revenues have consistently fallen short of projections. Moreover, the Commonwealth and its instrumentalities owe approximately US\$73 billion in debt, and Puerto Rico's net public pension liabilities were estimated by some analysts to exceed US\$48 billion as of June 30, 2015. In response to the worsening situation in Puerto Rico (and after efforts to implement local Puerto Rican debt restructuring legislation were held unconstitutional by the United States Supreme Court), the United States' legislature enacted the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA").

Signed into law by Former President Barack Obama on June 30, 2016, PROMESA provides Puerto Rico and its instrumentalities with access to a federal debt restructuring regime—access that was previously unavailable as Puerto Rico is legislatively

excluded from the definition of "State" under Chapter 9 of the U.S. Bankruptcy Code, making its various instrumentalities ineligible for the regime. In brief, PROMESA provides two primary debt restructuring options for potential debtors: *first*, a collective action debt restructuring option applicable with respect to bond debt only under Title VI of PROMESA, and *second*, a process under Title III of PROMESA, which closely resembles Chapter 9 of the Bankruptcy Code (albeit with some crucial differences) and allows for a more comprehensive restructuring. In addition to the debt restructuring options, PROMESA also provides for the creation of an Oversight Board, charged most importantly with developing and implementing a Fiscal Plan for the Commonwealth and its instrumentalities designed to ensure the financial health of the island and its residents over the long-term.

In March of 2017, nearly nine months after PROMESA's passage, the Oversight Board certified a Fiscal Plan for the Commonwealth and certain instrumentalities. Other instrumentalities, such as



the Puerto Rico Electric Power Authority (PREPA), will have certified Fiscal Plans separate from the consolidated one that includes the Commonwealth and was approved in March 2017. Shortly thereafter, on May 3, 2017, the Commonwealth filed for a Title III proceeding under PROMESA, and it is expected that many of the Commonwealth's instrumentalities will follow suit. Though not without critics in the press and among various creditor constituencies, certification of the Fiscal Plan and the Commonwealth's Title III filing represent major milestones under PROMESA and hopefully mark the first steps toward economic viability for the Commonwealth and its instrumentalities.

In an effort to encourage discourse with respect to some of the most interesting and complex issues that may arise as the Commonwealth and its instrumentalities progress through the untested PROMESA framework, lawyers from Cleary Gottlieb have published a series of articles on the topic in *Law360*. The articles and authors are listed below, and are linked directly in the electronic version of this issue. We hope that you will find these of interest.

Why Puerto Rico Will Likely Rely On PROMESA Title III

March 1, 2017

by Richard J. Cooper, Luke A. Barefoot,
Jessica E. McBride and Antonio J. Pietrantonio



Issues To Expect In A Title III Puerto Rico Restructuring

March 8, 2017

by Richard J. Cooper, Luke A. Barefoot,
Jessica E. McBride and Antonio J. Pietrantonio



What Should Puerto Rico Offer Its Creditors?

March 15, 2017

by Richard J. Cooper, Luke A. Barefoot and
Jessica E. McBride



Disarming Puerto Rico's Pension Time Bomb

April 19, 2017

by Richard J. Cooper, Luke A. Barefoot,
Daniel J. Soltman and Antonio J. Pietrantonio



Cleary Gottlieb assisted Puerto Rico and its instrumentalities with their financial challenges prior to the recent change in government, and also was closely involved in the development, drafting and passage of PROMESA.