

# The Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA” or the “Act”)

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## *A Brief Overview on the PROMESA Title III cases filed by the Commonwealth and COFINA*

### PROMESA Debt Restructuring

On May 3, 2017 and May 5, 2017, the Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), filed a petition under title III of

(restructure the debt), just like in a regular bankruptcy proceeding. The petitions filed by the Commonwealth and COFINA are currently being jointly administered. Judge Laura Taylor Swain, a United States District Judge of the United States District Court for the Southern District of New

**All documents filed in the PROMESA Title III Cases are available free of charge to the general public by accessing the website maintained by Prime Clerk LLC at <https://cases.primeclerk.com/puertorico>**

PROMESA. The Oversight Board was created by Section 101 of PROMESA, and has the authority to designate any territorial instrumentality as subject to the provisions of the Act. Pursuant to Section 315 of PROMESA, the Oversight Board acts as the representative of the debtor (the Commonwealth and COFINA). The members of the Oversight Board were appointed by President Obama.

Title III of PROMESA provides the means for the Commonwealth and COFINA to work with its creditors to adjust its debts

York, is handling the petitions filed by the Commonwealth and COFINA. All documents in the Title III cases are filed in the Bankruptcy Court's docketing system for ease of administration. Guy Gebhardt, Acting Trustee for Region 21, has two (2) main responsibilities under Title III: (1) the appointment of committees under Bankruptcy Code Section 1102, and (2) the review of request for compensation of professionals employed by the Oversight Board, the debtors, and committees.

## *Rules applicable to the Title III Cases*



- Bankruptcy Code
- Federal Rules of Bankruptcy Procedure
- All Federal Rules of Civil Procedure made applicable by the Federal Rules of Bankruptcy Procedure
- All Local Bankruptcy Rules
- The *Case Management and Administrative Procedures Order* entered by Judge Laura Taylor Swain (if there is a conflict between the Case Management Procedures and any other bankruptcy rule, the Case Management Procedures will generally govern)

## *Omnibus Hearings Scheduled in the Title III Cases*

- August 9, 2017, 9:30 a.m.
- September 26, 2017, 9:30 a.m.
- November 15, 2017, 9:30 a.m.
- December 20, 2017, 9:30 a.m.

The petitions filed under Title III operate as an automatic stay of actions against the Commonwealth and COFINA, barring the commencement or continuation of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Title III cases. Notwithstanding, there have been instances where the Debtors have reached agreements with the movant to lift the automatic stay and allow the continuation of judicial proceedings.

As a result of the Title III petitions, all persons (including individuals or corporations) have been prohibited from terminating any executory contract or unexpired lease of the Debtors, or any right or obligation under any such contract or lease of the Debtors, at any time after the commencement of the Title III Cases, solely because of a provision in such contract or lease that is conditioned on: (a) the insolvency or financial condition of the Debtors at any time before the closing of the Title III Cases; or (b) the commencement of the Title III Cases.

### *COFINA dispute*

In 2007, the Legislative Assembly of Puerto Rico amended Act No. 91, and officially created COFINA. COFINA was authorized to issue bonds backed by sales and use tax revenues. There are many bondholders in

the Title III cases that have insured bonds that have been issued by COFINA. The dedicated sales tax backing the bonds issued by COFINA are being deposited directly in a special account. Bondholders or debtholders have argued that the sales and use tax is the property of COFINA and cannot constitute a resource available to the Commonwealth for purposes of a debt restructuring. Despite this, the Commonwealth, has proposed and approved a fiscal plan that contemplates the “invasion” of funds that have been set aside for COFINA. The fiscal plan certified by the Oversight Board as part of the Title III cases, permits the diversion of COFINA’s dedicated sales tax to the Commonwealth.

Bondholders are currently litigating who is entitled to the payment of the COFINA funds held by the Bank of New York Mellon, as Trustee for the COFINA Notes. To that effect an interpleader action (an adversary proceeding) was brought by the Bank of New York Mellon. In the interpleader action, Judge Laura Taylor Swain must resolve the bondholders’ respective interests in the COFINA funds. The interpleader action or adversary proceeding has been divided in three (3) stages:

Stage 1: Interplead of the June 1 payment, and discharge of the Bank of New York Mellon from any and all claims and liability relating to the institution of the adversary proceeding, concerning the disputed funds.

Stage 2: The Court will determine the parties’ respective interests in the Disputed COFINA Funds, including whether and, if so, when, an Event of Default occurred, and whether the bonds at issue have been or can be accelerated.

Stage 3: Litigation of the Bank of New York Mellon’s requests for declaratory relief and the claims of bondholders against Bank of New York Mellon, including, but not limited to, any motions to remand the lawsuits brought by the Whitebox Funds and Ambac Assurance Corporation (as bondholders) to state court, any motions to dismiss the Bank of New York Mellon’s requests for declaratory relief, and/or the filing of counterclaims against the Bank of New York Mellon in the adversary proceeding.

All bondholders of COFINA funds should appear in the pending adversary proceeding, because if not they may be precluded from asserting any claim against the Bank of New York Mellon with respect to the Disputed Funds.

### *Conclusion*

The fiscal stability and future of Puerto Rico depends on the outcome of these proceedings. Although the process outlined by Title III is akin to the provisions of the Bankruptcy Code, substantive and procedural questions remain, which will be resolved along the way.

## *References*

\*Notice of Commencement of  
Cases Under Title III of  
PROMESA, Entry of Order for  
Relief and Related Matters

\*Docket Entries in Cases 17-  
03283, 17-03284, and 17-00133.