

Debt Restructuring Process Under Puerto Rico Oversight,
Management and Economic Stability Act
(PROMESA)

Sonia Colón, Esq.
Ferraiuoli LLC
Looking Forward

221 Ponce de León Ave., Floor 5
Hato Rey, PR 00917
T. 787-766-7000

390 N. Orange Ave., Suite 2300
Orlando, FL 32801
T. 407-982-4182

scolon@ferraiuoli.com

- ▶ The contents of this presentation has been prepared solely for educational purposes. It is not intended as, nor does it constitute legal advice. It is recommended that anyone reading this presentation get legal advice from a lawyer before taking any action related to the procedures described in this presentation.

- I. BACKGROUND
- II. PROMESA
- III. POWERS OF OVERSIGHT BOARD
- IV. DEBT ADJUSTMENT
- V. CREDITOR COLLECTIVE ACTION

Commonwealth of Puerto Rico et al. v. Franklin California Tax Free-Trust et al. Case No. 15-233 (U.S. Sup. Ct. June 13, 2016).

- On June 13, 2016, the Supreme Court of the United States decided *Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*, holding that Chapter 9 of the federal bankruptcy code preempts Puerto Rico's municipal debt restructuring law.
- The Supreme Court ruled that Puerto Rico's instrumentalities are ineligible for municipal debt adjustment under Chapter 9 of the Bankruptcy Code, and that Puerto Rico cannot adopt local laws dealing with the insolvency of its units, such as municipal power and water companies.
- In 2014, Puerto Rico enacted a law allowing its public utilities to restructure its debts.
- The Supreme Court held that because the definition's exception "unmistakably" exempts Puerto Rico from the definition of a "State" only for purposes of allowing it to define which municipalities may be a debtor, it does not exempt Puerto Rico for any other purpose. Had Congress intended to exclude Puerto Rico from preemption, it would have said so. Congress does not "hide elephants in mouseholes".

Commonwealth of Puerto Rico et al. v. Franklin California Tax Free-Trus
et al. Case No. 15-233 (U.S. Sup. Ct. June 13, 2016).

- Section 903(i) of the Bankruptcy Code, which pre-empts state bankruptcy laws that enable insolvent municipalities to restructure their debt over the objections of creditors and instead requires municipalities to restructure such debts under chapter 9 of the bankruptcy code, pre-empts the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was enacted to enable the Commonwealth's public utilities to implement a recovery or restructuring plan for their debt.
- The Supreme Court held that Puerto Rico is a "State" for purposes of chapter 9's preemption provision, despite the code's definition of "state" excluding Puerto Rico for purposes (???)

PROMESA

- On June 30, 2016 Congress adopted the "Puerto Rico Oversight, Management and Economic Stability Act" (PROMESA), which was immediately signed into law by President Obama.
- PROMESA creates a mechanism for debt adjustment proceedings and to generate the meaningful fiscal reforms that Puerto Rico needs while improving efficiency, transparency and internal control;
- PROMESA provides a framework for restructuring instrumentalities by incorporating provisions from Bankruptcy Code, other protocols used in restructuring sovereign debt.
- According to section 101 of PROMESA, the purpose of the Act is to provide a method for Puerto Rico to achieve fiscal responsibility and access to the capital markets.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Debt Restructuring Process Under Puerto Rico Oversight, Management and Economic Stability Act (PROMESA)

Also available as part of the eCourse

[2016 Bankruptcy eConference](#)

First appeared as part of the conference materials for the 35th Annual Jay L. Westbrook Bankruptcy Conference session "Restructuring Public Finances—Chapter 9 and Alternatives"