

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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THE GOVERNMENT DEVELOPMENT BANK	:	PROMESA
FOR PUERTO RICO,	:	Title VI
	:	
	:	Case No. 18-1561 (LTS)
	:	
Applicant.	:	
	X	

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ NOTICE OF INTENTION
TO OBJECT REGARDING PURPORTED QUALIFYING MODIFICATION
FOR GOVERNMENT DEVELOPMENT BANK**

PLEASE TAKE NOTICE that the Official Committee of Unsecured Creditors for the Title III Debtors¹ (the “Committee”) intends to object to the *Application of the Government Development Bank for Puerto Rico and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Approval of the Qualifying Modification for GDB* [Docket No. 1] (the “Title VI Application”),² and transactions related thereto (collectively, the “GDB Restructuring”).

PLEASE TAKE FURTHER NOTICE that, in light of the fact, among other things, that the GDB Restructuring will be “full, final, complete, binding, and conclusive as to the territorial government Issuer, other territorial instrumentalities of the territorial government Issuer, and any

¹ On May 3, 2017, a voluntary petition for relief under section 304(a) of PROMESA was filed in the United States Bankruptcy Court for the District of Puerto Rico for the Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283 (LTS)). Thereafter, Title III cases were commenced for (i) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)), (ii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)), and (iii) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780 (LTS)). The Office of the United States Trustee for the District of Puerto Rico has appointed the Committee in the Title III cases of the Commonwealth, ERS, HTA, and PREPA (collectively, the “Title III Debtors”).

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Title VI Application.

creditors of such entities,”³ the Committee intends to object to the GDB Restructuring on various bases, including, but not limited to, the following:

- The GDB Restructuring, comprised of the Title VI Application and legislation known as the Government Development Bank for Puerto Rico Debt Restructuring Act, Act No. 109 of 2017, as amended (the “GDB Restructuring Act”),⁴ which GDB Restructuring Act was adopted to effectuate what could not legally be effectuated under Title VI, constitutes an “unlawful application” of Title VI of PROMESA.⁵
 - The GDB Restructuring is also unlawful because (a) the asset allocation scheme embodied in the GDB Restructuring (i.e. giving all assets to a sub-set of unsecured creditors while leaving other unsecured creditors with no assets to satisfy their claims) violates

³ PROMESA § 601(m)(2) (emphasis added). The term “territorial government” used in section 601(m)(2) is defined by PROMESA as the “government of a covered territory.” PROMESA § 5(18). Here, that covered territory is Puerto Rico. *See* PROMESA § 5(8). Title VI of PROMESA defines “Issuer” as, among other things, a “Territory Government Issuer” (PROMESA § 601(a)(8)), which, in turn, means the “Government of Puerto Rico.” PROMESA § 601(a)(15). Thus, section 601(m)(2) provides that any Title VI approval order entered by this Court will have preclusive and binding effect on the unsecured creditors of Puerto Rico.

⁴ The GDB Restructuring Act is attached to the Declaration of Suzanne S. Uhland, Docket No. 5, at Ex. K and Ex. M. Neither the Title VI Application nor the GDB Restructuring Act can become effective without the other. The Title VI Application makes clear that the Qualifying Modification involves issuing new bonds to existing GDB bondholders from a newly created entity called the Recovery Authority, (Title VI Application at ¶ 3), but the new bonds will be paid from assets at GDB (which assets are, prior to enforcement of the GDB Restructuring Act, available to satisfy the claims of all Title III Debtors against GDB) to be transferred under the GDB Restructuring Act. *See* Title VI Application at ¶ 27. Indeed, the Restructuring Support Agreement (“RSA”) upon which the Title VI Application is based expressly required enactment of the GDB Restructuring Act. *See* Uhland Decl., Ex. G-A (Term Sheet) at p.1. Specifically, the RSA provides that “The Restructuring shall be carried out pursuant to Act No. 109-2017, also known as the [GDB Restructuring Act].” In turn, the asset transfers and new bonds contemplated by the GDB Restructuring Act will not occur until the “Effective Date”. *See* GDB Restructuring Act Arts. 401, 403. The term “Effective Date” is defined as “**the date on which the Qualifying Modification becomes conclusive and binding pursuant to Section 601(m) of PROMESA**” (i.e., after the Court approves such modification). Thus the Title VI Application and the GDB Restructuring Act are two essential elements of the scheme to liquidate GDB by shielding the assets at GDB from the claims of the Title III Debtors and their creditors.

⁵ *See* PROMESA § 601(n)(2). For example, the purported Qualifying Modification violates the requirements set forth in section 201(b)(1)(M) of PROMESA regarding asset transfers among Puerto Rico instrumentalities. Also, to the extent the Court determines that the Title III Debtors’ deposits are not held in trust or in a fiduciary capacity by GDB, then the proposed treatment of the Title III Debtors’ deposits with GDB violates the statutory requirements for pools of bond claims in PROMESA. *See* PROMESA § 601(d). In addition, the GDB Restructuring violates section 601(m)(2) of PROMESA because it proposes broad general releases of inter-governmental claims against GDB and releases of all current and former GDB officers, directors, employees and representatives. These releases, which are expressly prohibited by section 601(m)(2) of PROMESA, would be triggered by the Court’s approval of the Qualifying Modification. *See* GDB Restructuring Act Arts. 403, 702.

the Fifth and Fourteenth Amendments to the US Constitution, as well as the Due Process Clause of the Puerto Rico Constitution, and (b) the GDB Restructuring Act violates the Bankruptcy Clause of the US Constitution.

- Cash that the Commonwealth and other Title III Debtors transferred to GDB from the public fisc is not GDB's property as it was held by GDB in trust or in a fiduciary capacity and cannot be confiscated by GDB to pay certain of its creditors at the expense of the Title III Debtors and their creditors.
 - The Committee also objects to any effort by GDB to shift liability for federal funds on deposit at GDB to the Commonwealth and its creditors. Although the Title VI Application suggests that federal funds deposited with GDB will “not be used to effect the restructuring of GDB,”⁶ there is no mechanism in the GDB Restructuring for the transfer of federal funds from GDB to the intended beneficiaries of those funds. Rather, the Fiscal Plan for the Commonwealth indicates that the Commonwealth will cover the “loss” of any federal funds deposited with GDB. Thus, GDB *will retain and use* any federal funds it currently holds to pay the GDB bondholders and the closing expenses of the Title VI case, because no cash is proposed to be allocated to the Public Entity Trust, which is the only vehicle proposed by GDB for non-municipal government entities to recover on their claims against GDB, including for funds they deposited with GDB.
 - The Committee also intends to object to approximately \$80 million of “transaction costs” that GDB proposes to pay in connection with the GDB Restructuring, including professional fees and expenses to be paid under the RSA. No justification for the proposed transaction costs has been given and, due to the fact that an operational wind-down of GDB has been completed, the proposed transaction costs appear to be excessive.
- The GDB Restructuring violates section 303(1) of PROMESA and the Contracts Clause of the US Constitution because it is premised on a method of composition of indebtedness or moratorium law called the GDB Restructuring Act that purports to bind non-consenting creditors.
- The Committee intends to object to the GDB Restructuring insofar as it seeks to modify any rights that the Title III Debtors or the unsecured creditors of the Title III Debtors may have against GDB or persons acting

⁶ Title VI Application at 13, n.5.

on behalf of GDB, including, but not limited to, claims against current and former officers, directors, and employees of GDB.

RESERVATION OF RIGHTS

The Committee is concerned that the negotiations giving rise to the GDB Restructuring were not conducted on an arms'-length basis because current and former GDB insiders are (i) board members of the Oversight Board, (ii) officers of AAFAF, (iii) managing directors of AAFAF's financial advisor, or (iv) the executive director of a GDB bondholder group supporting the transaction (the so-called "Bonistas Del Patio"). In addition, AAFAF and GDB were not represented by separate counsel or separate financial advisors during these negotiations. Moreover, there are a number of material documents related to the GDB Restructuring which the Committee has not seen, including the Ancillary Documents (as defined in the GDB Restructuring Act) and the proposed order of approval for the Title VI Application. Accordingly, the Committee reserves the right to revise, supplement, or otherwise modify the bases for its objection to the GDB Restructuring prior to the deadline for filing an objection in accordance with applicable rules and/or any scheduling order entered by the Court. The Committee further reserves the right to challenge the GDB Restructuring by other means, including, but not limited to, through the commencement of an adversary proceeding and motions filed in the title III cases of the Title III Debtors.

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Dated: August 22, 2018

/s/ Juan J. Casillas Ayala

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CERTIFICATE OF SERVICE

I certify that on August 22, 2018, I caused a copy of the foregoing document to be served on the following parties by CM/ECF, overnight courier, and/or electronic mail:

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