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PUERTO RICO
Government Development Bank
for Puerto Rico

SUMMARY OF THE PUERTO RICO PUBLIC CORPORATION DEBT ENFORCEMENT AND RECOVERY ACT (Act 71-2014)

July 31, 2014

The information contained herein is for illustrative purposes only and does not contain legal advice. Interested persons should consult with legal counsel. Everything contained in this presentation is qualified in all respects by the language and provisions of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act.

Objectives of the Recovery Act

- The Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the “Recovery Act” or “RA”) fills a gap in existing law because, prior to its passage, no law existed to provide an orderly recovery and reorganization regime for the Commonwealth’s public corporations
- The Recovery Act protects the interests of all stakeholders
- The Recovery Act provides flexibility to a public corporation by offering two separate frameworks for debt relief: Chapter 2 or Chapter 3
- Chapters 2 and 3 are designed to work together, simultaneously or sequentially
- The Recovery Act is not available to many Commonwealth Entities, including the Commonwealth itself, the Puerto Rico Sales Tax Financing Corporation (COFINA), and the Government Development Bank for Puerto Rico (GDB)
 - Because the Commonwealth is ineligible for relief under the Recovery Act, general obligation bonds or guaranteed general obligation debt are not affected

Organization of the Recovery Act

- The Recovery Act is organized into three primary chapters
- Chapter 1 contains general provisions applicable to the entire Recovery Act, including:
 - Definitions
 - The creation of a court
 - Jurisdiction
 - Eligibility requirements
 - Notice requirements
 - Adequate protection requirements
 - Discretionary appointment of an emergency manager
- Chapter 2 provides a mechanism for consensual debt relief with limited judicial intervention
- Chapter 3 provides debt enforcement overseen by a court

Key Features of Chapter 2 and Chapter 3

■ Chapter 2

- Market-based approach that provides a mechanism for consensual debt relief with limited judicial intervention
- Relief must be accompanied by a recovery program to make the public corporation self-sustaining
- The requirement that the public corporation commit to a recovery program ensures that all stakeholders share in the burdens associated with debt relief
- A public corporation operating under chapter 2 is called an “eligible obligor”

■ Chapter 3

- Debt enforcement process overseen by a court
- The public corporation may propose a debt enforcement plan that provides creditors with (i) at least the value attainable from simultaneous enforcement of all creditors’ claims, maximized based on the assets’ value deployed to fulfill public functions, plus (ii) a note entitling creditors to half of petitioner’s free cash flow for ten years
- The public corporation may propose a transfer of all or substantially all assets free and clear of liens and claims, with the proceeds distributed to creditors according to their priorities. A transfer to a non-Commonwealth entity would be subject to applicable law conditioning such transfers. The assets must continue to be used to fulfill their public functions. Contracts may be rejected
- A public corporation operating under chapter 3 is called a “petitioner”
- The public corporation operates its business in the ordinary course under both chapter 2 and chapter 3 under existing management, unless the Governor appoints an emergency manager to carry out the functions of the governing body and chief executive officer. See RA § 136(a)

■ The Court of First Instance, located in San Juan, has jurisdiction over any dispute related to the Recovery Act

- Hon. German Brau Ramirez was appointed as the judge overseeing proceedings under the Recovery Act



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Consensual Debt Relief

CHAPTER 2

Chapter 2: Overview

- Chapter 2 consensual debt relief has the following statutory objectives (see RA § 201(a)):
 - to enable an eligible obligor to become financially self-sufficient
 - to allocate equitably among all stakeholders the burdens of the recovery program
 - to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment
- A public corporation may seek consensual debt relief from financial creditors in conjunction with a recovery program that is designed to make the public corporation self-sustaining. See RA §§ 201, 202
- Only “affected debt instruments” can be compromised
- A public corporation is eligible for chapter 2 if it is authorized by its governing body with the approval of GDB (or by the Governor, if he determines that a chapter 2 process is in the best interest of the public corporation and the Commonwealth). See RA § 113(a), 201(b)
- A public corporation may obtain credit (or “DIP” financing) under chapter 2. See RA § 206
- Debt relief requires 75% creditor consent and 50% participation. See RA § 202(d)

Chapter 2: Relief Available

- Chapter 2 permits amendments, modifications, waivers and exchanges (referred to herein as ‘amendments’) to “affected debt instruments,” which are debt instruments related to obligations that the public corporation seeks to amend and that are identified in a suspension period notice (discussed on the next slide). See RA §§ 102(5), 202(d)
- There is no limitation as to the type of amendments that may be made, and could include, among other things, any combination of the following:
 - interest rate adjustments;
 - maturity extensions or deferrals; and/or
 - principal reduction
- A debt relief transaction may be done as a consent solicitation, exchange offer, or any other offering
- The amendments under chapter 2 will not impact non-financial stakeholders directly, but other stakeholders may be impacted through measures adopted through a recovery program
 - The eligible obligor can seek voluntary concessions from other stakeholders

Chapter 2: Suspension of Remedies – § 205

- An eligible obligor announces that it has commenced a restructuring process under chapter 2 by publishing a “suspension period notice” on its website indicating (i) that the “suspension period” has commenced and (ii) which financial obligations are subject to suspension. See RA § 201(d)
- During the suspension period, remedies are temporarily suspended (either under existing law or contained in any debt instrument related to the suspended obligations), but only for financial obligations listed in the suspension period notice. See RA § 205(a)
 - “Remedy” is broadly defined and includes the right of setoff and application of funds
- The suspension period is 270 days, subject to a 90-day extension with 20% creditor support from one class of similarly situated creditors. See RA § 205(e)

Chapter 2: Trade Creditors – § 205

- Chapter 2 addresses trade credit incurred before the commencement of the suspension period as follows:
 - Trade credit will not be listed on the suspension period notice
 - Chapter 2 provides that so-called *ipso facto* clauses (provisions allowing a counterparty to terminate a contract upon the commencement of a suspension period) contained in trade contracts are unenforceable during the suspension period. See RA § 205(c)
 - Under chapter 2, trade creditors are required to perform all obligations under, and comply with all terms of, trade contracts during the suspension period, provided that the eligible obligor is not in default under such contract (including for non-payment). See RA § 205(d). However, if the contract is deemed an “essential supplier contract” (necessary for the public sector obligor to continue performing public functions), the counterparty must continue to perform so long as the eligible obligor is current on its payment obligations for liabilities incurred during the suspension period. See RA § 205(d)(2). Chapter 2 does not contain a procedure for the rejection or assumption of executory contracts

Chapter 2: Obtaining Credit – § 206

- An eligible obligor may incur unsecured debt in the ordinary course
- The Recovery Act also gives eligible obligors tools to obtain credit that gives lenders assurance of repayment
- If the eligible obligor is unable to obtain unsecured credit, the eligible obligor may obtain credit in the following ways:
 - with equal or superpriority status over certain administrative expenses should the eligible obligor become a petitioner under chapter 3;
 - with a lien on property of the eligible obligor that is not otherwise subject to a lien;
 - with a junior lien on property of the eligible obligor that is subject to a lien; or
 - with any combination of the foregoing

Chapter 2: Obtaining Credit – § 206 (cont'd)

- The Recovery Act also provides for a priming lien if the Court determines that the eligible obligor is unable to obtain such credit otherwise and (i) the proceeds are needed to perform public functions, or (ii) there is adequate protection of the interest of the holder of the lien on the property of the eligible obligor on which such senior or equal lien is proposed to be granted
- Chapter 2 may not be used to impair any debt incurred under chapter 2 or chapter 3 while a public corporation is operating under the Recovery Act
- The Recovery Act protects lenders from reversal of an order authorizing the incurrence of debt; if a court order authorizing the eligible obligor to obtain credit is reversed, the reversal does not affect the validity of any debt incurred

Chapter 2: Adequate Protection – § 207

- To continue performing its public functions and to consummate a consensual debt relief transaction, the eligible obligor may use property, including cash collateral; however, any entity claiming an interest in the property shall be entitled to a hearing to consider a request for adequate protection as promptly as the Court's calendar permits
- Bondholders with a “net pledge” on revenues are not entitled to adequate protection to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of current or operating expenses as defined in the affected debt instruments
- An entity holding a lien, pledge, or interest in the collateral may consent to its use and shall be deemed adequately protected once such consent is granted

Chapter 2: Consent and Court Approval for Amendments – §§ 202, 203

- All debt that is impacted by a consensual debt relief transaction must be placed into classes that are substantially similar (but not by maturity date). See RA § 202(d)(3)
- The eligible obligor will provide a disclosure document containing material facts to enable creditors to make an informed judgment about whether to approve the amendments
- Each class vote or consent solicitation must satisfy the following conditions (see RA § 202(d)(2)):
 - 50% of the amount of debt of such class participates in a vote or consent solicitation
 - 75% of the amount of debt that participates approves the amendments
- After the vote or consent solicitation, the eligible obligor must seek entry of an approval order, see RA § 204, and if the Court enters the approval order, the amendments become binding on all entities that are impacted by the amendments, see RA §§ 115, 202(d)
- The approval order shall be treated as a judgment under Commonwealth law, and no entity asserting claims in respect of affected debt instruments may bring any action except to enforce rights permitted under the amendments. See RA § 115

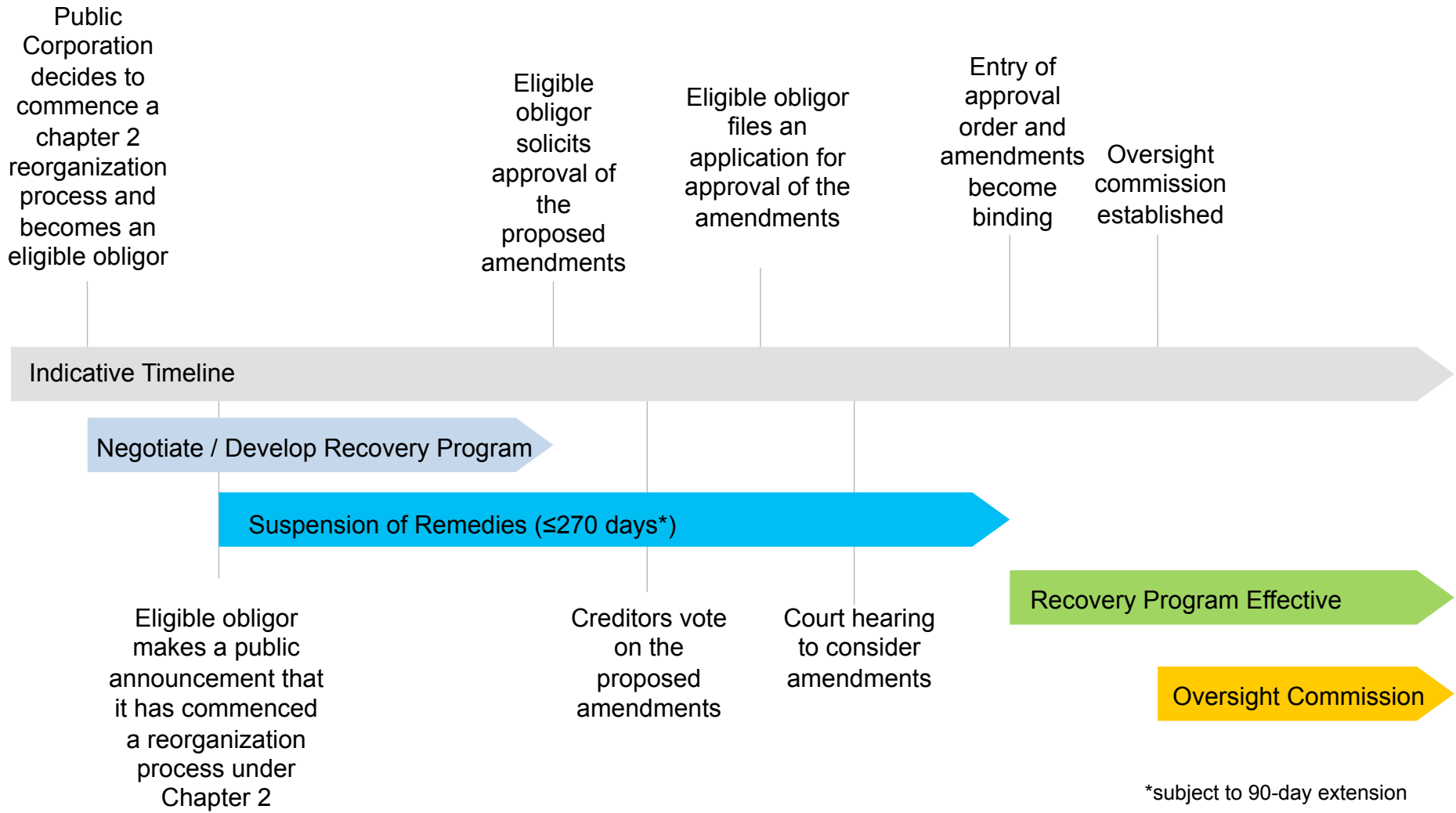
Chapter 2: Recovery Program – § 202

- The eligible obligor must formulate a recovery program that is approved by GDB to obtain the benefits of debt relief under chapter 2
- Creditors do not vote on the recovery program, but it will be a key factor when considering whether to approve the amendments to the affected debt instruments
- The recovery program is designed to make an eligible obligor self-sufficient, and it may include interim milestones, performance targets and other measures to (see RA § 202(b)):
 - improve operating margins;
 - increase operating revenues;
 - reduce operating expenses;
 - transfer or otherwise dispose of or transfer existing operating assets;
 - acquire new operating assets; and
 - close down or reorganize existing operations or functions
- The recovery program can be proposed after the commencement of the suspension period

Chapter 2: Compliance and the Oversight Commission – § 203

- Chapter 2 establishes an oversight commission to monitor the eligible obligor's compliance with the recovery program. See RA § 203
- The commission is charged to provide periodic compliance updates to stakeholders and the public of compliance with the recovery program. See RA § 203
- The oversight commission may issue non-compliance findings and make recommendations for curing such non-compliance (including dismissal of management) if the eligible obligor fails to achieve its interim performance targets. See RA § 203(b)
- The amendments may contain covenants requiring an eligible obligor to adhere to the terms of the recovery program, and may contain penalties for a non-compliance finding

Chapter 2: Steps and Indicative Timeline





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Debt Enforcement Plan

CHAPTER 3

Chapter 3: Overview

- Chapter 3 provides a mechanism for a public corporation to seek court-supervised debt relief through a debt enforcement plan or final statement of allocation of proceeds from a court-approved transfer free and clear of liens, claims, and interests. See RA §§ 308, 315

- A public corporation is eligible to become a “petitioner” under chapter 3 if the following three conditions are satisfied (see RA § 113(b)):
 - the public corporation is insolvent (as defined in the Recovery Act);
 - the public corporation was authorized to file a petition by its governing body and GDB, or a petition is filed on its behalf by GDB, upon the Governor’s request; and
 - the public corporation is ineligible for relief under both chapter 9 and chapter 11 of the U.S. Bankruptcy Code

- At the outset, the petitioner identifies “affected debt” it anticipates altering under chapter 3
 - Certain kinds of debt are excluded from the scope of chapter 3 and are referred to as “unaffected debt”

Chapter 3: Relief Available

- Chapter 3 is designed as an orderly debt-enforcement mechanism providing creditors more than they would receive if all claims were simultaneously enforced

- In addition to each creditor's entitlement to receive at least what it would receive if it enforced its claim, the values payable to unsecured claimholders are to be maximized consistent with the assets' use to satisfy public functions, and creditors must receive a note for half the petitioner's free cash flow for ten years, or until paid in full, if shorter

- Chapter 3 enables (but does not require) the petitioner to obtain the following types of relief:
 - reduce and defer principal and/or interest obligations (see RA § 315)
 - reduce certain trade debt obligations (see RA § 315)
 - reject contracts (see RA § 326)
 - transfer assets free and clear under certain circumstances (see RA § 307)

Chapter 3: Unaffected Debt

- Certain categories of debt (unaffected debt) may not be affected under a plan or during a case, meaning that any legal and equitable rights in respect of such debts will not be altered under the plan. See RA §§ 327, 328. They include:
 - certain employee wages and benefits
 - claims for the provision of goods and services in an amount of less than \$1 million (except where such treatment would substantially and severely impair other debt)
 - critical vendor debt
 - claims owed to another public corporation for goods or services provided by such public corporation to the petitioner, or to the United States
 - claims of a Commonwealth Entity for money loaned, or other financial support, to the petitioner during the sixty (60) days before the filing of the petition
 - claims of GDB for reimbursement pursuant to section 134 of the Recovery Act
 - certain credit incurred or debt issued by a public sector obligor in a chapter 2 proceeding, if such proceeding is followed by a chapter 3 petition no later than six (6) months after the chapter 2 suspension period ends
 - debts for goods and services delivered/rendered to the petitioner within 30 days prior to filing

Chapter 3: Starting and Prosecuting a Chapter 3 Case

- A petitioner starts a chapter 3 case by filing a petition with the Court in San Juan. See RA § 301
- With the petition (or shortly thereafter), the petitioner shall file a schedule of all claims the petitioner intends to affect under a chapter 3 plan, which may be amended from time to time prior to the voting record date. See RA § 302
- The filing of a petition creates an ‘automatic stay’ barring the prosecution of claims against the petitioner with respect to the debt listed on the schedule of claims petitioner intends to affect under the plan. See RA § 304
- After filing the petition and the formation of the general creditors’ committee, the Court will hold an eligibility hearing to determine whether the petitioner meets the eligibility requirements under chapter 3; this process is meant to be expeditious. See RA § 306
- After filing the petition, a petitioner may then propose a debt enforcement plan approved by GDB, and/or may propose a transfer of all or substantially all assets free and clear of liens, claims, and interests with the proceeds distributed to creditors according to their respective priorities

Chapter 3: Creditors Committee – §§ 318, 319

- The Court shall appoint a committee comprised of 5-13 entities holding the largest amounts of secured and unsecured claims identified on the schedule of affected debt. To the extent practicable, the committee shall be representative of the categories of claims to be affected under a plan

- The petitioner may request that the Court appoint additional committees comprised of holders of affected debt held by particular creditor constituencies if the additional committee(s) would facilitate efforts to confirm a plan

- The creditors' committee(s) are entitled to employ legal and financial advisors at the petitioner's expense

- A committee may:
 - be heard on any issue (i) relating to eligibility; (ii) relating to adequate protection; (iii) involving new borrowing by the petitioner; (iv) concerning a transfer of assets; and (v) in connection with the plan, but solely as to matters regarding how the plan affects the creditors' committee's constituents;
 - conduct a reasonable investigation into the petitioner's legal and financial ability to increase distributions under the plan for the creditors' committee's constituents; and
 - negotiate with the petitioner over the treatment of its constituents in the plan

Chapter 3: Trade Creditors – §§ 325, 327

- Chapter 3 addresses trade credit incurred prior to the filing of a chapter 3 case in the following five ways:
 - Any trade creditor owed less than \$1 million (or a higher amount as determined by the petitioner) on the petition date is unaffected by chapter 3. See RA § 327(b)
 - Debts for goods and services delivered/rendered to the petitioner within 30 days prior to the filing are unaffected by chapter 3. See RA § 328
 - “Critical vendor debt” is unaffected under chapter 3. See RA § 327(c). “Critical vendor debt” means special trade debt owed to an entity designated by petitioner, which entity agrees to deliver ongoing goods and services to the petitioner on the same or better terms than those in place during the one hundred and eighty (180) days preceding the filing of a petition under chapter 3 of this Act. See RA § 102(23)
 - *Ipso facto* clauses (provisions allowing a counterparty to terminate a contract upon the commencement of a reorganization process) contained in trade contracts are unenforceable during a chapter 3 case. See RA § 325(a)
 - Certain trade creditors are required to perform all obligations under, and comply with all terms of, trade contracts during a chapter 3 case, provided that the petitioner is not in default under such contract (including for non-payment). See RA § 325(b). However, if the contract is deemed an “essential supplier contract” (necessary for such public sector obligor to continue performing public functions), the counterparty must continue to perform so long as the petitioner pays its obligations for goods and services provided during the chapter 3 case. See RA § 325(b)(2)

Chapter 3: The Debt Enforcement Plan

- The petitioner has the exclusive right to propose a plan or a transfer of all or substantially all assets. See RA § 310

- The petitioner must provide a disclosure statement containing material facts demonstrating the plan pays creditors at least the value they would receive from enforcing their claims and the maximum value attainable from using the petitioner's assets to fulfill petitioner's public functions, as well as other information enabling creditors to make informed judgments about the plan. See RA § 311

- Only affected creditors are entitled to vote. See RA § 312
 - A claim will be affected for plan voting purposes if any of its legal or equitable rights are altered
 - For the plan to be confirmed, one class of affected claims must accept the plan by one-half in number and two-thirds in amount of the claims voted

Chapter 3: The Debt Enforcement Plan Confirmation – § 315

- The Court shall confirm a debt enforcement plan if it meets certain confirmation requirements, including:
 - the plan separates affected debt into classes based on (1) differences in the claims' collateral security or priorities; or (2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar
 - the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized based on the assets' use to fulfill public functions
 - the plan provides the same treatment for each claim of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such claim
 - at least one class of affected claims has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted

Chapter 3: The Debt Enforcement Plan Confirmation – § 315 (cont'd)

- affected creditors receive annually 50% of the petitioner's positive free cash flow for ten years or until paid in full, if less than ten years
- the plan does not provide for materially different and adverse treatment among similarly situated creditors, unless the petitioner demonstrates a rational basis to permit such disparate treatment
- the petitioner shall have proved to the Court that it undertook a reasonable program of cost reductions and income enhancements to maximize its repayment of affected debt under the plan
- the plan provides for the payment of all administrative claims
- confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, and all other provisions of the plan must be feasible
- the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution that is not remedied or otherwise justified

Chapter 3: Transfer of Assets – §§ 307, 308

- Only the petitioner or GDB may propose a transfer of some or all of petitioner's assets free and clear of liens, claims, or other interests (including successor liability) with Court approval. See RA § 307
- The petitioner's assets can be transferred to:
 - a Commonwealth Entity for reasonably equivalent value, or,
 - a non-Commonwealth Entity, but only to the extent allowed by existing law (excluding the Recovery Act), after adequate marketing and arms-length bargaining, or a fair auction process
- The transferee must perform the same public functions with the property acquired as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or are no longer necessary
- The liens must attach to the transfer proceeds
- In the event of a transfer of all or substantially all the petitioner's assets, all unaffected debt shall be paid in full
- In the event of a transfer of all or substantially all the petitioner's assets, a final statement of allocation distributes the proceeds of the transfer, and may serve as the final distribution mechanism to the petitioner's affected creditors, in which case there may be no plan

Chapter 3: Obtaining Credit – § 322

- A petitioner may obtain unsecured credit and incur unsecured debt allowable as an administrative expense in the ordinary course

- If the petitioner is unable to obtain unsecured credit, the petitioner may obtain credit in the following ways:
 - with equal or superpriority status over certain administrative expenses;
 - secured by a lien on property of the petitioner that is not otherwise subject to a lien;
 - secured by a junior lien on property of the petitioner that is subject to a lien;
or
 - any combination of the foregoing

Chapter 3: Obtaining Credit – § 322 (cont'd)

- The Recovery Act also provides for a priming lien when there are no other sources of credit available if the Court determines that the petitioner is unable to obtain such credit otherwise and (i) the proceeds are needed to perform public functions, or (ii) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted
- Chapter 3 may not be used to impair any debt incurred under chapter 2, if a petition under chapter 3 is filed no more than six (6) months after the suspension period has ended
- The Recovery Act protects lenders from a reversal of an order authorizing the incurrence of debt. If a court order authorizing the petitioner to obtain credit is reversed, the reversal does not affect the validity of any debt incurred

Chapter 3: Adequate Protection – § 324

- To continue performing its public functions and to consummate a consensual debt relief transaction, the petitioner may use property, including cash collateral; however, any entity claiming an interest in the property shall be entitled to a hearing to consider a request for adequate protection as promptly as the Court's calendar permits
- Under chapter 3, adequate protection may take the form of, among other things, administrative claims. See § 129(a)(3)
- Bondholders with a “net pledge” on revenues are not entitled to adequate protection to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of current expenses or operating expenses as defined in the relevant debt instruments
- An entity holding a lien, pledge, or interest in the collateral may consent to its use and shall be deemed adequately protected

Chapter 3: Rejection of Contracts – § 326

- A petitioner may reject contracts, including collective bargaining agreements (“CBA”), but only if rejection damages exceed \$1 million and the rejection is in the best interest of the petitioner
- A petitioner may only reject a CBA if the following three conditions (based on U.S. Supreme Court precedent set forth in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984)) are satisfied (see RA § 326(d)):
 - the equities balance in favor of the rejection of such agreement or plan after taking into account prior legislation negatively impacting employees
 - absent rejection, the petitioner will likely become unable to perform public functions
 - the petitioner provided information to the union and negotiated in good faith with its representative to reach voluntary modifications and such efforts did not succeed
- With court approval, prior to rejection (if any) of a CBA, the petitioner may implement interim changes to such CBA



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KEY COMPARISONS

Chapter 2 and Chapter 3: Key Comparisons

- Chapters 2 and 3 are not mutually exclusive and can be invoked individually, simultaneously, or sequentially.
- Process-related comparisons:

Feature of Statute	Chapter 2	Chapter 3
<u>Application</u> : Does not apply to the Commonwealth, GDB, and other related entities.	✓	✓
<u>Affected Debt</u> : Provides debt relief only as to specified debt.	✓ Financial debt	✓ Financial debt, special trade debt, and other identified debt
<u>Commencement</u> : Commences upon authorization of the governing body of the public corporation and approval of GDB, or, in the absence of such action, upon authorization by GDB, at the Governor's request, on the public corporation's behalf.	✓	✓
<u>Protection of the Public Corporation</u> : Commencement temporarily suspends or stays all enforcement of claims against the public corporation related to affected claims.	✓ Suspension	✓ Automatic stay
<u>Obtaining Credit</u> : Public corporation may obtain financing while seeking relief under the Recovery Act.	✓	✓

Chapter 2 and Chapter 3: Key Comparisons (cont'd)

- Process-related comparisons continued:

Feature of Statute	Chapter 2	Chapter 3
<u>Use of Collateral</u> : Public corporation may use cash and other collateral.	✓	✓
<u>Adequate Protection</u> : Holders of a pledge, interest or lien are entitled to a hearing before the Court to consider whether adequate protection should be granted.	✓	✓
<u>Fiscal Sustainability</u> : The public corporation must improve its fiscal health to get relief under the Recovery Act.	✓	✓
<u>Voting</u> : Creditor approval for debt relief plan/transaction.	Requires 50% participation with 75% approval in each class	Requires approval of a 50% of votes cast and 2/3 of the aggregate amount of debt in at least one class of affected debt
<u>Transfer of Assets</u> : Allows for free and clear transfer to other Commonwealth entities to the extent allowed by existing law.		✓
<u>Rejection of Contracts</u> : Provides mechanism for public corporation to reject contracts.		✓
<u>Creditors' Committee</u> : Mandatory appointment of general creditors' committee and appointment of additional committees at public corporation's discretion; public corporation required to pay all committees' reasonable professional fees.		✓

Chapter 2 and Chapter 3: Key Comparisons (cont'd)

- Court-related comparisons:

Feature of Statute	Chapter 2	Chapter 3
<u>Judicial Proceeding</u> . All judicial proceedings under the Recovery Act will take place before a designated judge of the Court of First Instance located in San Juan, Puerto Rico.	✓ limited court involvement	✓ Court resolves all creditor issues
<u>Designated Judge</u> . The Chief Justice of the Supreme Court designated Hon. German Brau Ramirez as the judge overseeing proceedings under the Recovery Act, and Hon. Angel Pagan Ocasio as his substitute.	✓	✓
<u>Special Commissioner</u> . The designated judge may appoint a special commissioner to propose resolutions of matters.	✓	✓
<u>Appeals</u> . Appeals of certain orders (<i>e.g.</i> , an approval order under chapter 2 or a confirmation order under chapter 3) go directly to the Supreme Court of Puerto Rico.	✓	✓

Recovery Act versus Chapter 9 of the U.S. Bankruptcy Code

<u>Feature / Characteristic</u>	<u>Chapter 9 (Bankruptcy Code)</u>	<u>Chapter 2 (Recovery Act)</u>	<u>Chapter 3 (Recovery Act)</u>
Scope	Applies to all creditors	Applies to financial debt only	Applies to financial debt, special trade debt, and other identified debt
Eligibility	Not applicable to the Commonwealth and public corporations	Limited to certain public corporations	Limited to certain public corporations
Stay	Automatic stay applies to all creditors with limited statutory exceptions	Suspension of remedies applies only to affected financial creditors	Automatic stay only applies to affected debt / creditors
Adequate Protection	Entitled to adequate protection	Public corporation may use cash and other collateral; creditors can seek relief from court for adequate protection	Public corporation may use cash and other collateral; creditors can seek relief from court for adequate protection
Statutorily Mandated Creditors' Committee	None	None	Statutory committee, comprised of secured and unsecured creditors, paid by public corporation
Emergency Manager	None	An emergency manager can be appointed	An emergency manager can be appointed

Recovery Act versus Chapter 9 of the U.S. Bankruptcy Code (cont'd)

<u>Feature / Characteristic</u>	<u>Chapter 9 (Bankruptcy Code)</u>	<u>Chapter 2 (Recovery Act)</u>	<u>Chapter 3 (Recovery Act)</u>
Plan	Plan of adjustment	Amendments to debt instruments coupled with recovery program	Debt enforcement plan
Voting	Cramdown available. Requires approval of a majority of votes cast and 2/3 of the aggregate amount of debt in at least one class of affected debt.	No cramdown available. Requires 50% participation in each class with 75% approval of those voting	Cramdown available. Requires approval of a majority of votes cast and 2/3 of the aggregate amount of debt in at least one class of affected debt.
Excess Cash Flow Recovery Instrument	Excess cash flow recovery instrument could be part of a plan of adjustment	Excess cash flow recovery instrument feature could be part of amendments to debt instruments.	Excess cash flow recovery instrument required for at least 10 years
Treatment of Non-Recourse Revenue Bonds	Holders never get recourse but keep lien on special revenues	Negotiated	Holders do not get recourse; holders keep a lien on special revenues; holders get recovery instrument payable from excess revenues
Timing limitation	No outside date for filing a plan	270 days (plus 90 days with consent)	No outside date for filing a plan

Certain Misconceptions Regarding the Recovery Act

MISCONCEPTION	TRUTH
<p>The Recovery Act requires a public corporation to seek relief chapter 2 before chapter 3.</p>	<p>A public corporation may seek relief under chapter 2 or chapter 3 simultaneously or sequentially.</p>
<p>The Recovery Act cannot affect debt a public corporation owes to GDB or another Commonwealth Entity.</p>	<p>Debt owed by a public corporation to GDB or another Commonwealth Entity may be affected and does not have any special status under the Recovery Act, other than these limited exceptions in Chapter 3:</p> <ul style="list-style-type: none"> • financing provided to the public corporation by GDB or another Commonwealth entity in the 60 days prior to the filing of a chapter 3 case • goods and services provided to the public corporation <p>Long-term debt provided to the public sector obligor by GDB may be affected notwithstanding section 134(b)(2) of the Recovery Act, which provides for reimbursement of costs incurred by GDB on behalf of the public corporation with respect to a proceeding under the Recovery Act.</p>
<p>Under chapter 2 of the Recovery Act, 37.5% of the amount of debt can approve a debt enforcement transaction.</p>	<p>A consensual debt relief transaction under chapter 2 requires, in each affected class, 50% participation and 75% approval of those participating.</p> <p>Dissenting creditors holding 12.5 – 25% of the amount of debt (depending on the participation rate) can block a transaction.</p>

Certain Misconceptions Regarding the Recovery Act (cont'd)

MISCONCEPTION	TRUTH
<p>Commonwealth or GDB guarantees can be affected by the Recovery Act.</p>	<p>The Recovery Act will not adversely affect Commonwealth or GDB guaranteed debt.</p> <p>Enforcement of guarantees is temporarily stayed under chapter 3 until the stay is lifted by the Court (or until the earlier of the effective date of the plan or the time the case is dismissed and the dismissal is final and unappealable).</p> <p>The Commonwealth and GDB intend to waive any benefit they might have from the automatic stay with respect to guarantees.</p>
<p>Creditors can receive equity of a public corporation as a result of a chapter 2 or chapter 3 proceeding.</p>	<p>As governmental units, public corporations do not have equity interests, and creditors will not receive equity in the public corporation. Chapter 3 does allow for a transfer of a public sector obligor's assets to: (i) another Commonwealth entity, or (ii) a non-Commonwealth Entity, but only to the extent allowed under existing law (excluding the Recovery Act).</p>