



TRIBUNA INVITADA

por Robert D. Gordon



viernes, 26 de agosto de 2016

PROMESA and Retiree Benefits: The Need for Vigilance and a Voice

On June 30, 2016, President Obama signed into law the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), which, among other things, provides a mechanism for restructuring the debts of Puerto Rico. As a new law, it is not entirely clear how it will be implemented. In particular, it is unclear how and when the retiree community will participate in the debt restructuring negotiations and related activities. However, because the retiree community has much at stake in this financial crisis, it must actively ensure that

it has a voice and an opportunity to play a constructive role in the restructuring process.

The uncertain role of the retiree community under PROMESA arises primarily from the unique provisions of the law under Title VI, section 601. These provisions create a structure for collective debt restructuring negotiations among the numerous classes of bondholders - - and only bondholders. The public pension systems, unions, retiree associations, and retirees themselves are not entitled to participate in the collective negotiations.

A key component of the law is the creation of an Oversight Board to oversee negotiations with creditors, as well as the development of annual budgets and a fiscal plan for Puerto Rico and its instrumentalities. The Board is expected to be created by September 15, 2016.

If the Title VI bondholder negotiations fail to reach an overall resolution, the Oversight Board can commence proceedings in federal district court under Title III of PROMESA and seek court approval of a restructuring plan.

Notably, however, it is only after the Oversight Board commences court proceedings under Title III that PROMESA provides for the potential formation of a retiree committee to participate in the process and protect the interests of retirees.

The significant concern for the retiree community is that by the time a retiree committee is created under Title III, retirees could be at a terrible disadvantage in the negotiation process, since they will not have been involved in the many weeks and months of Title VI negotiations.

Accordingly, even though retirees have no formal role in the Title VI collective negotiations, the retiree community must be vigilant and participatory, as appropriate, prior to the commencement of a proceeding under Title III of PROMESA, to ensure that its interests are fully considered. The retiree community should be closely monitoring the Title VI negotiations and professionally developing its own legal and economic positions. Also, it appears that the retiree community could participate in the development of appropriate budgets and fiscal plans.

One logistical issue that the retiree community may have to address is how to create and fund an informal retiree committee outside of Title III to undertake these activities.

In the bankruptcy of the City of Detroit, the retiree community, through the Detroit Retirement Systems and the Retiree Committee, was an active and constructive participant. This participation was important to achieving a restructuring plan that reasonably protected the interests of retirees.

The stakes for retirees are high. In light of the drastic underfunding of Puerto Rico's major public pension systems, the pension benefits (and healthcare benefits) of public-employee retirees in Puerto Rico are in peril, and any debt restructuring for Puerto Rico must provide a reasonable and reliable solution to this problem.

Since PROMESA is a new law, its prospective implementation is, in many ways, unclear. However, what is clear is that the retiree community in Puerto Rico must be vigilant and proactive to ensure that any debt restructuring adequately considers the critical funding needs for retiree pension and healthcare benefits.

(Mr. Gordon is a restructuring attorney at Clark Hill PLC. As Special Restructuring Counsel to the Detroit Retirement Systems in the City of Detroit bankruptcy case, Mr. Gordon played a central role on behalf of retirees).