

7136

2011-2012 Regular Sessions

I N   A S S E M B L Y

April 13, 2011

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Introduced by M. of A. LATIMER -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to certain provisions of contracts and debt or equity securities of debt evading foreign states and state-owned corporations of debt evading foreign states to be void as against public policy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The general obligations law is amended by adding a new  
2     section 5-337 to read as follows:  
3     S 5-337. CERTAIN AMENDMENTS OF CONTRACTS ENTERED INTO BY DEBT EVADING  
4     FOREIGN STATES AND BY STATE OWNED CORPORATIONS OF DEBT EVADING FOREIGN  
5     STATES VOID AS AGAINST PUBLIC POLICY. (A) AN AMENDMENT OF A CONTRACT TO  
6     WHICH A DEBT EVADING FOREIGN STATE, AN AGENCY OR INSTRUMENTALITY OF A  
7     DEBT EVADING FOREIGN STATE, OR A STATE-OWNED CORPORATION OF A DEBT EVAD-  
8     ING FOREIGN STATE IS A PARTY, INCLUDING A CONTRACT GOVERNING DEBT OBLI-  
9     GATIONS OF OR EQUITY SECURITIES ISSUED BY A FOREIGN STATE, ADOPTED BY A  
10    VOTE OF THE PARTIES TO, OR THE RECORD OR BENEFICIAL HOLDERS OF THE OBLI-  
11    GATION IN CONNECTION WITH A TRANSACTION WITH THE FOREIGN STATE AS A  
12    RESULT OF WHICH THE HOLDERS VOTING IN FAVOR OF SUCH AMENDMENT WILL NO  
13    LONGER BE HOLDERS, AND WHICH PURPORTS TO REVOKE, AMEND, CHANGE OR ELIMI-  
14    NATE A PROVISION WHICH RELATES IN ANY WAY TO A HOLDER'S ENFORCEMENT  
15    RIGHTS UNDER SUCH OBLIGATION, INCLUDING BUT NOT LIMITED TO AN AMENDMENT  
16    THAT RELATES TO A PROVISION WHEREBY THE FOREIGN STATE:  
17    (I) WAIVES THE IMMUNITY OF SUCH FOREIGN STATE WITH RESPECT TO ACTIONS  
18    OR PROCEEDINGS, INCLUDING ACTIONS OR PROCEEDINGS TO ENFORCE ANY FINAL  
19    JUDGMENT ENTERED AGAINST SUCH FOREIGN STATE, BROUGHT BY ANY HOLDER BASED  
20    UPON OR WITH RESPECT TO SUCH OBLIGATION; OR  
21    (II) DESIGNATES THE COURTS OR JURISDICTION TO WHICH THE FOREIGN STATE  
22    WILL SUBMIT FOR PURPOSES OF SUIT, OR FOR ACTIONS OR PROCEEDINGS TO  
23    ENFORCE ANY FINAL JUDGMENT; OR

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (III) DESIGNATES THE CHOICE OF LAW SET FORTH IN ANY SUCH CONTRACT FOR  
2 PURPOSES OF DETERMINING THE RIGHTS AND DUTIES OF THE PARTIES TO ANY SUCH  
3 CONTRACT; OR

4 (IV) ELIMINATES ANY OBLIGATION OF THE FOREIGN STATE TO APPOINT AND  
5 MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE JURISDICTION TO WHICH  
6 THE FOREIGN STATE HAS SUBMITTED OR IN WHICH IT IS SUBJECT TO JURISDIC-  
7 TION; OR

8 (V) COMMITS NOT TO CREATE OR PERMIT TO SUBSIST ANY LIEN, PLEDGE, MORT-  
9 GAGE, SECURITY INTEREST, DEED OF TRUST, CHARGE OR OTHER ENCUMBRANCE OR  
10 PREFERENTIAL ARRANGEMENT WHICH HAS THE PRACTICAL EFFECT OF CONSTITUTING  
11 A SECURITY INTEREST; OR

12 (VI) COMMITS THAT ITS DUTY TO MAKE PAYMENT WILL RANK, AND PAYMENT WILL  
13 BE MADE, PARI PASSU, OR AT LEAST EQUALLY, WITH ANY OTHER PRESENT OR  
14 FUTURE PAYMENT OBLIGATION, SHALL BE VOID AS AGAINST PUBLIC POLICY AND  
15 UNENFORCEABLE AGAINST ANY HOLDER THAT HAS NOT AFFIRMATIVELY AGREED TO  
16 SUCH AMENDMENT, REGARDLESS OF THE PERCENTAGE OF HOLDERS OF SUCH OBLI-  
17 GATION VOTING FOR SUCH AMENDMENT.

18 (B) ANY PROVISION OF A CONTRACT TO WHICH A FOREIGN STATE IS A PARTY,  
19 INCLUDING A CONTRACT GOVERNING THE OBLIGATIONS OF SUCH FOREIGN STATE,  
20 WHICH RELATES IN ANY WAY TO A HOLDER'S ENFORCEMENT RIGHTS UNDER ANY SUCH  
21 OBLIGATIONS, INCLUDING BUT NOT LIMITED TO THOSE SET FORTH IN SUBDIVISION  
22 (A) OF THIS SECTION, SHALL SURVIVE THE ENTRY OF FINAL JUDGMENT ON BEHALF  
23 OF ANY HOLDER AGAINST ANY SUCH FOREIGN STATE AND SHALL NOT BE MERGED  
24 INTO ANY SUCH FINAL JUDGMENT.

25 (C) THE FOLLOWING TERMS AS USED IN THIS SECTION, SHALL HAVE THE  
26 FOLLOWING MEANING UNLESS A DIFFERENT MEANING CLEARLY APPEARS FROM THE  
27 CONTEXT:

28 (I) "AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE" SHALL MEAN ANY  
29 ENTITY:

30 (A) WHICH IS A SEPARATE LEGAL PERSON, CORPORATE OR OTHERWISE; AND

31 (B) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE, OR ANY POLI-  
32 TICAL SUBDIVISION THEREOF; OR A MAJORITY OF WHOSE SHARES OR ANY OTHER  
33 OWNERSHIP INTEREST IS OWNED BY A FOREIGN STATE OR A PROVINCE, OR ANY  
34 POLITICAL SUBDIVISION THEREOF; AND

35 (C) WHICH IS NEITHER A CITIZEN OF A STATE OF THE UNITED STATES, NOR  
36 CREATED UNDER THE LAWS OF ANY THIRD COUNTRY.

37 (II) "FINAL JUDGMENT" SHALL MEAN ANY JUDGMENT THAT IS NO LONGER ELIGI-  
38 BLE TO BE APPEALED TO ANY COURT.

39 (III) "FOREIGN STATE" INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF  
40 A FOREIGN STATE.

41 (IV) "DEBT EVADING FOREIGN STATE" SHALL MEAN:

42 (A) ANY FOREIGN STATE THAT:

43 (I) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR  
44 FEDERAL COURT LOCATED IN THIS STATE, INCLUDING ANY FINAL JUDGMENT  
45 ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN THIS  
46 STATE, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEEDS ONE MILLION  
47 DOLLARS;

48 (II) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE  
49 THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS  
50 OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE DATE OF THE  
51 EFFECTIVE DATE OF THIS SUBDIVISION; AND

52 (III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

53 1. FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION, UNLESS  
54 SUCH STATE IS ELIGIBLE FOR FINANCING FROM THE INTERNATIONAL BANK FOR  
55 RECONSTRUCTION AND DEVELOPMENT; OR

1 2. DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE, AS DEFINED IN  
2 SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTI-  
3 TUTIONS ACT, OR DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITI-  
4 ATIVE OF THE INTERNATIONAL MONETARY FUND; AND

5 (B) A PROVINCE OR POLITICAL SUBDIVISION OF A FOREIGN STATE REFERRED TO  
6 IN SUBPARAGRAPH (A) OF THIS PARAGRAPH.

7 (V) "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" SHALL  
8 MEAN ANY CORPORATION OR ENTITY, OTHER THAN A NATURAL PERSON:

9 (A) THAT IS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A  
10 DEBT EVADING FOREIGN STATE; OR

11 (B) THAT A MAJORITY OF THE SHARES OR OTHER OWNERSHIP INTEREST OF WHICH  
12 IS HELD, EITHER DIRECTLY OR INDIRECTLY, BY A DEBT EVADING FOREIGN STATE  
13 OR BY AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT  
14 EVADING FOREIGN STATE.

15 S 2. This act shall take effect immediately.