S T A T E O F N E W Y O R K

7967--A

2011-2012 Regular Sessions

I N A S S E M B L Y

May 25, 2011

Introduced by M. of A. SIMOTAS, P. RIVERA, WEPRIN, REILLY, JAFFEE, MONTESANO, SPANO, LAVINE, BRAUNSTEIN -- Multi-Sponsored by -- M. of A. CROUCH, McLAUGHLIN, MENG, NOLAN -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general obligations law, in relation to certain provisions of contracts governing debt obligations of foreign states

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

Section 1. The general obligations law is amended by adding a new section 5-336 to read as follows:

S 5-336. SURVIVAL OF ENTRY OF FINAL JUDGMENT AND NON-MERGER INTO FINAL JUDGMENT OF PROVISIONS OF CONTRACTS GOVERNING DEBT OBLIGATIONS OF A FOREIGN STATE.

1. AS A MATTER OF PUBLIC POLICY, THE PROVISIONS OF A CONTRACT GOVERNING A DEBT OBLIGATION OF A FOREIGN STATE, AS DEFINED IN 28 UNITED STATES CODE SECTION 1603, THAT ARE NOT DIRECTLY ADDRESSED IN A FINAL JUDGMENT IN FAVOR OF THE HOLDER OF THE DEBT OBLIGATION AGAINST THE FOREIGN STATE, SHALL SURVIVE THE ENTRY OF SUCH FINAL JUDGMENT AND SHALL NOT BE MERGED INTO SUCH FINAL JUDGMENT. SUCH PROVISIONS INCLUDE BUT ARE NOT LIMITED TO A PROVISION THAT:

(A) WAIVES THE IMMUNITY OF SUCH FOREIGN STATE IN RESPECT OF ACTIONS OR PROCEEDINGS, INCLUDING ACTIONS OR PROCEEDINGS TO ENFORCE ANY FINAL JUDGMENT ENTERED AGAINST SUCH FOREIGN STATE, BROUGHT BY ANY HOLDER BASED UPON OR WITH RESPECT TO SUCH OBLIGATION; OR

(B) DESIGNATES THE COURTS OR JURISDICTION TO WHICH THE FOREIGN STATE HAS SUBMITTED FOR PURPOSES OF SUIT, OR FOR ACTIONS OR PROCEEDINGS TO ENFORCE ANY FINAL JUDGMENT; OR

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

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

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(D) OBLIGATES THE FOREIGN STATE TO APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE JURISDICTION TO WHICH THE FOREIGN STATE HAS SUBMITTED OR IN WHICH IT IS SUBJECT TO JURISDICTION; OR

(E) COMMITS NOT TO CREATE OR PERMIT TO SUBSIST ANY LIEN, PLEDGE, MORTGAGE, SECURITY INTEREST, DEED OF TRUST, CHARGE OR OTHER ENCUMBRANCE OR PREFERENTIAL ARRANGEMENT WHICH HAS THE PRACTICAL EFFECT OF CONSTITUTING A SECURITY INTEREST; OR

(F) CONCERNS A PARI PASSU CLAUSE.

2. FOR PURPOSES OF THIS SECTION, "FINAL JUDGMENT" SHALL MEAN ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO BE APPEALED TO ANY COURT.

S 2. This act shall take effect immediately and shall be applicable to all unsatisfied judgments against a foreign state.