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2013-2014 Regular Sessions

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(PREFILED)

January 9, 2013

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed 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:

Section 1. The general obligations law is amended by adding a new section 5-337 to read as follows:

S 5-337. CERTAIN AMENDMENTS OF CONTRACTS ENTERED INTO BY DEBT EVADING FOREIGN STATES AND BY STATE OWNED CORPORATIONS OF DEBT EVADING FOREIGN STATES VOID AS AGAINST PUBLIC POLICY. (A) AN AMENDMENT OF A CONTRACT TO WHICH A DEBT EVADING FOREIGN STATE, AN AGENCY OR INSTRUMENTALITY OF A DEBT EVADING FOREIGN STATE, OR A STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE IS A PARTY, INCLUDING A CONTRACT GOVERNING DEBT OBLIGATIONS OF OR EQUITY SECURITIES ISSUED BY A FOREIGN STATE, ADOPTED BY A VOTE OF THE PARTIES TO, OR THE RECORD OR BENEFICIAL HOLDERS OF THE OBLIGATION IN CONNECTION WITH A TRANSACTION WITH THE FOREIGN STATE AS A RESULT OF WHICH THE HOLDERS VOTING IN FAVOR OF SUCH AMENDMENT WILL NO LONGER BE HOLDERS, AND WHICH PURPORTS TO REVOKE, AMEND, CHANGE OR ELIMINATE A PROVISION WHICH RELATES IN ANY WAY TO A HOLDER'S ENFORCEMENT RIGHTS UNDER SUCH OBLIGATION, INCLUDING BUT NOT LIMITED TO AN AMENDMENT THAT RELATES TO A PROVISION WHEREBY THE FOREIGN STATE:

(I) WAIVES THE IMMUNITY OF SUCH FOREIGN STATE WITH RESPECT TO 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

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

LBD01702-01-3

(II) DESIGNATES THE COURTS OR JURISDICTION TO WHICH THE FOREIGN STATE WILL SUBMIT FOR PURPOSES OF SUIT, OR FOR ACTIONS OR PROCEEDINGS TO ENFORCE ANY FINAL JUDGMENT; OR

(III) 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

(IV) ELIMINATES ANY OBLIGATION OF 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

(V) 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

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

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

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

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

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

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

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

(II) "FINAL JUDGMENT" SHALL MEAN ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO BE APPEALED TO ANY COURT.

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

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

(A) ANY FOREIGN STATE THAT:

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

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

(III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

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

2. DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE, AS DEFINED IN SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTITUTIONS ACT, OR DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE INTERNATIONAL MONETARY FUND; AND

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

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

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

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

S 2. This act shall take effect immediately.