STATE OF NEW YORK

5542--A

2023-2024 Regular Sessions

IN SENATE

March 8, 2023

Introduced by Sens. RIVERA, BRISPORT, CLEARE, COMRIE, GIANARIS, HOYLMAN-SIGAL, KRUEGER, MYRIE, RAMOS, SALAZAR, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the debtor and creditor law, in relation to restructuring unsustainable sovereign and subnational debt

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "sovereign debt stability act".

§ 2. The debtor and creditor law is amended by adding a new article 8 to read as follows:

ARTICLE 8
SOVEREIGN AND SUBNATIONAL DEBT
Section 220. Legislative intent.
221. Definitions.
222. Election to be covered by the provisions of this article.
223. Petition for relief; recognition.
224. Notification of creditors.
225. Debt reconciliation.
226. Submission, contents and voting on plan.
227. Financing the restructuring.
228. Priority of repayment.
229. Adjudication of disputes.
230. Recoverability of section 230 claims.
231. Application; opt in.
232. Severability.

§ 220. Legislative intent. The legislature finds that it is a long-standing policy of the United States and the state of New York, as the

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

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world's leading financial center, to support orderly, collaborative and effective international sovereign debt relief for countries with unsustainable levels of debt. Debt distress, debt crises, and disorderly default are associated with unacceptable human suffering, economic decline, and financial market and payment systems disruption. Moreover, debt restructuring is ineffective and does not lead to sustainable outcomes when it is not perceived as equitable or legitimate by stakeholders in borrowing and lending countries. Additionally, public creditors are unlikely to participate in debt restructuring initiatives unless there is fair burden sharing among all public and private creditors, which is essential to the legitimacy and effectiveness of debt relief initiatives. Therefore, the legislature finds and declares that it shall be the policy of New York state to support international debt relief initiatives for countries to ensure that the cost of such debt relief is allocated in a fair and equitable manner, and that such costs do not fall disproportionately on the residents and taxpayers of New York state, and for other purposes. The purpose of this article is to provide effective mechanisms for restructuring sovereign and subnational debt so as to:

1. reduce the social costs of sovereign and subnational debt crises to residents of New York state;

2. reduce systemic risk to the financial system, a system that is concentrated in New York state;

3. reduce creditor uncertainty, including to the numerous holders of sovereign debt that are residents in New York state;

4. strengthen the role of New York state as a primary location for the issuing and trading of sovereign debt;

5. reduce the need for sovereign and subnational debt bailouts, which create moral hazard and are costly to residents of New York state;

6. otherwise protect economic activity within New York state's borders, by reducing the likelihood of a sovereign debt default which could adversely impact New York state's economy;

7. reduce, out of universal human rights and humanitarian imperatives, the social cost of unresolved sovereign debt crises imposed on the people of nations with unsustainable debt, especially the poorest among them, taking due account of creditor rights; and

8. enable debtor states to choose a debt restructuring option that appropriately suits its circumstances and needs.

§ 221. Definitions. For purposes of this article:

1. "creditor" means a person or entity that has a claim against a debtor state;

2. "claim" means a payment claim against a debtor state for monies borrowed or for the debtor state's guarantee of, or other contingent obligation on, monies borrowed; the term "monies borrowed" shall include the following, whether or not it represents the borrowing of money: monies owing under bonds; debentures; notes, or similar instruments of original maturity of at least one year; monies owing for the deferred purchase price of property or services, other than trade accounts payable arising in the ordinary course of government operations; monies owing on capitalized lease obligations; monies owing on or with respect to letters of credit, bankers' acceptances, or other extensions of credit of original maturity of at least one year;

3. "plan" means a debt restructuring plan pursuant to section two hundred twenty-six of this article;

4. "debtor state" means a sovereign nation; or unincorporated territory; or any subnational unit thereof, excluding any municipality whose adjustment or debts is governed by 11 U.S.C. 9;

5. "independent monitor" means an individual appointed by the governor, in consultation with the United States department of the treasury, acceptable to the sovereign debtor and to the holders, or their agents, of a majority of the obligations issued under New York law. The independent monitor is meant to facilitate and encourage an effective, prompt and fair agreement by the parties, as intended by this article. The debtor state shall pay the independent monitor's reasonable costs and expenses;

6. "international initiative" means any mechanism, framework or initiative in which the United States government and other sovereign states have engaged with international financial institutions and official and commercial creditors to advance the implementation and improvement of prompt and effective debt relief among eligible states, including but not limited to the Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank, the Debt Service Suspension Initiative of the Group of 20, the Common Framework for Debt Treatments beyond the DSSI, also known as the "Common Framework", the Paris Club, and any successor or similar international mechanism, framework or initiatives;

7. "eligible claim" shall mean a claim as defined in subdivision two of this section and any judicial or other official domestic or foreign judgment with respect to such a claim against an eligible state participating in one or more of the international initiatives;

8. "eligible state" shall mean a sovereign state eligible to participate in one or more of the international initiatives;

9. "burden-sharing standards" shall mean standards set by the relevant international initiative or international initiatives for equitable burden-sharing among all creditors with material claims on each participating debtor without regard for their official, private, or hybrid status;

10. "section 223 claim" shall mean, as applicable, a claim with respect to which the debtor state has elected for its claims to be covered by section two hundred twenty-three through section two hundred twenty-nine of this article; and

11. "section 230 claim" shall mean an eligible claim with respect to which the debtor state issuing such claim has elected to be covered by section two hundred thirty of this article, and not to be covered by section two hundred twenty-three through section two hundred twenty-nine of this article inclusive.

§ 222. Election to be covered by the provisions of this article. 1. Any debtor state against which there are one or more claims governed by or enforced under New York law shall have the option to apply the provisions of this article to such claims by filing a notice thereof with the state of New York. In such notice, the debtor state shall choose whether those claims shall, to the extent governed by New York law, be covered as section 223 claims or, to the extent enforced under New York law, as section 230 claims. Within thirty days after giving such notice, the debtor state shall notify the holders of such claims and the state of New York of its choice. In the case of a choice to have those claims be covered as a section 223 claim, the debtor state shall also make the certifications specified in subdivision two of section two hundred twenty-three of this article. Any waiver of the provisions of this subdivision shall be ineffective.

2. A debtor state that makes a choice under subdivision one of this section shall have the right to change that choice once, at any time prior to a plan becoming effective and binding on the debtor state and its creditors, by notifying the state of New York and the holders of all claims affected by that choice.

§ 223. Petition for relief; recognition. 1. The notification under section two hundred twenty-two of this article that claims against a debtor state shall be covered as a section 223 claim shall constitute a voluntary petition for relief with the state of New York.

2. Such notice shall certify that the debtor state:

(a) seeks relief as a section 223 claim under this article, and has not previously sought relief under this article, or under any other law that is substantially in the form of this article, during the past five years;

(b) needs relief as a section 223 claim under this article to restructure claims that, absent such relief, would constitute unsustainable debt of the debtor state;

(c) agrees to restructure those claims in accordance with this section through section two hundred twenty-nine of this article;

(d) agrees to all other terms, conditions and provisions of this section through section two hundred twenty-nine of this article;

(e) has duly enacted any national or subnational law needed to effectuate these agreements. If requested by the independent monitor, such petition shall also attach documents and legal opinions evidencing compliance with this subdivision; and

(f) is cooperating with the International Monetary Fund to devise an effective, efficient, timely and fair path back to sustainability.

3. Immediately after such a petition for relief has been filed, and so long as such filing has not been dismissed by the independent monitor for lack of good faith or the debtor state has not changed its choice under subdivision two of section two hundred twenty-two of this article to have its claims covered by section two hundred thirty of this article, the terms, conditions, and provisions of this article shall:

(a) apply to the debtor-creditor relationship between the debtor state and its creditors to the extent such relationship is governed by the law of this jurisdiction;

(b) apply to the debtor-creditor relationship between the debtor state and its creditors to the extent such relationship is governed by the law of another jurisdiction that has enacted law substantially in the form of this article; and

(c) be recognized in, and by, all other jurisdictions that have enacted law substantially in the form of this article.

§ 224. Notification of creditors. 1. Within thirty days after filing its petition for relief, the debtor state shall notify all of its known creditors of its intention to negotiate a plan under section two hundred twenty-three through section two hundred twenty-nine of this article.

2. The independent monitor shall prepare and maintain a current list of creditors of the debtor state and verify claims for the purposes of supervising voting under section two hundred twenty-three through section two hundred twenty-nine of this article.

§ 225. Debt reconciliation. The creditor claims shall be reconciled against debtor records and any discrepancies shall be addressed between the parties.

§ 226. Submission, contents and voting on plan. 1. The debtor state may submit a plan to its creditors at any time, and may submit alternative plans from time to time.

2. No other person or entity may submit a plan on behalf of the debtor state.

3. A plan shall:

(a) designate classes of claims in accordance with subdivision six of this section;

(b) specify the proposed treatment of each class of claims;

(c) provide the same treatment for each claim of a particular class, unless the holder of a claim agrees to a less favorable treatment;

(d) disclose any claims not included in the plan's classes of claims;

(e) provide adequate means for the plan's implementation including, with respect to any claims, curing or waiving any defaults or changing the maturity dates, principal amount, interest rate, or other terms or canceling or modifying any liens or encumbrances; and

(f) certify that, if the plan becomes effective and binding on the debtor state and its creditors under subdivision four of this section, the debtor state's debt will become sustainable.

4. A plan shall become effective and binding on the debtor state and its creditors when it has been submitted by the debtor state and agreed to by each class of such creditors' claims designated in the plan under subdivision three of this section. Thereupon, the debtor state shall be discharged from all claims included in those classes of claims, except as provided in the plan.

5. A class of claims has agreed to a plan if creditors holding at least two-thirds in amount and more than one-half in number of the claims of such class voting on such plan agree to the plan, without counting claims owned by the debtor state or entities it controls.

6. Each class of claims shall consist of claims against the debtor state that are equal in priority, provided that:

(a) equal priority claims need not all be included in the same class;

(b) claims of governmental or multi-governmental entities holding claims each shall be classed separately;

(c) claims that are governed by this article or the law of another jurisdiction that is substantially in the form of this article shall not be classed with other claims; and

(d) the fact that a claim arises under, or is supported or evidenced by, a judicial or other official domestic or foreign judgment shall not in and of itself mean that such claim is not equal in priority to other claims.

§ 227. Financing the restructuring. 1. Subject to subdivision three of this section the debtor state shall have the right to borrow money on such terms and conditions as it deems appropriate.

2. The debtor state shall notify all of its known creditors of its intention to borrow under subdivision one of this section, the terms and conditions of the borrowing, and the proposed use of the loan proceeds. Such notice shall also direct those creditors to respond to the independent monitor within thirty days as to whether they approve or disapprove of such loan.

3. Any such loan shall be approved by creditors holding at least two-thirds in amount of the claims of creditors responding to the independent monitor within that thirty-day period.

4. In order for the priority of repayment, and corresponding subordination, under section two hundred twenty-eight of this article to be effective, any such loan shall additionally be approved by creditors holding at least two-thirds in principal amount of the covered claims of the creditors responding to the independent monitor within that thirty-day period. Claims shall be deemed to be covered if they are governed by

this article or by the law of another jurisdiction that is substantially in the form of this article.

§ 228. Priority of repayment. 1. The debtor state shall repay loans approved under section two hundred twenty-seven of this article prior to paying any other claims.

2. The claims of creditors of the debtor state are subordinated to the extent needed to effectuate the priority payment under this section. Such claims are not subordinated for any other purpose.

3. The priority of payment, and corresponding subordination, under this section is expressly subject to the approval by creditors under subdivision four of section two hundred twenty-seven of this article.

§ 229. Adjudication of disputes. The independent monitor may request that a court of competent jurisdiction appoint a referee or a special master to make recommendations to the court regarding the resolution of any disputes arising under a section 223 claim under this article.

§ 230. Recoverability of section 230 claims. Any section 230 claim incurred prior to the date of an eligible state's application to participate in one or more international initiatives shall only be recoverable:

1. to the extent that it comports with burden-sharing standards;

2. provided it meets robust disclosure standards, including intercreditor data sharing and a broad presumption in favor of public disclosure of material terms and conditions of such claims; and

3. only up to the proportion of the eligible claim that would have been recoverable by the United States federal government under the applicable international initiative if the United States federal government had been the creditor holding the eligible claim, and without regard to de minimis clauses.

§ 231. Application; opt in. 1. Where this article applies, it shall operate both retroactively and prospectively and, without limiting the foregoing, shall with respect to section 223 claims override any contractual provisions that are inconsistent with the provisions of this article. Notwithstanding the foregoing, the provisions of this article shall not operate retroactively as to debtor states that are not sovereign nations.

2. Any creditors of a debtor state whose claims are not otherwise governed by this article may contractually opt in to this article's terms, conditions, and provisions.

3. The terms, conditions, and provisions of this article shall apply to the debtor-creditor relationship between the debtor state and creditors opting in under subdivision two of this section as if such relationship were governed by the laws of New York state under subdivision three of section two hundred twenty-three of this article.

§ 232. Severability. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of this article are severable. Without limiting the foregoing, a debtor state's choice to have claims covered as a section 223 claim shall be valid even if its choice to have claims covered as a section 230 claim of this article would be invalid, and vice versa.

§ 3. This act shall take effect immediately.