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Introduced by Sens. RIVERA, BRISPORT, CLEARE, COMRIE, GIANARIS, HOYLMAN-SIGAL, JACKSON, KRUEGER, MYRIE, RAMOS, SALAZAR, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

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:

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

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

ARTICLE 8

SOVEREIGN AND SUBNATIONAL DEBT

5
6
7 Section 220. Legislative intent.

8 221. Definitions.

9 222. Election to be covered by the provisions of this article.

10 223. Petition for relief; recognition.

11 224. Notification of creditors.

12 225. Debt reconciliation.

13 226. Submission, contents and voting on plan.

14 227. Financing the restructuring.

15 228. Priority of repayment.

16 229. Adjudication of disputes.

17 230. Recoverability of section 230 claims.

18 231. Application; opt in.

19 232. Severability.

20 § 220. Legislative intent. The legislature finds that it is a long-
21 standing policy of the United States and the state of New York, as the
22 world's leading financial center, to support orderly, collaborative and
23 effective international sovereign debt relief for countries with unus-

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

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1 tainable levels of debt. Debt distress, debt crises, and disorderly
2 default are associated with unacceptable human suffering, economic
3 decline, and financial market and payment systems disruption. Moreover,
4 debt restructuring is ineffective and does not lead to sustainable
5 outcomes when it is not perceived as equitable or legitimate by stake-
6 holders in borrowing and lending countries. Additionally, public credi-
7 tors are unlikely to participate in debt restructuring initiatives
8 unless there is fair burden sharing among all public and private credi-
9 tors, which is essential to the legitimacy and effectiveness of debt
10 relief initiatives. Therefore, the legislature finds and declares that
11 it shall be the policy of New York state to support international debt
12 relief initiatives for countries to ensure that the cost of such debt
13 relief is allocated in a fair and equitable manner, and that such costs
14 do not fall disproportionately on the residents and taxpayers of New
15 York state, and for other purposes. The purpose of this article is to
16 provide effective mechanisms for restructuring sovereign and subnational
17 debt so as to:

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

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

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

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

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

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

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

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

37 § 221. Definitions. For purposes of this article:

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

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

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

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

1 5. "independent monitor" means an individual appointed by the gover-
2 nor, in consultation with the United States department of the treasury,
3 acceptable to the sovereign debtor and to the holders, or their agents,
4 of a majority of the obligations issued under New York law. The inde-
5 pendent monitor is meant to facilitate and encourage an effective,
6 prompt and fair agreement by the parties, as intended by this article.
7 The debtor state shall pay the independent monitor's reasonable costs
8 and expenses;

9 6. "international initiative" means any mechanism, framework or initi-
10 ative in which the United States government and other sovereign states
11 have engaged with international financial institutions and official and
12 commercial creditors to advance the implementation and improvement of
13 prompt and effective debt relief among eligible states, including but
14 not limited to the Heavily Indebted Poor Countries Initiative of the
15 International Monetary Fund and the World Bank, the Debt Service Suspen-
16 sion Initiative of the Group of 20, the Common Framework for Debt Treat-
17 ments beyond the DSSI, also known as the "Common Framework", the Paris
18 Club, and any successor or similar international mechanism, framework or
19 initiatives;

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

24 8. "eligible state" shall mean a sovereign state eligible to partic-
25 ipate in one or more of the international initiatives;

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

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

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

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

54 2. A debtor state that makes a choice under subdivision one of this
55 section shall have the right to change that choice once, at any time
56 prior to a plan becoming effective and binding on the debtor state and

1 its creditors, by notifying the state of New York and the holders of all
2 claims affected by that choice.

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

7 2. Such notice shall certify that the debtor state:

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

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

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

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

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

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

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

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

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

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

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

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

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

51 § 226. Submission, contents and voting on plan. 1. The debtor state
52 may submit a plan to its creditors at any time, and may submit alterna-
53 tive plans from time to time.

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

56 3. A plan shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 2. The debtor state shall notify all of its known creditors of its
40 intention to borrow under subdivision one of this section, the terms and
41 conditions of the borrowing, and the proposed use of the loan proceeds.
42 Such notice shall also direct those creditors to respond to the inde-
43 pendent monitor within thirty days as to whether they approve or disap-
44 prove of such loan.

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

48 4. In order for the priority of repayment, and corresponding subordi-
49 nation, under section two hundred twenty-eight of this article to be
50 effective, any such loan shall additionally be approved by creditors
51 holding at least two-thirds in principal amount of the covered claims of
52 the creditors responding to the independent monitor within that thirty-
53 day period. Claims shall be deemed to be covered if they are governed by
54 this article or by the law of another jurisdiction that is substantially
55 in the form of this article.

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

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

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

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

14 § 230. Recoverability of section 230 claims. Any section 230 claim
15 incurred prior to the date of an eligible state's application to partic-
16 ipate in one or more international initiatives shall only be recovera-
17 ble:

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

19 2. provided it meets robust disclosure standards, including intercred-
20 itor data sharing and a broad presumption in favor of public disclosure
21 of material terms and conditions of such claims; and

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

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

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

37 3. The terms, conditions, and provisions of this article shall apply
38 to the debtor-creditor relationship between the debtor state and credi-
39 tors opting in under subdivision two of this section as if such
40 relationship were governed by the laws of New York state under subdivi-
41 sion three of section two hundred twenty-three of this article.

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

51 § 3. This act shall take effect immediately.