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Introduced by M. of A. DAVILA, HYNDMAN, GONZALEZ-ROJAS, SIMON, RAMOS, ROMERO, ROSENTHAL, LUNSFORD, KELLES, FORREST, LEVENBERG, SAYEGH -- read once and referred to the Committee on Judiciary

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

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 unsus-
24 tainable levels of debt. Debt distress, debt crises, and disorderly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 5. "independent monitor" means an individual appointed by the gover-
56 nor, in consultation with the United States department of the treasury,

1 acceptable to the sovereign debtor and to the holders, or their agents,
2 of a majority of the obligations issued under New York law. The inde-
3 pendent monitor is meant to facilitate and encourage an effective,
4 prompt and fair agreement by the parties, as intended by this article.
5 The debtor state shall pay the independent monitor's reasonable costs
6 and expenses;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 3. A plan shall:

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

1 (b) specify the proposed treatment of each class of claims;
2 (c) provide the same treatment for each claim of a particular class,
3 unless the holder of a claim agrees to a less favorable treatment;
4 (d) disclose any claims not included in the plan's classes of claims;
5 (e) provide adequate means for the plan's implementation including,
6 with respect to any claims, curing or waiving any defaults or changing
7 the maturity dates, principal amount, interest rate, or other terms or
8 canceling or modifying any liens or encumbrances; and

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

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

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

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

24 (a) equal priority claims need not all be included in the same class;
25 (b) claims of governmental or multi-governmental entities holding
26 claims each shall be classed separately;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 § 3. This act shall take effect immediately.