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SOVEREIGN DEBT RESTRUCTURING

THREE NEW YORK ASSEMBLY ACTIVE BILLS

At present, the New York State Assembly has three active bills relating to matters which, if passed into law, would have a material impact on the current process for the restructuring of sovereign debt. In respect of each Assembly bill there is currently also a related active "same as" bill in the New York State Senate. These bills are described below:

1. Assembly Bill A5290 dated March 7, 2023 and Senate Bill S5623 dated March 9, 2023 which would alter New York State law on champerty in respect of sovereign claims.
2. Assembly Bill A2102A dated January 2023 and Senate Bill S5542 dated March 8, 2023 which would effectively impose a comprehensive sovereign debt restructuring mechanism by way of an amendment to the existing New York Banking Law through a new Article 7.
3. Assembly Bill A2970 dated February 1, 2023 and Senate Bill S4747 dated February 14, 2023 which would limit recoveries on sovereign claims to those which would have been applicable if they had been held by the US itself and those claims are the subject of one or more international initiatives in respect of the sovereign debt of an affected country.

The substance of the original Assembly Bill A2102 was a verbatim replica of Senate Bill S6627 of May 10, 2021, on which we produced a client briefing dated May 2021. However, in late March 2023, an amendment to Assembly Bill A2102 was introduced and, as this was the first amendment, the new version published on March 31, 2023 is now referred to as A2102A.

This client briefing starts with a description of the background circumstances which are likely to have influenced the promotion of these bills. That description draws heavily on the 'Overview' section of our May 2021 client briefing but is updated to reflect the most recent practical experience in the sovereign debt restructuring field.

In relation to each Assembly bill, there is then a description of the proposed changes to New York law. We then consider the potential permutations which could arise in terms of all, some or none of these bills being passed into law.

For convenience, the full draft of each Assembly bill is appended to this client briefing.

Background Circumstances

No Insolvency/Bankruptcy regime for Sovereign debt

There is no insolvency or bankruptcy regime applicable to sovereign debtors under which an orderly reorganisation of the financial claims of a sovereign debtor can be achieved and, at the most fundamental level, that is likely to have been the predominant motivating factor behind the promotion of these bills. A sovereign debt restructuring mechanism ('SDRM') was proposed in November 2001 by the then Managing Director of the International Monetary Fund ('IMF') but was eventually shelved. In the absence of such an insolvency or bankruptcy regime, other mechanisms have been developed and refined to address sovereign debt relief where this is necessary. Market initiatives, including the use of collective action clauses ('CACs') in sovereign bond issuances governed by New York law, were adopted in the wake of the SDRM proposal (English law governed sovereign bonds had, at that point, already been incorporating CACs for many years). Given the breadth of its roles with respect to its member states (comprising almost all countries), the IMF has been significantly involved in this field, including through its lending policies (including its lending into arrears policies), monitoring the effectiveness of applicable mechanisms and making recommendations for improvement.

Concerning official sector debt, the Paris Club plays a key role and its practices continue to evolve in response to developments, including in conjunction with the initiatives described under the Covid-19 – DSSI and Common Framework below.

As to private sector debt, the implementation of debt relief arrangements is centred around the use of contractual mechanisms (e.g. the use of majority voting through CACs), engagement and voluntary participation. Such initiatives, including to address perceived holdout creditor problems have been, and continue to be, further refined over time and it is now routine for new sovereign bond issuances governed by New York or English law to contain the latest enhanced CACs published by the International Capital Market Association ('ICMA') in 2014/2015 together with a template *pari passu* clause disavowing the rateable payment interpretation of *pari passu* clauses at the heart of the Argentine litigation prior to the latest Argentina restructuring. Enhanced CACs in broad terms allow voting across various sovereign bond issuances to be aggregated in a manner with parallels to that used in US Chapter 11 corporate bankruptcy with the ability to conduct a single aggregated vote at the 75% level. If the voting threshold is reached, those bondholders which do not vote or vote against the proposal put to them are bound by the outcome of the votes and so would be crammed down, again in a manner similar to that available in US Chapter 11 proceedings. The vast majority of sovereign bonds are now issued with these enhanced CACs.

However, it is generally accepted that there is a significant volume of sovereign debt without majority amendment provisions for payment terms. This is because some types of sovereign debt, including loans, do not generally contain majority voting for payment term revisions and because there are outstanding sovereign bonds which were issued before the adoption of the enhanced CACs with long original maturities (although most of these legacy bonds contain single series CACs, so within an individual series of bonds the minority can be crammed down if the majority votes in favour of a restructuring proposal). With these limitations in mind, the IMF and other market stakeholders have taken a renewed interest in how sovereign loans are restructured, when necessary, following a number of years where sovereign bonds were at the centre of market innovations to facilitate sovereign debt restructurings (see IMF Staff Paper of October 1, 2021 – The International Architecture for Resolving Sovereign Debt Involving Private – Sector Creditors – Recent Developments, Challenges and Reform Options). This has given rise to the publication on 1 November 2022 by various industry bodies (including the APLMA, ICMA, IIF and the LMA) of a Guidance and Explanatory Note and a suite of specimen clauses for inclusion on a voluntary and forward-looking basis in sovereign loan agreements. The essential element of the policy initiative behind these specimen clauses, which are designed as 'slot in' clauses for sovereign loan agreements, is to move away from lender unanimity for payment term amendments by including majority voting provisions ('MVPs') in sovereign loan agreements. These MVPs operate at a recommended majority voting threshold of 75% (i.e. below the previously typical unanimous creditor consent level but above the typical majority lender voting threshold for non-unanimity matters). See our briefing Majority Voting for Payment Term Amendments in Sovereign Loans – Latest Addition to the International Financial Architecture.

Overall therefore, current thinking on how to facilitate sovereign debt restructuring further has focused on incremental contractual enhancements, greater debt transparency, increasing private sector participation when debt relief is needed and earlier creditor engagement among other things. For the most part, a new SDRM or major international initiative in respect of a sovereign debt restructuring treaty or model law has not been favoured at this time. Hence the proposed New York law approach in respect of Assembly Bill A2102A, which would amend Article 7 of the New York Banking law does not fit well into these prevailing views and the lack of consultation thereon has raised concerns.

Covid-19 Pandemic – DSSI and Common Framework

Clearly, the Covid -19 pandemic materially affected the ability of many countries in already vulnerable financial circumstances to service their debt obligations in full and on time. The Debt Service Suspension Initiative ('DSSI') (see here) represented a swift response by the G20 to the short-term consequences of the Covid-19 pandemic on government finances for the 73 eligible low income countries ('LICs'), following the IMF and World Bank call to action. It was noteworthy for its co-ordination at the G20 level on debt matters and provided cash flow relief with few conditions (e.g. request for financing (emergency or otherwise) from the IMF). The April 2020 G20 Finance Ministers and Central Bank Governors Communiqué regarding DSSI also called on the private sector to participate "on comparable terms" to those set out for official sector bilateral creditors. While the production of Terms of Reference for Voluntary Private Sector participation in the G20/Paris Club DSSI and other documents to facilitate participation provided a framework for engagement, take-up was low, not least because of the hesitation of debtor countries to request it.

Whilst it was generally accepted that the DSSI was a timely response by official bilateral creditors to Covid-19, it was recognised that this did not address medium term debt distress. The end of the DSSI gave rise to the Common Framework (which is a more durable treatment for dealing with debt relief for DSSI-eligible countries). The Common Framework represents more of a return to the use of pre-existing financial architecture, save that the G20 coordination on debt matters will continue as the official sector will be represented not solely through the Paris Club but also through G20 official bilateral creditors that are not Paris Club members (e.g. China, India, Turkey and Saudi Arabia). A new official sector creditor committee is to be established in response to each request for debt treatment.

Under the Common Framework, like the DSSI, the process must be initiated by the debtor country. However, unlike the DSSI, the debtor country must have an agreed IMF Programme (e.g. an Extended Credit Facility) and an IMF-World Bank Group debt sustainability analysis ('DSA') needs to be conducted, which in practice identifies the needed debt relief. Comparability of treatment is required under the Common Framework (but not the DSSI). This requires the debtor country to obtain from all other official bilateral and private creditors a debt treatment at least as favourable as that agreed under the Common Framework. The DSSI and the Common Framework are both expressly referred to in Assembly Bill A2970 and Senate Bill S4747.

There are remaining concerns linked to the Common Framework over the speed at which official sector countries form creditor committees and the need for relevant creditor countries to move swiftly to establish new norms and procedures. To make processes more efficient, (i) relevant issues need to be considered (for example the relevant co-chair, timeline, work plan and potential sharing with the private sector); (ii) transparency on the private sector side is required and (iii) discussions should move in parallel based on access to similar levels of data. Against that backdrop, in February 2023, the IMF announced that a new Global Sovereign Debt Roundtable had been established with the goal of bringing together creditors – official, old and new, and private – and debtor countries to discuss key issues that can facilitate the debt resolution process.

Legislation used elsewhere

Significant volumes of sovereign debt are governed by New York law and the proposed legislation is therefore significant as it could impact on an important segment of the sovereign debt market in a way which those contracting under New York law would not have foreseen or expected. In attempting to address any concerns associated with sovereign debt, it is very unusual to seek to legislate. France took that route in 2016 through legislation designed to prevent asset seizures by creditors who purchased sovereign debt if certain conditions are satisfied. In 2015 Belgium passed legislation to prevent creditors from suing for more than they paid for the debt in certain circumstances. These measures have not had a significant impact in the markets because their reach is primarily domestic. The UK also chose to legislate through the Debt Relief (Developing Countries) Act in 2010, however this was only to assist in the implementation of heavily indebted poor country ('HIPC') debt relief. English law, like New York law, is widely used in the sovereign debt markets, and the UK legislation was both specific only to HIPCs and was initially implemented for one year only to allow an assessment to be made as to any unwelcome unforeseen consequences before it was made permanent.

The approach taken through Assembly Bill A2102A and the proposed draft of new Article 7 is far more broad ranging than the UK, Belgian and French legislation, both in scope and application.

The approach taken in Assembly Bill A5290 which would alter New York champerty rules in respect of sovereign claims has some parallels with the legislation passed by France and Belgium.

The core change made through the UK legislation is to limit recoveries on HIPC debt to those available under the applicable HIPC terms. This limitation on recoveries is essentially the same mechanism used in Assembly Bill A2970 and Senate Bill S4747 but the approach is considerably broader.

Consultations

It has become customary for there to be market consultations with varying degrees of formality in respect of proposed significant initiatives in the field of sovereign debt restructurings. A consultation process allows both a technical review and the evaluation of potential unintended consequences to be undertaken, for example, any pricing implications for new debt raisings following a new policy initiative, potentially affecting the debt sustainability of debtor countries through increased debt servicing costs or leading to loss of market access quicker than might otherwise have been the case. Credit ratings agency implications and the risk of accelerated sell offs have also been taken into consideration in developing policy in this area.

We now turn to consider each of these bills.

Assembly Bill A5290 – Reinstating a Champerty Defence

Laws relating to champerty generally have a public policy purpose linked to limiting the trafficking of litigation and an abuse of process of the court. Under English law, champerty is typically linked with maintenance and it is illegal to engage in maintenance or champerty. A person is guilty of maintenance if, without just cause or excuse, s/he supports litigation in which s/he has no legitimate interest. Champerty occurs when a person maintaining another's litigation is entitled to a share of the proceeds of the action or suit. English law rules on champerty and maintenance in the context of the sale and purchase of sovereign debt were helpfully clarified in a Court of Appeal Case (*Camdex International Ltd v Bank of Zambia 1998*). One key part of the judgment reads: "An assignment of debt is not invalid even if the necessity for litigation to recover it is contemplated. Provided that there is a *bona fide* debt, it does not become unassignable merely because the debtor chooses to dispute it. Suing on an assigned debt is not contrary to public policy even if the assignor retains an interest. What is contrary to public policy and ineffective is an agreement which has maintenance or champerty as its object; such a consequence will not be avoided by dressing up a transaction which has that character and intent as an assignment of a debt. But, because the assignment of a debt itself includes no element of maintenance and is sanctioned by statute, any objectionable element alleged to invalidate the assignment has to be proved independently and distinctly in the same way as any other alleged illegality has to be proved in relation to a contract which is on its face valid".

Under New York Law, section 489 of the New York Judiciary Law prohibits a person or entity from acquiring debt "with the intent and for the purpose of bringing an action or proceeding thereon". The application of section 489 is limited in the context of secondary market debt trading to items with an aggregate purchase price of less than US$500,000.

The leading case interpretating section 489 in the context of sovereign debt litigation is the 1999 Second Circuit case of *Elliot Associates, LP v Banco de la Nación*.

The Second Circuit held that the acquisition of a debt with intent to bring suit against the debtor is not a violation of the statute where the principal purpose of the suit is the collection of the debt acquired.

In effect, the Second Circuit drew a distinction between acquisition of debt for the primary purpose of litigation (to which section 489 would apply), and instances in which the intent to litigate is incidental and contingent (to which section 489 would not apply).

The intended purpose of the A5290 Bill would effectively be to remove the at least US$500,000 exemption threshold and to alter the distinction made by the Second Circuit.

The bill contemplates that evidence would be brought by a sovereign debtor as to an assignee's intent and purpose and that may be inferred from: (a) the assignee's (or its affiliates') history of acquiring claims at significant discounts from face values and bringing legal actions to enforce such claims; (b) the assignee or any predecessor in title to the claim having refused to participate in a consensual settlement of the claim, if holders of not less than sixty-six and two-thirds percent of the outstanding amount of similar claims against the obligor had agreed to accept the terms of that settlement and (c) such other facts or circumstances as a court may find relevant in assessing the assignee's intent and purpose in taking the assignment.

Interestingly, the bill then goes on to impose a duty on the holder of the New York law governed instruments to participate in a qualified restructuring affecting that instrument. A "qualified restructuring" means a "modification of the terms of some or all of the unsecured debt instruments issued by a foreign state whose debt has been assessed as unsustainable by the International Monetary Fund within the prior twelve months provided that the modification is accepted by the holders of not less than two-thirds in amount and more than one-half in number of the debt instruments affected by the modification (excluding, for purposes of voting, any instruments that are owned or controlled, directly or indirectly, by the foreign state or any of its agencies or instrumentalities)."

The potential implications of Bill A5290 are significant. The Second Circuit described a number of policy reasons behind its decision on champerty in the Elliot case including the following:

1. It is in the US's national interests for debt to be enforceable.

2. It is helpful for distressed sovereign debt to be liquid.

3. A ruling in favour of the sovereign debtor would create the perverse tendency for sovereign debtors not to perform and thereby compel litigation (in which the champerty defence would then be raised).

There have also long been concerns that adverse impacts on secondary market debt will translate into direct effects on primary market issuances and so result in higher pricing, shorter tenors and lower quantum raised.

We now turn to the bill which would introduce new Article 7 into the New York Banking Law.

Comprehensive Approach to Sovereign Debt Restructuring through New Article 7 of the New York Banking Law – Assembly Bill A2102A

Summary Overview

Article 7 is reviewed section by section below in the same manner as it was in our May 2021 client briefing. Again points of note are highlighted as they arise.

By way of executive summary, a country facing financial difficulties which believes it has unsustainable debts can file a petition with the State of New York. Article 7 describes the required process, certifications and notifications

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to creditors. It contemplates that a plan for restructuring will be submitted by the country which designates different classes of claims. Majority voting applies to each class and so, effectively, majority payment term amendment is retroactively introduced into debt contracts. Once a plan is approved by all classes, the plan becomes effective at which point contractual rights to payment are effectively replaced by those specified in the plan. New money may be raised through majority voting and is legally senior to other claims. Where Article 7 is involved, the effect is retroactively to alter existing New York law contractual rights including any enhanced CACs that may be included in any sovereign bonds governed by New York law.

1. **Introduction and Stated Purpose**

1.1 Observations, unless otherwise stated, are confined to the text of the proposed new Article 7 (annexed). This new draft Article contains Sections 300 to 309 inclusive.

1.2 The stated purpose is to 'provide effective mechanisms for restructuring unsustainable sovereign and subnational debt' (section 300).

Note here that:

- The concept of debt being 'unsustainable' in the context of sovereign debt restructurings is usually determined by the IMF through its DSA. Whilst not without question by private creditors on occasions, the work of the IMF on DSAs is a generally accepted significant anchor to sovereign debt restructurings and evaluations as to the resulting amount of debt relief which may be sought.

- Please see paragraph 3.4 below for a description of 'unsustainable'.

- Subnational debt is not clearly defined and so could give rise to ambiguity.

1.3 The new Article 7 is brief and written in simple terms. Whilst this approach could be regarded as a virtue, there are many areas of important detail which are not covered and the main operative provisions do not appear to be designed to dovetail with the existing sovereign debt restructuring architecture (the 'Existing Architecture') under which the IMF and the Paris Club have key roles.

2. **What Debts Can be Restructured under Article 7**

2.1 Key concepts are:

2.1.1 'Claim' which in broad terms is borrowed money or a state's guarantee (or equivalent) for borrowed money.

Note here that: one of the changes made through the March 31, 2023 amendments is to specify, in broad terms, that debts with an original maturity of less than one year and trade debt through letters of credit are excluded. The inclusion of these short term debts was a concern under the original version of the bill.

Other distinctions generally made in connection with claims in the Existing Architecture are not utilised. These extend to domestic vs external debt; secured vs unsecured debt. There would therefore be likely to be consequences in the market for sovereign finance, for example, finance to purchase or construct a building where the lender would have the benefit of security over the building; or equipment supplied on credit title retention terms where title passes once the final payment is made, would be likely to be impeded. Similarly, there is no provision for set offs and other similar issues which arise in the administration of a typical bankruptcy process (e.g. a hotchpot rule to limit recoveries under Article 7 for creditors gaining outside of Article 7).

2.1.2 'Creditor' which is a person or entity to whom a claim is owed by a state.

2.1.3 'State' is a sovereign nation or unincorporated territory or any subnational unit thereof (but excluding any municipality whose adjustment or debts is governed by 11 U.S.C. 9). In practice, whilst the sovereign nation element is clear, this definition is likely to give rise to ambiguity in relation to the other two elements.

2.2 Section 301 is used to provide other defined terms for the purposes of new Article 7 which include:

2.2.1 'Independent monitor' which is an individual appointed by the Governor and acceptable to the sovereign debtor and the holders of a majority of New York law governed obligations. The purpose of the independent monitor is to facilitate and encourage an effective, prompt and fair agreement by the parties.

2.2.2 'Plan' is the state's restructuring plan around which Article 7 is framed.

Note here that:

- The previously controversial provisions in the original version of the bill which provided for a comprehensive audit have been removed.
- The previously contemplated role for the supervisory authority appears to have been replaced by the independent monitor.

3. Initiation of the Process

3.1 Section 302 sets out the process through which claims of a sovereign may be restructured. It contains both procedural and substantive features.

3.2 The main procedural features include:

– A state filing a petition for relief with the State of New York.

– A petition must contain specified certifications from the state.

3.3 The substantive features are effectively woven into the certifications required as part of the petition and also set out in Section 303.

3.4 The petition must contain six certifications (set out in Section 302.2(a) to (f) inclusive).

– Relief is sought by the state under Article 7 and the state has not sought relief under Article 7 or any equivalent law within the last 10 years.

– The state needs relief to restructure claims that would otherwise be unsustainable.

- ***Note here that***: whilst 'unsustainable' is undefined, Section 302.2 contemplates that the applicable state will self-certify that it needs to restructure claims. This is at variance with the Existing Architecture under which the IMF conducts a DSA. Assuming that the state has an IMF Programme (which often contains structural adjustment measures from the state designed materially to reduce the prospects of further debt relief being required), the Paris Club, to the extent it is involved, then generally applies the DSA to the debt relief it offers to the state and includes a comparability of treatment provision in respect of non-Paris Club claims. Even if the Paris Club is not involved in most cases the IMF will be and will conduct a DSA which underpins the scope and amount of debt relief being sought. Creditors and other stakeholders are likely to be uncomfortable with self-certification of unsustainability.

- The state agrees to restructure those claims in accordance with Article 7.

- The state agrees to all other terms, conditions and provisions in Article 7.

- Any local law steps required in order give effect to its certifications have been taken.

- The state is 'co-operating with the International Monetary Fund to devise an effective, efficient, timely and fair path back to sustainability'.

- ***Note here that***: whilst the inclusion of this certification relating to the IMF is a significant amendment introduced on March 31, 2023 and recognises the central role of the IMF under the Existing Architecture, the points made above with respect to debt being 'unsustainable' remain.

3.5 Section 302.3 provides that immediately after the filing of such a petition (as long as it has not been dismissed by the independent monitor) the terms, conditions and provisions of Article 7 shall (a) apply to any New York law governed claim; (b) apply to any claim governed by the law of another jurisdiction which has enacted a substantially similar law to Article 7 and (c) be recognised in all jurisdictions that have enacted Article 7 or its equivalent.

Note here that:

- Operationally, the timing associated with 'immediately' does not fit well with other timing related matters.

- The ability of the independent monitor to dismiss a petition is not elaborated other than a reference to a lack of good faith. There is no definition of 'good faith' in Article 7.

- The governing law limitation is material and those promoting the new Article may assume that other jurisdictions will implement substantially similar laws. It is unclear how this could work, in that, as drafted, any other such similar law would itself require the filing of a petition by the state in that other jurisdiction thereby creating a parallel regime, unless it is the legislative basis for the filing of a petition with the supervisory authority under Article 7 which is envisaged, raising significant evaluations of sovereignty for any jurisdiction contemplating such a step.

- The effect, described in paragraph 6 below, is to introduce pooling of claims and majority voting concepts into contractual provisions governing those claims. Further, as described in paragraph 7 below, new money which is legally senior to the existing claims, may arise. At its core the effect of Article 7 is therefore to vary existing contractual rights. It would also appear to be seeking to do so in circumstances which would ordinarily be affected by foreign relations considerations and so naturally fall under the aegis of the federal government. The US Constitution protects contract rights (e.g. a taking of private property may be an expropriation which requires just compensation). It also limits the ability of US states to pass laws which impair contractual rights. In very broad terms, historically, the US National Government position, where the debts owed by foreign sovereigns are unsustainable, has been to promote voluntary creditor participation through negotiation. Article 7 therefore strays into areas which may be regarded as beyond normal limits and, as a result, may raise separation of powers arguments by affected stakeholders.

- The reference to 'jurisdictions' does not fit well with arrangements expressly or impliedly governed by international law, which governs many arrangements between international treaty institutions and their member states.

- The filing of a petition is likely to (a) be regarded as a negative event by rating agencies and (b) give rise to events of default or potential events of default in many types of debt arrangements.

4. **Notification to, and list of, creditors**

4.1 Section 303 requires the state to notify all known creditors with 30 days of the filing of a petition.

4.2 The independent monitor is required to prepare and maintain a current list of creditors and verify claims for voting purposes under Article 7.

Note here that:

- Where there is an active trading market in the applicable claims (e.g. through bonds trading through international clearing and settlement systems) these provisions are likely to be challenging to administer well.

- Most sovereign debt restructurings requiring voting from creditors proceed on the basis that trading is effectively frozen whilst the voting process is being conducted through blocking instructions to the clearing and settlement systems. These types of operational aspects are not addressed.

- The independent monitor is intended to exercise certain discretions and in practice any individual taking on such a role is likely to insist upon extensive exculpatory protection and indemnities. Customary protection from the client (i.e. the state) is unlikely to be sufficient, given creditworthiness associated with initiating Article 7 at the outset. Protection from creditor action within Article 7 itself may therefore be required.

5. **Debt Reconciliation**

5.1 The previous version of Section 304 requiring a comprehensive audit to be conducted has been replaced by a requirement that 'creditor claims shall be reconciled against debtor records and any discrepancies shall be addressed between the parties'.

5.2 There is no mention of timing or how that process is to sit in the sequencing of other events associated with a debt restructuring plan.

***Note here that**:*

- This revised approach removes the significant practical difficulties previously associated with the requirement for a comprehensive audit. In broad and general terms the new approach effectively represents current practice under the Existing Architecture.

- Reconciliation issues tend to be more pronounced where there are long periods of arrears and active trading of claims.

6. **The Debt Restructuring Plan from the State**

6.1 Section 305.1 provides that a state may both submit a plan and submit alternative plans from time to time. On its face this construction appears to undermine the 'only once in each ten years' requirement mentioned in paragraph 3.4 above.

6.2 Section 305.2 makes clear that only the state may submit a plan and that cannot be done by any other party on behalf of the state.

6.3 Section 305.6. A plan is required to designate classes of claims on the basis that each class of claims is comprised of claims against the state that are equal in priority. However, all equal claims need not be in the same class; claims of 'governmental or multi-governmental entities' must be classed separately and claims governed by Article 7 or its equivalent under the laws of other jurisdictions may not be classed with other claims.

6.4 A plan must specify the proposed treatment of each class of claims. Each claim of a particular class must have the 'same treatment' unless the holder agrees to inferior treatment. Claims not included in the plan must be disclosed.

6.5 The plan itself must 'provide adequate means' for its implementation including dealing with 'curing or waiving any defaults or changing the maturity dates, principal amount, interest rate, or other terms or cancelling or modifying any liens or encumbrances'. Further, the state must certify that if the plan becomes effective the state's debt will become sustainable.

6.6 Critically a plan will become binding and effective on the state and its creditors when it has been submitted by the state and agreed to by each class of claims of those creditors. Once that has occurred, the state is 'discharged from all claims included in those classes of claims, except as provided in the plan'. In other words, the restructuring terms then apply to the exclusion of the original contractual rights.

6.7 Section 305.5. The test for agreement by each class of creditors is that at least two thirds in amount and more than one half in number of the claims of that class which vote agree to the plan.

Note here that:

- The same treatment for holders of claims in a class could limit a menu approach unless it is intended to be a reference to net present value which raises complex issues.
- There is no reference to disenfranchising debtor or debtor controlled holders of claims.
- The inclusion of claims owed to multi governmental entities in a class is difficult to reconcile with norms associated with preferred creditor status in the Existing Architecture.
- The plan appears not to include any of the customary conditionality associated with an economic reform programme built into a letter of intent as part of an IMF Programme typically used as part of the Existing Architecture. Similarly, the DSA is not a reference point for the restructuring terms, rather the state's own assessment appears to be the basis for the restructuring terms.
- The process is difficult to reconcile with existing Paris Club norms and processes.
- The inclusion of 'adequate means' in the plan to seek to cure defaults is untimely as steps to avoid defaults should ideally be taken at an earlier stage through requests for consents or waivers.
- The conjunctive requirement in the voting by class under which a majority by number as well as two thirds by value of claims is the threshold is potentially open to abuse. A creditor seeking to undermine the process could sell one dollar, or even one cent claims, to multiple like-minded parties who then all vote against the plan.
- By separating the claims governed by New York law (and jurisdictions which have enacted an equivalent to Article 7) from other claims and requiring that each class designated in the plan has agreed to the plan, Article 7 can only proceed where those other classes (which may lack any form of majority voting) agree. That could hand considerable power and leverage to creditors in other classes.

7. New Money

7.1 Section 306 contains provisions which are conceptually similar to debtor in possession financings used in many corporate bankruptcy/insolvency arrangements.

7.2 There are procedural requirements under which the state is required to notify all of its known creditors of its intention to borrow new money. In doing so it is also required to specify the applicable terms and conditions for the proposed new borrowing, the proposed use of the proceeds and to direct those creditors to notify the independent monitor within 30 days as to whether they approve or disapprove of the proposed new loan.

7.3 If at least two thirds by value of those notifying the supervisory authority within 30 days of their views agree then the proposed new loan is approved. Separately, in order to enjoy priority 'of repayment and corresponding subordination' a vote of 'covered claims' is required. Covered claims appear to be New York law governed claims under the plan or claims governed by the laws of any other jurisdiction which has enacted the equivalent of Article 7. The voting threshold for these purposes is two thirds by value of those responding to the supervisory authority within 30 days.

7.4 Section 307 set out the priority and simply states that such new money loans must be repaid prior to the payment of any other claims. There are no exclusions.

Note here that:

- In practice, the lack of exclusions is likely to be problematic.
- The anticipated arrangements are difficult to reconcile with preferred creditor status for IMF claims and claims of other international financial institutions which regard themselves as benefitting from preferred creditor status, which is generally preserved through the methodology used in the DSA.

8. Adjudication of Disputes

8.1 Section 308 provides that the independent monitor may request a court of competent jurisdiction to appoint a referee or special master to make recommendations to the court regarding the resolution of any disputes arising under Article 7.

8.2 The issue of costs is not addressed.

Note here that: This could raise the possibility of competing actions being pursued through whatever dispute resolution mechanism is recommended by the referee or special master and the dispute resolution mechanism in the underlying finance documents, leading to delays and legal uncertainty.

9. Retroactivity and Opt in Rights

9.1 Section 309 clarifies that where Article 7 is invoked in accordance with its terms, the effect is retroactively to alter existing New York law governed contractual rights.

9.2 In accordance with many corporate bankruptcy arrangements, creditors with claims against the state may opt into the bankruptcy style procedure used in Article 7. If they do so their claims are effectively treated as though they were governed by New York Law for the purposes of Article 7.

9.3 Article 7 would take effect immediately it has become a law.

Note here that: Creditors would therefore not know whether their contracts were in the form entered into or as amended by Article 7 if a state submitted a petition under Article 7. This could have unforeseen market consequences.

10. **Other Observations**

10.1 Article 7 contains no stay on proceedings. Activation of Article 7, through the filing of a petition may result in litigation, even in a pre-payment default scenario, as events of default and potential events of default would be occurring at this point. Litigation on contract claims may therefore occur almost simultaneously with activation.

10.2 It is possible that the promoters of the bill envisage that sovereign debt restructurings will not necessarily take place under new Article 7 but rather will be encouraged because the parties know that the alternative of Article 7 restructurings exist. In that conception restructurings would be encouraged to occur outside of Article 7 and would be taking place under its shadow.

10.3 Innovations and policy development in the sovereign debt space have to date involved varying degrees of consultation from relevant stakeholders aimed not only at enhancing the Existing Architecture but also at avoiding unintended negative market access and financial stability consequences. As drafted, the bill leaves many unanswered questions and would benefit from such market consultation.

11. **Conclusion**

The new draft Article 7 represents a significant departure from the norms and practices which have evolved over many years and now form part of the Existing Architecture. If enacted it is likely to have a major impact in the field of restructuring sovereign debt and will materially alter existing practices and incentives. As drafted, it leaves important questions of detail unanswered, potentially leading to market uncertainty and unintended consequences for sovereign debtors as well as other relevant stakeholders. We anticipate that market participants will be keen to follow its progress through the New York legislative process closely and provide feedback, as appropriate.

We now turn to the bills designed to limit recoveries on sovereign debt claims in certain circumstances.

Limit on Recovery on Sovereign Claims

Assembly Bill A2970 and Senate Bill S4747 are identical in substance and the purpose is stated to be to 'amend the debtor and creditor law' in relation to the recoverability of sovereign debt.

These bills are short and would add a new Article 10-b to the existing law. The full text of the Assembly bill is annexed to this client briefing.

The key operative provision is to limit recovery on an 'Eligible Claim' which in broad terms would be a debt claim against an Eligible State participating in one or more International Initiatives.

An Eligible State is a sovereign state eligible to participate in one or more International Initiatives.

International Initiatives is defined as any "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", and any successor or similar international mechanism, framework or initiatives."

The key operative provision also refers to 'Burden-Sharing Standards' which are defined as "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."

The key operative provision states that any Eligible 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 inter-creditor data sharing and a broad presumption in favor of public disclosure of material terms and conditions of such claims; and
3. 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."

UK – House of Commons International Development Committee

In the context of these bills, it is instructive to mention the work in the UK which led to a recent House of Commons Committee report entitled, 'Debt relief in low-income countries' written by the UK's International Development Committee. This report was published on March 10, 2023 and contained recommendations to government. It is likely that the current position in relation to these bills in the New York legislature will be of considerable interest to members of that House of Commons Committee. Among the main recommendations made in that report were the following (note the reference below to the 'MDRI' is to the Multilateral Debt Relief Initiative introduced in 2005 which, broadly, resulted in the cancellation of 100% of the claims of the IMF, the International Development Association of the World Bank and the African Development Fund on countries that reached completion point under the enhanced Initiative for HIPC countries):

The HIPC, the MDRI, the DSSI and the Common Framework were all undermined by the inability to compel or incentivise private creditors to participate. A legislative solution is required to enable the Common Framework to provide a meaningful way to address this. The UK Government's view on the relative merits of market-based solutions compared with legislative options is currently unclear. The UK Government should consult on the introduction of legislation to compel or incentivise participation of private creditors in the Common Framework, such as those proposed by the World Bank. This should include proposals either:

a) to prevent low-income countries facing debt distress from being sued by private creditors for a sum greater than that those creditors would have received had they participated in the Common Framework; or

b) to make debt restructuring agreements binding for all private creditors, if the agreement is supported by at least two-thirds of private creditors. (Paragraph 62).

As New York and English law comprise the two major legal jurisdictions covering international debt agreements, the UK and New York have the potential to significantly improve private creditor participation in debt relief initiatives globally, particularly if these efforts are co-ordinated. We recommend that the UK Government engages in bilateral talks with New York law makers to explore the scope for co-operation in legislative approaches. (Paragraph 63).

The full report is available through the following link here. Clifford Chance LLP made a submission to that House of Commons Select Committee which is also available through that link.

Potential outcomes in terms of Bills being passed or not passed

It is possible that all, some or no bills will be enacted. The table below sets out the possible permutations.

	Alter Champerty Rules	New Article 7 of New York Banking Law	Limit Recovery on Sovereign Claims
One Bill Only Passes	✓ x x	x ✓ x	x x ✓
Two Bills Pass	✓ ✓ x	✓ x ✓	x ✓ ✓
Three Bills Pass	✓	✓	✓
No Bills Pass	x	x	x

Clearly if none of the bills become law, then the status quo will continue to prevail.

Whilst the impact of the enactment of new Article 7 would have the most far reaching impact (many of the roles currently performed by the IMF and the Paris Club would be likely to alter significantly), the enactment of any one of these bills would have a profound impact on the Existing Architecture for resolution of sovereign debt claims.

New Article 7 and the other two measures could be regarded as complementary. As mentioned earlier, Article 7 only applies where the sovereign debtor has filed a petition. Where Article 7 does apply, the champerty measure and the recovery limitation measure would not seem to be necessary as the Plan under new Article 7 would dictate the financial terms. For as long as a sovereign debtor had not filed such a petition, the champerty protection could be invoked and the recovery limitation would limit recoveries.

It would therefore seem to follow that: if the new Article 7 Bill does pass but the champerty bill and/or the recovery limitation bill do not become law, then more petitions under Article 7 are likely to be filed more swiftly than would otherwise be the case if all three bills had passed. Conversely, if the new Article 7 Bill does not pass but the champerty bill and/or the recovery limitation bill do pass, then it would be rational to expect champerty defences and/or recovery limitations to have greater effect than would have been the case if all three bills had passed.

If the champerty measure were to be passed then, in effect, holders of original claims would have superior rights to assignees because original claims would remain unaffected by the change to the champerty rules. In addition to the issues raised earlier in the context of champerty, other things being equal, the result is likely to be arrangements under which trading occurs synthetically through, say, a further increase in the use of risk amelioration techniques, such as credit derivatives (particularly CDS), insurance and sub participations as well as refinements to settlement procedures in CDS contracts so that pure cash settlement is used more often to compensate the credit protection purchaser so as to avoid the need for physical delivery of financial assets where a Credit Event has occurred.

Whilst all or any of these potential measures may facilitate the resolution of current sovereign debt problems, particularly those most acutely exacerbated by the Covid-19 pandemic and its consequences, one rational response from potential investors in future sovereign debt claims would be to move away from the use of New York law in sovereign debt contracts or to invest smaller amounts in a narrower range of countries on shorter tenors and only at higher risk premia. There may therefore be unhelpful long term policy implications of enactment of all or any of these bills.

STATE OF NEW YORK

5290

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. GONZALEZ-ROJAS, DAVILA -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to the purchase of claims by corporations or collection agencies and to certain instruments calling for payment of a monetary obligation by a foreign state

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

Section 1. Subdivision 2 of section 489 of the judiciary law, as added by chapter 394 of the laws of 2004, is amended to read as follows:

2. Except as set forth in subdivision three of this section, the provisions of subdivision one of this section shall not apply to any assignment, purchase or transfer hereafter made of one or more bonds, promissory notes, bills of exchange, book debts, or other things in action, or any claims or demands, if such assignment, purchase or transfer included bonds, promissory notes, bills of exchange and/or book debts, issued by or enforceable against the same **eligible** obligor (whether or not also issued by or enforceable against any other **eligible** obligors), having an aggregate purchase price of at least five hundred thousand dollars, in which event the exemption provided by this subdivision shall apply as well to all other items, including other things in action, claims and demands, included in such assignment, purchase or transfer (but only if such other items are issued by or enforceable against the same **eligible** obligor, or relate to or arise in connection with such bonds, promissory notes, bills of exchange and/or book debts or the issuance thereof). **For the purposes of this subdivision, the term "eligible obligor" means an obligor that qualifies as a "debtor" within the meaning of Title 11 of the United States Code (the United States Bankruptcy Code).**

§ 2. Section 489 of the judiciary law is amended by adding a new subdivision 4 to read as follows:

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

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4. For purposes of subdivision one of this section, an assignee's intent and purpose in taking an assignment of a claim against an obligor that is not an eligible obligor may be inferred from: (a) the assignee's (or its affiliates') history of acquiring claims at significant discounts from their face values and bringing legal actions to enforce those claims, (b) the assignee (or any predecessor in title to the claim) having refused to participate in a consensual settlement of the claim if holders of not less than two-thirds (by outstanding amount) of similar claims against the obligor had agreed to accept the terms of

that settlement, and (c) such other facts or circumstances as a court may find relevant in assessing the assignee's intent and purpose in taking the assignment.

§ 3. The judiciary law is amended by adding a new section 489-a to read as follows:

§ 489-a. Sovereign debt modifications. 1. Every instrument governed by the law of the state of New York calling for the payment of a monetary obligation by a foreign state (as defined in 28 U.S.C. § 1603(a)) imposes a duty on the holder to participate in good faith in a qualified restructuring affecting such instrument.

2. For purposes of this section, a "qualified restructuring" means a modification of the terms of some or all of the unsecured debt instruments issued by a foreign state whose debt has been assessed as unsustainable by the International Monetary Fund within the prior twelve months provided that the modification is accepted by the holders of not less than two-thirds in amount and more than one-half in number of the debt instruments affected by the modification (excluding, for purposes of voting, any instruments that are owned or controlled, directly or indirectly, by the foreign state or any of its agencies or instrumentalities).

§ 4. This act shall take effect immediately.

STATE OF NEW YORK

2102--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. DAVILA, RIVERA, GONZALEZ-ROJAS, CRUZ, CLARK, REYES, MAMDANI, BURDICK, MITAYNES, GALLAGHER, COLTON, FORREST, SIMON, TAYLOR, JACKSON -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking 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. The banking law is amended by adding a new article 7 to read as follows:

ARTICLE 7

SOVEREIGN AND SUBNATIONAL DEBT

Section 300. Legislative intent.

301. Definitions.

302. Petition for relief; recognition.

303. Notification of creditors.

304. Debt reconciliation.

305. Submission, contents and voting on plan.

306. Financing the restructuring.

307. Priority of repayment.

308. Adjudication of disputes.

309. Application; opt in.

§ 300. Legislative intent. The purpose of this article is to provide effective mechanisms for restructuring unsustainable sovereign and subnational debt so as to:

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

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

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

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

4. strengthen the role of the state of New York 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 this state;

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

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

§ 301. Definitions. For purposes of this article:

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

2. "claim" means a payment claim against a state for monies borrowed or for the 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

contemplated by section three hundred five of this article;

4. "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; and

5. "independent monitor" means an individual appointed by the governor and acceptable to the sovereign debtor and to the holders, or their agents, of a majority of the obligations issued under New York law. The monitor is meant to facilitate and encourage an effective, prompt and fair agreement by the parties, as intended by this article.

§ 302. Petition for relief; recognition. 1. A state may invoke application of this article by filing a voluntary petition for relief with the state of New York.

2. Such petition shall certify that the state:

(a) seeks relief 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 ten years;

(b) needs relief under this article to restructure claims that, absent such relief, would constitute unsustainable debt of the state;

(c) agrees to restructure those claims in accordance with this article;

(d) agrees to all other terms, conditions and provisions 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 paragraph; 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, the terms, conditions, and provisions of this article shall:

(a) apply to the debtor-creditor relationship between the 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 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.

§ 303. Notification of creditors. 1. Within thirty days after filing its petition for relief, the state shall notify all of its known creditors of its intention to negotiate a plan under this article.

2. The independent monitor shall prepare and maintain a current list of creditors of the state and verify claims for the purposes of supervising voting under this article.

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

§ 305. Submission, contents and voting on plan. 1. The 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 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 state and its creditors under subdivision four of this section, the state's debt will become sustainable.

4. A plan shall become effective and binding on the state and its creditors when it has been submitted by the state and agreed to by each class of such creditors' claims designated in the plan under subdivision three of this section. Thereupon, the 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 onehalf in number of the claims of such class voting on such plan agree to the plan.

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

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

(b) claims of governmental or multigovernmental entities holding claims defined under this article shall be included with the claims of private holders of such claims, and each shall be classed separately;

and

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(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.

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

2. The 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 three hundred seven 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.

§ 307. Priority of repayment. 1. The state shall repay loans approved under this article prior to paying any other claims.

2. The claims of creditors of the 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 three hundred six of this article.

§ 308. 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 this article.

§ 309. Application; opt in. 1. This article applies where, by contract or otherwise;

(a) the law of New York state governs the debtor-creditor relationship between a state and its creditors; and

(b) the application of this article is invoked in accordance with section three hundred two of this article.

2. Where this article applies, it shall operate retroactively and, without limiting the foregoing, shall override any contractual provisions that are inconsistent with the provisions of this article.

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

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

§ 2. This act shall take effect immediately.

STATE OF NEW YORK

2970

2023-2024 Regular Sessions

IN ASSEMBLY

February 1, 2023

Introduced by M. of A. FAHY, KELLES – read once and referred to the Committee on Judiciary AN ACT to amend the debtor and creditor law, in relation to the recoverability of sovereign debt

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

Section 1. Legislative findings and intent. The legislature finds that it is a longstanding policy of the United States and the state of New York, as the world's leading financial center, to support orderly, collaborative and effective international debt relief for developing 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. The United Kingdom has successfully implemented legislation to promote such burden-sharing in support of international debt relief initiatives since 2010. Therefore, the legislature finds and declares that it shall be the policy of the state of New York to support international debt relief initiatives for developing countries in, or at high risk of, debt distress, 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 the state of New York, and for other purposes.

§ 2. The debtor and creditor law is amended by adding a new article 10-B to read as follows:

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

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ARTICLE 10-B

RECOVERABILITY OF SOVEREIGN DEBT

Section 287-a. Definitions.

287-b. Recoverability of eligible claims.

§ 287-a. Definitions. As used in this article, the following terms shall have the following meanings:

1. "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", and any successor or similar international mechanism, framework or initiatives.

2. "Eligible claim" shall mean a payment claim for borrowed money, a guarantee or similar obligation with respect to borrowed money, any debt-equivalent claim, and any domestic or foreign judgment with respect to such a claim against an eligible state

participating in one or more of the international initiatives.

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

4. "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.

§ 287-b. Recoverability of eligible claims. Any eligible 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 burdensharing standards;

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

3. 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.

§ 3. This act shall take effect immediately.

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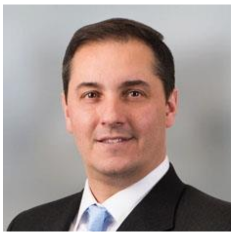

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