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Restructure or Die? Current Litigation Developments Under the Act.

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Restructure or Die? Current Litigation Developments Under the Act.

I. THE BASICS OF THE ACT

The local law, officially called the Puerto Rico Public Corporations Debt Enforcement and Recovery Act ("Act"),[1] was adopted on June 28, 2014 and encourages the distressed corporation to negotiate and come to a consensual resolution with creditors. However if discussions fail to produce a solution, the distressed corporation can enter into proceedings before a commonwealth court in Puerto Rico.

The goal of the law is to balance the interest of all creditors and stakeholders with the Commonwealth of Puerto Rico's ("Commonwealth") ability to provide essential services delivered via public corporations during periods of fiscal stress. Pursuant to the Act, all Commonwealth general obligation securities are required to be paid in full, while certain debt of Puerto Rico's government corporations are eligible to be restructured.

The three largest public corporations that may be restructured pursuant to the Act have outstanding indebtedness totaling $20 billion are: (1) Puerto Rico Electric Power Authority (PREPA); (2) Puerto Rico Aqueduct and Sewer Authority (PRASA); and (3) Puerto Rico Highways and Transportation Authority (PRHTA).[2]

Chapter 2	Chapter 3
Provides for a market-based approach with limited court involvement	Provides for enhanced judicial oversight
An entity files Notice of Suspension Period which stays holders of affected debt instruments, and can last for 270 days or longer	With the consent of the Government Development Bank of Puerto Rico ("GDB"), the public enity files a Petition with the court provided the corporation is eligible and an automatic stay is imposed, and a creditors committee may be appointed which may be

[1] The Puerto Rico Corporations Debt Enforcement and Recovery Act, Act Commonwealth S. 1164 dated June 25, 2014 (English Text), at 158 and § 112.

[2] Besides PREPA, PRASA and PRHTA, unless expressly excluded, other public corporations are eligible for relief under the Debt Enforcement Act, including: the Puerto Rico Telephone Authority and the Puerto Rico Ports Authority. However, a number of entities are expressly excluded, including the Commonwealth of Puerto Rico its governments, the GDB, the Sales Tax Financing Corporation (COFINA), the Puerto Rico Infrastructure Finance Authority (PRIFA) and the Puerto Rico Industrial Development Company,

	heard on a variety of issues
When at least 50% of the amount of the affected debt in the particular class participates in a vote or consent solicitation (of those who cast a vote, at least 75% approval) then all affected creditors will be bound within the applicable class.	Either GDB or the petitioner must then file a proposed plan or proposed transfer of the petitioner's assets, which the court can confirm only if it provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed. At least one class of affected debt must accept the plan with a majority of all votes cast and with the support of at least 2/3 of affected debt in the class. Certain classes of creditors and claims are protected from impairment including employee claims for wages, salaries, commissions, etc.
GDB and the specialized court must approve any consensual debt relief transaction before any amendments, modifications, waivers, or exchanges become binding on any class of creditors. Once the specialized court enters an approval order, creditors may not bring a separate action to enforce their original claims.	Court approval of the plan is needed, although there is no discharge of claims - creditors that are not paid in full are entitled to a portion of the corporation's free cash flow for up to the first ten full fiscal years after the first anniversary of the effective date of the plan up until the time they are paid in full.

The Act was modeled on chapters 9 and 11 of the Bankruptcy Code. Parties are directed to refer to case provisions of chapters 9 and 11 of the Bankruptcy Code, to the extent applicable, for of interpreting the provisions of chapter 3. Case law from the First Circuit is binding. While adopting certain provisions of the Bankruptcy Code, several important provisions of the Bankruptcy Code were left out of the Act, or amended:

1. **Surcharging Collateral**

Bankruptcy Code	**Act**
A debtor is able to recover from a secured creditor the costs actually incurred to preserve, maintain or dispose of property, but only if the expense is for the benefit of the secured creditor. § 506	A debtor may recover from or use collateral for the reasonable, necessary costs and expenses of preserving, or disposing of, property, including payment of expenses incurred by the debtor pursuant to or in furtherance of the Act. § 129

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2. Cash Collateral

Bankruptcy Code	Act
A debtor may not use cash collateral without the consent of the secured party or court order, and the court may condition the debtor's use of cash collateral on providing the secured creditor with adequate protection. § 362	A debtor public corporation may use property, including cash collateral as necessary to perform public functions. §§ 129, 207, 323, 324

3. Executory Contracts

Bankruptcy Code	Act
Protections afforded to parties that have entered into certain types of agreements with *ipso facto* clauses and contracts that are executory. § 365	No similar *ipso facto* protections and a debtor may reject any contract, whether or not it is executory. §§ 205, 325

4. Priming Lien

Bankruptcy Code	Act
Debtors are able to obtain credit secured with a lien equal or senior to lien only if the existing lien holder receives adequate protection. § 362	Debtor may obtain a priming lien only if the credit is necessary for the public corporation to perform its public functions. §§ 206, 322

5. Creditors' Committee

Bankruptcy Code	Act
There is no statutorily mandated creditors' committee	Under Chapter 3, there is a statutorily appointed committee comprised of secured creditors that are paid by the public corporation

6. Voting

Bankruptcy Code	Act	
Cramdown is available with approval of a majority of votes cast and 2/3 of the aggregate amount of debt in at least one class of affected debt	Under Chapter 2, there is no cramdown available, rather a 50% participation of each class with 75% approval of those voting is needed	Under Chapter 3, cramdown is available, requiring approval of a majority of votes cast and 2/3 of the aggregate amount of the debt in at least one class of affected debt

II. CHALLENGES TO THE LEGALITY OF THE ACT

The Act was meant to give the PREPA an option for paring down a $7 billion debt load if closed-door negotiations with bondholders don't produce a consensual deal. But a list of funds overseen by Franklin Templeton Investments and Oppenheimer Funds Inc. filed suit against the Commonwealth less than a week after the Act's passage, followed by BlueMountain Capital Management LLC (collectively "Funds"). The cases are *Blue Mountain Capital Management LLC v. Garcia-Padilla* et al., No. 3:14-cv-01569, and *Franklin California Tax-Free Trust et al. v. Commonwealth of Puerto Rico* et al., No. 3:14-cv-01518, in the United States District Court for the District of Puerto Rico. There are three main arguments raised in briefing directed at the pleadings.

1. Preemption

First, the Funds all claim that the law interferes with the bankruptcy scheme set up by Congress, which has forbidden Puerto Rico's public corporations from availing themselves of the protections many municipalities enjoy under Chapter 9. They argue that the Commonwealth overstepped by setting up a local debt adjustment system for its public corporations when only Congress has the power to select who may or may not file for bankruptcy. They base this argument on the text of the United States Constitution and the Bankruptcy Code.

Article I, Section 8 of the United States Constitution provides that "Congress shall have the power . . .[to] establish . . . uniform laws on the subject of Bankruptcies throughout the United States. . ." The United States Congress has established uniform laws of bankruptcy by its enactment of the Bankruptcy Code and the Bankruptcy Code applies in the Commonwealth. Chapter 9 of the Bankruptcy Code governs the filing of bankruptcy petitions by "municipalities" but section 101(40) defines a "municipality" as a political subdivision or public agency or

instrumentality of a "State" which is defined in section 101(52) to include Puerto Rico "except for the purpose of defining who may be a debtor under Chapter 9 [of the Bankruptcy Code]".

The Commonwealth's response is that under clear Supreme Court precedent, state and local governments retain the power to pass their own restructuring statutes, so long as they do not conflict with federal law. Congress has not wholly occupied the field, and the Constitution does not vest it with exclusive power to enact such laws. Puerto Rico's public entities are not currently governed by any federal bankruptcy law. Rather—much like banks and insurance companies—they fall into a gap in the Bankruptcy Code. On the one hand, because Puerto Rico is not a "state" for "the purpose of defining who may be a debtor under chapter 9," 11 U.S.C. § 101(52), its political subdivisions, public agencies, and instrumentalities are not "municipalit[ies]" eligible to reorganize under Chapter 9. *See* 11 U.S.C. §§ 101(40), 109(c)(1), 109(c)(2). At the same time, because those entities are classified as "governmental unit[s]" for purposes of 11 U.S.C. § 101(41), they are not "person[s]" for purposes of the Bankruptcy Code and thus cannot seek the Chapter 11 relief available to their counterparts in the 50 states. *See* 11 U.S.C. § 109(b), (d). As a result, there is no federal restructuring scheme that conflicts with or displaces the public-entity restructuring law enacted by Puerto Rico pursuant to its inherent police power. The Commonwealth may authorize proceedings for the restructuring of its public entities for precisely the same reasons.

2. Impairment of Contracts

Next, the Funds claim that the Act deprives creditors of their contractual rights to payment in full of their claims, thus impairing contractual obligations in violation of the Contract Clause. The Funds argue that the Act effects a "substantial impairment" of their rights: (i) to full payment of principal and interest in accordance with the maturities set forth in a Trust

Agreement, (ii) not to have the debtor sell, lease or otherwise dispose of the electric power system or grant senior or equal liens impairing the Funds' lien on pledged revenues, (iii) to declare an event of default when, among other things, an order, decree, or proceeding is instituted or entered "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims or such creditors," and (iv) to certain remedies upon an event of default, including accelerating payments, suing at law or equity to enforce a Trust Agreement, and seeking the appointment of a receiver to collect their pledged revenues.

Article I, section 10 of the United States Constitution provides that "No State shall . . . pass any. . . Law impairing the Obligation of Contracts. . . ." Despite its language, this provision does not make unlawful every state law that conflicts with any contract. Claims based on the Contract Clause are analyzed under a two-part test, first whether the state law has operated as a substantial impairment of a contractual relationship, and second, if the contract was substantially impaired, then whether the impairment was reasonable and necessary to serve an important government purpose.

On the merits, the Commonwealth responds that even assuming the Act substantially impaired certain contractual obligations, such impairment would require an analysis of the second step in any Contract Clause analysis which focuses on the reasonableness and necessity of the law in question: laws modifying a state's financial obligations are constitutional if they are "reasonable and necessary to serve an important public purpose," and no "more moderate course [that] would serve its purposes equally well" is in evidence. The Supreme Court has repeatedly upheld laws impairing contractual obligations where those laws were reasonable and

necessary to the achievement of a sufficiently important government interest so as to render them constitutional exercises of the state's police power.

3. Unconstitutional Taking

Finally, the Funds claim that the U.S. Constitution forbids a taking of private property, by depriving them of the benefits of their security interests. The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." Here, the Funds' bonds are secured by a lien on net revenues. Recognizing this, the Bankruptcy Code allows a debtor to "prime" a secured creditor – i.e., subject its collateral to a senior or equal lien – only if compensation in the form of "adequate protection" is provided. *See* 11 U.S.C. § 364(d). In contrast to the Bankruptcy Code, §§ 129(d) and 322(c) of the Act authorize the debtor to borrow money secured by a senior or equal lien on the Funds' collateral *without* "adequate protection" whenever Puerto Rico's "police power" would permit or whenever the proceeds of the new loan are used "for a public purpose." The Funds further argue that the elimination of their right to seek the appointment of a receiver – which occurred immediately upon passage of the Act – also constitutes a taking.

The Commonwealth responds that the Supreme Court has long recognized a sovereign's authority to enact legislation that affects creditors' property interests. First, that the Legislative Assembly carefully drafted the Act to minimize any adverse economic impact on potential claimants. Second, even if the Act has some adverse economic impact on the Funds, they have not claimed that it interfered with any reasonable investment-backed expectations—nor could they make out such a claim. Finally, the Act is simply not the type of government action that triggers the Fifth Amendment's requirement of just compensation.

The pleadings are still open in both cases and issues surrounding whether the court should grant oral argument on the Commonwealth's Motion to Dismiss are being briefed.

CONCLUSION

Like every other instance in recent history involving the restructuring of public obligations (see e.g. the City of Detroit, Greece, Argentina) the fight over process is likely ensure a long delay until a resolution is reached. Moreover, even if the Commonwealth is successful in restructuring its current obligations, it will not address larger economic structural problems plaguing the island (high crime, inefficient government, lack of general economic growth). Accordingly, the Act is only a small tool that the Commonwealth can use to help fix public finances.

THE PUERTO RICO PUBLIC CORPORATION DEBT ENFORCEMENT AND RECOVERY ACT AS COMPARED TO CHAPTER 9 OF THE BANKRUPTCY CODE

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	CHAPTER 9 Bankruptcy Code	CHAPTER 2 PCDERA	CHAPTER 3 PCDERA
I. Purpose 	The purpose of chapter 9 is to provide a financially-distressed municipality protection from its creditors while it develops and negotiates a plan for adjusting its debts. Reorganization of the debts of a municipality is typically accomplished either by extending debt maturities, reducing the amount of principal or interest, or refinancing the debt by obtaining a new loan. Although similar to other chapters in some respects, chapter 9 is significantly different in that there is no provision in the law for liquidation of the assets of the municipality and distribution of the proceeds to creditors. Such a liquidation or dissolution would violate the 10th Amendment to the Constitution and the reservation to the states of sovereignty over their internal affairs. Indeed, due to the severe limitations placed upon the power of the bankruptcy court in chapter 9 cases the bankruptcy court generally is not as active in managing a municipal bankruptcy case as it is in corporate reorganizations under chapter 11. The functions of the bankruptcy court in chapter 9 cases are generally limited to approving the petition (if the debtor is eligible), confirming a plan of debt adjustment, and ensuring implementation of the plan. As a practical matter, however, the municipality may consent to have the court exercise jurisdiction in many of the traditional areas of court oversight in bankruptcy, in order to obtain the protection of court	The purpose of Chapter 2 is to entail a process of debt relief through consensual negotiations between the eligible obligor and its creditors. Chapter 2 provides a mechanism for a public corporation to adopt a recovery program and seek a market-led solution for debt relief, based on the recovery program that binds all debt holders with the consent of a supermajority of debt holders. The recovery program contemplated by chapter 2 will have as its objectives: to enable an eligible obligor to become financially self-sufficient; to allocate equitably among all stakeholders the burdens of the recovery program; and to provide the same treatment to all creditors unless a creditor agrees to a less favorable treatment.	The purpose of Chapter 3 is to address the debt problem of the Commonwealth's public corporations through a judicial solution requiring the same consent required in, for example, chapters 9 and 11 of title 11 of the United States Code. Chapter 3 enables each qualifying public corporation to defer debt repayment and to decrease interest and principal to the extent necessary to enable each entity to continue to fulfill its vital public functions. Collective bargaining agreements may be modified or rejected under certain circumstances and trade debt can be reduced when necessary. In designing chapter 3, the Legislative adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, the Legislative expresses its intent that jurisprudence interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act.

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	orders and eliminate the need for multiple forums to decide issues.		
II. Eligibility 	Only a "municipality" may file for relief under chapter 9. 11 U.S.C. § 109(c). The term "municipality" is defined in the Bankruptcy Code as a "political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40). The definition is broad enough to include cities, counties, townships, school districts, and public improvement districts. It also includes revenue-producing bodies that provide services which are paid for by users rather than by general taxes, such as bridge authorities, highway authorities, and gas authorities. Section 109(c) of the Bankruptcy Codes sets forth four additional eligibility requirements for chapter 9:	Section 201 states that an "eligible obligor" may seek relief from its creditors pursuant to one or more transactions in accordance with chapter 2, those transactions being understood as "consensual debt relief transaction," subject to certain eligibility criteria. The term "eligible obligor" is defined in Section 102(28), which defines it in terms of a "public sector obligor" and remits to Section 113(a), which in turn remits again to the criteria in Section 201(b). A "public sector obligor" is defined in Section 102(50) as a Commonwealth Entity, excluding the Commonwealth itself, its municipalities, and a number of public agencies, corporations, trusts, and pension systems, among them COFINA, GDB, and UPR. The eligibility requirements in Section 201(b) are that the eligible obligor *be authorized* to seek relief under Chapter 2 by (1) its governing body, with the approval of GDB; or by (2) GDB, at the Governor's request, and on behalf of the eligible obligor, *if the eligible obligor has not authorized such action* and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth. Furthermore, Section 101(59) provides that the following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of	According to Section 113, a petitioner is eligible if the public sector obligor is: (1) insolvent and (2) authorized to file a petition by its governing body and GDB or the petition is filed by GDB on behalf of the obligor upon the Governor's request. Additionally, the obligor must be ineligible for relief under the Bankruptcy Code (title 11 of the United States Code) because it is not a "municipality" that may file a petition under Chapter 9 and it is a "governmental unit" that may not seek relief under Chapter 11, terms and chapters of the Bankruptcy Code as defined by title 11 of the United States Code. A "public sector obligor" is defined in Section 102(50) as a Commonwealth Entity, excluding the Commonwealth itself, its municipalities, and a number of public agencies, corporations, trusts, and pension systems, among them COFINA, GDB, and UPR. Furthermore, Section 101(59) provides that the following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary Requirement System; the Municipal Finance Agency; the

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	1. the municipality must be specifically authorized to be a debtor by state law or by a governmental officer or organization empowered by State law to authorize the municipality to be a debtor; 2. the municipality must be insolvent, as defined in 11 U.S.C. § 101(32)(C); 3. the municipality must desire to effect a plan to adjust its debts; and 4. the municipality must either: • obtain the agreement of creditors holding at least a majority in amount of the claims of each class that the debtor intends to impair under a plan in a case under chapter 9; • negotiate in good faith with creditors and fail to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that the debtor intends to impair under a plan; • be unable to negotiate with creditors because such negotiation is impracticable; or reasonably believe that a creditor may attempt to obtain a preference.	doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary Requirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.	Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.
III. Commencement of the Case 		Section 201(b) requires that to commence this process, an eligible obligor must be properly authorized before engaging in a consensual debt relief transaction. Once it has obtained such authorization or has been authorized by the Governor, Section 201(d) states that the eligible obligor shall notify the general public through its website of the commencement of a suspension period as of the date	To commence a Chapter 3 case, the petitioner must be duly authorized to file a petition with the Court. This authorization can come in the shape of an act by its governing body, which is then approved by GDB, or by GDB itself in certain circumstances including a request by the Governor. Section 301(c) clearly prohibits involuntary petitions filed by creditors or other entities.

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	Municipalities must voluntarily seek protection under the Bankruptcy Code. 11 U.S.C. §§ 303, 901(a). They may file a petition only under chapter 9. A case under chapter 9 concerning an unincorporated tax or special assessment district that does not have its own officials is commenced by the filing of a voluntary "petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district." 11 U.S.C. § 921(a). A municipal debtor must file a list of creditors. 11 U.S.C. § 924. Normally, the debtor files the list of creditors with the petition. However, the bankruptcy court has discretion to fix a different time if the debtor is unable to prepare the list of creditors in the form and with the detail required by the Bankruptcy Rules at the time of filing. Fed. R. Bankr. P. 1007.	of such notice's publication, and of the obligations subject to it. The suspension period temporarily suspends all remedies otherwise granted to holders of, parties with a beneficial interest in, and trustees and indenture trustees and similar representatives related to, the affected debt instruments. This notice may be amended to add or eliminate subject obligations, but the suspension period strictly commences with the first publication of the notice.	Once authorized the petitioner will file a petition that includes (1) a list of the amounts and types of claims against the petitioner that will be affected by the process; and (2) an assessment of eligibility of petitioner, made by the petitioner itself. Accompanying the petition, or within a determinate time period after filing petition, the petitioner must include a schedule listing the creditors intended to be affected for whom the petitioner has readily accessible contact information. Petitioner must also submit a schedule of all claims against it, detailing, among other things, seniority of claims, collateral securities or pledged revenues, and allowable and disputed claims.
IV. Applicable Rules of Procedure 	The Rules of Procedure applicable for Federal bankruptcy proceedings are the Federal Rules of Bankruptcy Procedure and the local rules for each bankruptcy court.	Section 117 states that "[t]o the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act."	Section 117 states that "[t]o the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act."

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V. Assignment of Case to a Bankruptcy Judge 	One significant difference between chapter 9 cases and cases filed under other chapters is that the clerk of court does not automatically assign the case to a particular judge. "The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced [designates] the bankruptcy judge to conduct the case." 11 U.S.C. § 921(b). This provision was designed to remove politics from the issue of which judge will preside over the chapter 9 case of a major municipality and to ensure that a municipal case will be handled by a judge who has the time and capability of doing so.	Section 109 defines the composition of the Public Sector Debt Enforcement and Recovery Act Courtroom as part of the Court of First Instance, San Juan Part. The Chief Justice of the Puerto Rico Supreme Court may appoint a local judge, but the law is silent on any alternative. However, a judge thus appointed may further appoint a special commissioner to "oversee multiple proceedings under either or both chapter 2 and chapter 3…."	Section 109 defines the composition of the Public Sector Debt Enforcement and Recovery Act Courtroom as part of the Court of First Instance, San Juan Part. The Chief Justice of the Puerto Rico Supreme Court *may* appoint a local judge, but the law is silent on any alternative. However, a judge thus appointed may further appoint a special commissioner to "oversee multiple proceedings under either or both chapter 2 and chapter 3…."
VI. Notice of Case/ Objections/ Order for Relief 		Section 201(b) requires the duly authorized eligible debtor seeking chapter 2 relief to give public notice on its website of commencement of a suspension period and a list of the obligations affected by it. The Court has jurisdiction to hear any matter arising under Chapter 2, but the suspension period prohibits the enforcement of contractual remedies by creditors. Section 204 provides for Court approval of proposed consensual debt relief transactions, which requires the filling of an application by the eligible obligor and holding of a hearing, no later than twenty-one (21) days of filing of application. Notice of said hearing can be properly made through Section 116(c)(2) or by notifying the holders of the affected debt instruments at least fourteen (14) days prior to the hearing, "including through The Depository Trust Company or similar depository, or as the Court otherwise orders."	Section 303 mandates that all affected creditors and contract counterparties, and all entities who file notices of appearance under Section 119, be notified "promptly after filing of petition" and after obtaining a date for the eligibility hearing, of the following events: (1) the filing of the petition and the automatic stay; (2) the date and time of the hearing on the eligibility of the petitioner for relief under chapter, pursuant to Section 306; (3) the date by which objections, if any, to the petitioner's eligibility must be filed; (4) the schedule required in Section 302(a)(2) or, if not available, the one specified in Section 301(d)(1); (5) the right of the affected creditor to notify its willingness to serve in a creditor's committee pursuant to Section 318(a); and

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	The Bankruptcy Code requires that notice be given of the commencement of the case and the order for relief. 11 U.S.C. § 923. The Bankruptcy Rules provide that the clerk, or such other person as the court may direct, is to give notice. Fed. R. Bankr. P. 2002(f). The notice must also be published "at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates." 11 U.S.C. § 923. The court typically enters an order designating who is to give and receive notice by mail and identifying the newspapers in which the additional notice is to be published. Fed. R. Bankr. P. 9007, 9008. The Bankruptcy Code permits objections to the petition. 11 U.S.C. § 921(c). Typically, objections concern issues like whether negotiations have been conducted in good faith, whether the state has authorized the municipality to file, and whether the petition was filed in good faith. If an objection to the petition is filed, the court must hold a hearing on the objection. Id. The court may dismiss a petition if it determines that the debtor did not file the petition in good faith or that the petition does not meet the requirements of title 11. Id. If the petition is not dismissed upon an objection, the Bankruptcy Code requires the court to order relief, allowing the case to proceed under chapter 9. 11 U.S.C. § 921(d).	Section 116(c) governs the service of process by publication. The Court has the power to order notice by publication in place of or as a supplement to notice by mail. Additionally, Section 116(c)(2) provides that notice by publication, published at least three (3) times, at least fourteen (14) days prior to a specified hearing, in both newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of the approval hearing pursuant to section 204(b) of this Act with regards to consensual debt relief transactions. Finally, notices under Section 204(a) require supplementation by notice by publication, published at least three (3) times during the fourteen (14) days after the filing of a Section 204(a) application, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth.	(6) the threshold for the special trade debt. Section 303(b) also orders supplemental notice to be given through the chapter 3 case's website, and refers to the application of Section 116(c)(2). Section 116(c) governs the service of process by publication. The Court has the power to order notice by publication in place of or as a supplement to notice by mail. Additionally, Section 116(c)(2) provides that notice by publication, published at least three (3) times, at least fourteen (14) days prior to a specified hearing, in both newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of (1) the eligibility hearing; (2) the hearing on a transfer of all or substantially all assets of the petitioner pursuant to Section 307; and the confirmation hearing pursuant to Section 314. Finally, notices of filing of petition pursuant to Section 301 require publication at least three (3) times during the fourteen (14) days after the filing of petition, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth.

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VII. Automatic Stay 	The automatic stay of section 362 of the Bankruptcy Code is applicable in chapter 9 cases. 11 U.S.C. §§ 362(a), 901(a). The stay operates to stop all collection actions against the debtor and its property upon the filing of the petition. Additional automatic stay provisions are applicable in chapter 9 that prohibit actions against officers and inhabitants of the debtor if the action seeks to enforce a claim against the debtor. 11 U.S.C. § 922(a). Thus, the stay prohibits a creditor from bringing a mandamus action against an officer of a municipality on account of a prepetition debt. It also prohibits a creditor from bringing an action against an inhabitant of the debtor to enforce a lien on or arising out of taxes or assessments owed to the debtor. Section 922(d) of title 11 limits the applicability of the stay. Under that section, a chapter 9 petition does not operate to stay application of pledged special revenues to payment of indebtedness secured by such revenues. Thus, an indenture trustee or other paying agent may apply pledged funds to payments coming due or distribute the pledged funds to bondholders without violating the automatic stay.	The suspension period provided for in Section 201 is analogous to the automatic stay. It affords the eligible obligor a temporary period of time in which it can negotiate with stakeholders without being exposed to legal action arising from contractual remedies included in the affected debt instruments.	Section 304 delimits the extent of the automatic stay in chapter 3 cases. The stay operates from the filing of petition over all affected debt added to the schedule required in Section 302(a)(2). Section 304(a) impedes "the commencement or continuation, including the issuance or employment of process, of a judicial, arbitrative, administrative or other [prepetition] action or proceeding against the petitioner..." It also insulates petitioner from the enforcement of prepetition judgments, the creation, perfection or enforcement of any lien against its property, and the collection and setoff of any prepetition claim. One of the important exceptions to the automatic stay is that it does not operate against "the lawful exercise of police power by any Commonwealth Entity, the United States, or a state … [excluding] the collection of interest or principal on any debt owed to the Commonwealth or GDB." The automatic stay operates until both the case is dismissed and the dismissal is final and unappealable, until the effective date of the confirmed plan, or, with respect to individual property, until it is no longer property of the petitioner. The Court can grant relief from the automatic stay to certain entities if they meet the criteria set out in Section 304(g). If relief is objected to, the affected creditor will have the burden of proving it meets the criteria for granting relief.

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VIII. Adequate Protection 	Section 361 states that when adequate protection is required by Section 362 mentioned earlier, or Sections 363 or 364, it may be provided by any of the following: "(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property; (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or (3) granting such other relief, other than entitling such entity to compensation allowable under section 503 (b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property."11 U.S.C. § 361.	Section 129(a) provides examples of the reasonable means by which an entity's interest in property may be adequately protected. The examples for Chapter 2 petitions are: (1) cash payment or periodic cash payments; and (2) a replacement lien or liens (or future revenues or otherwise). Similarly, Section 129(c) states that adequate protection of an entity's interest in cash collateral of the eligible obligor or petitioner, including revenues, may be provided by a pledge to such entity of future revenues of such eligible obligor or petitioner if: "(1)the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions; (2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and (3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use of cash collateral or revenues to avoid then-current impairment of public functions." An eligible obligor or petitioner "may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner…"	Section 129(a) provides examples of the reasonable means by which an entity's interest in property may be adequately protected. The examples for Chapter 3 petitions are: "(1) cash payment or periodic cash payments and (2) a replacement lien or liens (or future revenues or otherwise); or (3) in connection with a case under chapter 3, administrative claims, in each case, solely to the extent that the suspension period, the automatic stay, the use or transfer of property subject to a lien, or the granting of a lien under this Act results in a decrease in value of such entity's interest in property subject to the lien as of commencement of the suspension period of a chapter 3 case." Similarly, Section 129(c) states that adequate protection of an entity's interest in cash collateral of the eligible obligor or petitioner, including revenues, may be provided by a pledge to such entity of future revenues of such eligible obligor or petitioner if: "(1)the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions; (2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and (3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use

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			of cash collateral or revenues to avoid then-current impairment of public functions." An eligible obligor or petitioner "may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner…"
IX. Proofs of Claim	In a chapter 9 case, the court fixes the time within which proofs of claim or interest may be filed. Fed. R. Bankr. P. 3003(c)(3). Many creditors may not be required to file a proof of claim in a chapter 9 case. For example, a proof of claim is deemed filed if it appears on the list of creditors filed by the debtor, unless the debt is listed as disputed, contingent, or unliquidated. 11 U.S.C. § 925. Thus, a creditor must file a proof of claim if the creditor's claim appears on the list of creditors as disputed, contingent, or unliquidated.	Not Applicable. The debtor has the power to suspend specific obligations which would affect specific creditors. Their inclusion in the suspension notice provided in Section 201(d) would be the most analogous concept.	Section 331 explicitly states "no creditor (affected or unaffected) needs to file a proof of claim to be entitled to payment on its claims." It goes on to say that disputes as to the claims' amounts will be resolved "using the same procedures applicable if there were no case under chapter 3…"
X. Court's Limited Power	Sections 903 and 904 of the Bankruptcy Code are designed to recognize the court's limited power over operations of the debtor.	In general, the Court has very limited powers under Chapter 2. It is basically circumscribed to (1) holding hearings on the entry of approval orders of consensual debt relief transactions; (2) approving the extension of credit to the eligible obligor at any time before the approval order is issued; and (3) enforcing the suspension period, which includes the power to grant	A Court presiding over a chapter 3 case has a vital role in approving certain aspects of the petitioner's actions, but by and large, its powers are limited. Section 110(b) states that the Court may issue any order or conduct any processes necessary or appropriate to carry out the provisions of this Act." Section 110(c) imposes a particular limit on the Court

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	Section 904 limits the power of the bankruptcy court to "interfere with – (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor's use or enjoyment of any income-producing property" unless the debtor consents or the plan so provides. The provision makes it clear that the debtor's day-to-day activities are not subject to court approval and that the debtor may borrow money without court authority. In addition, the court cannot appoint a trustee (except for limited purposes specified in 11 U.S.C. § 926(a)) and cannot convert the case to a liquidation proceeding. However, the court cannot interfere with the operations of the debtor or with the debtor's use of its property and revenues. This is due, at least in part, to the fact that in a chapter 9 case, there is no property of the estate and thus no estate to administer. 11 U.S.C. § 902(1). Moreover, a chapter 9 debtor may employ professionals without court approval, and the only court review of fees is in the context of plan confirmation, when the court determines the reasonableness of the fees. The restrictions imposed by 11 U.S.C. § 904 are necessary to ensure the constitutionality of chapter 9 and to avoid the possibility that the court might substitute its control over the political or governmental affairs or property of the debtor for that of the state and the elected officials of the municipality.	damages, costs, attorneys' fees, and punitive damages for intentional or knowing violations. Additionally, the Court may issue other appropriate remedies, including that the act comprising such violation be declared void or annulled. It may also, pursuant to Section 207(a), condition the use of cash collateral by the eligible obligor in order to adequately protect an entity's interest on it Section 110(b) states that the Court may issue any order or conduct any processes necessary or appropriate to carry out the provisions of this Act. Section 110(c) imposes a particular limit on the Court (and any other Commonwealth court), barring it from "appoint[ing] a custodian with respect to the public sector obligor during the suspension period under chapter 2 of this Act…" The Court does not have the power to modify the ongoing operations of the eligible obligor during the suspension period.	(and any other Commonwealth court), barring it from "appoint[ing] a custodian with respect to the public sector obligor… in or during its case under chapter 3 of this Act under any applicable law or contract." Section 111 delimits the jurisdiction of the Court. It affords the Court jurisdiction "to consider and adjudicate… – all disputes arising under chapter 3" and subsidiary controversies arising from or under a case under chapter 3. The Court also has jurisdiction over interpretation and enforcement of any part of the Act, including the confirmed plan, a transfer order, and a final statement of allocation under chapter 3. The Courts determinations shall be binding on the parties and over any entity asserting claims or rights over affected debt instruments, among other entities. The Court may direct the necessary parties to execute, deliver, or join in the execution or delivery of any contract required to effect a transfer of property pursuant to a confirmed plan or a final statement of allocation under chapter 3, as well as any other act necessary for the consummation of these chapter 3 decrees. See Sections 114 and 115. The Court does not have the power to modify the ongoing operations of the eligible obligor during the suspension period. Section 136 states that the petitioner will remain in control of the operation of its enterprise, continue to be in possession and control of its assets, and shall be able to use and transfer such assets without the Court's approval. This last prerogative of the petitioner is limited by the Court's

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	Similarly, 11 U.S.C. § 903 states that "chapter [9] does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of the municipality, including expenditures for such exercise," with two exceptions – a state law prescribing a method of composition of municipal debt does not bind any non-consenting creditor, nor does any judgment entered under such state law bind a non-consenting creditor.		power to determine a number of details regarding transfers, as governed by Section 307. Lastly, the Court has ample powers of case management under Section 317. It can, *sua sponte*, hold status conferences and issue orders as it finds them appropriate to the speedy and economical resolution of the case. This section allows the Court to bypass the rules of civil procedure in pursuit of this purpose, conditioned on not straying from the parameters of chapter 3. This power includes, but is not limited to: (1) setting deadlines for filing of disclosure statement and plan, or proposed transfers of property; (2) setting deadlines for pleadings, responses, replies, and other matters; and (3) issuing orders fixing the timing, scope, and format of any notice under the Act.
XI. Role of the U.S. trustee/bankruptcy administrator		GDB may act as something similar to a trustee pursuant to Section 133. GDB has standing to "raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief ... under chapter 2…" "All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 … shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or	GDB may act as something similar to a trustee pursuant to Section 133. GDB has standing to "raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief ... under chapter 2…" "All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 … shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or

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	In a chapter 9 case, the role of the U.S. trustee (or the bankruptcy administrator in North Carolina or Alabama) (1) is typically more limited than in chapter 11 cases. Although the U.S. trustee appoints a creditors' committee, the U.S. trustee does not examine the debtor at a meeting of creditors (there is no meeting of creditors), does not have the authority to move for appointment of a trustee or examiner or for conversion of the case, and does not supervise the administration of the case. Further, the U.S. trustee does not monitor the financial operations of the debtor or review the fees of professionals retained in the case.	the public sector obligor's attorneys shall take instruction from GDB. Each action taken by GDB shall be binding on the public sector obligor. The Governor may appoint an emergency manager at any point during the suspension period. Pursuant to Section 135(a), the emergency manager will "exclusively possess and exercise all powers of the governing body and the principal executive officer of the eligible obligor…" The emergency manager must also report to the governing body on the operations of the obligor, the progress of the restructuring process, and may be advised by such body. Tenure is limited to the suspension period and an optional three (3) months after the entry of an approval order. The governor can further extend the period an additional three (3) months, or choose to relieve the emergency manager before the expiration of such periods. An oversight commission is appointed once a recovery program has been approved by the Court. This commission has the duty to monitor compliance with the recovery program. The eligible obligor provides the commission with regular updates of its compliance. If the commission finds, by majority vote, that the eligible obligor has incurred in sustained (meaning at least ninety days) noncompliance with a specific target or some other milestone in the recovery program, it can issue and publish a non-compliance finding for the eligible obligor, the Governor, the Legislative Assembly, and the public, explaining the reasons for such non-compliance. The commission	the public sector obligor's attorneys shall take instruction from GDB. Each action taken by GDB shall be binding on the public sector obligor. The Governor may appoint an emergency manager at any point during the suspension period. Pursuant to Section 135(a), the emergency manager will "exclusively possess and exercise all powers of the governing body and the principal executive officer of the… petitioner…" The emergency manager must also report to the governing body on the operations of the petitioner, the progress of the restructuring process, and may be advised by such body. Tenure is limited to the duration of the case and an optional three (3) months after the effective date of the plan. The governor can further extend the period an additional three (3) months, or choose to relieve the emergency manager before the expiration of such periods.

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		may also make recommendations, which can include the replacement of some or all management or the governing body of the eligible obligor.	
XII. Role of Creditors 	The role of creditors is more limited in chapter 9 than in other cases. There is no first meeting of creditors, and creditors may not propose competing plans. If certain requirements are met, the debtor's plan is binding on dissenting creditors. The chapter 9 debtor has more freedom to operate without court-imposed restrictions. In each chapter 9 case, however, there is a creditors' committee that has powers and duties that are very similar to those of a committee in a chapter 11 case. These powers and duties include selecting and authorizing the employment of one or more attorneys, accountants, or other agents to represent the committee; consulting with the debtor concerning administration of the case; investigating the acts, conduct, assets, liabilities, and financial condition of the debtor; participating in the formulation of a plan; and performing such other services as are in the interest of those represented. 11 U.S.C. §§ 901(a), 1103.	Holders of affected debt instruments are barred from executing available remedies in the debt instruments they hold for the duration of the suspension period. These remedies are defined in Section 205(b) to include any right to setoff, to apply appropriate funds, to seek the appointment of a custodian, to seek to raise rates, and to exercise control over property of the obligor. Chapter 2 provides for the negotiation of consensual debt relief transactions. These transactions entail the amendment, modification, waiver, or exchange to or of the affected debt instruments from their holders. These alterations need to be consented to. The creditors must vote on the transaction, and as one of the conditions for it to be binding on them, it must be approved by creditors representing at least 75% of the amount of debt that participates or votes in a class, as specified in the transaction itself, provided a quorum of creditors representing 50% of the amount of debt in such class. It is important to note that for purposes of calculating these voting percentages, debt held by the Commonwealth is not counted. Any holder who is adversely affected by any action taken pursuant to the Act in general may object to the entry of an approval order in the hearing for such.	Section 318 governs the establishment of creditor committees. The Court must appoint a committee made up of at least five (5) and no more than thirteen (13) of the willing entities holding the largest amount of secured claims and unsecured claims as identified in the schedule of affected debt accompanying petition. The members of this "General Creditors' Committee" must be convened no later than 14 days prior to the eligibility hearing and, when reasonably practicable, represent the range of affected claims. Additional committees can be convened at the request of petitioner (or GDB) if their formation will facilitate a transfer under Section 307. Based on our interpretation, Section 318(d)(2) and (3) apparently prohibit creditors which have or had speculative interests in the decreasing value of Commonwealth debt from serving in any committee. Additionally, Section 320(c) establishes limitations on the holding of Commonwealth-related debt or securities. Section 319 enumerates the powers and competency of creditor committees. The committees have the power to employ law firms and financial specialists. The committees have the power to appear and be heard on a number of issues mentioned in Section 318(b)(1), specifically those relating to the eligibility of petitioner, adequate protection, new borrowing by petitioner, concerning transfers and allocations of

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		Creditors may not bring avoidance actions against any eligible obligor. Only the Commonwealth may bring such action to the benefit of the creditors.	proceeds pursuant to Sections 307 and 308, and in connection to the plan's effect of the committee's constituents. Section 320 clarifies the limitations that a creditor's committee faces. The committees do not have a general right to be heard; their right is confined to the subject matter laid out in Section 319(b)(1).They also do not have any standing in regards to independent or derivative legal action. Additionally, Section 310 prohibits creditors from submitting a proposed plan or from filing a proposed transfer of any of the petitioner's assets. Meanwhile, Section 320(b) denies the committee the power to vote over a proposed plan.
XIII. Intervention/Right of Others to be Heard	When cities or counties file for relief under chapter 9, there may be a great deal of interest in the case from entities wanting to appear and be heard. The Bankruptcy Rules provide that "[t]he Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case." Fed. R. Bankr. P. 2018(c). Furthermore, "[r]epresentatives of the state in which the debtor is located may intervene in a chapter 9 case." Id. In addition, the Bankruptcy Code permits the Securities and Exchange Commission to appear and be heard on any issue and gives parties in interest the right to appear and be	No analogous provision for "parties in interest" (as the term is used in 11 USC chapter 9) to appear or be heard. See Section 102(43). Generally, the only actors are the eligible obligor and the affected creditors. The Governor, through GDB, and GDB in its own capacity, may step into the process, and at some points their participation is required.	No analogous provision for parties in interest to appear or be heard Generally, the only actors are the petitioner and any creditor affected by the plan. The Governor, through GDB, and GDB in its own capacity, may step into the process, and at some points their participation is required. Also, counterparties to a rejected contract may be heard on their objections to rejection and calculation of damages.

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	heard on any issue in a case. 11 U.S.C. §§ 901(a), 1109. Parties in interest include municipal employees, local residents, non-resident owners of real property, special tax payers, securities firms, and local banks.		
XIV. Powers of the Debtor 		The eligible obligor in Chapter 2 retains a wide spectrum of powers with regards to its internal management and the debt negotiation process. However, those faculties can be curtailed by the Executive branch at its discretion. As discussed, the eligible obligor may on its own accord seek authorization to commence a chapter 2 process. It may also unilaterally commence a suspension period through the mere publication of a notice on its website. The creditors, a.k.a. holders of affected debt instruments, have little choice within the scheme of the Act but to engage in debt relief negotiations with the eligible obligor. The eligible obligor may also maintain its control over its daily operations, as provided for in Section 136(a), which includes the power to "operate the enterprise and make all personnel and other business	During the pendency of a Chapter 3 case, the petitioner remains in possession and control of its assets and is empowered to continue managing its operations and making the necessary business determinations, except in the case that an emergency manager is appointed pursuant to Section 135. The Act generally affords the petitioner considerable room for managing its financial assets during the pendency of a chapter 3 case, always towards the end of continuing performance of its public functions. Section 322 allows a petitioner to seek and obtain credit during the pendency of a chapter 3 case, payable as an administrative expense, and at times subject to Court approval. Section 323 allows a petitioner, without notice or hearing, to pay post-petition and pre-petition debts necessary to continue performing its public functions, as well as using cash

	Due to statutory limitations placed upon the power of the court in a municipal debt adjustment proceeding, the court is far less involved in the conduct of a municipal bankruptcy case (and in the operation of the municipal entity) while the debtor's financial affairs are undergoing reorganization. The municipal debtor has broad powers to use its property, raise taxes, and make expenditures as it sees fit. It is also permitted to adjust burdensome non-debt contractual relationships under the power to reject executory contracts and unexpired leases, subject to court approval, and it has the same avoiding powers as other debtors. Municipalities may also reject collective bargaining agreements and retiree benefit plans without going through the usual procedures required in chapter 11 cases. A municipality has authority to borrow money during a chapter 9 case as an administrative expense. 11 U.S.C. §§ 364, 901(a). This ability is important to the survival of a municipality that has exhausted all other resources. A chapter 9 municipality has the same power to obtain credit as it does outside of bankruptcy. The court does not have supervisory authority over the amount of debt the municipality incurs in its operation. The municipality may employ professionals without court approval, and the professional fees incurred are reviewed only within the context of plan confirmation.	determinations during the suspension period… [and to] remain in possession and control of its assets….” Pursuant to Section 207, an eligible obligor may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice.	and other resources for the same end. It also allows the petitioner to lease and property and the revenues derived from this. Section 324 deals with the use of collateralized property by petitioner. Petitioner may use property or cash subject to a lien, pledge or other interest for the benefit of another entity, subject to said entity’s right to schedule a prompt hearing, upon notice, to request adequate protection for said lien, pledge or interest. The Court may condition the use of said property as necessary to adequately protect the affected entity’s interest. Section 324(b) deals with the issue of pledged revenues under which current or operating expenses maybe paid before payment to creditor. In this case, the petitioner is not required to provide adequate protection inasmuch as there is no sufficient revenue to pay creditor after paying for current or operating expenses. A petitioner may assign a contract after assuring cure of any default under such contract, pursuant to Section 325(d) and subject to Section 325(e). A petitioner may also reject, impair, or modify a contract, as allowed for in Section 326. A petitioner may reject a contract after Court approval, notice and hearing, if it’s in its best interests. A contract may not be rejected if its rejection would result in damages exceeding the threshold for special trade debt as defined in Section 102(52). When it comes to collective-bargaining agreements or retirement or post-employment benefit plans, in order for the petitioner to be able to reject them, it must persuade the Court that (1) equity favors rejection, in consideration of Law 66-2014; (2) that absent

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			rejection, petitioner will likely be unable to continue performing its public functions; and (3) that it engaged in a good faith dialogue with the representatives for the employees or retirees and presented the data underlying its request for rejection, and that such efforts were unsuccessful. Pursuant to Section 326(d), a Court may, after notice and hearing, while a collective bargaining agreement remains in effect, authorize the petitioner to implement interim changes in the terms, conditions, wages, benefits or work rules provided for by the agreement. It is important to note that the petitioner remains free to exercise its rights under such agreements or applicable law in order to terminate, modify, amend, or otherwise enforce any provision in said agreements without having to seek the Court's approval.
XV. Dismissal	As previously noted, the court may dismiss a chapter 9 petition, after notice and a hearing, if it concludes the debtor did not file the petition in good faith or if the petition does not meet the requirements of chapter 9. 11 U.S.C. § 921(c). The court may also dismiss the petition for cause, such as for lack of prosecution, unreasonable delay by the debtor that is prejudicial to creditors, failure to propose or confirm a plan within the time fixed by the court, material default by the debtor under a confirmed plan, or termination of a	Dismissal under Chapter 2 could conceivably be obtained under two courses of action. First, Section 120 allows entities to "object or challenge the relief requested under chapter 2…" Section 110 describes the powers of the Court and includes the following language: "No provision of chapter 2 or chapter 3 of this Act providing for the raising of an issue by a party in interest shall be construed to preclude the Court from, *sua sponte*, taking any action or making any	

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	confirmed plan by reason of the occurrence of a condition specified in the plan. 11 U.S.C. § 930.	determination necessary or appropriate to enforce or implement Court orders or rules, *or to prevent an abuse of process*." (emphasis added) I take this to mean that an objection to the commencement of a suspension period may be sustained if the Court deems it an abuse of process, at least. Second, a suspension period may terminate automatically. Section 205(e) states that this will happen if an approval order for a consensual debt relief transaction is denied and not remedied within sixty days (or the term otherwise ordered by the Court; or if no approval application is filed within two hundred and seventy days (270) after the commencement of the suspension period, unless extended.	Section 339 governs dismissal of a chapter 3 case. After notice and hearing, the Court may decide to dismiss for the following reasons: (1) a legislative decree announcing the end of the fiscal emergency period necessary under chapter 3; (2) a judicial determination by a federal or state court that confirms the eligibility of the petitioner to file a petition under the federal Bankruptcy Code; and (3) if the petition is withdrawn pursuant to Section 112, in which case the Court may condition the dismissal "on such terms as are just."
XVI. Election of Chapters 	Chapter 9 debtors do not have options to elect the chapter in which to file for bankruptcy.	A public sector obligor may seek relief under either chapter 2 or chapter 3 of the Act, or both simultaneously or sequentially.	A public sector obligor may seek relief under either chapter 2 or chapter 3 of the Act, or both simultaneously or sequentially.

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XVII. Treatment of Bondholders and Other Lenders	Different types of bonds receive different treatment in municipal bankruptcy cases. General obligation bonds are treated as general debt in the chapter 9 case. The municipality is not required to make payments of either principal or interest on account of such bonds during the case. The obligations created by general obligation bonds are subject to negotiation and possible restructuring under the plan of adjustment. Special revenue bonds, by contrast, will continue to be secured and serviced during the pendency of the chapter 9 case through continuing application and payment of ongoing special revenues. 11 U.S.C. § 928. Holders of special revenue bonds can expect to receive payment on such bonds during the chapter 9 case if special revenues are available. The application of pledged special revenues to indebtedness secured by such revenues is not stayed as long as the pledge is consistent with 11 U.S.C. § 928 [§ 922(d) erroneously refers to § 927 rather than § 928], which ensures that a lien of special revenues is subordinate to the operating expenses of the project or system from which the revenues are derived. 11 U.S.C. § 922(d). Bondholders generally do not have to worry about the threat of preference liability with respect to any prepetition payments on account of bonds or notes, whether special revenue or general obligations. Any transfer of the municipal debtor's property to a noteholder or bondholder on account of a note or bond cannot be avoided as a preference, i.e., as an	There is no specific provision affording dissimilar treatment to Bondholders and other creditors. Chapter 2 provides for creditors to be divided into classes of "substantially similar" debt (Section 202(d)(3)) but makes no mention of how they should be treated with respect to one another. Affected debt instruments held or controlled by Commonwealth entities are not afforded voting power in consensual debt relief transactions.	There is no specific provision affording dissimilar treatment to Bondholders and other creditors.

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	unauthorized payment to a creditor made while the debtor was insolvent. 11 U.S.C. § 926(b).		
XVIII. Plan for Adjustment of Debts 	The Bankruptcy Code provides that the debtor must file a plan. 11 U.S.C. § 941. The plan must be filed with the petition or at such later time as the court fixes. There is no provision in chapter 9 allowing creditors or other parties in interest to file a plan. This limitation is required by the Supreme Court's pronouncements in Ashton, 298 U.S. at 528, and Bekins, 304 U.S. at 51, which interpreted the Tenth Amendment as requiring that a municipality be left in control of its governmental affairs during a chapter 9 case. Neither creditors nor the court may control the affairs of a municipality indirectly through the mechanism of proposing a plan of adjustment of the municipality's debts that would in effect determine the municipality's future tax and spending decisions.	Chapter 2 provides for a consensual relief transaction, to be negotiated between the eligible obligor and its creditors. The content of these transactions is left to the discretion of the parties, but Section 202(a) allows for the "amendment, modification, waiver, or exchange to or of the affected debt instruments from the holders of such instruments." Consensual relief transactions must be approved by the Court and are subject to a class-voting system detailed in Section 202(d) and (e). Intricately connected to these transactions is the recovery program, by which the eligible obligor commits itself to adhere to a financial and operational plan which assures self-sufficiency and burden-sharing among affected stakeholders.	Under §301, only the petitioner or GDB, upon the Governor's request, may propose a debt enforcement plan under chapter 3. Creditors must be separated into different classes (based upon different collateral security, priorities, or rational bases for classifying similar claims separately) for treatment under the plan, §302(2). Plan treatment must be such that every affected creditor receives payments and/or property having a present value of at least the amount the claims in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized under the circumstances. § 315(d) At least one class of affected debt must accept the plan with a majority of all votes cast and with the support of at least two-thirds of affected debt in the class. §§ 312, 315(e). Under the plan, creditors that are not paid in full are entitled to a portion of the corporation's free cash flow for up to "the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan" until they are paid in full. § 315(k).

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XIX. Confirmation Standards 	The standards for plan confirmation in chapter 9 cases are a combination of the statutory requirements of 11 U.S.C. § 943(b) and those portions of 11 U.S.C. § 1129 (the chapter 11 confirmation standards) made applicable by 11 U.S.C. § 901(a). Section 943(b) lists seven general conditions required for confirmation of a plan. The court must confirm a plan if the following conditions are met: the plan complies with the provisions of title 11 made applicable by sections 103(e) and 901; the plan complies with the provisions of chapter 9; all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable; the debtor is not prohibited by law from taking any action necessary to carry out the plan; except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan, each holder of a claim of a kind specified in section 507(a)(1) will receive on account of such claim cash equal to the allowed amount of such claim; any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and the plan is in the best interests of creditors and is feasible. 11 U.S.C. § 943(b).	Section 204(e) sets down the sole criteria by which the Court will consider approval of a proposed consensual debt relief transaction: (1) whether the amendments, modifications, waivers, or exchanges, as the case may be, proposed in such transaction, are consistent with the requirements of chapter 2… and the objectives set forth in section 201(a)…; (2) whether the voting procedure followed in connection with the [transaction], which shall include a reasonable notice and period of time to vote or consent as the circumstances require, was carried out in a manner consistent with chapter 2…. The objectives set forth in Section 201(a) are: (1) to enable an eligible obligor to become financially self-sufficient; (2) to allocate equitably among all stakeholders the burdens of the recovery program; and (3) to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment.	**Section 315 – Sets forth the Standard of Confirmation as follows:** The Court shall confirm a plan only if all the following requirements are met: (a) the plan substantially complies with all applicable provisions of chapter 3 of this Act; (b) the plan separates affected debt into classes based on: (1) differences in the claims' collateral security or priorities; or (2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar; (c) the plan provides the same treatment for each claim of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such claim; (d) the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed; (e) at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted; (f) the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution

	Section 943(b)(1) requires as a condition for confirmation that the plan comply with the provisions of the Bankruptcy Code made applicable by sections 103(e) and 901(a) of the Bankruptcy Code. The most important of these for purposes of confirming a plan are those provisions of 11 U.S.C. § 1129 (i.e., § 1129(a)(2), (a)(3), (a)(6), (a)(8), (a)(10)) that are made Rules by 11 U.S.C. § 901(a). Section 1129(a)(8) requires, as a condition to confirmation, that the plan has been accepted by each class of claims or interests impaired under the plan. Therefore, if the plan proposes treatment for a class of creditors such that the class is impaired (i.e., the creditor's legal, equitable, or contractual rights are altered), then that class's acceptance is required. If the class is not impaired, then acceptance by that class is not required as a condition to confirmation. Under 11 U.S.C. § 1129(a)(10), the court may confirm the plan only if, should any class of claims be impaired under the plan, at least one impaired class has accepted the plan. If only one impaired class of creditors consents to the plan, plan confirmation is still possible under the "cram down" provisions of 11 U.S.C. § 1129(b). Under "cram down," if all other requirements are met except the § 1129(a)(8) requirement that all classes either be unimpaired or have accepted the plan, then the plan is confirmable if it does not discriminate unfairly and is fair and equitable. The requirement that the plan be in the "best interests of creditors" means something different under chapter 9 than under chapter 11. Under chapter 11, a plan is said to be in the "best interest of creditors" if creditors would receive as much under the plan as they would if the debtor were liquidated. 11 U.S.C. § 1129(a)(7)(A)(ii). Obviously, a different		that is not remedied or otherwise justified pursuant to section 128 of this Act; (g) the petitioner shall be able to— (1) make all mandatory payments provided by the plan and (2) perform public functions; (h) confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, unless such reorganization is proposed by the plan, and all other provisions of the plan must be feasible; (i) the plan has been proposed in good faith and not by any means forbidden by law, subject to section 108 of this Act; (j) all administrative expenses accruing prior to the effective date of the plan shall be paid in full according to their terms or on the effective date of the plan, and all noncontingent, undisputed, and matured claims unaffected by the plan in accordance with section 327 of this Act shall be paid in full according to their terms; provided, however, that disputed or contingent claims shall be resolved in the ordinary course and paid as the parties agree or as the plan otherwise provides; (k) each class of claims of affected debt that will not be satisfied in full under the plan absent the additional consideration provided in this subsection shall be entitled to receive annually in arrears its pro rata share of 50% of the petitioner's positive free cash flow, if any, at the end of any fiscal year, after payment of: (1) operating expenses; (2) capital expenditures (including capitalized expenses); (3) taxes, if any; (4) principal, interest, and other payments made in respect of financial indebtedness; (5) reserves; (6) changes in working capital; (7) cash payments of other liabilities; and (8) extraordinary items; in each

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	interpretation is needed in chapter 9 cases because a municipality's assets cannot be liquidated to pay creditors. In the chapter 9 context, the "best interests of creditors" test has generally been interpreted to mean that the plan must be better than other alternatives available to the creditors. See 6 COLLIER ON BANKRUPTCY § 943.03[7] (15th ed. rev. 2005). Generally speaking, the alternative to chapter 9 is dismissal of the case, permitting every creditor to fend for itself. An interpretation of the "best interests of creditors" test to require that the municipality devote all resources available to the repayment of creditors would appear to exceed the standard. The courts generally apply the test to require a reasonable effort by the municipal debtor that is a better alternative for its creditors than dismissal of the case. Id. Parties in interest may object to confirmation, including creditors whose claims are affected by the plan, an organization of employees of the debtor, and other tax payers, as well as the Securities and Exchange Commission. 11 U.S.C. §§ 901(a), 943, 1109, 1128(b).		case, incurred, expensed, and recorded in such fiscal year; such contingent payments to be made by the petitioner, but only to the extent necessary to pay each claim in full, including interest and any fees contractually required, for each of the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan, provided that once any claim is paid in full, its share of future contingent payments shall be ratably distributed to other affected creditors not yet paid in full; (l) the effective date of the plan shall be the first date after confirmation of the plan that the confirmation order is not stayed and the petitioner or GDB files a notice with the Court that it is prepared to begin implementing the plan; (m) with respect to affected secured claims (representing the amount by which a claim for principal, interest, and fees is secured by the value of the collateral security): (1) both: (A) the plan provides that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the petitioner or transferred to another entity, to the extent of the allowed amount of such claims; and (B) each holder of such a claim receives on account of such claim immediate or deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the petitioner's interest in such property, with value being determined by the Court based on the plan's proposed disposition

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			or use of the property, including its expected net revenues or net transfer proceeds if contemplated by the plan; or (2) the plan provides for the transfer of any property that is subject to the liens securing such claims, free and clear of liens, and such liens attach to the net proceeds of such transfer; (n) with respect to unsecured claims for affected debt (including deficiency claims, subject to section 331(d) of this Act, for secured affected debt that are based on a deficiency arising from liens against property having a value of less than the full amounts of the affected debt held by the affected creditor owning such liens), the plan shall be in the best interests of such creditors and shall maximize the amounts distributable to such creditors to the extent practicable, subject to the petitioner's obligations to fulfill its public functions; o) the petitioner shall have proved to the Court that it undertook—before or after the petition was filed—a reasonable program of cost reductions and income enhancements to try to maximize its repayment of affected debt under the plan, subject to the constraints that the petitioner must fulfill its public functions, and that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth, to reduce spending in the Commonwealth, or to reduce the consumption of services provided by the petitioner; and (p) except to the extent agreed to by an affected creditor, the plan does not provide for a materially

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			different and adverse treatment for such claim as compared to the treatment of claims in different classes under the plan having the same priority, unless the petitioner demonstrates a rational basis to permit such disparate treatment.
XX. Discharge 	A municipal debtor receives a discharge in a chapter 9 case after: (1) confirmation of the plan; (2) deposit by the debtor of any consideration to be distributed under the plan with the disbursing agent appointed by the court; and (3) a determination by the court that securities deposited with the disbursing agent will constitute valid legal obligations of the debtor and that any provision made to pay or secure payment of such obligations is valid. 11 U.S.C. § 944(b). Thus, the discharge is conditioned not only upon confirmation, but also upon deposit of the consideration to be distributed under the plan and a court determination of the validity of securities to be issued.	Under the Chapter 2 of the Act, discharge is not available as relief to the petitioner. Instead, section 201(b) provides that: (b) An eligible obligor may seek debt relief from its creditors pursuant to one or more transactions in accordance with chapter 2 of this Act (each a "**consensual debt relief transaction**") if so authorized by either— (1) its governing body, with the approval of GDB; or (2) GDB, at the Governor's request, and on behalf of the eligible obligor, if the eligible obligor has not authorized such action and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth. The relief available under chapter 2, consensual debt relief transaction, consists of any combination of amendments, modifications, waivers, or exchanges (collectively referred to as amendments) to the affected debt instruments, so long as the amendments	Like Chapter 2, it does not provide for a discharge of any creditor's claim. Rather, creditors that are not paid in full are entitled to a portion of the corporation's free cash flow for up to "the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan" until they are paid in full. § 315(k). The contingent payment obligations are intended to allow all creditors to retain claims payable from the corporation's better future. Although Discharge is not expressly stated or defined, section 326 of the Act, Contract Rejection, Impairment and Modification, is similar to a debt discharge. Under Chapter 3, Rejection of Contracts, section 326(a), the petitioner has the power to assign or reject contracts to which it is party if the Court finds it is in the petitioner's best interests. Section 326(b), counterparties to rejected contracts will be left with claims for breach of contract, to be treated under the petitioner's plan. Section 326(d), collective

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	There are two exceptions to the discharge in chapter 9 cases. The first is for any debt excepted from discharge by the plan or order confirming the plan. The second is for a debt owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case. 11 U.S.C. § 944(c). At any time within 180 days after entry of the confirmation order, the court may, after notice and a hearing, revoke the order of confirmation if the order was procured by fraud. 11 U.S.C. §§ 901(a), 1144.	are coupled with the public corporation's commitment to be bound by the recovery program. Amendments may include various features such as interest rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments. Furthermore, Section 115 states that upon entry of an approval order in respect of a consensual debt relief "the Court shall retain jurisdiction, and thereafter no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, no trustee, no collateral agent, no indenture trustee, no fiscal agent, an no bank that receives or holds funds from such an eligible obligor related to the affected debt instruments shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the Court and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order."	bargaining agreements are subject to rejection or modification, but only where the Court determines that absent rejection or modification the petitioner would likely become unable to perform public functions, which determination is to be made only, based on U.S. Supreme Court precedent, after the data underlying the request for rejection have been shared with union representatives and reasonable efforts to negotiate a voluntary modification have failed. Once the court issues a confirmation order, a transfer order, or a final statement of allocation, section 115 (c) (3) states that "all creditors affected by the plan or the final statement of allocation shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt…"
XXI. Plan of Adjustment Requirements	**i.** Confirmation Requirements (§ 943)	In order to enter into a consensual debt relief transaction with a creditor, the eligible obligor must prepare and commit itself to a recovery plan. This recovery plan must meet a number of requirements, which can be found in Section 202. Firstly, the governing body of the eligible obligor, or GDB, must commit itself to the recovery plan. In any case, GDB	Section 310 states that if the GDB approved it, the petitioner may file a proposed plan or proposed transfer of all the petitioner's assets. Notwithstanding, he GDB may also file said plan or transfer of assets with the approval of the Governor. The GDB is the only entity that may file a proposed plan or file a proposed transfer of the petitioner's assets.

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	A chapter 9 plan of adjustment is simply the document that provides for the treatment of the various classes of creditors' claims against the municipal debtor. Similar to a chapter 11 debtor, a chapter 9 debtor submits a disclosure statement that describes the plan and related matters, and the disclosure statement is sent with a ballot to each impaired creditor with an opportunity to vote on the plan. Similar to a chapter 11 plan of reorganization, in order to be confirmed, the plan of adjustment must be accepted by a majority of creditors and two thirds in amount of claims within each class of claims that is impaired under the plan. In addition to the voting requirements, the Bankruptcy Code contains several other requirements that a plan of adjustment must meet to be confirmed by the bankruptcy court. The requirements include the following: (i) the chapter 9 debtor must not be prohibited by law from taking any action necessary to carry out the plan; (ii) all post-petition administrative expense claims must be paid in full; (iii) the chapter 9 debtor must have obtained all of the regulatory and electoral approvals necessary to consummate the plan; and (iv) the plan must be feasible. Importantly, the plan of adjustment must also be in the best interest of creditors. Since a chapter 9 debtor is ineligible to be a debtor in a chapter 7 liquidation, however, this test has been interpreted to mean that a plan of adjustment need only be "better than alternatives," such as the dismissal of the chapter 9 case.	must approve it in writing. Section 202(b)(1) provides what should be the guiding purpose of the program: "[the recovery program] allows the eligible obligor to become financially self-sufficient based on such financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders" The recovery program may provide for interim milestones and performance targets in order to: (1) improve operating margins; (2) increase operating revenue; (3) reduce operating expenses; (4) transfer or otherwise dispose of or transfer existing operating assets; (5) acquire new operating assets; and (6) close down or restructure existing operations or functions. This section not only sets out the requirements of a recovery program, but also the rules regarding voting by creditors.	Section 311 provides as a requirement for plan confirmation that the creditors' committee and all affected creditors receive a written disclosure statement approved by the court at least forty-five (45) days prior to the hearing on confirmation. The section states that the disclosure statement must include: (a) the material facts demonstrating the petitioner's reasons for contending the plan fairly uses the value of the petitioner's assets or operating revenues to maximize repayment of claims consistent with the performance of public functions or otherwise fostering a growing economy that will generate increasing revenues and enable greater claim repayment. (b) the treatment of each class of the petitioner's affected creditors under the plan and any material financial information reasonably necessary for such creditors to understand their future recoveries (c) other relevant information For an extensive list of additional plan requirements, please refer to section 315 under Confirmation Standards above.

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	If an impaired class of creditors votes against a chapter 9 debtor's plan of adjustment, the bankruptcy court can still confirm the plan through a "cram down" of the dissenting class (or classes) if the plan meets all of the other confirmation requirements set forth in section 943 of the Bankruptcy Code. In order to accomplish such a cram down, the debtor must show that at least one impaired class has accepted the plan and that the plan is fair and equitable and does not discriminate unfairly among creditors. In chapter 11, the fair and equitable requirement, often referred to as the "absolute priority rule," requires that the debtor establish that no junior class of creditors is receiving any distribution under the plan of reorganization on account of its claims unless all senior classes of claims are paid in full. In chapter 9, however, a plan of adjustment is considered "fair and equitable" if the amount to be received by the dissenting class is "all they can reasonably expect to receive under the circumstances." If a plan of adjustment is not approved, the bankruptcy court may dismiss the chapter 9 case, thereby stripping the municipality of the protections of the Bankruptcy Code. A bankruptcy court may also dismiss a chapter 9 case for a variety of other reasons, such as the failure of a debtor to prosecute the case, unreasonable delay, the non-acceptance of a plan by creditors or a material default or termination of a plan.		
XXII. Collective Bargaining Agreements and	As stated above, a petitioner may reject a collective bargaining agreement under certain conditions	Chapter 2 does not have specific provisions the treatment of collective bargaining agreements.	A petitioner may reject a collective bargaining agreement, retirement, or post-petition employment

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Retirement or Post-Petition Employment Benefit Plans 	pursuant to section 365 of the Bankruptcy Code, 11 U.S.C. § 365.		benefit plan if it is in the petitioner's best interest. Section 326 states that said rejection is treated as a material breach. The rejection may only take place the petitioner meets these conditions: 1. "the equities balance in favor of the rejection of such an agreement or plan…; 2. Absent rejection, the petitioner will likely become unable to perform public functions; and 3. the petitioner shared with the representative(s) for employees and retirees, as applicable, the data underlying its request to reject the agreement or plan and conferred, at reasonable times, in good faith with the representative(s) to reach voluntary modifications to such agreements or plans, and such efforts did not succeed." Prior to the rejection, the Court, after notice and a hearing, may allow the petitioner to make interim changes to the "terms, conditions, wages, benefits, or work rules" of a collective bargaining agreement.

RULES OF CIVIL PROCEDURE OF 2009

CHAPTER I

SCOPE OF THESE RULES

RULE 1. SCOPE OF THESE RULES

These rules shall govern the procedure in all suits of a civil nature brought before the General Court of Justice. They shall be construed so as to secure the just, speedy and inexpensive determination of every action.

CHAPTER II

COMMENCEMENT OF ACTION

RULE 2. HOW TO INITIATE

An action is commenced by filing a complaint with the court.

RULE 3. JURISDICTION; VENUE AND REMOVAL

Rule 3.1. Jurisdiction

(a) The General Court of Justice shall have jurisdiction:

(1) on any matter, case or controversy arising within the territorial demarcation of the Commonwealth of Puerto Rico, and

(2) on domiciled and non-domiciled persons that have any contact which makes the jurisdiction compatible with the applicable constitutional provisions.

(b) The court shall have the power to hear voluntary jurisdiction procedures. A voluntary jurisdiction action can be filed in court in order to record and perpetuate an event that is not subject to a judicial controversy in that moment and that cannot result in prejudice to a certain and determined person.

Rule 3.2. Venue

Every action shall be presented in the appropriate part as provided by law and these rules, but no case shall be dismissed by reason of being presented in the wrong venue.

Every action could be handled in the venue in which it is presented by agreement of the parties and substantiated consent from the judge presiding the part in that moment. Otherwise, it will be transferred to the corresponding part by order of the judge.

Rule 3.3. Actions involving real property

Actions involving the title to real property or any right or interest in such property shall be filed in the part corresponding to that in which the subject of the action, or part thereof.

Rule 3.4. Actions to be tried according to the place of origin of the cause

Actions against the Commonwealth of Puerto Rico and actions to recover damages under any legal precept, or to obtain compensation from an insurance company, based on an insurance policy contract, shall be filed in the part corresponding to that in which the cause of action or any part thereof originated.

Rule 3.5. Actions to be tried according to residence of parties

In all other cases, action shall be filed in the part of the court corresponding to the established place of residence of any or all defendants, except for actions involving claims for wages and child support, which shall be processed in the part corresponding the plaintiffs place of residence. If none of the defendants reside in Puerto Rico, or if the plaintiff does not know where they live, action shall be filed in any part of the Court of First Instance. In the case of businessmen, partnerships, corporations and associations with offices or agents in different places, action may be brought against them in the part of the court in which their headquarters, main office or agent is located, or in the place in which they incurred obligations.

Rule 3.6. Removal of Actions

(a) When an action has been filed in an inappropriate part, if the defendant wishes to challenge said part jurisdiction, a motion to have the action removed to the proper part of the court shall be filed within a term of thirty (30) days from the date of notice of the suit and service of process. The motion for removal shall be duly sworn unless the facts on which the referred motion is grounded are clearly stated from the face of the complaint or from the record in the case. If no written opposition to the motion for removal is filed within ten (10) days following the service of notice of said motion the case shall be removed to the proper part of the court.

The filing of any motion or of a responsive pleading within the aforesaid thirty (30) day period shall not be considered a waiver of the right to petition for removal.

(b) The court may order an action removed from the part of the court where it is being heard to another part in the interests of justice or for the witnesses' convenience.

RULE 4. THE SUMMONS

Rule 4.1. Issuance

Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or his attorney. Upon request of the plaintiff, the clerk shall issue separate or additional summons against any defendants.

Rule 4.2. Form

The summons shall be signed by the Clerk and bear the name and seal of the Court, specifying the Part, state the names of the parties, subject to the provisions of Rule 8.1. It shall be directed to the defendant, state the name, mailing address, telephone number, fax number, email address, and identification number of the plaintiff's attorney, if any, before the Supreme Court of Puerto Rico or of the plaintiff if he/she does not have an attorney, as well as the term within which these rules require the defendant to appear before the Court. It shall also notify the defendant that a failure to appear shall result in a default judgment against him/her, for the relief demanded in the complaint, or any other, as deemed by the Court in the exercise of its sound discretion.

Rule 4.3. By Whom Served; Term to Serve

(a) Service of process shall be made by a marshal or by any person not less than eighteen (18) years of age who can read and write, who is not a party or his attorney or a relative within the fourth degree of consanguinity or second of affinity and who has no interest in the action.

(b) When, under Rule 3.1 or other provisions of law, the Court has jurisdiction to hear a claim against a defendant who is not in Puerto Rico, the summons shall be served in one of the following ways:

(1) by personal delivery in the manner prescribed in subsection (a) of this rule;

(2) in the manner prescribed by law in the courts of general jurisdiction where the summons will take place;

(3) By letter of request to the foreign country where the defendant is;

(4) by public notice as provided in Rule 4,.6;

(5) as ordered by the court.

(c) The summons shall be served within a term of one hundred and twenty (120) days after the complaint is filed or after the date of issue of the service of summons by publication. The Clerk shall issue the summons on the same day in which the complaint is filed. Should the Clerk fail to issue the summons on the same date, the Court shall grant an additional term for serving the summons, which shall be equal to the number of days the issue is delayed, once the plaintiff files a petition for extension on a timely manner. If the summons is not served within such term, the Court shall dismiss and shelve the action without prejudice. A subsequent dismissal and shelving due to noncompliance with the term provided herein shall have the effect of adjudication on the merits

Rule 4.4. Personal Service

The summons and the complaint shall be served jointly. When delivering a copy of the complaint and the summons, either by physical delivery to the defendant or by making them accessible in their immediate presence, the defendant shall forward the necessary copies to the person who performs the processing. Said person, when delivering the copy of the summons, shall sign the back of same, stating the date and the location of the delivery, and the name of the person to whom same was delivered. The processing shall be performed as follows:

(a) Upon a person of legal age, by delivering a copy of the summons and of the complaint to him personally or to an agent authorized by him or appointed by law to receive service of process.

(b) Upon a person under fourteen (14) years of age, by delivering a copy of the summons and of the complaint to his father or mother with patria potestas or to a guardian, in case they are outside Puerto Rico, service shall be made, instead, upon any of the persons having the care of the minor or upon the person with whom the minor lives. In case the father, mother or guardian lives in Puerto Rico but the minor does not live with him or her, any of the persons named above shall also be served with process.

Upon a minor fourteen (14) years or older, by delivering a copy of the summons and of the complaint to him personally and to his father or mother with patria potestas or to his guardian. In case the father, mother or guardian are outside Puerto Rico, any of the persons having the care of the minor or the person with whom he lives shall be served with process in their stead.

(c) Upon a person declared incompetent by a court and for whom a guardian has been appointed, by delivering a copy of the summons and of the complaint to said person and to his guardian. In the case of a person not declared incompetent by a court but confined in an institution for the treatment of mental illness, by delivering a copy of the summons and of the complaint to

said person and to the director of the institution. In all other cases where the plaintiff, his attorney or the person making service may have reasonable grounds to believe that the person upon whom service is to be made is mentally incompetent, he shall notify the court so that it may proceed pursuant to Rule 15.2 (b).

(d) Upon a person confined in a correctional institution, by delivering a copy of the summons and of the complaint personally to him and to the director of the institution.

(e) Upon a corporation, company, partnership, association or any other artificial person, by delivering a copy of the summons and of the complaint to an officer, managing or general agent, or to any other agent authorized by appointment or designated by law to receive service of process.

(f) Upon the Commonwealth of Puerto Rico, by delivering a copy of the summons and of the complaint to the Secretary of Justice or to a person designated by him.

(g) Upon an officer or agency of the Commonwealth of Puerto Rico other than a public corporation by delivering a copy of the summons and of the complaint to said officer or to the chief executive of said agency. Furthermore, it shall be an indispensable requirement that in all suits filed against an officer or agency of the Commonwealth of Puerto Rico other than a public corporation, the plaintiff shall deliver a copy of the summons and of the complaint to the Secretary of Justice or to the person designated by him. If the agency is a public corporation, copies shall be delivered pursuant to the provisions in Rule 4.4(e).

(h) Upon a municipal corporation or agency thereof with standing to sue and be sued, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or to a person designated by him.

Rule 4.5. Waiving Personal Service of Summons; Duty of the Defendant to Avoid the Expenses of Serving the Summons

(a) A person of legal age, corporation, company, partnership, association or any other legal person notified that a claim has been raised against him has the duty to avoid the expenses for the processing of a summons. A defendant who waivers a summons does not waiver raising the defense of lack of standing, or requesting the transfer of the case to a court with jurisdiction.

(b) The claimant may notify the defendant that a claim has been raised against him and, in said notification, request that the defendant waiver the summons. The notification:

(1) Must be in writing and addressed to the defendant, if it is an individual, or to an official, administrative manager or general agent, or to any other agent authorized to receive summonses by means of appointment or legal designation, in the case of a corporation, company, partnership, association, or any other legal person.

(2) Must be sent by certified mail with return receipt requested, or by other reliable means that confirm the receipt of the document.

(3) Must be accompanied by a copy of the claim and must identify the court at which it was filed.

(4) Must inform the defendant of the consequences entailed by compliance or non compliance with the request.

(5) Notify the defendant that, if he/she waives the summons, he/she shall sign the waiver request stating that such waiver was voluntary and not the result of coercion, and return it within a term of twenty (20) days from the date such request was sent, or thirty (30) days if the defendant is outside of Puerto Rico.

(6) Must provide the defendant with an additional copy of the request, as well as a self-addressed envelope.

If the defendant does not fill out the waiver request, the court shall impose upon same the payment of the expenses incurred in the processing of the summons. However, the court shall not impose the payment of such expenses if the defendant is able to show just cause for not having filled out the waiver request.

(c) A defendant who returns a waiver of summons within the term established in paragraph (5) above shall serve an answer to the complaint within thirty (30) days after the date on which the waiver request was returned.

(d) The claimant shall request for a summons waiver in court and the action should proceed as if the summons and the complaint had been served at the time of the acceptance of the waiver, and no evidence may be required from the service of summons.

(e) The expenses to be paid by the defendant that does not comply with the request for the summons waiver shall be those incurred by the claimant for

the processing of the summons, in addition to the expenses incurred in attorney's fees for the preparation of the motion requesting payment of the expenses for the summons.

(f) The request for waiver of summons provided in subsections (a) through (e) above shall not be used to summon the Commonwealth of Puerto Rico, its agencies, corporations, instrumentalities, municipalities or public officials in their official or personal character, or minors or those defined as incompetent. In all of these cases they will be summoned as provided in Rule 4.4.

Rule 4.6. Service by edicts and publication thereof

(a) The court shall issue an order providing for a summons by publication when the person to be served is outside of Puerto Rico or if in Puerto Rico, cannot be located although pertinent attempts have been made to locate him/her, or when the person goes into hiding to avoid being served, or if it is a foreign corporation with no resident agent, and it is proved to the satisfaction of the court through an affidavit stating the steps taken, and said statement or sworn complaint filed states that justifies the granting of some relief against the person to be served or that said person is the proper party in the suit action. The return of process, unexecuted, shall not be a prerequisite for an order for service by publication.

The order shall provide that the summons shall be published only once in a newspaper of general circulation in Puerto Rico. The order shall also provide that, within the ten (10) days following the publication of the summons, the defendant shall be sent a copy of the summons and of the complaint filed, by certified mail, with acknowledgment of receipt, or through any other mail delivery service with acknowledgment of receipt, provided said entity has no ties with the defendant nor any interest in the suit, to his/her last known address, unless a sworn statement is made justifying that in spite of the steps taken, which shall be stated, it has been impossible to find any known address of the defendant, in which case the court will [excuse] compliance of this provision.

(b) The summons shall contain the following information:

(1) Title-- Service by Edict

(2) Part of the Court of First Instance

(3) Case number

(4) Plaintiff's name

(5) Name of defendant to be served

(6) Type of action

(7) Name, address and telephone number of plaintiff's attorney

(8) Name of person issuing the summons through publication

(9) Date of issue

(10) Term within which the person so served shall answer the complaint, as provided in Rule 10.1, and a warning that if he/she fails to answer the complaint by filing the original of the answer with the corresponding court, with a copy to plaintiff, the contempt shall be entered and judgment shall be rendered granting the remedy sought without further summons or hearing. The summons shall identify in ten (10)-point bold black letters, every first mention of a natural and/or juridical person who is summoned thereby.

If the complaint is amended at any time before the appearance of the defendant summoned by publication, said amended complaint shall be served on him/her in the manner provided by the applicable rule on service.

(c) In the case of defendants who are away from Puerto Rico, the plaintiff may substitute personal delivery of copies of the complaint and the summons on the defendant, for summons by publication. Service of summons in this case shall be made pursuant to Rule 4.3.

Rule 4.7. Proof of Service

The person effecting service shall make proof thereof to the Court within the term during which the person served must respond to the process. If service is made by a marshal, proof may be made by executing a certificate of service to such effect; and if served by a nonofficial person, proof of service must be made by the server's affidavit. If service is made by publication, the same shall be proved by the newspaper's manager or authorized agent's affidavit, together with a copy of the published notice and a writ by the attorney stating that a copy of the summons and the complaint were mailed. In cases where service is made pursuant to Rules 4.3(b)(2) and (5), it shall be proved by an affidavit attesting to compliance with all the established requirements, or by Court order. In case of the situation presented in Rule 4.6, the defendant's return receipt shall be presented. In cases covered under Rule 4.6, the defendant shall file his/her acknowledgment of receipt. Failure to make proof of service shall not affect the

validity of the service. The sworn acceptance or waiver of the defendant, or his/her appearance, shall render said proof unnecessary.

Rule 4.8. Amendment

At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

CHAPTER III

PLEADINGS AND MOTIONS

RULE 5. PLEADINGS ALLOWED

Rule 5.1. Pleadings

The pleadings allowed are a complaint and an answer; a counterclaim and a reply; a cross-claim and an answer; a third-party complaint and a third-party answer.

No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Rule 5.2. Action by stipulation of facts

When there is a controversy that may give rise to a suit, the parties need not file pleadings, but rather may file with the court a stipulation of facts together with a sworn statement showing that there exists a real and effective controversy between the parties and that the stipulation is filed in good faith so that the court may determine the rights of the parties. If the court determines that a controversy exists, the proceedings shall be governed by these rules.

RULE 6. GENERAL RULES OF PLEADING

Rule 6.1. Claims for relief

A pleading which sets forth a claim for relief, whether a complaint, counterclaim, cross-claim or third-party complaint, shall contain:

(1) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(2) a prayer for the relief to which he deems himself entitled.

Relief in the alternative or of several different types may be demanded.

Rule 6.2. Defenses; form of denials

(a) A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies, along with the relation of demonstrative facts that assist such defenses.

(b) In case that the party that presents a responsive allegation does not totally or partially comply with the requirements imposed in subsection (a) of this rule, the court, motu proprio or by request of a party, may issue an order to assure he meets the requirements of said subsection.

(c) If the party does not have the knowledge or sufficient information to form an opinion regarding the veracity of some of the exposed averments, for being facts that cannot be verified during the term granted to answer, it shall be stated so. The party that proceeds this way is compelled to investigate the veracity or falsehood of the denied averment for lack of information and knowledge, and to amend his claim during the term set by the court in the initial conference or, on or before the date set for the hearing in advance to trial. If it is not possible for the respondent party to verify the denied averments, after the use of the methods of discovery of evidence and other reasonable proceedings, he should amend his claim to deny it. If the claim is not amended to admit or deny the denied averments for lack of information and knowledge, these shall be deemed admitted.

(d) Negations will contest the substance of the corresponding averments and will affirmatively express the version of the facts denied by the party that presents the responsive claim. When the party who presents a responsive claim tries to only deny a part of an averment or a condition of an averment, he will specify that part which is true and material, and will deny the rest. A party may specifically deny each one of the averments or paragraphs of the preceding pleading, or he may make a general denial of all the averments or paragraphs of said pleading, except for the averments or paragraphs he expressly admits; but if the party intends to deny, in good faith, all the averments of the preceding pleading he may do so by general denial subject to what has been set forth in Rule 9.

Rule 6.3. Affirmative Defenses

In responding to a pleading, the following defenses shall be affirmatively stated: (a) settlement, (b) accord and satisfaction, (c) arbitration and award, (d) assumption of risk, (e) negligence, (f) discharge in bankruptcy, (g) duress, (i)[sic] failure of consideration, (j) fraud, (k) illegality, (l) lack of diligence, (m) license, (n) payment, (o) release, (p) *res judicata*, (q) acquisitive or extinctive

prescription, (r) waiver, and any other matter constituting an avoidance or affirmative defense. These defenses shall be clear, direct, and concise when responding to a pleading or they shall be deemed as waived, unless the party becomes aware of the existence of the same during discovery, in which case, an amendment to the pertinent pleading shall be made.

When a party has mistakenly designated a defense as a counterclaim, or a counterclaim as a defense, the court, if justice so requires and on the terms it deems appropriate, shall treat the pleading as if there had been a proper designation.

Rule 6.4. Effect of failure to deny

Averments contained in any pleading to which a responsive pleading is required, other than those referring to the amount of damages, shall be deemed admitted when not denied in the responsive pleading.

Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or explained.

Rule 6.5. Pleading to be concise and direct; inconsistency

(a) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleadings or motions are required. All pleadings shall be interpreted with the purpose of doing justice.

(b) Subject to the obligations set forth in Rule 9, a party may also state as many separate claims or defenses as he has regardless of their inconsistency.

Rule 6.6. Rules on extension of time

Extension of time shall only be granted in the existence of a just cause with duly sustained concrete explanations. Any request for an extension of time should be submitted before the deadline for which an extension is requested and should be done in compliance with Rule 68.2. The term of the extension shall begin to run the day after the expiration period for which an extension is requested.

RULE 7. PLEADING SPECIAL MATTERS

Rule 7.1. Capacity

It is not necessary to aver the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of an artificial person that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued, or the authority of a party to sue and be sued in a representative capacity, he

shall do so by specific negative averment which shall include such particulars as are peculiarly within his knowledge.

Rule 7.2. Fraud, mistake or condition of the mind

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated in detail. Malice, intent, knowledge, and any other attitude or condition of the mind of a person may be averred in general terms.

Rule 7.3. Time and place

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material nature.

Rule 7.4. Special damages

When special damages are claimed, the nature of the different items shall be specifically stated.

Rule 7.5. Description of real property

A pleading claiming a right over real property shall describe the same so accurately as to make its identification possible.

RULE 8. FORM OF PLEADINGS AND MOTIONS

Rule 8.1. Caption

Every pleading shall have a caption which sets forth the name of the court, specifying the part thereof, the title of the action, the file number and its designation. In the complaint, the title of the action shall include the names of all the parties, but in the other pleadings it shall be sufficient to state the name of the first litigant of each party with a reference indicating the existence of other parties. In voluntary jurisdiction proceedings the complete name of the claimant should be included over the phrase *Ex parte.*

Rule 8.2. Paragraphs; separate statements

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited, as far as practicable, to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction, or occurrence, and each defense other than denials, shall be stated in a separate

claim or defense whenever a separation facilitates the clear presentation of the matters set forth.

Rule 8.3. Adoption by reference and exhibits

Any statement in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or motion. A copy of any written document which is an exhibit to a pleading will be considered a part thereof for all purposes.

Rule 8.4. Motions

An application to the court for an order shall be made by motion which, unless made during a hearing or trial, shall be made in writing, setting forth with particularity the grounds and arguments on which it is based and the relief or order sought. It shall also be accompanied by any document or affidavit necessary to decide the same.

Any party opposing a motion shall file its opposition within twenty (20) days after service of the motion. Said opposition shall be accompanied by any document or affidavit necessary to decide the same. If no opposition is filed within said period of twenty (20) days, the motion shall be taken to be submitted.

Motions shall be taken under advisement without a hearing unless the court motu proprio or at the request of a party decides to set a hearing therefor at its discretion. This rule shall not apply to those motions that either as provided by law or by these rules require that a hearing be held.

Rule 8.5. Writings to judicial file

The parties may address any matter appearing in the record relating to judicial proceedings in relation to which, at that time or procedural stage did not required attention of the judge by a writing titles or directed "TO JUDICIAL FILE".

Same treatment should be given to such writings, unless after integrated in the record they do not rise to the consideration of the judge. In any subsequent stage of the proceeding and adjudication, the court may become aware of its content and date of filing.

Rule 8.7. Language

Pleadings, requests, and motions shall be written in Spanish or English. Pleadings that must be signed by a party or another person who does not speak

Spanish or English may be drawn in said party or person's native language, as long as they are accompanied by the necessary copies in Spanish or English. It shall not be necessary or mandatory to translate documents written in English. However, in such cases in which the service of justice so warrants, or when the translation of the documents is necessary for the fair adjudication of the case, or in the case any of the parties so requests, the Court shall order the translation of all pleadings, motions, or documents requested.

Rule 8.8. Form of writings

The rules applicable to captions, signatures and other matters related to the form of the pleading apply to all motions and other papers.

RULE 9. LEGAL REPRESENTATION

Rule 9.1. Signature and Information of Pleadings

When a party to a complaint is represented by an attorney, every pleading shall be signed by at least one attorney of record, who shall state his/her name, license number issued by the Supreme Court of Puerto Rico, telephone and fax numbers, mailing address, and email address, as these appear in the Attorney Registration of the Supreme Court of Puerto Rico. Moreover, the first pleading submitted by the attorney shall include the street and mailing addresses and the telephone number of the party he/she is representing. When a natural person is a party to the complaint and is not represented by an attorney, he/she shall sign his/her pleading and state his/her telephone and fax numbers, mailing address, and email address, if any.

The attorney or the party shall immediately notify the court, by a motion under the title of the case, any change in phone number, fax number, and mailing address or e-mail address.

Except when it is specifically requires by a legal provision, it will not be necessary to swear any document or include an affidavit. The signature of the attorney or the party is equivalent to certifying that he is able and available to comply with the statements and orders of the court, that he has read the document and that, according to his best knowledge, information and belief, formed after a reasonable investigation, said document is well founded in the facts and supported by the applicable law, and that it has not been presented with the purpose of causing injustice, delay or oppression or increasing litigation cost.

If a document is signed in violation of this rule the court, by motion of a party or motu proprio, will impose the person who signed it, the represented party or both, any sanction pursuant to Rule 9.3, or can include and order to pay the other party or parties a reasonable amount for expenses incurred in relation to the presentation of the document, including a reasonable amount for attorney fees.

If it is determined that a document has been presents with false information, simulated, defamatory or improper or uses offensive or profane language, the court will impose any sanction pursuant to Rule 9.3.

Rule 9.2. Legal Representation

Any attorney who assumes legal representation of a party to a proceeding pending in the Court shall submit a motion to such effect, which shall include his/her license number issued by the Supreme Court of Puerto Rico, telephone and fax numbers, mailing address, and email address.

When an attorney who has appeared in court in representation of a client requests to waive such representation, he shall present a motion in writing to that effect. The attorney will present the reasons why he should be allowed to waive representation and shall inform the phone number, postal address of whom he represents. In addition, he must report that he has informed the resignation to his client and that he has complied with the requirements of the Code of Professional Ethics. The court shall have the power to reject the waiver requested in exceptional cases where it believes that the rights of the party may be seriously injured or that the proceedings might be overly delayed.

Rule 9.3. Conduct

The appearance of an attorney in any hearing, conference, or proceeding without being duly prepared may be considered as a conduct constitutive of obstruction to the sound administration of justice. The Court, in the exercise of its inherent power to oversee the conduct of attorneys that postulate before it, may, *motu proprio* or by request of a party, impose penalty or other sanctions, or disqualify an attorney that incurs conduct that is constitutive of obstruction to the sound administration of justice, or who is in dereliction of his/her duties before the Court, his/her clients or his/her fellow attorneys.

Rule 9.4. Self-representation

Natural persons in ordinary civil cases may represent themselves. People who represent themselves shall comply with the following requirements:

(a) the person is not represented by an attorney;

(b) the decision to represent themselves is intelligent and voluntary, and with full knowledge of cause and that the person will be treated as any other party represented by an attorney;

(c) that the person can represent himself adequately, according to the complexity of the controversy of the dispute;

(d) that the person has the minimum knowledge necessary to adequately defend their interests, comply with procedural rules and invoke the applicable substantive law;

(e) That self-representation will not cause or contribute to undue delay or interruption of the procedures which will not hinder proper administration of justice and jeopardize the dignity of the court, the parties or their attorneys.

The court shall make sure that the person complies with these requirements from its initial appearance and during the process. Not complying with any of these requirements will be just cause to suspend his self-representation. When the court suspends the self-representation of a person, it will order that in certain period he shall appear represented by an attorney.

If during the process a party wishes to represent himself, he should request the court's authorization, but also he should comply with the foregoing subsections (a) through (e), he should satisfy the following requirements:

(1) that the person has requested to represent himself in a timely manner, and

(2) that the person has expressly and unequivocally stated the purpose and interest in starting with his self-representation.

A person who assumes self-representation shall be subject to the same sanctions provided in Rule 9.3 for attorneys, as well as to the procedural consequences that these rules provide for parties represented by attorneys. The Court is not required to enlighten the self-represented person about laws or rules, or to appoint attorneys to advise him/her during the proceedings, or to question the reasons why such person has opted for self-representation, except for times in which it deems it convenient to achieve the sound administration of justice.

RULE 10. DEFENSES AND OBJECTIONS

Rule 10.1. When presented

A defendant in or outside of Puerto Rico shall file his/her answer within 0thirty (30) days after service of the summons and complaint upon him/her or, should the summons be served pursuant to the provisions of Rule 4.6, after the publication of the summons. A party served with a pleading stating a cross-claim against him/her shall file a copy of his/her answer thereto within ten (10) days after service upon the party. The plaintiff shall file his/her reply to a counterclaim, thus denominated in the reply, within ten (10) days after service of the answer. When the Commonwealth of Puerto Rico, its officials, or any of its instrumentalities, other than public corporations, and the municipalities of Puerto Rico are parties to a complaint, any party shall file its answer to such complaint, its answer to a crossclaim against it, or its reply to a counterclaim,

within an non-extendable term of sixty (60) days after service of the summons and complaint.

Service of a motion allowed under this rule or under Rule 36, alters the above prescribed terms as follows, unless a different term is fixed by order of court: (1) if the court denies the motion or postpones its decision until the trial is held on its merits, the corresponding pleading shall be served within ten (10) days after notice of the court order; (2) if the court grants a motion for a more definite statement, a copy of the reply brief shall be served within ten (10) days after the service of the more definite statement.

Rule 10.2. How presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim or third-party complaint, shall be asserted in the responsive pleading thereto, if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; (6) failure to join an indispensable party.

No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5), matters outside the pleading being attacked are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 36 until its final disposition, and all parties shall be given reasonable opportunity to present all material pertinent to such motion under said rule.

Rule 10.3. Motions for judgment on the pleadings

After all pleadings have been presented, but within such time as not to delay the trial, any party may move for judgment on the pleadings. If on such a motion matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment, shall be subject to Rule 36 until final disposition, and all parties shall be given reasonable opportunity to present all material pertinent to such motion under said rule.

Rule 10.4. Motion for more definite statement

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) days after notice, or within such other time as the court

may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Rule 10.5. Motion to strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted, upon motion made by a party within ten (10) days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 10.6. Preliminary hearings

The defenses specifically enumerated (1) to (6) in Rule 10.2, whether made in a pleading or by motion, the motion for judgment mentioned in Rule 10.3, and the motion to strike mentioned in Rule 10.6 shall be determined before trial unless the court orders that the determination thereof be deferred until the trial.

Rule 10.7. Consolidation of defenses

A party who makes a motion under this Rule 10 may join with it the other motions herein provided for and then available to him. If a party makes a motion under this Rule 10 and omits therefrom any of the defenses or objections then available to him which such Rule 10 permits to be raised by motion, he shall not thereafter make a motion based on the defenses or objections so omitted, except a motion as provided in Rule 10.2(1), and based on the grounds expressed in said Rule 10.8(b).

Rule 10.8. Waiver of defenses

(a) A defense of lack of jurisdiction over the person, insufficiency of process or insufficiency of service of process is waived:

(1) if it is not included in a motion for joinder of defenses under Rule 10.7, or

(2) if it is not made by motion, as provided in this Rule 10, nor included in a responsive pleading or in an amendment not requiring permission of the court, pursuant to that provided in Rule 13.1.

(b) The defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party as provided in Rule 16, and the objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 5.1, or by motion for judgment on the pleadings, or at the trial.

(c) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

RULE 11. COUNTERCLAIM AND CROSS-CLAIM

Rule 11.1. Compulsory counterclaims

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. However, such a claim need not be stated as a counterclaim if at the time the action was commenced the claim was the subject of another pending action.

Rule 11.2. Permissive counterclaims

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of said party's claim.

Rule 11.3. Scope of the counterclaim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party and it may also claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

Rule 11.4. Counterclaim by supplemental pleading

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

Rule 11.5. Omitted counterclaim

When a pleader fails to set up a counterclaim through oversight, inadvertence or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

Rule 11.6. Cross-claim against co-party

A cross-claim may state any claim arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or

may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

The cross-claim against co-party may be presented, without court approval, within the thirty (30) days from the date of the presentation of the answer to all the defendants. After this term, the party shall request permission from the court to present such claim, before demonstration of just cause.

Rule 11.7. Joinder of additional parties

Persons other than parties to the original action may be brought in as parties in a counterclaim or cross-claim, as provided in Rules 16 and 17.

RULE 12. THIRD PARTY PRACTICE

Rule 12.1. When a defendant may bring in third party

The defendant may notify, as third-party plaintiff, a summons and a claim to a person that is not part of the controversy and that is or may be liable to the defendant for all or part of the claim of the plaintiff, or that is or may be responsible to any party.

The third party claim may be presented without court approval within thirty (30) days from the date of the presentation of the answer of the claim or the reply to the counterclaim. After this term, approval of the court should be requested in order to file the claim, upon showing just cause.

The person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 10, and shall assert his counterclaims against the third-party plaintiff's claim and his cross-claims against any other third-party defendants, as provided in Rule 11.

The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim arising out of the action, omission or event that is the subject of the original claim in the action against the plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the action, omission or event that is the subject of the plaintiff's original claim in the action, and the third-party defendant shall then assert his defenses as provided in Rule 10 and his counterclaims and cross-claims as provided in Rule 11.

A party may move for severance, for a separate trial or for the dismissal of the third-party claim and the court may render judgment on the original claim or on the third-party claim only in accordance with the terms of Rule 42.3. A third-

party defendant may proceed under this Rule 12 against any person not a party to the action who is or may be liable to him, to the plaintiff, or the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

Rule 12.2. When plaintiff may bring in third party

When a claim is asserted against a plaintiff, he may proceed in the same way as the defendant in accordance with Rule 12.1.

RULE 13. AMMENDED AND SUPPLEMENTAL PLEADINGS

Rule 13.1. Amendments

A party may amend his pleading once at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, he may amend it at any time within twenty (20) days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within twenty (20) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Rule 13.2. Amendments to conform pleadings to the evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense. The court may grant a continuance to enable the objecting party to meet such evidence.

The provisions of Rules 42.4 and 67.1 shall apply whenever a party is found in default for failure to appear.

Rule 13.3. Relation back of Amendments

The amendments shall relate back to the date of the original pleading, whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, omission, or occurrence set forth in the original pleading.

An amendment relates back to the date of the original pleading when it changes the party against whom a claim is asserted, if the foregoing provision is satisfied and within the prescriptive term the party to be brought in by the amendment: (1) knew of the pending cause of action, so that he/she is not prejudiced in maintaining a defense on the merits, and (2) should it had not been for a mistake concerning the identity of the proper party, the action would have been brought originally against the party.

An amendment to add a plaintiff shall relate back to the date of the original pleading if such plaintiff has a claim that arises from the same conduct, transaction, omission, or occurrence set forth in the original pleading and if such defendant knew, within the prescriptive term, of the existence of the cause of action of the claimants who wish to assemble as plaintiffs and of their participation in the original action.

RULE 14. Joinder of Claims

Rule 14.1. Joinder of claims

A party asserting a claim in a complaint, counterclaim, cross-claim or third-party complaint may join, either as independent or as alternate claims, as many claims as he may have against an opposing party.

Rule 14.2. Joinder of contingent claims

Whenever a claim is one cognizable only after another claim has been prosecuted to a conclusion, the two (2) claims may be joined in a single action. The court shall not decide on the contingent claim until there is a judgment on the principal claim.

CHAPTER IV

PARTIES

RULE 15. CAPACITY TO APPEAR AS PLAINTIFF OR DEFENDANT

Rule 15.1. Real party in interest

Every action shall be prosecuted in the name of the real party in interest, but a person authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when so provided by statute, a claim for the benefit of another may be brought in the name of the Commonwealth of Puerto Rico. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest, and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Rule 15.2. Minors and incompetent persons

(a) A minor shall appear by his father or mother with patria potestas or, in their defect, by his general guardian. A person of legal age or who has been emancipated and who has been declared incompetent by a court shall appear by his general guardian. However, the court may appoint a guardian ad litem for an infant or an incompetent person as it deems proper or as provided by law.

(b) In the cases provided for in the last sentence of Rule 4.4(c) and in Rule 22.2, the court shall determine the party's mental condition, and if deemed convenient and proper, the court shall appoint a guardian ad litem.

Rule 15.3. Defendants under a common name

Whenever two (2) or more persons do business under a common name, regardless of whether or not said name contains the names of said persons, they may be sued under the common name and service upon one of them shall be sufficient.

Rule 15.4. Defendant whose name is not known

Whenever a plaintiff does not know the true name of a defendant, he shall so state in the complaint, setting forth the specific claim he allegedly has against said defendant. In said case, the plaintiff may designate said defendant in any pleading or proceeding with a fictitious name, and upon discovery of the true name, he shall forthwith make the corresponding amendment in the pleading or proceeding.

RULE 16. INDISPENSPENSABLE JOIUNDER OF PARTIES

Rule 16.1. Indispensable joinder

Persons having a joint interest and who are indispensable for the adjudication of the controversy shall be made parties and joined as plaintiffs or defendants, as the case may be. When a person who should join as a plaintiff refuses to do so, he may be made a defendant.

Rule 16.2. Joinder of parties not indispensable

The court may order the appearance of persons subject to its jurisdiction who, although not indispensable, ought to be joined if complete relief is to be accorded to those already parties.

RULE 17. PERMISSIVE JOINDER OF PARTIES

Rule 17.1. Permissive joinder

Any number of persons may join in one action as plaintiffs or defendants if they assert a claim for relief or one is asserted against them jointly, severally or, in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 17.2. Order to avoid prejudice

The court may make such orders as it deems necessary to avoid difficulties, delays or expenses to a party by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, may order separate trials or make other orders to prevent delay or prejudice, and may render judgment on a claim by or against one or more parties, pursuant to Rule 42.3.

RULE 18. MISJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 19. INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 17.

RULE 20. CLASS ACTIONS

Rule 20.1. Prerequisites to a class action

One or more members of a class may sue or be sued as representative parties on behalf of all the persons constituting the class only if (1) the class is so numerous that the joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Rule 20.2. Class actions maintainable

An action may be maintained as a class action if the prerequisites of Rule 20.1 are satisfied, and in addition:

(a) the prosecution of separate actions by or against individual members of the class would create a risk of:

(1) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(4) the difficulties likely to be encountered in the management of a class action.

Rule 20.3. Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(a) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(b) In any class action maintained under Rule 20.2(c), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort, except when this would be so difficult as to obstruct the prosecution of the action, in which case the court shall determine the manner in which notice shall be given. The notice shall advise each member that:

(1) The court will exclude him from the class if he so requests by a specified date;

(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(3) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(c) The judgment in an action maintained as a class action under Rule 20.2(a) or (b), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Rule 20.2(c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 20.3 (b) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(d) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

Rule 20.4. Orders in conduct of class actions

In the conduct of actions to which this rule applies, the court may make appropriate orders:

(a) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct

to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(c) imposing conditions on the representative parties or on intervenors;

(d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(e) providing special rules for the proceeding and the terms to be had by the parties for discovery;

(f) dealing with similar procedural matters.

The orders may be combined with an order under Rule 37, and may be altered or amended as may be desirable from time to time.

Rule 20.5. Dismissal or compromise

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

RULE 21. INTERVENTION

Rule 21.1. Intervention of right

Upon timely application anyone shall be permitted to intervene in an action:

(a) When a statute or these rules confer an unconditional right to intervene; or

(b) when the applicant claims a right or an interest relating to the property or transaction which is the subject of the action which may as a practical matter be impaired by the final disposition of the action.

Rule 21.2. Permissive intervention

Upon timely application, anyone may be permitted to intervene in an action:

(a) When a statute confers a conditional right to intervene; or

(b) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 21.3. Validity of constitutional provision, statute, executive order, franchise or administrative regulation.

When the constitutionality of a statute, executive order, franchise or administrative regulation of the Commonwealth of Puerto Rico is drawn in question in any action to which the Commonwealth or an officer or agency of the same is not a party, the court shall order that said challenge be notified to the Secretary of Justice and shall allow the Commonwealth of Puerto Rico to intervene.

Rule 21.4. Procedure

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 67. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Rule 21.5. Right to intervene of third parties claiming personal or real property attached by order of the court

Whenever a marshal executes a writ of execution, a writ of attachment, or any other order against any item of personal or real property, and said property, or any part thereof or any interest in the same is claimed by one not a party to the action, said third party shall be entitled to bring a motion to intervene. The procedure to intervene in relation to real or personal property shall be governed by these rules.

Rule 21.6. Motion to release property; bond

In cases where the third-party intervenor wishes to obtain possession of the attached property, he shall file a motion to that effect and the court shall decide on it after holding a hearing to give the parties the opportunity to present their views on the intervenor's motion. If the motion is granted, the third-party intervenor shall, in order to have possession restored to him, give security for the amount of the attachment, plus any other sum determined by the court to protect the rights of the affected party.

Rule 21.7. Conditions to the bond

A bond shall be executed on condition that if the claimant fails to justify his claim, he shall return the property to the attaching officer, to his successor or the depositary of the property, and shall be liable for any damage or impairment sustained by the same, including total loss. The claimant shall likewise pay any other compensation the court deems fair and reasonable under the specific facts of the case. If the claimant prevails, the bond shall be released

Rule 22. SUBSTITUTION OF PARTIES

Rule 22.1. Death

(a) If a party dies and the claim is thereby extinguished, judgment will be rendered dismissing the claim.

(b) If a party dies and the claim is not thereby extinguished, any of the parties to the action or their attorneys shall give notice of the death to the court and to the other parties within thirty (30) days after actual knowledge of the death. Upon motion made within ninety (90) days after said notice, the court shall order the substitution of the appropriate parties for the deceased. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased or by any party, and shall be served on the parties as provided in Rule 67, and upon persons not parties as provided in Rule 4. The claim will be amended for the sole purpose of including the substitution and incorporating new parties to the claim.

(c) In the event of the death of one or more of the plaintiffs or one or more of the defendants in which the right sought to be enforced survives only to the surviving plaintiffs or the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

Rule 22.2. Incompetency

If a party becomes incompetent, the court upon motion served as provided in Rule 22.1 may allow the action to be continued by or against his guardian or guardian ad litem.

Rule 22.3. Transfer of interest

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Rule 22.1.

Rule 22.4. Public officers

When an officer of the United States, or of the Commonwealth of Puerto Rico, its municipalities or any of its agencies or instrumentalities is a party to an action in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action will not be dismissed and his successor will automatically be substituted as a party.

CHAPTER V

PRETRIAL PROCEEDINGS

RULE 23. GENERAL PROVISIONS GOVERNING DISCOVERY

Rule 23.1. Scope of discovery

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In general.*-- The parties may obtain discovery regarding any matter not privileged, which is relevant to the matter in controversy in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, information electronically stored, documents or other tangible objects and the identity and address of persons having knowledge of any pertinent facts. It is not grounds for objection that the information sought will be inadmissible at the trial, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Documents, tangible things and other evidence obtained in preparation for the trial.*--Subject to the provisions of subsection (c) of this rule, a party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative including his attorney, consultant, surety, insurer or agent. Mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning a litigation shall be protected against disclosure. A party may require from the other party a list of the persons whom the other party expects to call as witnesses at trial, as well as a brief summary of each witness' proposed statement. Likewise, any party may require any other party to produce a copy of all witnesses' statements within said party's possession. Also, parties and witnesses alike may obtain a copy of any statement previously made by them. For purposes of this rule, a statement previously made is any written statement signed or approved by the person making it, or any recording of an oral statement, or a transcription thereof.

(3) *Experts.*-- Discovery of expert evidence may be obtained as follows:

(1) A party may through interrogatories require any other party to furnish the names and addresses of all experts the other party has already consulted, and of those whom he expects to call as witnesses at trial. With respect to the latter, the party may also be required to state the subject matter on which the expert is expected to testify, and to state the substance of the expert's opinions as well as a brief summary of the theories, facts and arguments supporting each opinion. Upon motion, the court may order further discovery of expert evidence by other means, subject to such conditions or restrictions as it may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 32.2 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery. If the party seeking discovery of expert evidence should prove to the court's satisfaction to be without means to pay said fees, the court may order discovery in such terms and conditions as it may deem just and reasonable.

(4) The court is empowered to summon expert witnesses other than those of the parties, subject to such conditions as it may in its discretion deem appropriate, including witness' compensation by one or both parties.

(4) *Continuing obligation to preserve evidence subject to discovery.*—A person perceived to have a claim against him has the obligation to preserve the evidence. He also has said obligation if a legal o ethical duty exists that requires him to preserve the evidence, if he voluntarily assumed the obligation or if it arises from the particular circumstances of the case. Moreover, a party has the obligation of preserving the evidence that may be subject to discovery, even though it is not required. The obligation to preserve the electronically stored information will be subject to the provisions of Rule 34.3.

(5) *Continuing obligation to update, correct or amend the evidence that has been discovered and notify it.* A party that has responded a request of discovery has the continuing obligation to update, correct or amend their responses and notify the opposing party all additional information obtained after said

request and that is related with said discovery, every time the court orders it or that the following occurs:

(1) That the party has knowledge that the delivered material is incorrect or incomplete and that the corrective or additional information has not been released to the other party.
(2) That the party has knowledge that the information provided in the answer of the interrogatory, the requirement of production of documents or the requirement of admissions is incomplete, incorrect and that the corrective or additional information has not been released.

The party's failure to comply with his obligation to preserve the evidence will be subject to economic sanctions or any other nature that the court deems at its discretion, including contempt, pursuant to Rule 34.3. The party's failure to comply with his obligation to update, correct or amend implies the exclusion in trial of the evidence that is not updated if it appears that, before trial, the party had or should have had knowledge of the corrective or additional information and did not update it, correct it or amend it. However, at his interest, the party who requested said discovery might make use of the evidence. If the discovery of evidence arises during the trial, the corresponding remedy will be provided.

Rule 23.2. Protective orders

(a) The court, motu proprio or by motion of a party, may limit the scope of the methods of discovery of evidence if it determines the following: (i) that the evidence that aims to discovery is a duplicate of other evidence or is unreasonably cumulative; (ii) that the evidence can be obtained in a more convenient way, less onerous and expensive for the party to whom it is requested; (iii) that the party that requests the evidence had the opportunity to obtain it, or (iv) that the costs of obtaining the evidence exceed the benefit it contributes to the case.

(b) Upon motion by a party or by the person from whom discovery is sought, presented by motion accompanied by an indicative certification that he has tried in good faith to solve the dispute over the discovery pursuant to Rule 34.1., and b just cause, the court may issue any order that justice requires to protect said party or person from harassment, disturbance or oppression, and any discomfort or undue expense. The order of the court may include one or more of the following measures:

(1) That the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that the discovery be conducted in the presence of those persons authorized by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential information not be disclosed or be disclosed only under certain conditions;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order the moving party to provide or permit discovery. The provisions of Rule 34 shall apply to the award of fees and expenses incurred in relation to the motion.

Rule 23.3. Claim of privileges

(a) *Retained information*. When a party retains required information, claiming that it is privileged or protected material in contemplation of the preparation for the trial, he shall make his claim in an explicit manner and substantiated specifying the nature of the documents, the communications or the objects not produced or revealed, so that, without revealing privileged information, the other parties can evaluate the applicability of the privilege or protection, and express themselves on the matter.

(b) *Information produced by inadvertence*. When a party produces information unintentionally during the discovery of evidence that is subject to a claim of privilege or protection, the plaintiff will notify the party that received the claim and the basis of the claim. When notified, the party shall return the information immediately, retain it or destroy it, and any copies that he has, and may not use it or disclose it until the claim is solved. The defendant may immediately present the information to the court in a sealed envelope for the adjudication of the claim. If the defendant had disclosed the information before receiving the claim, he should take the corresponding reasonable measures to recover the information. The party that produced the information may preserve it until the claim is settled.

Rule 23.4. Manner of conducting discovery

Methods of discovery may be used in any sequence. The fact that a party is conducting discovery by any method shall not operate to delay or postpone any other party's discovery, unless the court, upon motion of a party and for the convenience of parties and witnesses, and in the interest of justice, orders otherwise.

The mechanisms for discovery may not begin until the term to respond to the pleading has ended.

RULE 24. DEPOSITIONS BEFORE ACTIONS OR PENDING APPEAL

Rule 24.1. Before action

(a) *Petition.*-- A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in court may file a verified petition to that effect. The petition shall be entitled in the name of the petitioner and shall show:

(1) That the petitioner expects to be a party to an action cognizable in court but is presently unable to bring it or cause it to be brought;

(2) the subject matter of the expected action and his interest therein;

(3) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it;

(4) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and

(5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

(6) His/her interest that the depositions be taken via oral examination or written questions.

(b) *Notice.*-- After the petition is filed, the petitioner shall serve a notice upon each person named in the petition as an expected adverse party. The notice shall be served in the manner provided in Rule 4.4 for service of summons, and a period of not less than fifteen (15) days shall be allowed for the parties so served to raise any objections to the petition; but if such service cannot with due diligence be made upon any of the persons named in the petition, the court may make such order as is just for service by publication or otherwise, and shall take such measures as are appropriate to safeguard the interests of persons who have not been notified. If any of the persons is a minor or incompetent, the provisions of Rule 15.2 shall apply.

(c) *Order and examination.*-- If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules and the court may make orders of the character provided for by Rules 31 and 32. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(d) *Use of deposition.*-- If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the jurisdiction in which it is taken, it may be used in any action subsequently brought involving the same subject matter, in accordance with the provisions of Rule 29.1.

Rule 24.2. During Appeal

If an appeal has been entered against a judgment of a court, or prior to entering an appeal if the term therefor has not expired, the part of the court which rendered the judgment shall allow the taking of the depositions of witnesses to perpetuate their testimony to be used in the event of further proceedings before it. In such case, the party who wishes to perpetuate the testimony may file a motion before the part of the court requesting permission to take the depositions, giving equal notice and service to the opposing party as if the action was pending in that part. The motion shall state: (1) The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and (2) the reason for perpetuating their testimony. If the court finds that perpetuation of the testimony is necessary to avoid a miscarriage or delay of justice, it may issue orders similar to those provided in Rules 31 and 32; and from then on these depositions may be taken and used in the same manner and under the same conditions provided in these rules for depositions in pending actions.

RULE 25. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

Rule 25.1. Within Puerto Rico

Within the jurisdiction of the Commonwealth of Puerto Rico, depositions shall be taken before an officer authorized to administer oaths by the laws of Puerto Rico or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths, take testimony, and preside over the taking of depositions. It is

not necessary for the person administering the oath to remain at the place where the deposition is to be taken after the deponent has been sworn.

When a person through an affidavit certifies before the court that he lacks the means to meet the expense of taking a deposition, the court may order that the deposition be taken under such conditions as it deems appropriate.

Rule 25.2. In foreign countries

In a foreign country, depositions may be taken on notice:

(1) Before a person authorized to administer oaths in the place in which the examination is held, or

(2) before a person or officer commissioned by the court for this purpose, or

(3) pursuant to a letter rogatory.

A commission or a letter rogatory shall be issued only when necessary and convenient, on application and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed 'To the Appropriate Authority in (here the name of the country).' Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within Puerto Rico.

Rule 25.3. Disqualification for interest

No deposition shall be taken before a person who is a relative within the fourth degree of consanguinity or the second degree of affinity, or employee or attorney of any of the parties, pursuant to Rule 26, or is a relative within the degrees mentioned or employee of such attorney, or is financially interested in the action.

Rule 26 Stipulations Regarding Depositions and Other Methods of Discovery

Insofar as they are not contrary to the scheduling order stated in Rule 37.3, the parties can stipulate that:

(1) That depositions be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions;
(2) that the procedures provided by these rules for other methods of discovery may be modified;

(3) that any of the lawyers present may administer the oath or affirmation to the deponent, and to the stenographer, if there is one.

RULE 27 DEPOSITIONS UPON ORAL EXAMINATION

Rule 27.1 When depositions may be taken

(a) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination, without leave of court, except that plaintiff may not take any deposition whatsoever without leave of court before the expiration of defendant's period to answer the complaint. If the defendant has sought discovery within the period to answer the complaint, the above-mentioned limitation does not apply. The attendance of witnesses may be compelled by subpoena as provided in Rule 40. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Leave of court is not required for the taking of a deposition by plaintiff within the twenty-day period after service of summons on the defendant if the notice states that the person to be examined is about to go out of Puerto Rico and will be unavailable for oral examination later. The plaintiff's attorney shall sign the notice and his signature constitutes a certification by him that, to the best of his knowledge, information, and belief, the facts set forth therein are true. The signature will also be subject to the provisions of Rule 9.

Rule 27.2 Notice of examination; time and place

A party desiring to take the deposition of any person upon oral examination shall give notice in writing, at least twenty (20) days in advance, to every other party to the action. The notice shall state the date, time and place for taking the deposition, the method that will be used, and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice to a party deponent may be accompanied by a request made in compliance with Rule 31 for the production of documents and tangible things. If the deponent is not one of the parties and a subpoena for the production of documents and tangible things at the taking of the deposition is to be served on him, the designation of these documents or things shall be included in the notice to the parties. The place where the examination is to be held and the subpoena for the taking of the deposition are subject to the provisions of Rule 40.4.

27.3 Means of reproduction

The deposition may be taken or recorded by shorthand, stenography, or by any other means of tape or digital recording that guarantees the preservation and integrity of the process and allows the reproduction of the recording.

27.4 Oral depositions by telephone, videoconference, or other remote electronic means

The parties may stipulate in writing, or upon request by a party, the Court may order that the oral deposition be taken by telephone, videoconference, or any other remote electronic means. The party interested in taking the deposition will notify in writing, at least twenty (20) days in advance, to the deponent and all other parties in the suit. The notification shall include the date, time, place, and method that will be used to take the deposition. Witnesses shall be required to appear by citations issued according to Rule 40.

The notice of the deposition may include a request for the production of documents or tangible things, which must be provided with enough time in advance to the date of the deposition of the party that requested it. Once the moving party has the documents or tangible things requested from the deponent, the moving party will provide copy of these to the person recording the deposition and all other notified parties.

If the moving party decides to appear by telephone, videoconference, or any other remote electronic means, the party must make the necessary arrangements for all other parties to appear through the same means. If the moving party decides to appear in person to the place of the deposition, any other party may appear through telephone, videoconference, or any other remote electronic means, if the necessary arrangements are made with the moving party and the person recording the deposition. If the deposition if taken through these means, the place of the deposition shall be where the deponent answers the questions before someone authorizes by law to administer the oath and receive the testimony.

Rule 27.5 Regulation by the court

Upon request of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time for taking the deposition. Also, the court may determine the time, place, and order for taking the depositions, as well as all other matters covered in Rules 27.2 and 27.3, at the convenience of the parties, witnesses, and justice.

Rule 27.6 Depositions of corporations or organizations

A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association and describe with reasonable particularity the matters on which examination is requested. Absent specification by the party as to the person to be examined, the organization named as deponent shall designate one or more persons, who consent to testify on their behalf or on the organization's behalf, having the most knowledge about the matters to be examined, and may set forth, for each person designated, the matters on which he/she will testify. A subpoena shall advise a nonparty organization of its duty to make such appointment or designation. The person so designated shall testify as to matters known or reasonably available to the organization.

This provision will apply to the Government of Puerto Rico, its instrumentalities, public corporations, and municipalities.

Rule 27.7 Form of examination; record of examination; oath; objections and conduct

(a) *Form of examination, record and oath.* A witness may be questioned on direct examination and cross-examination. A person designated under Rule 25 shall put the witness on oath and shall personally, or by someone acting under his direction, record the testimony of the witness. If the person before whom the deposition is taken is not present, in accordance with Rule 25.1, the person taking down the deposition shall leave record of it. The testimony of the witness shall be taken by any of the methods provided in Rule 27.3. Regardless of the method used for reproduction, all depositions must be transcribed, unless all parties agree to the contrary. The moving party shall pay the cost of the appearance of the stenographer, the transcription, and the copy to the deponent. The moving party shall provide copies, at their expense, of the deposition unless the court orders otherwise.

(b) *Objections and conduct.*

(1) *Objections in general*. The only objections allowed during the course of the deposition are those related to information protected by a privilege or those that are considered waived if they are not raised at the moment. All other objections shall be noted on the record and the answer will be given, preserving the right of the party to request the proper remedy in court.

(2) *Objections in the course of the deposition to perpetuate testimony*. Notwithstanding the provisions of (a), when the deposition is intended to perpetuate the testimony of a party or witness, the necessary objections must be raised to allow the party intending to perpetuate the testimony to reformulate the question and save the objections if the party understands it appropriate.

(3) *Limitations regarding the grounds of the objections explained.* Any objection raised during the course of a deposition must be stated in a clear, simple, and concise way and articulated in a way that does not suggest an answer to the deponent. During the course of a deposition, no person shall make any comment or manifestation that interferes with the interrogatory of the deponent.

(4) *Refusal to answer*. A deponent is obligated to answer all questions formulated during the course of the deposition, except: (i) to preserve a privilege, (ii) to enforce any limitation imposed by a court order;, or (iii) when the question is clearly improper and answering it would cause great harm to a person. As a result, the attorney may not instruct the deponent not to answer, unless with the purpose to preserve a privilege or to enforce a limitation imposed by a court order. Any refusal to answer or instruction not to answer must be accompanied by a clear and concise expression for the record stating the

grounds for the refusal or instruction. If a deponent refuses to answer a question, the parties may initiate a telephone conference with the judge presiding the courtroom assigned to the case with the purpose of obtaining a resolution from the court regarding the issue. In these cases, the parties will comply with what the court determines at that moment, which will be recorded and notified to the parties. If the court is not available, the deposition will continue regarding any other matter unrelated to the objection.

(5) *Attorneys' conduct*. Attorneys may not interrupt the deposition to communicate with the deponent, unless all parties have stipulated otherwise, in which case, the stipulation must be clearly stated on the record. Once the deposition has started, the attorneys may not request the record to stop, unless all parties stipulate otherwise.

Instead of participating personally, a party may send a written interrogatory in a sealed envelope, which the person before who the deposition will be taken will give to the witness for him/her to answer.

Rule 27.8 Reading, amendment and signing of deposition

When the testimony is transcribed, the stenographer must provide it to the witness, after no more than forty-five (45) days of the deposition's conclusion. Once the deposition has been delivered, the deponent has ten (10) days for examination and reading, unless such examination and reading are waived by the witness and by the parties, which shall be entered upon the record. Any changes in form or substance which the witness desires to make shall be filed within the thirty (30) days following the notification of the transcription.

In cases in which the parties stipulated that the deposition will not be transcribed and when the testimony has been reproduced by tape, video, or any other recording method, the deponent must examine it within the thirty (30) days following the delivery, unless such examination was waived by the deponent and the parties, which shall be entered upon the record. The changes in form or substance that the deponent wishes to do must e filed within the term stated above, in a document accompanied by the tape, video, or method used for recording.

The amendments shall be recorded in the transcription of the deposition or in the document prepared by the person before whom the deposition was taken or, in his/her absence, by the person recording the deposition, who will provide the reasons given by the witness for making them. The transcription of the deposition or the document shall then be signed by the witness, unless the parties, by stipulation, waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the reasons therefor shall be entered upon the record and the deposition may then be used for all legal purposes unless on a motion to suppress under Rule 29.3 the court holds that the reasons given for refusal to sign require rejection of the deposition in whole or in part.

Rule 27.9 Certification and notice of deposition

(a) The person before whom the deposition is taken or, in his absence, the person recording the examination shall certify on the deposition that the witness was duly sworn and that the deposition is a true and exact transcript of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked 'Deposition of (here insert name of witness)' and shall deliver it to the party taking it within the timeframe provided in Rule 27.8, who shall in turn be obliged to notify all other parties that the deposition is in his possession. Furthermore, he shall be obliged to keep the deposition and produce it at the trial.

(b) Documents and things produced for inspection during the examination of the witness shall, upon request of a party, be marked for identification and annexed to the transcript, tape, video, or the method used for the reproduction of the deposition. Said documents and things may be inspected and copied by any party. The person producing the documents or things may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify that the copies are true and exact to the originals. Also, if the person producing the documents or things requests their return, each party will be given an opportunity to inspect and copy them, and they will be returned to the person producing them after being duly marked by the parties and the materials may then be used in the same manner as if annexed to the deposition.

(c) Upon payment of a prescribed fee therefor, the person before whom the deposition is taken or, in his absence, the person taking or recording the examination shall furnish a copy of the deposition to any party to the action or to the deponent.

(d) In cases in which the parties stipulate that the deposition will not be transcribed, the moving party shall have the obligation of preserving and producing the content of the testimony to the Court in the way it was originally taken.

RULE 28 DEPOSITIONS UPON WRITTEN QUESTIONS

Rule 28.1 Notice and service of questions

A party desiring to take the deposition of any person upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, the name or descriptive title and address of the person who will administer the oath of the deposition, and the name and address of the person who is to take or record the deposition. Within ten (10) days after service of notice, the party so served may serve cross questions upon the party who proposed the taking of the deposition. Within five (5) days after being served with cross questions, a party may serve redirect questions upon a party who has served said cross questions. Within three (3) days after being served with redirect questions, a party may serve recross questions upon the party who proposed the taking of the deposition.

Rule 28.2 Taking of responses; preparation of record; duties

A copy of the notice and copy of all questions served shall be delivered by the party taking the deposition to the person before whom the deposition is taken, pursuant to Rule 27.7. Said person or, in his absence, the person who is to record the deposition shall proceed promptly, pursuant to Rules 27.7, 27.8, and 27.9, to take the testimony of the witness in response to the questions and to prepare, certify, and dispose of the deposition, attaching thereto the copy of the notice and the questions received by him.

When the party taking the deposition is served with it, he shall give notice thereof to all other parties. He shall also keep the deposition and produce it at the trial.

Rule 28.3 Orders for the protection of parties and deponents

After service of notice and written questions, and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent and upon notice and good cause shown, may make any order specified in Rule 23.2 which is appropriate and just or it may make an order that the deposition shall not be taken before the person designated in the notice or that it shall not be taken except upon oral examination.

RULE 29 USE OF DEPOSITIONS IN COURT PROCEEDINGS

Rule 29.1 Use of depositions

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, official, director, or managing agent, or a person designated under Rule 27.6 to testify on behalf of a public or private corporation, partnership, association or governmental agency which is a party to the action, may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(1) That the witness is dead; or

(2) that it has been shown that it would be burdensome to require the appearance at trial of a witness who is out of Puerto Rico, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the witness is unable to attend or testify because of age, illness or disability; or

(4) that the party offering the deposition has been unable to produce the attendance of the witness by subpoena; or

(5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(d) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which is relevant and admissible, and ought in fairness to be considered with the part introduced; also any party may introduce any other parts.
Substitution of parties does not affect the right to use depositions previously taken; and, when an action in the General Court of Justice or in any court of the United States or of any of its states, territories or possessions has been dismissed and another action involving the same subject matter is afterwards brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

Rule 29.2 Objections to admissibility

Subject to the provisions of these rules, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Rule 29.4 Effect of errors and irregularities in depositions

(a) *As to notice.*-- All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *Capacity of person before whom the deposition is taken.* Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition*

(1) Objections to the competency of a witness or to the admissibility of a testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.
(3) Objections to the form of written questions submitted under Rule 28 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last written questions authorized.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or reproduced, or the deposition is prepared, signed, certified, sealed, indorsed, transmitted or filed are waived unless a motion to suppress the deposition or some part thereof is made within thirty (30) days since such defect is, or with due diligence might have been, ascertained.

RULE 30 INTERROGATORIES TO PARTIES

Rule 30.1 Procedures for use

Any party may serve upon any other party written interrogatories to be answered by the party so served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer, official or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action. They may also be served upon any other party to the action, provided said party has been duly summoned and they are attached to the summons served on said party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to.

If the interrogatory were objected to, the reasons for objection shall be stated by motion in lieu of an answer and a copy of the interrogatory objected to shall be furnished.

If only part of the interrogatory were objected to, the party objecting to it shall include the question verbatim, together with a statement of the reasons for objection. If this be the case, the objecting party shall serve, together with his objections, the answers to the remainder of the interrogatory upon the party who submitted it.

The answers are to be signed and sworn by the person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections if any, or both, upon the party who served the

interrogatories within thirty (30) days after service thereof. The court may, upon motion and good cause shown, allow a shorter or longer time.

The party submitting the interrogatories may make objections, subject to the provisions of Rule 34.1, to the answers thereto by motion to the court to that effect which shall include a verbatim transcript of the question and answer involved and the reasons for objection.

The party submitting the interrogatories may move for an order under Rule 34 with respect to any objection to or other failure to answer an interrogatory.

Rule 30.2 Scope; use at trial

Interrogatories may relate to any matters which can be inquired into under Rule 23 and the answers may be used to the extent permitted by the Rules of Evidence. Any interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or to conclusions of law, but the court may upon good cause shown order that such an interrogatory need not be answered or that it be answered under such conditions as are reasonable and when it is appropriate.

Rule 30.3 Option to produce books, documents, records, or information stored electronically

Where the answer to an interrogatory may be derived from the books, documents, records, or information stored electronically, of the party upon whom the interrogatory has been served and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records, books, documents, or information stored electronically from which the answer may be derived and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect them and to make copies, compilations, summaries, or prints.

RULE 31 DISCOVERY OF DOCUMENTS AND THINGS FOR INSPECION, COPYING OR PHOTOGRAHING

Rule 31.1 Scope

In addition to the right to seek the production of any document or thing for inspection in connection with an examination under Rule 27 or interrogatories under Rule 30, a party may pursuant to Rule 23.2 serve on any other party a request:

(1) To produce and permit the inspection, copying or photographing, by or on behalf of the appellant party, of any designated documents, papers, electronically stored information translated, if necessary, into information comprehensible to those who solicit the same, books, accounts, letters, photographs, objects or tangible things, not privileged,

which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 23.1 of this appendix and which are in its possession, custody or control, or

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any object or operation thereon within the scope of the examination permitted by Rule 23.1.

The request shall specify the date, time, place and manner of making the inspection and taking the copies and photographs, and may prescribe such terms and conditions as are just.

Rule 31.2 Procedure

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party. The request shall set forth the items to be inspected, which must be described with reasonable particularity, and it shall also specify a reasonable date, time, place and manner for making the inspection, pursuant to criteria of reasonability.

The party upon whom the request is served shall serve a written response within fifteen (15) days after the service of the request, unless the court fixed a different term. The response shall state, with respect to each item designated in the request, that inspection will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. The party submitting the request may move for an order under Rule 34.2 with respect to any objection to or other failure to respond to the request of any part thereof, or any failure to permit objection as requested.

The documents shall be produced just as they are kept in the ordinary course of business, the party producing them being allowed only to organize and identify them so that they correspond with the item designated in the request.

In cases where the request includes information stored electronically, the party upon whom the request is serves may produce the information in the way or ways as they are ordinarily kept or maintained or in the way or ways in which it may be reasonably used or understood. A party having electronically stored information in more than one way may only produce it in one of the ways.

RULE 32 PHYSICAL OR MENTAL EXAMINATION OF PERSONS

Rule 32.1 Order for examination

In a suit in which the mental or physical condition of a party, including the blood group or genetic structure of a party or of a person under his/her guardianship, custody, or parental rights, is in dispute, the court in which the suit is pending may order said party to submit to a physical or mental examination by a

professional authorized by law to perform them, or to submit the person under his/her guardianship, custody, or parental rights to said examination. In cases where the party makes allegations regarding his/her mental or physical condition, any privacy rights over the medical or psychiatric records regarding the controversy are understood to be waived. The order may only be issued through a motion upon notice to the party to be examined, and to all the other parties, and shall specify the date, time, place, manner, conditions and scope of the examination and the professional or professionals that shall perform it.

Rule 32.2 Medical report

(a) The party causing the examination to be made shall deliver the party examined a copy of a detailed written report of the examiner setting out his/her findings in a term no longer than forty-five (45) days since the date of the exam or test. After such delivery, the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver said report, the court on motion duly served may make an order requiring delivery on such terms as are just, and if the professional authorized by law who conducted the exam fails or refuses to make a report, the court may exclude his testimony if offered at trial.

(b) By obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

Rule 33 Requests for admission

(a) *Requests for admission.* For purposes of the pending action only, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 23.1 set forth in the request that relate to statements or opinions of facts or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party after service of the summons upon that party.

Each matter of which an admission is requested shall be separately set forth. All matters of which an admission is requested shall be deemed admitted unless, within twenty (20) days after service of the request, or within such term as the court upon motion and notice may allow, the party to whom the request is directed serves upon the party requesting the admission an answer made under oath by said party, or written objection addressed to the matter. Unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of twenty (20) days after service of the copy of the summons and complaint upon him. Notice shall be given in the request to the effect that if answers are not served within the time specified the matter shall be

deemed admitted. If objection is made to the request for admission, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry to obtain such information and that the information known or obtained by him is insufficient to enable him to admit or deny. A party may not object to the request on the sole ground that the matter of which an admission has been requested presents a justiciable controversy; he may, subject to the provisions of Rule 34.4, deny the matter or set forth the reasons why he cannot admit it or deny it.

The party who has requested the admissions may, upon motion to the court, move to determine the sufficiency of the answers of objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter be admitted or that an amended answer be served. The court may, in lieu of these orders, determine that a final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 34.2(c) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.*-- Any admission made under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 37 governing amendment of a pretrial order, the court may permit withdrawal or amendment of the admission when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his claim or defense. Any admission made by a party under these rules is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

RULE 34 CONTROVERSIES REGARDING DISCOVERY; REFUSAL TO MAKE DISCOVERY AND CONSEQUENCES

Rule 34.1 Controversies regarding discovery

When a controversy regarding discovery arises, the court may only consider the motions containing a certification from the moving party where the party informs the court with specificity that it has made a reasonable effort, in a timely manner and in good faith, to try to reach an agreement with the attorney of the other party to solve the issues stated in the motion and these efforts have been unsuccessful.

Rule 34.2 Motion for order compelling discovery

After the moving party made timely and reasonable efforts in good faith with the opposing party and the opposing party has refused to make the discovery requested, the moving party by a motion under this rule may request the court to issue an order for the opposing party to make the requested discovery, according to the following.

(a) *Motion.* If a deponent refuses to answer a question propounded or submitted under Rule 27 or 28, or a corporation or organization fails to designate a person in accordance with Rule 27.6, or the party fails to answer an interrogatory submitted under Rule 30, or if a party, in response to an order made under Rule 31, fails to respond or fails to answer a request to carry out an inspection, the discovering party may move for an order compelling an answer, or a specification of the things requested, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(b) *Evasive or incomplete answer.* For purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.

(c) *Award of expenses.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent who did not comply with the order or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that, under the circumstances, an award of expenses would be unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or attorney advising him or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that under the circumstances an award of expenses would be unjust.

Where the circumstances so require, the court may apportion the reasonable expenses incurred among the parties or the persons involved, or both.

Rule 34.3 Failure to comply with order

(a) *Contempt.* If a party refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be considered contempt of that court.

(b) *Other consequences.* If a party, or an officer or managing agent of a party or a person designated under Rule 27.6 or 28 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under

Rules 32 and 34.2, the court may make such orders in regard to the refusal as are just, and among others the following:

(1) An order that the matters included in the aforementioned orders or any other facts designated by the court shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matter in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any of said orders except an order to submit to a physical or mental examination.

(5) Where a party has failed to comply with an order under Rule 32 requiring him to produce another person under his guardianship, custody, or parental rights for examination, such orders as are listed in clauses (1), (2) and (3) of this subsection, unless the party failing to comply shows that he is unable to produce such person for examination.

(6) An order, under such conditions as the court may deem just, imposing an economic sanction on any party, witness, or attorney as a result of his conduct.

(c) In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the expenses incurred, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that under the circumstances an award of expenses would be unjust.

(d) If the party moving for discovery pertaining to the allegations or defenses justifies with reliable evidence that the opposing party refuses to make the discovery requested due to having destroyed or not complied with their duty to preserve evidence pending litigation or reasonably useful in a future litigation, said party shall be subject to the sanctions provided in these rules. The court may not order the imposition of sanctions under this rule to a party for not providing information stored electronically, if the party proves that the information was lost due to the routine operation in good faith of the electronic storing system, unless the party was requested beforehand to preserve the evidence. In such case, the party will have the burden to show that the information stored electronically could not be produced due to the reasons stated above.

Rule 34.4 Expenses on refusal to admit

If a party refuses to admit the genuineness of any document or the truth of any matter as requested under Rule 33, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, said party may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including attorney's fees. The court shall grant said award unless it finds that:

(1) The request was held objectionable pursuant to Rule 33(a); or

(2) the admissions sought were of no substantial importance; or

(3) the party which refused to admit had reasonable grounds to believe that he might prevail on the matter; or

(4) there was other good reason for the refusal.

Rule 34.5 Failure of a party to appear or serve answers to interrogatories or respond to request for inspection; failure to appear or notify the citation

If a party or an officer or managing agent of a party or a person designated under Rule 27.6 or 28 to testify on behalf of a party fails:

(1) To appear before the person before whom his deposition is to be taken after being served with a proper notice, or

(2) to serve answers or objections to interrogatories submitted under Rule 30, after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection, after proper service of the request, the court on motion of party may make such orders in regard to the failure as are just, and among others it may take any action authorized under clauses (1), (2) and (3) of subsection (b) of Rule 34.3. In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to comply or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the refusal, unless the court finds that the failure was substantially justified or that other circumstances make an award of expense unjust.

The failure to comply described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to comply has obtained a protective order as provided by Rule 23.2.

If the party that notified the deposition does not appear and the other party appears in person or through an attorney in accordance with said notification, the court may order the party that made the notification to pay the reasonable expenses incurred to appear, including a reasonable amount for attorney’s fees.

If a party that notified the deposition or a witness does not furnish him/her a citation and as a result, the party does not appear, and another person appears in person of through an attorney because of the expectation of the deposition being taken, the court may order the party that made the notification to pay the reasonable expenses incurred to appear, including a reasonable amount for attorney's fees.

Rule 34.6 Expenses against the Commonwealth of Puerto Rico

Expenses and attorney's fees may be awarded against the Commonwealth of Puerto Rico under this rule, if a previous hearing is held.

RULE 35 OFFER OF JUDGMENT AND PAYMENT

Rule 35.1 Offer of judgment

At any time prior to the twenty (20) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with the costs accrued up to that time. The offer shall comply with the following requirements:

(1) Shall be in writing and served to the party for which it is intended through certified mail.

(2) It shall specify who is making the offer and to whom it is directed.

(3) It shall establish the amount, if any, offered for damages.

(4) It shall specify the total amount of property and conditions offered.

(5) It shall establish the amount for costs accrued up to that time.

If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and it shall not be admissible in evidence except in a proceeding to determine the costs, expenses and attorney's fees or in a proceeding to enforce compliance of a judgment rendered, product of the offer of judgment.

If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs, expenses and attorney's fees incurred by the party that made the offer after the making of the offer.

The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party has been determined by judgment, but the amount of the damages or the extent of the liability remains to be determined by

further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than twenty (20) days prior to the commencement of the hearing.

Rule 35.2 Offer of payment

When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he is entitled, and thereupon deposits in court, for plaintiff, the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs but must pay costs to the defendant as well as the expenses and attorney's fees.

Rule 35.3 Deposit in court

In an action in which any part of the relief sought is a judgment for a sum of money, or the disposition of any other thing capable of delivery, a party, upon notice to every other party and by leave of court, may deposit with the court all or any part of such sum or thing to be kept by the clerk, subject to withdrawal, in whole or in part, at any time upon order of the court.

Rule 35.4 Entry of judgment by confession

(a) A judgment by confession may be entered without action, based upon the consent of a person with legal capacity to do so, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this rule. Once the court passes judgment, the same shall be entered in the docket and notified by the clerk and will become final and unappealable at the date of entry.

(b) Such consent shall appear from affidavits, signed by the defendant, to the following effect:

(1) It must authorize the entry of judgment for a specified sum.

(2) If it be for money owed or to be owed, it shall expose concisely the facts and origin of the debt, and demonstrate that the sum consented is owed of shall be owed in justice.

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed therefor does not exceed the same.

RULE 36 SUMMARY JUDGMENT

Rule 36.1. For claimant

A party seeking to a remedy may, at any time after the expiration of twenty (20) days from service of the summons or after service of a motion for summary judgment by the adverse party, but no later than thirty (30) days following the deadline established by the court to conclude discovery, file a motion based on affidavits or on evidence that proves the inexistence of a substantial controversy of essential and pertinent facts, to move the court for summary judgment in its favor over the totality of claim or of any part requested.

Rule 36.2 For defending party

A party against whom a claim is asserted, may, at any time after service of a motion for summary judgment by the adverse party, but no later than thirty (30) days following the deadline established by the court to conclude discovery, file a motion based on affidavits or on evidence that proves the inexistence of a substantial controversy of essential and pertinent facts, to move the court for summary judgment in its favor over the totality of claim or of any part requested.

Rule 36.3 Motion and proceedings

(a) The motion for summary judgment shall be notified to the opposing party and shall contain the following:

(1) a brief explanation of the allegations of the parties;

(2) the litigious issues or issues in controversy;

(3) the cause of action, claim, or party against whom declaratory judgment is requested;

(4) a concise statement, organized in enumerated paragraphs, of all of the essential and relevant facts over which there is no substantial controversy, indicating the paragraphs or pages of the affidavits or other admissible evidence that establishes them, as well as any other document admissible in evidence that is part of the court's file;

(5) the reasons for which declaratory judgment must be granted and a discussion of the applicable law, and

(6) the remedy that should be granted.

(b) The answer to the motion for summary judgment must be filed within the twenty (20) days after its notification and shall contain the following:

(1) the indicated in subsections (1), (2), and (3) above;

(2) a concise statement, organized in enumerated paragraphs, of all of the essential and relevant facts over which there is, in all truthfulness and in good faith, substantial controversy, indicating the paragraphs or pages of the

affidavits or other admissible evidence that establishes them, as well as any other document admissible in evidence that is part of the court's file;

(3) a list of the facts over which there is no controversy, indicating the paragraphs or pages of the affidavits or other admissible evidence that establishes them, as well as any other document admissible in evidence that is part of the court's file; and

(4) the reasons for which summary judgment should not be granted and a discussion of the applicable law.

(c) When a motion for summary judgment is filed and granted in the manner provided by Rule 36, the opposing party may not rely upon the assertions or statements contested in his/her allegations, but rather the party will have to answer in the same manner, as detailed and specific, as the moving party. If the party does not so respond, summary judgment, if appropriate, shall be entered against him/her.

(d) Any statement of facts exposed in a motion for summary judgment or in its reply may be considered admitted if the paragraphs or pages of the affidavits or other admissible evidence that establishes them are indicated, unless it's appropriately contested according to this rule.

The court shall not have the obligation to consider those facts that have not been enumerated with specificity and that do not indicate the paragraphs or pages of the affidavits or other admissible evidence that establishes them. It will also not have the obligation of considering any part of an affidavit or other admissible evidence which was not referenced in a statement of facts.

(e) The judgment requested shall be immediately granted if the allegations, depositions, answers to interrogatories and admissions offered, in addition to the affidavits if there are any, or other evidence that demonstrates that there is no real, substantial controversy regarding any essential and pertinent fact and that, as a matter of law, the court should grant summary judgment in favor of the moving party.

The court shall entry a summary judgment of an interlocutory nature to solve any controversy between any party that may be separated from the rest of the controversies. Said judgment might be granted in favor or against any party in the claim.

If the opposing party does not file a reply to the motion for summary judgment in the term provided by this rule, the motion for summary judgment is understood to be filed for the court's consideration.

Rule 36.4 Case not adjudicated on motion

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked or is denied and a trial is necessary, the court must solve the

motion through a determination of the essential and relevant facts over which there is no substantial controversy and the essential and relevant facts that are truly and in good faith contested, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just, including an evidentiary hearing limited to the issues in controversy. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Based on the determinations made pursuant to this rule, the court shall decide the corresponding remedies, if any.

Rule 36.5 Form of affidavits; further testimony

Affidavits supporting and opposing the motion shall be based on the personal knowledge of the witness. They shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or further affidavits.

Rule 36.6 When affidavits are unavailable

Should it appear from the affidavits of a party opposing the motion that he/she cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may deny the request for judgment or may postpone considering the motion to grant the party a reasonable time to obtain affidavits, take depositions, obtain evidence from the opposing party, or may make such order as is just.

Rule 36.7 Affidavits made in bad faith

Should it appear to the satisfaction of the court that any of the affidavits presented are filed in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

RULE 37 MANAGEMENT OF THE CASE

Rule 37.1 Meeting for the case management

In any contentious case, with the exception of those under Rules 45 and 60, in cases of family relationships or others regulated by special laws, a meeting will be held between the attorneys of the parties, no later than forty (40) days since the last reply of the defendant or of the date of the last subpoena to a co-defendant, or on the date that the term to respond expires. The plaintiff's

attorney shall coordinate with the defendant's attorney the date of the meeting, in which the following matters must be addressed:

(a) Exchange a legible copy of every document, audiovisual work or information stores electronically under custody, possession or control, than any party may use in support of the allegations and defenses formulated.

(b) In cases of division and liquidation of property, exchange inventory, a description and valuation by the parties, and a copy of all of the documents required by law or regulation for processing the case.

(c) Exchange the name, address, phone number, of every person that might have information relevant to the case and which might be subject of discovery, and a summary of said information.

(d) Evaluate the need or convenience of designating a commissioner, be it a judicial administrator, accountant, liquidator, appraiser, receiver, arbitrator, tutor, expert, special commissioner, ad hoc administrator or any other human resource, for which the name of a candidate by agreement or of two candidates with whom they have spoken to and who are available to accept the entrusted.

(e) Exchange the name, address, phone number and curriculum vitae of any expert witness consulted or intended to be consulted, including occurrence experts. Provide a summary of his/her opinions and a brief explanation of the theories, facts, or arguments that sustain them, and the term for the filing of expert reports.

(f) Prepare a schedule of all the discovery the parties intend to do, including the dates for compliance and for the depositions of parties, witnesses, and expert witnesses, if any. It shall include the methods for discovery, if any, and the term within which they shall be completed.

(g) Evaluate the case pursuant to the active regulation of alternate dispute resolution.

(h) Inform the pending related suits, to be filed, or subject to consolidation.

As a result of the meeting, the attorneys shall prepare a joint report called *the Report for case management,* which will include any agreements reached in the meeting, and will be presented at the clerk's office within the ten (10) days following the meeting. The *Report for case management* shall be made by telephone, fax, e-mail, videoconference, or by any other method. In virtue of this report, the court shall schedule the initial conference, the conference prior to the trial, or the trial.

The parties are required to update, supplement, correct, or amend the evidence or information they must exchange pursuant to this rule. Incompliance with this obligation shall result in sanctions pursuant to Rule 23.1(e).

The terms provided in this rule are of strict compliance.

Rule 37.2 Initial conference

In any contentious case, with the exception of those provided in Rule 60 and others regulated by special laws, the court shall assign an initial conference no later than sixty (60) days after filing the *Report for case management*. In the initial conference, the following matters shall be attended:

(a) The controversies regarding jurisdiction and competence.

(b) Accumulation of parties or claims.

(c) Amendments to the allegations.

(d) Stipulations regarding the facts and documents, in such a way that an additional discovery and the presentation of unnecessary evidence is avoided.

(e) The contested facts and applicable law.

(f) Evaluate the case in accordance with the regulation relative to alternate methods of dispute resolution.

(g) The limits, reach, and deadline to conclude the discovery of pending evidence.

(h) The issuance of protective orders.

(i) The term to file dispositive motions.

(j) The term to file amendments to the allegations in accordance with Rule 6.2(c).

(k) The separation of claims for separate adjudication.

(l) The related claims pending, to be filed, or consolidated.

(m) The exchange of inventory, the description and valuation of the property estimated by the parties, and copy of all the documents required by law or regulation for processing the case.

(n) The possibility of certifying the case as a case of complex litigation.

(o) The convenience of submitting litigious matters to a commissioner, judicial administrator, accountant, liquidator, appraiser, receiver, arbitrator, tutor, expert, special commissioner, ad hoc administrator or any other human resource
(p) The stipulations to facilitate the processing of the case.

(q) The transactions.

(r) Assign a date for the trial.

(s) Any other measure to facilitate the most prompt processing of the case. None of the provisions of this rule prevent the court, according to the provisions of the *Report for case management*, from substituting the initial conference date with the conference prior to the trial, or from ordering additional conferences with the purpose of directing the procedures related to discovery.

Rule 37.3 Scheduling order

(a) In cases holding an initial conference, the court shall issue an order for the scheduling of the process that will include the provisions and agreements.
(b) In cases not holding an initial conference, the court shall issue a scheduling order in which it shall adopt the provisions and agreements of the *Report for case management*.
(c) The terms and assignments issued in a scheduling order shall be of strict compliance, subject to the sanctions established in Rule 37.7.

Rule 37.4 Meeting in preparation for the conference prior to trial

In cases holding a conference prior to a trial, the attorneys of the parties shall meet informally at least fifteen (15) days prior to the date of the conference with the purpose of preparing, in accordance with the *Report for case management*, the agreements in the scheduling order and the events after these, a *preliminary report among attorneys* that includes the following:

(a) Names, addresses, phone numbers, fax, and e-mail of the attorneys that will intervene in representation of a party at the hearing in the merits.

(b) A brief statement of the facts relevant to the claims or defenses of the parties, and if damages are claimed, a detailed list of these.

(c) Stipulations about the facts, documents, and issues over which there is no controversy and that avoid the presentation of unnecessary evidence.

(d) A brief statement of the position of the parties with relation to the facts, documents, and the issues over which there is controversy and the legal grounds in support of the position.

(e) A summary of the law applicable to the specific facts of the case, a summary of the matters of law that the parties anticipate shall be raised or were raised, indicating those over which the parties disagree and their opinions, and the applicable jurisprudence.

(f) A detailed statement of the documentary evidence duly identified, including the depositions or other evidence that shall be presented, and for which there is no controversy regarding admissibility.

(g) A statement of the documentary evidence that each party shall offer and for which there is controversy regarding admissibility, including a concise exposition of the grounds for objection.

(h) A list of each party with the names and addresses of the witnesses, including the occurrence experts that will testify in trial (except for witnesses of contestation or rebuttal) including a summary of the testimony.

(i) A list of each party with the names of the expert witnesses that will testify in trial, including a summary of the testimony.

(j) The claims or defenses that each party allege has been withdrawn or waived.
(k) A list of all motions filed and those intended to be filed, subject to the court's discretion, to allow them at this stage in the proceedings.

(l) The amendments to the allegations and grounds for not filing them previously.

(m) An estimation of the number of days and hours required for the presentation of the evidence of each party at the hearing in the merits.

(n) The possibility of a transaction.

(o) Consider any other measure that might facilitate the most rapid conclusion of the claim.

The parties' attorneys might discuss the matters required for the *Report* by telephone, videoconference, fax, e-mail or by any other method.

The parties' attorneys shall file the *Report* herein required to the clerk's office ten (10) days prior to the conference prior to trial.

Unless just cause can be shown, the court will not allow the presentation in trial of those documents, witnesses or controversies not identified according to this rule, and the objections and defenses not specified in the *Report* are considered to be waived.

Rule 37.5 Conference prior to trial

The conference prior to trial will be held at least thirty (30) days prior to the date of the trial in the merits. The court may require the attendance of the parties with their respective attorneys. In the conference, the matters specified in the *Report* shall be discussed, as well as the following:

(a) The transaction of the claim.

(b) The adjudication of all pending controversies that arise from the *Report,* including the admissibility of the evidence.

(c) Establish the plan for the date of the trial.

The court shall issue an order in which it will expose what was agreed to and provided in the conference, the amendments to the allegations that were allowed and the stipulations of the parties regarding any of the issues considered, and which might limit the litigious matters that will be considered by the court to those not solved through admissions or stipulations of the attorneys. Said order, once entered, will control the course to follow in the suit, unless it is modified in the trial to prevent an injustice.

Rule 37.6 Conference about transaction

At any moment that the court might deem timely, it might order a conference to consider the transaction of the case with the assistance of the parties and their attorneys.

Rule 37.7 Sanctions

If a party or his/her attorney does not comply with the terms and provisions of this rule, or does not comply with any order of the court for the management of the case without having a just cause, the court shall impose upon the party or the party's attorney the economic sanction that corresponds.

CHAPTER VI

THE TRIAL

RULE 38 CONSOLIDATION; SEPARATE TRIALS

Rule 38.1 Consolidation

When actions involving a common question of law or of fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and to this effect it may make such orders as may tend to avoid unnecessary costs or delay.

Rule 38.2 Separate trials

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim or third-party claim, or of any separate issue, and may render judgment pursuant to the provisions of Rule 42.3.

RULE 39 VOLUNTARY DISMISSAL AND DISMISSAL OF ACTIONS

Rule 39.1 Voluntary dismissal

(a) *By plaintiff; by stipulation.* Subject to the provisions of Rule 20.5, an action may be dismissed by the plaintiff without order of the court:

(1) By filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or

(2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in the General Court of Justice or in any court of the United States or of any state an action based on or including the same claim.

(b) *By order of court.* Except as provided by Rule 39.1(a), an action shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. Unless otherwise specified in the order, a dismissal under this subsection is without prejudice.

Rule 39.2. Involuntary dismissal

(a) Where the plaintiff fails to comply with these rules or with any order of the court, the court, on its own motion or on motion of a defendant, may dismiss an action or any claim against him or order that the allegations be eliminated, as the case may be.

In the case of a first failure to comply, the severe sanction of dismissal of the claim or elimination of the allegations shall only be in order after the court has first notified the counsel of the party in question and the opportunity to respond has been given thereto. If the counsel of the party does not respond to the notice, the court shall proceed to impose sanctions on the counsel of the party and the party shall be notified of the situation directly. After the party has been duly notified or advised of the situation and its consequences, if the same is not corrected, the court may order the dismissal of the complaint or the elimination of the allegations. The court shall grant a reasonable term to the party to correct the situation, which in no case shall be less than thirty (30) days, unless the circumstances of the case justify that the term be reduced.

(b) Whenever a civil action shall have been pending in any court for six (6) months without any required proceeding having been taken therein, the administrative judge shall order dismissal thereof unless failure to prosecute is reasonably accounted for. For the purposes of this rule, motions to stay, for transfer of hearing, or for extensions of time shall not be considered a proceeding taken.

In every case the administrative judge shall issue an order requiring the parties to state in writing, within the term of ten (10) days after service of notice by the clerk, the reasons why the action should not be dismissed.

(c) After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that under the proved facts and the law

the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this Rule 39.2, and any dismissal other than a dismissal for lack of jurisdiction or for failure to join an indispensable party, operates as an adjudication upon the merits.

Rule 39.3 Voluntary dismissal and dismissal of counterclaim, cross-claim or third-party claim

The provisions of Rule 39 apply to the voluntary dismissal and to the dismissal of any counterclaim, cross-claim or third-party claim. A voluntary dismissal by the claimant alone pursuant to Rule 39.1(a) shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial.

Rule 39.4 Costs or attorney's fees of previously dismissed actions

If a plaintiff who has once dismissed an action commences another based upon or including the same claim against the same defendant, the court may make such order for the payment of costs or attorney's fees of the action previously dismissed as it may deem proper and may stay the proceedings in the new action until the plaintiff has complied with the order.

RULE 40 SUBPOENA

Rule 40.1 Form

All subpoenas shall include the name of the court issuing it, the courtroom in which the case is pending, the title of the claim, and the civil number of the case. It shall compel each person to whom it is addressed to appear, offer testimony in a hearing, trial or deposition, produce or allow the inspection or copy of books, documents, information stored electronically, or tangible things in the custody, possession or control of said person or entity or to allow the inspection of a property under his/her possession, custody or control in the date, time, and place specified.

A request to produce evidence or allow inspection can be annexed to a request to appear in court for a trial, hearing, or deposition, or could be issued separately. A subpoena to produce information stores electronically shall specify the way or ways in which the information shall be produced.

Rule 40.2 Issuance

A subpoena may be issued by the court’s clerk on a motion by a party or by an attorney duly admitted to the profession that appears in representation of a party, in the following situations:

(a) to require the appearance in a trial or hearing in the courtroom where the case is assigned;
(b) to require the appearance for the taking of a deposition in the residence, workplace, or where the deponent carries out his/her personal businesses ;
(c) to require the production, inspection, or copy of books, documents, information stored electronically or tangible things, in the judicial region corresponding to the courtroom where the case is pending, subject to the provisions of Rule 31; and
(d) to require the inspection of a property under the possession, custody, or control or the subpoenaed in the date, time, and place specified, subject to the provisions or Rule 31.

Rule 40.3 Service

A subpoena may be served by the marshal, or by any other person not less than eighteen (18) years of age, who can read and write, and who is not a party or attorney for a party, nor a family member within the fourth degree of consanguinity or second of affinity, and who has no interest in the action. Service of a subpoena upon a person named therein shall be made by delivering it to such person or pursuant to the provisions of Rule 4.4 regarding personal service of summons. In cases where the subpoena requires appearance, it must be accompanied by a check or money order for the amount of diet and mileage pursuant to the regulations in accordance with the law. When the subpoena is issued on behalf of the Commonwealth of Puerto Rico or an officer or agency thereof, the amount for diet and mileage need not be tendered.

The subpoena shall be served at least twenty (20) days prior to the date of compliance, except when the subpoena requires appearance at a trial or hearing, which might be serviced outside said term.

Proof of the service shall be made by presenting a copy of the citation at the clerk's office, which will include an affidavit if it was serviced by a particular person or by certification if it was served by a marshal, that shall state the date, form and manner in which it was made and the name of the person of entity to which it was delivered.

Rule 40.4 Protection of the parties subject to subpoenas

(a) The party requesting the issuance of a subpoena or the attorney that issues a subpoena shall take reasonable measures to avoid imposing burdensome charges or expenses to the person subject to the subpoena. The court that issues the subpoena might impose sanctions on the party or party's attorney that does not comply with this duty, which shall include loss of income and attorney's fees.

(b) The person required to produce documents or to inspect and copy books, documents, information stores electronically, tangible things or in a place, do not have to appear in the place where the inspection will take place, unless they must appear for a deposition, hearing or trial.

c) The person to who the subpoena is addressed may, within a term of fifteen (15) days since its service, notify in writing to his/her attorney designated in the subpoena of any objections to the inspection or photocopy of all or part of an information, or of the place in which it is located, or of the production of information stored electronically in the way or ways required, or to the inspections of a property. If there are objections, the party that notifies the subpoena shall not have a right to the inspection or production of the requested, but may oppose and request the court, upon prior notice to the person subpoenaed, to issue an order allowing the inspection or production. The court may issue the order that corresponds, and if the court orders the inspection or production requested, it shall protect any person that is not a party or a party's official from any significant expense which might result from the inspection, production, or photocopy of the information.

(d) A person who was subpoenaed to testify in a deposition might present his/her objections within the fifteen (15) days after the service of the subpoena. If the subpoena is for a hearing or trial, the objection might be filed at any moment.

Rule 40.5 Duty to reply to a subpoena

(a) The person replying to a subpoena for the production of documents must produce them as he/she files them in the normal course of the business, or must organize them and identify them in categories, in accordance with what is requested.
(b) When the information requested in a subpoena is not provided, alleging that the information is privileged or that it is subject to a protective order because it is material of preparation for trial, the allegation must be explicit and based on a description of the nature of the documents, the communications, or the objects not produced, to allow the party to contest said allegation. This shall not excuse the production of documents that are not object of the request of the protective order.

Rule 40.6 Subpoena to witnesses for a deposition outside of the jurisdiction

The witnesses that are outside the jurisdiction shall be subpoenaed for the deposition through a commission or rogatory addressed to the judicial authority of the place where the witness is. The testimony shall be taken pursuant to the provisions of Rule 25.2 and the transcription of said testimony might be used in lieu of testimony.

Rule 40.7 Subpoena unnecessary

A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 40.8 Concealment of witness

If a witness goes into hiding so as to evade service of a subpoena upon him, the court may, upon proof by affidavit of the concealment of the witness and of the

relevancy of his testimony, make an order directing that subpoena be served by the marshal, who must serve it accordingly, and, for that purpose, may search any building or property where the witness may be hiding.

Rule 40.9 Subpoena of persons confined in prison

The court, upon the filing of an affidavit certifying the relevancy of the desired testimony, may order the issuance of a subpoena requiring attendance of a person confined in prison for the purpose of testifying at a trial, hearing or deposition.

Rule 40.10 Contempt

Failure to obey, without just cause, a duly served subpoena may be regarded as a contempt of court.

RULE 41 MASTERS

Rule 41.1 Appointment and compensation

The court in which any action or proceeding is pending may appoint a special master therein. As used in these rules, the word 'master' includes a referee, an auditor and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties as the court may order, or paid out of any fund or property involved in the action, which is in the custody and control of the court, as the court may direct. The master shall not retain his report as security for his compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against such a party. Also, if a party without just cause refuses to comply with the order to pay the master's compensation, the court may impose penalties in accordance with Rule 34.3.

Rule 41.2 Reference

The Supreme Court and the Appellate Court may refer a matter to a master in any case or proceeding or original jurisdiction.

A reference to a master in the Court of First Instance shall be the exception and not the rule. No case shall be referred to a master, save in actions involving matters of accounts and of difficult computation of damages or cases involving highly technical matters or matters requiring expertise. A master shall not be appointed if a party demonstrates that it would cause an unnecessary delay in the proceedings and unreasonable costs.

Rule 41.3 Powers

The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues, or to do or perform particular

acts, or to receive and report evidence only and may fix a reasonable time for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference, and shall have the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Rules of Evidence.

Rule 41.4 Proceedings

(a) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall forthwith notify the parties or their attorneys of the time and place of the first meeting to be held within twenty (20) days after the date of the order of the court. It shall be the duty of the master to proceed with all reasonable diligence. Any party, on notice to the other parties and master, may apply to the court for an order requiring the master to expedite the proceedings and to submit his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(b) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 40. If a witness fails to appear or give evidence, without adequate excuse, he may be punished for contempt and be subjected to the consequences, penalties and remedies provided in Rules 34 and 40.

(c) *Statement of accounts.* When matters of accounts are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a public accountant or a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the account or specific items thereof to be proved by oral examination or upon written interrogatories or in such other manner as he directs.

Rule 41.5 Report

(a) *Contents and filing.* The master shall prepare a report upon all matters submitted to him by the order of the court and, if required to make findings of fact and conclusions of law, he shall set them forth in the report, which he shall file with the clerk of the court on the date specified in the order of reference pursuant to Rule 41.3; and, unless otherwise directed, he shall file with it a statement of the proceedings, a summary of the evidence and the original exhibits.

(b) *Draft of the report.* Prior to presenting the report, the master may submit a draft of it to the attorneys of all parties with the purpose of receiving suggestions. Upon filing the report, the clerk shall notify all parties.

(c) *Approval.*-- In all cases the court shall accept the findings of fact of the master, unless clearly erroneous. Within twenty (20) days after being served with notice of the filing of the report or within the term that the court provided, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon the objections thereto shall be made by motion and upon notice, as prescribed in Rule 67. After hearing the parties the court may adopt, modify or reject the report in whole or in part, or receive further evidence, or return it with instructions.

(d) *Stipulations regarding the findings of fact*. The effect of the report of the master shall be the same, regardless of the parties' consent to the matters appointed to him/her, but when the parties stipulate that the master's findings of fact shall be final, only the matters related to law that arise from the report shall be considered.

CHAPTER VII

JUDGEMENTS AND RESOLUTIONS

RULE 42 JUDGMENTS AND RESOLUTIONS

Rule 42.1 Judgment; what it includes

As used in these rules, the term 'judgment' includes any determination of the Court of First Instance that finally resolves the matter under litigation which may be appealed. The term "resolution" includes any determination that concludes an event of the judicial process.

The term 'judgment' when issued by a court of appeals, refers to the official decision of that court concerning the appeal brought before it or concerning the discretionary remedy through which the court of appeals has issued the requested ruling. The final determination of the Court of Appeals when the latter, at its discretion, denies the requested ruling, is denominated as a 'resolution'. The final determination of the court of appeals when the latter dismisses for any reason, or files an abandonment of appeal shall be known as 'judgment'.

Rule 43.2 Recital of facts found and conclusions of law

In all actions the court shall specify the facts found and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its decision. Findings of fact based on oral evidence shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to pass upon the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the court's findings of fact.

Findings of fact and conclusions of law need not be specified:

(a) On decisions on motions under Rule 10 or 36.1 and 36.2, or any other motion except as provided by Rule 39.2;

(b) in default cases;

(c) by stipulation of the parties;

(d) when the court so decides in view of the nature of the cause of action or of the remedy granted by the judgment.

In cases in which a motion for summary judgment in completely or partially denied, the court shall determine the facts pursuant to Rule 36.4.

Rule 42.3 Judgments on claims or multiple parties

When a suit comprises more than one claim, whether by suit, reconvention, suit against a co-party or suit against third parties or in which multiple parties appear, the court may issue a final judgment with regard to one or more claims, or parties without disposing of the total suit, provided that it expressly concludes that there is no reason to postpone the pronouncing of judgment on such claims or parties, until the final decision of the suit and provided that it is expressly directed for total judgment of record to be entered.

When said conclusion and express order is reached, the partial judgment issued shall be final for all purposes with regard to the controversy adjudicated thereby, and once it is registered and a copy of its notice is filed in the case it shall be effective with regard to the terms provided in Rules 43.1, 47, 48 and 52.2.

Rule 42.4 Granting of relief

Every judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleading; however, a judgment by default shall not be different in kind nor exceed the amount prayed for in the demand for judgment.

RULE 43 AMENDMENTS OF INITIAL OR ADDITIONAL DETERMINATIONS

Rule 43.1 Amendments or initial or additional determinations

It shall not be necessary to request that findings of facts be consigned for the purposes of an appeal, but upon the motion of a party, filed not later than fifteen (15) days after a copy of the notice of the judgment is filed in the record of the case, the court make take the corresponding initial findings of facts or conclusions of law, if they were not made because they were not necessary, pursuant to Rule 42.2, or may amend or make additional determinations, and may amend the judgment accordingly. If a party is interested in presenting a motion of amendments or initial or additional determinations, reconsideration, or for new trial, these shall be filed in a single document and the court will resolve. In any case, the sufficiency of the evidence to support the findings may be raised subsequently, even though the party raising the issue has not objected to them in the lower court, or has not filed a motion to amend them, or has not filed for a judgment.

The motion for additional findings of facts shall be notified to the other parties in the case within the same fifteen (15) days established by this rule to file it in court. The term to notify shall be of strict compliance.

Rule 43.2 Interruption of term to request post-trial remedies

The motion for amendments of initial or additional determinations shall expose with sufficient particularity and specificity the facts that the moving party considers proven, and shall be based on substantial questions related to determinations of relevant facts or conclusions of law.

Upon filing the motion, any party in the claim for the court to amend its determinations or to make initial or additional determinations, the term to appeal shall be interrupted for all parties. This term shall begin to elapse once again as soon as a copy of the resolution granting or denying the request or issuing an amended judgment is filed in the record of the case.

RULE 44 COSTS; ATTORNEY'S FEES; LEGAL INTEREST

Rule 44.1 Costs and attorney's fees

(a) *To whom awarded.* Costs shall be allowed to the prevailing party in whose favor the claim is solved, or a judgment in appeal or revision is issued, except when otherwise directed by law or by these rules. The costs which may be allowed by the court are those expenses necessarily incurred in prosecuting an action or proceeding which, according to law or to the discretion of the court, one of the parties should reimburse to the other.

(b) Within the term of ten (10) days after a copy of the service of the judgment is filed in the record of the case, the party claiming costs shall file with the court and serve upon the adversary party, a list or memorandum of all necessary expense and disbursement items incurred during the action or proceeding. The memorandum of costs shall be filed under oath, and shall state that to the

claimant's or his attorney's best knowledge and belief the expense items included are correct, and that all the disbursements were needed for the handling of the action or proceeding. If there is no objection, the court shall approve the memorandum of costs, and may eliminate any item deemed inappropriate, after granting the applicant the opportunity to justify the same. Any party who disagrees with the costs thus claimed may object to the same, in whole or in part, within a term of ten (10) days from the day the memorandum of costs is served. The court, after considering both parties' position, shall resolve the objection. The decision of the Court of First Instance may be reviewed by the Circuit Court of Appeals through a certiorari to be issued at its discretion, and not otherwise. The review of the decision shall be handled jointly with any other recourse that has been filed against the judgment, and if no recourse has been filed the decision on the costs may be appealed.

(c) *On Appeal.*-- The party in whose behalf judgment is rendered on appeal, shall file a statement or memorandum of all the expense items and the necessary disbursements incurred for the processing of the appeal with the Court of Appeals or the Supreme Court, as it may correspond, in the Court of First Instance that decided the case initially, and shall serve it upon the opposing party, within the jurisdictional term of ten (10) days after the remand, and pursuant to the criteria established in subsection (b) above. The memorandum of costs shall be filed under oath, and the objections shall be delineated and decided pursuant to Rule 44.1(b). The resolution issued by the Court of First Instance may be reviewed as provided in subsection (b). The resolution issued by the Circuit Court of Appeals may be reviewed through a *certiorari* before the Supreme Court.

When the decision of the Court of First Instance is reversed, the party in whose favor the issue is decided shall file a memorandum of expenses pursuant to the procedure and term provided by this subsection and shall include the expenses and the necessary disbursements incurred in the Court of First Instance, and in the Court of Appeals and the Supreme Court.

(d) *Attorney's Fees.* In the event any party or its lawyer has acted obstinately or frivolously, the court shall, in its judgment, impose on such person the payment of a sum for attorney's fees which the court decides corresponds to such conduct. In cases in which the Commonwealth of Puerto Rico, its municipalities, agencies, or instrumentalities has acted obstinately or frivolously, the court shall impose, in its judgment, an amount for attorney's fees, unless it is explicitly exempt by a provision of law.

Rule 44.2 Interlocutory costs and penalties upon the parties

The court may impose interlocutory costs upon the parties and pecuniary sanctions in every case and in any stage upon one of the parties and for delay, inaction, abandonment, obstruction or lack of diligence in prejudice of the good administration of justice. The payment of such concepts shall be made by electronic means or any other method or instrument that the Chief Justice of the Supreme Court adopts, in coordination with the Secretary of the Treasury. The

amounts raised from these sanctions imposed to the parties or the attorneys shall be deposited in the Special Fund of the Judicial Branch created by Act No. 235 of August 12, 1998, as amended, to be used in the ways and for the purposes there exposed.

Pecuniary sanctions that the court may impose to the Commonwealth of Puerto Rico or its agencies, corporations, or instrumentalities shall be granted in favor of the opposing party in the claim.

Rule 44.3 Legal interest

(a) Interest, at the rate fixed by regulation by the Finance Board of the Office of the Commissioner of Financial Institutions in effect when judgment is pronounced, shall be included in every judgment ordering the payment of money, to be computed on the amount of the judgment from the date it was pronounced and until paid up, including costs and attorney's fees. The interest rate shall be stated in the judgment.

The Board shall periodically fix and review the interest rate on judgments, taking into consideration the market's fluctuations, with the objective of discouraging the filing of frivolous claims, avoiding unreasonable delay in compliance with the existing obligations and stimulating the payment of judgments as soon as possible.

(b) Except when the defendant is the Commonwealth of Puerto Rico, its municipalities, agencies, instrumentalities or officers acting in their official capacity, the court will also impose on the party that has acted rashly the payment of interest at the rate fixed by the Board by virtue of the previous subsection which is in effect at the moment the judgment is pronounced, from the time the cause of action arises in every case of collection of money and from the time the claim is filed in actions for damages until the date judgment is pronounced, to be computed on the amount of the judgment. The interest rate shall be stated in the judgment.

RULE 45 DEFAULT

Rule 45.1 Entry

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

The court of its own initiative or upon motion of party may enter default against any of the parties pursuant to Rule 34.3(b)(3).

Said entry shall have the effect of admitting the averments set forth in the affirmative defenses, subject to the provisions of Rule 45.2(b).

Failure to enter default shall not affect the validity of a judgment by default.

Rule 45.2 Judgment

Judgment by default may be entered as follows:

(a) *By the clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted, and if he is not an infant or incompetent person.

(b) *By the court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by the father, mother, guardian, guardian ad litem or other such representative who has appeared therein. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court shall hold such hearings or order such references as it deems necessary and proper, or assign the case to a master. When the party against whom judgment by default is sought has appeared in the action, it shall be served with written notice of any hearing by default to be held.

Rule 45.3 Power to set aside default

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 49.2.

Rule 45.4 Who may apply for entry

The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 42.4.

Rule 45.5 Judgment against the Commonwealth of Puerto Rico

No judgment by default shall be entered against the Commonwealth of Puerto Rico, its municipalities, agencies or corporations, or against an officer acting in his official capacity, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Rule 46 Notice and Registration of Judgments

It shall be the duty of the Clerk to notify the decisions issued by the Court as soon as possible within the norms fixed by the Supreme Court, by filing in the record a copy of the decision and the evidence of the notice and the registration of the

decision. The filing of the decision in the Registry of Suits and Procedures constitutes the registration of the decision. The decision shall not be effective until a copy of the notification has been filed in the record and the term for the appeal shall begin to run from the date of said filing.

CHAPTER VIII

PROCEEDINGS SUBSEQUENT TO JUDGMENT

Rule 47 Reconsideration

The party adversely affected by a decision or order of the Court of First Instance may, within the jurisdictional term of fifteen (15) days as of the date of notice of the decision or order or, as of the date of filing in the record of the case a copy of the judgment, file a motion for reconsideration of the decision, order or judgment.

The motion for reconsideration shall expose, with sufficient particularity and specificity, the facts and law that the moving party considers should be reconsidered and must be based on substantial matters related to the determinations of relevant facts and law conclusions.

The motion of reconsideration that does not comply with the specifications of this rule shall be denied and shall not interrupt the term to appeal.

Once the motion for reconsideration has been filed, the terms to appeal will be interrupted for all parties. These terms shall begin from the date on which the decision of the court definitively passing upon the motion is notified.

The motion for reconsideration shall not notified to all other parties to the litigation within the fifteen (15) days established by this rule for presenting the same before the court simultaneously. The term for notifying shall be of strict compliance.

RULE 48 NEW TRIAL

Rule 48.1. Grounds

A new trial may be granted on any of the following grounds:

(a) When material evidence is discovered which, despite reasonable diligence, could not be discovered or produced at the trial.

(b) When it is impossible to prepare a narrative statement of the evidence or when a transcript of the stenographic notes of the proceedings cannot be obtained.

(c) When substantial justice requires it, the court may grant a new trial to all or any of the parties and on all or part of the issues. The court shall grant a new trial to any party and over any of the litigious matters.

Rule 48.2 Time for motion

A motion for new trial shall be filed within fifteen (15) days after a copy of the notice of the judgment is filed in the record, except that:

(a) If such motion is based on newly discovered evidence, it may be filed before the term to appeal or to seek review has expired, upon notice to the other party, the holding of a hearing, and a showing that due diligence has been exercised.

(b) When it is based on Rule 48.1(b) it may be filed within thirty (30) days after the the unavailability or loss of the tape is diligently established

The last fact should be established within thirty (30) days after notice of the judgment.

Rule 48.3 Time for serving affidavits

When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party shall have fifteen (15) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding fifteen (15) days after good cause is shown. The court may permit reply affidavits.

Rule 48.4 On initiative of court

Within fifteen (15) days after entry of judgment the court, of its own initiative, may order a new trial for any reason for which it might have granted a new trial on motion of a party, and it shall specify in the order the grounds therefor.

RULE 49 RELIEF FROM JUDGEMENT OR ORDER

Rule 49.1 Errors of form

Errors of form in judgments, orders or other parts of the record, and those appearing therein because of oversight or omission, may be corrected by the court at any time, on its own initiative, or upon the motion of a party, upon prior notice, should it be ordered. Said errors can be corrected during the handling of an appeal or a writ of certiorari, before the appeal is docketed to the court of appeals, and subsequently, they shall only be corrected by permission of the court of appeals.

Rule 49.2 Mistakes; inadvertence; surprise; excusable neglect; newly discovered evidence, fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a judgment, order or proceeding for the following reasons:

(a) Mistake, inadvertence, surprise or excusable neglect;

(b) Discovery of essential evidence which, despite due diligence, could not be discovered in time to move for a new trial under Rule 48;

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(f) Any other reason justifying relief from the operation of the judgment.

The provisions of this rule shall not be applicable to judgments in divorce cases, unless the motion is based on reasons (c) or (d). The motion shall be filed within a reasonable time, but in no case after six (6) months have elapsed since the filing of the judgment or order on the record or since the proceedings took place. A motion under this Rule 49.2 shall not affect the fact that the judgment is final and shall not suspend its effects. This rule does not limit the court's authority to:

(1) become aware of an independent suit with the purpose of releasing a party from a judgment, order, or proceeding;

(2) grant a remedy to a party that has not been duly summoned;

(3) rescind a judgment for reasons of fraud to the court.

While an appeal or certiorari is pending final resolution in a procedure of voluntary jurisdiction, the respondent court shall not grant any remedy under this rule, unless permitted by the appellate court. Once the appellate court pronounces judgment, no redress may be granted under this rule which is inconsistent with the mandate unless previously permitted by the appellate court. In both cases, the motion for redress shall always be made before the respondent court within the above stated term, and if the respondent court determines that it is willing to grant redress a request for said permit shall then be made to the appellate court.

Rule 50 Harmless errors

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order, or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or for setting aside, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 51. Execution

Rule 51.1. Time for executing

The party in whose favor judgment is entered may execute the same by the proceeding fixed in Rule 51 at any time within five (5) years after it becomes final. Upon expiration of that period, the judgment may be executed by leave of court, on motion of a party and notice to all parties. If after entry of the judgment the execution thereof is stayed by order or judgment of the court or by operation of law, the time the execution has been suspended shall be deducted in computing the five (5) years during which the writ of execution may be issued.

Rule 51.2. Proceedings in cases of judgments for payment of money

Process to enforce a judgment or order for the payment of money and to collect the costs awarded by the court shall be a writ of execution. The writ shall specify the terms of the judgment and the amount actually due. Every writ of execution shall be directed to the marshal. In execution cases, including those where a judicial sale is ordered, the marshal shall deliver to the clerk the writ duly served and any surplus in his possession within fifteen (15) days after the date of such execution. A writ of execution may issue upon one or more judgments or orders in the same action.

In cases where the service processing of the writ of execution does not completely satisfy the judgment or it is unsuccessful, it shall not be necessary to issue an additional order. The sheriff or marshal will take immediate record of each service on the back of the true and exact copy of the writ of execution. In cases that meet the entire sentence by filling out one service of proceeding or if it is the last service of proceeding satisfying the judgment, the sheriff or marshal shall record the filling in the original document of the writ of execution.

Rule 51.3. Proceedings in cases of judgments for specific acts; foreclosure of mortgages and other liens

(a) If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the defaulting party by some other person appointed by the court and the act when so done shall have the same effect as if done by the party.

Whenever necessary, on application of the party entitled to performance, and upon order of the court, the clerk shall issue a writ of attachment against the property of the defaulting party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

Likewise, the court, in lieu of directing a conveyance of the land, may enter a

judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.

When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk.

Whenever the court orders a judicial sale of personal or real property, said order shall have the force and effect of a writ directing the physical delivery of the possession, and it shall be so stated in the judgment or order so that the marshal or any other acting officer may proceed to put the purchaser in possession of the property sold within the period of twenty (20) days after the sale or public auction, without prejudice to the rights of third persons who have not participated in the proceeding.

(b) Judgments entered in actions for the foreclosure of mortgages and other liens shall order that plaintiff recover his debt, interests and costs through the sale of the encumbered property. To that end, an order shall be served upon the marshal directing him to sell the property in satisfaction of the judgment in the manner provided by law for the sale of property subject to execution; if the mortgaged property cannot be found, or if the proceeds of such sale are insufficient to satisfy the judgment, the marshal shall collect the rest of the amount, or the remaining unpaid balance, out of any other property of the defendant as in case of ordinary executions.

Rule 51.4. Supplementary proceedings

In aid of the judgment or of its execution, the judgment creditor or his successor in interest may examine any person including the judgment debtor, as is provided in these rules for the taking of depositions. If the deposition is taken by written questions, the subpoena for the taking thereof may provide that the judgment debtor or deponent need not appear personally thereunder, provided that before the time fixed for the taking of the deposition he delivers to the judgment creditor or to his attorney answers under oath to the written questions served upon him. The court may make any order which it considers just and necessary for the execution of a judgment.

Rule 51.5. Manner of execution

If the writ of execution is against the property of the judgment debtor, it shall require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor. When there is property of the judgment debtor whose value is greater than the amount of the judgment including costs, the marshal shall attach only such part of the property as the judgment debtor may indicate, provided it is amply sufficient to satisfy the judgment and costs accrued.

A writ of execution obtained under a summary proceeding, as provided by Rule 60, may not be executed on Saturdays, Sundays, holidays or after working hours, except when the urgency is proved.

Rule 51.6. Process in behalf of and against persons not parties

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Rule 51.7. Judicial sales

(a) *Notice of sale.-* Before the sale of the property on execution is held, notification thereof shall be published during two (2) weeks by posting visible written notification in three (3) public places of the municipality where the sale is to be held, such as the City Hall, the court and the collector's office.

Such notification shall be published twice in a newspaper of general circulation in Puerto Rico and during two (2) consecutive weeks with an interval of seven days between both publications. It is understood that at least fourteen (14) days must elapse between the first publication in the newspaper or in the public places for the sale to be held. Copy of such notification shall be sent to the defendant through judgments and to his or her lawyer by certified mail return receipt requested within the first five (5) days of the publication of the first notification, provided that he or she appeared to the hearing. In cases in which the defendant has not appeared, the notification shall be by certified mail return receipt requested to the last known address.

In all cases where it is alleged that the movant in a procedure for enforcement for judgment has not complied with some of the requirements in this rule, the court, at the party's request, shall hold a hearing to resolve the issue raised. The notification of sale shall adequately describe the property on sale, and shall also succinctly mention the judgment to be satisfied through said sale, indicating the place, day and time when the sale is to be held. If the property is perishable the court may, on motion of the party, reduce the term for posting the notification of sale to less than two (2) weeks. All judicial sales which do not comply with the notification of sale requirement shall be null, without prejudice to the liability of the party who made the sale without complying with said notification.

(b) *Conduct of sale.-*The judicial sale of property under execution shall be engaged after fourteen (14) days within the fir publication of the first publication of the notification. It must be made at auction to the highest bidder, between nine o'clock in the morning and five o'clock in the afternoon. After sufficient property has been sold to satisfy the execution no more property shall be sold. Neither the officer holding the execution nor his deputy, nor any officer or employee of any part of the court, may buy or participate directly or indirectly in the purchase of said property. When the sale is of personal property, capable of manual delivery, it must be within view of those attending the sale and must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold

separately; or, when a portion of such property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. If the judgment debtor may direct the order for the sale of the personal or real property when such property consists of several known lots or parcels or articles which can be sold separately to advantage, and the marshal must follow such directions.

(c) *Refusal of purchaser to pay*-- If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may resell the property at any time to the highest bidder, and if any loss is occasioned thereby, the affected party may claim such loss from the bidder refusing to pay before any court of competent jurisdiction. Likewise, the officer may, in his discretion, reject thereafter any subsequent bid of such person. The officer shall be only liable for the amount bid by the second or subsequent purchaser and the amount collected from the purchaser who has refused to pay.

(d) *Delivery of property and certificate of sale*-- After the sale, the officer in charge of conducting it shall draft a certificate accounting for the sales proceeding and the subsequent award to the highest bidder who shall pay the purchase price in cash or through a certified check to said officer. In extraordinary cases, the court may order any other kind of payment. In case of personal property, the officer shall deliver the property to the purchaser and, at his request, shall deliver to him a copy of the certificate of sale. Such certificate shall be deemed as the official evidence of the purchaser's title to the property subrotating him in all the rights of the debtor in such property. When real property is sold, the officer in charge of the sale shall execute a public deed in favor of the purchaser before the notary public chosen by said purchaser and the latter shall pay for such deed. Such execution constitutes a real transfer of domain of the real property in question.

Rule 51.8. Rights of purchaser upon failure of title; revival of judgment

If the purchaser of real property sold on execution, or his successor in interest, fails to recover the title or possession as a result of irregularities in the proceedings concerning the sale that could make such sale null, or because the property sold was not subject to execution and sale, such interested party may request the court the most favorable remedy provided herein. The court shall, after due notice to every interested party and on motion of such interested party, and prior to the proceeding:

(a) Order and expedite a writ of execution against the lender(s) by judgment for the amount paid by the purchaser at the judicial sale, with interest from the time of payment until the date of the repayment at the valid legal interest.

(b) Reiterate the judgment that gave rise to the sale in favor of the victorious bidder to the amount paid at such foreclosure sale, with interest from the time of payment to the same rate as stated in the judgment. From this same date, the renewed judgment shall have the same force and effect of the original judgment. In case of partial execution of judgment, the right to of the victorious bidder shall have priority over the creditor from the original judgment.

Rule 51.9. Proceedings to compel contribution among judgment debtors

When upon an execution against several persons jointly liable, more than a due proportion of the judgment is satisfied by one of them, said person is entitled to the benefit of the judgment to enforce contribution or reimbursement, if within thirty (30) days after his payment, he files with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or reimbursement. Upon the filing of such notice, the clerk shall make an entry thereof in the margin of the docket and, on motion of the interested party, shall issue a writ of execution against the other joint debtors.

51.10. Costs in executing

All expenses reasonably incurred by a party to enforce a judgment in its favor shall be recoverable. The request to this effect shall be submitted under oath by a party or attorney within ten (10) days following the date the judgment became effective. It shall be stated, to the best of the parties' or lawyer's knowledge, that the expenses are correct and that all disbursements were necessary to the execution of the judgment. Any party who does not agree with the costs claimed may challenge them in whole or in part within ten (10) days from the day when such request was notified. The court, after considering the position of the parties, shall decide the dispute. The resolution of the Court of First Instance may be reviewed by the Court of Appeal by certiorari.

If no claim is presented, the court will approve the request for costs and may eliminate any item deemed inadmissible, after granting the parties an opportunity to justify such claim.

Rule 52. Appeal, certiorari, certification, and other procedures for the revision of judgments and resolutions

Rule 52.1. Procedures

Every procedure for appeal, certiorari, certification, and any other procedure to review judgments and resolutions shall be handled in accordance with applicable laws, these rules, and the rules adopted by the Supreme Court of Puerto Rico.

Writs of certiorari to review judgments or interlocutory orders pronounced by the Court of First Instance shall only be issued by the Court of Appeals when resorted to by reason of a resolution or order under Rules 56 and 57 or the denial of a motion of a provisory nature. However, and as an exception to the above provision, the Court of Appeals may review interlocutory judgments or orders issued by the Court of First Instance when resorted to for decisions regarding the admissibility of factual witnesses or essential experts, issues regarding evidentiary privileges, entries of contempt, in cases involving family relations, in cases vested with public interest, or in any other situation in which

waiting for a judgment of the Court of Appeals constitutes a gross miscarriage of justice. When denying the issue of a writ of certiorari in such cases, the Court of Appeals does not have to state the grounds for its decision.

Any other judgment or interlocutory order issued by the Court of First Instance may be reviewed in the petition for review instituted against the judgment in question, subject to the provisions of Rule 50 on harmless errors.

Rule 52.2. When and how to do it

(a) *Writs of Appeals.* - Writs of Appeals before the Court of Appeals or Supreme Court to review judgments shall be presented within thirty (30) jurisdictional days counted from the date of filing of a copy of the notice of the appealed judgment or order.

(b) *Writs of Certiorari*. - Writs of Certiorari before the Court of Appeals to review final judgments in proceedings of voluntary jurisdiction or before the Supreme Court to discretionally review the judgments or orders of the Court of Appeals in writs of appeal or the final judgments or orders in writs of certiorari in proceedings of voluntary jurisdiction shall be filed within the jurisdictional term of thirty (30) days counted from the date of filing of a copy of the notice of the appealed judgment or order.

Writs of Certiorari to the Court of Appeals to review judgments or orders from the First Instance Court or to the Supreme Court to review the other final judgments or proceedings from the Court of Appeals in discretional writs or to review any proceeding shall be presented within thirty (30) days counted from the date of notice of the recurred judgment or order. The term herewith shall be strictly complied with, and shall be only extended when dully sustained special circumstances exists.

In those cases in which proceedings before the Court of First Instance are stayed through writs of certiorari, the Court of Appeals shall resolve the matter brought before it within sixty (60) days after the parties concerned are heard.

(c) *Writs of Appeal or Certiorari when the Commonwealth of Puerto Rico is a Party*. In those cases in which the Commonwealth of Puerto Rico, its municipalities, officials, or one of its instrumentalities other than a public corporation are parties to a case, the writ of appeal to review judgments of the Court of First Instance, or the writs of certiorari to discretionally review the judgments or orders of the Court of Appeals in writs of appeal, shall be filed by any party to the case injured by the judgment or order within the jurisdictional term of sixty (60) days counting from the filing of a copy of the notice of the appealed judgment or order.

The terms computed from the filing of a copy of the notice of the appealed judgment, proceeding or order shall began to lapse from the mail deposit date of the notice of the dictum, provided this date is different from the filing date.

(d) *Writs of certification to the Supreme Court*. Through the certification writ, which can be expedited discretionally, motu proprio or by a party request, the Supreme Court may immediately bring before it any pending issued from the First Instance Court or the Court of Appeals to consider and resolve, if the controversy entails novel issues or issues of high public interest including substantial constitutional issues under the Constitution of the Commonwealth of Puerto Rico or the Constitution of the United States.

Also, the recourse of certification shall be formalized when the Supreme Court of the United States, a United States Court of Appeals for any Circuit, a United States District Court, the highest court of appeals of any of the states and territories of the United States of America, or any other lower court of appeals, has a case under its consideration which involves Puerto Rican legal issues that may determine the result thereof, and with regards to which, in the opinion of the requesting Court, there are no clear precedents in the case law of this Court.

(e) *Interruption of the term to appeal.*- The term to appeal shall be interrupted by a timely motion made pursuant to any of the rules set forth below, and said term shall start to run anew when a copy of the service of any of the following orders regarding said motions is filed in the case:

(1) Rule 43.1 In appeals to the Court of Appeals proceeding from the Court of First Instance, granting or denying a motion under Rule 43.1 to amend or to make initial or additional findings of fact;

(2) Rule 47. In appeals before the Court of Appeals proceeding from the Court of First Instance, finally resolving a motion for reconsideration as provided in Rule 47;

(3) Rule 48. In appeals to the Court of Appeals proceeding from the Court of First Instance, denying a motion for a new trial under Rule 48;

(4) In the appeals to the Supreme Court proceeding from the Court of Appeals, finally resolving a motion for reconsideration.

(f) *Interruption of the term to file a writ of certiorari before the Supreme Court.* The term to file a writ of certiorari of a final judgment or proceeding before the Supreme Court from the Court of Appeals shall be interrupted by the opportunity of presentation of the motion to reconsider. The term herewith shall begin to run from the date of filing of a copy of the notice of the appealed proceeding or judgment of the Court of Appeals definitely resolving the motion to reconsider. If the date of the filing of the copy of the notice of the judgment or proceeding is different from the date of the mail deposit of such notice, the term shall be calculated from the date in which the notice was deposited in the mail.

(g) *Interruption of the term to file a writ of certiorari before the Court of Appeals.* The term to file a writ of certiorari before the Court of Appeals shall be interrupted and shall begin to run anew pursuant to the provisions of Rule 47.

(h) *Who benefits.* When the term to appeal or file writ of certiorari is interrupted by virtue of these rules, the interruption shall benefit any other party involved in the suit.

Rule 52.3. Stay of proceedings

(a) Once a bill of appeal is filed, all further proceedings in lower courts regarding a judgment or any part thereof which is appealed, or the issues contained therein, shall be stayed, except for an order to the contrary, issued on its own initiative or by petition of a party thereto by the court of appeals; but the Court of First Instance may continue the action with regard to any matter involved therein which is not included in the appeal, provided that the proceedings in the Court of First Instance shall not be stayed whenever the judgment orders the sale of goods susceptible to loss or damage, in which case the Court of First Instance may order such goods to be sold and the proceeds deposited until the appellate court has pronounced judgment.

(b) The filing of a writ of certiorari shall not stay the proceedings in the respondent court, except for an order to the contrary issued by the court of appeals on its own initiative or by petition of a party. The issuing of a writ of certiorari shall stay the proceedings in the respondent court, except if the Court of Appeals says otherwise.

(c) The filing of a writ for certification shall not stay the proceedings in the Court of Appeals or the Court of First Instance, except when the Supreme Court issues an order to the contrary, on its own initiative or by petition of a party. Insofar as temporary restraining orders and injunctions are concerned, they shall be governed by the provisions of Rule 57.7.

(d) The effects of an appealed judgment shall not be stayed, except through an order to the contrary issued in its own initiative or upon petition of a party by the court of appeals, which includes any of the following remedies:

(1) An injunction, mandamus or restraining order;

(2) an order to pay child support;

(3) an order on custody on filial relations.

Chapter IX

Provisional Remedies, Extraordinary Remedies and Special Legal Proceedings

Rule 53. Special Proceedings and Extraordinary Remedies

All special legal proceedings, extraordinary remedies, and any other proceedings of a special nature not covered by Rules 54, 55, 56, 57, 58, 59 and

60 shall be prosecuted in the manner provided in the corresponding statute. The provisions set forth in these rules shall be applicable to all cases where there is no incompatibility or controversy with such corresponding statutes.

In every case when the principal requested remedy is a permanent injunction the issuing of a preliminary injunction will be governed exclusively by the provisions in Rule 57 and the special applicable laws. In turn, in the context of a case in which the object is not the granting of an injunction, the mandate of a do or desist order as a provisional and supplemental remedy to ensure the judgment, shall be governed by the provisions in Rule 56.

Rule 54. Mandamus

The remedy heretofore available by a writ of mandamus, whether peremptory or alternative, may be obtained by filing a sworn petition therefor. Whenever such remedy is requested and the right to demand the immediate performance of an act is evident and it appears that there is no excuse for not performing it, the court may peremptorily order that the remedy be granted; otherwise, it shall order that an answer be filed and, as soon as practicable, shall hold a hearing to receive evidence, if necessary, and shall promptly make a decision. Compliance with the orders entered by the court shall be in the same manner required for compliance with any other order.

Rule 55. Exequatur

Rule 55.1. Exequatur; Definition

An exequatur is a validation and judicial recognition procedure of a judgment in another jurisdiction by the courts that are to make effective such judgment. The process may be ex parte or ordinarily.

Rule 55.2. Allegations of the Petitioner

The petitioner shall present before the corresponding First Instance Court one of the following documents:

(a) A complaint against every other party affected by the judgment of the other jurisdiction whose validation and recognition is requested.

(b) An ex parte request subscribed under oath by all d the persons affected by the judgment of the other jurisdiction whose validation and recognition is requested.

In any case in which the interests of minors or people with disabilities are

affected, the complaint or ex parte request shall include the mother and father with patria potestas or the tutor of the minor or the person with disability.

Rule 55.3. Documents Accompanying the Allegations

The complaint or ex parte request shall be presented to the court accompanied with the following documents:

(a) Certified, legible and complete copy, in compliance with the requirements provided in the Rules of Evidence, of the judgment whose validation and recognition is requested.

(b) Faithful and accurate translation to the Spanish language of the judgment of the case, provided it was not written originally in the Spanish or English language.

Rule 55.4. Notice

In accordance to the peculiar situation of each case, in addition to the notices to the people affected by the judgment whose validation and recognition is requested, in accordance to Rule 4, it shall be also notified with copy of the complaint or the expert request to the following public officials:

(a) The Procurator for Family Affairs in any case the interests of minors or persons with disability may be affected.

(b) The Public Ministry, in any case in which, with the purpose to achieve an inscription in the Property Registry, the validation of judgments referred to in article 45 of the Mortgage Law and the Property Registry, 30 LPRA sec. 2208, is requested.

(c) The Secretary of Justice, in any case in which, at the discretion of the court, a high interest public case arises so that he can appear representing the Commonwealth of Puerto Rico, if he desires to.

Rule 55.5. Proceedings

The procedure will take place in the form presented in these rules.

The court, after resolving the pertinent procedural issues, shall determine if the judgments of the other jurisdiction comply with the following norms:

(a) If it is a judgment by a states of the United States or its territory:

(1) that it was dictated by a court with jurisdiction over the person and matter;

(2) that the court followed the due process of law, and

(3) that it was not obtained by fraud.

(b) If it is a judgment dictated in a jurisdiction other than a state in the United State or its territory:

(1) that it was dictated by a court with jurisdiction over the person and matter;

(2) that it was dictated by a competent court;

(3) that the court followed the due process of law;

(4) that the system where the judgment took place, is known by its impartiality, and for its lack of prejudice to foreign citizens.

(5) that it was not contrary to the public order ;

(6) that it was not contrary to the basic principles of justice; and

(7) that it was not obtained by fraud.

Rule 55.6. Execution

The execution of judgments from other jurisdictions that were recognized and validated will be processed according to the provisions of the applicable procedural norms for the execution of judgments dictated by the courts of Puerto Rico.

Rule 56. Provisional Orders

Rule 56.1. General principles

In every action, before or after entering judgment, and on motion of claimant, the court may issue any provisional order it may deem necessary to secure satisfaction of the judgment. The court may order the attachment, garnishment, the prohibition to alienate, claim and delivery of personal property, receivership, an order to do or to desist from doing any specific act, or it may order any other measure it deems necessary, according to the circumstances of the case. In every case in which a provisional remedy is sought, the court shall consider the interests of all the parties and shall adjudicate as substantial justice may require.

Rule 56.2. Notice

No provisional remedy shall be granted, modified, set aside, nor shall any action be taken thereon without notice upon the adverse party and a hearing, except as provided in Rules 56.4 and 56.5.

When a remedy is sought under this rule prior to the summons of the defendant, the petitioner shall notify the adverse party copy of the order indicating the hearing, as well as copy of the allegations, of the motions of the provisional remedies and of any supporting document.

Rule 56.3. Bond

A provisional remedy may be granted without the filing of a bond in any of the following cases:

(a) If it appears from public or private documents, as defined by law, signed before a person authorized to administer oaths, that the obligation may be legally enforced; or

(b) If party is indigent and expressly exempted by law from the payment of filing fees, and in the court's opinion the complaint adduces facts sufficient to establish a cause of action which may evidently succeed, and there are reasonable grounds to believe, after a hearing to that effect, that if such provisional remedy is not granted the resulting judgment would be academic since there would be no property over which to execute it; or

(c) If a remedy is sought after judgment is entered.

Whenever the court grants the provisional remedy without the filing of a bond in accordance with the provisions of this rule, it may exclude certain property from its order.

In all other cases, the court shall require the filing of a bond sufficient to secure all the damages arising from the remedy. However, a defendant or respondent may retain the possession of the personal property attached by plaintiff or claimant by filing a bond for the amount the court deems sufficient to secure the value of said property. If the defendant furnishes a bond for the amount attached, the attachment will be left without effect.

In every bond under this rule the surety shall submit to the jurisdiction of the court and irrevocably designates the court Clerk as its agent to receive any notification, summons or writings related with his responsibility as surety. Through a motion the responsibility of a surety shall be made effective, without being necessary an independent proceeding. The motion and any notification of such that the court orders may be delivered to the court Clerk, who shall immediately send it to the surety by mail, if his address is known.

Rule 56.4. Attachment or prohibition to alienate

If the requirements of Rule 56.3 have been met, the court shall issue, on motion ex parte of a claimant, an order of attachment or of prohibition to alienate.

an order of embargo or prohibition to transfer may be issued without prior notice and hearing, except when the complainant proves to have a previous interest in ownership over the embargoed property, or the existence of extraordinary circumstances or the probability to prevail in by reliable documentary evidence showing that the debt is liquid, due and payable.

Any party affected by any order made without notice and hearing, may at any time present a motion to modify or annul an order, and such motion shall be brought to hearing in the earliest possible date and shall take precedence over all other matters. For the purposes of such hearing, a two-day notice to the part who obtained the order, or a shorter notice as the court prescribes, will suffice.

In the case of real property, both the embargo and the prohibition to transfer shall be made by entering them in the registry of property and notifying the defendant. In case of personal property, the order shall be made by depositing the goods in question to the court or to the person designated by the court, under the responsibility of the complainant. The court may order, at the request of either party, the public sale of the consumable goods condemned to an embargo or prohibition to transfer, allocating the product of such sale in the manner prescribed by the court.

The party requesting the designation of a depository of the property to be attached shall furnish his address and telephone number, if any, of his residence or of his place of employment or business. The designated depository shall immediately notify the court, under the title of the case, any change of address or telephone number, or of place or conditions of the property attached.

Rule 56.5. Order to do or to desist from doing

No order shall be made under this Rule 56.5 to do or to desist from doing any specific act without serving notice upon the adverse party, unless from specific facts supported by affidavit it clearly appears that the petitioner will sustain irreparable injury, damage or loss before notice and hearing on the petition. Such order ex parte shall be effective upon service of notice thereof. Any party affected thereby may at any time file a motion to modify or to set aside the order and said motion shall be heard at the earliest possible date, but not later than five (5) days after the filing thereof and shall have preference over all other matters. A two (2) day notice upon the party obtaining the order, or the shortest notice the court may prescribe, shall be sufficient for the purposes of the hearing.

Rule 56.6. Receivers

(a) No receiver shall be appointed unless it is established that no other provisional remedy would be effective to secure satisfaction of the judgment. Unless otherwise ordered by the court, a receiver shall proceed in accordance with the

rules for the judicial administration of estates.

(b) No party, or its attorney, or person interested in the action shall be appointed receiver therein, without the written consent of the affected parties filed with the court.

(c) The court may require that the receiver furnishes a bond to secure strict compliance with his duties, and, in that case, the receiver shall not take office until the bond has been approved.

Rule 56.7. Notice of pending suit

The court before which the action is pending shall have the power to direct that the notice of pendency of action be expunged, once a hearing has been held and a bond for a reasonable amount has been submitted, taking into account the probability that the plaintiff may prevail, the value of the property or rights involved, and the other circumstances of the case.

Rule 56.8. Complying with an Order that Grants a Provisional Remedy

The court shall compel compliance with an order issued under this Rule through its civil contempt power.

Rule 57. Injunctions

Rule 57.1 Temporary restraining order; notice; hearing; duration

A temporary restraining order may be granted without notice to the adverse party or his attorney only if:

(a) It clearly appears from the facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard; and

(2) the applicant's attorney or the applicant himself certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period, or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without

notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible date and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion expeditiously as the ends of justice require.

Rule 57.2. Preliminary injunction

(a) *Notice.*-- No writ of preliminary injunction shall be issued without prior notice to the adverse party.

The notice shall be served in the same manner as provided in Rule 4.4 by delivering a copy of the order to the adverse party in conjunction with a copy of the request for injunction. Said delivery shall have the same effect as the delivery and service of the summons under Rule 4.4.

Proof of service of notice shall be provided in the same manner allowed for the service and amendment of the summons under Rules 4.7 and 4.8.

(b) *Consolidation of hearing with trial on merits.*-- Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received in the hearing of an application for preliminary injunction which would be admissible upon the trial on the merits becomes part of the record of the case and need not be repeated upon the trial. The court, as it emits its resolution, shall immediately dictate an order, specifying the facts that have been determined as proven in such stage and ordering the subsequent procedures to be just in the trial.

Rule 57.3. Criteria for issuing a temporary restraining order or preliminary injunction

In deciding whether to issue a temporary restraining order or a preliminary injunction, the court shall consider, among others, the following:

(a) the nature of damage exposed by the petitioner;

(b) the irreparable harm or lack of an adequate remedy at law;

(c) the likelihood that the petitioner will prevail;

(d) the likelihood that the cause becomes in academic;

(e) the impact on the public interest of the remedy sought, and

(f) the diligence and good faith with which the petitioner has worked.

Rule 57.4. Security

No restraining order or preliminary injunction shall be issued except upon the giving of security by the applicant, in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Commonwealth of Puerto Rico, its municipalities, agencies, instrumentalities or of any of its officers acting in their official capacity.

Whenever these rules require or permit the giving of security by a party, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any notice, summons or papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 57.5. Form and scope of injunction or restraining order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 57.6. Labor disputes

This Rule does not modify Act No. 50 of August 4, 1947, as amended, 29 L.P.R.A. §§ 101through 107, in any way regarding the issue of interdictions and injunctions in cases arising from or involving a labor-management dispute. Neither does it modify the provisions of any other law of the Commonwealth of Puerto Rico regarding the issue of interdictions and injunctions in actions affecting employers and employees.

Rule 57.7. Injunction pending appeal, review or certiorari

(a) When a judgment or resolution granting, dissolving or denying an injunction is appealed, the appealed court may in its discretion suspend, modify, restore or grant an injunction while the appeal is elucidated, under such terms regarding bail and others it deems adequate to protect the rights of the opposing party.

(b) What is provided in this rule does not restrict the power of the court of appeals or of one of its judges to stay the proceedings while the appeal is elucidated, or to suspend, modify, restore or grant an injunction while the appeal or certiorari is pending, or to issue any adequate order to preserve the status quo or the effectiveness of the judgment to be issued in due course. However, when a party makes use of an order to revoke or deny an injunction interim, the court of appeal may only issue, while the appeal is elucidated, an ex parte interim order not to exceed a period of ten (10) days beyond the period that characterizes such extraordinary appeal, unless the court expressly extend the term in accordance with Rule 57.1.

Rule 58. Eminent Domain

Rule 58.1. Applicability of other rules

These rules shall govern the procedure for the condemnation of real and personal property under the power of eminent domain, except in the cases when the rule is in conflict with the provisions of rule or a special law.

In cases where the amount does not exceed that provided by Rule 60, the court may order the simplification of the proceedings substantially following the procedural mechanisms provided therein.

Rule 58.2. Joinder of properties

The plaintiff may join in the same action one or more pieces of property, whether in the same or different ownership and whether or not sought for the same use.

Rule 58.3. Complaint

(a) *Caption.* The complaint shall contain a caption as provided in Rule 8.1, except that the plaintiff shall name as defendants both the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) *Contents.* The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interests thereon. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall join as

defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search in the Registry of Property, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation 'Unknown Owners'. In case the property lacks possession or ownership title the person or persons appearing as owners of the property in the tax receipt or in any other similar document establishing a title shall be added as defendants. Process shall be served as provided in Rule 58.4 upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently joined, and a defendant may answer as provided in Rule 58.5. The court meanwhile may order such distribution of a deposit as the facts warrant.

(c) *Expropriation file*. The complaint shall be accompanied by the following documents that will constitute the expropriation file:

(1) The Exhibit A, which will identify specific and individually movable and immovable property expropriated, registry data if the estate has registered in the Registry of Property, the cadastral number of the property in the Municipal Revenue Collection Center, people with interest in the proceedings, setting the sum of money estimated by the petitioner as just compensation for the property to be acquired and the public purpose of the procedure. It will also identify and assess the personal properties that are in the expropriated property, in case the petitioner also want obtain ownership of these.

(2) A certification expedited by the Registry of Property within six (6) months prior to the presentation of the complaint. However, in cases where the certification was issued within the previously stated six (6) months, but in a date that exceeds the previous three (3) months to the presentation of the complaint, a recent title study shall be accompanied with the certification issued by the Registry of Property. To this end, a recent title study means a title study made within the prior ten (10) days of the presentation of the complaint. The aforementioned title study shall be made by a notary public, or by a natural or juridical person that has an insurance policy that could respond for any error or omission in the title.

(3) A location query.

(4) A plane survey.

(5) A valuation report submitted by an expert appraiser.

In addition, I shall also include a statement to the acquisition and physical delivery of the property, which shall contain and be accompanied by the following:

(i) A statement of the authority under which the property is intended to be acquired and the public use for which is intended to be acquired.

(ii) A description of the property sufficient to identify it.

(iii) A statement of the title or interest to be acquired from the property for public purposes.

(iv) A draft resolution.

(d) *Filing.* In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of defendants and additional copies at the request of the clerk or of a defendant. He shall additionally present three (3) copies of the expropriation file, and every of its documents, which shall be certified and notified to the Municipal Revenue Collection Center and the Registry of Property.

Rule 58.4. Process

(a) *Delivery.* Upon presentation of the claim, the plaintiff shall immediately deliver to the Clerk the notice, together or separately, addressed to the named or designated defendants in the complaint for immediate dispatch by the Clerk. Additional notices directed to subsequent accumulated defendants, shall be done in the same way.

The delivery of the service and its processing have the same effect as the delivery and service of the summons under Rule 4.

(b) *Same; form.* Each notice shall state the name of the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice or within thirty (30) days if it was done through publication. The notice shall conclude with the name of the plaintiff's attorney and an address where he may be notified. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) *Service of notice.*

(1) *Personal service.* Personal service of the notice (but without a copy of the complaint) shall be made in accordance with Rules 4.3 and 4.4 upon a defendant who resides within the Commonwealth of Puerto Rico or within the United States or its territories or insular possessions and whose residence is known.

(2) *Service by publication.* Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after a diligent inquiry within the Commonwealth of Puerto Rico

the place of residence of the defendant cannot be ascertained, or, if ascertained, that it is beyond the territorial limits of Puerto Rico, service of the notice shall be made on this defendant by publication in a newspaper of general circulation in Puerto Rico once a week for not less than three successive weeks. Within ten (10) days of the to the last publication, a copy of the notice shall also be mailed with a copy of the receipt to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to 'Unknown Owners'.

Service by publication is complete on the date of the last publication. The publication shall be proven by a sworn statement from the manager or authorized agent of the newspaper, together with printed copies of the published notice, recording on these copies the name of the newspaper and the date of publication. The acknowledgement of receipt of the defendant shall also be presented, together with a writ from the attorney certifying that the copies of the summons and the complaint with its attachments have been mailed.

(d) *Term for the service.* The notice will be filled within a period of ninety (90) days from the filing of the application or the date of the issue of the notice by publication. If the notice exceeds such period of time, the court shall impose sanctions to the plaintiffs, but shall not dismiss the trial.

(e) Proof of Service; Amendment. Proof of service of process and its amendment shall be made in the manner allowed for the service and for the amendment of the summons under Rules 4.7 and 4.8.

Serviced parties shall be entitled to be heard in relation to the rights they may have regarding the compensation of the expropriated property value or the damage the procedure may have caused.

Rule 58.5. Appearance or answer

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any defense or objection to the taking of his property, he shall serve his answer within twenty (20) days after the service of notice upon him.

The answer shall identify the property in which defendant claims to have an interest, state the nature and extent of the interest claimed, and state all his defenses and objections to the taking of his property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.

Failure to notify a person or entity having any right or interest in the expropriated property does not affect the jurisdiction of the court to transfer the title to the plaintiff, although it decreases the efficacy to determine a compensation and allows any part that was not notified to retrial. In these cases, the court may impose sanctions on the plaintiff for the lack of timely notification.

Rule 58.6. Amendments of pleadings

The plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Rule 58.8. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 67, upon any party affected thereby who has appeared, and in the manner provided in Rule 58.4, upon a party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the court, for the use of the defendants, at least one copy of each amendment, and he shall furnish additional copies at the request of the clerk or of a defendant. Within the time allowed by Rule 58.5 a defendant may serve his answer to the amended pleading in the form and manner and with the same effect as there provided.

Rule 58.7. Substitution of parties

If a defendant dies or becomes incompetent or transfers his interest after his joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Rule 58.4(c).

Rule 58.8. Dismissal of actions

(a) *As of right.* If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or any other interest in or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) *By stipulation.* Before the entry of any judgment vesting the plaintiff with title or any other interest in or possession of property, the action may be voluntarily dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of voluntary dismissal by the plaintiff and the defendant affected thereby; and if the parties so stipulate, the court may vacate any judgment that has been entered.

(c) *By order of the court.* At any time before compensation for a piece of property has been determined and paid, and after motion and hearing, the court may allow the plaintiff to dismiss the action under the terms and conditions it may deem pertinent as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or other interest, but shall award just compensation for

the possession, title or other interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(d) *Effect.* Except as otherwise provided in the notice, stipulation or order of the court, any voluntary dismissal is without prejudice.

Rule 58.9. Deposit and its distribution

The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may take a deposit when permitted by statute. In such cases, the court and attorneys shall expedite all proceedings, including those for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the plaintiff for the overpayment.

Any request for withdrawal or distribution of the money deposited shall be sworn. In such, the party must certify that it has reviewed the file of expropriation and that it adequately reflects all persons who, to his knowledge, have an interest in such property, including: owners, occupants, tenants, beneficial owners and mortgagees. In case the party becomes aware of any transaction or property right that is not arising from expropriation file, it shall so notify the Court.

Rule 59. Declaratory Judgments

Rule 59.1. When appropriate

The Court of First Instance shall have the authority to declare rights, status and other legal relationship, even though another remedy is or may be instigated. The fact that a declaratory judgment or decree has been requested shall not be deemed sufficient motive to challenge any action or proceeding. The declaration may be either affirmative or negative in form and effect and shall have the force and effect of final judgments or resolutions. The court may order a speedy hearing of an action for a declaratory judgment giving it preference in the calendar.

Rule 59.2. Who may request declaratory judgment; power to construe; exercise of powers

(a) Every person interested in a deed, will, written contract or other document constituting a contract, or whose rights, status or other legal relations are affected by any statute, municipal ordinance, contract or franchise may apply for a decision on any difference in the construction or validity of said statutes,

ordinances, contract or franchise, and also a declaration of rights, status or other legal relations derived therefrom. A contract may be construed before or after noncompliance thereof.

(b) Executors, administrators, receivers, trustees, guardians, creditors, legatees, heirs or successors in interest acting in such capacities or in behalf of other interested persons may apply for and obtain a declaration of rights or legal relations in all cases where trusts, foundations, estates or the property of minors, incapacitated or insolvent persons are administered:

(1) To determine classes of creditors, legatees, heirs, successors in interest and others; or

(2) To direct executors, administrators or trustees to execute or refrain from executing any act in their capacity as such; or

(3) To determine any question arising in the administration of the property or trust, including construction of wills and of other documents.

(c) The enumeration made in subsections (a) and (b) of this rule shall neither limit nor restrict the exercise of general powers conferred by Rule 59.1 in any proceeding for a declaratory remedy, provided a judgment or decree will put an end to the controversy or clear any uncertainty.

Rule 59.3. Discretion of the court

The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, will not put an end to uncertainty or to controversy giving rise to the proceedings.

Rule 59.4. Additional remedies

Additional remedies based on a declaratory judgment or decree may be allowed whenever necessary or adequate. They shall be sought by application to a court with jurisdiction to grant the remedy. If the application is deemed sufficient, the court shall summon any adverse party whose rights have been adjudicated by a declaratory judgment or decree to appear within a reasonable period to show cause why the additional remedies applied for should not be granted immediately.

Rule 59.5. Parties

When a declaratory remedy is sought, all persons having or alleging an interest which may be affected by the declaration shall be included as parties, and no declaration shall impair the rights of persons not parties to the proceedings. In any proceeding where the validity of a municipal ordinance or franchise is at issue, the corresponding municipality shall be included as a party, and the Secretary of Justice shall also be served notice of the proceedings, pursuant to

the provisions of Rule 21.3.

Rule 60.Claims of $15, 000 or less.

When an action is filed regarding the collection of an amount not exceeding fifteen thousand dollars ($15,000), excluding interest, and the action does not specifically request that the case be handled under the regular procedure, the plaintiff shall file a form to request a Summons and Order of Notice, which shall be issued immediately by the Clerk. The plaintiff shall be the responsible for serving the Summons and Order of Notice and a copy of the complaint, either personally pursuant to Rule 4 or by certified mail with acknowledgement of receipt, within ten (10) days of the filing of the complaint.

The Summons and Order of Notice shall state the date set for the hearing on the merits, which shall be held not later than three (3) months as of the filing of the complaint, but never before fifteen (15) days after the notice has been served upon the defendant. In the notice, the defendant shall be advised to appear at the hearing and answer the complaint and that in case he/she fails to do so judgment by default shall be entered against him/her.

The plaintiff may appear at the hearing either pro se or with legal representation. The Court shall hear all matters involved in the complaint during the hearing and issue a judgment immediately. If the defendant fails to appear and the Court determines that he/she was duly notified and that he/she owes a certain amount of money to the plaintiff, it shall enter its judgment in accordance with Rule 45. If it is demonstrated to the Court that the defendant has a substantial claim, or in the interest of justice, either party shall be entitled to request that the trial will continue under the ordinary procedure prescribed by these rules or the Court may order it motu proprio.

Chapter X

General Provisions

Rule 61. The Court

The court shall be deemed always open, within the time fixed by the Supreme Court, for the purpose of submitting any papers, issue commands and return filled out and issue any appropriate order.

Rule 62. Hearings and orders

Rule 62.1. Hearings and orders in chambers

(a) All hearings upon the merits of a case shall be conducted in open court in a courtroom, unless the court decides otherwise due to the nature of the proceeding. All other acts or proceedings may be done or conducted by a judge in chambers, or in any other place, without the attendance of the clerk or of other officials

(b) Information about files of the cases that are deemed confidential by law, the court, motu proprio or by request of a party, as well as its copies, may only be shown or furnished to persons with a legitimate interest, or to other persons through a court order and for a justified cause. Said copies shall only be furnished, upon presentation of evidence of necessity and the express authorization of the court, to officials of the General Court of Justice in their official capacity and to those persons of accredited professional or scientific reputation that show evidence of their interest to obtain information to perform their official duties, studies or work, and always subject to the conditions stipulated by the judge..

(c) The following shall be persons with legitimate interest:

(1) The parties in the case and their heirs.

(2) The attorneys of the parties in the case.

(3) The notaries that authorize public documents from whose face or content it arises that the judicial document is a complementary document to the public instrument issued by same; as well as the circumstances in which the notaries are required copies of the judicial document for the correction of errors or faults notified by the Honorable Registrar of the Property.

(4) Any other person that one of the parties in the case has authorized by means of a sworn statement.

The aforementioned persons shall not have to submit a request to the Court to be allowed access to the judicial files.

Other persons who wish to review the files or obtain a copy of the documents in such cases, shall have to submit a request before the Court through which they shall show the causes that justify their examination of said files.

The Chief Justice of the Supreme Court of Puerto Rico shall take the necessary administrative measures to comply with the provisions set forth herein.

Rule 62.2. Papers lost, how supplied

Whenever a pleading or paper forming part of the record of an action or proceeding is lost, the court may authorize a copy thereof to be filed and used instead of the one lost.

Rule 63. Inhibition or recusation of a judge

Rule 63.1. When disqualified

A judge, whether on his own initiative or on motion of party, shall disqualify

himself from an action or proceeding in any of the following cases:

(a) When he has prejudice or bias towards any of the persons or lawyers in the trial, or for having caused a bias in the trial;

(b) When he is interested in the outcome thereof, has personal bias against, or is partial to any of the parties or their attorneys;

(c) When he is related by blood or affinity within the fourth degree to any of the parties or their attorneys;

(d) When a friendship exists between the judge and any of the parties or their attorneys, of such nature as to thwart the ends of justice;

(e) When he has been attorney or counsel for any of the parties or their attorneys in the action pending before him, or prosecuting attorney in an investigation or criminal proceeding wherein the facts are the same as those to be submitted to him for decision;

(f) When he has presided over the trial in a lower court or for having acted as a magistrate judge as to issue a citation or arrest warrant to determine probable cause in the preliminary hearing of a criminal proceeding;

(g) When a natural or juridical person has intervened in a proceeding that helped him or caused him to obtain a loan without any collaterals or usual conditions;

(h) When as an official public employee, he has participated as a lawyer, advisor or essential witness of the case in controversy;

(i) When one of the lawyers of the parties is the lawyer of the judges that are to resolve the controversy before his consideration, or it has been in the past three years.

(j) When there is any other cause that may reasonably cast doubt upon his impartiality to adjudicate or which tends to undermine the public confidence in the administration of justice.

Rule 63.2. Proceeding in case of prejudice or bias

(a) Every recusation must be sworn and shall be presented before the recused judge within twenty (20) days starting when the petitioner knows the recusation cause. The request shall state the facts on which it is grounded and its documental evidence and sworn statements supporting the request. If the petitioner does not follow the aforementioned formed, the judge may continue with the proceedings of the case.

(b) Once the recusation request is presented, if the recused judge concludes that it proceeds the inhibition, he shall state the applicable reason as described in Rule 63.1 from (a) to (i) or otherwise, the specific reason under the (j) provision, and

shall notify all the parties. The case shall be assigned to another judge.

(c) If the judge concludes that his inhibition does not proceeds, he shall abstain from acting as the judge in the case, and shall remit the request to the administrative judge to designate a judge to resolve the recusation request. The recusation shall be resolved within thirty (30) days of being submitted.

(d) Once the judge commenced or intervened in a case, lawyers that may cause a recusation shall not join the case.

Rule 64. Substitution of a judge

If by reason of death, illness, retirement or for any other reason, a judge cannot continue to hear the issue, another judge may act in his place, but if the new judge decides, after the beginning or end of a trial, that he cannot pursue his duties without the celebration of a new trial of every or any part of the facts, or without again hearing a witness, he shall take the necessary measures to resolve the case.

Rule 65 Clerk

Rule 65.1. When open

The clerk's office shall be open during business hours on all days except Saturdays, Sundays and legal holidays. By special administrative rule or order it may be open during such days and hours.

Rule 65.2. Actions of the clerks

(a) All motions and petitions filed with the clerk's office for the issuance of writs, for entering defaults or judgment by default, and for other proceedings which do not require allowance or order of the court, are grantable by the clerk but his action may be suspended, altered or rescinded by the court upon cause shown.

(b) When this rules or any special law required the Clerk to issue a writ based on a judicial order, the issue of a certified copy of the order shall be sufficient. The issued order shall have every legal effect of the writ.

(c) The Clerk shall not be authorized to deny any document for not complying with the formal requirements imposed by any of these rules or regulation.

Rule 65.3. Notice of orders and judgments

(a) Immediately upon the entry in the record of an order or judgment, the clerk shall serve notice thereof upon all the parties who may have appeared in the action in the manner provided by Rule 67. Such mailing shall be sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules.

(b) The Secretary shall notify to the last address that has been entered in the record by the party that represents itself or to the address of the attorney found in the Supreme Court registry authorized to receive notifications, in accordance with Rule 9, any order, resolution or judgment that in accordance with its terms shall be notified to the parties who have appeared in the trial.

(c) For defaulting parties who have appeared in the case, the Secretary shall notify him every order, decision or judgment to the last address that has been entered in the record by the party that represents itself or to the address of the attorney found in the Supreme Court registry authorized to receive notifications, in accordance with Rule 9. For parties in default that have been serviced by publications or who have never appeared in case or are unknown parties, the Clerk shall issue a notice announcing judgment by publication by the plaintiff. The notice shall provide that it must be published only once in a newspaper of general circulation in the Island of Puerto Rico within ten (10) days of notification and shall inform the defendant of the judgment and the term to appeal. All terms begin to run from the date of publication of the service, which must be evidenced by a sworn statement by the authorized administrator or agent of the newspaper, accompanied by a copy of the service published.

(d) The content of the service must have the following information:

(1) Title ("Notification by service")

(2) Chamber of the Court of First Instance

(3) Case Number

(4) Name of the plaintiff

(5) Name of the defendant to be notified

(6) Nature of the claim

(7) Date of issue

(8) The term within which the person so notified must review or appeal of the judgment before it becomes final and binding.

(e) The Clerk shall set forth on the copy of the proof of service which he may attach to the original record the date and the manner in which the notice was served and the person or persons notified.

If the notice is served personally, there shall be attached to the record the marshal's return or that of the employee of the court serving such notice, or the affidavit of the private person verifying the service.

(f) Any party may acknowledge service of notice of any order, resolution or judgment by signing the original document and by entering the date of such

acknowledgment.

Rule 65.4. Papers to which seal shall be affixed

The seal of the court shall be affixed to the following papers: to a writ, summons, subpoena or bench warrant, and to a copy of any document or paper forming part of a record or other proceeding of the court and which is certified to by the clerk or other officer.

Rule 66. Docket of actions, proceedings and interlocutory actions

The clerks shall keep a book known as 'Docket of Actions, Proceedings and Interlocutory Actions' in which they shall enter all actions, proceedings and interlocutory actions in accordance to the established regulation. The entry of a document or judgment shall show the date such entry is made.

Rule 67. Notice and presentation of documents

Rule 67.1. Service; when required

Every order issued by the court and every document presented by the parties shall be notified to all the parties. The notice shall be done the same date the order was issued or the document was presented.

No service is required on a party who is in default for failing to appear, except that pleadings asserting new or additional claims for relief against such parties shall be served on that party as provided under Rule 4.4, or in its default, in Rule 4.6.

Rule 67.2. Service; how made

Whenever a party has appeared represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it, faxing it or sending it through electronic means to him at his last known address or to the address of the attorney found in the Supreme Court registry authorized to receive notifications, in accordance with Rule 9. If no address is known, the party shall notify the Court leaving a copy of the document.

Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person not less than eighteen (18) years of age then residing therein. Service by mail is complete upon mailing.

Rule 67.3. Certification of notice

When an order, because of its nature, needs to be notified by a party or his lawyer to another person, the service of such order shall be presented before the court, within the period fixed by the court, through an accredited certification of the compliance of the requirements established in the order, as established in Rule 9.

Rule 67.4. Filing

All documents subsequent to the complaint shall be filed before the court either before service thereof or within a reasonable time thereafter; however, depositions, interrogatories, applications for admissions and answers thereto and offers of judgment shall not be filed until needed in the prosecution, or until filing thereof is ordered by the court on motion of a party or of its own initiative.

Rule 67.5. Filing of pleadings defined

The filing of pleadings and other papers shall be made by filing them with the clerk of the court. The judge may, nevertheless, permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Once presented at the Clerk, nothing prevents a party to notify, through its lawyer, a copy of the documents to the judge, in those cases where the written documents require immediate attention. Such additional copy shall be notified to the judge by its delivery to any person authorized to receive it in his chamber, by fax or by electronic means, and it shall state that the other party has been previously advised of the notice of such additional copy to the judge. In such case, the written notification to the other party shall be on the date and in the manner in which it was notified to the judge.

Rule 68. Term

Rule 68.1. Computation

In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. Half-holidays shall be considered as complete holidays.

Rule 68.2. Enlargement or reduction of time

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion: (1) With or without motion or notice, order the period enlarged or shortened if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend or shorten the time for taking any action under Rules 43.1, 44.1, 47, 48.2, 48.4, 49.2 and 52.2, except to the extent and under the conditions stated in them.

Rule 68.3. Additional time when served by mail

Whenever a party is entitled to, or is required to perform any action within a specific term after having been served a notice or other writ and the notice or writ is served by mail, three (3) days shall be added to the prescribed period, except that it shall not apply to the terms that are counted from the filing in the record of a copy of the notice of the judgment.

The terms computed from the filing in the record of a copy of the notice of a judgment, resolution or order shall begin to elapse from the mailing date of the notice of the dictum when said date is different to that of filing in the record.

Rule 69. Bond

Rule 69.1. Requirements; personal security

In all cases in which a personal security is required, such security shall be accompanied by an affidavit by a surety stating that he is a resident of Puerto Rico and that he is the owner of the real property given as security, and that he owns property, exclusive of property exempt from execution, worth double the amount specified in the bond over and above all his debts and liabilities. If there are two (2) or more sureties and their respective liability is not sufficient to answer for the total amount of the bond, they shall also state that the whole amount of their total liability is equivalent to that of a sufficient surety. The affidavit shall also set forth the place of abode of the surety, and shall contain a description sufficient to identify the property owned by him and which he can give as security, an estimate of the actual value of such properties, encumbrances thereon, including their amount, whether or not such encumbrances are recorded in the Registry of Property, any other bond obligation contracted by the surety and which may be standing, and any other impediment in the free use and enjoyment of the property known by the affiant.

A personal or mortgage bond furnished by the surety is sufficient to authorize

the court to order the Registry of Property to record it as an encumbrance in the manner provided by Rule 56.7

Rule 69.2. By corporations

Any corporation organized under the laws of Puerto Rico or of any state of the United States for the purpose of giving bonds or guaranteeing undertakings required by law may become and may be accepted as surety or as sole or sufficient guarantor of such undertakings. Such security shall be subject to all the liabilities and entitled to all the rights of natural persons' bonds, provided such corporation shall have complied with all the requirements of the law which governs in Puerto Rico the organization of corporations engaged in this type of business.

Rule 69.3. In cash

Whenever a bond is required, the court may order and accept in lieu thereof a deposit in cash for the full amount of the bond.

Rule 69.4. Mortgage bond

The mortgage bond shall be executed upon real property having a value exceeding by one-third (1/3) the amount of the bond required by the court. The value of the property may be ascertained by a certificate of assessment of the property for the purpose of the payment of the property tax.

Rule 69.5. Of nonresidents

When the plaintiff resides outside of Puerto Rico or is a foreign corporation, a bond shall be required to secure the costs, expenses and attorney's fees which may be awarded. All proceedings in the action shall be stayed until bond is given, which shall not be less than one thousand (1,000) dollars. The court may require an additional bond upon a showing that the original bond is not sufficient security, and stay the proceedings in the action until such additional bond is given.

After the lapse of sixty (60) days from the service of the order requiring bond or additional bond, without the bond having been given, the court shall dismiss the action.

No bond is required by a complainant who lives outside of Puerto Rico when:

(a) he is a insolvent party at the trial, expressly exempted by law for the payment of fees and filing fees;

(b) he is a co-owner in a trial involving a property located in Puerto Rico and at least one of the co-owners is also a complainant and lives in Puerto Rico, or

(c) the case is brought by a joint owner for the dissolution, liquidation, partition and allocation of the real property located in Puerto Rico

Rule 69.6. None required; when

No bond shall be required:

(a) From the Commonwealth of Puerto Rico, its officials in their official functions, public corporations or municipal corporations;

(b) from any party in a divorce, family relations, or community property suit, unless the court provides otherwise in meritorious cases;

(c) in alimony claims when the court so orders and from any indigent litigant who lives out of the country, if he/she shows that there is a probability of prevailing on the merits of the case.

Rule 69.7. Acceptance

The clerks, marshals and other court officers may not accept a bond in any action or proceeding unless such bond has been approved by a judge of the part of the court before which the action or proceeding is pending, excluding the bind presented under Rule 69.3

Rule 69.8. Who may not be sureties

No officer of the court or attorney may be surety in an action or proceeding.

Rule 69.9. Cancellation of bond

In case a party granted a bond, and such party prevails in the action, the court in its final judgment shall order the cancellation of said bond.

Rule 70. Decisions and Judgments.

Contentious cases heard on the merits and motions for summary judgments shall be decided within ninety (90) days as of the date on which they are filed for adjudication. All other motions, cases by default, and other judicial matters shall be decided within thirty (30) days as of the date on which the issue is filed in Court. However, both terms may be reasonably extended when the nature of the issue or any unusual circumstance so require.

The date on which the introduction of evidence concludes shall be deemed to determine that cases have been filed and are ready for adjudication, unless the Court grants a term to the parties to submit memoranda of law, in which case, the filing date shall be deemed extended for the duration of such term or until the
memoranda of law are filed in the event that such filing occurs before the expiration of the term granted therefor.

Motions for summary judgments shall be deemed to be filed when the motion or motions opposing the same are received. The date of receipt of the opposing motion or motions, or failure to receive the same within the term established therefor, shall determine that cases have been filed and are ready for adjudication. This submittal shall be understood to be extended to the term granted by the Court to reply or duplication, unless the same are filed before the term expires, in which case, cases shall be deemed as filed on the date on which those documents are filed.

Rule 71. Error in trial or appeal

Any defect in the name of the trial or appeal remedy shall not preclude the court to grant the appropriate remedy according to the allegations and evidence.

Rule 72. Cases not foreseen by these rules

Where no specific procedure has been foreseen in these rules, the court may regulate its practice in any manner not inconsistent with these or with any provision of applicable law.

Rule 73. Repeal and exception clause

It is hereby repealed Civil Procedure Rules 1979, as amended.

However, those items of the Civil Procedure Code,1933 edition, that remained in force by virtue of the Rule 72 of Civil Procedure of 1979, shall not be repealed.

The following provisions of law shall remain temporarily in effect until they are repealed or otherwise modified by special laws:

(1) Articles 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 249 and 252 of the Civil Procedure Code, 1933 edition.

(2) Section 2 of Act No. 39 of April 20, 1942.

(3) Article 1 and 2 of Act No. 433 of May 14 1951.

Rule 74. Effective Date

These rules shall start to take effect on July 2010.

American Bankruptcy Institute

Caribbean Insolvency Symposium
Westin Grand Cayman
Grand Cayman, Cayman Islands

February 2-7, 2015

Puerto Rico Debt Enforcement and Recovery Act
Summary of the Law, Requirements and Procedural Guidelines

Submitted by
Hon. Judge Enrique S. Lamoutte
Chief Judge of the US Bankruptcy Court/District of Puerto Rico

Carmen D. Conde-Torres, Esq.
C. Conde & Assoc.

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$20 BILLIONS

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PRHTA:	PUERTO RIGO HIGHWAY AND TRANSPORTATION AUTHORITY
PRPBA:	PUERTO RICO PUBLIC BUILDINGS AUTHORITY

C. GDB- GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO

- FINANCIAL ADVISER AND FISCAL AGENT TO THE GOVERNMENT, INSTRUMENTALITIES, PUBLIC CORPORATIONS AND MUNICIPALITIES
- SOURCE OF INTERIM FINANCING (USED TO COVER OPERATING DEFICITS)
- ESTIMATED DEBT TO GDB AS OF 2013:

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  - $2.2 BILLION MUNICIPALITIES
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c. APPROVAL BY GDB

v. COURT APPROVAL ORDER
   a. 30 DAYS AFTER CONSENT OF DEBT HOLDERS
   b. 21 DAYS AFTER TO HOLD A HEARING
   c. NOTICE BY PUBLICATION 14 DAYS PRIOR TO HEARING
   d. OBJECTIONS
      i. IN WRITING NO LATER THAN 7 BUSINESS DAYS PRIOR TO HEARING
      ii. BASIS FOR OBJECTION
      iii. SWORN STATEMENT
      iv. 5 DAYS TO PRODUCE DOCUMENTS REQUESTED BY OBLIGOR

vi. OVERSIGHT COMMISSION (3 experts appointed by the Governor, 1 resident of PR)
   a. 10 DAYS AFTER FINAL ORDER
   b. REPORTS ONCE EVERY 4 MONTHS (QUATERLY)
   c. DEFAULT UNDER THE RECOVERY PLAN
      i. 90 DAYS TO CURE
      ii. REPLACEMENT OF GOVERNING BOARD

CHAPTER 3- JUDICIAL SOLUTION

REQUEST FOR DEBT ENFORMENT PLAN:

A. DEFER DEBT REPAYMENT
B. DECREASE INTERESTS AND PRINCIPAL
C. COLLECTIVE BARGAINING AGREEMENTS MODIFIED OR REJECTED
D. TRADE DEBT REDUCE

A. PROCEDURE:

COMMENCEMENT AND ELIGIBILITY: STAY OF ACTIONS

DESIGNATED FORUM (PUBLIC SECTOR DEBT ENFORCEMENT AND RECOVERY ACT COURTROOM OF THE FIRST INSTANCE, SAN JUAN, PART)

PETITION FOR RELIEF

-UNABLE OR AT SERIOUS RISK OF BEING UNABLE TO PAY DEBTS AND NEED TO CONTINUE ITS PUBLIC FUNCTION

-NO AVAILABILITY UNDER CHAPTER 9 OR 11 OF THE U.S. BANKRUPTCY CODE

-AUTHORIZATION TO FILE A PETITION

-GOVERNING BOARD AND GDB

-GDB AT THE GOVERNOR'S REQUEST

-LIST OF CREDITORS TO BE AFFECTED/ TYPE OF DEBT/ AMOUNT

-LIST OF ESSENTIAL SUPPLIERS CONTRACTS

PROMPT NOTICE INCLUDING:

-COPY OF PETITION

-CLAIMS TO BE AFFECTED

-AUTOMATIC STAY

-OPPORTUNITY TO SERVE IN CREDITORS COMMITTEE

-APPOINTMENT 14 DAYS PRIOR TO ELIGIBILITY HEARING

-GENERAL COMMITTEE

-SPECIAL COMMITTEE (S)

-21 DAYS AFTER TO SUBMIT APPLICATION FOR EMPLOYMENT OF PROFESSIONALS

-NOT APPEALABLE

-DATE SET FOR HEARING TO DETERMINE ELIGIBILITY

- NO MORE THAN 30 DAYS AFTER THE PETITION DATE

-45 DAYS TO MAKE THE DETERMINATION

-DEADLINES FOR FILING OBJECTIONS

-SERVICE OF PROCESS WILL FOLLOW PUERTO RICO RULES OF CIVIL PROCEDURE RULE 4.3 AND 4.4, 4.6 (BY PUBLICATION)

-SUPPLEMENTAL NOTICE: NOTICE BY PUBLICATION

B. PENDENCY OF CASE

a. DEBTOR IN POSSESSION
b. EXPENSES IN THE ORDINARY COURSE OF BUSINESS: ADMINISTRATIVE EXPENSES
c. POST PETITION FINANCING – FURTHER PROTECTIONS PROVIDED
d. CRITICAL VENDORS
    i. SAME OR BETTER TERMS THAN THOSE DURING 180 DAYS PRIOR TO PETITION
    ii. CRITICAL TO PERFORM THE PUBLIC FUNCTION
e. SPECIAL TRADE DEBT (NOT LESS THAN $1 MILLION)
f. ASSIGNMENT OR REJECTION OF CONTRACTS
g. COLLECTIVE BARGAINING AGREEMENTS; REJECTED ONLY UPON DETERMINATION OF NON-AVAILABITY TO PERFORM PUBLIC FUNCTION (USING US SUPREME COURT PRECEDENTS)
    i. DATA TO BE SHARED WITH UNION
    ii. UNABLE TO REACH AN AGREEMENT
    iii. REJECTION DAMAGES (UNSECURED CLAIMS)
h. RELIEF OF AUTOMATIC STAY
    i. 14 DAYS FOR OBJECTIONS

ii. 30 DAYS FOR COURT TO COMMENCE HEARING

i. TRANSFER OF ASSETS FREE AND CLEAR

j. STATEMENT OF ALLOCATION OF PROCEEDS

i. 30 DAYS TO OBJECT

ii. 14 DAYS TO OBJECT TO AMENDED STATEMENT

C. DEBT ENFORCEMENT PLAN

a. ONLY THE PETITIONER APPROVED BY GDB OR GDB APPROVED BY THE GOVERNOR CAN PROPOSE A PLAN

b. DISCLOSURE STATEMENT AND PLAN

i. REASONS FOR FILING

ii. MAXIMIZE PAYMENT TO CREDITORS

c. PAYMENT IN FULL :

i. EMPLOYEE WAGES AND SALARIES,

ii. PAYMENT FOR THE PROVISIONS OF GOODS AND SERVICES UNDER CERTAIN THRESHOLD (NOT UNDER $1 MILLION) AND;

iii. DEBTS TO USA OR ANOTHER PR PUBLIC CORPORATION

iv. UNAFFECTED DEBTS

d. CREDITORS TO BE SEPARATED IN CLASSES

i. SECURED

ii. PRIORITIES

iii. RATIONAL BASIS TO CLASSIFY SEPARATELY

iv. CREDITOR TO RECEIVE PAYMENT OR PROPERTY OF PRESENT VALUE OF AT LEAST THE AMOUNT THE CLAIMS IN THE CLASS WOULD HAVE RECEIVED IF ALL CREDITORS HOLDING CLAIMS AGAINST THE PETITIONER HAD BEEN ALLOW TO ENFORCE THEM ON THE DATE OF THE PETITION A PROMISSORY NOTE EQUAL TO 50% OF THE PETITIONERS

POSITIVE FREE CASH FLOW FOR 10 YEARS AFTER THE EFFECTIVE DATE

D. CONFIRMATION HEARING AND REQUIREMENTS

i. 45 DAYS AFTER FILING OF DISCLOSURE STATEMENT AND PLAN
ii. AT LEAST ONE (1) CLASS ACCEPTS THE PLAN
iii. OBJECTIONS 14 DAYS PRIOR TO HEARING
iv. COMPLIANCE OF REQUIREMENTS SIMILAR TO 11 USC 1129
    1. GOOD FAITH
    2. PROPER CLASSIFICATION
    3. BEST INTEREST TEST
    4. NO DISCRIMINATION
    5. FEASIBLE TO PERFORM PUBLIC FUNCTION

E. APPEALS:

i. SUPREME COURT FOR THE COMMONWEALTH OF PUERTO RICO
    1. APPROVAL OF ELIGIBILITY
    2. TRANSFER OF ASSETS
    3. FINAL STATEMENT OF ALLOCATION
    4. CONFIRMATION ORDER
ii. 14 DAYS AFTER FILING OF COPY OF THE NOTICE OF ORDER
iii. OTHER ORDERS
    1. COURT OF APPEALS

F. OTHER MATTERS:

a. LANGUAGE CONFLICT : ENGLISH TEXT SHALL GOVERN

b. CHAPTER 2 OR 3 CAN BE USED SIMULTANEOUSLY OR SEQUENTIALLY

c. PETITION MAY BE WITHDRAWN:

   i. CHAPTER 2: PRIOR OF ENTRY OF FINAL ORDER FOR A CONSENSUAL DEBT RELIEF

   ii. CHAPTER 3: WITH THE APPROVAL OF GDB OR UPON THE GOVERNOR'S REQUEST

d. ALL PLEADINGS IN SPANISH SHALL BE ACCOMPANIED BY AN ENGLISH TRANSLATION

e. NOTICING AGENT MAY BE APPOINTED

f. OBLIGOR TO NOTIFY (BOLD AND 12 POINT FONT): **"EVERY ENTITY FILING A DOCUMENT WITH THE COURT UNDER THE PUERTO RICO PUBLIC CORPORATION DEBT ENFORCEMENT AND RECOVERY ACT SHALL EMAIL AN IDENTICAL COPY OF THE DOCUMENT FILED TO THE ENTITY MAINTAINING THE WEBSITE REQUIRED BY SECTION 121 HEREOF TO THE FOLLOWING EMAIL ADDRESS (INSERT EMAIL ADDRESS HERE) OR IF UNABLE TO TRANSMIT EMAILS SHALL MAIL THE COPY TO THE FOLLOWING ADDRESS (INSERT MAILING ADDRESS HERE)."**

g. ONLY ELECTRONIC FILINGS

h. SPECIAL COUNSELS, PROFESSIONAL DISCLOSURES AND RETAINERS

   i. SPECIAL COUNSEL – TWO PETITIONERS AND GDB /SAME LEGAL REPRESENTATION

   ii. 14 DAYS AFTER RETENTION FOR LEGAL REPRESENTATION OF PETITIONER OR CREDITOR'S COMMITTEE TO FILE APPLICATION AND DISCLOSURES

   iii. WAIVERS OF CONFLICT BY THE SUPREME COURT

   iv. FEE EXAMINER

i. AVOIDANCE ACTIONS
    i. NO PREFERENCE ACTIONS SHALL BE PROSECUTED BY CREDITORS, EXCEPT:
        - FRAUDULENT TRANSFERS / ONLY IF THERE IS ACTUAL INTEND TO HINDER, DELAY OR DEFRAUD. (SOLELY BY THE ATTORNEY GENERAL OF THE COMMONWEALTH)
    ii. RECOVERY OF AVOIDANCE ACTIONS ONLY BY PETITIONER OR OBLIGOR

j. EMERGENCY MANAGER: APPOINTED BY THE GOVERNOR
k. QUASI IMMUNITY OF THE ELIGIBLE OBLIGOR: EXCEPT WILLFUL MISCONDUCT OF PERSONAL GAIN OR GROSS NEGLIGENCE

G. GDB:
    a. STANDING AS OF ALL THE RIGHTS TO THE OBLIGOR OR PETITIONER AND REIMBURSEMENT OF ALL COSTS AND EXPENSES
    b. RIGHT TO OBTAIN COUNSEL FOR OBLIGOR

H. DISMISSAL OF CASE
    a. FISCAL EMERGENCY ENDED
    b. NEW LEGISLATION TO ALLOW FILING UNDER 11 USC.

(P. del S. 1164)

LEY NUM. 71
28 DE JUNIO DE 2014

Parte II – English Version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act,"

To create the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act," in order to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico during an economic emergency; to create chapter 1 of the Act, titled General Provisions, chapter 2, titled Consensual Debt Relief, chapter 3, titled Debt Enforcement, and chapter 4, titled Effectiveness of the Act; to establish the definitions, interpretation and evidentiary standards applicable to the Act; to establish provisions regarding jurisdiction and procedure, including the creation of the Public Corporation Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, the powers and responsibilities of said court, the parameters that will govern eligibility for processes under chapter 2 and chapter 3 of the Act and to establish provisions on service of process, applicability of the rules of civil procedure, objections and appeals, among others; to establish provisions regarding creditor protection and governance, including limitations on avoidance actions, recovery on avoidance actions and the appointment of an emergency manager, among others; to establish the rules that will govern chapter 2, Consensual Debt Relief, including the objectives of a consensual debt relief transaction, the creation an oversight committee to monitor the public corporation's compliance with the recovery program, the court approval of the consensual debt relief transaction, the suspension of remedies during the suspension period and the financing of the public corporation during said period, among others; to establish the rules that will govern chapter 3, Debt Enforcement, including the petition for relief, the automatic stay, the eligibility hearing, the enforcement of claims by foreclosure transfer, the confirmation requirements, the creation of the creditors' committees and various additional provisions relating to the assets, liabilities, contracts and powers of the petitioner, among others; and to other ends.

STATEMENT OF MOTIVES

A. Current State of Fiscal Emergency

The fiscal situation of the Government of the Commonwealth of Puerto Rico for the last six years has been the most critical the country has undergone in its history. In January 2013, the General Fund deficit for fiscal year 2012-2013 was projected to surpass $2.2 billion. By means of various measures implemented by this Administration, said deficit was reduced to approximately $1.29 billion as of June 30, 2013. For the current fiscal year 2013-2014, this Legislative Assembly approved various measures of fiscal discipline that permitted a reduction, with legislative approval, of appropriations in an amount of $170 million below budgeted amounts. Notwithstanding, and as informed by the Treasury Department, at June 10, 2014, the projected collections for the current fiscal year were $320 million below the

projected amount, for which measures have been implemented in order to close the gap and achieve the goal of closing the current fiscal year with a deficit of $650 million.

The situation at the public corporations in January 2013 was no different, as the combined deficit of the country's three main public corporations (the Electric Power Authority (hereinafter "PREPA"), the Aqueduct and Sewer Authority (hereinafter "PRASA") and the Highways and Transportation Authority (hereinafter "PRHTA")) for fiscal year 2012-2013 was approximately $800 million, all of them with a combined debt adding up to $20 billion. This Administration implemented various measures in order to improve the finances of these public corporations in order to assist them in again becoming financially self-sufficient.

For example, on February 27, 2013, this Administration completed the transaction that involved the lease of the Luis Muñoz Marín International Airport by means of a public-private partnership, which strengthened the fiscal position of the Ports Authority and reduced the financial difficulties of said public corporation and Government Development Bank for Puerto Rico (hereinafter "GDB") by repaying in excess of $490 million owed to, or guaranteed by, GDB; on June 25, 2013, acts 30-2013 and 31-2013 were approved increasing the revenues of the PRHTA by approximately $270 million and allowing such public corporations to begin amortizing all of the lines of credit owed to GDB, currently in an amount of approximately $1.8 billion, and cover operational expenses; in July 2013, the Governing Board of PRASA implemented an average increase of 60% in water rates, approved by the prior administration, to cover operational expenses and improve its debt service coverage, which has allowed that public corporation to stop depending on General Fund subsidies to cover its operational deficits; and, notwithstanding the predictions, in August 2013, PREPA was able to place a bond issue of $673 million that allowed it to partially finance its capital improvement program.

Notwithstanding all of the foregoing, the measures taken with the General Fund, as well as with the public corporations, have not been enough to address the economic and fiscal problems of Puerto Rico. As the public is aware, for the first time in our constitutional history, the credit of the Commonwealth has been compromised as a result of the downgrade to non-investment grade of its general obligation bonds by the principal rating agencies, notwithstanding all of the previously mentioned governmental measures. The three principal rating agencies downgraded below investment grade the Commonwealth's general obligation bonds, and the bonds of the majority of its instrumentalities and public corporations, including GDB, PREPA, PRASA, PRHTA, and the Public Buildings Authority. The public debt's loss of its investment grade rating places the economic and fiscal health of the people of Puerto Rico at risk, and improperly compromises the credit of the Central Government and its public corporations.

Also, during fiscal year 2013-2014, the liquidity of the government and GDB was adversely affected by various factors that significantly limited the available resources and financial flexibility of the government to cover its governmental operations. These factors include a significant increase in the interest rates and yields of both Commonwealth obligations and those of its instrumentalities and public corporations, limited access by these entities to the United States capital markets and a marked reduction in the island's capital markets. In addition, this crisis limited GDB's ability to provide interim financing to public

corporations and other entities. In light of this, local and international private financial institutions, which in the past had served as a source of interim liquidity for the Central Government and the public corporations, have significantly reduced and continue to reduce the credit extended to the Commonwealth and its public corporations, and no longer are a viable alternative for obtaining interim financing. The reduction in capital market access and in the credit provided by private financial institutions, has also limited the volume of debt that can be issued and, as a result, makes it impossible for the government to depend on financings to cover the cost of its governmental operations.

GDB, which has the statutory role of serving as financial adviser and fiscal agent to the Government of the Commonwealth, its instrumentalities, municipalities, and public corporations, and has also served as a source of interim financing for all parts of the governmental apparatus, has seen its liquidity affected precisely by its financing of the operational deficits of various public corporations. In GDB's financial statements for the fiscal year ended June 30, 2013, the auditors emphasize that GDB has $6.9 billion in loans to the Commonwealth and its public corporations, which constitutes 48% of GDB's total assets. On the other hand, loans to municipalities totaled $2.212 billion, or 15% of GDB's total assets. Therefore, the liquidity and financial condition of GDB significantly depends upon the ability of the Commonwealth and its public corporations to repay their debt, which, as stated before, has been severely affected.

Based on this situation, the present Administration took various measures to improve GDB's liquidity. For example, in March 2014, the Commonwealth made a historic bond issue of its general obligation bonds in the amount of $3.5 billion, the net proceeds of which were mainly used to repay the Commonwealth's obligations with GDB. Also, Act No. 24-2014 was approved so that GDB, among others, could require certain governmental entities to transfer the balance of cash accounts maintained at private sector institutions to GDB. Also, said Act prohibits GDB from approving loans to public corporations that are unable to show that they have the sources of revenue sufficient to cover the debt service of the new financing. As a result, that law has the effect of imposing fiscal discipline on public entities and preserves the liquidity and financial situation of GDB. Although these measures, together with other efforts, have increased GDB's liquidity, it still lacks sufficient financial strength, on its own, to satisfy the current financing needs of the Government of the Commonwealth and, in particular, of its public corporations, especially with the limited market access of these entities.

As a result of this liquidity situation which has exacerbated the difficult fiscal and financial outlook of the country, this Administration has proposed the approval of a balanced budget for the Commonwealth, without the financing of operational deficits nor debt refinancing for fiscal year 2014-2015. In addition, various expense reduction and operational reorganization measures have been taken at the agency and public corporation level, including the enactment of the Special Law for the Fiscal and Operational Sustainability of the Government of the Commonwealth of Puerto Rico, Act 66-2014, so that the Central Government as well as the public corporations may be able to cover their operational expenses with revenues collected by such entities and not by means of non-recurring funds, such as loans and debt refinancing. Act 66-2014 declared a fiscal emergency for the country for:

> the fiscal and economic recovery after the downgrade of Puerto Rico's credit and the reduction of collections that affects the liquidity of the State, safeguarding the constitutional mandate for the payment of interest and amortization of the public debt, it is hereby adopted a plan for the management of the consequences of the same and to establish a structured administration that will permit the country to meet its obligations. Similarly, the continuity of the public function is assured in essential areas of health, safety, education, social work and development, among others, as well as the rendering of those services necessary and indispensable for the populace. This law will have as its public policy the restoration of the public credit of the commonwealth of Puerto Rico through the elimination, in the short term, of the General Fund deficit and the improvement in the fiscal condition of the public corporation, without resorting to the dismissal of regular or career public employees, nor affecting the essential functions of the government agencies that provide security, education, health or social work. This structured plan is indispensable to protect the availability of cash to the Commonwealth of Puerto Rico in such a manner so that the provision of indispensable services the populace receives is not affected. This plan considers the challenges that Puerto Rico confronts to restore the public credit and address the uncertainty surrounding the duration, scope and cost of access to the capital markets in the absence of an investment grade rating.

Although the implementation of Act 66-2014 will result in approximately $230 million in combined savings for all public corporations, such fiscal control measures will not be sufficient to address the immediate fiscal situation of many public corporations of the country. Public corporations of the Commonwealth of Puerto Rico that provide essential public services, PREPA being the most dramatic example, today face significant operational, fiscal, and financial challenges. During the past years, these public corporations have issued bonds in the capital markets or obtained loans, guarantees, or other financial support from the Government Development Bank for Puerto Rico ("GDB") or private financial institutions to cover recurring budget deficits as result of the prolonged weakness in the Commonwealth's macroeconomic conditions, their inefficiencies, and their high operating costs. These fiscal and financial conditions have also been exacerbated by the needs of these public corporations to invest substantial amounts in their capital improvement plans, in many instances required by applicable federal regulation. As a result of this, some of these public corporations are also burdened with a heavy debt load as compared to the resources available to cover the corresponding debt service.

At present, as previously discussed, these public corporations have limited access to the capital markets and their ability to repay outstanding financings is severely compromised. At the same time and contrary to past improper practices, the Government of Puerto Rico has implemented responsible public policies pursuant to which GDB will no longer provide financing to cover operating deficits of the public corporations, and neither will the Department of the Treasury of the Commonwealth because these are not financially sound practices, and GDB and the Central Government are not in a position to cover such deficits. As previously indicated, under this Administration, the public corporations have been taking

the measures necessary to achieve economic self-sufficiency, because reaching such self-sufficiency is fundamental for the new policy of responsibility required by the people of Puerto Rico. That being said, the lack of access to financing and deficit funding may culminate in some public corporations becoming unable to pay their debts when due, honor their other contractual obligations, and continue to perform important public functions such as providing required maintenance and improvements to existing critical infrastructure or making new investments necessary to the continuation of these vital services and compliance with regulatory requirements.

As recognized by this Legislative Assembly upon the enactment of Act Nos. 30 and 31 of 2013, which, as previously indicated, assigned new revenues to PRHTA, that public corporation has been facing a precarious situation for some years now due to the general reduction of its revenues exacerbated by the increases in the costs of its operations. Based on that public corporation's audited financial statement for fiscal years 2010 through 2013, PRHTA had accumulated operational losses (before depreciation) of $349 million. These deficiencies were covered by GDB during the past years in order for that public corporation to continue operating and making payments to its principal creditors. During the past four years from 2009-2012, PRHTA's fiscal outlook worsened due to a severe pattern of covering its operational mismatches with GDB lines of credit, that, during such period, added up to $2.113 billion without having identified resources for the repayment of such obligations.

In a separate matter, this Legislative Assembly has also recognized, through the Puerto Rico Transformation and Energy RELEIF Act, Act 57-2014, that high energy costs, which reached their highest levels at the end of 2012 at $0.31 per kilowatt hour, have crippled our economic development and that these high costs are a result of PREPA’s dependence on oil for purposes of generating electricity and its highly leveraged structure, which for several years has created difficulties in its ability to implement necessary capital improvements to the power generation, transmission, and distribution systems. PRHTA and PREPA exemplify the nature and scope of the crisis that certain of our public corporations currently face that may lead to an unprecedented failure in the ability of some public corporations to safeguard the public and promote the general welfare of the people by continuing to provide essential government services while at the same time honoring their debt and other obligations.

As previously mentioned the financial challenges facing some of the public corporations have been further exacerbated by the Central Government’s own fiscal and economic challenges. The budget deficits incurred over decades, prolonged economic recession (since 2006), a high rate of unemployment that reached 16% in 2010, population decline, and high levels of debt and pension obligations, have contributed to the financial problems of the public corporations. All of these factors have led to widening of credit spreads for public sector debt and the ratings downgrades, all as previously discussed. This, in turn, has further strained the liquidity of the Commonwealth and its public corporations and adversely affected their access to the capital markets and private sources of financing, as well as their borrowing costs.

This Legislative Assembly has time and again demonstrated its willingness to act to address the financial and economic challenges of the Commonwealth and its public corporations. This Legislative Assembly has enacted comprehensive reforms of the Employees Retirement System through Act No. 3-2013, as amended, the Teachers Retirement

System through Act No. 160-2013, and the Judiciary Retirement System through Act No. 162-2013 in order to ensure retirees will continue to receive their pensions while addressing the Commonwealth's cash flow needs. This Legislative Assembly also enacted comprehensive energy reform legislation, Act 57-2014, in order to promote the economic development and wellbeing of the people of the Commonwealth.

In light of the financial situation of the Commonwealth and the Administration's goal to balance the Commonwealth's General Fund, Governor Alejandro Garcia Padilla recently announced that the Commonwealth's public corporations would be required to achieve financial self-sufficiency in the near future. This self-sufficiency, however, may not be achieved through increases in basic rates, which are already excessively high, hinder and depress economic activity and development. Given that public corporations no longer can rely on GDB loans, Commonwealth subsidies, or rate increases to cover their operating deficits, they may be unable to pay their debts as they come due and honor their other contractual obligations, while at the same time trying to meet their obligations to provide services to our populace. If the public corporations were to default on their obligations in a manner that permits creditors to exercise their remedies in a piecemeal way, the lack of an effective and orderly process to manage the interests of creditors and consumers, would threaten the ability of the Commonwealth's government to safeguard the interests of the public to continue receiving essential public services and promote the general welfare of the people of Puerto Rico.

The challenges described herein are not issues that can be addressed in the future in a gradual and measured manner over an extended period of time. We have inherited them and they are with us today, constituting a real and palpable threat to the government's ability to protect and promote the general welfare of the people of Puerto Rico now, and therefore establish a current state of fiscal emergency.

B. Insufficiency of Current Commonwealth Laws and Inapplicability of Federal Law

At present, there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent. The enabling acts of PREPA and PRASA, for example, contain provisions that contemplate the appointment by a court of a receiver in the context of a default that, under the direction of a court, would take over the operations of the public corporation and apply its operating revenues in the manner ordered by the court. The receiver would remain in place until such time as all defaults of the public corporation are cured. These general provisions are inadequate to address the complexities involved in a recovery process in the event of an insolvency. They lack the rules and procedures necessary to properly and equitably manage the recovery process of a public corporation for the benefit and protection of all stakeholders.

At the same time, the provisions of the federal laws applicable to corporations in state of insolvency are inapplicable to the Commonwealth's public corporations.

This Act addresses the existing statutory gap, consistent with Commonwealth and federal constitutional requirements, and enables the Commonwealth's public corporations to address their particular fiscal and financial emergencies in a manner that maximizes value to creditors while protecting public functions important for the public health, safety and welfare, and

positioning the Commonwealth to grow its economy for the benefit of all stakeholders collectively. This legislation acknowledges the complexity of these types of proceedings and provides special procedures by which the Chief Justice of the Puerto Rico Supreme Court may designate particular judges to oversee these types of proceedings who may, in turn, designate special commissioners with the required expertise to assist in their resolution. This is not a bankruptcy act, but an orderly debt enforcement act for the eligible public corporations.

C. Constitutional Basis

This legislation is consistent with guidance provided by the United States Supreme Court (the "U.S. Supreme Court") with respect to the proper rules and procedures for carrying out the financial recovery of entities ineligible for relief under the applicable federal laws.

As discussed below, the Commonwealth has the power to enact a statute that allows a public corporation to modify the terms of its debt with the consent of a substantial number of affected creditors or through a court-supervised proceeding because the U.S. Supreme Court has acknowledged the power of states to enact their own laws for entities Congress has not rendered eligible under applicable federal law. In addition, Puerto Rico has the police power to enact orderly debt enforcement and recovery statutes when facing an economic emergency, since Congress enacted legislation in 1950 and 1952 granting the Commonwealth the power to govern under its own constitution.

These being the circumstances, states have the power to enact their own laws to provide a process for adjusting debts. States have also enacted laws permitting insurance companies and banks ineligible under provisions like chapters 9 and 11 of title 11 of the United States Code to adjust their debts.

States are also able to enact their own enforcement and adjustment statute under their police power. In Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942), the U.S. Supreme Court explained the state retains police power with respect to the financial wellbeing of the state: "If a State retains police power with respect to building and loan associations . . . because of their relation to the financial well-being of the State, and if it may authorize the reorganization of an insolvent bank upon the approval of a state superintendent of banks and a court, . . . a State should certainly not be denied a like power for the maintenance of its political subdivisions and for the protection not only of their credit but of all the creditors . . . ." Faitoute Iron & Steel Co., 315 U.S. at pages 313–14. This police power extends not only to the enactment of an adjustment statute where Congress has failed to act, but also to the use of the police power during periods of emergency.

The Commonwealth has sovereign authority to enact its own laws, as long as the statute does not conflict with our own Constitution, the Constitution of the United States or applicable federal law. With the passage of Public Law 600, Congress authorized the Commonwealth to draft its own constitution. The legislation was offered in the "nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." In approving the proposed constitution, Congress noted: "Within this framework, the people of Puerto Rico will exercise self-government. As regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union."

Courts have recognized this sovereign authority of the Commonwealth. The U.S. Supreme Court has held that the Commonwealth is "sovereign over matters not ruled by the Constitution." The Court has reiterated this holding on two occasions. Specifically, in Examining Board of Engineers v. Flores de Otero, 426 U.S. 572, 594 (1976), the Court stated that "The purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with a state of the union." In Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982), the Court further explained: ". . . Puerto Rico . . . is an autonomous political entity, sovereign over matters not ruled by the Constitution." Moreover, in Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, 649 F.2d 36, 41 (1st Cir. 1981) , a case that was cited positively by the U.S. Supreme Court in U.S. v. Lara, 541 U.S. 193, 204 (2004), the United States Court of Appeals for the First Circuit concluded that:

> In sum, Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

The Commonwealth Constitution expressly recognizes the Commonwealth's police power. Under Article II, Section 18, citizens of the Commonwealth are given the right to organize and bargain collectively. That right, however, does not impair the state's police power: "Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services." In addition, Article II, Section 19 more explicitly recognizes the police power of the Commonwealth: "The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively."

Similarly, the Legislative Assembly was given the power to create the Commonwealth courts by Congress in 1950 and 1952 when Congress enacted legislation granting Puerto Rico Commonwealth status and the power to govern under its own constitution. Section 2 of Article V of the Commonwealth Constitution grants the Legislative Assembly the authority to create the Commonwealth court. Therefore, the Legislative Assembly has the power to enact, and a Puerto Rico court has the power to enforce, an orderly debt enforcement statute.

D. Purpose and Objectives of the Act

This Legislative Assembly finds that the current fiscal emergency situation requires legislation that allows public corporations, among other things, (i) to adjust their debts in the interest of all creditors affected thereby, (ii) provides procedures for the orderly enforcement and, if necessary, the restructuring of debt in a manner consistent with the Commonwealth Constitution and the U.S. Constitution, and (iii) maximizes returns to all stakeholders by providing them going concern value based on each obligor's capacity to pay. It further believes that the public corporations can be restored to a position of solvency and

creditworthiness by postponing or reducing debt service with the consent of a supermajority of the creditors as part of a recovery program, as contemplated by chapter 2 of this Act.

This Legislative Assembly recognizes that if the public corporations fail to use the revenues that have been pledged to the payment of debt service to maintain basic public services that are necessary to preserve the public health, safety, and welfare of our citizens, they will likely be unable to honor their debt. This Act also recognizes that if an orderly debt enforcement and recovery process is not in place, there will likely be outcomes that do not balance fairly the interests of all the stakeholders. To address these challenges in a manner that treats debt holders fairly and balances the best interests of creditors with the interest of the Commonwealth to protect its citizens and to grow and thrive for the benefit of its residents, this Legislative Assembly has decided to enact a law that is consistent with the precepts espoused by the courts of the Commonwealth and the United States.

E. Summary of the Act

The Act contemplates two types of procedures to address a public corporation's debt burden. The first is a consensual debt modification procedure that would culminate in a recovery program (chapter 2 of this Act) and the second is a court-supervised procedure that would culminate in an orderly debt enforcement plan (chapter 3 of this Act). A public corporation can seek relief under either chapter 2 or chapter 3 at the same time or sequentially. This Act is designed in many respects to mirror certain key provisions of title 11 of the United States Code, and courts and stakeholders are encouraged to review and consider existing precedent under title 11 of the United States Code, where applicable, when interpreting and applying this Act.

Eligibility

The following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary Requirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.

Summary of Chapter 1 of the Act

Chapter 1 of the Act establishes the general provisions of the law and includes three subchapters, the first entitled "Title, Purposes, Nomenclature, and Interpretation," the second "Jurisdiction and Procedure," and the third "Creditors' Protections and Governance." Subchapter I includes provisions related to, among other things, definitions, standards of interpretation and evidence, a savings clause, and inapplicability of other laws. Subchapter II establishes the norms regarding jurisdiction, the powers and responsibilities of the Court, eligibility, service of process, and appeals, among others. Subchapter III contains provisions concerning constitutional safeguards for creditors, the role of GDB in proceedings conducted

under the Act, the power of the Governor to appoint an Emergency Manager, and the basic tools available to an eligible public corporation availing itself of the Act, such as continued operations and limited recovery of setoffs and actual fraudulent transfers.

Summary of Chapter 2 of the Act

General. Chapter 2 provides a mechanism for a public corporation to adopt a recovery program and seek a market-led solution for debt relief, based on the recovery program, that binds all debt holders with the consent of a supermajority of debt holders. The recovery program contemplated by chapter 2 will have as its objectives: to enable an eligible obligor to become financially self-sufficient; to allocate equitably among all stakeholders the burdens of the recovery program; and to provide the same treatment to all creditors unless a creditor agrees to a less favorable treatment.

Chapter 2 was designed based on jurisprudence that has determined that no violation of the constitutional prohibition on the impairment of contracts exists upon the enactment of a debt adjustment regime that complies with the following principal characteristics: the existence of a fiscal emergency that necessitates the enactment of this legislation; a supermajority vote in order to bind the minority; the creation of an impartial oversight board to supervise compliance with the recovery program; ratable distributions; and court approval.

Commencement and Eligibility. The chapter 2 process begins when the governing body of a public corporation and GDB, or GDB upon the Governor's request, as the case may be, authorize the public corporation to seek consensual debt relief from holders of specified debt instruments (which chapter 2 identifies as the affected debt instruments). Any government entity, other than those specifically excluded (see above), is eligible to commence a recovery process under chapter 2 of this Act.

Scope of Relief. The relief available under chapter 2 consists of any combination of amendments, modifications, waivers, or exchanges (collectively referred to as amendments) to the affected debt instruments, so long as the amendments are coupled with the public corporation's commitment to be bound by the recovery program. Amendments may include various features such as interest rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments.

Suspension of Remedies. After a public announcement of the suspension period is made, all remedies otherwise granted to holders of, parties with a beneficial interest in, and trustees and indenture trustees and similar representatives related to the affected debt instruments are temporarily suspended for a sufficient period of time to allow the public corporation to engage in discussions with stakeholders, seek the required consent from holders, and obtain court approval of the amendments. The public corporation shall have the power through court process to enforce the temporary suspension of remedies.

Recovery Program. A public corporation seeking approval of a consensual debt relief transaction must commit to and formulate a recovery program. The recovery program must allow the public corporation to become financially self-sufficient based on financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders. The recovery program, which may include interim milestones and performance targets, will necessarily require burden sharing by

affected stakeholders and may also include measures designed to improve operating margins; increase operating revenues; reduce operating expenses; transfer or otherwise dispose of existing operating assets; acquire new operating assets; and close down or restructure existing operations or functions.

Required Consent of Debt Holders. Proposed amendments to the affected debt instruments must be submitted to the holders of such debt instruments for consent or approval. If holders of at least half of the amount of debt entitled to vote or consent in a particular class participate in the vote or consent process and holders of at least three-quarters of the aggregate amount of debt that participate in the vote or consent solicitation approve the amendments, the public corporation may then seek court approval of the amendments for the purpose of binding all holders of such affected debt instruments to the amendments.

Court Approval. The court process is designed to be efficient and expedient in light of the consensual nature of the transaction. The designated courtroom within the Court of First Instance, San Juan Part, established by this Act will have original jurisdiction to resolve any disputes relating to any provision under chapter 2, including a consensual debt relief transaction. Upon an application by the public corporation for approval of the amendments, the court will be required to determine whether (i) the amendments proposed in such transaction are consistent with the objectives of chapter 2, and (ii) that the voting procedure was conducted in a manner consistent with chapter 2. If the court is satisfied that these requirements have been satisfied, the court must order that the proposed amendments shall become effective immediately, and that all holders of such instruments shall be bound by the new terms of the instrument. The amendments shall be binding on the public corporation and any entity asserting claims or other rights, including anyone with a beneficial interest, in respect of affected debt instruments.

Oversight Commission. In order to monitor the public corporation's compliance with the recovery program, chapter 2 establishes an oversight commission comprised of three independent experts appointed by the Governor. The commission is also charged with the responsibility of providing periodic compliance updates to stakeholders and the public. If the public corporation fails to achieve its interim performance targets, for example, the commission may issue non-compliance findings and make recommendations for curing such non-compliance.

Summary of Chapter 3 of the Act

General. Chapter 3 addresses the debt problem of the Commonwealth's public corporations through a judicial solution requiring the same consent required in, for example, chapters 9 and 11 of title 11 of the United States Code. Chapter 3 enables each qualifying public corporation to defer debt repayment and to decrease interest and principal to the extent necessary to enable each entity to continue to fulfill its vital public functions. Collective bargaining agreements may be modified or rejected under certain circumstances and trade debt can be reduced when necessary. In designing chapter 3, this Legislative Assembly has adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, this Legislative Assembly clearly expresses its intent that jurisprudence

interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act.

Constitutional Basis. Notwithstanding the common concepts that this legislation shares with analogous federal law, as stated before, this legislation is not a bankruptcy statute. This legislation provides for a regime to guarantee the orderly enforcement of debts, to the extent of each such public corporation's ability to do so. To address the U.S. Supreme Court's concern about a municipality legislating the terms on which its own instrumentalities' debts can be handled, chapter 3 adopts even more stringent economic standards than Congress adopted for chapters 9 and 11 of title 11 of the United States Code. Accordingly, the underlying premise of chapter 3 is that it must serve as an orderly debt enforcement mechanism that makes creditors better off than they would be if they all simultaneously enforced their claims immediately. Primarily, chapter 3 accomplishes this task by requiring that each creditor receive (i) at least the value it would receive if all creditors were allowed simultaneously to enforce their respective claims against the public corporation, and, wherever possible, the higher going concern value of the public corporation, plus (ii) a note providing additional value based on the amount by which the public corporation's future financial results yield positive cash flow. This note serves as a protection against paying creditors less than the available value and as a proxy for the amount each creditor could receive in the future in the absence of chapter 3.

Chapter 3 was designed based on the desire of the Commonwealth's public corporations to satisfy their contractual obligations to the maximum extent possible. Wherever practicable, chapter 3 opts to maximize distributions to creditors consistent with the execution of vital public functions, without which all creditors would be worse off. For example, in some circumstances, if pledged revenues are turned over to creditors and not used to sustain a public corporation, there may be fewer revenues in the future to pay the creditors. Assets backing employee retirement or post-employment benefit plans remain inviolable under chapter 3. Obligations for employee wages and salaries, payment for the provision of goods and services under a certain threshold (not to be lower than $1 million), and debts owing to the United States of America will be paid in full.

Commencement and Eligibility; Stay of Actions. A case under chapter 3 is commenced when a petition for relief is filed, as such concept is defined in chapter 3. To be eligible for chapter 3, a petitioner must be (i) currently unable or at serious risk of being unable to pay valid debts as they mature while performing its public functions without additional legislative or financial assistance, (ii) ineligible for relief under chapter 11 of title 11 of the United States Code and (iii) authorized to file a petition by its governing body and GDB or by GDB at the Governor's request on behalf the public corporation. The petition must contain information about the types and amounts of claims the petitioner intends to affect under its debt enforcement plan. Any actions for payment of such claims are stayed as of the date the petition is filed, channeling their adjudication into a single forum—the designated courtroom within the Court of First Instance, San Juan Part, established by this Act. Prompt notice of the petition, the claims to be affected, and the automatic stay must be furnished to creditors, along with notice of the opportunity to volunteer to serve on a general creditors' committee to be appointed by the Court. The notice shall also include a date set by the Court for a hearing to determine whether the petitioner is eligible for relief under chapter 3

and the deadlines for filing any objections to eligibility. The eligibility hearing must take place no more than 30 days after the petition is filed.

Pendency of Case. During its chapter 3 case, the petitioner remains in possession and in control of its assets and operations. After the petition is filed, any expense the petitioner incurs in exchange for new value is an administrative expense, to be paid in full in the ordinary course, and unaffected by the petitioner's plan. The petitioner may obtain unsecured credit or incur debt in the ordinary course as an administrative expense; if the petitioner is unable to obtain credit or incur debt on those terms, chapter 3 provides the Court with the power to authorize significant further protections for lenders willing to extend credit to the petitioner.

Rejection of Contracts. The petitioner also has the power to assign or reject contracts to which it is party if the Court finds it is in the petitioner's best interests. Counterparties to rejected contracts will be left with claims for breach of contract, to be treated under the petitioner's plan. Collective bargaining agreements are subject to rejection or modification, but only where the Court determines that absent rejection or modification the petitioner would likely become unable to perform public functions, which determination is to be made only, based on U.S. Supreme Court precedent, after the data underlying the request for rejection have been shared with union representatives and reasonable efforts to negotiate a voluntary modification have failed.

Debt Enforcement Plan. Only the petitioner or GDB, upon the Governor's request, may propose a debt enforcement plan under chapter 3. Creditors must be separated into different classes (based upon different collateral security, priorities, or rational bases for classifying similar claims separately) for treatment under the plan. Plan treatment must be such that every affected creditor receives payments and/or property having a present value of at least the amount the claims in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized under the circumstances. Under the plan, every affected creditor also must receive a note that provides for 50% of the petitioner's positive free cash flow for ten years following the plan effective date. No plan can be confirmed unless at least one class of affected debt votes to accept the plan, but all other classes can have their claims treated as described above regardless of whether they accept the plan. This protects the public corporations from entering into debt repayment plans they cannot afford.

F. Desire for a Single Court

This Act creates the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, which will have exclusive competence and jurisdiction over all matters arising under or related to this Act. Accordingly, it is this Legislative Assembly's desire that all disputes arising under or related to this Act (or to any debt that is affected by it), wherever filed, be directed to and resolved by the Court established by this Act (or to the federal court located in the Commonwealth, if applicable) and that courts in States (and federal courts located outside the Commonwealth) decline to adjudicate such disputes in the same manner that this Legislative Assembly would expect Commonwealth courts to abstain from hearing disputes against States and their instrumentalities facing a similar financial crisis.

G. Conclusion

As previously demonstrated, this Legislative Assembly has the power to enact legislation that allows a public corporation to modify the terms of its debt with the consent of supermajority of its affected creditors or through a court supervised proceeding. Certain public corporations are operating under fiscal and financial conditions such that, if emergency action is not taken to prevent their insolvency, they will have to submit themselves to a debt adjustment process, because with their current revenue structures they will be unable to pay their debts as they become due and honor their contractual obligations, while continuing to provide services to the people. This Act provides the necessary regime to establish an orderly process that will allow those public corporations that so require to satisfy their debts and other contractual obligations to the best of their ability, while guaranteeing the continuity of the governmental functions in providing essential public services.

In light of the foregoing, this Legislative Assembly, relying on the state of fiscal emergency declared in Act 66-2014, confirms that the approval of this Act is of utmost importance to ensure that the public corporations of the Commonwealth satisfy their debts in an orderly fashion so that indispensable services to the people of Puerto Rico may continue uninterrupted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Chapter 1: General Provisions

Subchapter I: Title, Purpose, Nomenclature, and Construction

Section 101. —Short Title and Fiscal Emergency.—

(a) This Act shall be known and may be cited as the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act."

(b) Pursuant to Act No. 66-2014, the Legislative Assembly has declared a state of fiscal emergency for the Commonwealth and its instrumentalities.

(c) The Legislative Assembly, in the exercise of its police power, is empowered to adopt measures aimed at protecting the public health, safety and welfare in a structured manner, while addressing the current fiscal situation of the Commonwealth and, in particular, of its public corporations. To that end, the Legislative Assembly may adopt legislation in response to social and economic interests, as well as in emergencies. Section 19 of the Bill of Rights of the Commonwealth Constitution provides that the enumeration of rights contained in Article II shall not be construed as to restrict "[t]he power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people". Similarly, Section 18 of the Bill of Rights of the Commonwealth Constitution gives this Legislative Assembly authority to enact laws to address grave emergencies that imperil the public health, safety or essential public services."

(d) This Act is adopted in the exercise of the Commonwealth's police power, as well as under the Legislative Assembly's power to adopt laws for the protection of the life, health and welfare of the people, such as in emergencies where the health, public safety and

essential government services are clearly endangered. For these reasons, this Act shall prevail over any other law.

(e) The public policy of this Act shall be to restore the credit of the public corporations of the Commonwealth by improving the fiscal condition of the public corporations without affecting the essential functions of such entities.

Section 102. —Definitions.—

The following words and terms, when used and referred to in this Act, shall have the meaning stated below:

(1) "Act" means this Puerto Rico Public Corporation Debt Enforcement and Recovery Act.

(2) "administrative expense" means an expense of a petitioner, incurred or accrued from and after the date its petition is filed up through the date a plan is confirmed in its case, in respect of new value provided or new obligations incurred, including any expenses necessary to fulfill the petitioner's public functions.

(3) "affected creditor" means a creditor holding affected debt.

(4) "affected debt" means the debt scheduled pursuant to section 302(a)(2) of this Act.

(5) "affected debt instrument" means each debt instrument related to an obligation identified in a suspension period notice, provided that no debt instrument evidencing an obligation incurred pursuant to section 206 or section 322 of this Act shall qualify as an affected debt instrument.

(6) "affiliate" means, with respect to an entity, another entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity first specified.

(7) "approval order" means an order of the Court under chapter 2 of this Act finding that:

(a) the amendments, modifications, waivers, or exchanges, as the case may be, proposed in a consensual debt relief transaction are consistent with the requirements of chapter 2 of this Act, including the objectives stated in section 201(a) of this Act and the requirements of sections 202(d)(1) through 202(d)(3) of this Act; and

(b) the voting procedure followed in connection with the consensual debt relief transaction was carried out in a manner consistent with the requirements of chapter 2 of this Act.

(8) "case" means a case commenced under chapter 3 of this Act.

(9) "cash collateral" means a petitioner's cash and cash equivalents to the extent encumbered by valid liens or security interests.

(10) "claim" means:

(a) a right to present or future payment, whether matured, unmatured, contingent, noncontingent, disputed, undisputed, liquidated, or unliquidated; or

(b) a right to an equitable remedy for which money damages are a remedy under applicable law.

(11) "Commonwealth" means the Commonwealth of Puerto Rico.

(12) "Commonwealth Constitution" means the Constitution of the Commonwealth of Puerto Rico, as amended.

(13) "Commonwealth Entity" means the Commonwealth and a department, agency, district, municipality, or instrumentality (including a public corporation) of the Commonwealth, including any successor entity or additional entity created or to be created to perform any function of such Commonwealth Entity.

(14) "Commonwealth law" means any law of the Commonwealth, or rule or regulation of any Commonwealth Entity.

(15) "consensual debt relief transaction" has the meaning given to that term in section 201(b) of this Act.

(16) "contract" means any contract or agreement, including any debt instrument or unexpired lease, any collective bargaining agreement, any retirement or post-employment benefit plan, and any other agreement or instrument providing for amounts or benefits due by the petitioner to any retiree or employee.

(17) "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(18) "Court" means the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, described in section 109 of this Act.

(19) "Court of Appeals" means the Court of Appeals of the Commonwealth of Puerto Rico.

(20) "Court of First Instance" means the Court of First Instance of the Commonwealth of Puerto Rico.

(21) "creditor" means a holder of a claim against, either or both:

(a) a public sector obligor seeking a consensual debt relief transaction under chapter 2 of this Act; and

(b) a petitioner under chapter 3 of this Act.

(22) "creditors' committee" means a committee appointed by the Court pursuant to section 318 of this Act.

(23) "critical vendor debt" means special trade debt owed to an entity that agrees to deliver, during the pendency of a case under chapter 3 of this Act and through the effective date, ongoing provision of goods and services to the petitioner—

(a) on the same or better terms for the petitioner than those in place during the one hundred and eighty (180) days preceding the filing of a petition under chapter 3 of this Act; and

(b) that the petitioner has designated as critical to its ability to perform public functions.

(24) "custodian" means:

(a) a receiver or trustee of any of the property of an entity;

(b) an assignee under a general assignment for the benefit of an entity's creditors; or

(c) a trustee, a receiver, a conservator, or an agent under any applicable law, common law right, or under any contract, that is appointed or authorized to take charge of property of an entity for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of some or all of the entity's creditors.

(25) "debt" means liability on a claim.

(26) "debt instrument" includes any document or statement for, used in connection with, or related to:

(a) any obligation to pay the principal of, premium of, if any, interest on, penalties, reimbursement or indemnification amounts, fees, expenses, or other amounts relating to any indebtedness, and any other liability, contingent or otherwise,

(i) for borrowed money,

(ii) evidenced by bonds, debentures, indentures, notes, resolutions, credit agreements, trade finance agreements, trade finance facility agreements, securities, or similar instruments, or

(iii) for any letter of credit or performance bond;

(b) any liability of, or related to, the kind described in the preceding clause (a), which has been guaranteed or insured;

(c) any obligation in respect of bankers' acceptances;

(d) any obligation in respect of a swap agreement, derivative contract or related agreement, hedge agreement, securities contract, forward contract, repurchase agreement, option, warrant, commodities contract, or similar document;

(e) any and all deferrals, renewals, extensions, and refunding of, or amendments, modifications, or supplements to, any liability of the kind described in any of the preceding clauses (a) through (d);

(f) any liability arising out of any judgment relating to any liability of the kind described in any of the preceding clauses (a) through (e); or

(g) any liability arising from an obligation of insurance relating to any liability of a kind described in this section.

(27) "effective date" of a plan has the meaning given to that term in section 315(l) of this Act.

(28) "eligible obligor" means a public sector obligor satisfying the eligibility criteria in section 113(a) of this Act, rendering it eligible to seek relief under chapter 2 of this Act.

(29) "emergency manager" means a natural person appointed as emergency manager pursuant to section 135 of this Act.

(30) "employee claims against a successor employer" means any liability or obligation relating to the petitioner's employees' rights pursuant to any contract or applicable law not expressly assumed in a transfer pursuant to section 307 of this Act.

(31) "entity" includes an individual, a person, an estate, a trust, a Commonwealth Entity, a governmental unit that is not a Commonwealth Entity, a corporation, a partnership, and a limited liability company.

(32) "enumerated entity" means the eligible obligor and the petitioner, as applicable, and each of their successors or assigns to all or part of their business; the Commonwealth; GDB; any governing body of any of the foregoing; any emergency manager; any official of an employee benefit plan to which any of the foregoing in the past contributed or now contributes and any trustee or other official of any pension fund or retirement or post-employment benefit plan for the benefit of any past or present employee of any of the foregoing; the oversight commission appointed pursuant to section 203 of this Act; any member of such oversight commission; any creditors' committee; any member of a creditors' committee or its representative on the creditors' committee; any elected official; any entity appointed by an elected official or any other public official; any professional retained by any of the foregoing; any past or present advisor, agent, consultant, controlling person (if any), director, employee, manager, member, officer, partner, or stockholder of any of the foregoing; and any successor, assign, and personal representative of any of the foregoing.

(33) "essential supplier contract" means a contract, or type of contract, for the provision of goods or services to a public sector obligor seeking relief under this Act, which contract or type of contract is necessary for such public sector obligor to continue performing public functions, and as identified—

(a) with respect to an eligible obligor, on a schedule published on the website on the date the suspension period notice is published; and

(b) with respect to a petitioner, on the schedule specified in section [302(a)(2)] of this Act.

(34) "financially self-sufficient" means, in respect of any public sector obligor, able to meet its projected operating expenses, capital expenditure requirements, working capital requirements, and financing costs out of its projected revenues within the period of time specified in the recovery program without the need for subsequent relief under this Act or financial support from any Commonwealth Entity.

(35) "GDB" means the Government Development Bank for Puerto Rico, including any successor entity or additional entity created or to be created to perform any function of the Government Development Bank for Puerto Rico.

(36) "general committee" means the committee formed pursuant to section 318(a) of this Act.

(37) "governing body" means:

(a) the board of directors of a public corporation; and

(b) any deliberative body by means of which an instrumentality exercises its authority, as provided in the particular instrumentality's enabling act.

(38) "Governor" means the person serving as the Governor of the Commonwealth pursuant to Article IV of the Commonwealth Constitution.

(39) "insolvent" means:

(a) currently unable to pay valid debts as they mature while continuing to perform public functions; or

(b) will be unable or at serious risk of being unable, without further legislative acts or without financial assistance from the Commonwealth or GDB, to pay valid debts as they mature while continuing to perform public functions

(40) "instrumentality" means an entity created by Commonwealth law as an entity authorized to perform public functions for the Commonwealth.

(41) "noticing agent" means the agent that an eligible obligor, a petitioner, or GDB (acting on behalf of the eligible obligor or petitioner) may retain at the expense of such eligible obligor or petitioner pursuant to section 121 of this Act.

(42) "oversight commission" means a body composed of three (3) independent experts appointed by the Governor under chapter 2 of this Act, not more than one (1) of whom may be a resident of the Commonwealth at the time of appointment.

(43) "party in interest" includes a public sector obligor that seeks relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act, the Governor, GDB, a creditor of such public sector obligor, a creditors' committee, an indenture trustee (or entity performing comparable functions) acting in the interest of one or more of such public sector obligor's creditors, and a party to a contract scheduled pursuant to section 302(a)(2) of this Act.

(44) "performing public functions" or other similar phrase including "fulfilling public functions" and "serving public functions" means serving an important government purpose—including providing goods or services important or necessary for the protection of public health, safety, or welfare (which include the promotion of the economic activity of the Commonwealth)—whether such public functions are performed directly, or indirectly by facilitating or assisting another Commonwealth Entity to serve such a purpose.

(45) "petition" means the document filed by a petitioner to commence a case under chapter 3 of this Act pursuant to section 301 of this Act.

(46) "petitioner" means a public sector obligor that files a petition—or on whose behalf GDB, upon the Governor's request, files a petition—pursuant to section 301 of this Act.

(47) "plan" means a debt enforcement plan proposed under chapter 3 of this Act.

(48) "pleading" means any document, including any motion, filed with the Court in any proceeding under chapter 2 or chapter 3 of this Act.

(49) "public corporation" means an entity created by Commonwealth law as a public corporation.

(50) "public sector obligor" means a Commonwealth Entity, but excluding:

(a) the Commonwealth;

(b) the seventy-eight (78) municipalities of the Commonwealth; and

(c) the Children's Trust; the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and its Instrumentalities; GDB and its subsidiaries, affiliates, and entities ascribed to GDB; the Judiciary Retirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Public Finance Corporation; the Puerto Rico Industrial Development Company, the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation (COFINA); the Puerto Rico System of Annuities and Pensions for Teachers; and the University of Puerto Rico.

(51) "recovery program" means, consistent with section 202 of this Act, for an eligible obligor, a financial and operational adjustment program.

(52) "special trade debt" means any claim for the provision of goods or services that

(a) is scheduled pursuant to section 302(a)(2) of this Act, and

(b) exceeds a threshold to be determined by the petitioner in its reasonable discretion, but not to be less than $1 million;

(53) "statement of allocation," "amended statement of allocation," and "final statement of allocation" have the meanings given to those terms in section 308 of this Act.

(54) "Supreme Court" means the Supreme Court of the Commonwealth of Puerto Rico.

(55) "suspension period" means the period of time commencing on the date that the suspension period notice is published, and ending on the earlier of:

(a) the date that the approval order has become a final and unappealable order; and

(b) the date on which either of the conditions specified in section 205(e) of this Act has occurred.

(56) "suspension period notice" means the notice published pursuant to section 201(d) of this Act.

(57) "transfer order" means the order approving a transfer pursuant to section 307 of this Act.

(58) "United States" means the United States of America.

(59) "U.S. Constitution" means the Constitution of the United States, as amended.

Section 103. —Interpretation.—

(a) The terms of this Act shall be liberally construed in favor of furthering the legislative objectives of this Act.

(b) The singular includes the plural.

(c) Any neuter personal pronoun shall be considered to mean the corresponding masculine or feminine personal pronoun, as the context requires.

(d) The phrase "after notice and a hearing," or other similar phrase means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances, provided, however, an act may be authorized without a hearing if notice is given properly under the circumstances and if—

(1) a hearing is not timely requested by a party in interest; or

(2) there is insufficient time for a hearing to be commenced before such act must be done, and the Court authorizes such act.

(e) The phrase "at any time" means at any time and from time to time.

(f) A "claim against the petitioner" includes any claim against property of the petitioner.

(g) The words "includes" and "including" are not limiting.

(h) The phrase "may not" is prohibitive, and not discretionary.

(i) The word "or" is not exclusive.

(j) The phrase "applicable law" includes applicable laws, rules, and regulations, including this Act.

(k) A definition contained in a section of this Act that refers to another section of this Act does not, for the purpose of such reference, affect the meaning of a term used in such other section.

(l) The phrase "counterparty" means:

(1) with respect to a collective bargaining agreement, the union that is a bargaining unit under such contract, and not any individual member of such union;

(2) with respect to a pension fund, the administrator of such pension fund, and not any beneficiary of such fund; and

(3) with respect to a retirement or post-employment benefit plan, the administrator of such retirement or post-employment benefit plan, and not any beneficiary of such plan.

(m) The phrase "final and unappealable" shall mean a final and unappealable order, resolution, judgment, or other ruling that is no longer subject to appeal or certiorari proceeding.

(n) The phrase "use or transfer" includes a lease and a sale and lease back transaction.

(o) Any reference to "website" with respect to an eligible obligor or a petitioner means either the website of such eligible obligor or petitioner, or the website specified in section 121 of this Act.

(p) For purposes of interpreting this Act, the Court shall consider to the extent applicable jurisprudence interpreting title 11 of the United States Code.

(q) The phrases "goods" or "services" do not include money loaned or other financial debt incurred.

Section 104. —Applicability of Act.—

This Act is applicable as to all debts—as they exist, prior to, on, and after the effective date of this Act—of any public sector obligor that requests relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act; provided, however, that some of a public sector obligor's debt may remain unaffected by this Act as provided herein.

Section 105. —Evidentiary Standard.—

Unless expressly otherwise provided, the requisite standard of proof in any proceeding under this Act is proof by a preponderance of the evidence.

Section 106. —Savings and Severability Clause.—

This Act shall be interpreted in a manner to render it valid to the extent practicable in accordance with the Commonwealth Constitution and the U.S. Constitution. If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act, were to be declared unconstitutional by a competent court, the order to such effect issued by such court will neither affect nor invalidate the remainder of this Act. The effect of such an order shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act declared unconstitutional.

Section 107. —Language Conflict.—

This Act shall be adopted both in English and Spanish. If in the interpretation or application of this Act any conflict arises as between the English and Spanish texts thereof, the English text shall govern. It is recognized that certain terms and phrases used in this Act are terms and phrases used in English in the context of Title 11 of the U.S. Code.

Section 108. —Inapplicability of Other Laws.—

(a) Any other Commonwealth law or any certificate of incorporation, bylaw, or other governing instrument of any Commonwealth Entity is superseded to the extent

inconsistent with this Act. Any and all procedural rules herein shall supersede any other conflicting Commonwealth law to the extent inconsistent with this Act. For the avoidance of doubt, the Commerce Code of 1932, as amended, and Act No. 60 of April 27, 1931, as amended, do not apply to any public sector obligor under this Act.

(b) This Act supersedes and annuls any insolvency or custodian provision included in the enabling or other act of any public corporation, including Section 17 of Act No. 83 of May 2, 1941, as amended, and Section 13 of Act No. 40 of May 1, 1945, as amended.

(c) Any contradiction between the enabling or other act of any public corporation or otherwise applicable Commonwealth law and this Act shall be resolved as if this Act supercedes. For purposes of Section 27 of Act No. 83 of May 21, 1941 and Section 21 of Act No. 74 of June 23, 1965, this Act shall be interpreted as specifically amending such Act No. 83 and Act No. 74, respectively. Nothing contained in the aforementioned Act No. 83, as amended, nor in the enabling legislation of any other Commonwealth Entity shall be construed as limiting in any way the application of the provisions of this Act.

Subchapter II: Jurisdiction and Procedure

Section 109. —The Court.—

(a) The Public Sector Debt Enforcement and Recovery Act Courteoom is created herein, which shall be located in and be part of the Court of First Instance, San Juan Part. The Chief Justice of the Supreme Court may designate a judge of the Puerto Rico judicial system.

(b) A judge appointed pursuant to subsection (a) of this section may appoint a special commissioner in accordance with Rule 41 of the Puerto Rico Rules of Civil Procedure. The special commissioner must be a person of recognized expertise in financial matters, including insolvency proceedings. The special commissioner is empowered to oversee multiple proceedings under either or both chapter 2 and chapter 3 of this Act, either simultaneously or sequentially.

(c) An eligible obligor or a petitioner, as applicable, shall reimburse the appropriate entity within the Judiciary Branch for the costs of administering any proceeding under this Act, including the reasonable and documented costs and expenses of the special commissioner, if any, and, if multiple eligible obligors and/or petitioners exist, the incremental costs shall be allocated among them.

Section 110. —Responsibilities and Powers of the Court.—

(a) In keeping with the prescribed time periods in other sections of this Act, the Court shall endeavor to conduct any proceeding under chapter 2 of this Act or to resolve a case under chapter 3 of this Act with all deliberate speed and efficiency consistent with due process, and taking into account that continuing uncertainty about the resolution of the proceeding is harmful to creditors, to the viability of the public sector obligor, to the credit of the Commonwealth Entities, and to the well-being of the residents and businesses in the Commonwealth.

(b) The Court may issue any order and conduct any processes necessary or appropriate to carry out the provisions of this Act. No provision of chapter 2 or chapter 3 of this Act providing for the raising of an issue by a party in interest shall be construed to

preclude the Court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement Court orders or rules, or to prevent an abuse of process.

(c) Notwithstanding any other Commonwealth law, or any contract that is binding on any Commonwealth Entity or to which any of its property is subject, no court established by the Commonwealth shall appoint a custodian with respect to the public sector obligor during the suspension period under chapter 2 of this Act or in or during its case under chapter 3 of this Act under any applicable law or contract.

Section 111. —Subject Matter, Personal, and In Rem Jurisdiction.—

(a) Unless otherwise provided for in this Act, the Court shall have original jurisdiction and exclusive jurisdiction, except in relation to a federal court exercising federal jurisdiction, to consider and adjudicate all disputes arising out of or related to this Act, including the following—

(1) all disputes arising out of or related to affected debt instruments during the suspension period;

(2) all disputes, whether prior to or after entry of an approval order, arising under or related to chapter 2 of this Act, arising in any proceeding under chapter 2 of this Act, or related to a consensual debt relief transaction proposed under chapter 2 of this Act, including any dispute as to who votes or consents under this Act;

(3) all disputes arising under chapter 3 of this Act or arising in or related to a case under or related to chapter 3 of this Act, including those related to affected debt; and

(4) all proceedings or matters related to the preceding clauses (1) through (3), including proceedings to interpret or enforce an approval order, a confirmed plan, a transfer order, a final statement of allocation, or any part of this Act.

(b) The Court shall have personal jurisdiction over all entities to the fullest extent permitted by the Commonwealth Constitution and the U.S. Constitution. The Court shall have in rem jurisdiction over the property of each public sector obligor.

(c) The Court shall retain subject matter and in rem jurisdiction to interpret and enforce:

(1) a consensual debt relief transaction as to which it has entered an approval order under chapter 2 of this Act; and

(2) a transfer order, a final statement of allocation, and a plan confirmed under chapter 3 of this Act.

Section 112. —Interaction of Chapter 2 and Chapter 3.—

A public sector obligor with the approval of GDB (or, upon the Governor's request, GDB on the public sector obligor's behalf) may seek relief under either chapter 2 or chapter 3 of this Act, or both simultaneously or sequentially, subject to section 113 of this Act, and may withdraw, in its discretion, a suspension period notice or any obligation identified in a suspension period notice, a proposal for a consensual debt relief transaction, or an application

for entry of an approval order under chapter 2 of this Act, prior to entry of an approval order that has become a final and unappealable order. The petitioner, with the approval of GDB (or, upon the Governor's request, GDB on the petitioner's behalf), may withdraw a petition under chapter 3 of this Act.

Section 113. —Eligibility.—

(a) A public sector obligor is eligible for chapter 2 of this Act, if it is authorized to commence a consensual debt relief transaction pursuant to section 201(b)(1) or 201(b)(2) of this Act.

(b) A petitioner is eligible for chapter 3 of this Act, if it—

(1) is insolvent;

(2) is authorized to file a petition under chapter 3 of this Act by its governing body and GDB, or a petition is filed on its behalf by GDB, upon the Governor's request; and

(3) is ineligible for relief under title 11 of the United States Code, because, among other reasons:

(A) it is not a "municipality" having permission of a "state" to file a chapter 9 petition, each as defined in title 11 of the United States Code; and

(B) it is a "governmental unit," as defined in title 11 of the United States Code, that may not seek relief under chapter 11 of title 11 of the United States Code.

Section 114. —Binding Nature of Court Determinations.—

Any determination of the Court shall be binding on the eligible obligor or the petitioner, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments or affected debt of such eligible obligor or such petitioner, any trustee, any collateral agent, any indenture trustee, any fiscal agent, any bank that receives or holds funds from such eligible obligor or such petitioner related to the affected debt instruments or affected debt, and any other entity specifically identified in such determination by the Court or the order memorializing such determination.

Section 115. —Effect of Approval, Transfer, and Confirmation Orders.—

(a) An approval order in respect of a consensual debt relief transaction under chapter 2 of this Act and a confirmation order in respect of a plan or transfer order or final statement of allocation under chapter 3 of this Act shall each be treated as a judgment for the purposes of Commonwealth law, subject only to appeal as provided in section 127 of this Act.

(b) Upon entry of an approval order in respect of a consensual debt relief transaction under chapter 2 of this Act—

(1) the amendments, modifications, waivers, or exchanges contained therein automatically shall take effect and shall be binding on the eligible obligor that is party to the affected debt instrument, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and

any bank that receives or holds funds from such eligible obligor related to the affected debt instruments; and

(2) the Court shall retain jurisdiction, and thereafter no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, no trustee, no collateral agent, no identure trustee, no fiscal agent, and no bank that receives or holds funds from such eligible obligor related to the affected debt instruments shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the Court and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order.

c) Except as otherwise provided in a plan, in the order confirming such plan, in a transfer order, or in a final statement of allocation, each under chapter 3 of this Act, upon entry of a confirmation order, a transfer order, or a final statement of allocation:

(1) the provisions of the confirmed plan and order confirming such plan bind the petitioner and all creditors whose rights are affected by the plan;

(2) the transfer order and final statement of allocation bind the petitioner and all creditors whose rights are affected by such transfer order or final statement of allocation; and

(3) all creditors affected by the plan or the final statement of allocation shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt, except as each has been affected pursuant to the plan under chapter 3 of this Act or the final statement of allocation.

(d) Except as expressly otherwise provided in an approval order under chapter 2 of this Act, or a plan, an order confirming a plan, a transfer order, or a final statement of allocation under chapter 3 of this Act, upon entry of any such order or final statement of allocation, the eligible obligor or the petitioner is authorized to perform all acts set forth in the debt relief transaction, the approval order, the plan, the order confirming such plan, the transfer order, or the final statement of allocation, without any further authorization from any Commonwealth Entity or the Court.

(e) The Court may direct the eligible obligor, the petitioner, and any other necessary party to execute, to deliver, or to join in the execution or delivery of any contract required to effect a transfer of property dealt with by an approved consensual debt relief transaction under chapter 2 of this Act, or a final statement of allocation or a confirmed plan under chapter 3 of this Act, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the consensual debt relief transaction, the final statement of allocation, or the plan.

Section 116. —Service of Process.—

Except as otherwise ordered by the Court, service of process may be made by any of the means described in subsections (a), (b), or (c) below:

(a) Subject to section 337 of this Act, service of process may be made by the entities and in the manner prescribed by Rules 4.3 and 4.4 of the Puerto Rico Rules of Civil Procedure, or by notice by mail to the last known address of the individual or entity to be served.

(b) Notice by mail or direct transmission may be made in accordance with sections 204(c)(2) and 338 of this Act or as the Court otherwise orders.

(c) Notice by Publication.

(1) The Court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice by mail.

(2) Pursuant to Rule 4.6 of the Puerto Rico Rules of Civil Procedure, or as further detailed below, notice by publication, published at least three (3) times at least fourteen (14) days prior to a specified hearing, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the approval hearing pursuant to section 204(b) of this Act with regard to a consensual debt relief transaction under chapter 2 of this Act;

(B) the eligibility hearing pursuant to section 306 of this Act;

(C) the hearing on a transfer of all or substantially all assets of the petitioner pursuant to section 307 of this Act; and

(D) the confirmation hearing pursuant to section 314 of this Act.

(3) Notice by publication, published at least three (3) times during the fourteen (14) days after each event specified in subsections (c)(3)(A) and (c)(3)(B) of this section, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the filing of an application pursuant to section 204(a) of this Act; and

(B) the filing of a petition pursuant to section 301 of this Act.

Section 117. —Application of the Puerto Rico Rules of Civil Procedure.—

To the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act.

Section 118. —Language.—

(a) All pleadings, requests, and motions under this Act shall be filed in accordance with Rule 8.7 of the Puerto Rico Rules of Civil Procedure; provided, however, that all pleadings, requests, and motions filed in Spanish shall be accompanied by an English translation.

(b) All hearings, opinions, and orders shall be in the language designated by the presiding judge and in accordance with Act No. 1 of January 28, 1993.

(c) Each public sector obligor seeking relief under this Act shall post on its website copies in Spanish and English of each consensual debt transaction proposed under chapter 2 of this Act and each plan proposed in a case under chapter 3 of this Act.

Section 119. —Notice of Appearance and Pleading Requirements.

(a) To the extent applicable under this Act, any party in interest may file a notice of appearance with the Court requesting all notices and pleadings be transmitted to such party or its attorney at the email addresses specified in its notice of appearance, or, if an email address is not available, at the mailing address specified in its notice of appearance.

(b) Every pleading filed in a proceeding or case under this Act shall include the mailing address and email address, if available, of the entity or entities on behalf of which the pleading is filed.

(c) Any entity filing a pleading, inclusive of a notice of appearance, with the Court shall email an identical copy of the document filed to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing the document with the Court or sending it to the Court for filing. Any entity not having the ability to send such a document by email shall mail it by certified mail to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing it with the Court or mailing it to the Court for filing.

(d) Each eligible obligor and petitioner shall include on each of its pleadings in bold, 12-point font the following statement: "Every entity filing a document with the Court under the Puerto Rico Public Corporation Debt Enforcement and Recovery Act shall email an identical copy of the document filed to the entity maintaining the website required by section 121 hereof to the following email address [insert email address here], or if unable to transmit emails shall mail the copy to the following address [insert mailing address here].

(e) All petititions and documents filed under this Act shall be filed electronically. An electronic judicial file shall be kept for corresponding cases pursuant to the provisions of Rule 67.6 of the Rules of Civil Procedure and Act 148-2013."

Section 120. —Objections.—

Whenever an entity objects to or challenges the relief requested under chapter 2 or chapter 3 of this Act, such entity shall provide, within five (5) business days of an eligible obligor's or a petitioner's written request, all documents in its possession, custody, or control supporting, and all documents in its possession, custody, or control opposing, the objecting party's claim and objection. This production shall be in addition to responses to any additional valid discovery requested by the eligible obligor or petitioner. Any such objection shall—

(a) be in writing and filed with the Court, no later than seven (7) business days prior to the relevant hearing unless the Court orders otherwise or as otherwise specified in this Act;

(b) articulate clearly the basis for the objection; and

(c) be accompanied by a statement, sworn under oath, that includes—

(1) the name of each objecting entity that holds or controls the beneficial interest in an affected debt instrument of the eligible obligor seeking relief under chapter 2 of this Act or an affected debt of a petitioner in a case under chapter 3 of this Act;

(2) a description of the beneficial interest that is held or controlled by such objecting entity or any of its controlled affiliates (naming such affiliates) in any of the following:

(A) the affected debt instrument or any affected debt, including the amount of any claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing entities or affiliates an economic interest that is affected by the value, acquisition, or disposition of the affected debt instrument or affected debt; and

(C) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity;

(3) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act was acquired before or after the commencement of the suspension period under chapter 2 of this Act or before or after the date the petition was filed under chapter 3 of this Act; and

(4) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act may appreciate in value if any debt issued by any Commonwealth Entity declines in value.

Section 121. —Noticing Agent.—

(a) Each the eligible obligor, the petitioner, or GDB (acting on behalf of the eligible obligor or the petitioner), shall carry out the disclosure mechanisms and noticing requirements provided in this section, and, to that end, may retain and employ an entity to serve as noticing agent to:

(1) create and maintain a website, accessible free of charge, containing all pleadings, orders, opinions, and notices properly filed under chapter 2 or chapter 3 of this Act, and a calendar showing all deadlines and hearings; and

(2) provide notices of all hearings and deadlines, and perform related functions, including those of a claims agent where applicable.

(b) The noticing agent shall maintain on the website a list of all parties in interest who file notices of appearance pursuant to section 119 of this Act, together with the email addresses or mailing addresses to which each party in interest requested that notices and pleadings be sent.

(c) The noticing agent shall be compensated at rates based on its normal charges for such services to other debtors in collective proceedings to enforce claims, such as cases under chapter 9 or chapter 11 of title 11 of the United States Code.

Section 122. —Confidentiality of Certain Filings.—

(a) The Court, for cause, may protect an individual with respect to the following types of information to the extent the Court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(1) any means of identification (as defined in 18 U.S.C. § 1028(d)) contained in a paper filed, or to be filed, in a proceeding or case under this Act; and

(2) other information contained in a paper described in subsection (a)(1) of this section.

(b) Upon ex parte or noticed application demonstrating cause, the Court shall provide access to information protected pursuant to subsection (a) of this section to an entity acting pursuant to the police or regulatory power of a Commonwealth Entity.

Section 123. —Confidential Deliberations.—

Notwithstanding any otherwise applicable Commonwealth law, including Act No. 159-2013, as amended, all deliberations regarding whether to seek relief under this Act, what plan or relief to propose, or other matters relating to this Act, shall not be made public, but adequate records of such deliberations shall be maintained. Such deliberations shall be privileged under Commonwealth law and shall neither be subject to discovery in any civil proceeding nor subject to disclosure, except as required by Commonwealth law or applicable U.S. law in connection with raising money or otherwise selling or buying securities.

Section 124. —No Implied Private Right of Action.—

There is no implied private right of action under this Act.

Section 125. —Special Counsel, Professional Disclosure, and Retainers.—

(a) To the extent, if any, that two public sector obligors seeking relief under this Act and represented by the same legal professionals have one or more disputes between such public sector obligors, or a public sector obligor seeking relief under this Act and GDB represented by the same legal counsel have one or more disputes between them, in each case, the disputes shall be handled by special counsel for each of the parties to the dispute.

(b) Each professional firm retained, respectively, by or for the public sector obligor(s) seeking relief under this Act or by one or more creditors' committees shall file with the Court no later than fourteen (14) days after its retention a written disclosure of its then current representation of entities in related or unrelated matters, which entities, to the best of the professional's actual knowledge, are (1) a Commonwealth Entity or (2) based on a reasonable review of the books and records of the eligible obligor or petitioner, hold claims against or other economic interests in respect of such eligible obligor or petitioner. Each professional shall promptly update its disclosures contemplated by this subsection (b) as it obtains additional information or as facts change.

(c) Notwithstanding any other Commonwealth law, a retainer may be advanced to any financial and legal advisors of the eligible obligor, the petitioner, and GDB.

(d) In the event that the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics and its interpretative jurisprudence make it impractical

for a public sector obligor to obtain legal representation of the highest level of competency to represent such public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act involving more than one hundred (100) creditors (including beneficial owners of publicly traded debt) that does not have a conflict or potential conflict, such public sector obligor may file a petition with the Supreme Court for a waiver of the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics or for the approval of a special rule, setting forth the reasons supporting the request. In considering the merits of any such petition, the Supreme Court may take into consideration the special rules and accompanying jurisprudence regarding conflicts of interest set forth in section 327 of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, including, but not limited to, those permitting the designation of one or more conflict counsel who would represent the public sector obligor in those matters that could represent a conflict for the attorneys representing the public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act.

Section 126. —Bond Requirement.—

In the discretion of the Court or the Supreme Court, any entity may be ordered to post a bond in the amount determined by the Court or the Supreme Court when—

(a) seeking to enjoin compliance with or proceedings pursuant to all or a portion of this Act; or

(b) appealing from a decision of the Court and requesting a stay of such decision under this Act.

Section 127. —Appeals.—

(a) Any appeal of an approval order, a transfer order, a final statement of allocation, or a confirmation order shall be filed with the Supreme Court no later than fourteen (14) days after the filing in the record of a copy of the notice of the approval order, the transfer order, the final statement of allocation, or the confirmation order, respectively.

(b) All other appeals shall be taken as provided by the law of the Commonwealth, and subject to subsection (a) of this section, nothing in this Act shall limit an appellate court's review of matters decided by the Court.

Subchapter III: Creditors' Protections and Governance

Section 128. —Compliance with Commonwealth Constitution and U.S. Constitution.—

If a party to a contract with an eligible obligor or a petitioner demonstrates that its treatment under this Act substantially or severely impairs its rights under such contract for purposes of the Commonwealth Constitution or the U.S. Constitution without providing an adequate remedy therefor, the substantial or severe impairment shall be allowed only if the eligible obligor, the petitioner, or GDB, each as applicable, carries the burdens imposed on it by the Commonwealth Constitution and the U.S. Constitution with respect to demonstrating its use of reasonable and necessary means to advance a legitimate government interest, and the aggrieved entity fails to carry the burden of persuasion to the contrary.

Section 129. —Adequate Protection and Police Power.—

(a) When an entity's interest in property is entitled to adequate protection under this Act, it may be provided by any reasonable means, including—

(1) cash payment or periodic cash payments;

(2) a replacement lien or liens (on future revenues or otherwise); or

(3) in connection with a case under chapter 3, administrative claims, in each case, solely to the extent that the suspension period, the automatic stay, the use or transfer of property subject to a lien, or the granting of a lien under this Act results in a decrease in value of such entity's interest in property subject to the lien as of commencement of the suspension period or a chapter 3 case.

(b) Without limiting subsection (a) of this section, adequate protection of an entity's interest in cash collateral, including revenues, of the eligible obligor or the petitioner, as applicable, may take the form of a pledge to such entity of future revenues (net of any current expenses, operational expenses or other expenses incurred by the eligible obligor or the petitioner under this Act) of such eligible obligor or petitioner if—

(1) the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions;

(2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and

(3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use of cash collateral or revenues to avoid then-current impairment of public functions.

(c) Without limiting subsections (a) and (b) of this section, an eligible obligor or petitioner may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner pursuant to or in furtherance of this Act.

(d) Notwithstanding any section of this Act conditioning the eligible obligor's or the petitioner's use or transfer of its property on adequate protection of an entity's interest in the property, if and when the police power justifies and authorizes the temporary or permanent use or transfer of property without adequate protection, the Court may approve such use or transfer without adequate protection.

Section 130. —Reserved. —

Section 131. —Limitations on Avoidance Actions.—

No preference action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted. No fraudulent transfer action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted except such actions for a transfer, or an incurrence of an obligation, that was made with actual intent to hinder, delay, or defraud creditors. Any and all such actions shall be controlled and prosecuted solely by the Commonwealth, in the

discretion of its Attorney General, for the benefit of the creditors entitled to bring the action outside of this Act.

Section 132. —Recovery on Avoidance Actions.—

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided pursuant to section 131 of this Act, an eligible obligor or petitioner may recover the property transferred, or, if the Court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) An eligible obligor or petitioner may not recover pursuant to subsection (a)(2) of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) A good faith transferee from whom an eligible obligor or petitioner may recover pursuant to subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(1) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(2) any increase in the value of such property as a result of such improvement of the property transferred.

(d) The eligible obligor or petitioner is entitled to only a single satisfaction pursuant to subsection (a) of this section.

(e) In this section, the term "improvement" includes—

(1) physical additions or changes to the property transferred;

(2) repairs to such property;

(3) payment of any tax on such property;

(4) payment of any debt secured by a lien on such property that is superior or equal to the rights of the eligible obligor or petitioner; and

(5) preservation of such property.

Section 133. —Right of GDB to Coordinate and Control Debt Enforcement and Recovery Procedures.—

(a) GDB shall have, on its own behalf and on behalf of the public sector obligor, at all stages of proceedings including appeals and certiorari proceedings, standing to raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief

in a consensual debt relief transaction under chapter 2 of this Act or in a case under chapter 3 of this Act. The eligible obligor or the petitioner shall reimburse GDB for all its costs and expenses therefor.

(b) All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 of this Act or in commencing and prosecuting its case under chapter 3 of this Act shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or the public sector obligor's attorneys shall take instructions from GDB. Each action taken by GDB shall be binding on the public sector obligor.

Section 134. —GDB Reimbursement.—

(a) The eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, for GDB's costs and expenses for amounts paid or agreed to be paid, in preparation for seeking relief under this Act, including for the payment of financial and legal advisors of the eligible obligor, the petitioner, and GDB (including any retainer advanced to such advisors), before the commencement of a suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with this Act.

(b) In addition to its reimbursement obligations set forth in subsection (a) of this section, the eligible obligor or the petitioner, as applicable, shall reimburse GDB, in full, for GDB's—

(1) costs and expenses (including payments to financial and legal advisors) for services provided by GDB to the eligible obligor or the petitioner, each before and after the commencement of the suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with the prosecution of the rights of the eligible obligor or petitioner under this Act when GDB has acted through its own attorneys pursuant to section 133(b) of this Act; and

(2) outlays incurred each before and after the commencement of the suspension period under chapter 2 of this Act or the filing of a petition under chapter 3 of this Act, in each case, on behalf of the eligible obligor or petitioner for the provision of goods and services paid by GDB and delivered to the eligible obligor or petitioner, and any funds GDB may have provided or provides to the eligible obligor or petitioner, as applicable, that GDB believes are necessary to the performance by the eligible obligor or petitioner of its public functions.

(c) Notwithstanding any other provision of this Act, the eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, pursuant to subsections (a) and (b) of this section promptly, but no later than ten (10) business days after GDB's written request. Amounts owing to GDB as described in this section may not be adjusted as an affected debt instrument under chapter 2 of this Act or be affected debt under chapter 3 of this Act and shall be formalized and incurred in accordance with laws regulating government contracting, except as provided in this Act. The provisions of Act 66-2014 shall not be applicable to contracts related to services provided in connection with this Act.

Section 135. —Appointment of Emergency Manager.—

The Governor may, at any time during the suspension period under chapter 2 of this Act or during the pendency of a case under chapter 3 of this Act, appoint an emergency manager for the eligible obligor or petitioner, as applicable. The Governor may choose any individual to serve as emergency manager, including, without limitation, a current or former officer of the eligible obligor or petitioner. The Governor may empower the emergency manager to oversee multiple eligible obligors or petitioners simultaneously or sequentially. The emergency manager shall subject to the applicable provisions and obligations entered into pursuant to Act 66-2014:

(a) exclusively possess and exercise all powers of the governing body and the principal executive officer of the eligible obligor or petitioner, as applicable, and the powers of the existing governing body of the eligible obligor or petitioner shall be suspended during the emergency manager's tenure;

(b) report periodically to such governing body regarding the operations of the eligible obligor or petitioner, as applicable, the progress of the restructuring process under chapter 2 of this Act or prosecution of the petitioner's plan under chapter 3 of this Act, and the governing body may provide advice to the emergency manager;

(c) report to the Governor, the Legislative Assembly and GDB upon request;

(d) serve:

(1) during the suspension period and may continue serving for a period of up to three (3) months after entry of the approval order, which period may be extended for three (3) additional months by the Governor or as otherwise provided for in the recovery program;

(2) during the chapter 3 case, unless and until replaced by the Governor, and shall continue serving for a period of three (3) months after the effective date of the plan, which period may be extended for three (3) additional months by the Governor; or

(3) until the Governor, in his absolute discretion, determines; provided, however, that the periods set forth in items (d)(1) and (d)(2) above shall not be exceeded; and

(e) be compensated by the eligible obligor or petitioner, as applicable, according to terms of employment approved by the Governor with advice of GDB.

Section 136. —Ongoing Operations.—

(a) During the suspension period under chapter 2 of this Act or the pendency of a case under chapter 3 of this Act, an eligible obligor or petitioner, as applicable, shall (i) operate the enterprise and make all personnel and other business determinations during the suspension period or the pendency of a case under chapter 3 of this Act, in each case in accordance with applicable law, (ii) remain in possession and control of its assets and, (iii) subject to sections 307 and 323 of this Act, shall be authorized to use and transfer such assets without Court approval.

(b) The Governor may at any time, on an interim basis during the suspension period or during the pendency of a case under chapter 3 of this Act, appoint new members of

the governing body of any eligible obligor or petitioner, as applicable, with the advice and consent of the Senate, to substitute for some or all of those existing members of the governing body who had been appointed by the Governor.

(c) The Governor may exercise either, both, or neither of the powers granted by subsection (b) of this section and section 135 of this Act, sequentially or simultaneously, as the case may be.

Section 137. —Quasi-immunity of the Eligible Obligor and the Petitioner, Creditors' Committee Personnel, and Government Officials.—

(a) Except to the extent proven by final and unappealable judgment, to have engaged in willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties, the enumerated entities shall not have any liability to any entity for, and without further notice or order shall be exonerated from, actions taken or not taken in their capacity, and within their authority in connection with, related to, or arising under, or as permitted under this Act.

(b) No action shall be brought against any enumerated entity concerning its acts or omissions in connection with, related to, or arising under this Act, except in the Court. No civil cause of action may arise against and no civil liability may be imposed on such enumerated entities absent clear and convincing proof of willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties. Any action brought for gross negligence shall be dismissed with prejudice if a defendant, as an officer, director, official, committee member, professional, or other enumerated entity, produces documents showing such defendant was advised of relevant facts, participated in person or by phone, and deliberated in good faith or received and relied on the advice of experts in respect of whatever acts or omissions form the basis of the complaint.

Chapter 2: Consensual Debt Relief

Section 201. —Consensual Debt Relief Transactions.—

(a) The objectives of chapter 2 of this Act are the following:

(1) to enable an eligible obligor to become financially self-sufficient;

(2) to allocate equitably among all stakeholders the burdens of the recovery program; and

(3) to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment.

(b) An eligible obligor may seek debt relief from its creditors pursuant to one or more transactions in accordance with chapter 2 of this Act (each a "consensual debt relief transaction") if so authorized by either—

(1) its governing body, with the approval of GDB; or

(2) GDB, at the Governor's request, and on behalf of the eligible obligor, if the eligible obligor has not authorized such action and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth.

(c) To enable GDB to coordinate the relief requested in instances where the Governor and GDB authorize the consensual debt relief transaction, GDB shall be entitled to select and retain on behalf of the eligible obligor and at the eligible obligor's expense, such professionals as GDB believes are necessary to seek relief under chapter 2 of this Act.

(d) After the eligible obligor obtains authorization pursuant to subsection (b) of this section, the eligible obligor shall publish on its website a notice that—

(1) the suspension period has commenced on the date of such notice; and

(2) identifies which obligations are subject to the suspension period.

(e) The suspension period notice may be amended to add or eliminate obligations, but the suspension period shall commence only from the time the suspension period notice is first published pursuant to subsection (d) of this section.

Section 202. —Relief and Commitment.—

(a) In a consensual debt relief transaction undertaken pursuant to section 201 of this Act, an eligible obligor may seek approval of any amendment, modification, waiver, or exchange to or of the affected debt instruments from the holders of such instruments.

(b) In connection with a consensual debt relief transaction, an eligible obligor must prepare and commit itself by an act of its governing body (if authorized by it, pursuant to section 201(b)(1) of this Act) or by GDB, upon the Governor's request (if authorized by it pursuant to section 201(b)(2) of this Act) on behalf of the eligible obligor to a recovery program that—

(1) allows the eligible obligor to become financially self-sufficient based on such financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders; and

(2) GDB has approved in writing.

(3) The recovery program may include interim milestones, performance targets, and other measures to—

(1) improve operating margins;

(2) increase operating revenues;

(3) reduce operating expenses;

(4) transfer or otherwise dispose of or transfer existing operating assets;

(5) acquire new operating assets; and

(6) close down or restructure existing operations or functions.

(d) In respect of any consensual debt relief transaction, and notwithstanding anything to the contrary contained in an affected debt instrument or otherwise applicable law, the amendments, modifications, waivers, or exchanges proposed in such transaction shall become effective and binding for each affected debt instrument on any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives

or holds funds from such eligible obligor related to the affected debt instruments, within a class specified in the consensual debt relief transaction, if—

(1) GDB has approved the consensual debt relief transaction in writing;

(2) creditors of at least—

(A) fifty percent (50%) of the amount of debt of such class participates in a vote or consent solicitation with respect to such amendments, modifications, waivers, or exchanges; and

(B) seventy-five percent (75%) of the amount of debt that participates or votes in such class approves the proposed amendments, modifications, waivers, or exchanges;

(3) each class contains claims that are substantially similar to other claims in such class, provided that the term "substantially similar" does not require classification based on similar maturity dates; and

(4) the Court enters an approval order in respect of such consensual debt relief transaction pursuant to section 204 of this Act.

(e) For purposes of calculating the voting percentage set forth in this section, any affected debt instruments held or controlled by any Commonwealth Entity, shall not be counted in such vote.

Section 203. —Oversight Commission.—

(a) An oversight commission shall be established for each eligible obligor that is subject to a recovery program no later than ten (10) days after entry of the approval order. The identity and affiliation(s) of the persons who will serve on the oversight commission shall be disclosed publicly prior to the commencement of the approval hearing. Such oversight commission shall be responsible for monitoring compliance with the recovery program. The eligible obligor subject to the recovery program shall provide the oversight commission with regular updates, not less frequently than once every four (4) months, of its compliance with terms of the recovery program.

(b) If the oversight commission, by majority vote, finds that an eligible obligor has failed to meet an interim performance target or other milestone contained in the recovery program and such failure has continued for at least ninety (90) days thereafter, the oversight commission shall issue a non-compliance finding to the eligible obligor, the Governor and to the Legislative Assembly, with a copy to be made available publicly, explaining the reasons for such non-compliance and making recommendations for curing such non-compliance. Such recommendations may include the replacement of some or all of the management or the governing body of the eligible obligor.

Section 204. —Court Approval of Consensual Debt Relief Transactions.—

(a) Any eligible obligor seeking entry of an approval order shall file an application with the Court requesting such approval not later than thirty (30) days after obtaining the requisite consent of holders of an affected debt instrument set forth in section 202(d)(2).

(b) The Court shall conduct a hearing to consider entry of the approval order not later than twenty-one (21) days after the filing of the application.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the hearing described in section 204(b) shall be proper and reasonable if—

(1) publication notice of such hearing is made in accordance with section 116(c)(2) of this Act; and

(2) notice of such hearing is transmitted to the holders of the affected debt instruments at least fourteen (14) days prior to such hearing, including through The Depository Trust Company or similar depository, or as the Court otherwise orders.

(d) Subject to the terms and conditions of the affected debt instrument (including any limitations on suits prescribed therein), any holder of an affected debt instrument may object to the relief sought in subsection (a) of this section by filing an objection in accordance with section 120 of this Act, provided, however, that no entity may object if it is not adversely impacted by the actions taken in connection with this Act.

(e) In determining whether an approval order shall be entered, the Court shall consider only whether the amendments, modifications, waivers, or exchanges, as the case may be, proposed in such transaction, are consistent with the requirements of chapter 2 of this Act and the objectives set forth in section 201(a) of this Act, and whether the voting procedure followed in connection with the consensual debt relief transaction, which shall include a reasonable notice and period of time to vote or consent as the circumstances require, was carried out in a manner consistent with chapter 2 of this Act. If the Court determines that each of these requirements has been satisfied, it shall enter the approval order.

Section 205. —Suspension of Remedies.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, during the suspension period, no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, no trustee, no collateral agent, no indenture trustee, no fiscal agent, no bank that receives or holds funds from such eligible obligor related to the affected debt instruments, may exercise or continue to exercise any remedy under a contract or applicable law—

(1) for the non-payment of principal or interest;

(2) for the breach of any condition or covenant; or

(3) that is conditioned upon the financial condition of, or the commencement of a restructuring, insolvency, bankruptcy, or other proceedings (or a similar or analogous process) by, the eligible obligor concerned, including a default or an event of default thereunder.

(b) The term “remedy” as used in subsection (a) of this section shall be interpreted broadly, and shall include any right existing in law or contract, and any right to—

(1) setoff;

(2) apply or appropriate funds;

(3) seek the appointment of a custodian;

(4) seek to raise rates; and

(5) exercise control over property of the eligible obligor

(c) Notwithstanding any contractual provision or applicable law to the contrary, a contract to which the eligible obligor is a party may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time during the suspension period solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the eligible obligor at any time before the commencement of the suspension period;

(2) the commencement of the suspension period or a restructuring process under chapter 2 of this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(d) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the eligible obligor for the provision of goods or services shall, unless the eligible obligor advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract during the suspension period, provided that the eligible obligor is not in default under such contract other than—

(1) as a result of a condition specified in subsection (c) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the commencement of the suspension period.

(e) The suspension period shall terminate automatically without further action if—

(1) an approval order for such consensual debt relief transaction is denied, and is not remedied within sixty (60) days after such denial unless otherwise provided for in an order denying the application for an approval order; or

(1) no approval application has been filed with the Court within two hundred and seventy (270) days after the commencement of the suspension period, provided that the suspension period may be extended for one additional period of ninety (90) days if the eligible obligor and the holders of at least twenty (20) percent of the aggregate amount of the affected debt instruments in at least one class of affected debt instruments consent to such extension.

(f) The Court shall have the power to enforce the suspension period, and any entity found to violate this section shall be liable to the eligible obligor concerned for damages, costs, and attorneys' fees incurred by such eligible obligor in defending against action taken in violation of this section, and punitive damages for intentional or knowing violations. Upon determining that there has been a violation of the suspension period, the Court may order additional appropriate remedies, including that the act comprising such violation be declared void or annulled.

Section 206. —Obtaining Credit.—

(a) After the commencement of the suspension period, an eligible obligor may obtain credit in the same manner and on the same terms as a petitioner pursuant to section 322 of this Act.

(b) Prior to or after the filing of an application for an approval order pursuant to section 204 of this Act, the eligible obligor may, to the extent required by any entity seeking to extend credit pursuant to subsection (a), seek from the Court, after notice and a hearing, an order approving and authorizing it to obtain such credit.

(c) Credit obtained pursuant subsection (a) of this section may not be treated as an affected debt instrument under chapter 2 or as affected debt under chapter 3 or avoided as a fraudulent transfer.

(d) If the eligible obligor subsequently seeks relief under chapter 3, the credit extended pursuant to this section shall be entitled to same priority and security as if such credit had been extended in a case under chapter 3.

(e) Section 322(e) shall apply to any order entered pursuant to subsection (b) of this section.

Section 207. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain an approval order or consummate a consensual debt relief transaction, the eligible obligor may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of an eligible obligor are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the eligible obligor shall not be required to provide adequate protection pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Chapter 3: Debt Enforcement

Subchapter I: Petition and Schedules

Section 301. —The Petition.—

(a) A case is commenced under chapter 3 of this Act by the filing of a petition with the Court, either:

(1) by a petitioner upon the decision of its governing body and approval of GDB; or

(2) by GDB, upon the Governor's request, on behalf of a petitioner, if the petitioner's governing body has not authorized the petition and GDB determines that the petition is in the best interests of the petitioner and the Commonwealth.

(b) To enable GDB to coordinate the relief requested in all cases filed under chapter 3 of this Act, GDB shall be entitled to select and retain financial and legal professionals to prosecute each chapter 3 case on behalf of the petitioner and at the petitioner's expense, subject to sections 125 and 134 of this Act.

(c) A case may not be commenced under chapter 3 of this Act by any involuntary petition of creditors or other entities.

(d) The petition shall set forth:

(1) the amounts and types of claims against the petitioner that the petitioner, subject to amendment, contemplates being affected under the plan, sufficient to enable the Court to form a general committee pursuant to section 318(a) of this Act; provided that if the schedule in section 302(a)(2) of this Act is filed with the petition, such schedule will satisfy the requirement in this subsection (1); and

(2) the assessment of the entity filing the petition pursuant to subsection (a)(1) or (a)(2) of this section that the petitioner meets the eligibility requirements provided in section 113(b) of this Act.

Section 302. —Petition Filing Requirements.—

(a) A petitioner shall file with the petition for relief under chapter 3 of this Act, or as soon as practicable thereafter, or if the petition is filed pursuant to section 301(a)(2) of this Act, no more than sixty (60) days after the date the petition is filed—

(1) a list of creditors the petitioner or GDB intends to be affected creditors and for whom the petitioner has readily accessible internal electronic records of names and mailing addresses or email addresses; and

(2) a schedule of all the claims against the petitioner, which existed on the date the petition was filed, intended to be affected under the plan, showing:

(A) the amounts outstanding as of the date the petition is filed;

(B) any seniorities or priorities among such claims;

(C) the collateral security, including pledges of revenues, for each claim;

(D) which of such claims the petitioner acknowledges as allowed and which claims the petitioner disputes or contends are contingent or unliquidated; and

(E) the essential supplier contracts.

(b) A petitioner may amend its list of affected creditors and schedule of claims at any time (1) up to five (5) days before the deadline to object to a transfer of all or substantially all of the petitioner's assets or (2) before the voting record date established by the Court, and shall provide notice of such amendments to all creditors affected by such amendments.

Section 303. —Notice of Commencement.—

(a) Promptly after the filing of the petition and obtaining a date from the Court for the hearing specified in subsection (a)(2) of this section, a petitioner shall send to all the petitioner's affected creditors and contract counterparties for whom it has readily accessible internal electronic records of mailing addresses or email addresses and to all entities who file notices of appearance pursuant to section 119 of this Act notice of:

(1) the filing of the petition and the automatic stay;

(2) the date and time of the hearing on the eligibility of the petitioner for relief under chapter 3 of this Act pursuant to section 306 of this Act;

(3) the date that objections, if any, to the petitioner's eligibility must be filed;

(4) the schedule specified in section 302(a)(2) of this Act, or, if not available, the schedule specified in section 301(d)(1) of this Act;

(5) the right of each affected creditor to advise the Court of its willingness to serve on the general committee to be appointed pursuant to section 318(a) of this Act, which advice shall be in the form of a notice filed with the Court prominently labeled as a "Notice of Willingness to Serve on General Committee," and shall clearly provide a disclosure of their economic interests as set forth in sections 318(d)(1) and 318(d)(2) of this Act; and

(6) the threshold for the special trade debt.

(b) A petitioner also shall provide supplemental notice of the information required by section 303(a) of this Act by publication as specified in section 116(c)(2) of this Act, and by posting on the website for its case under chapter 3 of this Act.

Subchapter II: Automatic Stay

Section 304. —The Automatic Stay.—

(a) Upon the filing of the petition, the following actions by all entities, regardless of where located, automatically shall be stayed with respect to affected debt:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, arbitrative, administrative, or other action or proceeding against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity that:

(A) was or could have been commenced before the filing of a petition under chapter 3 of this Act (including the request for a custodian); or

(B) is to recover on a claim against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity, by mandamus or otherwise, which claim arose before the filing of a petition under chapter 3 of this Act;

(2) the enforcement against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity of a judgment obtained before the filing of a petition under chapter 3 of this Act;

(3) any act to create, perfect, or enforce any lien against the petitioner's property;

(4) any act to collect, assess, or recover on a claim against the petitioner that arose before the filing of a petition under chapter 3 of this Act, including any act to obtain possession or control of property belonging to the petitioner; and

(5) the setoff of any debt owing to the petitioner that arose before the filing of a petition under chapter 3 of this Act against any claim against the petitioner.

(b) The stay in this section shall extend automatically to all affected debt added to the schedule described in section 302(a)(2) of this Act upon each amendment of such schedule.

(c) The petition shall not operate as a stay against the lawful exercise of police power by any Commonwealth Entity, the United States, or a state. Such exercise of police power shall not include the collection of interest or principal on any debt owed to the Commonwealth or GDB.

(d) The stay shall terminate with respect to property of the petitioner when the petitioner no longer has a legal or beneficial interest in the property.

(e) Unless terminated or modified by the Court pursuant to subsection (g) of this section, the stay of any act under this section shall continue until the earlier of:

(1) the effective date of the plan; or

(2) the time the case is dismissed and the dismissal is final and unappealable.

(f) Upon request of the petitioner, the Court may issue an order regarding the applicability and scope of the stay under subsection (a) of this section, and may issue an order enforcing the stay.

(g) The Court shall grant an entity relief from the stay, whether by terminating, annulling, modifying, or conditioning such stay, to the extent that—

(1) the entity's interest in property of the petitioner is not adequately protected against violations of the Commonwealth Constitution or the U.S. Constitution; or

(2) if—

(A) the petitioner does not have equity in such property; and

(B) no part of such property is used or intended to be used to perform public functions or otherwise foster jobs, commerce, or education.

(h) Upon objection to a motion seeking relief from the automatic stay, which objection shall be filed within fourteen (14) days of the filing of such motion, the Court shall commence a hearing no later than thirty (30) days after the motion for relief from the stay was filed unless a later date is otherwise agreed to by the petitioner and the affected creditor seeking relief from the stay. The affected creditor seeking relief from the stay shall have the burden to prove it lacks adequate protection, and the petitioner's lack of equity in the property. The petitioner has the burden to prove the facts relevant to relief pursuant to section 304(g)(2)(B) of this Act.

Section 305. —Remedies for Violating the Automatic Stay.—

Any entity found to violate section 304 of this Act shall be liable to the petitioner, and any other entity protected by the automatic stay, for compensatory damages, including any costs and expenses and attorneys' fees incurred by the petitioner in defending against action taken in violation of that section, and for punitive damages for intentional and knowing violations. Further, upon determining there has been a violation of the stay imposed by section [304] of this Act, the Court may order additional appropriate remedies, including that the acts comprising such violation be declared void or annulled.

Subchapter III: Eligibility Hearing

Section 306. —Eligibility Hearing.—

(a) No later than thirty (30) days after the petition is filed, the Court shall hold a hearing, on notice in accordance with section 338 of this Act, to determine whether the petitioner is eligible for relief under chapter 3 of this Act.

(b) No later than forty-five (45) days after the petition is filed, the Court shall enter an order determining that the petitioner is or is not eligible for relief under chapter 3 of this Act upon a finding that the petitioner satisfies, or does not satisfy, as the case may be, the eligibility requirements in section 113(b) of this Act.

Subchapter IV: Enforcement of Claims by Foreclosure Transfer

Section 307. —Power to Transfer.—

(a) Subject to the remaining provisions of this section 307 and notwithstanding any contrary contractual provision rendered unenforceable by this Act, the petitioner, with the approval of GDB (or GDB at the request of the Governor on the petitioner's behalf), subject to Court approval after notice and a hearing, may transfer all or part of the petitioner's encumbered assets (which transfer may also include unencumbered assets) free and clear of any lien, claim, interest, and employee claims against a successor employer, for good and valuable consideration consisting of any and all of cash, securities, notes, revenue pledges, and partial interests in the transferred assets or enterprise.

(b) A petitioner shall not effect a transfer of assets to an entity that is not a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, unless all the following requirements are met—

(1) applicable law (other than this Act) permits such transfer;

(2) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(3) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the

Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) the Court finds that a transfer to an entity that is not a Commonwealth Entity is the product of

(A) adequate marketing and arms-length bargaining designed to procure a price that is at least the reasonably equivalent value of the assets proposed to be transferred, or

(B) a fair auction process;

(5) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(6) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section 302(a)(2) of this Act shall be paid in full.

(c) For the avoidance of doubt, subsection (b) of this section does not confer any power on a petitioner to sell assets to a non-Commonwealth Entity that such petitioner does not currently posses under applicable law.

(d) A petitioner may effect a transfer of assets to a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, notwithstanding any other applicable law to the contrary, only if—

(1) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(2) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(3) the transfer to an entity that is a Commonwealth Entity is for a price that is at least the reasonably equivalent value of the assets proposed to be transferred, taking into account the requirement that they be used to perform the public functions the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first

priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(5) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section [302(a)(2)] of this Act shall be paid in full.

(e) The petitioner (or GDB at the Governor's request on the petitioner's behalf) may transfer part, but not all or substantially all, of the petitioner's assets not subject to a lien or pledge without Court approval if such transfer is independent of any and all transfers of encumbered assets.

(f) All transfers of unencumbered property or encumbered property or both shall be free and clear of successor liability imposed by otherwise applicable law.

(g) No transfer shall be approved unless the petitioner, or GDB on behalf of the petitioner, shall have included in its request for approval the reasons why such proposed transfer is reasonably likely to maximize value for creditors, in the aggregate, consistent with enabling the continued carrying out of the petitioner's public functions and the Court shall have found such reasons plausible.

Section 308. —Distribution of Proceeds of Transfer of Substantially All Assets.—

(a) In the event of a transfer of all or substantially all of the petitioner's assets pursuant to section 307 of this Act, after the closing of the transfer, the petitioner, with the approval of GDB (or GDB, at the Governor's request, on behalf of the petitioner), shall file a statement of allocation setting forth how the proceeds of transfer shall be allocated among each affected creditor or classes of affected creditors, and each affected creditor shall be entitled to object to the allocation by filing an objection no later than thirty (30) days after the statement of allocation is filed. When the transfer proceeds include forms of consideration other than cash and cash equivalents, the statement of allocation shall provide which forms of consideration shall be distributed to which classes of claims, or whether the non-cash forms of consideration shall first be sold for cash and then distributed.

(b) The Court shall hold a hearing to determine each objection. When all objections are resolved, the petitioner shall file an amended statement of allocation of the proceeds of transfer consistent with the Court's rulings on the objections. Affected creditors shall have fourteen (14) days to file objections to the petitioner's amended statement of allocation—provided, however, that such objections, if any, will be limited only to arguments that the amended statement of allocation does not accurately reflect the Court determination—after which the Court shall hold a hearing to resolve the objections and shall issue a final statement of allocation binding on the petitioner and all creditors. If there is no objection timely filed to the petitioner's amended statement of allocation, the Court shall order that the net proceeds of transfer shall be allocated in accordance with the petitioner's amended statement of allocation without further notice or hearing.

(c) If substantially all of the petitioner's assets are transferred pursuant to section 307 of this Act, a plan distributing the value of the assets not subject to such transfer shall not be required, but may be filed at the discretion of the petitioner, or by GDB on its behalf. If no

such plan is filed, the final statement of allocation shall allocate the value of the assets that have not been transferred by means of such forms of consideration as are feasible and practicable under the circumstances.

Section 309. —Protection for Good Faith Acquirer.—

The reversal or modification on appeal of a transfer order shall not affect the validity of the transfer under such authorization to an entity that acquired such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such transfer were stayed pending appeal.

Subchapter V: Confirmation Requirements

Section 310. —Petitioner Exclusivity.—

A petitioner may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets if first approved by GDB, or GDB may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets on behalf of the petitioner with approval of the Governor. No other entity may file a proposed plan or file a proposed transfer of any of the petitioner's assets.

Section 311. —Plan Disclosure.—

The Court shall not confirm any plan unless the creditors' committee(s) and all affected creditors receive at least forty-five (45) days before the hearing on confirmation of the plan, a written disclosure statement, approved by the Court, containing:

(a) the material facts demonstrating the petitioner's reasons for contending the plan fairly uses the value of the petitioner's assets or operating revenues to maximize repayment of claims consistent with the performance of public functions or otherwise fostering a growing economy that will generate increasing revenues and enable greater claim repayment. Confidential or proprietary information may be redacted from any disclosure made;

(b) the treatment of each class of the petitioner's affected creditors under the plan and any material financial information reasonably necessary for such creditors to understand their future recoveries, if any, under the plan; and

(c) other information, if any, necessary to provide adequate information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the petitioner and the condition of the petitioner's books and records, that would enable a hypothetical creditor in the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

Section 312. —Affected Debt Entitled to Vote.—

Subject to the petitioner's right to deem a class to reject a plan, a class of claims of the petitioner is affected for purposes of voting under a plan unless, with respect to each claim of such class, the plan—

(a) leaves unaffected the legal, equitable, and contractual rights to which such claim entitles the holder of such claim;

(b) pays such claim in full in cash; or

(c) notwithstanding any contractual provision or applicable law that entitles the holder of such claim to demand or receive accelerated payment of such claim after the occurrence of a default—

(1) cures any such default that occurred before or after the filing of a petition under chapter 3 of this Act, other than a default of a kind that is not required to be cured or is unenforceable under this Act or a default creating no money damages;

(2) reinstates the maturity of such claim as such maturity existed before such default;

(3) compensates the holder of such claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(4) if such claim arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim for any actual pecuniary loss incurred by such holder as a result of such failure; and

(5) does not otherwise affect the legal, equitable, or contractual rights to which such claim entitles the holder of such claim.

Section 313. —Plan Amendments.—

The petitioner or GDB may amend the plan at any time before confirmation, but may not amend the plan so that the plan as amended fails to meet the requirements of chapter 3 of this Act. After the petitioner files an amendment, the plan as amended becomes the plan. Material modifications adverse to affected creditors shall require resolicitation and approval pursuant to section 315(e) of this Act prior to the confirmation hearing.

Section 314. —Confirmation Hearing.—

(a) After notice specified in section 338 of this Act, the Court shall hold a hearing on confirmation of the plan.

(b) Any creditors' committee may object to the treatment of its constituency's claims under the plan and any affected creditor may object to the treatment of its claims under the plan and each may be heard in opposition of or in support of the plan, by filing an objection or a pleading supporting the plan, in writing, no later than fourteen (14) days prior to commencement of the hearing on the plan.

Section 315. —Standards for Plan Confirmation.—

The Court shall confirm a plan only if all the following requirements are met:

(a) the plan substantially complies with all applicable provisions of chapter 3 of this Act;

(b) the plan separates affected debt into classes based on:

(1) differences in the claims' collateral security or priorities; or

(2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar;

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

(d) the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed;

(e) at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted;

(f) the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution that is not remedied or otherwise justified pursuant to section 128 of this Act;

(g) the petitioner shall be able to—

(1) make all mandatory payments provided by the plan and

(2) perform public functions;

(h) confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, unless such reorganization is proposed by the plan, and all other provisions of the plan must be feasible;

(i) the plan has been proposed in good faith and not by any means forbidden by law, subject to section 108 of this Act;

(j) all administrative expenses accruing prior to the effective date of the plan shall be paid in full according to their terms or on the effective date of the plan, and all noncontingent, undisputed, and matured claims unaffected by the plan in accordance with section 327 of this Act shall be paid in full according to their terms; provided, however, that disputed or contingent claims shall be resolved in the ordinary course and paid as the parties agree or as the plan otherwise provides;

(k) each class of claims of affected debt that will not be satisfied in full under the plan absent the additional consideration provided in this subsection shall be entitled to receive annually in arrears its pro rata share of 50% of the petitioner's positive free cash flow, if any, at the end of any fiscal year, after payment of: (1) operating expenses; (2) capital expenditures (including capitalized expenses); (3) taxes, if any; (4) principal, interest, and other payments made in respect of financial indebtedness; (5) reserves; (6) changes in working capital; (7) cash payments of other liabilities; and (8) extraordinary items; in each case, incurred, expensed, and recorded in such fiscal year; such contingent payments to be made by the petitioner, but only to the extent necessary to pay each claim in full, including interest and any fees contractually required, for each of the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan, provided that once any claim is paid in full, its share of future contingent payments shall be ratably distributed to other affected creditors not yet paid in full;

(l) the effective date of the plan shall be the first date after confirmation of the plan that the confirmation order is not stayed and the petitioner or GDB files a notice with the Court that it is prepared to begin implementing the plan;

(m) with respect to affected secured claims (representing the amount by which a claim for principal, interest, and fees is secured by the value of the collateral security):

(1) both:

(A) the plan provides that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the petitioner or transferred to another entity, to the extent of the allowed amount of such claims; and

(B) each holder of such a claim receives on account of such claim immediate or deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the petitioner's interest in such property, with value being determined by the Court based on the plan's proposed disposition or use of the property, including its expected net revenues or net transfer proceeds if contemplated by the plan; or

(2) the plan provides for the transfer of any property that is subject to the liens securing such claims, free and clear of liens, and such liens attach to the net proceeds of such transfer;

(n) with respect to unsecured claims for affected debt (including deficiency claims, subject to section 331(d) of this Act, for secured affected debt that are based on a deficiency arising from liens against property having a value of less than the full amounts of the affected debt held by the affected creditor owning such liens), the plan shall be in the best interests of such creditors and shall maximize the amounts distributable to such creditors to the extent practicable, subject to the petitioner's obligations to fulfill its public functions;

(o) the petitioner shall have proved to the Court that it undertook—before or after the petition was filed—a reasonable program of cost reductions and income enhancements to try to maximize its repayment of affected debt under the plan, subject to the constraints that the petitioner must fulfill its public functions, and that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth, to reduce spending in the Commonwealth, or to reduce the consumption of services provided by the petitioner; and

(p) except to the extent agreed to by an affected creditor, the plan does not provide for a materially different and adverse treatment for such claim as compared to the treatment of claims in different classes under the plan having the same priority, unless the petitioner demonstrates a rational basis to permit such disparate treatment.

Section 316. —Compliance with Final Statement of Allocation and Confirmation Order.—

Notwithstanding any otherwise applicable law, the petitioner and any entity organized or to be organized for the purpose of carrying out a final statement of allocation issued pursuant to section 308 of this Act or a plan shall carry out the final statement of allocation or the plan and shall comply with all orders of the Court.

Subchapter VI: Case Management

Section 317. —Power of the Court.—

The Court, on its own motion or on the request of a party in interest—

(a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;

(b) unless inconsistent with another provision of chapter 3 of this Act, may issue an order, notwithstanding the rules of civil procedure, prescribing such limitations and conditions as the Court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(1) sets the date by which the petitioner shall file a disclosure statement and plan or a proposed transfer of all or substantially all the petitioner's property; or

(2) sets deadlines for pleadings, responses, replies, and other matters;

(3) may issue an order fixing the timing, scope, and format of any notice required under this Act.

Subchapter VII: Creditors' Committees

Section 318. —Formation of Creditors' Committees.—

(a) As soon as practicable after the petition is filed, but not later than fourteen (14) days prior to the first scheduled date of the eligibility hearing pursuant to section 306 of this Act, the Court shall appoint a general committee comprised of entities, based on the received Notices of Willingness to Serve on General Committee, holding the largest amount of secured claims and largest amount of unsecured claims identified in the schedule of affected debt filed pursuant to section 301(d)(1) or 302(a)(2) of this Act. The general committee shall be comprised of at least five (5) and no more than thirteen (13) members, and, to the extent reasonably practicable, shall be representative of the categories of claims to be affected by the plan.

(b) The Court may appoint as the general committee a committee of creditors formed to negotiate with the petitioner prior to the filing of the petition; provided that the members of the prepetition committee are representative of the categories of claims to be affected by the plan.

(c) At the petitioner's or GDB's request, the Court shall appoint one or more additional committees, comprised of holders of affected debt held by particular creditor constituencies and identified by the petitioner in a written certification that the petitioner or GDB believes formation of such committee(s) would facilitate efforts to obtain a transfer pursuant to section 307 of this Act or confirmation of a plan. Such additional committee shall be comprised of at least three (3) and no more than seven (7) members. If and when an additional committee is disbanded or the petitioner or GDB certifies in a writing filed with the Court that it no longer believes an additional committee previously appointed will further facilitate a transfer pursuant to section 307 of this Act or confirmation of a plan or that the additional committee's costs outweigh its benefits, the additional committee no longer shall be

eligible for reimbursement of its member expenses and its professionals' fees and disbursements.

(d) Each creditors' committee member shall file with the Court, within twenty-one (21) days after its appointment to a creditors' committee, a verified statement declaring, as of the date of its appointment to the creditors' committee, that:

(1) the creditors' committee member, the entity to be acting on its behalf on the creditors' committee, and any affiliate of the foregoing that employed or is employed by such member, held or controlled, to the extent set forth in such statement, a beneficial interest in:

(A) any affected debt, specifying the face amount of each security or other claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing an economic interest that is affected by the value, acquisition, or disposition of the affected debt, specifying each type of right;

(C) each other economic interest relating to any Commonwealth Entity, specifying each interest; and

(D) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity, specifying each type of interest; and

(2) no interest that the creditors' committee member, such entity to be acting on its behalf, or any such affiliate holds or controls and that should have been set forth pursuant to sections 318(d)(1)(A) through 318(d)(1)(D) of this Act may increase in value if any debt issued by any Commonwealth Entity declines in value.

(e) The holding or controlling at any time of any interest that should be set forth pursuant to section 318(d)(2) of this Act by the creditors' committee member, such entity that acts on its behalf, or any such affiliate shall disqualify such creditor from serving as a member of any creditors' committee. For the avoidance of doubt, the acquisition of such an interest by a creditors' committee member, such entity acting on its behalf, or any such affiliate, automatically shall divest the creditor of committee membership.

(f) Each creditors' committee member shall update its disclosure contemplated by subsection (d) of this section in writing filed with the Court within three (3) business days of each change in its previously disclosed holdings.

(g) Requests by the petitioner, GDB, or any affected creditor for changes or additions to creditors' committee membership shall be granted or denied in the Court's discretion. The Court's determinations of creditors' committee(s) membership shall not be appealable.

(h) Creditors' committee(s) members shall not be entitled to compensation for their time and service as creditors' committee members or to reimbursement of their expenses for retaining professionals to represent them individually, but the creditors' committee(s) shall be entitled from the petitioner to payment of fees to the extent permitted in section 333 of this Act, and creditors' committee(s) members shall be entitled to reimbursement of their actual,

reasonable, and documented out-of-pocket expenses for travel and lodging arising from their function as creditors' committee members.

Section 319. —Powers and Duties of Appointed Committees.—

(a) At a scheduled meeting of a creditors' committee, at which a majority of the members of such creditors' committee is present in person or by phone, the creditors' committee may select and authorize the employment of up to two (2) law firms, one of which must be resident in the Commonwealth, and one financial advisor, to perform services for such creditors' committee to be paid as administrative expenses in accordance with section 333 of this Act; provided, however, upon seven (7) days' notice to the petitioner and subject to the petitioner's right to object, the general committee may retain one or more additional professionals, including law firms, when and if reasonably necessary to represent different constituencies of the general committee in respect of material issues. If the petitioner objects to the general committee's proposed retention of any additional professional, the petitioner shall not be obligated to compensate such professional unless the Court rules its retention should be permitted.

(b) A creditors' committee may only:

(1) appear and be heard on any issue—

(A) relating to the eligibility hearing pursuant to section 306 of this Act;

(B) relating to adequate protection;

(C) involving new borrowing by the petitioner;

(D) concerning a transfer pursuant to section 307 of this Act or the allocation of proceeds of transfer pursuant to section 308 of this Act; and

(E) in connection with the plan, but solely as to matters regarding how the plan affects the creditors' committee's constituents;

(2) conduct a reasonable investigation into the petitioner's legal and financial ability to increase distributions under the plan for the creditors' committee's constituents; and

(3) negotiate with the petitioner over the treatment of its constituents in the plan.

(c) A creditors' committee appointed pursuant to section 318 of this Act or its authorized agent shall receive copies of notices concerning motions and actions taken by the petitioner (and any objections thereto) pursuant to sections 307 and 308 of this Act, and sections 310 through 316 of this Act.

(d) A creditors' committee may request discovery in accordance with the Puerto Rico Rules of Civil Procedure, but only with respect to the matters enumerated in subsections (b)(1)(A) through (b)(1)(E) of this section.

(e) Subject to redaction of confidential or proprietary information, affected creditors who are not committee members may obtain the same discovery produced to the creditors' committee and may obtain other discovery only, in each case, upon order of the Court for good cause shown.

(f) The committee shall not be a juridical entity capable of suing and being sued.

Section 320. —Limitations on Committees.—

(a) A creditors' committee appointed under chapter 3 of this Act shall not have standing to commence an action either directly on its own behalf or derivatively on behalf of the petitioner or on behalf of the petitioner's creditors, and may not be heard on any matter except as expressly provided in this Act.

(b) Each creditors' committee may make recommendations to its constituents with respect to the plan but cannot bind its constituencies or any member thereof to accept, reject, support, or object to any plan, and may not consent to a plan on behalf of any creditor.

(c) No member of a creditors' committee appointed pursuant to section 318 of this Act shall trade in claims against or securities issued by any Commonwealth Entity, unless the member:

(1) has established and enforces sufficient compliance procedures to prevent such member's representative on the creditors' committee from sharing information obtained as the member's representative with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity;

(2) filed with the Court a notice of its intention to trade, which notice sets forth the details of the member's compliance procedures referenced in subsection (c)(1) of this section;

(3) obtained approval of its compliance procedures from the petitioner , which approval, in the petitioner's discretion, may be based on the recommendation of an entity knowledgeable in the securities industry and retained by or for the petitioner; and

(4) does not share information obtained from its service on the creditors' committee with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity.

Section 321. —Disbanding Committees.—

All creditors' committees automatically shall be disbanded on the earlier of the date the Court issues the final statement of allocation pursuant to section 308 of this Act or confirms a plan for the petitioner, unless the final statement of allocation or plan provides otherwise or the Court orders otherwise. The petitioner may disband any additional committee appointed pursuant to section 318(c) of this Act by seven (7) days' written notice to such additional committee and the Court.

Subchapter VIII: Assets, Liabilities, Contracts, and Powers of the Petitioner

Section 322. —Obtaining Credit.—

(a) A petitioner may obtain unsecured credit and incur unsecured debt allowable under chapter 3 of this Act as an administrative expense.

(b) If the petitioner is unable to obtain unsecured credit allowable as an administrative expense, the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 333 of this Act;

(2) secured by a lien on property of the petitioner that is not otherwise subject to a lien;

(3) secured by a junior lien on property of the petitioner that is subject to a lien; or

(4) any combination of the preceding clauses (1), (2), and (3), in addition to allowance as an administrative expense.

(c) The Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the petitioner's property that is subject to a lien only if—

(1) the petitioner is unable to obtain such credit otherwise; and

(2) either

(A) the proceeds are needed to perform public functions and satisfy the requirements of section 128 of this Act; or

(B) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted.

(d) In any hearing pursuant to this section, the petitioner has the burden of proof.

(e) The reversal or modification on appeal of an authorization pursuant to this section to obtain credit or incur debt, or of a grant pursuant to this section of a priority or a lien, shall not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, was stayed pending appeal.

Section 323. —Use or Lease of Property not Subject to Court Approval.—

Unless the Court orders otherwise, without notice or a hearing, the petitioner may, in its sole discretion:

(a) pay on a current basis—

(1) its expenses accruing postpetition (exclusive of amounts related to prepetition indebtedness except as set forth in subsection (a)(2) of this section) and the costs and expenses incurred in connection with the case (including the reasonable fees and expenses of the professionals retained by or for the petitioner or GDB and any creditors' committee(s) formed under chapter 3 of this Act, subject to sections 318, 319 and 333 of this Act); and

(2) its prepetition debt not scheduled to be affected under the plan or that is necessary to pay to safeguard the petitioner's ability to perform its public functions;

(b) enter into transactions, including the lease of property, and use its property in its operations, including the use of revenues; and

(c) use cash and other resources as necessary to perform public functions, subject to section 324(a) of this Act.

Section 324. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain confirmation of a plan or approval of a statement of allocation, the petitioner may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of a petitioner are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the petitioner shall not be required to provide adequate protection to such creditor pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Section 325. —Unenforceable Ipso Facto Clauses; Assignment of Contracts.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time after the filing of a petition under chapter 3 of this Act solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the petitioner at any time before the closing of the case;

(2) the filing of a petition pursuant to section 301 of this Act and all other relief requested under this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(b) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the petitioner for the provision of goods or services shall, unless the petitioner advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract, provided that the petitioner is not in default under such contract other than—

(1) as a result of a condition specified in subsection (a) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the date when the petition is filed.

(c) All claims against the petitioner arising from performance by a contract counterparty pursuant to subsection (b) of this section, after the date when the petition is filed, shall have the status of an administrative expense. Failure by such contract counterparty to satisfy the requirement of subsection (b) of this section shall result in compensatory damages to the petitioner, in an amount determined by the Court.

(d) Notwithstanding any contractual provision to the contrary, except as set forth in subsection (e) of this section, on notice to the counterparty under the contract and upon Court approval, a petitioner can assign any contract, if the petitioner cures—or provides adequate assurance it promptly will cure—any default under such contract, other than a default that is a breach of an unenforceable provision under applicable law. Defaults on nonmonetary obligations that cannot reasonably be cured by nonmonetary actions may be cured as best as practicable with money damages.

(e) A petitioner shall not assign a contract of the petitioner, whether or not such contract prohibits or restricts assignment of rights or delegation of duties, if—

(1) applicable law excuses a party, other than the petitioner, to such contract from accepting performance from or rendering performance to the petitioner or to an assignee of such contract, and such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the petitioner, or to issue a security or other instrument of the petitioner.

(f) Only a party to a contract that a petitioner seeks to assign and having the right under such contract to enforce such contract, or such party's authorized representative, shall have standing to object to and be heard on the petitioner's requests pursuant to this section.

Section 326. —Contract Rejection, Impairment, and Modification.—

(a) Subject to subsection (d) of this section and Court approval, after notice and a hearing, and notwithstanding any contractual provision to the contrary, a petitioner may reject any contract if the rejection is in the petitioner's best interests; provided, however, that a petitioner may not reject a contract (except for collective bargaining agreements and retirement or post-employment benefit plans) where rejection of such contract would produce damages that would not exceed the threshold for special trade debt, as defined in section 102(52) of this Act.

(b) Any counterparty to a contract the petitioner seeks to reject shall file with the Court its calculation of rejection damages at least five (5) days prior to the hearing on rejection. A counterparty opposing rejection shall file such calculation with its objection at least seven (7) days prior to the hearing on rejection. The petitioner may object to such proposed damages at any time before confirmation. Disputes concerning rejection damages shall be resolved by the Court.

(c) Rejection of a contract pursuant to subsection (a) of this section shall be treated as a material breach of such contract.

(d) The Court shall not approve the rejection of a collective bargaining agreement or retirement or post-employment benefit plan unless the petitioner has demonstrated that:

(1) the equities balance in favor of the rejection of such agreement or plan. In making such determination, the Court shall take into consideration the impact of the provisions of Law 66-2014, including any agreements made by employees and the petitioner pursuant to negotiations provided thereunder, on such agreement or plan;

(2) absent rejection, the petitioner will likely become unable to perform public functions; and

(3) the petitioner shared with the representative(s) for employees and retirees, as applicable, the data underlying its request to reject the agreement or plan and conferred, at reasonable times, in good faith with the representative(s) to reach voluntary modifications to such agreements or plans, and such efforts did not succeed;

(e) During a period when a collective bargaining agreement continues in effect, if essential to the continuation of the petitioner's public functions, or in order to avoid irreparable damage to the petitioner, the Court, after notice and a hearing, may authorize the petitioner to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by such collective bargaining agreement. Any hearing pursuant to this subsection shall be scheduled in accordance with the needs of the petitioner. The implementation of such interim changes shall not render the application for rejection moot.

(f) Nothing in this Act impairs the right, if any, of the petitioner under a collective bargaining agreement, retirement or post-employment benefit plan, or applicable law to terminate, modify, amend, or otherwise enforce any of the provisions of such collective bargaining agreement or retirement or post-employment benefit plan without obtaining the relief in subsection (d) of this section.

(g) Only a party to a contract a petitioner seeks to reject hereunder and having the right under such contract to enforce such contract, or such entity's authorized representative, shall have standing to object to and be heard on the petitioner's request pursuant to this section.

(h) Subject to subsection (b) of this section and section 327 of this Act, any damages arising from the rejection of a prepetition contract shall be treated as prepetition claims for affected debt that are neither priority claims nor administrative claims.

Section 327. —Unaffected Debt.—

The following expenses and claims arising prior to filing of a petition under chapter 3 of this Act shall not constitute affected debt under the plan and shall be paid to the maximum extent practicable, without acceleration or other remedy arising from a default occurring prior to the effective date of a chapter 3 plan, according to the terms of the contracts pursuant to which the unaffected debt was incurred, and subject to applicable law:

(a) allowed unsecured claims of individuals for wages, salaries, or commissions, vacation, severance, and sick leave pay, or other similar employee benefits, earned by an individual prior to the petition date in accordance with a petitioner's employment policies or

by applicable law, except to the extent that such claims arise out of a transaction that is avoidable under applicable law, including section 131 of this Act;

(b) except as provided in subsection (c) of this section, claims for the provision of goods or services other than claims arising under a rejected contract or special trade debt, provided, however, that any and all claims for provision of goods or services may be affected debt if the treatment of such claims as unaffected debt is a direct cause of other debt being substantially or severely impaired for purposes of the Commonwealth Constitution or the U.S. Constitution and such substantial or severe impairment is not remedied or otherwise justified pursuant to section 128 of this Act;

(c) notwithstanding subsection (b) of this section, critical vendor debt as determined by the petitioner;

(d) notwithstanding subsection (a) of this section, claims arising under a collective bargaining agreement or retirement or post-employment benefit plan, unless and until the claims arising under such collective bargaining agreement or retirement or post-employment benefit plan are scheduled as affected debt pursuant to section 302(a)(2) of this Act or such collective bargaining agreement or retirement or post-employment benefit plan is rejected;

(e) claims owed to another public corporation (but only to the extent such claims are for goods or services provided by such public corporation to the petitioner), or to the United States;

(f) claims of a Commonwealth Entity for money loaned, or other financial support, to the petitioner during the sixty (60) days before the filing of the petition under chapter 3 of this Act, or claims of GDB for reimbursement pursuant to section 134 of this Act; and

(g) any credit incurred or debt issued by a public sector obligor between the commencement of the suspension period and the filing of a petition under chapter 3 of this Act, but only if such petition under chapter 3 of this Act is filed no more than six (6) months after the suspension period shall have elapsed.

Section 328. —Goods and Services Delivered within Thirty Days before the Petition is Filed.—

All valid amounts payable for goods received by or services rendered to the petitioner within thirty (30) days before the filing of a petition under chapter 3 of this Act shall have the status of an administrative expense and shall be paid in full, and according to the terms of the contracts pursuant to which the goods were provided or services were rendered to the maximum extent practicable. To the extent there is any dispute as to the validity of such amounts payable, it shall be resolved pursuant to section 331(a) of this Act.

Section 329. —Assets Backing Retirement or Post-Employment Benefit Plans.—

All assets backing any pension plan, any retirement or post-employment benefit plan, and any other similar funded retiree or employee benefit shall be inviolable and shall not be considered in the calculation of the petitioner's value to be distributed pursuant to a plan under chapter 3 of this Act or final allocation statement pursuant to section 308 of this Act.

Section 330. —Subordination.—

(a) A subordination agreement is enforceable in a case under chapter 3 of this Act to the same extent that such agreement is enforceable under other applicable law.

(b) For the purpose of distribution under chapter 3 of this Act, a claim arising from rescission of a purchase or sale of a security or note of the petitioner or of an affiliate of the petitioner, for damages arising from the purchase or sale of such a security or note, or for reimbursement or contribution allowed on account of such a claim, shall be subordinated to all claims senior to or equal to the claim represented by such security or note.

Section 331. —Allowed Claims.—

(a) No creditor (affected or unaffected) needs to file a proof of claim to be entitled to payments on its claims. To the extent there are disputes between the petitioner and creditors as to the amounts of their claims, such disputes shall be resolved using the same procedures applicable if there were no case under chapter 3 of this Act; provided, however, that claim objections pursuant to sections 330, 332 and 333 of this Act and rejection damage claims shall be determined only by the Court, subject to its power to abstain when the determination is not required prior to deciding whether a plan should be confirmed.

(b) A claim shall be an allowed claim if valid under applicable law to the extent—

(1) it does not include unmatured interest as of the petition date, and

(2) is not disallowed under another provision of this Act.

(c) The assertion of a claim in a chapter 3 case shall not constitute a legal proceeding subject to the disclosure requirement for government vendors and contractors pursuant to any applicable law. The existence of a claim under chapter 3 of this Act shall not constitute the basis for disqualification from any procurement process or for not entering into a contract with the petitioner.

(d) Nothing in this Act shall grant recourse status to non-recourse claims.

Section 332. —Claims for Reimbursement, Contribution, Indemnification, and Subrogation.—

(a) Claims for reimbursement, contribution, or indemnification shall not be allowed to the extent their allowance causes a petitioner to have liability to pay the same underlying debt more than once. To the extent such claims relate to debts in existence prior to the filing of a petition under chapter 3 of this Act, such claims shall not be deemed administrative claims.

(b) The Court shall subordinate to the claim of an affected creditor and for the benefit of such creditor an allowed subrogation claim of an entity that is liable with the petitioner on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under chapter 3 of this Act or otherwise.

Section 333. —Payment of Administrative Expenses Pending Plan Confirmation.—

(a) A petitioner timely shall pay in full and in cash all administrative expenses incurred in connection with its operations and its case, including wages, salaries, commissions for services, trade debt, and monthly requests for reasonable fees and reimbursement of expenses incurred by the professionals retained by the petitioner (or retained by GDB on

behalf of the petitioner, as provided by section 301(b) of this Act) and the creditors' committee(s), and the noticing agent.

(b) To the extent that a petitioner or GDB believes fees and expenses of a retained professional are unreasonable, it shall advise the applicant of its objection and the petitioner shall pay the undisputed portion. If the petitioner or GDB, as applicable, and the applicant are unable to reach an agreement about the disputed portion, either party may request the Court to rule on the reasonableness of such disputed fees and expenses. The petitioner or GDB, as applicable, may object to any applicant's fees as unreasonable for any legitimate reason.

(c) A petitioner or GDB may, in its sole discretion, retain an entity to serve as a fee examiner to review all fees and disbursements of all professionals for the petitioner and the creditors' committee(s). To the extent any professional requests payments in excess of those recommended by the fee examiner, the professional must procure a Court order allowing such additional amounts.

Section 334. —Custodian.—

(a) A custodian with knowledge of the filing of a petition under chapter 3 of this Act concerning the petitioner may not make any disbursement from, or take any action in the administration of, property of the petitioner, proceeds, product, offspring, rents, or profits of such property, or property of the petitioner, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the petitioner any property of the petitioner held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the filing of the petition; and

(2) file an accounting of any property of the petitioner, or proceeds, product, offspring, rents, or profits of such property that, at any time, came into the possession, custody, or control of such custodian.

(c) The Court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian for any improper or excessive disbursement, other than a disbursement that has been made in accordance with any applicable law, or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the filing of the petition.

Section 335. —Turnover.—

(a) Except for collateral secured and perfected by possession, and except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the petitioner may use or

transfer pursuant to sections 307 and 323 of this Act, shall deliver to the petitioner, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the petitioner.

(b) Except as provided in this section, an entity that owes a debt to the petitioner that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the petitioner, except to the extent that such debt may be offset against a claim against the petitioner.

(c) Except as provided in section 304(a)(5) of this Act, an entity that has neither actual notice nor actual knowledge of the filing of the petition concerning the petitioner, may transfer property of the petitioner, or pay a debt owing to the petitioner, to an entity other than the petitioner, with the same effect as to the entity making such transfer or payment as if the case under chapter 3 of this Act concerning the petitioner had not been commenced.

(d) Subject to any applicable privilege, after notice and a hearing, the Court may order an attorney, accountant, or other entity that holds recorded information, including books, documents, records, and papers, relating to the petitioner's property or financial affairs, to turn over or disclose such recorded information to the petitioner.

Section 336. —Surrender of Securities.—

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five (5) years after the date of the entry of the confirmation order or as otherwise provided under the plan. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in any distribution under the plan.

Section 337. —Notice of Pleadings.—

(a) Service of any and all pleadings in a case under chapter 3 of this Act, arising in a case under chapter 3 of this Act, or related to a case under chapter 3 of this Act shall be sufficient if provided—

(1) by mail to the last known address or attorney of the affected creditor or other party in interest;

(2) by email to the email address provided by the affected creditor or other party in interest in any of such cases; or

(3) through The Depository Trust Company or similar depository.

(b) Service may be made within the Commonwealth and the United States and by first class mail postage prepaid or email as follows:

(1) notices required to be mailed to an affected creditor or indenture trustee (or entity performing comparable functions) shall be addressed as such entity or an authorized agent has directed in its last notice of appearance filed in the particular case;

(2) if an affected creditor or indenture trustee (or entity performing comparable functions) has not filed a notice of appearance designating a mailing address or email address, the notices shall be mailed to the entity's address, if any, shown on the list of affected creditors filed by the petitioner;

(3) if a list of affected creditors filed by the petitioner includes the name and address of a legal representative of a minor or incompetent person, and an entity other than that representative files a notice of appearance designating a name and mailing address that differs from the name and address of the representative included in the list of affected creditors, unless the Court orders otherwise, notices shall be mailed to the representative included in the list or schedules and to the name and address designated in the notice of appearance;

(4) an entity and the noticing agent may agree that the noticing agent shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the noticing agent. That address is conclusively presumed to be a proper address for the notice. The noticing agent's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law;

(5) an affected creditor may treat a notice as not having been brought to the affected creditor's attention only if, prior to issuance of the notice, the affected creditor has filed a statement with the Court that designates the name and address of the entity or organizational subdivision of the affected creditor responsible for receiving notices under chapter 3 of this Act, and that describes the procedures established by the affected creditor to cause such notices to be delivered to the designated entity or subdivision and the notice does not conform to such designation; and

(6) if the papers in the case disclose a claim of the United States other than for taxes, copies of notices required to be mailed to all affected creditors under this Act shall be mailed to the United States Attorney for the District of Puerto Rico and to

the department, agency, or instrumentality of the United States through which the petitioner became indebted.

(c) If, at the request of the petitioner, a party in interest with standing to be heard on a matter hereunder, or on its own initiative, the Court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give an affected creditor with an address outside the Commonwealth and the United States to which notices under this Act are mailed reasonable notice under the circumstances, the Court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. Unless the Court for cause orders otherwise, the mailing address of an affected creditor with such foreign address shall be determined pursuant to subsections (b)(1) and (b)(2) of this section.

(d) The Court may, in its discretion, order specific noticing requirements for specific deadlines, hearings, and motions in the case, which orders shall supersede the noticing requirements in chapter 3 of this Act to the extent inconsistent.

Section 338. —Special Notices.—

(a) In addition to all other notices required hereunder, a petitioner shall provide special notices of (1) the filing of a petition, (2) the hearing on a petitioner's request for entry of an order determining the petitioner is eligible for relief under chapter 3 of this Act, (3) the hearing on a transfer pursuant to section 307 of this Act, and (4) the hearing on confirmation of the proposed plan. Such notice shall be posted on the website for its case under chapter 3 of this Act and published in accordance with section 116(c)(2) of this Act.

(b) Notice shall be transmitted to

(1) all parties in interest (except for holders of claims not scheduled pursuant to section 302(a)(2) of this Act) for whom a petitioner has readily accessible internal electronic records of mailing addresses or email addresses,

(2) all entities that file notices of appearance, and

(3) in accordance with subsection (c) below, holders of claims not scheduled pursuant to section 302(a)(2) of this Act.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the events set forth in subsection (a) of this section to holders of claims not scheduled pursuant to section 302(a)(2) of this Act shall be proper and reasonable if publication notice thereof is made in accordance with section 116(c)(2) of this Act.

Section 339. —Dismissal of Case.—

(a) After notice and a hearing, the Court may dismiss a case under chapter 3 of th1a) a legislative determination that the state of fiscal emergency underlying the need for chapter 3 of this Act has ended; or

(1) a determination by the Court, or by a federal court whose judgment is final and unappealable, that the petitioner is eligible to prosecute a case under title 11 of the United States Code.

(b) The Court shall dismiss a case under chapter 3 of this Act, and may condition such dismissal on such terms as are just, if the petition is withdrawn pursuant to section 112 of this Act.

Section 340. —Closing of Case.—

(a) After a plan is confirmed and effective, and all disputed claims are resolved, the Court shall close the case.

(b) A case may be reopened in the Court in which such case was closed to enforce the plan, to accord relief to the petitioner, or for other cause.

Section 341. —Escheat Rules.—

Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 3 of this Act for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any final statement of allocation or any plan confirmed under chapter 3 of this Act, or remaining unclaimed after the expiration of a time limit for claiming distribution under such final statement of allocation or such plan, as the case may be, becomes the property of the petitioner or of the entity acquiring the assets of the petitioner under the plan, as the case may be.

Chapter 4: Effectiveness of the Act

Section 401.-Effective Date.

This Act will be effective immediately upon its approval.