2nd PROMESA Conference

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Panel I: Confirmation of a Debt Adjustment Plan

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Restructuring of Debt:

- Title III of PROMESA provides for a restructuring mechanism that is very similar to Chapters 9 and 11 of the Bankruptcy Code.
- Title III incorporates most of the principal provisions of the Bankruptcy Code and provides for the approval of a plan for debt adjustment, voted by creditors and confirmed by the Court.

Debt Adjustment Plan

- Only the Board may present a Debt Adjustment Plan.
- If it is not presented along with the Petition, the Court will establish the term to do so.
- Creditors and some taxpayers may object the proposed plan.

Confirmation:

- Adopts requirements from Chapters 9 and 11 of the Bankruptcy Code.
- Administrative Expenses must be paid on the effective date of the plan.
- Debtor must obtain any regulatory, legislative, or electoral approvals necessary to implement the plan.
- The plan must be feasible.
- The Court must determine that creditors will receive under the plan a distribution greater than the distribution they would have otherwise received under the laws and Constitution of the Territory.
    - This requirement does not exist under Chapter 9.
    - Liquidation analysis?
    - How are government assets valued?
- The Plan should be consistent with the Fiscal Plan Certified by the Board.

Voting

- Affected creditors are entitled to vote on the Plan.
- The Plan must classify similarly situated creditors in the same class.
- A class accepts a Plan if it votes affirmatively for (i) at least 2/3 the value of the claims, and (ii) more than ½ the number of claims.
    - If a class is comprised of 10 claims that total $21,000,000.00, it must receive the affirmative vote of more than 5 claims and their aggregate value should be at least $14,000,000.

Voting (cont.)

If one or more classes of creditors do not vote for the Plan, the Court may confirm a Plan over said objections if it is deemed to be "fair and equitable."

In terms of the secured creditors, a plan is meets this requirement if the secured creditors retain their liens and receive payments equivalent to the value of their lien (or their proceeds) during the life of the Plan.

For unsecured creditors, it means that (i) they receive a payment equivalent to their claim or (ii) the lower classes will not be able to receive distributions until their claim is paid.

Thank You

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