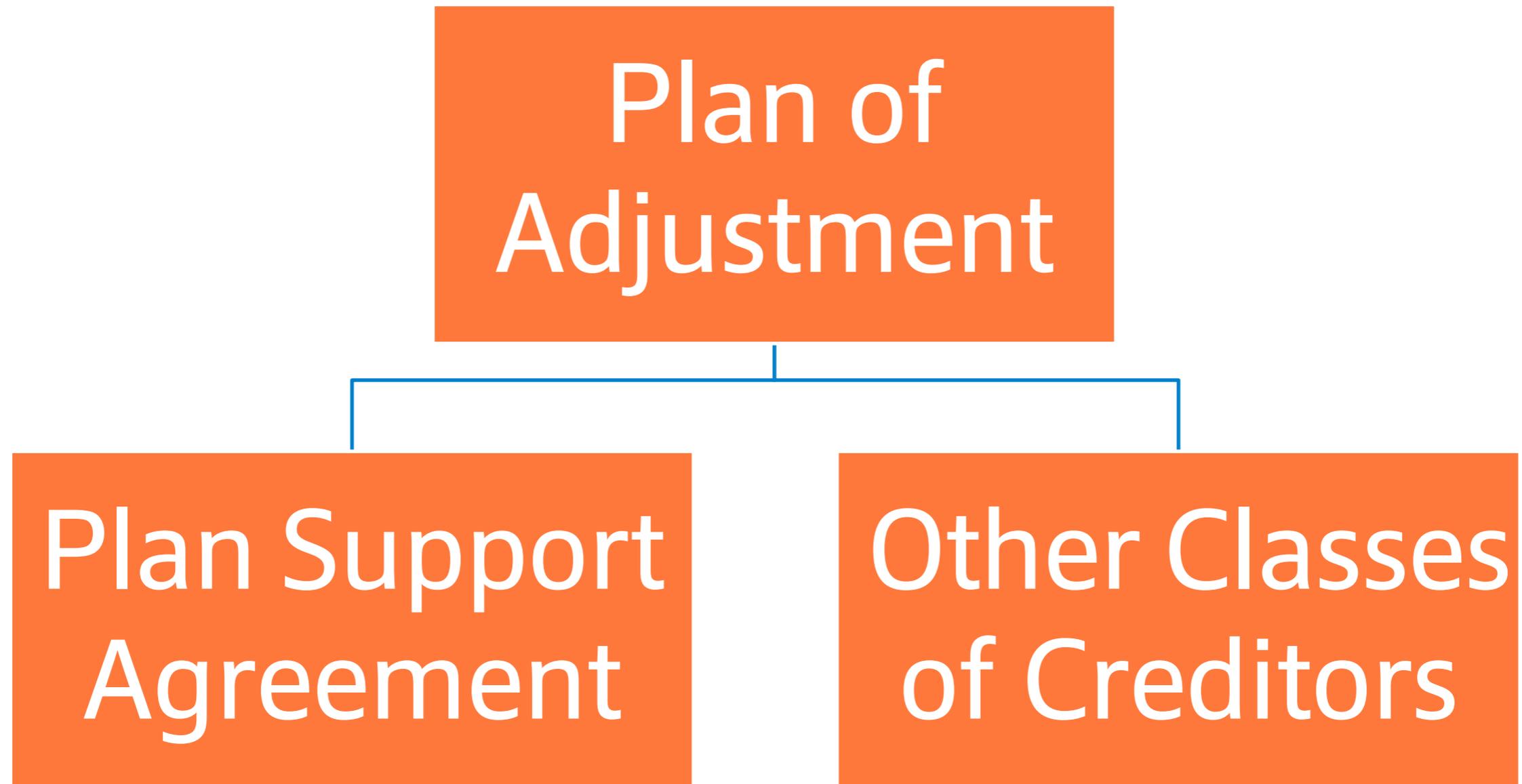


# Overview of Some Legal Issues Related to Puerto Rico's Debt Restructuring



by  
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# Overview



# Plan of Adjustment (2019)

- 39 classes of creditors.
- Approximately \$35 billion in Commonwealth debt and other claims; and
- \$50+ billion in unfunded pension liabilities.

# Plan Support Agreement (2020)

- Covers approximately \$18.7 billion of CW bonded debt
- \$14.1 billion GO bonds
- \$4.6 billion of PBA bonds
- Consideration:
  - \$3.4 billion in cash
  - \$10.1 billion in new bonds
    - 50% New GO bonds
    - 50% COFINA junior claim bonds
  - Average recovery: 72.2%
  - Average haircut: 27.8%
- In exchange bondholders agree to support (vote in favor) of the Plan of Adjustment (as amended).
- Important because it allows FOMB to use PROMESA's "cramdown" provision (Section 314(c)) as a lever against other creditors.

# Confirmation of Plan of Adjustment (PROMESA Section 314(b))

- (b) CONFIRMATION.—The court shall confirm the plan if—
  - (1) the plan complies with the provisions of title 11 of the United States Code, made applicable to a case under this title by section 301 of this Act;
  - (2) the plan complies with the provisions of this title;
  - (3) the debtor is not prohibited by law from taking any action necessary to carry out the plan;
  - (4) 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 507(a)(2) of title 11, United States Code, will receive on account of such claim cash equal to the allowed amount of such claim;
  - **(5) any legislative, regulatory, or electoral approval necessary under applicable law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval;**
  - **(6) the plan is feasible and in the best interests of creditors, which shall require the court to consider whether available remedies under the non-bankruptcy laws and constitution of the territory would result in a greater recovery for the creditors than is provided by such plan; and**
  - (7) the plan is consistent with the applicable Fiscal Plan certified by the Oversight Board under title II.

# Is Legislation Required?

- Yes. Both the 2019 Plan of Adjustment and the 2020 Plan Support Agreement state that Puerto Rico legislation is required to implement at least some parts of each agreement.
- Court has already stated FOMB does not have legislative authority:
  - “PROMESA neither abrogated the Commonwealth government’s power to legislate nor vested the Oversight Board with such legislative authority.” *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 390 F.Supp.3d 311, 321 (D.P.R. 2019); *see also In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 330 F.Supp.3d 685, 701 (D.P.R. 2018)
  - (“[T]he Oversight Board has not been given power to affirmatively legislate. Thus, with respect to policy measures that would require the adoption of new legislation or the repeal or modification of existing Commonwealth law, the Oversight Board has only budgetary tools and negotiations to use to elicit any necessary buy-in from the elected officials and legislators.”).

SOURCE: THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY’S (I) OBJECTION TO THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (A) MOTION TO SCHEDULE A DISCLOSURE STATEMENT HEARING [ECF NO. 10808] AND (B) MOTION TO ESTABLISH PRE-SOLICITATION PROCEDURES [ECF NO. 10839]; AND (II) RESPONSE TO THE AMENDED REPORT AND RECOMMENDATION OF THE MEDIATION TEAM [ECF NO. 10756] –2/19/20

# FOMB Options

- Disclosure Statement 2019 Plan of Adjustment (p. 352):
  - “The Plan contemplates legislation will be enacted by the Government on or prior to the Effective Date authorizing the transactions contemplated in the Plan, including the issuance of the New Bonds.
  - There is no certainty such legislation will be enacted, and if it is not, **the Oversight Board will seek judicial relief in lieu thereof pursuant to PROMESA Section 305**, allowing the Title III Court to interfere with governmental and political powers in a plan of adjustment or with the consent of the Oversight Board and to **cause** the issuance of the New Bonds. There is no certainty the Title III court will grant the foregoing judicial relief, or that it would be upheld on appeal.”

# PROMESA Section 305

- Subject to the limitations set forth in titles I and II of this Act, notwithstanding any power of the court, **unless the Oversight Board consents or the plan so provides**, the court may not, by any stay, order, or decree, in the case or otherwise, 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 use or enjoyment by the debtor of any income- producing property.

# FOMB Options

- Treatment of Active and Retired Employee Benefit Claims (2019 Plan of Adjustment – Article XXIX):
  - 29.1(b) Preemption. All provisions of the Commonwealth Constitution, Commonwealth statutes, executive orders, rules, regulations, and policies in effect as of the Confirmation Date that create, require, or enforce employee pension and other benefits that are modified and/or preserved in whole or in part herein, are preempted as inconsistent with PROMESA and shall be of no further force or effect.

# Pensions — Proposed Cuts

Case:17-03283-LTS Doc#:8766-7 Filed:09/27/19 Entered:09/27/19 09:44:05 Desc:  
Exhibit C-3 - Retiree Committee PSA (Part 3) Page 7 of 8

## Appendix Illustrative Calculations<sup>1</sup>

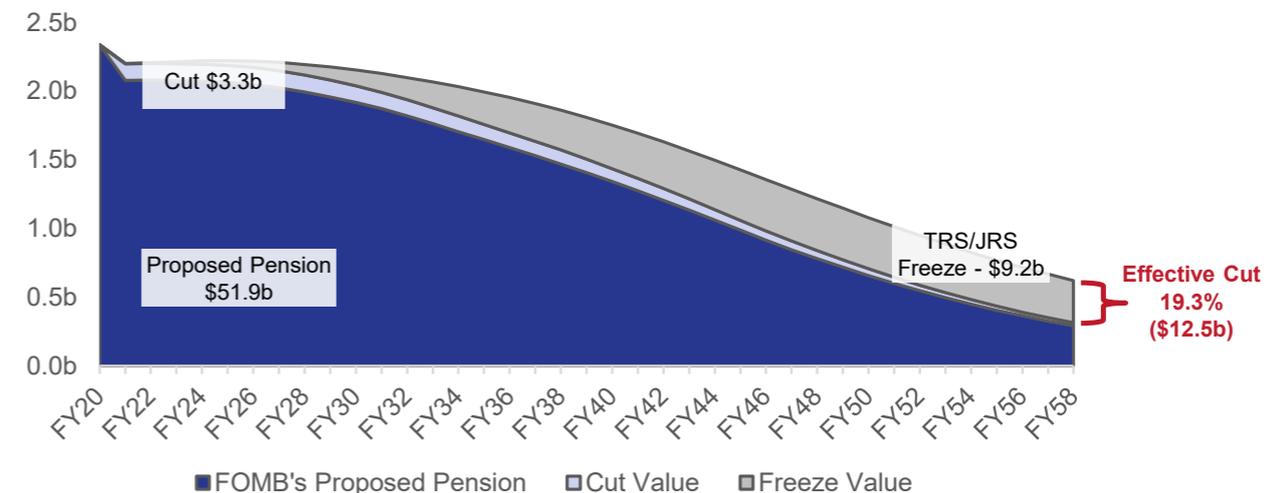
		Total Pension Value	Christmas bonus <sup>2</sup>	Medicine and/or Summer bonus <sup>3</sup>	Monthly Base Pension	Monthly Medical Insurance	Comment
A	Current	\$ 875	\$ 17	\$ 8	\$ 850	\$ 0	No cut since benefit below \$1,200
	Reduction After Cut	<u>0</u> \$ 875	<u>0</u> \$ 17	<u>0</u> \$ 8	<u>0</u> \$ 850	<u>0</u> \$ 0	
B	Current	\$1,625	\$ 17	\$ 8	\$1,500	\$100	Total Monthly Retirement Benefit cut by 8.5%, including full elimination of bonuses, since remaining amount after cut is still above \$1,200
	Reduction After Cut	<u>130</u> \$1,495	<u>17</u> \$ 0	<u>8</u> \$ 0	<u>105</u> \$1,395	<u>0</u> \$100	
C	Current	\$1,235	\$ 17	\$ 8	\$1,210	\$ 0	All bonuses eliminated but Total Monthly Retirement Benefit cut by less than 8.5% to remain above \$1,200
	Reduction After Cut	<u>35</u> \$1,200	<u>17</u> \$ 0	<u>8</u> \$ 0	<u>10</u> \$1,200	<u>0</u> \$ 0	
D	Current	\$1,205	\$ 17	\$ 8	\$1,180	\$ 0	\$5 of Christmas Bonus cut to remain above \$1,200
	Reduction After Cut	<u>5</u> \$1,200	<u>5</u> \$ 12	<u>0</u> \$ 8	<u>0</u> \$1,180	<u>0</u> \$ 0	
		Maximum 8.5% cut to Total Monthly Retirement Benefit so long as remaining amount after cut is still above \$1,200	Cut if total still above \$1,200	Cut if total still above \$1,200	Flat 8.5% cut on Total Monthly Retirement Benefit less bonuses already eliminated so long as total is still above \$1,200	Excluded from cut calculations	

# Pensions — Effect of Benefits Freeze

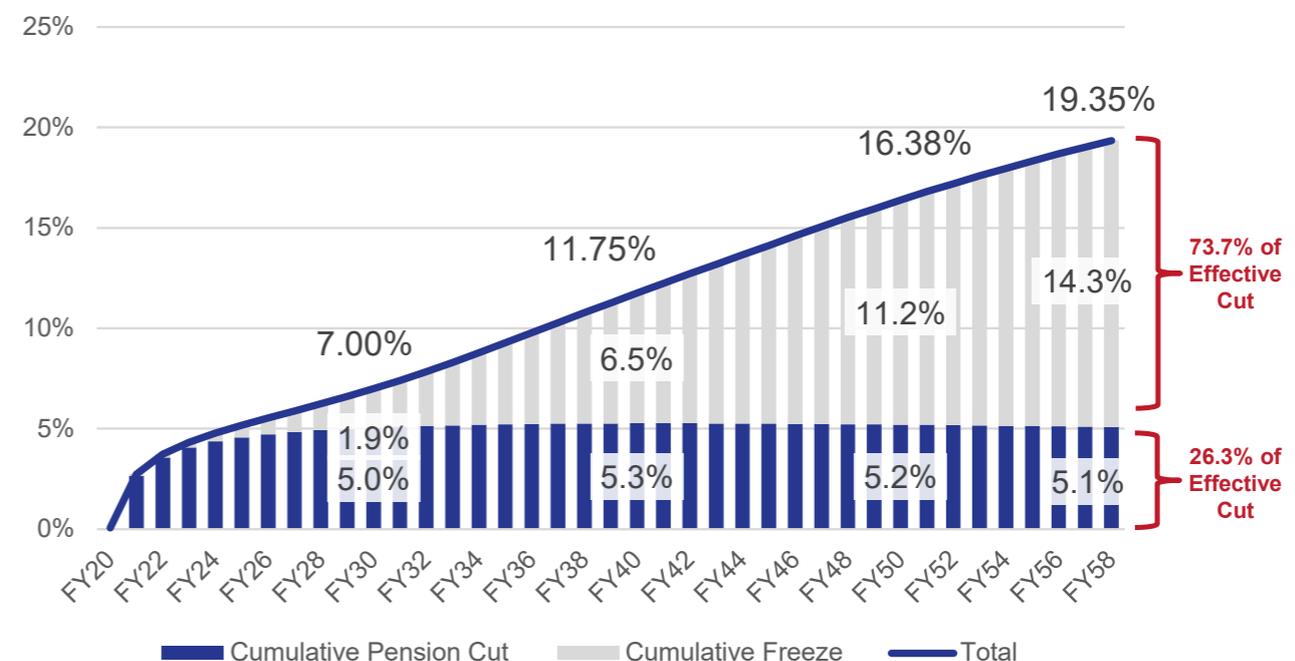
 The pension assumptions contain several downside risks

- Analysis based on data as of July 1, 2016 received from the pension systems
- Actuarial standards of practice allow for **rolling forward of data** based on standard actuarial practices and rules of thumb **but a fair amount of time has elapsed**
- Data limitations can cause significant fluctuations in the census data, including:
  - **Estimated load for obligations** for people terminated but vested in a benefit payable in the future
  - **Voluntary termination program data not available as of calc date** so these addl. costs not in the PayGo costs
  - **Gaps and missing info.** in records
  - Cash flows scaled to baseline PayGo costs. Applied to all benefits so **may produce difference when cash flows are broken into component parts** (e.g. System 2000 vs. Act 1/447).

Cumulative Nominal Effect of Total Proposed Cuts



Cumulative Nominal Effect of Total Proposed Cuts



Pre-Decisional | Privileged & Confidential Draft | Analysis Subject to Material Change

Source: FOMB, Commonwealth Fiscal Plan Risks, 17 September 2019

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# Feasibility

In the case of Detroit, Professor Peter Hammer wrote:

- “I admire the Expert Report’s effort to wrestle with the difficult question of feasibility. The Report’s definition is a useful point of departure.
- Is it likely that the City of Detroit, after the confirmation of the Plan of Adjustment, will be able to sustainably provide basic municipal services to the citizens of Detroit and to meet the obligations contemplated in the Plan without the significant probability of a default?
- In examining the Report’s analysis of feasibility, however, one is again struck by the absence of any developed theory, methodology or framework to define what “basic municipal services” are and therefore to assess whether they are sufficiently provided for in the POA.”

Source: Peter J. Hammer, Letter to Judge Rhodes, Journal of Law in Society, Volume 17, No. 1.

Thank You! 