United States: New York banking law: restructuring sovereign debt.

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New York Banking Law- Proposed Amendments Through Introduction of New Article 7 (Legislative Comment)

New York Lawmakers Proposed Introduction of a New Article 7 to Restructure Unsustainable Sovereign and Subnational Debt Effectively

In May 2021, New York lawmakers introduced a bill to amend the banking law concerning restructuring unsustainable sovereign and subnational debt ('Bill'). This amendment offers effective mechanisms to restructure unsustainable sovereign and subnational debt. This article seeks to argue that once the Bill has been passed, New York law will likely become the prevailing governing law that parties choose for their sovereign debt contracts.

Background

The current status of the rules on sovereign debt restructuring has been and is likely to remain a matter of vigorous debate as long as there are penurious governments. Sovereign debt restructuring is mainly shaped by private law, where municipal laws (predominantly English and New York laws) are at the root of the process. English and New York laws are the two most prominent governing laws that gave legal effects to sovereign debt contracts. Both jurisdictions are 'two most important jurisdictions whose law and courts are often regarded as hospitable for creditors' for sovereign debt financings.[1] As one of the predominant jurisdictions, New York law plays an essential role in the contemporary legal regime for sovereign debt restructurings. There are a significant amount of sovereign debts governed by New York law. The Bill's legislative intent is to reduce the social cost of debt crises, systemic risk to the financial system, the uncertainty of lenders, and the numbers of debt bailouts for sovereign debtors.

Comments on the Proposed Amendment Through New Article 7

The proposed Article 7 by the New York lawmakers takes a different path from the current practices of the existing legal regime for sovereign debt restructurings. The Bill will serve as a model law for parties to apply in sovereign debt restructurings. For instance, the Bill provided that an independent body referred by the New York State Senate Finance Committee would be nominated once the defaulted sovereign debtors filed a petition before the New York courts. In addition, the Bill provides the sovereign debt restructurings process certifications and notifications to the lenders. These proposed amendments provide a clear path for the parties to follow in the restructuring process.

Yet, the proposed Article 7 lacks essential details related to sovereign debt restructurings. The language used by the lawmaker for the Bill is too general. In particular, it is not clear whether the Bill is designated to fit the existing sovereign debt restructuring regime. For instance, it is not clear how the Bill engages with the current practice of the Paris Club and the International Monetary Fund. This will lead to uncertainty and ambiguity in future applications.

Unlike another predominant jurisdiction- English law, the approach was taken by the new Article 7 is broader and innovative. In particular, the Debt Relief (Developing Countries) Act

[1] Jeff King, *The Doctrine of Odious Debt in International Law- A Restatement* (Cambridge University Press 2016) 127 (hereafter King).

2010 is only applicable to heavily indebted poor country, instead of all countries. The new Article 7 is appliable to sovereign debts issued by different countries.

Future Position of New York Law in the Contemporary Sovereign Debt Restructurings Regime

Even though the Bill might lead to uncertainty for sovereign debtors and the holders of the sovereign debts, the Bill offers a systematic legal framework for parties in sovereign debt restructurings, compared with the English law. Hence, the New York law will likely become the prevailing governing law that parties choose for their sovereign debt contracts in the future.