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ALERT MEMORANDUM

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New York State Legislature Considers Sovereign Debt Restructuring Legislation

New York is currently considering three proposed laws with potential implications for sovereign debt, which seek to (i) create a comprehensive mechanism for restructuring sovereign debt; (ii) expand the champerty defense; and (iii) limit recovery on sovereign debt claims where the sovereign is participating in certain international initiatives.

All three proposals—which have not been enacted to date—have important potential ramifications since New York law governs over 50% of sovereign bonds issued worldwide. Since there is no international bankruptcy or insolvency regime for sovereigns, sovereign debt restructurings today largely rely on contractual collective action clauses (“CACs”) through which bondholders agree to be bound by a restructuring proposed by a sovereign if a specified supermajority of holders approves the proposal. CACs are included in over 95% of foreign law-governed sovereign bonds (by principal amount) and have proven to be effective in reducing the risk of “holdouts” in sovereign debt restructurings. But CACs do not completely eliminate holdout risk. Moreover, CACs are generally absent from non bonded sovereign debt instruments, which limits their ability to provide a comprehensive sovereign debt solution. Given these shortcomings and soaring sovereign debt levels following the COVID 19 pandemic, there is a renewed impetus for innovations in the sovereign debt restructuring process.

The proposed laws, which have garnered significant media attention, seek to address some of the challenges that sovereigns face when seeking to restructure their debt, including in particular the efforts of some holdout creditors to frustrate or circumvent the consensual resolution of a sovereign debt crisis. However, there are a number of legal and practical concerns that may limit their effectiveness or usefulness to sovereign debtors, and may lead to the migration of sovereign debt, including existing debt, away from New York law to laws of other jurisdictions.

Please [click here](#) to read the full alert memorandum.

If you have any questions concerning this memorandum, please feel free to contact the authors or your regular contacts at the firm.

This memorandum was intended for **Arturo Porzecanski**.

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