

Puerto Rico Overview 2021*

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Puerto Rico is undergoing important transformational changes that will continue to shape its legal, fiscal and socioeconomic landscapes entering 2021 and for the next years to come.

The Puerto Rico Financial Oversight and Management Board (“FOMB”) continues to exercise its oversight role over the Puerto Rico Government’s finances pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) enacted by U.S. Congress in 2016. The FOMB was created to provide a method for Puerto Rico to achieve fiscal responsibility and regain access to the capital markets. To achieve this end, the FOMB has certified various fiscal plans outlining measures to streamline government structure, enhance the delivery of essential services and to ease doing business in Puerto Rico. Some of these measures have been implemented, others have not. The FOMB also has final authority in the certification of budgets for Puerto Rico and has sought to certify balanced budgets since 2017. Since May, 2017, the FOMB has commenced six proceedings under Title 3 of PROMESA, which provides for a bankruptcy-like process to restructure the debts of the Commonwealth of Puerto Rico, the Puerto Rico Electric Power Authority, the Puerto Rico Highways and Transportation Authority, among others. The FOMB has certified a Plan of Adjustment restructuring the debts of COFINA and has certified a qualified modification to restructure the debts of the Government Development Bank. The FOMB has announced that it intends to file an Amended Plan of Adjustment this year, which may be considered for confirmation in the next two years.

Simultaneously, Puerto Rico is *en route* to an economic recovery and reconstruction with the more than \$60 billion appropriated to Puerto Rico by the U.S. Congress through the U.S. Stafford Act, the Community Development Block Grant Disaster Relief (CDBG-DR), among other federal programs, following the 2017 hurricanes. The recovery funds are destined to strengthen Puerto Rico’s infrastructure (including approximately \$10 billion to improve the island’s electric grid), promote affordable housing, broadband access, energy and community resiliency and foster economic development initiatives and projects.

The COVID-19 pandemic will continue to have an impact on the health system and local economy, as experienced in the rest of the world. Early 2021 Puerto Rico has seen a moderate relaxation of curfew and lockdown measures combined with a progressing vaccination process. Many businesses have mitigated the COVID-19 impact through economic relief packages provided under the U.S. CARES Act, such as the Payroll Protection Loan Program, among other federal and local relief packages.

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A new government led by Governor Pedro R. Pierluisi, elected in November 2020, aims to ensure Puerto Rico's economic and fiscal transformation with important initiatives included in his *Government Platform Plan 2020, Puerto Rico Promises*, directed to:

- *Expedite Puerto Rico's Recovery and Reconstruction Program*, paving the way for an unprecedented investment in infrastructure, resiliency projects and economic development initiatives utilizing the more than \$60 billion from federal recovery funds.
- *Accelerate the Digital Transformation of Puerto Rico*, in the public sector, by providing additional online government services and streamlined permits processes; in the private sector, promoting the expansion of broadband capacity, 5G technologies and Smart Cities capabilities.
- *Ease of Doing Business Initiatives*, aimed to facilitate the establishment and operation of businesses in Puerto Rico, including proposed reforms in the areas of labor and employment, permits and taxes, to reduce costs of doing business in Puerto Rico.
- *Leverage Puerto Rico's Important Bio-pharma and Medical Devices Manufacturing Capabilities as a U.S. Territory*, by becoming a critical supply chain provider and support for covid-19 pharmaceutical, medical device and medical supplies products manufacturing following the adopted U.S. federal policy under the *U.S. Defense Production Act* and President Joseph Biden's Executive Order 14001 from January 21, 2021 entitled "A Sustainable Public Health Supply Chain", and Executive Order 14005 from January 25, 2021 entitled, "Ensuring the Future is Made in All of America by All of America's Workers".
- *Convert Puerto Rico into an Important Regional Air Hub*, taking advantage of the U.S. Department of Transportation's waiver issued to Puerto Rico on April 29, 2020, for air cargo and passenger transfer services at international airports in Puerto Rico (restricted in many U.S. airports).
- *Promote Economic Development and Investment Promotion*, focused on three sectors:
 - o *Core Industries*: manufacturing, tourism, retail/commerce, services, real estate, telecom, health, agriculture, among others.
 - o *Strategic Industries*: aerospace, defense, renewable energy, international insurance center, international financial entities (IFE), private equity, among others.
 - o *Emergent Industries*: artificial intelligence (AI), IoT, smart cities, cybersecurity, blockchain, 3D printing, medical cannabis, esports, among others.
- *Expand the Public Private Partnerships Program (P3)*, including important public infrastructure and government services under a P3 model such as energy generation and battery storage, international regional airports, marine cruise terminals, among others.

The Puerto Rico legal landscape is also shaped by the adoption of a new Civil Code of Puerto Rico, which went into effect on November 28, 2020. The new Civil Code is the result of the first major civil code reform in more than 90 years, and it benefits from civil codes and vanguard legislation adopted in other jurisdictions with civil law tradition such as Argentina and Spain. Puerto Rico follows civil law tradition; the main difference between civil-law tradition and common-law tradition is that, in the

former, the courts resort to black-letter law (or statutory law) as the main source of authority to resolve disputes, as opposed to case law. The Civil Code is of great importance in the daily lives of individuals because it governs all aspects of civil life as part of a society. It also establishes the rules that govern all matters pertaining to private rights, including familial relationships, estate law, private property rights, contracts, obligations, torts, among others. The main objective of the reform, which took around two decades to complete, was to simplify, modernize and codify existing and new legal precepts (such as innovative legislation related to solar and wind energy and homestead rights), while eliminating certain obsolete concepts that hailed from the Spanish Civil Code of 1889.

Of particular importance is the development of the federal policy towards the tax structures of controlled foreign corporations (CFCs) doing business in Puerto Rico, many of which are within the manufacturing sector, particularly, pharmaceuticals, medical devices and biotechnology manufacturing operations. The outcome of the high-level negotiations between the Puerto Rico Government and the U.S. Treasury may lead to a comprehensive tax reform, particularly Act 154-2010, among other laws.

The current market conditions will continue to support additional mergers and acquisitions (M&A) including within the distressed debt market. Continued interest for private capital investments may be promoted by the Puerto Rico Incentives Code (Act 60-2019), the U.S. Qualified Opportunity Zone Program and other local incentives approved to attract strategic activities.

It is expected a continuation of active adversarial practice of cases litigated in both the local Puerto Rico courts and at the U.S. District Court for Puerto Rico, as a result of the complex economic and fiscal conditions, pending resolution of insurance recovery cases from the 2017 hurricanes, COVID-19 effects and generally contractual disputes. Given the significant construction that may be taking place in the next years, construction disputes are also likely to develop.

On the labor and employment side, companies continue to struggle with the covid-19 restrictions mandated by the government while managing the rules for return to work, protocols for covid-19 cases and vaccination programs.

Puerto Rico is on a path of profound transformation that is driven by a multiplicity of efforts and programs designed to attain fiscal, economic and physical infrastructure recovery. These efforts and initiatives, including new public policies and legal reforms, will certainly create new opportunities and positive economic prospects for Puerto Rico.
