

The Trend Toward Dedicated Revenue and Securitization Structures: More or Less than Meets the Eye

Presentation to Municipal Analysts of Greater New York

Bill Kannel

September 8, 2017

wkannel@mintz.com

617-348-1665

MINTZ LEVIN
Mintz Levin Cohn Ferris Glovsky and Popeo PC

Are The Benefits to Dedicated Revenue and Securitization Structures in the Municipal Context?

YES

as in corporate context there are benefits to isolating the issuer/revenue stream (securitization) and to being a secured creditor (dedicated revenue)

No guarantees that a structure will not get challenged in a highly distressed situation

- Don't be so binary
- The principle of the low hanging fruit
- How big (relatively) is the fruit?

Plus and minuses to dedicated revenue and securitization structures in the governmental unit context

- Constitutional constraints: contract impairment and taking clauses
 - "police power" exception
 - Bankruptcy is all about contract impairment
 - Concepts of "just compensation" and "adequate protection"
- Bankruptcy courts generally defer to state law for defining property interests

Plus and minuses to dedicated revenue and securitization structures in the governmental unit context

- Governmental units cannot be liquidated and the "best interests of creditors"
- Liens are generally on revenue streams not hard assets
 - Valuation issues
 - "adequate protection" challenges
- Special Revenues and Statutory Liens

PROMESA and Potential Puerto Rico Precedent

- PROMESA Title III and Chapter 9 are close but not identical
- Title III does not require insolvency. Chapter 9 does. (Good for solvent bankruptcy remote entities)
- Is Puerto Rico sui generis?

Important Legal Aspects of Dedicated Revenue Issues

- Who is your issuer?
- Is it "Bankruptcy Remote?"
 - "Bankruptcy Remote" does not mean "Bankruptcy Proof"
 - Authority to file?
 - Remote from operational risk of the originator?
 - Can its assets be recaptured?

Impact of Legal Aspects of Dedicated Revenue Structures

- Secured is better than unsecured (assuming valid, enforceable and perfected)
- Secured by a statutory lien is better than secured by a consensual lien
- Secured by special revenues (if the economics work) is best
- Puerto Rico "Wild Cards" on Statutory Liens and Special Revenues (among other things)

Questions?

Thank You!

If you have any questions please contact:

Bill Kannel

617.348.1665

BKannel@mintz.com