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112TH CONGRESS
1ST SESSION

H. R. 1798

To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling $100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2011

Mr. MACK (for himself, Mr. KING of New York, Ms. LORETTA SANCHEZ of California, Mr. CARNAHAN, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Judgment Evading Foreign States Accountability Act of 2011''.

SEC. 2. STATEMENT OF PURPOSE.

The purpose of this Act is to prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling $100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Foreign states that do business, issue securities, or borrow money in the United States, and then refuse to satisfy judgments of United States courts entered against them in connection with disputes resulting from these or other commercial activities, directly or indirectly inflict billions of dollars of damage in the United States, and undermine the credibility of the United States courts.

(2) Foreign states that engage in such behavior can infect the management of corporations and other entities that they own or control with their profligate and irresponsible habits. When negligent ethical standards permit government officials to repudiate lawful judgments, the injury to United States taxpayers is multiplied.

(3) The Republic of Argentina is a primary example of a foreign state that has incurred large debts in the United States, defaulted on those debts, and then refused to honor lawful judgments of United States and other courts ordering repayment. In 2001, Argentina defaulted on more than $81,000,000,000 in sovereign debt, the largest such default in history. In 2005, after refusing all efforts by creditors to negotiate the terms of an exchange offer, Argentina unilaterally offered lenders approximately 27 cents on the dollar in its restructuring deal, far below the international norm for sovereign debt restructurings. Argentina repudiated the debts owed to the unprecedented proportion of bondholders who rejected that offer.

(4) Argentina still owes United States bond holders more than $3,500,000,000. Overall, the default and restructuring by Argentina have cost

United States bondholders, taxpayers, and share holders more than $10,000,000,000.

(5) Argentina has the capacity to pay its external creditors. Argentina now holds more than $54,000,000,000 in reserves. Argentina chose to pay off its $9,800,000,000 debt to the International Monetary Fund in full in 2005, years before it was due, and has similarly announced an intention to pay sovereign creditors of the Paris Club, of which the United States is owed $360,000,000.

(6) United States bondholders have won numerous court rulings against Argentina relating to Argentina's default on debt owed to such bondholders and Argentina's decision to repeatedly ignore these judgments threatens the United States legal system. Despite having agreed to submit to the jurisdiction of the State of New York and to waive claims of sovereign immunity, Argentina is now contesting at least 170 lawsuits and refusing to honor 100 judgments against it, totaling more than $7,000,000,000.

(7) Argentina has demonstrated a similar disregard for claims brought by United States investors before the International Centre for Settlement of Investment Disputes (ICSID), a tribunal of the World

Bank. Argentina is the respondent in more ICSID cases than any other nation, now accounting for more than a quarter of the tribunal's caseload. It is important to note that Argentina's arguments for nonpayment have been outright rejected by both the Department of State and the ICSID. Argentina is currently receiving $5,810,000,000 from the World Bank and has requested an additional $1,630,000,000 in funding. Argentina has behaved in a manner that undermines the viability of the ICSID process, thereby alarming the worldwide investments of United States businesses that rely upon this forum for adjudication of disputes.

(8) Argentina's debts are legitimate. Any assertion that the Argentine debt now outstanding was incurred by the repressive, nondemocratic regimes that ruled Argentina in the late 1970s and early 1980s is inaccurate. The bonds currently held by United States creditors were not incurred by nondemocratic regimes; rather, they were issued by democratically elected Argentine governments.

(9) While it is true that the Argentine military junta—which caused tremendous suffering during a tyrannical 7-year reign—borrowed from foreign banks, 96 percent of that debt was refinanced in

1993 when Argentina's ''Brady Plan'' restructuring was completed. That restructuring was underwritten by the United States Government. Prior to the Brady Plan restructuring, Argentina had undergone two ''major restructurings'' of its foreign debt—the first in 1985, and the second in 1987.

(10) None of the debt now held by United States creditors dates from the days of the Argentine military junta. Further, even if it were fair to characterize the debt issued in the 1993 Brady Plan restructuring as somehow derivative of junta-era debt—a notion that maligns the United States policymakers who approved and underwrote the Brady Plan on behalf of the American people—only five percent of the defaulted debt now held by United States creditors was issued during or before 1993. Ninety-five percent of the defaulted debt held by United States creditors was incurred after 1993 by freely elected Argentine governmental officials and has no relationship to the military junta.

(11) Argentina's defaults have raised the costs of borrowing for both the public and private sectors. If the country took action to remediate its debts, its annual interest expense would certainly decline. Argentina's defaults have discouraged foreign direct in-

vestment. One study from 2007 states that Argentina loses over $6,000,000,000 in foreign direct investment every year as a result of its default and debt repudiation and the resultant risk profile.

(12) An October 2010 evaluation report by the Financial Action Task Force (FATF), an intergovernmental body that analyzes financial systems for criminal activity, gave Argentina the most negative evaluation of any G–20 nation. FATF evaluated Argentina on 49 financial standards, of which Argentina failed to meet 47 out of the 49 standards. Argentina was given an original timeline of three months, then an additional ten months to demonstrate compliance to the standards or face being blacklisted due to financial corruption and deficiencies in combating financing of terrorism (CFT) and anti-money laundering (AML) systems.

(13) Drawing further conclusions, FATF reported several shortcomings in Argentina's financial sector, most notably corruption and the poor enforcement of Argentine financial laws. The lack of enforcement has prompted wide-spread money laundering in Argentina's financial sector creating an environment that puts Argentina at risk of becoming

a hub for terrorism and drug trafficking in the Western Hemisphere.

(14) Many persons in the United States are unaware of Argentina's irresponsible behavior and disregard for the rule of law. Further, United States citizens continue to invest in, lend to, and do business with Argentina and are unfamiliar with the associated risks.

(15) Those who are injured as a result of this conduct often have little or no recourse. Judgment evading foreign states and their state owned corporations enjoy a safe haven within their national borders, and this fact often presents an insurmountable obstacle to recovery for those who are injured by the behavior of those states.

(16) The absence of a remedy for defaults by such foreign states undermines nations that badly need to access capital from foreign lenders, with disproportionate harm falling on responsible and democratic nations. By undermining confidence in the secondary market for sovereign debt, judgment evading foreign states significantly increase the risk that primary lending to less-advantaged nations will be curtailed, depriving deserving sovereign borrowers of access to the international capital markets.

(17) Action by the United States Government to combat this growing problem must include measures that both protect against the irresponsible conduct of judgment evading foreign states and their state owned corporations, and motivate such states and corporations to raise their standards of behavior.

(18) An effective means of achieving this important objective is to deprive judgment evading foreign states and their state owned corporations of the privilege of issuing securities or borrowing in the United States, and requiring that warnings of their irresponsible behavior be given to persons in the United States who are contemplating investing in, lending to, or doing business with such states and businesses, until those states demonstrate that such measures are no longer necessary.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE.—The term ''agency or instrumentality of a foreign state'' has the meaning given that term in section 1603(b) of title 28, United States Code.

(2) FINAL JUDGMENT.—The term ''final judgment'' means any judgment of a United States dis-

trict court, the Court of International Trade, or the court of any State, that is no longer eligible to be appealed to any court in the United States.

(3) FOREIGN STATE.—The term ''foreign state'' has the meaning given that term in section 1603(a) of title 28, United States Code, except that it does not include an agency or instrumentality of a foreign state.

(4) INTERNATIONAL ORGANIZATION.—The term ''international organization'' means an entity designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act (22 U.S.C. 288 et seq.).

(5) JUDGMENT EVADING FOREIGN STATE.—The term ''judgment evading foreign state'' means any foreign state that—

(A) has one or more judgments entered against it by any United States district court, the Court of International Trade, or the court of any State, the combined amount of which judgments exceeds $100,000,000;

(B) fails to satisfy in full any such judgment for a period of more than two years after the judgment becomes a final judgment, regardless of whether such judgment became a final judgment before the date of the enactment of this Act; and

(C) is not a foreign state eligible for—

(i) financing through the International Development Association but not from the International Bank for Reconstruction and Development; and

(ii) debt relief under the Enhanced HIPC Initiative (as defined in section 1625(e)(3) of the International Financial Institutions Act) or under the Multilateral Debt Relief Initiative.

(6) STATE OWNED CORPORATION OF A JUDGMENT EVADING FOREIGN STATE.—The term ''state owned corporation of a judgment evading foreign state'' means any corporation or entity, other than a natural person—

(A) that is an agency or instrumentality of a foreign state that is a judgment evading foreign state; or

(B) a majority of the shares or other ownership interest of which is held, either directly or indirectly, by a judgment evading foreign state or by an agency or instrumentality of a foreign state that is a judgment evading foreign state.

(7) STATE.—The term ‘‘State’’ means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 5. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to advocate within the governing bodies of international organizations, international financial institutions such as the World Bank and the International Monetary Fund, and other foreign policy settings for the full compensation and fair treatment of United States taxpayers in whose favor judgments have been awarded by the United States courts;

(2) to seek to protect the economic interests of such taxpayers and other persons and of nations that benefit from a reliable flow of foreign capital by—

(A) restricting the access to the United States capital markets of judgment evading foreign states and their state owned corporations;

(B) requiring that such persons be warned of the dangers of investing in, lending to, or doing business with such states and state owned corporations; and

(C) call on the World Bank, the International Monetary Fund, and other international financial institutions to vote against providing funding or foreign capital to judgment evading foreign states; and

(3) to further solidify the authority of the United States courts by preventing judgment evading foreign states from willfully disregarding the judgments of those courts.

SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND INVESTORS.

(a) MEASURES WITH RESPECT TO JUDGMENT EVADING FOREIGN STATES.—The Securities and Exchange Commission shall—

(1) take all necessary measures to deny every judgment evading foreign state access to United States capital markets, including the ability, directly or indirectly, to borrow money or sell securities in the United States; and

(2) require that all periodic filings made by the judgment evading foreign state with the Securities and Exchange Commission under the securities laws bear the following legend prominently on the cover

page: "WARNING: THIS REPORT IS SUBMITTED BY A FOREIGN STATE THAT HAS BEEN DETERMINED BY THE UNITED STATES DEPARTMENT OF THE TREASURY TO BE A JUDGMENT EVADING FOREIGN STATE BASED UPON ITS FAILURE TO SATISFY OUTSTANDING UNITED STATES COURT JUDGMENTS.".

(b) MEASURES WITH RESPECT TO STATE OWNED CORPORATIONS OF JUDGMENT EVADING FOREIGN STATES.—If any judgment evading foreign state remains in default on any final judgment for more than three years, irrespective of whether such judgment became final before the date of the enactment of this Act, the Securities and Exchange Commission shall—

(1) take all necessary measures to deny any state owned corporation of a judgment evading foreign state access to the United States capital markets, including the ability to issue debt, equity or other securities, or borrow money, unless the proceeds of such borrowing of securities issuance are to be used, in the first instance, to satisfy in full all final judgment against its parent judgment evading foreign state; and

(2) require that all periodic filings made by each state owned corporation of a judgment evading foreign state with the Securities and Exchange Commission under the securities laws bear the following legend prominently on the cover page: ‘‘WARNING: THIS REPORT IS SUBMITTED BY A STATE OWNED CORPORATION OF A FOREIGN STATE THAT HAS BEEN DETERMINED BY THE DEPARTMENT OF THE TREASURY TO BE A JUDGMENT EVADING FOREIGN STATE BASED UPON ITS FAILURE TO SATISFY OUTSTANDING UNITED STATES COURT JUDGMENTS.’’.

SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDGMENT EVADING FOREIGN STATES.

(a) BILATERAL ASSISTANCE.—Whenever any proposal is made to a department, agency, or other instrumentality of the United States Government to extend aid, a loan, or any other form of assistance to a judgment evading foreign state, the head of the department, agency, or other instrumentality may consider the proposal only if it bears prominently the legend described in subsection (c).

(b) MULTILATERAL ASSISTANCE.—Whenever any proposal is made to an international organization to extend aid, a loan, or any other form of assistance to a judgment evading foreign state, the Secretary of State shall provide prompt notice of such proposal to the Congress. Such notice shall bear prominently the legend described in subsection (c).

(c) LEGEND DESCRIBED.—The legend of a proposal referred to in subsection (a) and the legend of a notice referred to in subsection (b) is the following: ''REQUEST FOR GRANT–IN–AID OR LOAN BY A JUDGMENT EVADING FOREIGN STATE.''.

SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL MEASURES.

(a) ANNUAL REPORTS TO CONGRESS.—Not later than January 31 of each year, the Secretary of the Treasury shall provide a report, in writing, to the Congress identifying each judgment evading foreign state, and, for each such judgment evading foreign state—

(1) quantifying the impact on the United States economy, and cost to United States taxpayers, of the unsatisfied final judgments outstanding against the judgment evading foreign state; and

(2) describing all measures that the Secretary of the Treasury and the Securities and Exchange Commission have taken in the preceding year to carry out this Act.

(b) CONSIDERATION OF DOCUMENTS AND OTHER INFORMATION.—The Secretary of the Treasury may consider documents and other information received from third parties and from judgment evading foreign states in preparing each report under subsection (a).

(c) TERMINATION OF DESIGNATION.—At such time as the Secretary of the Treasury determines that any judgment evading foreign state no longer qualifies as a judgment evading foreign state, the Secretary shall so certify to the Congress no later than in the next annual report to Congress under subsection (a), at which time the requirements and prohibitions under this Act shall no longer apply to such former judgment evading foreign state, or to any state owned corporation of such judgment avoiding foreign state. The Secretary may consider documents and other information received from third parties and from the judgment evading foreign state in making this determination.

(d) OTHER PUBLIC REPORTS TO INCLUDE INFORMATION ABOUT JUDGMENT EVADING FOREIGN STATES.—The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce shall each reference the findings of the Secretary of the Treasury from the Secretary's most recent annual report to Congress under subsection (a) relating to the unsatisfied final judgments outstanding against the judgment evading foreign state in every report prepared for the public relating to the country risk or investment climate of such judgment evading foreign state.

(e) ADDITIONAL MEASURES.—The Secretary of the Treasury shall recommend to the Congress in writing additional measures to carry out the purposes of this Act.

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