

April 20, 2016

Legal Update

Governor Approves Reform of Subsidies and Payments of Electricity, Water and Sewer Services – Limitations on Use of Credits Enacted

On April 7, 2016, the Governor of Puerto Rico, Hon. Alejandro García Padilla, approved Act No. 22-2016, known as the “Electricity, Water and Sewer Services Subsidies and Overdue Payments Reform Act” (“Act No. 22”), which modifies subsidies and debt payments of electricity, water and sewer services in the industrial and tourism sectors, churches and social welfare organizations, Nutritional Assistance Program (“PAN” for its Spanish acronym) and Low Income Home Energy Assistance Program (“LIHEAP”) beneficiaries, public housing projects, and subscribers with electrical equipment necessary to sustain life.

Act No. 22, while seeking to improve the financial condition of both the Puerto Rico Energy Power Authority (“PREPA”) and the Puerto Rico Aqueducts and Sewer Authority (“PRASA”), limits flexibility in the use of certain tax credits, particularly to grantees of industrial and tourism tax incentives.

Industrial Sector

Act No. 22 amends Act No. 73-2008 as amended, known as the “Economic Incentives Act for the Development of Puerto Rico” (“Act No. 73”) in order to provide that:

1. No **existing** tax exempt business that holds a grant under Act No. 73 may apply the tax credit granted for Investment in Research and Development, Clinical Tests, Toxicological Tests, Infrastructure, Renewable Energy, or Intangible Property against the operational costs related to electric energy, water and/or sewer services, unless there is a certification from the Treasury Department certifying that it has the necessary funds to cover such operational costs.
2. No **new** grant or negotiation of a grant under Act No. 73 shall include or contemplate a tax credit to reduce the electric power cost.
3. No **new** grant or renegotiation of a grant under Act No. 73 shall include or contemplate a tax credit for investment in strategic projects.

Such credits continue to be transferrable pursuant to the provisions of Act No. 73.

Tourism Sector

Act No. 22 amends Act No. 101 of July 9, 1985, as amended, in order to provide that:

1. Hotels, condo hotels and *paradores* that are operating and have qualified to receive a monthly credit on its electricity bill on or before December 31st, 2016, shall continue to receive such credit for 10 years beginning on December 31st, 2016, which will be determined by the cost of the residential kilowatt per hour during the prior billing month.



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2. From January 1st, 2017 onward, PREPA shall grant hotels, condo hotels and *paradores* a monthly credit on their electricity bill for 5 years, which will be determined by the cost of the residential kilowatt per hour during the prior billing month.
3. The concessionaire shall have at least 15 rooms and its facilities shall be operated under the rules of the Puerto Rico Tourism Company.
4. The credit to hotels and *paradores* shall only be applicable to their operations, and subsidiary facilities such as restaurants, bars, salons, casinos, and other recreational areas which shall not exceed 1,000 sq. feet. Any areas in excess of the 1,000 sq. feet shall have a separate meter and will not be subject to the credit.

Churches and Social Welfare Organizations

Churches and Social Welfare Organizations shall be charged the full residential rate for water, sewer services and electricity exclusively in the place of worship, excluding commercial areas.

Public Housing Projects

PREPA and PRASA shall establish a fixed rate for clients who reside in public housing projects under the ownership of the Public Housing Administration, up to a maximum consumption, which will depend on the amount of bedrooms. Any excess shall be charged at the residential rate.

Agencies and Public Corporations

Agencies and public corporations are mandated to include in their annual budget allocations for the payment of water, sewer and electricity services, and for the debt repayment plans that they shall subscribe with PREPA and PRASA.

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