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## EMPLOYEE BENEFITS ALERT

### ***Reminder: Sponsors of Qualified Retirement Plans Required to File with Treasury Plan Restatements and Certain Specific Amendments to Meet New Tax Qualification Requirements***

As indicated in our employee benefits alerts of [December 13, 2011](#) and [November 29, 2012](#), pursuant to the P.R. Treasury Department's Circular Letters 11-10 and 12-09, sponsors of qualified retirement plans are required to adopt certain specific amendments to meet the new tax qualification requirements imposed by the P.R. Internal Revenue Code of 2011, as amended (the "2011 Code"). Amendments must be adopted no later than June 30, 2013 (for plans using as plan year a calendar year) or the last day of the first plan year beginning on or after January 1, 2012 (for plans using as a plan year a year other than a calendar year).

The circular letters also require that such amendments be submitted with Puerto Rico Treasury Department ("P.R. Treasury") for tax qualification no later than September 30, 2013 or the due date to file the income tax return of the employer (including extensions) for the first taxable year commencing after December 31, 2011.

#### Subsequent Restatements and Qualification Amendments

Circular Letter 11-10 ("CL 11-10") also requires that amended plans be re-qualified with the P.R. Treasury when: (i) restated; or (ii) partially amended through a separate amendment, to modify those plan provisions that may have a significant impact on its compliance with the qualification requirements of Section 1081.01 (a) of the 2011 Code (the "Qualification Amendments") (items (i) and (ii) are collectively referred to as the "Changes").

The Changes must be filed with P.R. Treasury in order to secure their qualified status on or before the last day provided to file the income tax return of the employer who maintains or participates in the plan (including any extensions granted for filing such return) for the employer's taxable year during which the plan year, in which the Changes become effective, ended.

For these purposes, CL 11-10 identifies the following as Qualification Amendments requiring a new or updated plan determination letter from the P.R. Treasury:

1. Amendments to account for future changes in the qualification requirements of Section 1081.01 (a) of the 2011 Code.
2. Changes to the eligibility requirements for participation in the plan applicable to the P.R. plan participants.

3. Changes to the formula for calculation of benefits under the plan or the distribution of contributions to the plan among the accounts of the P.R. participants (the “allocation formula”).
4. To add or remove participating employers in the plan that employs P.R. participants.
5. To account for changes in the application or correction of the no-discrimination tests of Sections 1081.01 (a)(3), 1081.01 (a)(4) or 1081.01 (d)(3) of the 2011 Code.
6. To grant P.R. participants credit for the years of service with another employer for purposes of plan participation, or the calculation of benefits or plan contributions.
7. The termination of plan contributions.
8. The merger, freezing or termination of the plan.
9. The substitution of the plan administrator, the trustee of the trust of the plan or the paying agent of benefits under the plan to the P.R. participants.
10. The substitution of the plan sponsor of a prototype or master plan adopted by the plan.

If you have any questions or would like our assistance regarding this matter, you may contact any of the following members of our Employee Benefits Practice Team:

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