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## EMPLOYEE BENEFITS ALERT

### ***Post-Windsor Amendments to Puerto Rico Qualified Plans***

On April 4, 2014, new guidance was issued by the U.S. Internal Revenue Service ("IRS") in IRS Notice 2014-19 regarding the application of the U.S. Supreme Court decision in United States v. Windsor, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013), which suggests that retirement plans failing to recognize same-sex spouses must be amended to be in compliance with the U.S. Supreme Court decision. For those plans qualified only under the Puerto Rico Internal Revenue Code ("PR Plans") amendments should be made **on or before December 31, 2014**. In the case of "dual qualified plans" (PR Plans also qualified under the U.S. Internal Revenue Code of 1986, as amended ("US Code")), the applicable deadline is the later of December 31, 2014, or the date provided under IRS Rev. Proc. 2007-44 Section 5.05. For more information on the Windsor decision and earlier U.S. official guidance on same-sex marriages, please refer to our [Employee Benefits Alert of October 8, 2013](#).

IRS Notice 2014-19 provides, among other things, that a retirement plan will fail to satisfy the US Code qualification requirements that apply with respect to married participants if, for purposes of those requirements, the plan does not recognize the same-sex spouse of a plan participant as of June 26, 2013. Many of the qualification rules of the US Code with respect to married participants, such as survivor annuity rules under US Code Section 401(a)(11) and qualified domestic relations orders under US Code Section 414(p), apply to PR Plans by way of the parallel provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). PR Plans must comply with the applicable ERISA provisions to retain their qualified status under the provisions of the Puerto Rico Internal Revenue Code of 2011, as amended. Therefore, the guidance issued by the IRS on these areas must be followed in the administration of PR Plans in order to comply with the provisions of ERISA Title I, despite the Commonwealth of Puerto Rico's law to exclusively recognize or validate opposite-sex marriages.

In view of the foregoing, clients sponsoring or participating in PR Plans are advised to review such plans to determine whether an amendment is necessary to properly reflect the outcome of Windsor as of June 26, 2013. Furthermore, administrators of PR Plans should review their PR Plans' operational forms and procedures for purposes of recognizing same-sex marriages with respect to ERISA matters. PR Plans that are consistent with the outcome of Windsor and the IRS' guidance may benefit from the adoption of a clarifying amendment or resolution for purposes of plan administration.

If you have any questions or comments regarding the above, or would like to receive specific advice on this matter, you may contact any of the attorneys listed below, members of our Employee Benefits Practice Team.

Yamary González	787.250.5687	<a href="mailto:yg@mcvpr.com">yg@mcvpr.com</a>
Angel S. Ruiz Rodríguez	787.250.2602	<a href="mailto:asr@mcvpr.com">asr@mcvpr.com</a>
Lillian Toro Mojica	787.250.2608	<a href="mailto:ltm@mcvpr.com">ltm@mcvpr.com</a>
Leyla González	787.250.5696	<a href="mailto:lgi@mcvpr.com">lgi@mcvpr.com</a>
Mayleen Santiago	787.250.2616	<a href="mailto:msg@mcvpr.com">msg@mcvpr.com</a>

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