

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1798
OFFERED BY MR. MACK OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Judgment Evading
3 Foreign States Accountability Act of 2012”.

4 SEC. 2. STATEMENT OF PURPOSE.

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

14 SEC. 3. FINDINGS.

15 Congress finds the following:

16 (1) Foreign states that do business, issue secu-
17 rities, or borrow money in the United States, and
18 then refuse to satisfy judgments of United States

1 courts entered against them in connection with dis-
2 putes resulting from these or other commercial ac-
3 tivities, directly or indirectly inflict billions of dollars
4 of damage in the United States, and undermine the
5 credibility of the United States courts.

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

13 (3) The Republic of Argentina is a primary ex-
14 ample of a foreign state that has incurred large
15 debts in the United States, defaulted on those debts,
16 and then refused to honor lawful judgments of
17 United States and other courts ordering repayment.
18 In 2001, Argentina defaulted on more than
19 \$81,000,000,000 in sovereign debt, the largest such
20 default in history. In 2005, after refusing all efforts
21 by creditors to negotiate the terms of an exchange
22 offer, Argentina unilaterally offered lenders approxi-
23 mately 27 cents on the dollar in its restructuring
24 deal, far below the international norm for sovereign
25 debt restructurings. Argentina repudiated the debts

1 owed to the unprecedented proportion of bondholders
2 who rejected that offer.

3 (4) Argentina still owes United States bond
4 holders more than \$3,500,000,000. Overall, the de-
5 fault and restructuring by Argentina have cost
6 United States bondholders, taxpayers, and share
7 holders more than \$10,000,000,000.

8 (5) Argentina has the capacity to pay its exter-
9 nal creditors. Argentina now holds more than
10 \$45,000,000,000 in reserves. Argentina chose to pay
11 off its \$9,800,000,000 debt to the International
12 Monetary Fund in full in 2005, years before it was
13 due, and has similarly announced an intention to
14 pay sovereign creditors of the Paris Club, of which
15 the United States is owed \$360,000,000.

16 (6) United States bondholders have won numer-
17 ous court rulings against Argentina relating to Ar-
18 gentina's default on debt owed to such bondholders
19 and Argentina's decision to repeatedly ignore these
20 judgments threatens the United States legal system.
21 Despite having agreed to submit to the jurisdiction
22 of the State of New York and to waive claims of sov-
23 ereign immunity, Argentina contested at least 151
24 lawsuits and has refused to honor 116 judgments
25 against it, totaling more than \$6,000,000,000.

1 (7) Argentina has demonstrated a similar dis-
2 regard for arbitral awards granted to United States
3 investors by the International Centre for Settlement
4 of Investment Disputes (ICSID), a tribunal of the
5 World Bank. Although Argentina was allocated
6 \$3,300,000,000 for its 2010-2012 Country Strategy
7 Partnership, and currently has \$5,500,000,000 in
8 loans and credits outstanding from the World Bank,
9 Argentina has consistently defied the decisions of
10 this World Bank tribunal. Argentina is the respon-
11 dent in more ICSID cases than any other G-20 na-
12 tion, accounting for more than 66 percent of such
13 cases. It is important to note that Argentina's argu-
14 ments for nonpayment of ICSID awards have been
15 outright rejected by both the Department of State
16 and the ICSID. Argentina's behavior undermines the
17 viability of the ICSID process, thereby harming the
18 foreign investments of United States businesses that
19 rely upon this forum for adjudication of disputes.

20 (8) Argentina's debts are legitimate. Although
21 Argentine government officials have asserted that
22 the Argentine debt now outstanding was incurred by
23 the repressive, nondemocratic regimes that ruled Ar-
24 gentina in the late 1970s and early 1980s, this is in-
25 accurate. All the bonds currently held by United

1 States creditors were issued by democratically elect-
2 ed Argentine governments, starting in 1993.

3 (9) Argentina's defaults have raised the costs of
4 borrowing for both the public and private sectors. If
5 the country took action to remediate its debts, its
6 annual interest expense would certainly decline. Ar-
7 gentina's defaults have discouraged foreign direct in-
8 vestment. One study from 2007 states that Argen-
9 tina loses over \$6,000,000,000 in foreign direct in-
10 vestment every year as a result of its default and
11 debt repudiation and the resultant risk profile.

12 (10) An October 2010 evaluation report by the
13 Financial Action Task Force (FATF), an intergov-
14 ernmental body that sets standards for safeguarding
15 the international financial system from money-laun-
16 dering and terrorist financing, gave Argentina the
17 most negative evaluation of any G-20 nation. FATF
18 evaluated Argentina on 49 financial standards, and
19 Argentina failed to fully comply with 47 of these. As
20 of October 2012, Argentina is still included in
21 FATF's list of "High-risk and non-cooperative juris-
22 dictions" because of strategic deficiencies in its anti-
23 money laundering and anti-terrorist financing re-
24 gime.

1 (11) Many persons in the United States are un-
2 aware of Argentina's irresponsible behavior and dis-
3 regard for the rule of law. Further, United States
4 citizens continue to invest in, lend to, and do busi-
5 ness with Argentina and are unfamiliar with the as-
6 sociated risks.

7 (12) Those who are injured as a result of this
8 conduct often have little or no recourse. Judgment
9 evading foreign states and their state owned cor-
10 porations enjoy a safe haven within their national
11 borders, and this fact often presents an insurmount-
12 able obstacle to recovery for those who are injured
13 by the behavior of those states.

14 (13) The absence of a remedy for defaults by
15 such foreign states undermines nations that badly
16 need to access capital from foreign lenders, with dis-
17 proportionate harm falling on responsible and demo-
18 cratic nations. By undermining confidence in the
19 secondary market for sovereign debt, judgment evad-
20 ing foreign states significantly increase the risk that
21 primary lending to less-advantaged nations will be
22 curtailed, depriving deserving sovereign borrowers of
23 access to the international capital markets.

24 (14) Action by the United States Government
25 to combat this growing problem must include meas-

1 ures that both protect against the irresponsible con-
2 duct of judgment evading foreign states and their
3 state owned corporations, and motivate such states
4 and corporations to raise their standards of behav-
5 ior.

6 (15) An effective means of achieving this impor-
7 tant objective is to deprive judgment evading foreign
8 states and their state owned corporations of the
9 privilege of issuing securities or borrowing in the
10 United States, and requiring that warnings of their
11 irresponsible behavior be given to persons in the
12 United States who are contemplating investing in,
13 lending to, or doing business with such states and
14 businesses, until those states demonstrate that such
15 measures are no longer necessary.

16 **SEC. 4. DEFINITIONS.**

17 For purposes of this Act:

18 (1) AGENCY OR INSTRUMENTALITY OF A FOR-
19 EIGN STATE.—The term “agency or instrumentality
20 of a foreign state” has the meaning given that term
21 in section 1603(b) of title 28, United States Code.

22 (2) FINAL JUDGMENT.—The term “final judg-
23 ment” means any judgment of a United States dis-
24 trict court, the Court of International Trade, or the

1 court of any State, that is no longer eligible to be
2 appealed to any court in the United States.

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

8 (4) INTERNATIONAL ORGANIZATION.—The term
9 “international organization” means an entity des-
10 ignated by the President as being entitled to enjoy
11 the privileges, exemptions, and immunities provided
12 by the International Organizations Immunities Act
13 (22 U.S.C. 288 et seq.).

14 (5) JUDGMENT EVADING FOREIGN STATE.—
15 The term “judgment evading foreign state” means
16 any foreign state that—

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

22 (B) fails to satisfy in full any such judg-
23 ment for a period of more than two years after
24 the judgment becomes a final judgment, regard-
25 less of whether such judgment became a final

1 judgment before the date of the enactment of
2 this Act; and

3 (C) is not a foreign state eligible for—

4 (i) financing through the Inter-
5 national Development Association but not
6 from the International Bank for Recon-
7 struction and Development; and

8 (ii) debt relief under the Enhanced
9 HIPC Initiative (as defined in section
10 1625(e)(3) of the International Financial
11 Institutions Act) or under the Multilateral
12 Debt Relief Initiative.

13 (6) STATE OWNED CORPORATION OF A JUDG-
14 MENT EVADING FOREIGN STATE.—The term “state
15 owned corporation of a judgment evading foreign
16 state” means any corporation or entity, other than
17 a natural person—

18 (A) that is an agency or instrumentality of
19 a foreign state that is a judgment evading for-
20 eign state; or

21 (B) a majority of the shares or other own-
22 ership interest of which is held, either directly
23 or indirectly, by a judgment evading foreign
24 state or by an agency or instrumentality of a

1 foreign state that is a judgment evading foreign
2 state.

3 (7) STATE.—The term “State” means each of
4 the several States, the District of Columbia, and any
5 commonwealth, territory, or possession of the United
6 States.

7 **SEC. 5. STATEMENT OF POLICY.**

8 It shall be the policy of the United States—

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

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

20 (A) restricting the access to the United
21 States capital markets of judgment evading for-
22 eign states and their state owned corporations;

23 (B) requiring that such persons be warned
24 of the dangers of investing in, lending to, or

1 doing business with such states and state owned
2 corporations; and

3 (C) call on the World Bank, the Inter-
4 national Monetary Fund, and other inter-
5 national financial institutions to vote against
6 providing funding or foreign capital to judg-
7 ment evading foreign states; and

8 (3) to further solidify the authority of the
9 United States courts by preventing judgment evad-
10 ing foreign states from willfully disregarding the
11 judgments of those courts.

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

14 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-
15 ING FOREIGN STATES.—The Securities and Exchange
16 Commission shall—

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

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

1 page: “WARNING: THIS REPORT IS SUB-
2 MITTED BY A FOREIGN STATE THAT HAS
3 BEEN DETERMINED BY THE UNITED
4 STATES DEPARTMENT OF THE TREASURY
5 TO BE A JUDGMENT EVADING FOREIGN
6 STATE BASED UPON ITS FAILURE TO SAT-
7 ISFY OUTSTANDING UNITED STATES
8 COURT JUDGMENTS.”.

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

16 (1) take all necessary measures to deny any
17 state owned corporation of a judgment evading for-
18 eign state access to the United States capital mar-
19 kets, including the ability to issue debt, equity or
20 other securities, or borrow money, unless the pro-
21 ceeds of such borrowing of securities issuance are to
22 be used, in the first instance, to satisfy in full all
23 final judgment against its parent judgment evading
24 foreign state; and

1 (2) require that all periodic filings made by
2 each state owned corporation of a judgment evading
3 foreign state with the Securities and Exchange Com-
4 mission under the securities laws bear the following
5 legend prominently on the cover page: “WARNING:
6 THIS REPORT IS SUBMITTED BY A STATE
7 OWNED CORPORATION OF A FOREIGN
8 STATE THAT HAS BEEN DETERMINED BY
9 THE DEPARTMENT OF THE TREASURY TO
10 BE A JUDGMENT EVADING FOREIGN STATE
11 BASED UPON ITS FAILURE TO SATISFY
12 OUTSTANDING UNITED STATES COURT
13 JUDGMENTS.”.

14 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**
15 **MENT EVADING FOREIGN STATES.**

16 (a) **BILATERAL ASSISTANCE.**—Whenever any pro-
17 posal is made to a department, agency, or other instru-
18 mentality of the United States Government to extend aid,
19 a loan, or any other form of assistance to a judgment
20 evading foreign state, the head of the department, agency,
21 or other instrumentality may consider the proposal only
22 if it bears prominently the legend described in subsection
23 (c).

24 (b) **MULTILATERAL ASSISTANCE.**—Whenever any
25 proposal is made to an international organization to ex-

1 tend aid, a loan, or any other form of assistance to a judg-
2 ment evading foreign state, the Secretary of State shall
3 provide prompt notice of such proposal to the Congress.
4 Such notice shall bear prominently the legend described
5 in subsection (c).

6 (c) LEGEND DESCRIBED.—The legend of a proposal
7 referred to in subsection (a) and the legend of a notice
8 referred to in subsection (b) is the following: “REQUEST
9 FOR GRANT-IN-AID OR LOAN BY A JUDGMENT
10 EVADING FOREIGN STATE.”.

11 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**
12 **MEASURES.**

13 (a) ANNUAL REPORTS TO CONGRESS.—Not later
14 than January 31 of each year, the Secretary of the Treas-
15 ury shall provide a report, in writing, to the Congress
16 identifying each judgment evading foreign state, and, for
17 each such judgment evading foreign state—

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

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

1 (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-
2 FORMATION.—The Secretary of the Treasury may con-
3 sider documents and other information received from third
4 parties and from judgment evading foreign states in pre-
5 paring each report under subsection (a).

6 (c) TERMINATION OF DESIGNATION.—At such time
7 as the Secretary of the Treasury determines that any
8 judgment evading foreign state no longer qualifies as a
9 judgment evading foreign state, the Secretary shall so cer-
10 tify to the Congress no later than in the next annual re-
11 port to Congress under subsection (a), at which time the
12 requirements and prohibitions under this Act shall no
13 longer apply to such former judgment evading foreign
14 state, or to any state owned corporation of such judgment
15 avoiding foreign state. The Secretary may consider docu-
16 ments and other information received from third parties
17 and from the judgment evading foreign state in making
18 this determination.

19 (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-
20 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—
21 The Secretary of State, the Secretary of the Treasury, and
22 the Secretary of Commerce shall each reference the find-
23 ings of the Secretary of the Treasury from the Secretary's
24 most recent annual report to Congress under subsection
25 (a) relating to the unsatisfied final judgments outstanding

1 against the judgment evading foreign state in every report
2 prepared for the public relating to the country risk or in-
3 vestment climate of such judgment evading foreign state.

4 (e) ADDITIONAL MEASURES.—The Secretary of the
5 Treasury shall recommend to the Congress in writing ad-
6 ditional measures to carry out the purposes of this Act.

