

**HEAVILY INDEBTED POOR COUNTRIES (LIMITATION ON DEBT RECOVERY)**  
**BILL 2012**

**EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon W.E. Teare, MHK.*

**1. Introduction**

- 1.1 These explanatory notes relate to the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012. They have been prepared by the Treasury in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 1.2 The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

**2. Summary and Background**

- 2.1 The enhanced Heavily Indebted Poor Countries Initiative ("the Initiative") is an international initiative to provide debt relief to heavily indebted low income countries. Under the Initiative, the International Monetary Fund ("the IMF") and World Bank calculate the proportionate reduction required in the country's external debts in order to return them to 150% of the country's annual exports. This is the level of debt that is considered to be sustainable. All creditors (whether multilateral, bilateral or commercial) are expected to provide the proportionate reduction that will achieve this. This Bill will, when enacted, prevent the courts of the Isle of Man from being used to enforce in full, the debts of countries to which the governments of other countries, multilateral lenders and commercial creditors have provided relief under the Initiative, to achieve sustainable debt levels.

The latest World Bank figures (to 24 January 2012) currently identify 39 countries as potentially eligible to receive debt relief under the Initiative.

- 2.2 While many creditors reduce their debts in accordance with the Initiative, some creditors have instead sought to recover the full value of the debt plus accumulated interest and any associated charges owed to them. Repayment of these creditors diverts the resources provided through debt relief, which are intended to support development and poverty reduction in the country.
- 2.3 The Bill addresses this by preventing creditors from recovering an amount in excess of that consistent with the Initiative. It also promotes the negotiated settlement of these debts on terms compatible with the Initiative by excluding from the scope of the legislation debts where the HIPC government does not offer to settle on such terms.

## Countries eligible for the HIPC Initiative

<b>Completion Point<sup>1</sup> (32 countries)</b>	<b>Decision Point<sup>2</sup> (4 countries)</b>	<b>Pre-Decision Point<sup>3</sup> (3 countries)</b>
Afghanistan	Chad	Eritrea
Benin	Comoros	Somalia
Plurinational State of Bolivia	Côte d'Ivoire	Sudan
Burkina Faso	Guinea	
Burundi		
Cameroon		
Central African Republic		
Republic of Congo		
Democratic Republic of Congo		
Ethiopia		
The Gambia		
Ghana		
Guinea-Bissau		
Guyana		
Haiti		
Honduras		
Liberia		
Madagascar		
Malawi		
Mali		
Mauritania		
Mozambique		
Nicaragua		
Niger		
Rwanda		
Sao Tomé Príncipe		
Senegal		
Sierra Leone		
Tanzania		
Togo		
Uganda		
Zambia		

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<sup>1</sup> Completion point is reached if a country maintains macroeconomic stability under a Poverty Reduction and Growth Facility supported programme for a minimum of one year.

<sup>2</sup> This is that point at which a debt sustainability analysis is carried out. If the ratio of present value of external debts to exports for a country (after applying traditional debt relief mechanisms) is above 150%, the country qualifies for relief under the Initiative.

<sup>3</sup> Adjustment and reform programmes supported by the IMF and World Bank must be adopted and implemented. At the point that a country is declared eligible for the Initiative, preliminary debt relief will be provided by creditors in conjunction with concessional assistance from donors and multilateral institutions.

### **3. Overview of clauses**

- 3.1 Clause 1 gives the Act resulting from the Bill its short title.
- 3.2 Clause 2 sets out the purpose of the Act. This is to support the HIPC Initiative by preventing the recovery of certain debts, to which the Initiative applies, against countries and territories, to which the Initiative applies.
- 3.3 Clause 3 provides for the interpretation of certain words and phrases used in the Bill.
- 3.4 Clause 4 subsection (1) defines what is meant by debt under the Bill. Subsection (2) clarifies by way of further explanation, those liabilities that are not to be considered as debt for the purposes of this Bill.
- 3.5 Clause 5 sets out and clarifies the debts to which the Bill applies. The application of the Bill is limited to debts of those countries to which the Initiative applies. These debts must have been incurred by an eligible country prior to the commencement of the Bill.

The debts of a country to which the Bill applies are those debts that have been incurred by:

- the government of that country;
- any department of the government of that country;
- a monetary authority or central bank of that country; or
- a body corporate that is either directly or indirectly controlled by the government, a department thereof or the monetary authority of that country.

The Bill also applies to debts that have been underwritten by the government, monetary authority etc as set out above.

Debts that have been restructured and which were originally incurred prior to the commencement of the Bill are within its scope. This follows the practice of the Initiative in determining whether or not a debt is included in the Initiative on the basis of the nature of the original debts, rather than of a replacement that arises through restructuring.

- 3.6 Clause 6 considers the amount that is recoverable on the debt of a country under the Initiative. This clause reduces the amount recoverable on a debt to which the Bill will apply to the amount which the creditor could recover if the creditor provided the level of debt relief expected under the Initiative. The standard formula applied reduces qualifying debts to a maximum of 33% of the original claim.

Debts that qualify under the Initiative and causes of action associated with these debts are limited to the reduced amount. Causes of action associated with a qualifying debt might, for example, be a damages claim.

Subsections (2) and (3) apply to those cases where an agreement has been reached to reduce (compromise) a debt or related cause of action. Where the level of reduction expected under the Initiative exceeds that agreed under the terms of a compromise agreement, the Initiative will be applied to the amount of the debt before compromise. The following example illustrates the reason for this:

- The original debt of £100 is reduced to £50 under a compromise agreement;
- But, the level of reduction expected under the Initiative is 90%;
- Applying the reduction factor of 90% to the compromised amount will mean that the debt becomes worth £5;
- Applying the reduction factor of 90% to a debt of £100 that has not previously been reduced under a compromise agreement will mean that the debt is worth £10.

If the reduction factor under the Initiative is not applied against the amount of the original debt, the creditor who has agreed to a compromise arrangement will clearly be disadvantaged when compared with a creditor who has not done so.

Under subsection (4) compromised debts that would increase under the Initiative will not be eligible for recalculation. In this case the agreed amount of the debt will be the amount of the debt recoverable.

- 3.7 Clause 7 reduces the value of judgments and arbitration awards relating to debts to which the Bill will apply. The effect of this clause is to ensure that judgments and awards in respect of qualifying debts can be enforced only for the reduced amount.

This clause applies to judgments and awards given within the Isle of Man and to those in foreign jurisdictions before the enactment of this Bill. This will ensure that the amount recoverable is limited to that under the Initiative. However, if the application of the reduction factor under the Initiative would be to increase the amount of the debt recoverable, this will not apply.

- 3.8 Clause 8 contains an exception to the legislation. This excludes debts where the debtor does not make an offer to repay the amount which remains recoverable under the Initiative. The purpose of this is to increase a creditor's prospects of recovering the amount to which it remains entitled, and to encourage the debtor to participate in negotiations to agree settlement of the debt. It is hoped that this will obviate the need for creditors to pursue debts through the Courts.

Where a judgment or award to which this clause applies has been made before the Bill is enacted, the reduction will apply automatically. There will be no need for the debtor to make an offer.

- 3.9 Clause 9 considers those circumstances where the Isle of Man is obliged to enforce foreign judgments under EU law or another international obligation. This clause excludes foreign judgements and awards from the effects of the Bill where there is an obligation under international instruments to enforce them in full, even where this is contrary to the Island's public policy.

- 3.10 Where a creditor has already received payment of an amount by a debtor, Clause 10 ensures that there can be no requirement for the creditor to repay this amount under any of the provisions in this Bill.

- 3.11 Clause 11 limits the application of the Bill in respect of changes that might be made to the terms under which a country is eligible for relief under the Initiative. Any future changes will not extend or reduce the debts to which the Bill applies.

4. Other points—

- (a) The Bill will come into operation upon the announcement of its Royal Assent to Tynwald;
- (b) The Bill is not expected to increase Government expenditure or to reduce the income of Government; and
- (c) Article 6 and Article 1 of the First Protocol of the European Convention on Human Rights are potentially engaged by the Bill. However, the Bill supports an internationally agreed framework for reducing the debts of the poorest countries through the Initiative.

Property rights are protected by Article 1 of the First Protocol. However, interference with these rights under the Bill does not completely deprive creditors of their property. Creditors will still retain an asset of some economic value.

The Bill will be applied retrospectively to historic debts and judgements obtained prior to enactment. The rationale for this is that the legislation aims to deal with historic debt which is sometimes purchased on the open market, often at substantially reduced prices. Those likely to purchase debts of this kind are likely to be what have colloquially become known as “vulture funds”. These “vulture funds” then pursue private legal actions against countries to which the Initiative applies. The actions brought often seek to recover the full amount of the original debt and may further include costs and damages.

Because the Bill reduces the enforceability of judgments and awards, including those that were given prior to the enactment of this Bill, Article 6 is potentially engaged.

The Island will not be a party to these proceedings. Moreover, there are no other measures that could be adopted to achieve the objectives of this Bill.

The effectiveness of this legislation would be severely hampered if the scope of application did not include judgement debts. This assertion is borne out by evidence that there are a number of creditors who have obtained judgments on their debts against countries that are covered by the Initiative.

It should be noted that the Bill mirrors legislation recently enacted in the UK. For the Island not to follow suit could create a risk that the unscrupulous vulture funds would seek to enforce debts in the Manx courts in preference to those of United Kingdom, thereby frustrating the effectiveness of the UK’s stance in enacting their legislation. The Island would seek to rely on the UK’s assertion in relation to its own legislation that any interference with Human Rights under this Bill is proportionate and within the margin of appreciation afforded to signatories to the Convention.

Therefore, in the view of the Member moving the Bill its provisions are compatible with the Convention Rights within the meaning of the Human Rights Act 2001.