

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

Explanatory Memorandum

1. This Bill is promoted by the Council of Ministers.
2. *Clause 1* provides for the short title of the resulting Act. *Clause 2* sets out the purpose of the Act which is to support the enhanced Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank (“the Initiative”) by preventing the recovery of certain historical debts against countries and territories supported by the Initiative where the amount of debt to be enforced exceeds the amount of debt that would remain were the creditor to provide the level of debt relief that the Initiative expects.
3. *Clause 3* sets out definitions for certain words and phrases to be used in the Act. “Debt” is defined in *clause 4*.
4. *Clause 5* sets out the debts to which the Act applies. The Act is limited to those debts of countries on which relief is expected under the Initiative and which are incurred before commencement of the Act. The debt essentially either has to have been incurred by a State, an arm of its government, its monetary authority or a corporate body controlled by any of them. Alternatively one of them has to have been the guarantor of the debt. The debt must have been incurred prior to the coming into operation of the Act or have replaced such a debt. In addition the creditor must not have been resident in the country eligible for debt relief at the time a decision was made that the company was so eligible, if this was before the Act commenced, otherwise at the time it commenced.
5. *Clause 6* limits the amount recoverable in respect of debts and causes of action associated with them in the case of a country covered by the Initiative to the amount which the creditor would recover if the creditor provided the level of debt relief expected by the Initiative. In the case of countries identified as potentially eligible for debt relief, recovery is limited to 33% of the amount otherwise recoverable. If the amount recoverable is less than these amounts due to a compromise of the debt, rescheduling the terms of its repayment or replacing the debt, only this lower amount is recoverable.
6. *Clause 7* makes similar provision as in *clause 6* so as to limit the amount that may be enforced in respect of a judgment or award made following arbitration proceedings. Under *clause 8* the Act will not apply to claims, judgments or awards where proceedings are brought and the debtor does not make an offer at least equal to the amount recoverable by virtue of the Act.
7. *Clause 9* disapplies the Act with respect to foreign judgments or arbitration awards required to be enforced by EU law or an international obligation. *Clause*

10 prevents the Act from requiring repayment by the creditor of an amount already paid by the debtor in relation to any of the liabilities covered by the Act. *Clause 11* limits the legislation so that future changes that might be made to the conditions for eligibility for the Initiative would not extend or reduce the debts to which the Act applies.

8. The Bill is not expected to have any impact on resources.
9. The Bill potentially engages Article 6 and Article 1 of the First Protocol of the European Convention on Human Rights. However, it supports the Initiative, which is an internationally-agreed framework for reducing debts of the poorest countries. Regarding the interference with property rights protected by Article 1 of the First Protocol, creditors would not be totally deprived of their property; they would still retain an asset of some economic value. It is considered moreover that there is an obvious and compelling public interest for the provisions to be retrospective and apply to debts incurred and judgments obtained, since the aim of the legislation is to deal with historic debt and prevent the activities of the so-called ‘vulture funds’ that buy sovereign debt at a substantial discount on the open market and then pursue private legal actions against the poor country concerned to recover the full sum. Article 6 is potentially engaged because the Act will reduce the enforceability of judgments, including judgments already given before the Act’s commencement. However, the Island will not be a party to the proceedings and nor are there other measures that could be adopted to achieve the Act’s objectives. The aim of the Act would be significantly hindered if it did not extend to judgment debts, given the number of creditors who have obtained judgments on their debts against countries covered by the Initiative.
10. Accordingly any interference with Human Rights is considered to be 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.



Ellan Vannin

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¹ A **BILL** to limit the recovery of certain debts against certain poor countries and
² territories; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

³ **1 Short title**

⁴ The short title of this Act is the Heavily Indebted Poor Countries (Limitation on
⁵ Debt Recovery) Act 2012.

⁶ **2 Purpose**

⁷ The purpose of this Act is to support the enhanced Heavily Indebted Poor
⁸ Countries Initiative of the International Monetary Fund and the World Bank by
⁹ preventing the recovery of certain debts –

- ¹⁰ (a) existing, or treated by this Act as existing, prior to its coming into
¹¹ operation;
- ¹² (b) against countries and territories eligible or potentially eligible for
¹³ debt relief under the HIPC Initiative; and
- ¹⁴ (c) over and above the amount of debt that would remain if the
¹⁵ creditor had provided the level of relief expected under that
¹⁶ Initiative.

¹⁷ **3 Interpretation**

¹⁸ P2010/22/1(2)&(7),5(2)&(5)&6(3)

¹⁹ (1) In this Act –

²⁰ “**decision point**” means the point at which the Executive Boards of the
²¹ International Monetary Fund and the World Bank formally decide on the
²² eligibility of a country or territory for debt relief;

²³ “**foreign judgment**” means a judgment (however described) of a court or
²⁴ tribunal of a country or territory other than the Island and includes

1 anything (other than an arbitration award) that is enforceable as if it were
2 such a judgment;

3 “**HIPC Initiative**” means the enhanced Heavily Indebted Poor Countries
4 Initiative of the International Monetary Fund and the World Bank;

5 “**judgment**” includes an order;

6 “**qualifying country**” means a country or territory to which the HIPC Initiative
7 applies or that –

8 (a) the International Monetary Fund and World Bank identify as potentially
9 eligible for debt relief under that Initiative; and

10 (b) in respect of which decision point has not been reached;

11 “**relevant claim**” means a claim for or relating to a debt and a claim under an
12 agreement compromising a debt.

13 (2) Decision point is regarded as having been reached in respect of a country
14 or territory if it is so regarded for the purposes of the HIPC Initiative.

15 **4 Meaning of “debt”**

16 P2010/22/2(2)-(4)

17 (1) For the purposes of this Act “**debt**” includes –

18 (a) a liability falling to be discharged otherwise than by the making of
19 a payment;

20 (b) an obligation to repurchase property that arises under an
21 agreement for the sale and repurchase of property (whether or not
22 the same property); and

23 (c) a liability of the lessee under a finance lease, other than a liability
24 relating to the operation or maintenance of property subject to the
25 lease.

26 (2) However, “**debt**” does not include –

27 (a) a liability to pay for goods or services that arose on the delivery of
28 the goods or the provision of the services;

29 (b) a liability falling to be discharged within a year of its being
30 incurred, unless it was due to be discharged more than a year
31 before –

32 (i) the coming into operation of this Act; or

33 (ii) where decision point has been reached in respect of the
34 qualifying country, more than a year before decision point;
35 or

36 (c) a liability incurred after the coming into operation of this Act that
37 replaces anything that was (at the time of replacement) within
38 paragraph (a) or paragraph (b).

5 Debts to which this Act applies

P2010/22/1(3)-(5), 2(5)-(10)

- (1) This Act applies to any debt incurred before its coming into operation that falls within the following provisions of this section.
- (2) The debt must satisfy subsection (3) or subsection (4).
- (3) The debt must be incurred –
 - (a) by a qualifying country or any part of it, whether defined by geographical area, administrative boundary or otherwise;
 - (b) by the government of, or of any part of, the qualifying country, or by any arm of such government;
 - (c) by any monetary authority of the qualifying country; or
 - (d) by an body corporate controlled either directly or indirectly by anything within paragraphs (a), (b) or (c).
- (4) The debt must –
 - (a) have been guaranteed, the guarantee being entered into before this Act came into operation and, where decision point has been reached in respect of the qualifying country, before it was reached; and
 - (b) fall within subsection (3) if it had been incurred by the guarantor, and if only part of the debt satisfied paragraphs (a) and (b), that part only satisfies this subsection.
- (5) The creditor of the debt must not be resident in the qualifying country –
 - (a) if decision point was reached in respect of the country before the coming into operation of this Act, at the time it was reached; or
 - (b) otherwise, at the time this Act comes into operation,and in any proceedings to which the creditor is a party, this subsection is to be treated as satisfied unless the contrary be proved.
- (6) For the purposes of this section a debt incurred after the coming into operation of this Act or after decision point is treated as having been incurred before it came into operation or before decision point (as the case may be) if and to the extent that it replaces one incurred before its coming into operation or decision point (as the case may be).

6 Limitation on amount recoverable: general

P2010/22/3&4

- (1) The amount recoverable in respect of a debt, or any cause of action relating to it, is limited to –
 - (a) if the debt relates to a country or territory to which the HIPC Initiative applies, the amount that the debt would be if it were reduced in accordance with that Initiative; and

- 1 (b) if the debt relates to any other qualifying country, 33% of the
2 amount that would be recoverable but for this Act.
- 3 (2) Subsection (3) applies if –
- 4 (a) an agreement has been made that compromises a claim in respect
5 of a debt or cause of action mentioned in subsection (1); or
- 6 (b) an agreement has been made –
- 7 (i) that changes the terms for repayment of a debt so as to
8 reduce its net present value; or
- 9 (ii) by virtue of which that original debt is replaced by a new
10 debt, the present net value of which is less than the original
11 debt.
- 12 (3) Where this subsection applies –
- 13 (a) subsection (1) does not apply; but
- 14 (b) the amount recoverable is limited to the amount that would have
15 been recoverable under that subsection if no agreement
16 mentioned in subsection (2) had been made and subsection (1)
17 did apply.
- 18 (4) However, subsection (3) does not apply if the effect of so applying it
19 would be to increase the amount that would otherwise be recoverable.
- 20 (5) References in this section to the amount recoverable include the amount
21 recoverable on the enforcement of any security.
- 22 (6) This section applies whether or not the law applicable to any claim,
23 agreement or security mentioned in this section is the law of the Island.

24 **7 Limitation on amount recoverable under judgment or award**

25 P2010/22/5

- 26 (1) This section applies to –
- 27 (a) a judgment on a relevant claim given by any court in the Island;
- 28 (b) a foreign judgment on a relevant claim (whenever given); and
- 29 (c) an award made (at any time) on a relevant claim in an arbitration
30 (whether conducted under the law of the Island or that of any
31 other country or territory).
- 32 (2) The amount of the judgment or award is to be the same as it would be if
33 the court, tribunal or arbitrator had applied section 6 in relation to the
34 relevant claim or, if the judgment or award gives effect to a compromise
35 of a relevant claim, the same as it would be if the relevant claim had not
36 been compromised and section 6 had been so applied.
- 37 (3) However, subsection (2) does not apply if the effect of so applying it
38 would be to increase the amount of the judgment or award.

8 Exception where debtor fails to make offer to pay recoverable amount

P2010/22/6

(1) This Act does not apply to a relevant claim or a judgment or award mentioned in section 7 if –

(a) proceedings are brought in respect of the claim, judgment or award; and

(b) before the relevant time the debtor does not make an offer in accordance with which the net present value of payments to be made is greater than or equal to the net present value of the payment required to satisfy the claim, judgment or award (reduced in accordance with this Act).

(2) This section applies whenever the proceedings were brought, except where the relevant time occurred before the coming into operation of this Act.

(3) In this section –

“proceedings” means proceedings in the Island, including proceedings for –

(a) the registration of a foreign judgment or arbitration award; or

(b) permission to enforce an arbitration award in the same manner as a judgment of the court,

but does not include proceedings for the enforcement of a judgment or award;

“relevant time” means the earliest of the following –

(a) the time when a court first gives judgment on the relevant claim;

(b) the time when the foreign judgment or arbitration award is registered; or (as the case may be);

(c) the time when permission is given to enforce the arbitration award in the same manner as a judgment of the court.

9 Exception for overriding EU or international obligations

P2010/22/7

(1) Nothing in this Act applies to a foreign judgment or an arbitration award that is required to be enforced in full by –

(a) European Union law; or

(b) an international obligation,

that applies to the Island, even in cases where such enforcement is contrary to the public policy of the Island.

(2) Accordingly, this Act does not apply to an award to which section 1 of the *Arbitration (International Investment Disputes) Act 1983*¹ applies

¹ c. 16

(awards made under the Convention on the settlement of investment disputes between States and nationals of other States).

10 Payments already made in satisfaction of debt

P2010/22/8

(1) Nothing in this Act enables a person to recover anything paid in total or partial satisfaction of any liability, whether arising under an agreement, judgment, order, award or otherwise.

(2) But anything paid in the circumstances mentioned in subsection (1) is still to be taken into account in assessing the amount recoverable under section 6(1).

11 Disregard of future changes to HIPC Initiative

P2010/22/1(11)&(12)

For the purposes of this Act any changes made to the terms of the HIPC Initiative after the coming into operation of this Act so as to affect a condition as to –

- (a) the level of a qualifying country's income or debt; or
- (b) the size of its economy,

are to be disregarded.



IN THE KEYS

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A BILL to limit the recovery of
certain debts against certain
poor countries and territories;
and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR TEARE

MAY 2012