



Isle of Man

Ellan Vannin

AT 11 of 2012

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



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Signed in Tynwald: 11 December 2012
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AN ACT to limit the recovery of certain debts against certain poor countries and 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:—

1 Short title

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

2 Purpose

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

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

3 Interpretation

P2010/22/1(2)&(7),5(2)&(5)&6(3)

- (1) In this Act —

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

“**foreign judgment**” means a judgment (however described) of a court or tribunal of a country or territory other than the Island and includes anything (other than an arbitration award) that is enforceable as if it were such a judgment;

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

“**judgment**” includes an order;

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

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

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

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

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

4 Meaning of “debt”

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

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

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

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

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

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

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

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

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

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

- (c) a liability incurred after the coming into operation of this Act that replaces anything that was (at the time of replacement) within 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
 - (b) if the debt relates to any other qualifying country, 33% of the amount that would be recoverable but for this Act.
- (2) Subsection (3) applies if —
 - (a) an agreement has been made that compromises a claim in respect of a debt or cause of action mentioned in subsection (1); or
 - (b) an agreement has been made —
 - (i) that changes the terms for repayment of a debt so as to reduce its net present value; or
 - (ii) by virtue of which that original debt is replaced by a new debt, the present net value of which is less than the original debt.
- (3) Where this subsection applies —
 - (a) subsection (1) does not apply; but
 - (b) the amount recoverable is limited to the amount that would have been recoverable under that subsection if no agreement mentioned in subsection (2) had been made and subsection (1) did apply.
- (4) However, subsection (3) does not apply if the effect of so applying it would be to increase the amount that would otherwise be recoverable.
- (5) References in this section to the amount recoverable include the amount recoverable on the enforcement of any security.
- (6) This section applies whether or not the law applicable to any claim, agreement or security mentioned in this section is the law of the Island.

7 Limitation on amount recoverable under judgment or award

P2010/22/5

- (1) This section applies to —
 - (a) a judgment on a relevant claim given by any court in the Island;
 - (b) a foreign judgment on a relevant claim (whenever given); and
 - (c) an award made (at any time) on a relevant claim in an arbitration (whether conducted under the law of the Island or that of any other country or territory).
- (2) The amount of the judgment or award is to be the same as it would be if the court, tribunal or arbitrator had applied section 6 in relation to the

relevant claim or, if the judgment or award gives effect to a compromise of a relevant claim, the same as it would be if the relevant claim had not been compromised and section 6 had been so applied.

- (3) However, subsection (2) does not apply if the effect of so applying it 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 international obligations¹

P2010/22/7

- (1) Nothing in this Act applies to a foreign judgement or an arbitration award that is required to be enforced in full by an international obligation that applies to the Island, even in cases where such enforcement is contrary to the public policy of the Island.²

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

¹ c. 16

ENDNOTES

Table of Endnote References

¹ S 9 heading amended by SD2019/0027 with effect from 31/12/2020 at 23:00.

² Subs (1) substituted by SD2019/0027 with effect from 31/12/2020 at 23:00.