

Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012

Clauses considered

4.3. Mr Teare to move.

The Speaker: We turn now to the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill and I call on the mover, Mr Teare, to move clause 1, please.

Mr Teare: Thank you, Mr Speaker.

Before moving clause 1, with your indulgence, sir, I would like to deal with a couple of points raised by the Hon. Member for South Douglas at the Second Reading stage.

The first point raised by the Hon. Member related to sunset clauses and whether these could be inserted into legislation to obviate the need for obtaining Royal Assent, if a decision had been taken to revoke the legislation. The constitutional position of the Island means that Royal Assent must ordinarily be obtained before any new legislation can be enacted or revoked. While the idea of exploring ideas to avoid this requirement is commendable, it is in practice unworkable. Inherent in sunset clauses is a limitation on the relevant legislation's lifespan. In certain circumstances this is appropriate. It serves as a reminder that the enactment in question was a time-bound or temporary measure to be reconsidered at some set future point. This legislation is not intended to have a limited life, but will remain in force if its passage through the legislative process is successful.

The Hon. Member also suggested that thought should be given to introduce a clause that restrict such enterprises, known as 'vulture funds', from suing for more than the original debt, so that it would stop the Isle of Man from becoming a location of choice to operate from. With the greatest respect, it appears that the Hon. Member has misread or misunderstood what is, admittedly, a Bill addressing a highly complex and technical subject. The Bill not only seeks to prevent vulture funds from bringing legal action to recover more than the amount of the original debt, Mr Speaker and Hon. Members, the Bill goes further than this. It limits the amount that can be recovered on the debt of a country that qualifies for the Heavily Indebted Poor Countries Initiative to the amount that remains of the debt under the Initiative. The amount of the debt recoverable will be a maximum amount of 33% of the original debt. The amount recoverable may, however, be lower than this.

The reduction factor applied to debts is determined by the IMF and the World Bank. This is a truly global initiative. Eligible countries will continue to be afforded relief under the Initiative for the duration of the Initiative. The Isle of Man is simply seeking to recognise this and must do so to ensure that it cannot be used to promote morally questionable behaviour and profiteering at the expense of the development of the world's poorest nations. In this particular instance, a sunset clause is not required initially will be brought to an end at a time that it is determined to be appropriate by the World Bank and the IMF. At this point, the legislation will have run its useful course, and then can be revoked at leisure.

If enacted, this Bill will provide the means to support the international Initiative to help poor countries manage their debt. This will be achieved by introducing a prohibition against the courts of the Isle of Man from being used to enforce a judgment in full against a country eligible for the Initiative. It will ensure that the amounts of debt that can be recovered through the Island's courts will be limited to the level of debt that remains after the reduction factor has been applied. The Bill will ensure that the Isle of Man continues to demonstrate that it is a responsible world citizen, that does not tolerate morally questionable practices.

The effectiveness of this legislation will be severely hampered if the scope of application did not include judgment debts. This assertion is drawn out with 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 unscrupulous creditors would seek to enforce debts in the Manx courts, in preference to those of the UK, thereby frustrating the effectiveness of UK stance in enacting their legislation.

The Island is relying on the UK's assertion in relation to its own legislation that any interference with Human Rights under this Bill is proportionate and within a margin of appreciation afforded to signatories to the Convention. Therefore, in my view, the Bill and its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Should the branches of Tynwald support this Bill, it will come into operation on receiving Royal Assent.

Mr Speaker, turning to the Bill. Hon. Members, clause 1 provides the short title of the Bill.

I beg to move that clause 1 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 2.

Mr Teare: Clause 2 sets out the purpose of the Act. This is to support the Heavily Indebted Poor Countries Initiative by preventing recovery of certain debts to which the Initiative applies against countries and territories to which the Initiative applies.

Mr Speaker, I beg to move that clause 2 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 3, sir.

Mr Teare: Clause 3 defines certain words and expressions used in the Bill. Included in this is a definition of ‘decision point’ which is used throughout the Bill.

Mr Speaker, I beg to move that clause 3 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

Mr Teare: Thank you, Mr Speaker.

Clause 4 deals with the meaning of ‘debt’. A comprehensive definition of the meaning of debt for the purposes of this Bill is given under this clause.

Clause 4(1) sets out the parameters, liabilities and obligations regarded as debt under the Bill.

Subsection (2) clarifies by way of further explanation those liabilities that are not treated as debt for the purpose of this Bill. The definition is based on that used by the World Bank and the International Monetary Fund in determining which debts are included in the Initiative.

Mr Speaker, I beg to move that clause 4 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 5.

Mr Teare: Clause 5 sets out and clarifies the debts to which the Bill applies. The application of the Bill is limited to debts of countries to which the Initiative applies. These debts must have been incurred by an eligible country and fall due for payment at least a year prior to the commencement of the Bill, or at least a year prior to the country having reached decision point. Under subsection (3), 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 the country, or a body corporate that is either directly or indirectly controlled by the government, a department thereof, or monetary authority of that country.

Subsection (4) makes provision for the inclusion of debts that have been underwritten or guaranteed by the government, monetary authority etc as set out in subsection (3).

Subsection (5) expressly excludes debts that are owed to creditors resident in that country, either before a decision point was reached in that country, or the enactment of the Bill.

Under subsection (6), debts that have been restructured and which were originally incurred prior to the commencement of the Bill are within the scope of the Bill. This is consistent with the practice of the Initiative in determining whether a debt is included in the Initiative on the basis of the nature of the original debt, rather than of a replacement that arises through the restructuring.

Mr Speaker, I beg to move that clause 5 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. I beg to second and reserve my remarks.

The Speaker: I put the question that clause 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Teare: Thank you, Mr Speaker.

Clause 6 considers the amount recoverable on debts under the Initiative. This clause reduces the amount recoverable on a debt to the amount that the creditor could recover, if the creditor provided the level of debt relief expected under the Initiative. A standard formula applies reducing qualifying debts to a maximum of 33% of the original claim. Debts that qualify under the Initiative and courses of action associated with these debts are limited to the reduced amount. Courses 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 or compromise a debt or related cause of action. Whenever level of reduction expected under the Initiative exceeds that degree under the terms of the agreement, the Initiative will be applied to the amount of debt before compromise. An illustration of the effect follows an example below.

The original debt of £100 is reduced to £50 under a compromise agreement, but the level of reduction expected under the Initiative is 20%. 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 are not eligible for recalculation. In this case, the agreed amount of the debt is the amount of the debt recoverable.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the motion that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7 please.

Mr Teare: Clause 7 reduces the value of judgments and arbitration awards relating to debts to which the Bill applies. The effect of subsection (2) is to ensure that judgments and awards in respect of qualifying debts can be enforced only for the amount by which the debt is reduced under the Initiative.

Subsection (1) of this clause confirms that it 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, under subsection (3), if the application of the reduction factor under the Initiative would be to increase the amount of the debt recoverable, this will not apply.

Mr Speaker, I beg to move that clause 7 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 7 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8, please.

Mr Teare: Thank you, Mr Speaker.

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 a debt.

This provision is intended to obviate the need for creditors to pursue debts through the courts.

Where a judgment or a law 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.

Mr Speaker, I beg to move that clause 8 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Teare: Thank you, Mr Speaker.

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

Mr Speaker, I beg to move that clause 9 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 9 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Teare: Thank you, Mr Speaker.

Subsection (1) of clause 10 considers circumstances in which a creditor has already received payment of an amount by a debtor. This clause ensures that there can be no requirement for the creditor to repay this amount under any of the provisions in this Bill.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 10 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 11.

Mr Teare: Thank you, Mr Speaker.

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

Mr Speaker, I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 11 stand part of the Bill. Those in favour, say aye; against, no.
The ayes have it. The ayes have it.

Hon. Members, that brings us to the end of business of the House on the Order Paper today.