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

3. Mr Braidwood to move:

That the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012 be now read a first time.

The President: Item 3, the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012. Mr Braidwood to take the First Reading.

Mr Braidwood: Thank you, Madam President.

This Bill is the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012. The Bill has been drafted to support the enhanced Heavily Indebted Poor Countries Initiative, which will be referred to as 'the Initiative' for ease of reference.

The Initiative is an international initiative to provide debt relief to heavily indebted low-income countries. The roots of the Initiative lie in the Millennium Development Goals which were set in the year 2000. This saw 189 nations pledging to free people from extreme poverty and multiple deprivations by 2015. The goals set include eradication of extreme poverty, reduction of child mortality rates, fighting disease epidemics, and developing a global partnership for development. In the intervening period, it has become increasingly clear that many countries, particularly those in sub-Saharan Africa, will fail to meet the objectives of the Millennium Development Goals without significant levels of assistance from international creditors.

The Initiative has been implemented under the stewardship of the International Monetary Fund and the World Bank. In order for the Initiative to succeed, all international creditors must participate. This includes multilateral creditors, such as regional development banks and the World Bank; official bilateral creditors; governments or their instruments, such as credit export agencies; and private creditors. Private creditors that are unwilling to participate in the Initiative pose the greatest risk of failure to the Initiative. It is here that what have become referred to as vulture funds will be found.

Countries that qualify for the initiative must meet certain criteria. These include that a country must be eligible for assistance from the IMF and the World Bank; continue to face an unsustainable debt burden after non-official development aid has been reduced by a factor of 67%; have a track record of reform and sound policies under the IMF and World Bank supported programmes.

There are four programmes to the Initiative. These are: (1) the preliminary period, which requires a country to have implemented IMF and World Bank supported reform programmes – at this point, preliminary debt relief should be provided by all creditors; (2) at decision point, the IMF and World Bank carry out a debt-sustainability analysis – if the ratio of the present value of external debts to exports to that country remains in excess of 150%, the country qualifies for relief under the Initiative; (3) during the interim period, relief, tailored to the particular circumstances, is provided to countries' performance of IMF programmes and must continue to be demonstrated; and finally, completion point is reached when a country can demonstrate macro-economic stability under poverty reduction and growth facility programme for a minimum of one year – debt relief is provided irrevocably at this point.

The Initiative was never intended to be a permanent mechanism for all countries that experience difficulty in servicing external debts. The list of countries that were potentially eligible under the Initiative was closed to new entrants in 2006. There are three reasons for this: the first is to ensure that the Initiative does not become permanent and raise expectations that all debts will always be reduced; the second considers the moral hazard and potential for free riding – this discourages countries not yet at decision point from borrowing unnecessarily in anticipation of eventual debt relief; the third reason is to encourage countries to adopt reforms as early as possible.

Under the Initiative, all creditors are expected to provide the same level of debt relief. Although it appears to be at odds with the Initiative itself, external debt is recognised to be a viable source of financing for developing countries. This is because the ability to raise funds from the international financial community permits developing countries that are in transition to finance their development. This includes attracting equity from foreign direct investment, receiving grants from donors, and borrowing from foreign lenders.

Debt obviously results in future obligations on the debtor to repay loans. The debtor must be in a position to repay debt, notably through the efficient use of loans to generate income that will be used to repay the debt. For the poorest countries, high levels of debt have themselves become a barrier to development. A fundamental principle of the Initiative is that all debtor countries should seek to receive comparative treatment from all creditors, including those that do not participate in the Initiative. The failure of some creditors to provide comparable treatment increases the prospect of these countries continuing to face unsustainable debt situations. This directly undermines their prospects of economic development and poverty reduction.

Some unco-operative creditors are indulging in morally dubious practices. This sees the debt of a country sold on the open market for a substantially reduced cost. The purchaser of the discounted debt then seeks to recover the full amount of the debt, with costs and damages, through the courts. Creditors of this type are referred to as 'vulture funds'. They seek to free-ride on the efforts of those creditors who do provide the level of relief expected under the Initiative. This free-riding on the back of the Initiative diverts the benefit of debt relief provided under the Initiative away from its intended use in the fight against poverty in some of the world's poorest countries.

Madam President, this Bill will ensure that the courts of the Isle of Man cannot be used to enforce a judgment in full against a country eligible for the Initiative. If this Bill is enacted, it will unsure that the highest amount of debt that can be recovered by the Isle of Man and its courts will be limited to the level of debt that remains after the reduction factor has been applied. The Bill, when enacted, will ensure that the Isle of Man will continue to act as a responsible world citizen and that the jurisdiction cannot be used to further morally questionable practices.

Madam President, I beg to move the First Reading of the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012.

The President: Hon. Member, Mr Lowey.

Mr Lowey: I beg to second, Madam President.

May I just say that it seems a shame that we have to introduce legislation of this type because, as the mover rightly said, certain donors have used aid as a tool or a vehicle for influencing… for the advantage of the donor, as opposed to the recipient. There are countries that sell their debt and, as he rightly says, this is to prevent the Isle of Man being used as a jurisdiction where vulture litigation can take place.

It is relevant in the sense that last week in the Isle of Man we had the Small Countries Initiative. Both the World Bank and the IMF were associated with that venture of trying to educate, and I use the word 'poor' in the sense that they may have been small, but they are looking to improve their position in the world, and they need to know that their efforts are being rewarded by learning how to have a responsible legal framework in which to operate.

Therefore, I just point that out, that the Isle of Man is playing its part, both in introducing this legislation and also by increasing its Overseas Aid contribution from time to time to a level that is comparable with other countries and also that we introduce aid programmes for helping small nations, poor nations, to improve their lot. So I think the Isle of Man is playing its part in the international world that we are all live in and now we participate in.

I think the Bill is well worth supporting. It does sadden me as an individual of the world that we have to introduce legislation of this type, but I think it is necessary.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I support the First Reading of this Bill. There have been many concrete examples in recent years of the vulture funds actually hampering the progress of poorer countries because of the debts that they are imposing upon them. It is important the Isle of Man is part of that process that we cannot be used by these people to try to enforce their debt.

I think the part that made it most clear to me of what this Bill is about is in explanatory memorandum at number 9, where is says:

> '… 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.'

There are several issues, parts of this which are quite complex, which I am interested in reading about and we will deal with later on. But I think that is the nub of this for me, that we are not going to be used to help those people who are going to hinder the progress in these countries.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

The First Reading of this Bill has my support. In my view, again, it is a practical piece of legislation which supports the standing and maturity of the Isle of Man as an international financial centre and jurisdiction. It is the right type of legislation from a moral perspective and a sad reflection on global society that Tynwald needs to bring this legislation through.

Thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I would agree with my hon. colleague, Mr Wild. Yes, we are doing this because it is the right thing to do. As Mr Lowey has said, we have helped small countries by hosting a conference last week, which was very useful, putting the Isle of Man on the international map, helping other countries in the right way because we have been through various issues with the International Monetary Fund etc, so we need to make sure that what we are doing is right and right internationally.

I can understand quite clearly the purpose of this Bill, which is to stop people buying sovereign debt heavily discounted by funds such as vulture funds and then trying to enforce the debts through the Isle of Man courts. We now will have in place the legislation to prevent this happening and will allow indebted countries to try and manage their way out of the debts they have incurred, because if the debt is unsustainable then the country is suffering badly and the people in it are suffering badly too.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I do not have so much of a problem with the Bill itself. I do have a problem understanding the explanatory memorandum no 9 attached to the Bill, in particular the reference to article 6 of the First Protocol of the European Convention on Human Rights, where it says:

> '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.'

I would be grateful for an explanation of what that means.

The President: The Hon. Member, Mr Callister.

Mr Callister: Yes, thank you, Madam President.

I will be supporting the Bill, because I think we have to support the Bill, on the basis of what we have heard so far.

The thing that I was disturbed about, when I first read the title of this Bill, is the extent to which we have to go to support countries which, many of them, were run by some of the world's worst despots. They have had, really… Haiti, for instance, under Papa Duvalier – Papa Doc, as he was called – was one of the worst, I suppose. If you look at Uganda, there is another; Rwanda is another. They are barely democratic *now*, a lot of these countries. Some of them are better than others.

The tragedy is that we have this Bill in front of us at all, and it seems to me that, in a lot of cases here under these 32 countries that are mentioned in the explanatory notes, it was not the people that benefited from these loans at all. I suspect that many of them were swallowed up by the regimes that ran the countries and to what extent the people will benefit from this, it is very hard to tell. A lot of them – some have had some really brutal dictatorships here in the past and presumably some of the debts which we are talking about may well have been released to those companies during the period when these rather undesirable leaders were in place, but nevertheless the situation is there, the debts are there, it may very well help some of the people in these countries. That is a debatable point.

The reason we are following this is because we do not want any vulture funds going through the Isle of Man and that is a possible area that needs to be closed up and for that reason, we do it.

I notice Zimbabwe is not listed here. That is one of the countries, I know, that are in debt at least to £8 billion at the moment to the IMF. I ask the mover to what extent, if any, the Isle of Man will be indebted to any of these 32 countries in the way that is described within the Bill?

The President: The Hon. Member, Mr Lowey.

Mr Lowey: Could I just say, on the last point raised by Mr Callister, the Overseas Aid Committee, which I have the privilege of being on, most of their work is with NGOs – non-governmental organisations – in the countries concerned, so it is not at the behest and distribution of the government. It is non-government, such as the Red Cross, UNICEF and international organisations.

Mr Callister: They are gifts, not loans, Mr Lowey.

Mr Lowey: In many cases, we give a variety of things over a few years to get projects up and running. Therefore, the idea that somehow they are going to be repaid… We want to see the benefit going to the people. That is what we want. So we are not giving it to the government; we are giving it to the non-government organisations, directly to the people. I just want to publicly make sure that we do not give money to governments, but we do give money directly to non-government organisations.

Mr Callister: I am aware of that, Madam President.

Mr Lowey: Indeed, not Papa Docs.

The President: Mover to reply.

Mr Braidwood: Thank you, Madam President, and can I thank all Hon. Members who are supporting the Bill.

I think it was mentioned by the Hon. Member of Council, Mr Crowe, that once again the Isle of Man has supported the Small Countries Finance Initiative, and this is for four years on the trot now. I think those who were able to go last Friday to meet some of the delegates and talk to them… and one thing that always comes through is how much they appreciate the Isle of Man putting on this programme of work to assist them.

So you can see where the Isle of Man is already participating in helping those small countries and countries who have a debt, not such as which are listed in the explanatory notes but are trying to assist themselves.

What the Isle of Man does not want to be is a back door, and this is one where we are slamming this back door on vulture funds, because as I have gone through the First Reading, Madam President, it is only those unco-operative creditors who are indulging in dubious practices in selling their debt and it is then the vulture funds who are picking up that debt at a substantial reduced cost, at a very big discount. What this Bill will do is it will mean that the amount of money that can be pursued is on the Initiative, so it will only be 33% of the actual debt, because it is reduced by 67%, so we are closing that door.

Mr Callister mentioned about Zimbabwe, and Zimbabwe withdrew from this initiative. He also mentioned a lot of this debt which has been run up by countries. It has been those debts really, or the amount of money which went to the country has been accumulated to dictators who were running the countries at that time and this Bill, Madam President, does not cover that. We are left… no matter how you look at those dictators who have been replaced, the country has a debt which has to be repaid and if it is an unsustainable debt, then that country cannot progress and this is why this initiative was brought in by the IMF and the World Bank to try to reduce that unsustainability.

I think also Mr Lowey mentioned those countries indebted to the Isle of Man, and that again, I think, has been explained by the Hon. Member of Council, Mr Lowey.

I think one of the hardest ones to answer is that of the Lord Bishop under Article 6 and Article 1 and the Human Rights issues. All I can say is that the Isle of Man is relying on the United Kingdom's assertion in relation to its own legislation that any interference with Human Rights under the Bill is proportionate and within the margin of appreciation afforded to signatories to the Convention. The only thing I can do, Madam President, I could go through the First Protocol of the European Convention on Human Rights as potentially engaged by this Bill. The Bill supports an international agreement for a framework for reducing the debt of 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 and the Bill will be applied retrospectively to historic debts and judgements obtained prior to enactment.

Madam President, I can, if the Lord Bishop wills it, come back at the Second Reading with a more definitive answer to the Lord Bishop's questions.

However, can I thank those Members who have supported this Bill. I do believe that it is the right legislation to go through, in that we are closing the back door to the vulture funds who buy this discounted debt and then try to apply through the courts the full… the amount which the country does owe.

Therefore, Madam President, I beg to move the First Reading of the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.