

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

3. Mr Braidwood to move:

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

**The President:** Now we will move to Item 3 and I call on Mr Braidwood.

**Mr Braidwood:** Thank you, Madam President.

This is the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012. This 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.

If enacted, this Bill will provide the means to support the Initiative. 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 amount 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.

Hon. Members might rightly be concerned that the Bill has the potential to impact on the Human Rights of the owners or purchasers of debts. It is true that 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. 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 judgments obtained prior to enactment. This is because the legislation aims to deal with historic debt, which is sometimes purchased on the open market, often at substantially reduced prices. Those who purchase debts of this kind are likely to be what have colloquially become known as vulture funds. These vulture funds then, as previously mentioned, pursue 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 judgment debts. This assertion is borne out by evidence that there are a number of creditors who obtain 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 United Kingdom. For the Island not to follow suit would 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 the United Kingdom's stance in enacting their legislation. The Island is relying on the United Kingdom'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 my view, in moving this Bill, Madam President, 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, the Bill will come into operation on receiving Royal Assent.

Madam President, I beg to move the Second Reading of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

I see this as one measure to be supported, but can I ask the mover, have there been any instances in Isle of Man courts of action to enforce foreign government debt? Or is this a pre-emptive measure to prevent it happening? Is there any history of seeking to enforce a debt in Isle of Man courts in the past?

**The President:** The Hon. Member, Mr Lowey.

**Mr Lowey:** I think the term used by my hon. friend, Mr Braidwood, as 'vulture funds' is very well descriptive that actually deal with it. I think the Isle of Man should take recognition that where less and less

countries are able to enforce these judgements, they are looking for areas where they can enforce them. As they are becoming more and more restricted, I think the international community does tend to look at other areas, where this could be enforced so while there may not be a history yet, the possibility should be removed and that it is what this Bill is about. I think we should be taking up that defensive position for the Isle of Man's international reputation.

**The President:** Hon. Member, Mr Downie.

**Mr Downie:** I just wondered if, in moving this Bill, the Hon. Member could perhaps show us where there is a differentiation between the leader of a country or the country itself, because we forever read in the media things about countries like Rwanda and those on the list where they are heavily indebted, but at the end of the day, a lot of that money has been siphoned out by unscrupulous leaders. There are still a number of them worldwide. I think it would be easier if there was a better understanding of how that issue was tackled, rather than the burden of debt that is left on the country itself.

It seems to me that in the past... and particularly with the ineffectual way the United Nations seems to be operating at the moment, there are more and more issues coming to light. We have various countries around the world now where they are running up huge debts, and yet the individuals who make the decisions seem to be able to move their money round at will, and when push comes to shove and they are eventually overthrown, they are given sanctuary in other countries and it is as if they start with a clean slate again. One of the best examples I can give of this is if you look at Palestine and the amount of debt that is in that country and how desperate they are, and yet their former leader is found to have owned many properties in France, in Paris, huge bank accounts and so on. Yet the country has had a huge amount of aid over the years and still finds itself in a very sad situation.

I know it is perhaps difficult for the mover to grasp, but there is a line here. If we could understand how the country gets in debt and the leader does not get held responsible for this... because, at the end of the day, the country is only as good as its leadership. You understand where I am coming from?

**Mr Braidwood:** Yes, I know where you are coming from.

**The President:** Mover to reply.

**Mr Braidwood:** Thank you, Madam President.

Mr Crowe, it is a pre-emptive strike and there have never been any measures in our courts which have been used. So it is really to cover our backs, so that our courts will not be used for this purpose of the vulture funds.

What happens is that as we go through the Bill, the debt is actually reduced by 67% to 33%. If the debt is bought and it can be pursued through the courts, they can go for 100%. In actual fact, that is against the other creditors, who actually have said, 'Right, we will give two thirds of our debt up to benefit the country.' So it is to close a loophole that our courts could be used.

Madam President, in answer to Mr Downie, always difficult to distinguish leaders and corporate... leaders who squirrel money away from very poor countries, but again, through the Bill, in actual fact, in the Bill, it gives a list of countries eligible for the Heavily Indebted Poor Countries Initiative and you will see completion point, decision point and pre-decision point.

The pre-decision point, if we look at the Bill, is Eritrea, Somalia and Sudan and to get onto that pre-decision point, 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 concession assistants and donors and multi-lateral institutions.

Then you get to a decision point and this is a 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.

Then it goes to completion point, where there are 32 countries and this is reached if the country maintains macro-economic stability and poverty reduction and growth facilities supported programme for a minimum of one year.

So there are three phases there; and if Mr Downie looks at 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 the country; and monetary authority or central bank of that country; 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 with those names I have just mentioned.

How we distinguish how leaders, in some of the countries that Mr Downie has mentioned: we know this does happen normally in the very poorest of countries, in a lot of the African countries that leaders... where you could say the resources of countries with oil, minerals, whatever are not getting the benefit – it does not go down to the people; it seems to be just to the leaders of the country. It is very, very difficult. All we are looking at, really, is for the benefit...

This Bill is for the benefit of the normal people of that country and we have to support them, because if we look at some of these countries in Africa, where the death of babies, the mortality rate is can be 80% or more, where life expectancy of people is only 30 or 40, we must try to assist those people in the countries and this is one way that we can assist in reducing the debt burden on the countries.

Madam President, I hope this helps Hon. Members in supporting the Second Reading.

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

### **Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012** **Clauses considered**

**The President:** Clauses: I think we could take clauses 1 to 3.

**Mr Braidwood:** Thank you, Madam President.

Clause 1 provides the short title of the Bill.

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

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.

Madam President, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Can I just make a point as to... the explanatory memorandum lists all the countries eligible for the Initiative, the Bill itself does not, and I would imagine the reason being that it is subject to change during the term of this, if it becomes an Act. Will the World Bank provide an update every so often, so that the courts are aware of which countries are eligible for their debts to be treated as such under this HIPC initiative?

**The President:** Mover to reply.

**Mr Braidwood:** Thank you, Madam President.

The World Bank and the International Monetary Fund will assess all countries who apply for this Initiative and we will be updated.

I beg to move, Madam President.

**The President:** The motion is that clauses 1 to 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 4 and 5, dealing with debt.

**Mr Braidwood:** Thank you, Madam President.

A comprehensive definition of the meaning of debt for the purpose of this Bill is given under clause 4.

Clause 4(1) sets out the parameters of 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.

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 fallen 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 – and I have explained this just previously – 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 the 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 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 or not 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 restructuring.

Madam President, I beg to move that clauses 4 and 5 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Yes, you cover all bases by covering those that were incurred before the Bill comes into operation or subsequent to its coming into operation, so you cover all bases in the Bill.

**Mr Braidwood:** Tried to cover.

**Mr Crowe:** Yes.

**The President:** Would you like to reply, or have you replied?

**Mr Braidwood:** I just thank Mr Crowe for his support, Madam President.

**The President:** The motion is that clauses 4 and 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 6 and 7, dealing with limitation.

**Mr Braidwood:** Thank you, Madam President.

Clause 6 considers the amount recoverable on debt under the Initiative.

This clause reduces the amount recoverable on a debt to the amount that the creditor could recover if the creditor approved 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 or 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. Illustration of effect follows in the example below.

I will try to explain, Madam President. If we say 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 compromise 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), compromise debts and 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.

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. Therefore, what we are saying, Madam President, in the legislation is the only recoverable amount will be under the initiative, so it will always be the 30. It will never be more.

Madam President, I beg to move that clauses 6 and 7 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 6 and 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 8 and 9, exceptions.

**Mr Braidwood:** Thank you, Madam President.

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 the 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. This provision is intended to 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.

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 judgments and awards from the effects of the Bill in those circumstances where there is an obligation under international instruments to enforce them in full, even where this is contrary to the Island's public policy.

Madam President, I beg to move clauses 8 and 9 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 8 and 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 10 and 11.

**Mr Braidwood:** Thank you, Madam President.

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

Clause 11 limits the application of the Bill in respect of changes that might in future 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 debt to which the Bill applies.

Madam President, I beg to move that clauses 10 and 11 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Callister.

**Mr Callister:** Thank you, Madam President.

I am interested in the term 'vulture funds' itself and I wonder where that originated? It is an ideal term to describe what this is all about, with the vultures being the most dangerous predators – or one of the most dangerous predators – in the animal kingdom, but what we are doing here, as far as I can see, essentially, is preventing a back door method of the use of the Isle of Man courts for improper – very improper – activities that have been going on.

I just wonder though, outside of the named countries here; there will be other countries clearly where this activity may be operating. Do we know anything about other countries that are not listed here and would we be in a position to be aware of that?

**The President:** Mr Lowey.

**Mr Lowey:** If I can just add one little thing to the information, I know of an American individual, corporate lawyers, who actually buy the debt and then operate in other jurisdictions – from an accommodation address in downtown New York, for example, a room or a brass plate on a wall – and this is really to restrict their ability to pursue things in jurisdictions such as small jurisdictions, where they think they can get away with it. So I do believe that the ‘vulture’ point is a very apt word. Vultures live on carcasses of dead animals, and the very poor indebted countries are being taken to the cleaners.

I think my good friend Mr Downie is right to point out that, in many instances, the debt has been incurred by what I would call less than kosher politicians who have allowed that debt to mount up, and then it is sold off at a discount to these people. I find that very offensive because it affects the livelihoods of the... because the debt, if it is enforced, means that the people of that country have to pay even more for their debt. Not right.

**The President:** The Hon. Member, Mr Downie.

**Mr Downie:** Yes, thank you.

Following on from that, what is not clear to me in this legislation is that if a case were to come before the courts, who are the parties? We have got the vulture on one hand, who is represented, the person who has actually bought the debt, but when we actually come to court, who is going to represent the heavily indebted, poor country? And if they have not got money to provide a proper defence, what happens there?

This is the bit that I cannot understand and I think before we launch ourselves into this, we should actually hear from the mover, how all this is going to work. At the end of the day, if somebody took a case against somebody in the Sudan or somewhere, how would it ever possibly use the mechanism that we have got available to us to come up with a result? I cannot see anybody from these countries actually providing a defence.

**The President:** Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

Can I just also clarify then with the mover, from what Mr Downie has said, I am presuming that the scenario he paints about how does the court work and enforce the debt, that is the situation as it would be now. Can you confirm, then, when this Bill comes in, that would actually stop these cases coming at all? Is that the point of this Bill – there would not be such a case, there would not be the arrangements to do so?

**The President:** The mover to reply please.

**Mr Braidwood:** Thank you, Madam President.

I think it was Mr Lowey who mentioned carcasses and in actual fact, this is what I have written down from Mr Callister when he was... how the name ‘vulture funds’ came because he said it is one of the biggest predators. I would not classify a vulture as a predator, because they are a scavenger and I have got here ‘feeds on dying or of carcasses’. And this is what these vulture funds do.

If you have got a very heavily indebted country and that debt has been bought for a substantial reduction by, as Mr Lowey said, some corporate lawyers in the States, they will then try to feed on that poor country to try to get the full debt, as I said previously, they would try to get the 100% plus all their costs, against 33% which other creditors would go for. So I think ‘vulture funds’ is a very apt word, feeding on those very poor countries. I thank Mr Lowey again, for his explanation.

With Mr Downie, the debtor nations would have to answer the case and a judgment would be given in their absence. So if they cannot represent themselves, the courts would have to give a judgment in their absence and if they have not got a party there, the judgment would go against those people who are going for the debt, so they would go 100%, so in actual fact we are closing the back door so our courts cannot be used.

Again, what we are putting, in answer to Mr Butt and Mr Downie, we are putting a mechanism in place to make it unattractive and not worth these people coming along and using the courts in the Isle of Man, and we just hope that other countries will introduce similar legislation to close the loophole, where these vulture funds will be able to pursue a debt through the courts of another country.

**Mr Butt:** Can I just come back on that?

**The President:** Well, he has replied, but go on then.

**Mr Butt:** Just my point about it would not stop the matters coming to court, but it would actually make it worthless, not worthwhile doing so.

**Mr Braidwood:** No. As I have just said, it would be unattractive and not worth pursuing through the Isle of Man courts, because once this legislation is in, the only thing they could go for is the 33%.

**Mr Butt:** The low level.

**Mr Braidwood:** The low-level debt.

**The President:** But they could still go for that.

**Mr Braidwood:** But they could still.

**The President:** Yes.

**Mr Braidwood:** But there would be no point, because even through the World Bank and the International Monetary Fund, this is the debt that the country has to repay, so there is no point in pursuing anything through the courts because, through the IMF and the World Bank, they have to pay this amount back.

**Mr Butt:** Thank you.

**Mr Braidwood:** I beg to move, Madam President.

**The President:** The motion is that clauses 10 and 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
That concludes the Second Reading and clauses.