

Debt Relief (Developing Countries) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Treasury with the consent of Baroness Quin, are published separately as HL Bill 53 – EN.

Debt Relief (Developing Countries) Bill

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Make provision for or in connection with the relief of debts of certain developing countries.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introduction

1 Meaning of “qualifying debt” etc

- (1) This section applies for the purposes of this Act.
- (2) “The Initiative” means the enhanced Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank. 5
- (3) “Qualifying debt” means a debt incurred before commencement that—
 - (a) is public or publicly guaranteed,
 - (b) is external,
 - (c) is a debt of a country to which the Initiative applies or a potentially eligible Initiative country, and 10
 - (d) in the case of a debt of a country to which the Initiative applies, is incurred before decision point is reached in respect of the country.
- (4) For the purposes of subsection (3) treat a debt incurred after commencement as incurred before commencement if (and so far as) it replaces one incurred before commencement. 15
- (5) For the purposes of subsection (3)(d) treat a debt incurred after decision point as incurred before decision point if (and so far as) it replaces one incurred before decision point.
- (6) “Potentially eligible Initiative country” means a country—
 - (a) that the International Monetary Fund and World Bank identify as potentially eligible for debt relief under the Initiative, and 20
 - (b) in respect of which decision point has not been reached.

- (7) Decision point is regarded as reached in respect of a country if it is so regarded for the purposes of the Initiative.
- (8) For the meaning of other expressions used in subsection (3), see section 2.
- (9) “Country” includes a territory.
- (10) “Commencement” means the commencement of this Act. 5
- (11) If the terms of the Initiative are amended after commencement in such a way as to change a relevant eligibility condition, this Act has effect as if they had not been so amended.
- (12) In subsection (11) “relevant eligibility condition” means a condition as to the level of a country’s income or debt or the size of its economy that must be met in order for the country to be eligible for debt relief under the Initiative. 10

2 Qualifying debts: further definitions

- (1) The expressions used in section 1(3) have the meaning given below.
- (2) “Debt” includes –
- (a) a liability that falls to be discharged otherwise than by the making of a payment, 15
 - (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 (except a liability so far as relating to the operation or maintenance of property subject to the lease). 20
- (3) “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 services, 25
 - (b) a liability that falls to be discharged in less than a year from the time it was incurred (“a short-term debt”) unless the short-term debt is within subsection (4), or
 - (c) a liability incurred after commencement that replaces anything that was (at the time of the replacement) within paragraph (a) or (b). 30
- (4) A short-term debt is within this subsection if it ought to have been discharged –
- (a) more than a year before commencement, and
 - (b) (where decision point has been reached in respect of the country concerned) more than a year before decision point. 35
- (5) A debt is a “public” debt of a country if it was incurred by –
- (a) the country or any part of it (or the government of the country or any part of the country or any department of any such government),
 - (b) the central bank or other monetary authority of the country, or
 - (c) a body corporate controlled (directly or indirectly) by anything within paragraph (a) or (b). 40
- (6) In subsection (5)(a) references to part of a country include any municipality or other local government area in the country.
- (7) A debt is a “publicly guaranteed” debt of a country if –

- (a) it is guaranteed,
 - (b) the guarantee was entered into—
 - (i) before commencement, and
 - (ii) where decision point has been reached in respect of the country, before that point was reached, and
 - (c) the debt would be a public debt of the country if it had been incurred by the guarantor. 5
- (8) If the conditions in subsection (7)(a) to (c) are met as regards part of a debt, that part is regarded as a publicly guaranteed debt of the country concerned.
- (9) A public or publicly guaranteed debt of a country is “external” unless the creditor was resident in the country— 10
- (a) if decision point was reached in respect of the country before commencement, at the time that point was reached, or
 - (b) otherwise, at commencement.
- (10) If in any proceedings there is an issue as to whether a debt is a qualifying debt, treat the debt as external unless it is proved in those proceedings that it is not external. 15

Relief of debts etc

3 Amount recoverable in respect of claim for qualifying debt etc

- (1) The amount recoverable in respect of— 20
- (a) a qualifying debt, or
 - (b) any cause of action relating to a qualifying debt,
- is the relevant proportion of the amount that would otherwise be recoverable in respect of the qualifying debt or cause of action.
- (2) For the meaning of “the relevant proportion”, see section 4. 25
- (3) Subsection (1) does not apply in relation to an agreement (a “compromise agreement”) that compromises—
- (a) a claim for a qualifying debt, or
 - (b) a claim in respect of a cause of action relating to a qualifying debt.
- (4) But the amount recoverable under a compromise agreement is limited to the amount that would be recoverable in respect of the claim if the agreement had not been made (and subsection (1) applied to the claim). 30
- (5) Subsection (1) does not apply where an agreement that is not a compromise agreement (a “refinancing agreement”) has been made—
- (a) that changes the terms for repayment of a debt (“the rescheduled debt”) in such a way as to reduce its net present value, or
 - (b) by virtue of which a debt (“the original debt”) is replaced by a debt (“the new debt”) whose net present value is less than the net present value of the original debt. 35
- (6) But the amount recoverable in respect of the rescheduled debt or the new debt is limited to the amount that would be recoverable in respect of the initial debt if the refinancing agreement had not been made (and subsection (1) applied to that debt). 40

- (7) In subsection (6) “the initial debt” means the debt mentioned in subsection (5)(a) or (as the case may be) the original debt.
- (8) References in this section to the amount recoverable include the amount recoverable on the enforcement of any security.
- (9) This section applies even if the law applicable to the qualifying debt, or to any compromise agreement, refinancing agreement or security, is the law of a country outside the United Kingdom. 5

4 Meaning of “the relevant proportion”

- (1) In this Act any reference to the relevant proportion, in relation to a qualifying debt, is to be read as follows. 10
- (2) Where the qualifying debt is one to which the Initiative applies, the relevant proportion is –

$$\frac{A}{B}$$

where –

- A is the amount the debt would be if it were reduced in accordance with the Initiative (on the assumption, if it is not the case, that completion point has been reached, for the purposes of the Initiative, in respect of the country whose debt it is), and 15
- B is the amount of the debt without it having been so reduced.
- (3) Where the qualifying debt is a debt of a potentially eligible Initiative country, the relevant proportion is 33%. 20

5 Judgments for qualifying debts etc

- (1) This section applies to –
- (a) a judgment on a relevant claim given by a court in the United Kingdom before commencement, 25
- (b) a foreign judgment given (whether before or after commencement) on a relevant claim, and
- (c) an award made (whether before or after commencement) on a relevant claim in an arbitration (conducted under any laws).
- (2) “Relevant claim” means – 30
- (a) a claim for, or relating to, a qualifying debt, or
- (b) a claim under an agreement compromising a claim within paragraph (a).
- (3) The amount of the judgment or award is to be treated as equal to the amount it would be if the court, tribunal or arbitrator had applied section 3 in relation to the relevant claim. 35
- (4) Subsection (3) does not apply in relation to a claim if the effect of it so applying would be to increase the amount of the judgment or award.
- (5) In this section – 40
- “judgment” includes an order (and references to the giving of a judgment are to be read accordingly), and

“foreign judgment” means a judgment (however described) of a court or tribunal of a country outside the United Kingdom, and includes anything (other than an arbitration award) which is enforceable as if it were such a judgment.

- (6) This section applies to anything that gives effect to a compromise of a relevant claim as if in subsection (3) after “if” there were inserted “the relevant claim had not been compromised and”. 5

Supplementary and general

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

- (1) This Act does not apply to a relevant claim, a relevant foreign judgment or a relevant arbitration award if – 10
- (a) proceedings are brought in respect of the relevant claim, foreign judgment or arbitration award, and
 - (b) the debtor does not, before the relevant time, make an offer to compromise the proceedings on comparable Initiative terms. 15
- (2) For the purposes of this section an offer is made on “comparable Initiative terms” if the net present value of payments to be made in accordance with the offer is equal to or exceeds the net present value of the payment required to satisfy the relevant claim, foreign judgment or arbitration award (reduced in accordance with this Act). 20
- (3) In this section –
- “foreign judgment” has the meaning given by section 5(5),
 - “judgment” includes an order,
 - “proceedings” means proceedings in a part of the United Kingdom, and includes proceedings for – 25
 - (a) the registration of a foreign judgment or an 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, 30
 - “relevant arbitration award” means an award within section 5(1)(c),
 - “relevant claim” has the meaning given by section 5(2),
 - “relevant foreign judgment” means a foreign judgment within section 5(1)(b), and 35
 - “the relevant time” means –
 - (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) 40
 - (c) the time when permission is given to enforce the arbitration award in the same manner as a judgment of the court.
- (4) This section applies to cases where the proceedings were brought before commencement (as well as cases where they are brought after commencement), but not to cases where the relevant time occurred before commencement. 45

7 Exception for overriding EU or international obligations

- (1) Nothing in this Act applies to a foreign judgment or an arbitration award of a kind required by European Union law, or by an international obligation of the United Kingdom, to be enforced in full even in cases where such enforcement is contrary to the public policy of the United Kingdom. 5
- (2) Accordingly, this Act does not apply to—
- (a) a foreign judgment that is certified as a European Enforcement Order (within the meaning of Regulation (EU) No. 805/2004 of the European Parliament and of the Council),
 - (b) a foreign judgment that is an enforceable European Order for Payment (within the meaning of Regulation (EU) No. 1896/2006 of the European Parliament and of the Council), or 10
 - (c) an award to which section 1 of the Arbitration (International Investment Disputes) Act 1966 applies (awards made under the Convention on the settlement of investment disputes between States and nationals of other States). 15
- (3) “Foreign judgment” has the meaning given by section 5(5).

8 Saving

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). 20

9 Duration of Act

- (1) This Act expires at the end of the period of one year beginning with commencement; but this is subject to subsections (2) and (3).
- (2) The Treasury may by order provide that this Act (instead of expiring at the time it would otherwise expire) expires at the end of the period of one year from that time. 25
- (3) The Treasury may by order provide that this Act has permanent effect.
- (4) An order under this section is to be made by statutory instrument.
- (5) An order under this section may be made only if a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament. 30
- (6) If this Act expires by virtue of this section—
- (a) the Act is to be treated as never having been in force, and
 - (b) accordingly, where— 35
 - (i) a judgment was given, or order or arbitration award made, on a relevant claim (as defined by section 5(2)) while the Act was in force, and
 - (ii) the amount of the judgment, order or award is, as a result of section 3, less than it would be if that section had not applied in relation to the claim, 40
- the amount of the judgment, order or award is to be treated as equal to the amount it would be if the section had not applied in relation to the claim.

10 Commencement, extent and short title

- (1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (2) This Act extends to each part of the United Kingdom.
- (3) This Act may be cited as the Debt Relief (Developing Countries) Act 2010.

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To make provision for or in connection with the relief of debts of certain developing countries.

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