STATES OF JERSEY

DRAFT DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 201-

Lodged au Greffe on 1st October 2012
by the Chief Minister

STATES GREFFE

Jersey

DRAFT DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Debt Relief (Developing Countries) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator I.J. Gorst**

REPORT

The Draft Debt Relief (Developing Countries) Jersey Law 201- intends to limit practices that could undermine international debt relief efforts.

The enhanced Heavily Indebted Poor Countries Initiative (HIPC) seeks to provide debt relief to heavily indebted low income countries. Under this Initiative, the International Monetary Fund and World Bank calculate the reduction required in a country's external debts in order to return them to a level of debt that is considered to be sustainable. All creditors are expected to provide the proportionate reduction that will achieve this. This Law will, when enacted, prevent the Jersey Courts being used to seek to enforce in full, the debts of countries to which the governments of other countries, multilateral lenders and commercial creditors have provided relief under the Initiative.

Repayment of these creditors seeking to recover the full value of the debt is believed to divert resources which are intended to support development and the reduction of poverty in the country. The Law will prevent creditors from recovering an amount in excess of that consistent with the Initiative. The Law also encourages the negotiated settlement of these debts on terms compatible with the Initiative by excluding from the scope of the legislation debts where the country does not offer to settle on such terms.

The Law is limited to those debts of countries on which relief is expected under the Initiative and which are incurred before commencement of the Act. The debt essentially either has to have been incurred by a State, an arm of its government, its monetary authority or a corporate body controlled by any of them. Alternatively, one of them has to have been the guarantor of the debt.

The latest World Bank Status Report (dated 08 November 2011) currently identifies 40 countries that have received debt relief under the HIPC Initiative or remain eligible or potentially eligible for such debt relief. The 40 countries are listed as: Afghanistan; Benin; Bolivia; Burkina Faso; Burundi; Cameroon; Central African Republic; Chad; Congo (Republic of); Congo (Democratic Republic of the); Comoros; Côte d'Ivoire; Eritrea; Gambia; Ghana; Guinea; Guinea-Bissau; Guyana; Haiti; Honduras; Kyrgyz Republic; Liberia; Ethiopia; Madagascar; Malawi; Mali; Mauritania; Mozambique; Nicaragua; Niger; Rwanda; São Tomé and Príncipe; Senegal; Sierra Leone; Somalia; Sudan; Tanzania; Togo; Uganda; Zambia.

The Law deals with those circumstances where Jersey is obliged to enforce foreign judgments under European Union law or another international obligation. The Law excludes foreign judgements and awards from the effects of the legislation where there is an obligation under international instruments to enforce them in full, even where this is contrary to the public policy of Jersey.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 26th September 2012 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Debt Relief (Developing Countries) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This draft Law enacts in Jersey provisions similar to those of the Debt Relief (Developing Countries) Act 2010 of the United Kingdom.

Article 1 sets out a number of definitions for the purposes of the interpretation of the draft Law. For example, the "Initiative" means the enhanced Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank and "lodging day" means the day on which the draft Law is lodged au Greffe.

Article 2 specifies that for a debt to be a qualifying debt of a country for the purposes of the draft Law, the following conditions need to be satisfied (set out here in simplified terms) –

(a) the debt has to be incurred before decision point under the Initiative is reached (if at all) in respect of the country and before the lodging day;

(b) the debt has to be public or publicly guaranteed;

(c) the debt has to be external; and

(d) the country has to be on one or other of certain lists of developing countries maintained by the IMF and the World Bank for the purposes of the Initiative.

Article 3 sets out in detail what a public debt is and when it is to be regarded as external, that is, owed to a creditor based outside the relevant country.

Article 4 provides that changes occurring, after the lodging day, to the eligibility criteria that determine whether a country comes under the Initiative are not to be taken into account in the operation of the draft Law.

Article 5 specifies that the amount of a qualifying debt that may be recovered is the relevant proportion.

Article 6 specifies that the relevant proportion is 33% in the case of a potentially eligible Initiative country – or the proportion specified under the Initiative in the case of a country to which the Initiative applies.

Article 7 applies the same proportion to judgments of courts (given before the draft Law comes into force in the case of Jersey judgments or at any time in the case of foreign judgments) and arbitration awards (made at any time).

Article 8 applies to a case where proceedings have been brought on or after the lodging day on a claim, foreign judgment, or award, concerning a qualifying debt. Article 8 effectively provides that the debtor must offer to compromise the proceedings if the debtor wants to benefit from the application of the draft Law.

Article 9 provides that the draft Law does not apply to a foreign judgment or to an arbitration award if European Union law, or an international obligation, that applies to Jersey requires enforcement in full of the judgment or award.

Article 10 provides that the draft Law does not allow payments on a debt that have already been made to be clawed back.

Article 11 sets out the short title of the draft Law and provides for it to come into force a week after its registration in the Royal Court.

Jersey

DRAFT DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 201-

Arrangement

Article

Jersey

DRAFT DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 201-

A LAW to make provision for or in connection with the relief of debts of certain developing countries.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of Her Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law –

"completion point" is regarded as being reached in respect of a country if it is so regarded for the purposes of the Initiative;

"country" includes a territory;

"debt" has the meaning set out in Article 3;

"decision point" is regarded as being reached in respect of a country if it is so regarded for the purposes of the Initiative;

"external", in relation to a debt, has the meaning set out in Article 3;

"foreign judgment" means a judgment (however described) of a court or tribunal of a country outside Jersey, and includes anything (other than an arbitration award) enforceable as if it were such a judgment;

"Initiative" means the enhanced Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank;

"judgment" includes an order;

"the lodging day" means the day on which the projet for this Law was lodged au Greffe;

"potentially eligible Initiative country" means a country –

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

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

"public" and "publicly guaranteed", in relation to a debt, have the meanings set out in Article 3;

"qualifying debt" has the meaning set out in Article 2;

"relevant claim" means –

(a) a claim for, or relating to, a qualifying debt; or

(b) a claim under an agreement compromising a claim within paragraph (a);

"relevant proportion" has the meaning prescribed in Article 6.

2 Qualifying debt

(1) In this Law, "qualifying debt" means a debt that is –

(a) incurred before the lodging day;

(b) public or publicly guaranteed;

(c) external;

(d) a debt of a country to which the Initiative applies or of a potentially eligible Initiative country; and

(e) in the case of a debt of a country to which the Initiative applies, a debt incurred before decision point is reached in respect of the country.

(2) For the purposes of paragraph (1), a debt incurred on or after the lodging day is to be treated as incurred before the lodging day if (and so far as) it replaces one incurred before the lodging day.

(3) For the purposes of paragraph (1), a debt incurred after decision point is to be treated as incurred before decision point if (and so far as) it replaces one incurred before decision point.

3 Qualifying debt: additional interpretation provisions

(1) This Article applies for the purposes of the interpretation of Article 2.

(2) A debt includes –

(a) a liability that falls 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 (except a liability so far as it relates to the operation or maintenance of property subject to the lease).

(3) A 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 that falls to be discharged in less than a year from the time when it was incurred unless it is within paragraph (4); or

(c) a liability incurred on or after the lodging day that replaces anything that was (at the time of the replacement) within sub-paragraph (a) or (b).

(4) A liability is within this paragraph if it ought to have been discharged –

(a) in every case, more than a year before the lodging day; and

(b) in the case where decision point has been reached in respect of the country concerned, more than a year before decision point.

(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 of 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 sub-paragraph (a) or (b).

(6) In paragraph (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 the lodging day, and

(ii) if decision point has been reached in respect of the country, before decision point was reached; and

(c) the debt would be a public debt of the country if it had been incurred by the guarantor.

(8) If the conditions in paragraph (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 –

(a) if decision point has been reached in respect of the country before the lodging day, at the time when decision point was reached; or

(b) otherwise, at the lodging day.

(10) If in any proceedings there is an issue as to whether a debt is a qualifying debt, the debt is to be treated as external unless it is proved in those proceedings that it is not external.

4 Change of relevant eligibility condition

(1) If the terms of the Initiative are amended on or after the lodging day in such a way as to change a relevant eligibility condition, this Law has effect as if they had not been so amended.

(2) In paragraph (1) "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.

5 Amount recoverable in respect of claim for qualifying debt etc

(1) The amount recoverable in respect of –

(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) Paragraph (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.

(3) However, the amount recoverable under a compromise agreement is limited to the amount that would have been recoverable in respect of the claim if the agreement had not been made and paragraph (1) had applied to the claim.

(4) Paragraph (1) does not apply where an agreement that is not a compromise agreement (a "refinancing agreement") has been made in respect of a debt ("the initial debt"), being an agreement –

(a) that changes the terms for repayment of the initial debt in such a way as to reduce its net present value; or

(b) by virtue of which the initial debt is replaced by a debt ("the new debt") whose net present value is less than the net present value of the initial debt.

(5) However, the amount recoverable in respect of the initial debt after its terms for repayment have been changed as referred to in paragraph (4)(a), or in respect of the new debt referred to in paragraph (4)(b), is limited to the amount that would have been recoverable in respect of the initial debt if the refinancing agreement had not been made and paragraph (1) had applied to the initial debt.

(6) References in this Article to the amount recoverable include the amount recoverable on the enforcement of any security.

(7) This Article 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 Jersey.

6 How to determine the relevant proportion

(1) Where a qualifying debt is one to which the Initiative applies, the relevant proportion in relation to that debt is the quotient found when A is divided by B and –

"A" is the amount that 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

"B" is the amount of the debt without its having been so reduced.

(2) Where the qualifying debt is a debt of a potentially eligible Initiative country, the relevant proportion in relation to that debt is 33%.

7 Judgments and awards on qualifying debts where Article 5 not applied by court, tribunal or arbitrator

(1) This Article applies to –

(a) a judgment given on a relevant claim where the judgment is given by a court of Jersey before this Law came into force;

(b) a foreign judgment given, whether before, on or after the lodging day, on a relevant claim; or

(c) an award made, whether before, on or after the lodging day, on a relevant claim in an arbitration conducted under any law.

(2) The amount of the judgment or award is to be treated as equal to the amount that it would have been if the court, tribunal or arbitrator had applied Article 5 in relation to the relevant claim.

(3) However, paragraph (2) does not apply in relation to a claim if the effect of its so applying would be to increase the amount of the judgment or award.

(4) This Article applies to anything that gives effect to a compromise of a relevant claim as if paragraph (2) read as follows –

"(2) The amount of the judgment or award is to be treated as equal to the amount that it would have been if the relevant claim had not been compromised and the court, tribunal or arbitrator had applied Article 5 in relation to the relevant claim.".

8 Law does not apply if debtor fails to offer to compromise proceedings

(1) This Law does not apply to a relevant claim, a relevant foreign judgment or a relevant arbitration award if –

(a) proceedings are brought in respect of the 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.

(2) For the purposes of this Article an offer to compromise proceedings 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 claim, foreign judgment or arbitration award (reduced in accordance with this Law).

(3) This Article applies only to cases where the proceedings were brought on or after the lodging day.

(4) In this Article –

"proceedings" means proceedings in a court of Jersey, and includes proceedings for –

(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 a court,

but does not include proceedings for the enforcement of a judgment or award;

"relevant arbitration award" means an award referred to in Article 7(1)(c);

"relevant foreign judgment" means a foreign judgment referred to in Article 7(1)(b);

"the relevant time" means, as the case requires –

(a) the time when a court first gives judgment on the relevant claim;

(b) the time when the relevant foreign judgment or relevant arbitration award is registered; or

(c) the time when permission is given to enforce the relevant arbitration award in the same manner as a judgment of a court.

9 Exception for European law or international obligation

Nothing in this Law applies to a foreign judgment, or an arbitration award, of a kind that is required, by –

(a) European Union law that applies to Jersey; or

(b) an international obligation that applies to Jersey,

to be enforced in full, even in cases where such enforcement is contrary to the public policy of Jersey.

10 Exception for amounts already paid on a liability

Nothing in this Law 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).

11 Commencement and short title

(1) This Law may be cited as the Debt Relief (Developing Countries) (Jersey) Law 201-.

(2) This Law comes into force 7 days after it is registered.