

ORDER IN COUNCIL

I
2014

ratifying a Projet de Loi

ENTITLED

Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013

(Registered on the Records of the Island of Guernsey
on the 13th January, 2014.)



2014

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 13th day of January, 2014 before Richard James McMahon, Esquire, Deputy Bailiff; present:- Stephen Edward Francis Le Poidevin, Esquire, Barbara Jean Bartie, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Terry George Snell, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Jonathan Grenfell Hooley, Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 11th December, 2013 approving and ratifying a Projet de Loi entitled “The Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.

J TORODE
Her Majesty’s Greffier



At the Court at Buckingham Palace

THE 11th DAY OF DECEMBER 2013

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 28th November 2012, the States of Deliberation at a meeting on 26th June 2013 approved a Projet de Loi entitled the Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 18th September 2013 considered the Projet de Loi when a Resolution was passed agreeing to the application to Alderney. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013, and to order that it shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

“The Committee have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Alderney, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013

ARRANGEMENT OF SECTIONS

1. Qualifying debt.
2. Qualifying debt: additional interpretation provisions.
3. Change of relevant eligibility condition.
4. Amount recoverable in respect of claim for qualifying debt etc.
5. How to determine the relevant proportion.
6. Judgments and awards on qualifying debts where section 4 not applied by court, tribunal or arbitrator.
7. Law does not apply if debtor fails to offer to compromise proceedings.
8. Exception for European law or international obligation.
9. Exception for amounts already paid on a liability.
10. Interpretation.
11. Extent.
12. Citation.

PROJET DE LOI

ENTITLED

The Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013

THE STATES, in pursuance of their Resolution of the 28th November, 2012^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Qualifying debt.

1. (1) In this Law, "**qualifying debt**" means a debt that is –
 - (a) incurred before the operative date,
 - (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

^a

Article V of Billet d'État No. XXIII of 2012.

- (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 subsection (1), a debt incurred on or after the operative date is to be treated as incurred before the operative date if (and so far as) it replaces one incurred before the operative date.

(3) For the purposes of subsection (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.

Qualifying debt: additional interpretation provisions.

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

(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 subsection (4), or
 - (c) a liability incurred on or after the operative date that replaces anything that was (at the time of the replacement) within paragraph (a) or (b).
- (4) A liability is within this subsection if it ought to have been discharged –
 - (a) in every case, more than a year before the operative date, 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 paragraph (a) or (b).

(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 the operative date, 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 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 –

- (a) if decision point has been reached in respect of the country before the operative date at the time when decision point was reached, or
- (b) otherwise, at the operative date.

(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.

Change of relevant eligibility condition.

3. (1) If the terms of the Initiative are amended on or after the operative date 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 subsection (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.

Amount recoverable in respect of claim for qualifying debt etc.

4. (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) 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.

(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 subsection (1) had applied to the claim.

(4) Subsection (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 subsection (4)(a), or in respect of the new debt referred to in subsection (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 subsection (1) had applied to the initial debt.

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

(7) 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 Guernsey and Alderney.

How to determine the relevant proportion.

5. (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%.

Judgments and awards on qualifying debts where section 4 not applied by court, tribunal or arbitrator.

6. (1) This section applies to –

- (a) a judgment given on a relevant claim where the judgment is given by a court of Guernsey or Alderney before this Law came into force,

- (b) a foreign judgment given, whether before, on or after the operative date, on a relevant claim, or
- (c) an award made, whether before, on or after the operative date, 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 section 4 in relation to the relevant claim.

(3) However, subsection (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 section applies to anything that gives effect to a compromise of a relevant claim as if subsection (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 section 4 in relation to the relevant claim".

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

7. (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 section 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 section applies only to cases where the proceedings were brought on or after the operative date.

(4) In this section -

"proceedings" means proceedings in a court of Guernsey or Alderney, 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 section 6(1)(c),

"relevant foreign judgment" means a foreign judgment referred to in section 6(1)(b), and

"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.

Exception for European law or international obligation.

8. 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 Guernsey or Alderney, or
- (b) an international obligation that applies to Guernsey or Alderney,

to be enforced in full, even in cases where such enforcement is contrary to the public policy of Guernsey or Alderney, as the case may be.

Exception for amounts already paid on a liability.

9. 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).

Interpretation.

10. (1) In this Law -

"**Alderney**" means the Island of Alderney,

"**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**": see section 2,

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

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**external**", in relation to a debt, has the meaning set out in section 2,

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

"Guernsey" means the Islands of Guernsey, Herm and Jethou,

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

"judgment" includes an order,

"the operative date" means the 17th May, 2013,

"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
- (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 section 2,

"qualifying debt" has the meaning set out in section 1,

"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 set out in section 5, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of this Law throughout Guernsey and Alderney.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

11. This Law applies to Guernsey and Alderney.

Citation.

12. This Law may be cited as the Debt Relief (Developing Countries) (Guernsey and Alderney) Law, 2013.

^b Ordres en Conseil Vol. XIII, p. 355.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

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