



Jersey

# **DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 2013**

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## DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 2013

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## **DEBT RELIEF (DEVELOPING COUNTRIES) (JERSEY) LAW 2013**

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

Commencement [[see endnotes](#)]

### **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 1st October 2012;

“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 Short title**

This Law may be cited as the Debt Relief (Developing Countries) (Jersey) Law 2013.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Debt Relief (Developing Countries) (Jersey) Law 2013	<a href="#">L.1/2013</a>	1 March 2013

### Table of Renumbered Provisions

Original	Current
11(1)	11
11(2)	Spent, omitted

### Table of Endnote References

*There are currently no endnote references*