

Vulture Funds 10 Minute Rule Bill

Developing Country Debt (Restriction of Recovery) Bill

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Regulate the recovery of the defaulted sovereign debt of developing countries, and for connected purposes.

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:—

1 Interpretation

In this Act—

“consent application” means an application under section 3, including all attachments to the application;

“debtor country” means the Low or Middle Income country which is the debtor of the defaulted sovereign debt for which a creditor is seeking payment;

“defaulted sovereign debt” means a sovereign debt following the occurrence of any circumstance entitling a creditor of the sovereign debt to exercise the creditor's right to institute proceedings to recover payment of part or all of the sovereign debt;

“diplomatic agent” has the same meaning as in the Diplomatic Privileges Act 1964 (c.1);

“Low or Middle Income country” means any country whose income group is classified as low income, lower middle income or higher middle

income by the International Bank for Reconstruction and Development and the International Development Association.

“recovery proceedings” means an application to a court under section 4.

“sovereign debt” means any debt of principal, interest or otherwise, owed by a government, or government agency of a foreign state.

“British citizen” means a British citizen under the British Nationality Act 1981 (c.61) .

2 Limitation on right of recovery in a court

A court may not award a creditor of the defaulted sovereign debt of a Low or Middle Income country the right to recover in excess of the maximum recovery amount as defined in section 3 of this Act.

3 Maximum recovery amount

In this Act the maximum recovery amount is the amount that equals—

(a) the amount paid by a creditor to acquire the interest the creditor has in the defaulted sovereign debt (excluding any legal fees or other fees and costs associated with collection); and

(b) interest, calculated as simple interest only, on the amount the creditor paid to acquire the interest in the defaulted sovereign debt, from the date the creditor acquired rights over the defaulted sovereign debt, and at an interest rate which is the lower of:

(i) the interest rate in the loan agreement for the sovereign debt; or

(ii) the interest rate set in accordance with section 17 of the Judgments Act 1838 (c.110);

provided that the maximum recovery amount calculated under (a) and (b) above shall be reduced by a sum equal to any amounts recovered from other actions related to the same defaulted sovereign debt.

4 Court consent required before recovering defaulted sovereign debt

A creditor must make an application to, and receive the consent of, a court before commencing proceedings in the United Kingdom for payment of any amount of defaulted sovereign debt.

5 Provision of consent application

- (1) For each consent application, a copy of the consent application and this Act must be sent by the creditor to the diplomatic agent in the United Kingdom of the debtor country, or his representative.**
- (2) For each consent application, a copy of the consent application must be sent by the creditor to the Secretary of State.**

6 Disclosure required in consent application

A consent application must include—

- (a) all original loan agreements and all collateral and amending loan agreements;**
- (b) all assignment documentation providing evidence of the chain of title from the original creditor of the defaulted sovereign debt to the creditor seeking to institute the recovery proceedings which are the subject of the consent application; and**
- (c) any other documentation necessary to establish the creditor's right to institute recovery proceedings;**
- (d) a statement of the names and addresses of all persons who will receive a financial benefit of more than 1% of the total amounts recovered from the proposed recovery proceedings;**
- (e) where the creditor is a company, a copy of the company's incorporation documents, the names and addresses of all company directors and board members, and the company's accounts for the previous financial year;**
- (f) a statement of the total amount paid for acquiring the right to the financial benefit by all persons who will receive a financial benefit of more than 1% of the total amounts recovered from the proposed recovery proceedings, the dates the rights were acquired and the identity of any person from whom the rights were acquired;**
- (g) a declaration that the financial benefit of all persons listed in accordance with section 4(d) has not been further assigned or encumbered;**
- (h) a statement of—**

(i) what the creditor calculates the maximum recovery amount to be, and

(ii) the amount the creditor claims if the consent application is granted; and

(i) a declaration that neither the creditor, nor any owner, employee or agent of the creditor has given anything of value to the debtor country, or any officer or agent of the debtor country, in exchange for any action in connection with the acquisition or collection of the defaulted sovereign debt, or any information concerning the acquisition or collection of the defaulted sovereign debt.

7 Right to discontinuance of recovery proceedings

On application by the diplomatic agent in the United Kingdom of the debtor country or his representative, another creditor of the debtor country, or the Secretary of State, a court may order recovery proceedings be discontinued on the grounds that the requirements of this Act have not been met.

8 Restriction of enforcement of recovery in UK courts

If a creditor has received a judgement by a court in a jurisdiction other than the United Kingdom granting the creditor the right to be paid part or all of a defaulted sovereign debt by the debtor country, and the creditor is entitled to enforce that judgement in the United Kingdom, the creditor is only entitled to enforce the judgement in the United Kingdom up to the maximum recovery amount.

9 Debtor right of recovery of amounts in excess of maximum recovery amount

If, as a result of an order of a foreign court, or a dispute resolution procedure that does not involve court proceedings, a creditor who is a British citizen, or a business carrying on business within the United Kingdom, has received payment from the debtor country in excess of the maximum recovery amount, the debtor country or interested party may apply for, and a court may order, the creditor to repay to the debtor country the amount that exceeds the maximum recovery amount.

10 Short title

This Act may be cited as the Developing Country Debt (Restriction of Recovery) Act 2009.