POLICY COUNCIL
THE STATES OF GUERNSEY

Consultation – Heavily Indebted Poor Countries Initiative

The purpose of this consultation is to invite comments from business on the enactment of legislation similar to that in the UK on Debt Relief designed to limit the capacity of "vulture funds" to enforce payment of debts through courts in the Bailiwick.

Written comments to the questions at the bottom of this letter should be submitted **before 17:00 on Friday 16 September 2011** to:

By letter:

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All comments are welcome and should be clearly marked with "Heavily Indebted Poor Countries Initiative – Consultation Response"

Background

The Heavily Indebted Poor Countries Initiative ("HPIC Initiative") was launched in 1996 and aims to ensure that no poor country faces a debt burden it cannot manage. Under the Initiative, the International Monetary Fund ("IMF") and World Bank calculate the proportionate reduction required in a country's external debts in order to return them to 150% of the value of the country's annual exports, which is considered to be a sustainable level. All creditors – multilateral, bilateral and commercial – are expected to provide the proportionate reduction that will achieve this. At present, the UK authorities, and many governments of other countries, multilateral lenders (e.g. the World Bank, the African Development Bank, the IMF, the Inter-American Development Bank and all Paris Club creditors) and commercial creditors do so.

Since its launch, responsible members of the international financial community have worked together to reduce to sustainable levels the external debt burdens of the most heavily indebted poor countries. While most creditors reduce their debts in accordance with the HIPC Initiative, some commercial creditors have lagged behind in their efforts.

Some commercial organisations have established funds (sometimes referred to as "vulture funds") designed to acquire debt (which it is intended should be reduced in accordance with the Initiative) and enforce payment of the debt plus accumulated interest and any associated charges through legal proceedings. Full repayment of these creditors has the effect of inhibiting the full benefit of the HIPC Initiative, as it diverts resources provided through debt relief, which are intended to support development and poverty reduction in the country.

40 countries have been designated by the IMF and World Bank as eligible or potentially eligible under the Initiative. The current position of eligible or potentially eligible countries in the Initiative is enclosed.

Government Position

On 6 June 2011, the Policy Council agreed that a report should be prepared recommending the enactment of appropriate legislation designed to limit the capacity of "vulture funds" to enforce payment of debts through Courts in the Bailiwick. The Council is aiming for proposals to be laid before the States at the earliest possible juncture.

This decision reflects the strong commitment to work with other jurisdictions to reduce external debt burdens of the most heavily indebted poor countries.

Debt Relief (Developing Countries) Act 2010[1]

The UK has recently made the Debt Relief (Developing Countries) Act 2010 permanent.[2] The Act prevents creditors of HIPCs recovering an amount of debt in excess of that consistent with the HIPC Initiative. The main provisions of the Act are to:

- Reduce the amount recoverable on a debt to which the Act applies to the amount which the creditor could recover if the creditor provided the level of debt relief expected under the HIPC Initiative.
- Reduce the value of judgments and arbitration awards relating to debts to which the Act applies.
- The Act applies to a fixed stock of historic debt (that eligible for the HIPC Initiative) and does not apply to new lending undertaken by HIPC governments.
- Apply to judgments given in the UK before commencement of the Act, so that such judgments may be enforced only for the reduced amount.
- Apply to the enforcement of awards and foreign judgments in the UK (and those awards and judgments may only be enforced for the reduced amount).
- Exclude debts where the debtor does not make an offer to repay the amount which remains recoverable by the creditor under the terms of the Act.

[1] A copy of the UK legislation along with explanatory notes is available at: http://www.legislation.gov.uk/ukpga/2010/22/contents
[2] An explanatory Memorandum to the Permanent Effect Order is available at: http://www.legislation.gov.uk/ukdsi/2011/9780111509838/memorandum/contents

- Exclude foreign judgments and arbitration awards from the effects of the Act where the UK is obliged under international instruments to enforce them in full, even where such enforcement is contrary to the UK's public policy.

Considerations:

1. **Do you agree that Guernsey should enact suitable legislation, which is in line with the provisions of the Debt Relief (Developing Countries) 2010 Act?**

2. **Do you envisage any consequences, outside of those intended and described above, that such legislation may have on your company's ability to do business?**

3. **If this legislation is put in place are there any other considerations that should be borne in mind – eg timing, communication etc?**

Thank you for taking the time to answer this consultation and I look forward to hearing from you.

Eligible or potentially eligible countries in the HIPC Initiative

Eligible for the Initiative		*Potentially eligible for the Initiative*
Post-Completion Point (32)	**Post-Decision Point (4)**	**Pre-Decision Point (4)**
Afghanistan	Chad	Eritrea
Benin	Comoros	Kyrgyz Republic
Bolivia	Côte d'Ivoire	Somalia
Burkina Faso	Guinea	Sudan
Burundi		
Cameroon		
Central African Republic		
Republic of Congo		
Democratic Republic of Congo		
Ethiopia		
The Gambia		
Ghana		
Guinea-Bissau		
Guyana		
Haiti		
Honduras		
Liberia		
Madagascar		
Malawi		
Mali		
Mauritania		
Mozambique		
Nicaragua		
Níger		
Rwanda		
São Tomé Príncipe		
Senegal		
Sierra Leone		
Tanzania		
Togo		
Uganda		
Zambia		

Note: Applicant countries must meet certain criteria, commit to poverty reduction through policy changes and demonstrate a good track-record over time. The IMF and World Bank provide interim debt relief in the initial stage (post decision point countries) and, when a country meets its commitments, full debt-relief is provided (post-completion point countries)