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# Legislative Measures for Successful Sovereign Debt Restructuring

## Existing laws and current proposals

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# I. Context

The current international regime for restructuring sovereign debt largely relies on consensual processes and contract law: Restructuring terms are agreed in principle between a debtor country and its main creditor groups within the Common Framework and other negotiation formats, but will only become binding once implemented in accordance with the laws governing the individual claim.

The need for comprehensive consensus has enabled holdout creditors to obtain and enforce judgments for full repayment, resulting in preferential treatment when compared to debt relief granted by cooperative creditors. More critically, the mere concern that other creditors may eventually obtain more favourable recovery terms can cause significant delays in the restructuring process: Notwithstanding improvements such as the introduction of aggregated collective action clauses to enable debt relief though majority vote, and the participation of China in the G20 Common Framework, it took Zambia four years to reach an agreement with its creditors. The processes for Ghana and Sri Lanka are still ongoing after two years, albeit at a faster pace.

To counter the disruptive litigation strategies of holdout creditors, the United Kingdom, Belgium and France have enacted domestic laws limiting the enforceability of distressed sovereign debt. Recent proposals for similar legislation seek to facilitate efficient and equitable sovereign debt restructurings more generally. Several bills for that purpose have been introduced in the New York legislature since 2021. In Germany, members of parliament from different political parties are investigating similar ideas.

While the existing laws and proposals are all built on well-established concepts of contract law and civil procedure, they differ significantly in scope and legal design. At the same time, the policy debate is often reduced to a binary choice between ‘market based’ and ‘statutory’ solutions. This publication seeks to to facilitate a more differenciated discussion by presenting a collection of the relevant texts preceded by a short overview of the main features and differences.

For ease of reference, the Belgian and French laws and the German proposal are included as English translations. The selected additional materials referred to for some of the laws and proposals reflect the diversity of opinion in the current policy debate.

# II. Main features

The main features of the above laws and proposals can be categorized by remedies, legislative aims, the role given to domestic law in relation to international formats, and the implementation mechanism:

## 1. Remedies: temporary stay and permanent restrictions

Except for the Belgian law and the Champerty Bill, all laws and proposals provide for either or both of the main remedies of corporate bankruptcy and restructuring laws, i.e.

- an automatic stay of enforcement measures by individual creditors during restructuring negotiations; and
- upon completion of negotiations, permanent enforcement restrictions in accordance with the general restructuring terms.

The main concerns in respect of a temporary stay are for how long it should apply, and how commitment of the debtor government to good faith negotiations should be assessed. Imposing permanent enforcement restrictions raises more difficult questions, notably the need for a benchmark to assess comparability of treatment between the different creditor groups.

The Belgian law takes a somewhat different approach by limiting the enforcement of distressed debt acquired in the secondary market to the purchase price paid by the creditor. In line with the underlying common law doctrine, the Champerty Bill goes even further as it precludes any enforcement action if the creditor has acquired the claim for the sole or primary purpose of starting litigation.

## 2. Legislative aims: preventing windfall profits or supporting comprehensive restructurings

As reflected in the prescribed remedy, the Belgian law and Champerty Bill specifically target the business model of distressed debt investment which aims at realizing windfall profits through holdout strategies. Targeted action tends to be less controversial because it only affects a small group of distressed debt investors with limited political influence. At the same time, targeting an otherwise

legal business model requires justification as an infringement on property rights and a deviation from equal protection under the law.

The other laws and proposals aim to support comprehensive restructuring schemes that capture all non-preferred debt, albeit subject to jurisdictional limits. The comprehensive approach is well aligned with corporate restructuring laws, which are rooted in a long legislative history and have consistently been upheld by constitutional courts. Since corporate restructuring laws are firmly grounded in the principles of majority principle and non-discrimination, the same standards are likely to be applied to sovereign debt legislation.

## 3. Role of domestic law: support of international formats or alternative process

Most laws and proposals following the comprehensive approach do not offer an alternative domestic process to existing international formats such as the Common Framework and private creditor committees. A notable exception has been included in the Sovereign Debt Stability Bill, which provides for an optional new process under New York law that is largely modelled after Chapter 11 of the US Bankrupty Code, the legal regime for corporate reorganizations in the United States.

The ancillary nature of the other laws and proposals follows from the entry criteria for protection: The Debt Relief (Developing Countries) Act and the second option under the Sovereign Debt Stability Bill specifically reference international debt relief formats such as the Highly Indebted Poor Countries initiative and the Common Framework. Similarly, the French law and the German proposal require supermajority approval across all affected creditor groups without prescribing a certain procedure, thus adopting the concept underlying aggregated collective action clauses. As reflected in the double limb voting process of the International Capital Markets Association's collective action clauses, majority voting by group can also serve as a procedural benchmark for comparability of treatment.

## 4. Implementation: contract law or enforcement jurisdiction

Imposing debt relief through the governing contract law has the advantage that the result will be recognised almost universally in the normal course of affairs. The New York bills have adopted this approach for sections 223 to 229 of the Debtor and Creditor Law and for section 489-a of the Judiciary Law (omitted in the current version of the Champerty Bill). However, the universal effects can easily be circumvented by opting for a diffferent law either initially our through an amendment of the choice of law clause.

The more limited but also more robust approach is to prescribe limitations for all enforcement actions as a matter of public policy. While public policy does not bind foreign courts, it ensures equal protection of all assets owned by the debtor government within the jurisdictional bounds of the domestic courts. This solution is best aligned with cross-border corporate insolvency laws and has been adhered to in the Debt Relief (Developing Countries) Act 2010 and the French and Belgian law. It is also reflected in the German proposal. The practical impact mainly depends on the extent of existing and potential economic ties between the debtor country and the relevant jurisdiction, notably the strength of the financial and export sectors.

## United Kingdom: Debt Relief (Developing Countries) Act 2010

The Debt Relief (Developing Countries) Act 2010 generally limits enforceability of sovereign debt qualifying under the Heavily Indebted Poor Countries (HIPC) initiative in the United Kingdom to a recovery ratio of 30 per cent. Since the law specifically references the HIPC initiative, it does not capture other past or future sovereign debt restructurings.

Although the law retroactively imposed an informal compromise without assurances against similar government action in the future, it was well received: According to an assessment by the House of Commons, the law achieved its purpose of preventing excess recoveries through the court system without causing an increase in borrowing costs for debtor countries, or negative effects on London as a financial centre. Based on this assessment, the Debt Relief (Developing Countries) Act 2010 was given permanent effect in 2011 by the incoming Conservative government.

In 2023, a report by the House of Commons International Development Committee reached the same conclusions and recommended that the government should consider renewed legislation to capture sovereign debt restructurings under the Common Framework and other international formats. In its response of June 2023, the Conservative government rejected the recommendation 'for the time being'. It remains to be seen whether the new UK government will reconsider the issue.

# Debt Relief (Developing Countries) Act 2010

**2010 CHAPTER 22**

Make provision for or in connection with the relief of debts of certain developing countries. [8th April 2010]

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, andby the authority of the same, as follows:—

*Introduction*

**1 Meaning of "qualifying debt" etc**

(1) This section applies for the purposes of this Act.

(2) "The Initiative" means the enhanced Heavily Indebted Poor Countries Initiative ofthe International Monetary Fund and the World Bank.

(3) "Qualifying debt" means a debt incurred before commencement that—

(a) is public or publicly guaranteed,

(b) is external,

(c) is a debt of a country to which the Initiative applies or a potentially eligible Initiative country, and

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

(4) For the purposes of subsection (3) treat a debt incurred after commencement as incurred before commencement if (and so far as) it replaces one incurred before commencement.

(5) For the purposes of subsection (3)(d) treat a debt incurred after decision point as incurred before decision point if (and so far as) it replaces one incurred beforedecision point.

(6) "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.

(7) Decision point is regarded as reached in respect of a country if it is so regarded for the purposes of the Initiative.

(8) For the meaning of other expressions used in subsection (3), see section 2.

(9) "Country" includes a territory.

(10) "Commencement" means the commencement of this Act.

(11) If the terms of the Initiative are amended after commencement in such a way as to change a relevant eligibility condition, this Act has effect as if they had not been so amended.

(12) In subsection (11) "relevant eligibility condition" means a condition as to the levelof a country's income or debt or the size of its economy that must be met in order forthe country to be eligible for debt relief under the Initiative.

**2 Qualifying debts: further definitions**

(1) The expressions used in section 1(3) have the meaning given below.

(2) "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 asrelating to the operation or maintenance of property subject to the lease).

(3) "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 services,

(b) a liability that falls to be discharged in less than a year from the time it was incurred ("a short-term debt") unless the short-term debt is within subsection (4), or

(c) a liability incurred after commencement that replaces anything that was (at the time of the replacement) within paragraph (a) or (b).

(4) A short-term debt is within this subsection if it ought to have been discharged—

(a) more than a year before commencement, and

(b) (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 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 withinparagraph (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 commencement, and

(ii) where decision point has been reached in respect of the country, before that 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 creditorwas resident in the country—

(a) if decision point was reached in respect of the country before commencement, at the time that point was reached, or

(b) otherwise, at commencement.

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

*Relief of debts etc*

**3 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 inrespect of the qualifying debt or cause of action.

(2) For the meaning of "the relevant proportion", see section 4.

(3) Subsection (1) does not apply in relation to an agreement (a "compromiseagreement") 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.

(4) But the amount recoverable under a compromise agreement is limited to the amount that would be recoverable in respect of the claim if the agreement had not beenmade (and subsection (1) applied to the claim).

(5) Subsection (1) does not apply where an agreement that is not a compromiseagreement (a "refinancing agreement") has been made—

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

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

(6) But the amount recoverable in respect of the rescheduled debt or the new debt islimited to the amount that would be recoverable in respect of the initial debt if therefinancing agreement had not been made (and subsection (1) applied to that debt).

(7) In subsection (6) "the initial debt" means the debt mentioned in subsection (5)(a) or (as the case may be) the original debt.

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

(9) 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 the United Kingdom.

**4 Meaning of "the relevant proportion"**

(1) In this Act any reference to the relevant proportion, in relation to a qualifying debt,is to be read as follows.

(2) Where the qualifying debt is one to which the Initiative applies, the relevantproportion is—

where—

A is the amount the debt would be if it were reduced in accordance with theInitiative (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 it having been so reduced.

(3) Where the qualifying debt is a debt of a potentially eligible Initiative country, the relevant proportion is 33%.

**5 Judgments for qualifying debts etc**

(1) This section applies to—

(a) a judgment on a relevant claim given by a court in the United Kingdom before commencement,

(b) a foreign judgment given (whether before or after commencement) on a relevant claim, and

(c) an award made (whether before or after commencement) on a relevant claim in an arbitration (conducted under any laws).

(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).

(3) The amount of the judgment or award is to be treated as equal to the amount it would be if the court, tribunal or arbitrator had applied section 3 in relation to therelevant claim.

(4) Subsection (3) does not apply in relation to a claim if the effect of it so applyingwould be to increase the amount of the judgment or award.

(5) In this section—

"judgment" includes an order (and references to the giving of a judgment are to be read accordingly), and

"foreign judgment" means a judgment (however described) of a court or tribunal of a country outside the United Kingdom, and includes anything (other than an arbitration award) which is enforceable as if it were such a judgment.

(6) This section applies to anything that gives effect to a compromise of a relevantclaim as if in subsection (3) after "if" there were inserted " the relevant claim had not been compromised and ".

*Supplementary and general*

**6 Exception where debtor fails to make offer to pay recoverable amount**

(1) This Act does not apply to a relevant claim, a relevant foreign judgment or arelevant arbitration award if—

(a) proceedings are brought in respect of the relevant 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 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 relevantclaim, foreign judgment or arbitration award (reduced in accordance with this Act).

(3) In this section—

"foreign judgment" has the meaning given by section 5(5), "judgment" includes an order,

"proceedings" means proceedings in a part of the United Kingdom, 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 the court, but does not include proceedings for the enforcement of a judgment or award,

"relevant arbitration award" means an award within section 5(1)(c),

"relevant claim" has the meaning given by section 5(2),

"relevant foreign judgment" means a foreign judgment within section 5(1) (b), and

"the relevant time" means—

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

(b) the time when the foreign judgment or arbitration award is registered, or (as the case may be)

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

(4) This section applies to cases where the proceedings were brought before commencement (as well as cases where they are brought after commencement), but not to cases where the relevant time occurred before commencement.

**7 Exception for overriding ... international obligations**

(1) Nothing in this Act applies to a foreign judgment or an arbitration award of a kind required by an international obligation of the United Kingdom to be enforced in full even in cases where such enforcement is contrary to the public policy of theUnited Kingdom.

(2) Accordingly, this Act does not apply to—

(a) . . . . . .

(b) . . . . . .

(c) an award to which section 1 of the Arbitration (International Investment Disputes) Act 1966 applies (awards made under the Convention on the settlement of investment disputes between States and nationals of other States).

(3) "Foreign judgment" has the meaning given by section 5(5).

**8 Saving**

Nothing in this Act 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).

**9 Duration of Act**

(1) This Act expires at the end of the period of one year beginning withcommencement; but this is subject to subsections (2) and (3).

(2) The Treasury may by order provide that this Act (instead of expiring at the time it would otherwise expire) expires at the end of the period of one year from that time.

(3) The Treasury may by order provide that this Act has permanent effect.

(4) An order under this section is to be made by statutory instrument.

(5) An order under this section may be made only if a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(6) If this Act expires by virtue of this section—

(a) the Act is to be treated as never having been in force, and

(b) accordingly, where—

(i) a judgment was given, or order or arbitration award made, on a relevant claim (as defined by section 5(2)) while the Act was inforce, and

(ii) the amount of the judgment, order or award is, as a result of section3, less than it would be if that section had not applied in relation to the claim,

the amount of the judgment, order or award is to be treated as equal to the amount it would be if the section had not applied in relation to the claim.

**10 Commencement, extent and short title**

(1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

(2) This Act extends to each part of the United Kingdom.

(3) This Act may be cited as the Debt Relief (Developing Countries) Act 2010.

## Additional materials:

House of Commons, Second Delegated Legislation Committee, Draft Debt Relief (Developing Countries) Act 2010 (Permanent Effect) Order 2011, 16 May 2011

House of Commons International Development Committee, Debt relief in low-income countries: Seventh Report of Session 2022-2023, HC 146, 10 March 2023

House of Commons International Development Committee, Debt relief in low-income countries: Government response to the Committee's Seventh Report of Session 2022-2023, Eighth Special Report of Session 2022-2023, HC 1393, 8 June 2023

## Belgium: Law relating to the fight against the activities of vulture funds of 12 July 2015

The Belgian law replaced a similar statute from 2008, which specifically protected funds earmarked for development aid. By limiting legal remedies to the amount of the purchase price paid by the creditor, the 2015 law generally targets the business model of distressed debt investors that acquire emerging market debt at a steep discount to realise above market returns.

Once enacted, the law was challenged as an infingement of property rights by NML Capital Ltd., a hedge fund specializing in distressed debt investments. In its ruling no. 61/2018 of 31 May 2018, the Belgian constitutional court upheld the law as constitutional and compliant with European Union law.

**Law relating to the fight against the activities of vulture funds**

**…**

Article 1. This law regulates a matter referred to in article 74 of the Constitution.

Article 2. When a creditor pursues an illegitimate advantage by purchasing a loan or claim on a State, his rights vis-à-vis the debtor State shall be limited to the price he paid to purchase the said loan. or said claim

Whatever the law applicable to the legal relationship between the creditor and the debtor State, no enforceable title can be obtained in Belgium and no conservatory or forced execution measure can be taken in Belgium at the request of the said creditor with a view to a payment to be received in Belgium if this payment gives him an illegitimate advantage as defined by law.

The search for an illegitimate advantage is deduced from the existence of a manifest disproportion between the redemption value of the loan or debt by the creditor and the face value of the loan or debt or between the repurchase value of the loan or claim by the creditor and the sums for which he requests payment.

For it to be an illegitimate advantage, the manifest disproportion referred to in paragraph 2 must be supplemented by at least one of the following criteria

- the debtor State was in a state of insolvency or proven insolvent or imminent at the time of redemption of the loan or debt

- the creditor has its registered office in a State or territory: a) included in the list of non-cooperative States or territories drawn up by the Financial Action Task Force (FATF), or b) referred to in Article 307, § 1, paragraph 5, of the Income Tax Code of 1992, or c) included in the list

drawn up by the King of States which refuse to negotiate and sign an agreement which provides, in accordance with OECD standards, for the automatic exchange of tax and banking information with Belgium as from 2015

- the creditor makes systematic use of legal proceedings to obtain reimbursement of the loan or loans that he has already bought back;

- the debtor State has been subject to debt restructuring measures, in which the creditor has refused to participate;

- the creditor took advantage of the weak position of the debtor State to negotiate a manifestly unbalanced repayment agreement;

- full reimbursement of the sums claimed by the creditor would have an identifiable adverse impact on the public finances of the debtor State and is likely to compromise the socio-economic development of its population.

Article 3. This law applies subject to the application of international treaties, European Union law or bilateral treaties.

## France: Law n° 2016-1691 of December 9, 2016

The French law addressing distressed debt investments was part of a more comprehensive package of financial regulation known as the '*Loi Sapin II*'. It limits attachment of assets owned by a foreign debtor government in France (1) pending restructuring negotiations and (2) in line with modifications approved by a supermajority of 66% of eligible claims.

Following a challenge by a group of opposition senators, the Conseil constitutionnel held that the new limits on creditor rights did not constitute a breach of constitutional property rights (decision no. 2016-741 DC of 8 December 2016).

**Article 60**

I. - No precautionary measure and no measure of forced execution targeting property belonging to a foreign State may be authorized by the judge, within the framework of Article L. 111-1-1 of the Code of Civil Procedures of execution, at the initiative of the holder of a debt security mentioned in article

L. 213-1 A of the monetary and financial code or of any instrument or right mentioned in article L. 211-41 of the same code characteristics similar to a debt security, against a foreign State when the conditions defined in 1° to 3° of this I are met:

1° The foreign State was on the list of recipients of official development assistance drawn up by the Development Assistance Committee of the Organization for Economic Co-operation and Development when it issued the debt instrument;

2° The holder of the debt security acquired this security while the foreign State was in a situation of default on this debt security or had proposed a modification of the terms of the debt security;

3° The situation of default on the debt instrument dates back less than forty-eight months at the time when the holder of the debt instrument requests from the judge an order on request authorizing him to practice a measure of forced execution or a conservatory measure , or the first proposal to modify the terms of the debt instrument dates back less than forty-eight months at the time when the holder of the debt instrument requests from the judge an order on request authorizing him to practice a measure of forced execution or precautionary measure, or a proposed modification, applicable to the debt security, has been accepted by creditors representing at least 66% of the principal amount of the eligible debts, regardless of the threshold required, if any, for entry into force.

II. - The judge may extend the two time limits of forty-eight months mentioned in 3° of I of this article to seventy-two months in the event of manifestly abusive behaviour by the holder of the debt instrument.

III. - The situation of default is defined in accordance with the clauses provided for in the

issue contract or, in the absence of such clauses, by a breach of the initial due date provided for in the issue contract.

IV. - Conservatory measures and forced execution measures relating to property belonging to a foreign State may be authorized by the judge when a proposal to modify the terms of the issue contract, applicable to the debt instrument held by the creditor, has has been accepted by creditors representing at least 66% of the principal amount of the eligible claims and has entered into force, and that the holder of the debt instrument has requested the implementation of one or more measures of forced execution or protective measures for sums whose total amount is less than or equal to the amount he would have obtained if he had accepted the said proposal.

V. - For the application of this article, the central State, the federated States and their public establishments are assimilated to the foreign State.

VI. - This article applies to debt securities acquired as of its entry into force.

VII. - This article is applicable throughout the territory of the French Republic, subject, for its application in New Caledonia and French Polynesia, to replacing the references to the Code of Civil Enforcement Procedures by locally applicable provisions having the same effect.

VIII. - For the application of this article, debt securities arising from a credit transaction referred to in Article L. 311-1 of the Monetary and Financial Code are assimilated to debt securities.

IX. The holder of the debt security communicates, under sanction of inadmissibility, the act by which he acquired the debt for which he is requesting a protective measure or a measure of forced execution and makes known the date and the completeness financial terms of the acquisition. This information is certified by an auditor.

## New York: Sovereign Debt Stability Bill (S5542-A)

The Sovereign Debt Stability Bill combines two separate predecessor bills as elective options under a single statute. Proposed sections 223 to 229 of the Debtor and Creditor Law (previously Assembly Bill A2102A) are largely modelled after the Chapter 11 proceedings of the U.S. Bankruptcy Code and would allow for a comprehensive restructuring of distressed sovereign debt governed by New York law. The alternative relief under section 230 (previously Assembly Bill A2970/Senate Bill S4747) is partly inspired by the Debt Relief (Developing Countries) Act 2010 and would limit recovery of sovereign debt in accordance with equal burden-sharing standards set by an international initiative such as the Common Framework or HIPC.

The Sovereign Debt Stability Bill has enjoyed strong support from a wide group of former heads of state, finance ministers and academics led by Joseph Stieglitz and Martín Guzman. At the same time, it has been subject to strong criticism. Most importantly, the comprehensive process Chapter 11 type process under New York law is considered undue interference with established international negotiation formats, while the reference to 'equitable burden-sharing standards' in section 230 has been criticised as vague and unpredictable.

The bill did not make it to a vote on the floor in the 2024 legislative session. It remains to be seen whether it will be reintroduced in 2025.

AN ACT to amend the debtor and creditor law, in relation to restructuring unsustainable sovereign and subnational debt

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "sovereign debt stability act".

§ 2. The debtor and creditor law is amended by adding a new article 8 to read as follows:

ARTICLE 8

SOVEREIGN AND SUBNATIONAL DEBT



§ 220. Legislative intent. The legislature finds that it is a long-standing policy of the United States and the state of New York, as the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [—] is old law to be omitted.

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world's leading financial center, to support orderly, collaborative and effective international sovereign debt relief for countries with unsustainable levels of debt. Debt distress, debt crises, and disorderly default are associated with unacceptable human suffering, economic decline, and financial market and payment systems disruption. Moreover, debt restructuring is ineffective and does not lead to sustainable outcomes when it is not perceived as equitable or legitimate by stakeholders in borrowing and lending countries. Additionally, public creditors are unlikely to participate in debt restructuring initiatives unless there is fair burden sharing among all public and private creditors, which is essential to the legitimacy and effectiveness of debt relief initiatives. Therefore, the legislature finds and declares that it shall be the policy of New York state to support international debt relief initiatives for countries to ensure that the cost of such debt relief is allocated in a fair and equitable manner, and that such costs do not fall disproportionately on the residents and taxpayers of New York state, and for other purposes. The purpose of this article is to provide effective mechanisms for restructuring sovereign and subnational debt so as to:

1. reduce the social costs of sovereign and subnational debt crises to residents of New York state;

2. reduce systemic risk to the financial system, a system that is concentrated in New York state;

3. reduce creditor uncertainty, including to the numerous holders of sovereign debt that are residents in New York state;

4. strengthen the role of New York state as a primary location for the issuing and trading of sovereign debt;

5. reduce the need for sovereign and subnational debt bailouts, which create moral hazard and are costly to residents of New York state;

6. otherwise protect economic activity within New York state's borders, by reducing the likelihood of a sovereign debt default which could adversely impact New York state's economy;

7. reduce, out of universal human rights and humanitarian imperatives, the social cost of unresolved sovereign debt crises imposed on the people of nations with unsustainable debt, especially the poorest among them, taking due account of creditor rights; and

8. enable debtor states to choose a debt restructuring option that appropriately suits its circumstances and needs.

§ 221. Definitions. For purposes of this article:

1. "creditor" means a person or entity that has a claim against a debtor state;

2. "claim" means a payment claim against a debtor state for monies borrowed or for the debtor state's guarantee of, or other contingent obligation on, monies borrowed; the term "monies borrowed" shall include the following, whether or not it represents the borrowing of money: monies owing under bonds; debentures; notes, or similar instruments of original maturity of at least one year; monies owing for the deferred purchase price of property or services, other than trade accounts payable arising in the ordinary course of government operations; monies owing on capitalized lease obligations; monies owing on or with respect to letters of credit, bankers' acceptances, or other extensions of credit of original maturity of at least one year;

3. "plan" means a debt restructuring plan pursuant to section two hundred twenty-six of this article;

4. "debtor state" means a sovereign nation; or unincorporated territory; or any subnational unit thereof, excluding any municipality whose adjustment or debts is governed by 11 U.S.C. 9;

5. "independent monitor" means an individual appointed by the governor, in consultation with the United States department of the treasury, acceptable to the sovereign debtor and to the holders, or their agents, of a majority of the obligations issued under New York law. The independent monitor is meant to facilitate and encourage an effective, prompt and fair agreement by the parties, as intended by this article. The debtor state shall pay the independent monitor's reasonable costs and expenses;

6. "international initiative" means any mechanism, framework or initiative in which the United States government and other sovereign states have engaged with international financial institutions and official and commercial creditors to advance the implementation and improvement of prompt and effective debt relief among eligible states, including but not limited to the Heavily Indebted Poor Countries Initiative of the International Monetary Fund and the World Bank, the Debt Service Suspension Initiative of the Group of 20, the Common Framework for Debt Treatments beyond the DSSI, also known as the "Common Framework", the Paris Club, and any successor or similar international mechanism, framework or initiatives;

7. "eligible claim" shall mean a claim as defined in subdivision two of this section and any judicial or other official domestic or foreign judgment with respect to such a claim against an eligible state participating in one or more of the international initiatives;

8. "eligible state" shall mean a sovereign state eligible to participate in one or more of the international initiatives;

9. "burden-sharing standards" shall mean standards set by the relevant international initiative or international initiatives for equitable burden-sharing among all creditors with material claims on each participating debtor without regard for their official, private, or hybrid status;

10. "section 223 claim" shall mean, as applicable, a claim with respect to which the debtor state has elected for its claims to be covered by section two hundred twenty-three through section two hundred twenty-nine of this article; and

11. "section 230 claim" shall mean an eligible claim with respect to which the debtor state issuing such claim has elected to be covered by section two hundred thirty of this article, and not to be covered by section two hundred twenty-three through section two hundred twenty-nine of this article inclusive.

§ 222. Election to be covered by the provisions of this article. 1. Any debtor state against which there are one or more claims governed by or enforced under New York law shall have the option to apply the provisions of this article to such claims by filing a notice thereof with the state of New York. In such notice, the debtor state shall choose whether those claims shall, to the extent governed by New York law, be covered as section 223 claims or, to the extent enforced under New York law, as section 230 claims. Within thirty days after giving such notice, the debtor state shall notify the holders of such claims and the state of New York of its choice. In the case of a choice to have those claims be covered as a section 223 claim, the debtor state shall also make the certifications specified in subdivision two of section two hundred twenty-three of this article. Any waiver of the provisions of this subdivision shall be ineffective.

2. A debtor state that makes a choice under subdivision one of this section shall have the right to change that choice once, at any time prior to a plan becoming effective and binding on the debtor state and its creditors, by notifying the state of New York and the holders of all claims affected by that choice.

§ 223. Petition for relief; recognition. 1. The notification under section two hundred twenty-two of this article that claims against a debtor state shall be covered as a section 223 claim shall constitute a voluntary petition for relief with the state of New York.

2. Such notice shall certify that the debtor state:

(a) seeks relief as a section 223 claim under this article, and has not previously sought relief under this article, or under any other law that is substantially in the form of this article, during the past five years;

(b) needs relief as a section 223 claim under this article to restructure claims that, absent such relief, would constitute unsustainable debt of the debtor state;

(c) agrees to restructure those claims in accordance with this section through section two hundred twenty-nine of this article;

(d) agrees to all other terms, conditions and provisions of this section through section two hundred twenty-nine of this article;

(e) has duly enacted any national or subnational law needed to effectuate these agreements. If requested by the independent monitor, such petition shall also attach documents and legal opinions evidencing compliance with this subdivision; and

(f) is cooperating with the International Monetary Fund to devise an effective, efficient, timely and fair path back to sustainability.

3. Immediately after such a petition for relief has been filed, and so long as such filing has not been dismissed by the independent monitor for lack of good faith or the debtor state has not changed its choice under subdivision two of section two hundred twenty-two of this article to have its claims covered by section two hundred thirty of this article, the terms, conditions, and provisions of this article shall:

(a) apply to the debtor-creditor relationship between the debtor state and its creditors to the extent such relationship is governed by the law of this jurisdiction;

(b) apply to the debtor-creditor relationship between the debtor state and its creditors to the extent such relationship is governed by the law of another jurisdiction that has enacted law substantially in the form of this article; and

(c) be recognized in, and by, all other jurisdictions that have enacted law substantially in the form of this article.

§ 224. Notification of creditors. 1. Within thirty days after filing its petition for relief, the debtor state shall notify all of its known creditors of its intention to negotiate a plan under section two hundred twenty-three through section two hundred twenty-nine of this article.

2. The independent monitor shall prepare and maintain a current list of creditors of the debtor state and verify claims for the purposes of supervising voting under section two hundred twenty-three through section two hundred twenty-nine of this article.

§ 225. Debt reconciliation. The creditor claims shall be reconciled against debtor records and any discrepancies shall be addressed between the parties.

§ 226. Submission, contents and voting on plan. 1. The debtor state may submit a plan to its creditors at any time, and may submit alternative plans from time to time.

2. No other person or entity may submit a plan on behalf of the debtor state.

3. A plan shall:

(a) designate classes of claims in accordance with subdivision six of this section;

(b) specify the proposed treatment of each class of claims;

(c) provide the same treatment for each claim of a particular class, unless the holder of a claim agrees to a less favorable treatment;

(d) disclose any claims not included in the plan's classes of claims;

(e) provide adequate means for the plan's implementation including, with respect to any claims, curing or waiving any defaults or changing the maturity dates, principal amount, interest rate, or other terms or canceling or modifying any liens or encumbrances; and

(f) certify that, if the plan becomes effective and binding on the debtor state and its creditors under subdivision four of this section, the debtor state's debt will become sustainable.

4. A plan shall become effective and binding on the debtor state and its creditors when it has been submitted by the debtor state and agreed to by each class of such creditors' claims designated in the plan under subdivision three of this section. Thereupon, the debtor state shall be discharged from all claims included in those classes of claims, except as provided in the plan.

5. A class of claims has agreed to a plan if creditors holding at least two-thirds in amount and more than one-half in number of the claims of such class voting on such plan agree to the plan, without counting claims owned by the debtor state or entities it controls.

6. Each class of claims shall consist of claims against the debtor state that are equal in priority, provided that:

(a) equal priority claims need not all be included in the same class;

(b) claims of governmental or multi-governmental entities holding claims each shall be classed separately;

(c) claims that are governed by this article or the law of another jurisdiction that is substantially in the form of this article shall not be classed with other claims; and

(d) the fact that a claim arises under, or is supported or evidenced by, a judicial or other official domestic or foreign judgment shall not in and of itself mean that such claim is not equal in priority to other claims.

§ 227. Financing the restructuring. 1. Subject to subdivision three of this section the debtor state shall have the right to borrow money on such terms and conditions as it deems appropriate.

2. The debtor state shall notify all of its known creditors of its intention to borrow under subdivision one of this section, the terms and conditions of the borrowing, and the proposed use of the loan proceeds. Such notice shall also direct those creditors to respond to the independent monitor within thirty days as to whether they approve or disapprove of such loan.

3. Any such loan shall be approved by creditors holding at least two-thirds in amount of the claims of creditors responding to the independent monitor within that thirty-day period.

4. In order for the priority of repayment, and corresponding subordination, under section two hundred twenty-eight of this article to be effective, any such loan shall additionally be approved by creditors holding at least two-thirds in principal amount of the covered claims of the creditors responding to the independent monitor within that thirty-day period. Claims shall be deemed to be covered if they are governed by

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this article or by the law of another jurisdiction that is substantially in the form of this article.

§ 228. Priority of repayment. 1. The debtor state shall repay loans approved under section two hundred twenty-seven of this article prior to paying any other claims.

2. The claims of creditors of the debtor state are subordinated to the extent needed to effectuate the priority payment under this section. Such claims are not subordinated for any other purpose.

3. The priority of payment, and corresponding subordination, under this section is expressly subject to the approval by creditors under subdivision four of section two hundred twenty-seven of this article.

§ 229. Adjudication of disputes. The independent monitor may request that a court of competent jurisdiction appoint a referee or a special master to make recommendations to the court regarding the resolution of any disputes arising under a section 223 claim under this article.

§ 230. Recoverability of section 230 claims. Any section 230 claim incurred prior to the date of an eligible state's application to participate in one or more international initiatives shall only be recoverable:

1. to the extent that it comports with burden-sharing standards;

2. provided it meets robust disclosure standards, including intercreditor data sharing and a broad presumption in favor of public disclosure of material terms and conditions of such claims; and

3. only up to the proportion of the eligible claim that would have been recoverable by the United States federal government under the applicable international initiative if the United States federal government had been the creditor holding the eligible claim, and without regard to de minimis clauses.

§ 231. Application; opt in. 1. Where this article applies, it shall operate both retroactively and prospectively and, without limiting the foregoing, shall with respect to section 223 claims override any contractual provisions that are inconsistent with the provisions of this article. Notwithstanding the foregoing, the provisions of this article shall not operate retroactively as to debtor states that are not sovereign nations.

2. Any creditors of a debtor state whose claims are not otherwise governed by this article may contractually opt in to this article's terms, conditions, and provisions.

3. The terms, conditions, and provisions of this article shall apply to the debtor-creditor relationship between the debtor state and creditors opting in under subdivision two of this section as if such relationship were governed by the laws of New York state under subdivision three of section two hundred twenty-three of this article.

§ 232. Severability. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of this article are severable. Without limiting the foregoing, a debtor state's choice to have claims covered as a section 223 claim shall be valid even if its choice to have claims covered as a section 230 claim of this article would be invalid, and vice versa.

§ 3. This act shall take effect immediately.

## Additional materials

Clifford Chance, Sovereign Debt Restructuring: Active New York Assembly Bill providing for a new comprehensive sovereign debt restructuring mechanism and a limit on recoveries on sovereign debt, Client Briefing, March 2024

Open Letter to Governor Hochul and Members of the New York State Legislature on the Sovereign Debt Stability Act, 25 April 2024

## New York: Champerty Bill (S5623-A)

The Champerty Bill combines three different legislative strategies: The proposed changes to section 489 of the Judiciary Law would extend the Champerty rule, i.e. the prohibition to acquiring debt with the sole or primary intent of bringing an action thereon, to sovereign debtors that do not qualify for bankruptcy protection. New section 489-a, which incorporates a proposal by Lee Buchheit and Mitu Gulati, would make modifications to distressed sovereign debt governed by New York law mandatory as a matter of good faith if approved by a supermajority of affected creditors. Finally, the proposed changes to section 5004 of the Civil Practice Laws and Rules would limit the pre- and post-judgment interest rate for sovereign debt enforced through the New York court system to the US treasury yield.

The Champerty Bill has met less opposition than the Sovereign Debt Stability Bill, possibly due to its narrow focus on distressed debt investors. The more far-reaching supermajority provision of section 489-a, which is still reflected below, was omitted prior to the vote on the floor in the New York Senate. While the bill passed the Senate, it did not make it to a vote in the Assembly. It remains to be seen whether and in what form it will be reintroduced in 2025.

Amend SENATE BILL NO. 5623 as follows: Strike out all after "AN ACT" and insert to amend the judiciary law and the civil practice law and rules, in relation to the purchase of claims by corporations or collection agencies and to certain instruments calling for payment of a monetary obligation by a foreign state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The intended purpose of this act is to restore the champerty defense in sovereign debt lawsuits for claims greater than $500,000 with respect to suits brought by litigious holdout investors. The restoration is not intended to apply to conventional and generally cooperative investors who may occasionally choose to sue.
§ 2. Subdivision 2 of section 489 of the judiciary law, as added by chapter 394 of the laws of 2004, is amended to read as follows:
2. Except as set forth in subdivision three of this section, the provisions of subdivision one of this section shall not apply to any assignment, purchase or transfer hereafter made of one or more bonds, promissory notes, bills of exchange, book debts, or other things in action, or any claims or demands, if such assignment, purchase or transfer included bonds, promissory notes, bills of exchange and/or book debts, issued by or enforceable against the same eligible obligor (whether or not also issued by or enforceable against any other eligible obligors), having an aggregate purchase price of at least five hundred thousand dollars, in which event the exemption provided by this subdivision shall apply as well to all other items, including other things in action, claims and demands, included in such assignment, purchase or transfer (but only if such other items are issued by or enforceable against the same eligible obligor, or relate to or arise in connection with such bonds, promissory notes, bills of exchange and/or book debts or the issuance thereof).For the purposes of this subdivision, the term "eligible obligor" means an obligor other than (i) a foreign state as defined in 28 U.S.C. §1603(a) or (ii) an issuer of a bond, loan, or

debt instrument guaranteed by a foreign state as defined in 28 U.S.C. 1603(a).

§ 3. Section 489 of the judiciary law is amended by adding a new subdivision 4 to read as follows:

4. For purposes of subdivision one of this section, an assignee's intent and purpose in taking an assignment of a claim against an obligor that is not an eligible obligor may be inferred from the history of the assignee's (and its affiliates') behavior in transactions involving the debts of other obligors including, but not limited to, whether that history indicates a pattern of either (a) participating in good faith alongside other creditors in consensual resolutions of such situations or (b) acquiring claims against such obligors at a significant discount from face value, refusing to participate in consensual workouts and instead resorting to legal enforcement of the acquired claims. A court shall consider such other facts and circumstances as it may find relevant in assessing the assignee's intent and purpose.

§ 4. The judiciary law is amended by adding a new section 489-a to read as follows:

§ 489-a. Sovereign debt modifications. 1. Every instrument governed by the law of the state of New York calling for the payment of a monetary obligation by a foreign state (as defined in 28 U.S.C. § 1603(a)) imposes a duty on the holder to participate in good faith in a qualified restructuring affecting such instrument.

2. For purposes of this section, a "qualified restructuring" means a modification of the terms of some or all of the unsecured debt instruments issued by a foreign state whose debt has been assessed as unsustainable by the International Monetary Fund within the prior twelve months provided that the modification is accepted by the holders of not less than two-thirds in amount and more than one-half in number of the debt instruments affected by the modification (excluding, for purposes of voting, any instruments that are owned or controlled, directly or indirectly, by the foreign state or any of its agencies or instrumentalities).

§ 5. Section 5004 of the civil practice law and rules, as amended by chapter 831 of the laws of 2021, is amended to read as follows:

§ 5004. Rate of interest. (a) Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute; provided the annual rate of interest to be paid in an action arising out of a consumer debt where a natural person is a defendant shall be two per centum per annum (i) on a judgment or accrued claim for judgments entered on or after the effective date of [the] chapter 831 of the laws of two thousand twenty-one [which amended this section], and (ii) for interest upon a judgment pursuant to section five thousand three of this article from the date of the entry of judgment on any part of a judgment entered before the effective date of [the] chapter 831 of the laws of two thousand twenty-one [which amended this section] that is unpaid as of such effective date.

(b) For claims brought after May fifteenth, two thousand twenty-four, the annual rate of interest to be paid in an action arising out of a claim against a foreign state (as defined in 28 U.S.C. §1603(a)) as a defendant shall be equal to the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week proceeding the date of entry of the judgment awarding damages (28. U.S.C. §1961(a)). For the purpose of this subdivision, a "claim against a foreign state" means a payment claim against a foreign state for monies borrowed or for the foreign

state's guarantee of, or other contingent obligation on,monies borrowed; the term "monies borrowed" shall include the following, whether or not itrepresentstheborrowing of money: monies owing under bonds; debentures; notes, or similar instruments of original maturity of at least one year; monies owing for the deferred purchase price of property or services, other than trade accounts payable arising in the ordinary course ofgovernmentoperations; monies owing on capitalized lease obligations; monies owing on or with respect to letters of credit, bankers' acceptances, or other extensions of credit of original maturity of at least one year;

(c) For the purpose of this section "consumer debt" means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer credit transaction, as defined in subdivision (f) of section one hundred five of this chapter.

[(c)] (d) This section does not affect or create any rights or remedies related to any amounts paid prior to the effective date of this subdivision, including amounts paid to satisfy judgments or to accrued interest or fees paid, or with respect to judgments satisfied prior to the effective date of this subdivision. For amounts paid prior to the effective date of this subdivision and lawfully applied in satisfaction or partial satisfaction of interest or fees accrued prior to the effective date of this subdivision, this section shall not be construed to require a judgment creditor or sheriff to (i) return or refund such amounts to judgment debtors; or (ii) apply such payments to satisfy any part of a money judgment other than fees or interest upon judgment pursuant to section five thousand three of this article.

[(d)] (e) If any word, phrase, clause, sentence, paragraph, subdivision, or part of this section or its application to any person or circumstance is held invalid by any court of competent jurisdiction after exhaustion of all further judicial review, the invalidity shall not affect, impair, or invalidate the remainder of this section or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ 6. This act shall take effect immediately.

## Additional materials

Gregory Makoff, Advice for New York State and International Policymakers Regarding Sovereign Debt Reforms at State Level, M-RCBG Associate Working Paper Series No. 245, September 2024

Lee C. Buchheit & G. Mitu Gulati, The Duty of Creditors to Cooperate in Sovereign Debt Workouts, in Festschrift in Honor of Christoph Paulus, 2024

## Germany: preliminary proposal for a sovereign debt restructuring law

The German proposal is still at the preliminary stage of a civil society project. It was first published in 2022 and has since been revised to reflect progress of the policy debate. Central features are:

- a temporary stay for the duration of international restructuring negotiations;
- permanent enforcement restrictions in accordance with majority approved restructuring terms, subject to comparability of treatment; and
- the possibility of a regulatory override to ensure full support for international debt relief initiatives.

Although the general idea of a German sovereign debt restructuring law has enjoyed support from members of parliament, it remains to be seen whether this will result in legislation and, if so, to what extent the current proposal will inform the legislative process.

**Foreign Sovereign Debt Restructuring Support Law**

**1 Legislative purpose**

The purpose of this Law is to support the restructuring of foreign sovereign debt in accordance with the principle of comparable treatment and with the goals of sustainable global development.

**2 Definitions**

For purposes of this Law and of any Regulations enacted thereunder, the definitions set forth in Annex 1 shall apply.

**3 General principles**

(1) The commencement of a restructuring negotiations by a Foreign State and the Restructuring Terms contained in a Finalised Restructuring Proposal will be recognised and enforced in Germany accordance with the provisions of this Law.

(2) The law of the European Union and any applicable rules of public international law, including any obligations arising from treaties to which Germany is a party, shall prevail over this Law.

(3) This Law does not affect:

(a) the validity of any restructuring of General External Debt under applicable contract law;

(b) the right of a creditor to pursue the Enforcement of General External Debt against any collateral granted as security for such General External Debt;

(c) the right of the Foreign State to pursue any defences against the enforcement of General External Debt available under any other laws, including in particular:

(i) any defence under applicable contract law;

(ii) the defence of sovereign immunity;

(iii) the defence of necessity; and

(iv) the defence of odious debt.

(4) For purposes of this Law, any estimation or projection contained in a Restructuring Proposal are deemed appropriate, unless it has evidently not been made in good faith.

**4 Temporary stay of enforcement**

(1) The Enforcement of General External Debt is stayed automatically for the duration of restructuring negotiations if this is stipulated in the Restructuring Proposal. The Foreign State may activate the stay at a later time by amending the Restructuring Proposal. The stay terminates:

(a) upon the approval or rejection of the Finalised Restructuring Proposal; but no later than

(b) twelve months after the stay it has become effective.

(2) Upon consultation with the Foreign Office and the Federal Ministry of Economic Cooperation and Development, the Federal Ministry of Finance may extend the stay once by up to twelve months if this is justified by German foreign policy interest upon consideration the global sustainable development goals. The decision takes the form of a general administrative award and must be published in the federal gazette.

**5 Permanent enforcement restrictions**

(1) The Enforcement of General External Debt is be permanently restricted in accordance with the Restructuring Terms provided for in the Finalised Restructuring Proposal if:

(a) the Restructuring Terms result from international restructuring negotiations between the Foreign State and all major creditor groups of its General External Debt;

(b) the Restructuring Terms meet the requirements of Comparable Treatment; and

(c) a Qualified Majority has approved the Finalised Restructuring Proposal.

(2) Upon consultation with the Foreign Office and the Federal Ministry of Economic Cooperation and Development, the Federal Ministry of Finance may decide that German foreign policy interest upon consideration the global sustainable development goals and the duty to respect human rights:

(a) justify permanent Enforcement restrictions irrespective of whether the approval pursuant to paragraph 1 litters c has been obtained; or

(b) constitute a bar to permanent Enforcement restrictions event though the approval pursuant to paragraph 1 litters c has been obtained.

The decision takes the form of a general administrative award and must be published in the federal gazette.

(3) The Enforcement restrictions resulting from the Binding Restructuring Terms also apply:

(a) in relation to creditors that have not participated in the vote or that have voted against the Finalised Restructuring Proposal, unless the underlying claim was excluded from the vote;

(b) if the General External Debt has been converted into a new debt instrument through novation, debt exchange or similar refinancing transaction, or in the form of a judgement or arbitral award.

(4) If the Finalised Restructuring Terms do not contain stipulations for a General External Debt, the right to Enforcement is reduced by the Proportional Contribution without changing the relevant maturities or other terms of such claims. If the Proportional Contributions resulting from the Restructuring Terms contained in the Finalised Restructuring Proposal differ from each other, the weighted average applies.

**6 Claw-back and hotchpotch**

(1) Any creditor that has obtained any recovery of a General External Debt in excess of what is permitted pursuant to sections 4 or 5 in any jurisdiction shall be liable for restitution of the recovered amount or other benefit to the Foreign State.

(2) The Foreign State is entitled to set-off any amount to which it is entitled pursuant to paragraph 1 above, or the monetary value of any other benefit liable for restitution, to discharge the outstanding Qualifying Debt as adjusted in accordance with the Restructuring Terms.

**7 Preservation of comparable treatment**

(1) The Enforcement restrictions under sections 4 or 5 cease to be effective if a voluntary action or omission of the Foreign State avails a creditor or group of creditors of any preferential recovery of General External Debt in in any jurisdiction in violation of the requirement of Comparable Treatment.

(2) A payment or set-off does not qualify as a voluntary action if it is required to obtain bridge financing from the International Monetary Fund in accordance with applicable lending into arrears policies.

(3) Failure to pursue a remedy available under section 6 qualifies as a voluntary omission.

(4) This section does not affect the right of the Foreign State to reestablish comparable treatment within the framework of a new Restructuring Proposal or otherwise.

**8 Fiduciary duties**

(1) If a creditors is subject to fiduciary duties for the restructuring of General External Debt, approval of a Restructuring Proposal that meets the requirements of this Law and participation in the implementation of Finalised Restructuring Terms is deemed compliant with all

relevant requirements under German law.

(2) Paragraph 1 also applies for the assessment whether the requirements for granting relief pursuant to section 59 paragraph 3 of the Federal Budget Law are met.

**9 Declaratory relief**

(1) The Foreign State may at any time apply for a declaratory order by the local court for the district where the Foreign State maintains its diplomatic mission in the Federal Republic of Germany confirming that:

(a) a Restructuring Proposal meets the requirements of this Law for a temporary stay under section 4; or

(b) a Finalised Restructuring Proposal meets the requirements of this Law for a permanent Enforcement restrictions under section 5.

(2) The Foreign State must publish the the application in the same form as the underlying Restructuring Proposal, together with an English translation.

(3) Any group of creditors representing five per cent or more of the General External Debt may raise objections to the application. The percentage is calculated:

(a) in case of paragraph 1 littera a on the basis of the outstanding principal amounts of General External Debt pursuant to the underlying Restructuring Proposal;

(b) in case of paragraph 1 littera b on the basis of the outstanding principal amounts of the claims that have participated in the vote, and in case of a vote by groups of the claims within the relevant group.

(4) Even if no creditor has raised any objection, declaratory relief must only be granted if the court is satisfied that all relevant requirements for a temporary stay or for permanent Enforcement restrictions are met.

(5) Once the order for declaratory relief has been granted, it is binding for and against the Foreign State and all creditors for all purposes of this Law.

(6) Without prejudice to the foregoing, sections 38 to 41, 60 paragraph 1 sentences 1 and 3, sections 61, 65 paragraph 1 and section 66 paragraph 1 of Act on the Stabilisation and Restructuring Framework for Businesses and the corresponding provisions of the Courts Constitution Act shall apply as appropriate.

**10 Final provisions**

(1) This Law shall enter into effect on the day after its publication in the Federal Gazette.

(2) This Law applies to all cases where a Restructuring Proposal has been published after the it has come into effect.

**Annex 1 (Definitions)**

Except as otherwise provided for in this Law or in a Regulation enacted thereunder:

(1) 'Binding Restructuring Terms' means the Restructuring Terms provided for in a Finalised Restructuring Proposal once the requirements of section 5 paragraphs 1 and, if applicable, paragraph 2 have been met.

(2) 'Comparable Treatment' means that the Proportional Contribution resulting from the Restructuring Terms is materially equal for all General External Debts. Differences of less that [2]% from the weighted average are considered immaterial. In case of a vote by groups, Comparable Treatment is assessed on a group by group basis.

(3) 'Enforcement' means any exercise of a right for the enforcement of Qualifying Debt against the Foreign State or its the assets, other than the foreclosure of collateral, including in particular:

(a) the filing of a lawsuit or counterclaim for enforcement of a Qualifying Debt;

(b) an application for recognition or confirmation of enforceability of a foreign judgment, arbitral award or payment order, except for any application for confirmation of enforceability under the Convention on the Settlement of Investment Disputes between States and Nationals of other States of of 18 March 1965;

(c) the attachment of assets by a court under a judgment, arbitral award or payment order;

(d) a restraining, freezing or preliminary payment order;

(e) a set-off against a claim owed by the creditor to the Foreign State; and

(f) the exercise of a statutory or contractual lien.

(4) ‚Finalised Restructuring Proposal' means a Restructuring Proposal submitted by the Foreign State to its creditors upon conclusion of negotiations with all major creditor groups of General External Debt.

(5) 'Foreign State' means:

(a) a low or middle-income country, as defined by the International Bank for reconstruction and Development, or a Small Island Developing State, as defined by the United Nations Organisation,

(b) which is not subject to countrywide economic sanctions of the United Nations Security Council, the European Union or Germany, or to comparable economic sanctions against any of its senior government officials.

The Foreign State may stipulate in the Restructuring Proposal that the Restructuring Proposal extends to specified sub-sovereign entities, if these are not eligible for insolvency protection under the laws of the Foreign State.

(6) 'General External Debt' means:

(a) all obligations owed by a Foreign State to non-resident creditors and that have come into existence prior to the cut-off date stipulated in the Restructuring Proposal, including, in particular:

(i) liabilities under government bonds and loans provided by private creditors or official bilateral lenders, in the amount of outstanding principal and interest accrued until the cut-off date;

(ii) contingent liabilities under guarantees, in the maximum amount available under such guarantees at the cut-off date;

(iii) liabilities under derivative contracts, repurchase contracts and finance leases, in the amount due upon early termination on or before the cut-off date, plus any amounts past due at the cut-off date;

(iv) liabilities arising from the breach of obligations under concession agreements, investment agreements, investment treaties or public international law, including compensation resulting from early termination; and

(v) judgements, arbitral awards and payment orders in respect of any of the above;

(b) Obligations owed to all obligations owed to preferred creditors, in particular:

(i) government bonds issued and loans granted with an initial maturity of less than one year;

(ii) liabilities to pay for goods or services that arose on the delivery of the goods or the provision of services; and

(iii) liabilities owed to the International Monetary Fund or to a multilateral development bank

are only considered General External Debt if the relevant creditor has explicitly consented to be included in the restructuring prior to publication of the Restructuring Proposal;

(c) The Foreign State may stipulate in the Restructuring Proposal that, in respect of certain or all types of debt instruments:

(i) liabilities governed by a law other than the contract law of the Foreign State or denominated in a currency other than the currency of the Foreign State, are treated as General External Debt irrespective of the residency of the creditors;

(ii) liabilities governed by the contract law of the Foreign State or denominated in the currency of the Foreign State, are excluded from the General External Debt irrespective of the residency of the creditors.

(7) ‘Proportional Contribution’ means a percentage determined by applying a uniform and transparent method and reflecting the present value effects of the Restructuring Terms on the

claims of a creditor under a financial instrument. The method is considered uniform and transparent of the criteria set forth in Annex 2 are met. Upon consultation with the Foreign Office and the Federal Ministry for Economic Cooperation and Development, the Federal Ministry of Finance may issue a regulation to prescribe a different method or deviations from Annex 2. The regulation does not require approval of the Federal Council.

(8) 'Qualifying Majority' means, subject to compliance with basic due process requirements, a group of creditors representing at least two thirds of the outstanding principal of General External Debt whose creditors have participated in the vote on the Finalised Restructuring Proposal, provided that:

(a) Basic due process requirements are deemed to have been complied with if the criteria set forth in Annex 3 have been met;

(b) Upon consultation with the Foreign Office and the Federal Ministry for Economic Cooperation and Development, the Federal Ministry of Finance may issue a regulation to prescribe a different criteria or deviations from Annex 3. The regulation does not require approval of the Federal Council;

(c) If the Foreign State has admitted an unjustified claim, has rejected a justified claim, or has admitted a claim with an incorrect amount to the vote, the validity of the result will only be affected if the Foreign State has not acted in good faith and the admission or rejection was material to reach the Qualifying Majority;

(d) In case of a vote by groups, a majority of more than half of the outstanding principal must have consented.

(9) 'Restructuring Proposal' means an English language document published by the Foreign State that contains at least the following information:

(a) a summary of external and internal debt owed by the Foreign State;

(b) the proposed Restructuring Terms for each type of General External Debt, including any options offered to the creditors;

(c) a debt sustainability analysis addressing and reflecting the goals of sustainable global development as prioritised by the Foreign State; and

(d) an analysis comparable treatment.

(10) 'Restructuring Terms' means the proposed adjustments of maturities, interest rates and principal haircut for each type of General External Debt pursuant to a Restructuring Proposal, including any related conditions and proposed options, value recovery terms or commitments by the relevant creditor to extend new credit.

**Annex 2 (Proportional Contribution)**

The method for calculation of the Proportional Contribution as defined in paragraph 7 of Annex 1 is deemed uniform and transparent if, when applying the formula (1 – A/B) x 100%

'A' equals the present values of all current and future payments owed to a creditor in respect of any given debt instrument pursuant to the Restructuring Terms, whereby:

(a) future cash flows will be discounted to the uniform cut-off date provided for in the Restructuring Proposal;

(b) an annually compounding uniform discount factor is applied to calculate the present value, provided that a lower discount factor may be applied for the duration of a consolidation program of the International Monetary Fund;

(c) an additional factor reflecting the probability of occurrence of the relevant event in accordance with customary market practice is applied to evaluate value recovery instruments and optional Restructuring Terms;

(d) claims resulting from a novation, debt exchange or similar refinancing transaction replacing any General External Debt are treated as future obligations under the restructured claims;

'B' means the claim owed prior to the restructuring, in an amount equal to:

(a) the principal claim plus interest arrears past due as of the cut-off date provided for in the Restructuring Proposal; or

(b) the sum of (i) the nominal amount of all amounts due as of the cut-off date and (ii) the present values of all future payments due under the relevant instrument, calculated by discounting the future cash flows to the cut-off date with the same discount factor applicable pursuant to paragraph 'A' littera (b)

as elected by the Foreign State. If a portion of the General External Debt has previously been restructured under applicable contract law, 'B' is determined based on the amount of the principal that would be outstanding without the preceding restructuring after taking into account all contractually owed payment.

Instead of the discounting future cash flows, the Proportional Contribution may be determined in an auction process, whereby the outstanding principal claims as per paragraph 'B' littera (b) are used as currency for the purchase of the restructured claims, if the auctions terms ensure that each creditor will have spent an equal proportion of its claims at the closure of the auction. In this case, the Proportional Contribution equals the uniform percentage of the claims used for the purchase of the restructured claims.

**Annex 3 (Voting)**

The vote on the Final Restructuring Proposal must meet the following minimum requirements:

(1) A period of no less than three months must have lapsed between publication of the initial Restructuring Proposal and publication of the Final Restructuring Proposal, and a period of no less than three weeks between publication of the Final Restructuring Proposal and the end of the voting process;

(2) The result of the vote must have been authenticated by a qualified independent service provider;

(3) If a restructuring of Qualified Debt under applicable contract law has preceded the vote, voting entitlements are determined based on the principal that would be outstanding without the preceding restructuring after taking into account all contractually owed payments; and

(4) General External Debt claims that are owned or controlled directly or indirectly by the Foreign State or any of its agencies or instrumentalities are excluded from the vote.

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