08 December 2011

Dear Sirs

Promotion of Debt Relief for Poorer Countries Green paper Response

The broader substantive issues that merit consideration were identified in the course of the 2009 HM Treasury consultation[i]. In this response I comment on matters specific to the Jersey consultation. This submission is based on a review of documents available in the public domain. I do not however possess any special expertise in these matters.

Question 1: Should Jersey enact legislation equivalent to the UK Debt Relief (Developing Countries) Act 2010 to help curb the ability of vulture funds to pursue sovereign debt through the Jersey courts?

The costs and benefits of various alternatives (including an option to do nothing) have been set out in the HM Treasury Impact Assessment issued in February 2010 (see especially pages 12 to 15)[ii]. The HM Treasury Impact Assessment concludes that "*the benefits of legislation aimed at achieving the intention set out are likely to outweigh significantly any costs. The rationale for action identifies a significant market failure and the proposed legislation tackles that failure. While there are significant differences, the limitation of property rights to recovery of underlying economic value to avoid free-riding is similar to the trade-off that justifies insolvency and bankruptcy law*"**. Jersey should enact legislation for these same reasons.**

The Debt Relief (Developing Countries) Act 2010 extends to pre-existing judgments that have not been enforced. The Jersey legislation should include equivalent provisions. The action initiated by FG Hemisphere in the Jersey courts in March 2009 has therefore introduced an element of **urgency in the promulgation of equivalent legislation** if it is to be effective in that case.

Finally in regard to the FG Hemisphere case I note that evidence submitted to Parliament by Global Witness[iii] has highlighted "*recent secretive sales by Congolese state mining companies* [that] *again throw doubt over the Congolese government's commitment to developing the country's mining sector in a responsible manner. Four large stakes in huge copper concerns – together worth well over $2.6 billion - have been secretly sold off by the state mining firms* ***Gecamines*** *and Sodimico. In one case, a mine was sold off for under one-sixteenth of its audited value. In two cases the direct beneficiaries were offshore-registered companies linked to Dan Gertler, a mining magnate close to President Joseph Kabila*". The rationale for the introduction legislation is based on addressing a market failure and is therefore not undermined by the evidence presented by Global Witness. The evidence does however provide a sobering reminder of some of the factors that cause or perpetuate poverty.

Question 2: Are there any unique aspects of Jersey's political, commercial or financial profile which are not present in the UK and which would require specific consideration?

The HM Treasury Impact Assessment cited above states that "*The policy objective is to prevent commercial creditors from **free-riding on internationally provided debt relief** by recovering repayment above the HIPC Initiative rates that have been assessed by the IMF and World Bank as representing the underlying economic value of the debt*" (page 1). Jersey taxpayers have not contributed to the substantial cost of debt relief borne by UK and other taxpayers. It would be politically and ethically undesirable for Jersey courts to be seen to be used to free-ride despite the action taken by the UK.

Question 3: Should the maximum recovery percentage be pegged to the Common Reduction Factor (as in the UK) or utilise a different benchmarking criteria (e.g. the amount paid for any sovereign debt purchased on the secondary market)?

To safeguard the equitable interest of commercial creditors the recovery should be pegged to the underlying economic value of the claim (in the absence of internationally provided debt relief). The HM Treasury consultation response (paragraph 2.22) sets out grounds for using the common reduction factor to establish a fair estimate of that economic value. Amongst other things it asserts that "*market participants confirmed that the defaulted debts of HIPCs typically trade on the secondary market at prices in line with or below the level of reduction expected under the Initiative*".

Market values will be affected by internationally provided debt relief (or market anticipation of that debt relief). Any proposed alternative method that references market data would therefore need to eliminate that component of the market value attributable to debt relief to determine the underlying economic value of the claim.

Question 6: What reputational impact is UK-equivalent legislation likely to have on Jersey?

The reputational impact for the City was not considered to be a significant impediment to the introduction of UK legislation. It would be reasonable to assume that the same conclusion can be drawn for Jersey in the absence of compelling evidence to the contrary.

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i Ensuring effective debt relief for poor countries: a response to consultation, HM Treasury, February 2010, http://www.hm-treasury.gov.uk/d/consult_effectivedebtrelief_response_190210.pdf

ii Impact Assessment of measures to address non-participation in debt relief. HM Treasury, 19 February 2010, pages 12 to 15

iii Working Effectively in Fragile and Conflict-Affected States: DRC, Rwanda and Burundi, Global Watch, 7 September 2011, http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/writev/conflict/co19a.htm see also the press release by Eric Joyce MP http://ericjoycemp.files.wordpress.com/2011/11/summary-5-5m-loss-to-congolese-people-through-questionable-mining-deals.pdf