

• VULTURE FUNDS

A ruling this summer in the Jersey Court of Appeal could lead to changes in legislation in both Guernsey and Jersey. The decision hit both the local press with the headline "Vultures could use our court to make the poor poorer" and UK national papers with the likes of "Debt "vultures" win right to pursue \$100m claim".

On 14 July 2011 the Jersey Court of Appeal upheld a judgment in favour of FG Hemisphere Associates LLC, a US distressed debt fund allowing it to pursue a debt claim in excess of \$100 million against the Democratic Republic of Congo. The debt had originally been bought by the fund in 2003 for \$37 million. The amount owing is currently growing by around \$27,500 a day.

While the decision is in no doubt legally the correct one, morally, ethically and politically it has not been well received. Just 15 months previously, as a result of lobbying by the Jubilee Debt Campaign and others, the UK adopted The Debt Relief (Developing Countries) Act 2010.

This case intended to restrict the ability of such funds to sue heavily indebted countries for historical debt thereby ensuring that repayment of debt could not be pursued beyond a level assessed as fair and sustainable by the World Bank.

Jersey Deputy Daniel Wimberley expressed his view on FG Hemisphere ruling in Jersey: "There is a serious risk of major reputational damage to the Island's finance industry when courts in the Island are used to force some

of the poorest people in the world to pay up on a debt going back to the 1980s. And the debts have now grown to many times their original value. The whole thing is obscene." Similar concerns were raised in Guernsey that Guernsey courts could also be used to pursue similar claims.

In August 2011 the States of Guernsey Policy Council issued a 'Heavily Indebted Poor Countries Initiative' ("HPIC Initiative") consultation paper (the consultation period has expired but the paper remains accessible [here](#)). The HPIC Initiative was launched in 1996 and aims to ensure that no poor country faces a debt burden it cannot manage. 40 countries have been designated by the IMF and World Bank as eligible or potentially eligible for inclusion under the HPIC Initiative.

The Policy Council agreed that a report should be prepared recommending the enactment of legislation designed to limit the ability of so-called 'vulture funds' to enforce payment of debt through Guernsey courts with the aim of proposals being laid before the States at the earliest opportunity.

The consultation paper invited businesses to respond to three questions:

1. should Guernsey enact suitable legislation in line with the Debt Relief (Developing Countries) Act 2010?
2. on doing so, how may this affect your company's business? and,
3. what other considerations should be borne in mind?

Jersey meanwhile also launched a consultation on the same topic (which may be found [here](#)) inviting responses to the following questions:

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?
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?
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)?
4. Should any other parameters (e.g. the list of countries which benefit, the application of the Act to original commercial creditors as well as 'vulture funds' etc) otherwise be broader or narrower than the UK Act and, if so, in what particular respect?

Given that it is estimated at least 54 companies are known to have taken legal action against 12 of the world's poorest countries in recent years, for claims amounting to over \$1.8 billion, there is a clear possibility that further claims may be brought in the Channel Islands.

The deadline for responding to the Jersey consultation is 8 December 2011.

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FOR MORE INFORMATION,
PLEASE CONTACT:



WAYNE ATKINSON
SENIOR ASSOCIATE
t: +44 (0)1481 734225
e: wayne.atkinson@collascrill.com



BRANDON DOFFING
ASSOCIATE
t: +44 (0)1534 601754
e: brandon.doffing@collascrill.com



NIN RITCHIE
TRAINEE SOLICITOR
t: +44 (0)1481 734273
e: nin.ritchie@collascrill.com

Collas Crill **Jersey**

40 Don Street,
St Helier,
Jersey, JE1 4XD
t: +44 (0) 1534 601700
f: +44 (0) 1534 601701
e: jersey@collascrill.com
w: www.collascrill.com

Collas Crill **Guernsey**

Glategny Court, PO Box 140,
Glategny Esplanade, St Peter Port,
Guernsey, GY1 4EW
t: +44 (0) 1481 723191
f: +44 (0) 1481 711880
e: guernsey@collascrill.com
w: www.collascrill.com