



EXECUTIVE SUMMARY

- This Briefing Note outlines a proposal for a statutory stay on recovering commercial debt repayments owed by low-income countries to free up resources to combat COVID-19.
- The proposal enhances the effect of the Debt Service Suspension Initiative committed to by the G20 and Paris Club official creditors and voluntary arrangements of private creditors.
- The current proposal is time-bound, does not interfere with the underlying contractual rights of parties to the contract and is contingent on the country subject to such claims making a suspension request to the court.

Briefing Note:

COVID-19: Suspending Debt Service for Indebted Countries

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Proposal

We are proposing legislation in the UK to enhance the effect of the [Debt Service Suspension Initiative \(DSSI\) for Poorest Countries](#) initiated to free up resources for low-income countries to support health, humanitarian and social and economic measures during the COVID-19 pandemic. The DSSI commits G20 and Paris Club official creditors to a time-bound suspension of debt service for eligible countries that request such forbearance.

The Institute of International Finance have developed [terms of reference for voluntary private sector participation](#) to support the DSSI.

The aim of this proposal is to complement the DSSI by granting a statutory standstill on recovery of qualifying debt owed to private creditors by DSSI-eligible countries that are governed by English law. The proposal covers 90% of bonds contracted by these countries. It grants a designated country a stay of legal or arbitral proceedings where those proceedings concern a qualifying debt owed by that country.

The proposed legislation does not directly intervene in a contract to suspend debt payments, and as such it is still open to creditors to declare a default under the relevant contract. Instead, the legislation mirrors existing insolvency legislation in suspending the link between contractual default and the execution and enforcement of contractual rights, including with the aid of the English courts.



Rationale

We believe this proposal to be necessary to prevent aid and debt relief provided by the UK and other donors and official creditors, from being diverted as debt service to commercial creditors and acting as an indirect subsidy to those creditors.



Source: Jubilee Debt Campaign (2020).

Experience with past debt relief measures, including under the Heavily Indebted Poor Countries (HIPC) Initiative and Paris Club restructurings, has demonstrated that without enshrining debt standstills and/or cancellation into law, private creditors are unlikely to participate fully and give effect to multilaterally organised debt relief initiatives despite voluntary commitments.

If the DSSI is not accompanied by a statutory standstill for private debt, English courts (more than any other jurisdiction) could end up enforcing the debts of private creditors free-riding on the DSSI and other debt relief measures funded by the UK taxpayers. It could also give rise to the purchase of distressed debt on the secondary markets by speculative investors with the aim of recovering the full face value at a later date.

Impact

The proposed legislation relieves pressure on debtor countries by blunting private creditor threats to sue. Debtor countries may apply to prevent such claims being brought in the UK – particularly English courts and London arbitral tribunals. The effect of the stay of enforcement in no way releases the debtor from the liability to pay, nor does it constitute a waiver of the debt or other forbearance by the creditor. The debt remains in place and interest continues to accrue; all the standstill does is suspend the right of creditors to execution and enforcement for a specified period.

Enshrining a standstill in law will demonstrate UK's leadership in global COVID-19 responses and reinforce its commitment to ensuring low-income countries have access to all the financial resources they need to contain COVID-19 and recover from this unprecedented health, social and economic crisis.

It is recognised that the current proposal is limited in resolving the longer-term debt burden of developing countries, but it is hoped that it will serve as an emergency measure to enable breathing space for countries while more comprehensive and sustainable mechanisms are being developed.



This Briefing Note is based on a proposal developed by members of The IEL Collective Law and Finance Working Group in conjunction with the Jubilee Debt Campaign, UK and Oxfam GB. The full proposal can be found at go.warwick.ac.uk/globe/ielcollective/lawfinance.

For a digital version of this Note (with referenced hyperlinks) and the GLOBE Centre Policy Briefs Series, visit go.warwick.ac.uk/globe/policybriefs.

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