Responses to arguments against debt legislation

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Introduction

This briefing responds to arguments which have been given against the UK passing debt legislation to:

a) Prevent creditors suing sovereign debtors, while the debtor is negotiating a debt restructuring in good faith

b) Prevent creditors suing sovereign debtors in order to recover more than other creditors have recovered through the debt restructuring process

This briefing assumes an understanding of these proposals, which have been written up in other briefings.[1] This briefing responds to counterarguments to the proposals.

1. "Private creditors are fully participating in debt restructuring"

This is not true. Private creditors have been a problem for virtually all countries going through a debt restructuring in recent years. As Astewaye Woldemichael, Senior Advisor to the Ministry of Finance of Ethiopia, says: *"Commercial creditors and Eurobond holders have been the most difficult"* in restructuring negotiations.[2]

In **Chad**, the private creditor consortium led by Glencore delayed negotiations while continuing to be paid in full. This led to Chad getting virtually no debt relief, because the debt to Glencore was largely paid off during the delayed negotiations. Chad could not default because the loans were collateralised by oil shipments. If it had, Glencore would have been able to get a UK Court injunction to seize Chad oil anywhere in the world, as happened with BB Energy getting an injunction to seize South Sudan oil in Sudan. The debts to Glencore were governed by English law, so UK legislation provide a stay on payments during debt restructuring negotiations would have prevented a UK Court injunction, and so enabled Chad to suspend debt payments.

Ethiopia's private bondholders twice refused to accept a reasonable and generous offer from the Ethiopian government have twice threatened to sue in the UK in order to pressure Ethiopia to accept a weak deal.[3] These threats led to Ethiopia making an even more generous offer to bondholders,

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[1] https://debtjustice.org.uk/wp-content/uploads/2025/07/The-lower-income-country-debt-crisis.pdf And Connelly, S., Patricio Ferreira Lima, K., and Tan, C. (2024). Responding to sovereign debt crises: The UK Debt Relief (Developing Countries) Bill. GLOBE Centre and CBLP Briefing Paper. December 2024 https://warwick.ac.uk/fac/soc/law/research/centres/globe/ielcollective/working-groups/lawfinance/debt/debt_relief_bill_briefing_december_2024.pdf

[2] **Paris Club Annual report 2025. https://clubdeparis.org/files/live/sites/clubdeparis/files/contributed/RAPPORTS%20ANNUELS/bro-ra-club-paris-2025-web-moyen.pdf**

[3] See https://debtjustice.org.uk/press-release/bondholders-would-still-make-30-profit-from-rejected-ethiopia-deal and https://www.ft.com/content/40c35ffd-fa86-445f-9c4c-dc434b61de25 and

which would see them paid 28% more than government creditors.[4] Bilateral creditors, led by France and China, have rightly rejected this deal as not being good enough. In response, bondholders started the process of suing Ethiopia in the UK.[5] In response to this threat, Ethiopia reached a new deal with bondholders which will see them paid 17% more than government creditors.[6]

Bondholders were led by VR Capital and Farallon Capital Management, both of which have a history of suing governments. The negotiations with bondholders and bilateral creditors have been held in parallel, and bilateral creditors agreed a deal first, in March 2025.

Zambia reached a restructuring deal with its government creditors in summer 2023. It took almost a year to reach a deal with bondholders. Some non-bond private creditors have now also concluded restructuring deals[7] but others, including UK-based Standard Chartered, have not. It is almost six years since Zambia started the Common Framework debt relief process, and over three years since it reached a deal with government lenders.

Similarly, it is two-and-a-half years since **Ghana**'s deal with official creditors, and two years months since a deal with bondholders, but no deals have yet been announced with non-bond private creditors. Some of these creditors are using political pressure to try to be paid in full, out of IMF loans to Ghana, which would break comparability of treatment with bilateral creditors and bondholders.[8]

South Sudan has been successfully sued for $657 million by Afreximbank in the UK courts after defaulting on high-interest loans from the profit-making lender.[9] Afreximbank is refusing to participate in the Common Framework in Ghana and Zambia, and its loans are governed by English law, so without legislation in the UK there is no point in South Sudan applying for the Common Framework. South Sudan has also been sued by BB Energy,[10] which managed to get a UK court to temporarily get a delivery of South Sudan oil blocked.[11] This has led to South Sudan paying BB Energy

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https://www.reuters.com/world/africa/ethiopias-debt-restructuring-hits-impasse-bondholders-eye-legal-action-2025-10-14/ and https://www.reuters.com/world/africa/ethiopias-debt-restructuring-hits-impasse-bondholders-eye-legal-action-2025-10-14/#:~:text=Ethiopia's%20debt%20restructuring%20hits%20impasse%2C%20bondholders%20eye%20legal%20action,-By%20Duncan%20Miriri&text=NAIROBI%2C%20Oct%2014%20(Reuters),limbo%20for%20almost%20two%20years.

[4] https://debtjustice.org.uk/press-release/bondholders-will-be-paid-28-more-than-governments-after-ethiopia-debt-relief-deal

[5] https://www.reuters.com/world/africa/ethiopia-investors-plan-legal-action-row-over-1-billion-bond-overhaul-escalates-2026-02-02/ and https://www.bloomberg.com/news/articles/2026-04-17/ethiopia-bondholders-said-to-start-process-to-sue-over-debt

[6] https://debtjustice.org.uk/press-release/bondholders-use-threat-of-uk-legal-action-to-limit-debt-relief-for-ethiopia

[7] https://x.com/mofnpzambia/status/1902025846161887718

[8] https://www.theafricareport.com/387089/ghana-courts-trump-on-travel-ban-and-debt-relief/ and https://3news.com/business/u-s-senator-demands-ghana-repay-251m-debt-to-american-firms-before-imf-loan-approval/#google_vignette and https://citinewsroom.com/2025/12/us-bars-ghana-from-aid-over-sovereign-debt-defaults/

[9] https://debtjustice.org.uk/press-release/south-sudan-ordered-to-pay-afreximbank-657m-by-uk-high-court#:~:text=South%20Sudan%20ordered%20to%20pay%20Afreximbank%20%24657m%20by%20UK%20High%20Court,-15%20May%202025&text=According%20to%20the%20court%20filing,%24193%20million%20in%20December%202020

[10] https://www.gtreview.com/news/africa/creditors-circle-south-sudan-over-oil-backed-debts/

[11] https://www.africa-energy.com/news-centre/article/bb-energy-wins-injunction-against-south-sudan-oil-cargo

ahead of other creditors.[12] Protection from litigation for countries that have applied to the Common Framework would be the main incentive for countries to apply.

Similarly, **Malawi** has been trying to negotiate a debt restructuring with Afreximbank and other high-interest lenders since May 2022, with no progress made in over four years. Like South Sudan, until the UK passes legislation there is no point in Malawi applying for the Common Framework, because Malawi's key commercial creditors do not acknowledge that they are covered by the Common Framework.

Bondholders twice refused generous offers from **Ukraine** to restructure the country's GDP-linked warrants.[13] Ukraine feared that bondholders, led by VR Capital and Aurelius Capital Management, would sue after the end of the war. They therefore agreed a deal which will see GDP-warrant holders be paid more than double other bondholders. It also doubles the amount owed to GDP-warrant holders in the likely event Ukraine defaults or restructures again, further complicated any future restructuring.[14] Other bondholders have reacted to this deal by wanting to reopen their deals with Ukraine, and have threatened legal action if Ukraine does not pay them more.[15] The debts are governed by English law.

In **Sri Lanka**, Hamilton Reserve Bank has rejected the bondholder restructuring and is continuing to pursue a court case in New York.

Academic research has found that *"creditor lawsuits have become an increasingly common feature of sovereign debt markets. The legal developments have strengthened the hands of creditors and raised the cost of default for debtors."*[16]

2. "Legislation would not lead to more debt relief for countries"
Yes it would, for various reasons, including the knock-on impacts legislation could have on debt relief negotiations.

1) In the examples above, some creditors are refusing to participate in debt relief who would legally not be able to claim more than other creditors who have participated in debt relief, if the legislation were passed.

2) Legislation would increase debtor power in debt relief negotiations. It would remove the threat of being sued during negotiations, which creditors have used as part of negotiating better deals for them, and worse deals for debtors.

3) One of the reasons countries do not seek debt restructuring when they need to is because of the threat of legal action. Academic research has found that governments in debt crisis continue to pay in full because of the threat of legal action, and the threat of legal action helps prevent future borrowing.[17]

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[12] https://www.gtreview.com/news/africa/bb-energy-secures-south-sudan-oil-cargo-under-troubled-oil-backed-loan/
[13] https://debtjustice.org.uk/press-release/hedge-funds-cash-in-while-ukraine-is-at-war and https://www.reuters.com/world/ukraines-talks-with-gdp-linked-debt-holders-break-down-second-time-2025-11-06/
[14] https://debtjustice.org.uk/press-release/lower-income-country-debt-payments
[15] https://www.bloomberg.com/news/articles/2026-02-27/ukraine-bondholders-seek-improved-terms-after-gdp-warrant-swap?srnd=phx-fixed-income
[16] Schumacher, J, Trebesch, C. Enderlein, H. (2021). Sovereign defaults in court. Journal of International Economics. 131 (2021) 103388
[17] Schumacher, J, Trebesch, C. Enderlein, H. (2021). Sovereign defaults in court. Journal of International Economics. 131 (2021) 103388

4) We want the UK to champion a number of changes to the G20 Common Framework, including a suspension of payments during negotiations and deeper debt relief. Our legislative proposals would work alongside these changes:

- The only way to ensure a suspension of payments to private creditors during negotiations is through legislation. Legislation would be the only way to automatically initiate suspensions of payments to private creditors during negotiations, without the risk of creditors suing. In 2020, the G20 agreed to suspend debt payments to bilateral and private creditors because of the Covid pandemic. The G20 agreement said: *"Private creditors will be called upon publicly to participate in the initiative on comparable terms."*[18] The onus was on private creditors to offer debt suspensions, which they did not. Despite this, Chad,[19] Grenada[20] and Zambia[21] all proactively requested a suspension of payments from their external private creditors. They were all denied.[22] China's expectation on agreeing the initiative was that Western private creditors would participate. The fact they did not has clouded G20 negotiations on improving debt relief ever since. Western governments need to acknowledge this, particularly those which host large numbers of private creditors, such as the UK, if they are to push for improvements in debt relief.
- Deeper debt relief also requires the IMF to stick to its own policy and require restructurings to reduce debt risk to moderate with space to absorb shocks. But requiring deeper debt relief will make debt relief negotiations with private creditors even more difficult, so debtors will need even more help to ensure those creditors take part in debt relief.
- For bilateral creditors such as China to agree to deeper debt relief, they need to be assured that Western private creditors will fully take part. Legislation is the way the UK and Western countries can reassure China that Western private creditors will not free-ride on Chinese debt relief, as happened under the suspension initiative during Covid. China has effectively called for the UK to pass legislation. Xuan Changneng, Deputy Governor of the People's Bank of China, said in June 2026: *"Coordinated efforts are also needed on legal and technical fronts to curb malicious litigation by bond investors, thereby safeguarding the foundation and credibility of the Common Framework."* [23]

3. "Borrowing governments / the international community do not want legislation"

Yes they do. African Finance Ministers have called for *"anti-vulture fund legislation in major creditor countries"*.[24] The High Commissioners and Ambassadors of eight Southern African Development Community countries have written to Rachel Reeves to *"express our support for the current calls for legislation that would ensure private creditors take part in debt relief processes."*[25] African Heads of State and Finance Ministers have called for changes to the G20 Common Framework for debt restructurings including: *"suspending debt servicing for all borrower countries embarking on a debt restructuring"* and *"establishing a supranational legal mechanism for enforcement purposes".*[26]

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[18] https://g20.utoronto.ca/2020/2020-g20-finance-0415.html
[19] https://www.bloomberg.com/news/articles/2020-09-20/chad-asks-to-suspend-payments-on-glencore-oil-backed-loan
[20] https://www.latinfinance.com/daily-briefs/2020/5/11/exclusive-grenada-seeks-moratorium-on-debt-payments
[21] https://www.ft.com/content/fc82cf3f-be77-4380-9e44-401ca3bf4ed5
[22] Except Intesa Sanpaolo, which did agree to suspend Zambia's debt payments.
[23] **Paris Club Annual report 2025.**
https://clubdeparis.org/files/live/sites/clubdeparis/files/contributed/RAPPORTS%20ANNUELS/bro-ra-club-paris-2025-web-moyen.pdf
[24] https://www.uneca.org/eca-events/sites/default/files/resources/documents/com2023/E_ECA_CM_55_6_E.pdf page 30
[25] High Commissioners of Mozambique, South Africa, Malawi, Namibia, Lesotho, Zambia and Tanzania, and Ambassador of Zimbabwe. (2025). Letter to Rachel Reeves. 23/03/25.
[26] https://au.int/sites/default/files/documents/44785-doc-EN_Draft_Zero_Declaration_AU_Conference_on_Debt_Final.pdf

At an event in Parliament in November 2025, Zambian High Commissioner Macenje Mazoka said: *"We do know that the UK does have a unique role and responsibility. It's been raised already. Nearly 90% of contracts of [external private] sovereign debt held by low income countries are governed by English law giving the UK extraordinary power to set fair standards in restructuring these debts. Past UK legislation has shown global leadership in compelling private creditors to participate in debt relief on terms equal to those offered by governments. But recent attempts at legislation have stalled.*

"The UK can take decisive action now by introducing, reintroducing and updating such laws, of which we know there was one in motion. This reform could unlock safer, fairer resolutions for countries like Zambia, but not just Zambia, abut all low income countries that have debt, not just on the African continent. That would allow funds currently spent on interest payments to be redirected toward development, social services and climate adaptation, as proven in past initiatives. The UK's leadership in this area could set a really strong example internationally. You're very, very well poised for that, signaling a commitment to just and sustainable growth for the world's most vulnerable countries. It's a leadership opportunity."

Through the UN Financing for Development agreement in June 2025, UN Member States[27] agreed text saying: *"We encourage jurisdictions to consider passing legislation aimed at limiting holdouts by creditors to facilitate effective debt restructuring."*[28]

Xuan Changneng, Deputy Governor of the People's Bank of China, said in June 2026: *"Coordinated efforts are also needed on legal and technical fronts to curb malicious litigation by bond investors, thereby safeguarding the foundation and credibility of the Common Framework."* [29]

The World Bank has conducted research into legislative options, which has concluded: "*G20 countries could consider enacting legislation to encourage private creditor participation in the Common Framework. This legislation would seek to inhibit preferential recoveries if a creditor chooses not to participate in a CF debt restructuring*."[30] Indermit Gill, chief economist of the World Bank, has said *"Sovereign borrowers deserve at least some of the protections that are routinely afforded to debt-strapped businesses and individuals under national bankruptcy laws. Private creditors that make risky, high-interest loans to poor countries ought to bear a fair share of the cost when the bet goes bad."*[31]

Former Head of the World Bank David Malpass said, when in role: *"Given the depth of the pandemic, I believe we need to move with urgency to provide a meaningful reduction in the stock of debt for countries in debt distress. Under the current system, however, each country, no matter how poor, may have to fight it out with each creditor. Creditors are usually better financed with the highest paid lawyers representing them, often in U.S. and UK courts that make debt restructurings difficult. It is surely possible that these countries—two of the biggest contributors to development—can do more*

[27] All UN Member States agreed to the text except the United States

[28] https://financing.desa.un.org/sites/default/files/ffd4-documents/2025/Compromiso%20de%20Sevilla%20for%20action%2016%20June.pdf

[29] **Paris Club Annual report 2025. https://clubdeparis.org/files/live/sites/clubdeparis/files/contributed/RAPPORTS%20ANNUELS/bro-ra-club-paris-2025-web-moyen.pdf**

[30] World Bank Group. (2022). Potential Statutory Options to Encourage Private Sector Creditor Participation in the Common Framework https://bit.ly/40K6IAm

[31] https://openknowledge.worldbank.org/bitstreams/4246aa14-dffa-415d-a7e8-fa102165a5fa/download

to reconcile their public policies toward the poorest countries and their laws protecting the rights of creditors to demand repayments from these countries."[32]

Head of the IMF Kristalina Georgieva has said: *"We also are pressing for some of the changes, legal changes that need to happen in New York, in London, to close loopholes for vulture funds and others to prevent debt resolution. We are discussing how we can bring more contingency measures in debt agreements, how to press for more debt transparency."*[33] The IMF have said of proposed legislation in New York that the bill *"could contribute to the ongoing international efforts to support orderly and predictable debt restructuring processes by reducing incentives for disruptive vulture fund litigation, which is a laudable goal."*[34]

A Group of Experts commissioned by the Late Pope Francis, Chaired by Nobel Prize winning economist Joseph Stiglitz, has recommended that *"A legislated cap on recoveries by private creditors—linked to the terms accepted by official creditors—for the restructurings of low- and lower-middle income economies would help ensure comparable treatment and foster greater private sector engagement in coordinated debt solutions. It would also reduce the incentive to hold out and litigate, making restructurings more timely and less conflictual."*[35]

The German government has commissioned research on legislative options.[36] Even private creditors have told Reuters that they think legislation in the UK (and New York) will be passed in some form.[37]

4. "Legislation in the UK would lead to loans being issued under other jurisdictions' law"
There is no evidence it would, and plenty of evidence it would not.

Moving governing law away from English law comes with risk for creditors, because there is not the same case law and awareness of how the legal system would operate in other jurisdictions.

The choice of governing law is not solely one for creditors, debtors also have a role in deciding this. The US government accepts that making New York sovereign debt law more creditor-friendly means it will be used less, because debtors will not want to use it.[38] Well-designed legislation that upholds international agreements on debt restructuring and ensures minority private creditors cannot hold out from restructurings agreed by bilateral creditors and other private creditors should be attractive to many creditors and to debtors.

Particular groups of private creditors argued against the UK 2010 Debt Relief (Developing Countries) Act by saying that if passed – in the form it was eventually passed in – it would mean English law would stop being used for debt issuance. The Institute of International Finance told the UK government at the time that the 2010 Act *"could damage the reputation of the UK legal system as a*

[32] https://www.worldbank.org/en/news/speech/2020/10/05/reversing-the-inequality-pandemic-speech-by-world-bank-group-president-david-malpass
[33] https://www.imf.org/en/News/Articles/2022/04/21/tr220421-transcript-of-the-imfc-press-briefing

[34] https://www.bloomberg.com/news/articles/2025-06-13/ny-bill-targeting-em-vulture-funds-faces-imminent-deadline?embedded-checkout=true
[35] https://ipdcolumbia.org/wp-content/uploads/2025/06/Jubilee-report_veryfinal.pdf
[36] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). (2024). Statutory and Policy Measures to Enhance Private Sector Participation in Sovereign Debt Restructurings. https://bit.ly/3O5UHha
[37] https://www.reuters.com/world/uk/uk-bill-aims-speed-debt-restructuring-poor-countries-2025-04-09/
[38] https://www.ft.com/content/abb704ed-e472-4b35-9514-f09852a338f6

reliable situs for resolving international disputes and inhibit the use of English law in international contracts."[39]

Dechert LLP, the mouthpiece for the hedge funds of the time, said "*At worst, and more likely, sovereign lending will be exported to other financial centres where trust in the integrity of their legal systems remains intact."*[40]

This did not happen. Following the introduction of the UK Debt Relief Act in 2010, lenders did not stop using English law. In fact, of bonds issued by countries covered by the Act since 2010, 90% use English law, and 10% New York[41] – the same proportion as for lower income countries more generally.

In fact, the assessment of the UK Debt Relief Act (2010) conducted by the UK government in 2011 concluded that:

"No evidence has been presented to the Government to suggest that the legislation has had a negative impact on the UK as a centre for financial services or that it has resulted in changes in the choice of law or jurisdiction for financial contracts."[42]

Such arguments frankly show a lack of faith in the quality of English law as the premier governing law for sovereign debt, and one of the drivers of that choice is legal certainty. When the UK implemented European law providing certainty in the restructuring of cross-border corporate debt, corporates flooded to the UK for restructuring thanks to its clear and certain private insolvency regime.[43] Of corporate debt restructurings in the UK, 75% are by foreign firms[44] – showing that clear law for debt restructuring will attract debtors and creditors to English law. The UK system for restructuring corporate debt has been so successful that other jurisdictions sought to copy it, which led to the UK making further improvements to ensure restructurings happen quickly and cover all creditors.[45] US companies are choosing to restructure their debt under English law.[46]

English law is the law of choice for sovereign debt in spite of the chaotic situation with holdout creditors, not because of it.

Furthermore, moving governing law jurisdiction would not enable creditors to avoid the impact of the legislation. The Bill would work on any enforcement action in UK Courts, regardless of the governing law. Cases are brought against sovereigns in the UK for two reasons – the governing law, and the UK being a major financial centre where assets are owned. If enforcement is sought in a UK court, the statutory cap applies. Conversely, changing governing law would not remove a creditor's claim from the scope of the Bill if that creditor still sought to litigate or enforce in the United Kingdom.

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[39] https://webarchive.nationalarchives.gov.uk/ukgwa/20100401184345mp_/http://www.hm-treasury.gov.uk/d/consult_effectivedebtrelief_responses_received_190210.pdf
[40] https://webarchive.nationalarchives.gov.uk/ukgwa/20100401184345mp_/http://www.hm-treasury.gov.uk/d/consult_effectivedebtrelief_responses_received_190210.pdf
[41] Calculated by Debt Justice from World Bank International Debt Statistics database and individual bond prospectuses.
[42] House of Commons, Second Delegated Legislation Committee, Monday 16 May 2011.
[43] https://www.ecgi.global/sites/default/files/working_papers/documents/finaleidenmueller4562019.pdf
[44] https://content.clearygottlieb.com/corporate/emerging-markets-restructuring-journal-winter-2021/recent-developments-cross-border-schemes-of-arrangement-and-restructuring-plans/index.html
[45] Jennifer Payne, "The Continuing Importance of the Scheme of Arrangement as a Debt Restructuring Tool" (2018) 15:3 ECFR 445.
[46] https://www.wsj.com/pro/bankruptcy/u-k-restructuring-gains-traction-as-chapter-11-alternative-51db0ca4

Ideally the UK would coordinate legislation with New York. The New York Assembly is further advanced in passing legislation than the UK, with Bills having passed the Senate. New York is more likely to Act if the UK does so at the same time. Similarly, other jurisdictions which have sympathy with passing legislation, such as France, Belgium, Germany and the EU generally, are likely to do so if the UK and New York legislate.

5. "Legislation in the UK would lead to lenders leaving the UK."
No it would not. The law is about the jurisdiction of the governing law of the debt, not where the banks are based. The 2010 Act did not initiate a flight of banks from the UK, and no one expected it to.

6. "Legislation cannot work if there is no definition of comparability of treatment"
We agree a clearer definition of comparability of treatment is ideally needed as part of the package of measures to make debt restructuring work better. Debtor governments have been calling for this. For example, African Heads of State and Finance Ministers have called for changes to the G20 Common Framework for debt restructurings including: *"setting up a universally accepted methodology for comparability of treatment"*.[47] The Financing for Development text agreed ahead of the Seville summit in July 2025 calls on the G20 to improve the Common Framework in various ways, including: *"developing a guide for assessing comparability of treatment and refining tools for enforcing comparability of treatment".*[48]

The Paris Club has acknowledged on its website that: *"Certain stakeholders have suggested an alternative methodology, comparing the NPV of restructured claims against the face value of the original outstanding claims. Such an approach would favour creditors with low interest concessional loans, particularly the official sector."*[49]

There is interest from both debtors and creditors in getting agreement on a new definition of comparability of treatment. And the UK is not a neutral actor in this. While we do not know what position they have taken in behind-closed door negotiations in the Paris Club and G20, we do know from our conversations with UK government officials that the UK has been a strong supporter of the current weak definition of comparability of treatment. If the UK actively and publicly changed to argue for a clearer and better definition of comparability of treatment this could help change the international dynamics substantially. China for one would be interested in a definition that required relatively more effort in debt relief negotiations from private creditors.

Agreeing a better definition of comparability of treatment is possible with political will and this definition could then be used in legislation. Offering to introduce legislation could help get agreement on a better definition.

In its absence, other definitions of comparability of treatment could still be used in any legislation. The Paris Club does have a definition based on the % reduction in the net present value, change in duration of the debt before and after the treatment, and change in nominal debt service over the IMF programme period. The bill, as drafted, is designed for flexibility: it allows the Secretary of State to adopt agreed comparability of treatment criteria in each restructuring case.

[47] https://au.int/sites/default/files/documents/44785-doc-EN_Draft_Zero_Declaration_AU_Conference_on_Debt_Final.pdf
[48] https://financing.desa.un.org/sites/default/files/ffd4-documents/2025/Compromiso%20de%20Sevilla%20for%20action%2016%20June.pdf
[49] https://clubdeparis.org/en/communications/page/what-are-the-main-principles-underlying-paris-club-work

Other definitions could also be used based on the restructuring negotiations, such as % NPV reduction agreed by one group of creditors, such as bondholders.

Furthermore, a definition of comparability of treatment is only needed for one aspect of the debt legislation. The other proposal – a stay on litigation during debt restructuring negotiations – is just as important and does not need a definition of comparability of treatment.

7. "Legislation would increase the cost of borrowing / mean lenders stop lending"
This type of statement reflects a persistent but unsubstantiated concern within the sovereign debt community. Similar concerns were raised when Collective Action Clauses were introduced under New York law in 2003 and have resurfaced with every innovation in the legal design of such clauses, yet they have never materialised. In fact, academic research has found that enhanced Collective Action Clauses lower borrowing costs for governments, because they improve the debt resolution process.[50] Legal changes to further improve the debt resolution process, making it quicker and ensuring it covers all creditors, would further reduce borrowing costs.

Particular groups of private creditors argued against the UK 2010 Act – in the form it was eventually passed in – by saying that if passed lending to lower income countries would stop and/or borrowing costs would increase. For example, the Institute of International Finance said: *"The IIF cautions HM Treasury against initiating legislation that has the potential to destabilize capital flows to low-income countries without achieving commensurate benefits for those countries."*[51]

Dechert LLP responded to the government consultation on behalf of "a number of [unnamed] hedge fund clients" saying "*At best, borrowings by sovereigns organised through the UK, and/or governed by English law, may become less available or, even if available, would be on terms inevitably more onerous for the sovereign.*"[52]

In fact, in the 2010s loans by private lenders to the 36 countries covered by the Act increased from $3 billion between 2005 and 2009, to $24 billion between 2010 and 2014, and $41 billion between 2015 and 2019.[53]

Despite having no evidence to support this claim, opponents of legislation still say it. In 2023 HMT officials said in response to the International Development Committee inquiry that legislation would increase borrowing costs for debtors. When Debt Justice asked HMT to provide evidence for this claim, they said they did not hold any.[54]

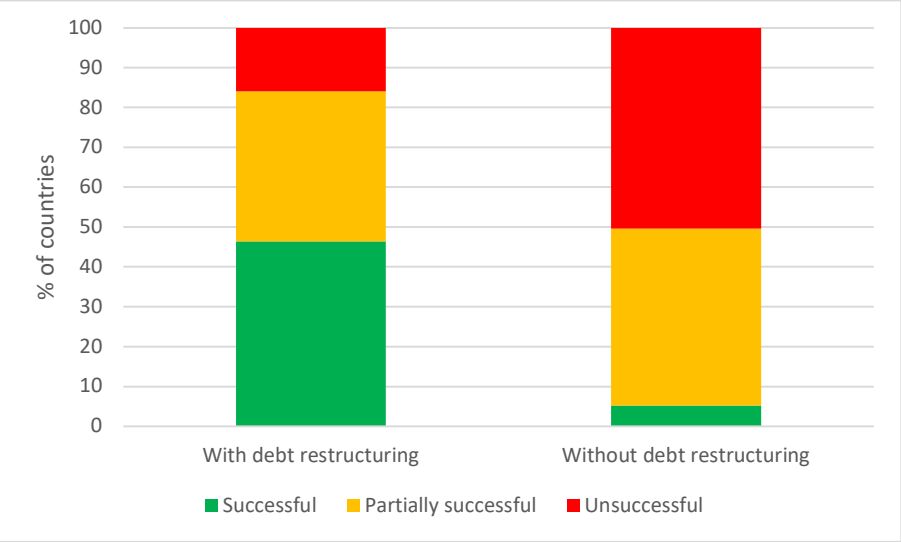
In contrast, there is evidence that effective debt restructuring systems lower future borrowing costs. Put simply, if governments have less debt, private lenders are more willing to lend to them. For example, the IMF has concluded that: *"debt restructurings have often been too little and too late, thus failing to re-establish debt sustainability and market access* [new loans from private lenders] *in a durable way."*[55] Scope Ratings has said: *"If an economy's debt sustainability is adequately enhanced*

[50] Chung, K. and Papaioannou, M.G. (2020). Do Enhanced Collective Action Clauses Affect Sovreiegn Borrowing Costs? IMF Working Paper. August 2020.
[51] https://webarchive.nationalarchives.gov.uk/ukgwa/20100401184345mp_/http://www.hm-treasury.gov.uk/d/consult_effectivedebtrelief_responses_received_190210.pdf
[52] https://webarchive.nationalarchives.gov.uk/ukgwa/20100401184345mp_/http://www.hm-treasury.gov.uk/d/consult_effectivedebtrelief_responses_received_190210.pdf
[53] Calculated from World Bank International Debt Statistics
[54] HMT. (2023). Response to Freedom of information request Ref: FOI2023/10063.
[55] https://www.imf.org/external/np/pp/eng/2013/042613.pdf

via public and private sector debt relief, this could support stronger market access and lower borrowing rates longer term, and with this, potentially a stronger credit rating long term.[56]

A 2018 IMF review found that of 33 IMF programmes in countries with high debt vulnerabilities,[57] in only 40% of them was any kind of debt reprofiling or restructuring carried out. However, in high debt countries where there was a restructuring as part of the IMF programme, 45% were successful, 40% partially successful and 15% unsuccessful. In contrast, in programmes in high debt countries without a restructuring, just 5% were successful, 45% partially successful and 50% unsuccessful (see Graph below). "Success" included resolving a country's balance of payments problems, making progress towards a stable and sustainable economic position, growth and poverty reduction, as well as restoring access to loans from private lenders.

Graph. Success of IMF programmes in high debt countries with and without debt restructurings, combined for GRA and PRGT countries[58]



The ability of certain creditors to threaten legal action holds up debt restructurings, lengthening defaults, and thereby reduces the ability of governments to borrow and increases interest rates. Academic research has found that *"creditor lawsuits have become an increasingly common feature of sovereign debt markets. The legal developments have strengthened the hands of creditors and raised the cost of default for debtors. We show that legal disputes in the US and the UK disrupt government access to international capital markets, as foreign courts can impose a financial embargo on sovereigns … courts can explicitly or implicitly impose an embargo on new borrowing or block debt repayments on performing bonds."*[59]

[56] https://www.scoperatings.com/ScopeRatingsApi/api/downloadstudy?id=d89d0b31-d96a-4cfb-a7a7-6558e499080d

[57] This is made up of 17 General Resources Account programmes where debt was viewed as "unsustainable" or "sustainable but not with high probability", and 16 Poverty Reduction and Growth Trust countries with a debt risk rating of "high risk" or in "debt distress".

[58] IMF. (2019). 2018 REVIEW OF PROGRAM DESIGN AND CONDITIONALITY. May 2019. https://www.imf.org/~/media/Files/Publications/PP/2019/PPEA2019012.ashx

[59] Schumacher, J, Trebesch, C. Enderlein, H. (2021). Sovereign defaults in court. Journal of International Economics. 131 (2021) 103388

Furthermore, UK corporate debt restructuring law does not increase interest rates for corporations. In fact, having a predictable debt relief process enables lenders to more easily resolve debt problems.[60] A study commissioned by the German government found that: *"there is no evidence that well-designed legislation increases interest rates on government borrowing, jeopardises market access, or negatively affects financial centres."*[61]

8. "Collective Action Clauses have solved the problem of holdouts"

Third-generation Collective Action Clauses (CACs) have improved debt restructuring negotiations with bondholders. However, the low level of debt relief in recent restructurings has also helped to get bondholders to agree – negotiations with bondholders will be harder if the G20 and IMF agree to deeper debt relief. Furthermore, Ethiopia's bondholders have refused a reasonable offer and have threatened to sue in the UK. Hamilton Reserve Bank is suing Sri Lanka after refusing to take part in a bondholder restructuring.

CACs in bond contracts do nothing to help get agreement from non-bond private creditors. The characterization of sovereign creditors as simply bondholders is manifestly out of date (if it were ever true); sovereign creditors increasingly lend under bilateral or syndicated credit facilities agreements.[62] A significant portion of this lending is structured with collateral arrangements, often involving the allocation of resource revenues to offshore escrow accounts. A study examining 45 Sub-Saharan African nations found that 14 had engaged in collateralised borrowing, with such debt constituting between 1% and over 60% of their external borrowing, averaging 8.4% of GDP by the end of 2021.[63] Collateralised debt structures provide a strong incentive for creditors to delay participation in debt restructuring negotiations. Secured creditors have little incentive to engage in negotiations, given their access to collateral. This is particularly the case when the collateral is readily enforceable—for instance, when financial assets are held in offshore escrow accounts. Moreover, once negotiations commence, secured creditors can leverage their position to demand more favourable terms in exchange for releasing their collateral, complicating the application of comparability of treatment standards.[64] This dynamic was exemplified in Chad's restructuring under the Common Framework, particularly in the case of Glencore.

Research for the German government has found that legislation would complement CACs and facilitate restructuring across the private sector.[65]

The poorer or smaller a country is, the more likely it is to hold more of its external private debt as non-bonds rather than bonds. Of external debts owed by low-income governments to private creditors, just 19% are bonds, 81% are other forms of private creditor. This rises to 54% of external

[60] Research for the IMF has also found that enhanced collective action clause in bond contracts also lower borrowing costs, because the provision of more orderly debt restructuring negotiations outweighs any loss in ability of particular creditors to holdout https://www.imf.org/en/Publications/WP/Issues/2020/08/07/Do-Enhanced-Collective-Action-Clauses-Affect-Sovereign-Borrowing-Costs-48960

[61] https://mia.giz.de/cgi-bin/getfile/53616c7465645f5f596b4518f5e81f0090400b7f2ab3eb389bc44c567f1a0054ee1fa3a1cb23ad27f8c11440e6c6648dc35aa49e22073bda30e293fd78bbe2e0/giz-2024-0065-en-Statutory-and-Policy-Measures-to-Enhance-Private-Sector-Participation-in-Sovereign-Debt-Restructurings.pdf

[62] Stephen Connelly, The Tuna Bond Scandal: The Continued Lack of Transparency in Bank-to-State Credit Facilities Agreements, *Journal of International Economic Law*, Volume 24, Issue 3, September 2021, Pages 649–671

[63] A Giorgia, Koumtingue N and Qiuyan Y, *Collateralized Debt in Sub-Saharan Africa: A Macroeconomic Perspective* (IMF Working Paper, forthcoming, International Monetary Fund 2023). Cited in International Monetary Fund and World Bank, *Collateralized Transactions: Recent Developments and Policy Recommendations* (15 September 2023).

[64] International Monetary Fund and World Bank, *Collateralized Transactions: Recent Developments and Policy Recommendations* (15 September 2023) 7.

[65] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). (2024). Statutory and Policy Measures to Enhance Private Sector Participation in Sovereign Debt Restructurings. https://bit.ly/3O5UHha

debts owed by Common Framework eligible governments to private creditors as bonds, leaving a still very significant 46% owed as other forms of private debt.[66]

However, these are absolute figures dominated by bigger and richer countries. The unweighted mean average for Common Framework countries is 35% of external debt owed to private creditors as bonds, 65% non-bonds. The median average is 14% bonds, 86% non-bonds, ie any one individual country is likely to owe more external debt to private creditors as debt other than bonds.[67]

Of the non-bond external debt owed to private creditors by Common Framework eligible countries, 18% is owed to Chinese creditors, 82% to creditors elsewhere in the world.[68] While there is little disclosure of the governing law of these non-bond debts, where it has been disclosed - in Chad, Mozambique, and on the OECD IIF database – the loans are governed by English law. There are also debts not classed as 'private' on the World Bank database that could also be covered by UK legislation. For example, an important creditor in a few countries is high-interest lender Afreximbank. Where the jurisdiction is known, Afreximbank's debts are governed by English law.[69]

Actual litigation is not the only problem the legislation is seeking to address. In Chad, Glencore did not need to litigate because Chad kept paying in full because it felt unable to suspend payments. Ethiopia's bondholders have publicly threatened legal action in the UK, as part of their negotiating tactics to demand a weaker deal from the Ethiopian government.[70] Other debtor governments have reported to us and our allies that they have been threatened with litigation during negotiations. Legislation to allow a suspension of debt payments would help overcome these problems, give debtors more power in negotiations and speed the process up.

9. "Voluntary Multilateral Voting Provisions will solve the problem of holdouts"

The UK government has sought to get syndicated lenders to agree majority voting provisions in their loans. But after several years of work on this, none have been agreed. If they were, they would only enable voting within one syndicated loan, rather than between loans, and between loans and bonds, replicating the failures of the first generation of CACs in bonds. They would make a negligible, if any difference, to the debt restructuring process. And they would only apply to future debts, not the current debt stock.

These sorts of majority voting provisions are a standard feature of corporate syndicated financial contracts, hence their attractiveness to practitioners. Yet one cannot consider these contractual provisions in the abstract—they are concluded in the shadow of applicable insolvency laws and are desirable because parties know statutory provisions offer an enforceable backstop. Rather than undermining it, positive legislation actively enables contractual approaches and promotes the use of majority voting.

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[66] Calculated from World Bank International Debt Statistics database. Data is for debt owed at end-2023, the most recent year available. There are 26 low income countries. There are 68 countries currently eligible for the G20 Common Framework, made up of low income countries, many lower-middle income countries and a few upper-middle income small islands states.

[67] Calculated from World Bank International Debt Statistics database. Data is for debt owed at end-2023, the most recent year available.

[68] World Bank International Debt Statistics database.

[69] https://data-explorer.oecd.org/vis?lc=en&fs[0]=T%2Co&fs[1]=Topic%2C0%7CFinance%23FIN%23&snb=2&fc=Topic&pg=0&vw=tb&df[ds]=dsDisseminateFinalDMZ&df[id]=DSD_DEBT_TRANS_COLL%40DF_MICRO&df[ag]=OECD.DAF&df[vs]=1.0&pd=2020%2C2022&dq=.....&ly[rw]=DD_ID%2CREF_AREA%2CRECIPIENT_TYPE%2CTIME_PERIOD%2CFIN_TYPE%2CCURRENCY%2CINTEREST_RATE%2CINTEREST_RATE_TYPE%2CCLAIM_RANK and South Sudan's debt to Afreximbank are governed by English law.

[70] https://www.ft.com/content/40c35ffd-fa86-445f-9c4c-dc434b61de25

10. "Debt relief will reduce the value of UK pension funds."
No it will not. If and where pension funds have invested in lower income country debt, it will be a tiny proportion of their assets.

The one form of global south government debt pension funds might own are bonds. The 73 countries eligible for the G20 debt relief initiative collectively owe $88 billion through bonds.[71] In contrast, the total assets held by pension funds based in 22 major economies is $48,000 billion ($48 trillion)[72] – 550 times as much.

Nowhere near all such bonds will be owned by pension funds. Bond ownership is very untransparent. A study by Eurodad found that the ownership of only 24% had been disclosed to regulators.[73] The bonds owned by global pension funds are included among those that need to be disclosed to regulators – so this means a maximum of $21 billion of bonds of the 73 countries are owned by pension funds. This is an overestimate because much of this $21 billion will be owned by people other than pension funds.

$21 billion is 0.04% of global pension assets. In contrast, prices of shares, the main investment for pension funds, change on a daily basis by 0.5%-1%. This means pension funds lose or gain far more from daily changes in stock exchanges than they would if all the 73 countries' bonds were entirely cancelled (which is not what debt legislation would do). Moreover, even if one accepts UK pensions funds have some relatively small exposure to high-yield emerging market bonds, as the majority tend to be priced in USD, pension funds will have taken a c.10% hit from the fall in the dollar year to date—something entirely due to factors emanating from the Global North and applicable to all USD-denominated exposures.

Furthermore, where pension funds do own such bonds they have bought them as a risky asset in accordance with prudential requirements. During the 2010s and the Covid crisis foreign currency bonds in lower-income countries charged high interest rates – around 6%-10% - at a time when pension funds were lending to governments like the US and UK at 0%-1%. But in these cases, as a risky asset, it should be a small proportion of any individuals' pension portfolio. And will be a tiny proportion of other risky investments (like high yield corporate bonds, equity in start-up companies etc). The logic behind all of these was high risk high reward – high interest rates offered potential high returns, but at the risk of not being repaid. Pension managers expect some of the bets not to pay off, but they earn a return because enough do.

Where pension funds own bonds they adjust how much the bonds are worth as the price of the bonds changes on financial markets. Many lower income country bonds have fallen significantly in value in recent years. This means that bondholders who bought the debt closer to face value have already written significant amounts off on their books, though still claim they are owed the full amount.[74] And speculators who have bought the debt more recently, since the bonds started falling

[71] Calculated from World Bank International Debt Statistics database.
[72] https://www.thinkingaheadinstitute.org/research-papers/global-pension-assets-study-2023/#:~:text=The%20Global%20Pension%20Assets%20Study,the%20GDP%20of%20these%20economies.
[73] https://assets.nationbuilder.com/eurodad/pages/2307/attachments/original/1621949568/sovereign-bond-report-FINAL.pdf?1621949568 page 20
[74] The way owners of bonds such as asset managers and pension funds account for their bond holdings is they change how much they are worth in their accounts based on the price they are trading at. So when the price of the bonds they own falls, they automatically count this as a loss in their accounts. Similarly, when bonds rise in price they count it as a financial gain, even if they don't sell the bonds. If a bond owner who accounts for their bonds in this way agrees to cancel debt down

in price, stand to make huge profits unless there is significant cancellation of the debt. Debt Justice has calculated that for countries which have reached debt restructuring agreements with bondholders, those bondholders are still making more money after debt relief, than if they had lent to the US government instead.[75]

Finally, debt relief legislation provides certainty to pension funds and predictability around the negotiation and outcome of restructuring. In the current regime, sovereign debt is subject to an additional risk discount thanks to the Wild West nature of debt renegotiations - a restructuring could be scuppered by surprise unilateral action by a private creditor. By controlling such unilateral behaviour, debt relief legislation thereby negates that discount, increasing the value of impaired debt in pension funds' hands.

to the current price (eg, if Ghana's bondholders cancelled 60% of the debt) this would not lead to any new losses for that bondholder, because they have already counted the fall in price as a loss.

[75] https://debtjustice.org.uk/press-release/private-lenders-to-make-14-billion-profit-after-debt-relief-deals