

(32)

PUBLIC DEBT MANAGEMENT ACT, 2008

ARRANGEMENT OF SECTIONS

Sections

PART I PRELIMINARY

1. Short Title
- Interpretation
3. Administration of Act

PART II LOANS

4. Authority to raise foreign loans
5. Payment due in respect of foreign asset
6. Moneys borrowed to be paid into Consolidated Fund
7. Power of Minister to repay, convert and consolidate loans
8. Authority to raise local loans
9. Local loans may be raised by issue of bills, bonds or stock
10. Conditions for issue of securities
11. Exemption from stamp duty
12. Other conditions for issue of securities
13. Interest subject to withholding tax

PART III GUARANTEES

14. Authority to guarantee loans
15. Body benefiting from guarantee to reimburse Government all disbursements

PART IV GRANTS

16. Authority to receive grants

PART V - DEBT MANAGEMENT COMMITTEES

17. Establishment of National Debt Management Committee
18. Functions of National Committee

19. Composition of National Committee
20. Meetings of National Committee
21. Proceedings of National Committee
22. Secretariat of National Committee
23. Establishment of Technical Debt Management Committee
24. Sub-committees

PART VI MISCELLANEOUS

25. Amounts due on loan or under guarantee to be charge c Consolidated Fund
26. Obligation of Government to pay debt
27. Status of claims in respect of Government debt
28. Loans and guarantees to be published
29. Responsibility of Minister with regards to plans and reports
30. Minister to specify certain particulars in annual estimates
31. Authority of Minister to be exercised in accordance with National Debt Strategy
32. Power of Minister to make regulations
33. This Act to prevail in case of conflict with other law
34. Repeals
35. Savings and Transitional Provision



PUBLIC DEBT MANAGEMENT ACT, 2008

(Act 32 of 2008)

I assent

J. A. Michel
President

23rd December, 2008

AN ACT to revise and consolidate the laws relating to loans raised and guarantees given by the Government, to provide for the acceptance of grants made to the Government and for related matters, and to repeal the Local Loans Act, 1960, Loans Decree, 1977, and Treasury Bills Decree, 1979.

ENACTED by the President and the National Assembly.

PART I PRELIMINARY

1. This Act may be cited as the Public Debt Management Act, 2008. Short title

2. In this Act,

“advance” means a loan to the Government from the Central Bank payable within a period of less than one year in accordance with section 40 of the Central Bank of Seychelles Act, 2004;

“Annual Debt Strategy” means an annual strategy that specifies tools and measures needed to institute effective debt management;

“bill” means a zero-coupon debt instrument with a maturity period of twelve months or less issued under section 9;

“bond” means an interest-bearing debt instrument with a maturity period of at least three years or more from the date of its issue;

“book entry system” means a computerized system established or otherwise authorized by the Minister, to register, for the account of holders, the issuance, account status, servicing and redemption of Government securities;

“borrowing plan” means a schedule of anticipated loan requirements which indicates the size and repayment terms of the anticipated loans;

“Central Bank” means the Central Bank of Seychelles established by the Central Bank of Seychelles Act, 2004;

“debt and budget execution report” means reports that detail the national debt and guarantee ledger, the level of public debt and the position of the guarantees issued by the Government and the performance to date of the existing debt strategy;

“debt management” means the policy and operational functions relating to raising of loans, issuing of

guarantees, discharging of obligations and issues emanating therefrom;

“financial year” shall have the same meaning given to it by the Public Finances Act, 1996;

“foreign loan” means any loan raised by the Government from outside the Republic;

“force majeure” means a natural disaster, emergency, or major economic slow-down requiring fiscal stimulus;

“gross domestic product” means the total market value of all the goods and services produced within the Republic during a financial year;

“guarantee” means the potential liability assumed by the Republic that is contingent on the financial obligation of another legal person and becomes public debt when the party responsible for the payment of the financial obligation fails to make payment when due;

“local loan” means any loan raised by the Government from within the Republic;

“Minister” means the minister responsible for financial matters; and

“Ministry” is construed accordingly;

“National Committee” means the National Debt Management Committee established under section 17;

“parastatal organisation” means a statutory corporation or body or limited liability company which is directly or ultimately under the control of the Government or of any other body which is carrying out a governmental function;

“public debt” means any debt incurred in or outside

Seychelles through the raising of loans, the issuing of securities, overdrafts or any other means, by the Government or a parastatal organisation guaranteed by the Government and includes advances from the Central Bank to the Government;

“security” means any document issued under the authority of the Minister as evidence of a local loan raised under this Act and includes bonds, bills and stocks issued under section 9;

“service cost” in respect of any financial year, in relation to any loan, means the aggregate of the payment required to be made in respect of the loan during the financial year, where such payment is of interest or is towards the repayment of the loan;

“stock” means a document incurring long term debt, which has a maturity period of more than ten years from the date of issue;

“suppliers credit” means financing advanced to the buyer by the supply of goods or services;

“Technical Committee” means the Technical Debt Management Committee” established under section 23;

3. (1) The powers of the Minister under this Act shall be exercised in accordance with the approval of the President.

(2) The Minister may, by Order published in the Gazette, delegate to any public officer specified in the order —

- (a) his or her function under this Act relating to negotiating a loan;
- (b) the authority to execute on behalf of the Government any agreement or other instrument relating to a loan raised or guarantee given, under this Act.

Administration
of Act

PART II LOANS

Foreign loans

4. (1) Subject to the provisions of this Act and on the advice of the National Committee, the Minister may, for and on behalf of the Republic, raise from outside the Republic, upon such terms and conditions as to interest, repayment or otherwise as may be negotiated by the Minister, loans of such sums which in the opinion of the Minister are necessary to defray expenditure which may lawfully be defrayed.

Authority to
raise foreign
loans

(2) The authority conferred upon the Minister by subsection (1) shall be exercised in accordance with the Annual Debt Strategy and borrowing plan referred to in section 29(1)(a).

5. Where the Government with the approval of the Minister acquires any asset under an agreement which provides for payment for such asset to be made outside the Republic subsequent to the date of the acquisition of the asset, the sum of money payable under such agreement shall, for the purposes of this section, be deemed to be a loan raised by the Minister outside the Republic.

Payment due in
respect of foreign
asset

6. (1) Subject to subsections (2), (3) and (4) all monies raised by foreign loans under section 4 shall be paid into the Consolidated Fund.

Moneys
borrowed to be
paid into
Consolidated
Fund

(2) Subsection (1) shall not apply to any sum of money deemed to have been borrowed in accordance with section 5;

(3) Where a foreign loan has been raised for any development project for which a special fund has been established under the Development Loans Act, 1977, or section 7 of the Public Finances Act, 1996, the Minister may, by order published in the Gazette, direct that the whole or such part of the amount of the loan as the Minister may specify shall be paid into the fund;

(4) Where any foreign loan has been raised for the purpose of a parastatal organisation, the Minister may, by Order published in the Gazette, direct that the whole or such part of the amount of the loan as the Minister may specify, shall be paid into a special fund established for that purpose and every fund so established shall be deemed to be a fund established under section 8 of the Public Finances Act and shall be regulated in accordance with that Act.

7. (1) The Minister may, with the consent of the lender and upon such terms and conditions as the Minister may determine,

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the terms of a loan; or
- (c) consolidate two or more loans into a single loan.

(2) The Minister shall, in exercising the powers conferred upon him or her under subsection (1), have regard to the interests of sustainable public debt management.

Local Loans

8. (1) Subject to the provisions of this Act and on the advice of the National Committee, the Minister may, for and on behalf of the Government, in the manner provided for in this Act, raise loans from within the Republic of such sums which in the opinion of the Minister are necessary to defray expenditures which may be lawfully defrayed.

(2) The authority conferred upon the Minister by subsection (1) shall be exercised in accordance with the Annual Debt Strategy and borrowing plan referred to in section 29(1)(a).

9. A local loan may be raised by —

- (a) the issue, by the Minister, of Government bills, bonds, or stock;
- (b) any other method that the Minister considers appropriate.

10.
Act—

Where a local loan is raised under section 8 of this

Conditions for
issue of
securities

- (a) such securities shall be issued upon the best and most favourable terms and conditions as may be advised by the National Committee;
- (b) the issued securities shall, to the best possible extent, be auctioned through market-based procedures;
- (c) all new treasury bills and bonds issued on behalf of the Government shall be transferable by an instrument of transfer in a form approved by the National Committee;
- (d) a security issued by the Government, shall be held by investors in book entry system, the system of which shall be maintained by the Central Bank or by whoever conducts security auctions on behalf of the Government;
- (e) treasury bills issued may provide for maturity at a date not later than one year after their date of issue;
- (f) bonds and stocks shall be redeemable at a par on a date to be named when issuing them;
- (g) on the date appointed for the redemption of a security or any part of the security, all the interest on the principal moneys represented thereby shall cease to accrue whether payment of the principal has been demanded or not;
- (h) interest on the securities, if payable, shall be paid quarterly or at such longer intervals as the Minister may direct;

Power of
Minister to
repay, convert,
and
consolidate loans

Authority to
raise local loans

Local loans may
be raised by
issue of bills,
bonds or stock

- (i) subject to section 34(1)(b) of the Central Bank of Seychelles Act, 2004, the Government may, on such terms and conditions as may be agreed with the Central Bank, appoint the Central Bank as agent to undertake the issue and management of securities;
- (j) stocks, bonds and bills issued under this Act may be given in pledge in all civil and commercial transactions and such pledging shall be proved by a transfer inscribed in a special register kept for that purpose approved by the National Committee.

11. No stamp duty shall be payable in respect of any interest certificate of transfer stock.

12. The Minister may, at the time of issue of any bills, bonds or stock, impose conditions, not inconsistent with this Act, as to any of the following matters:

- (a) the price of issue of the security;
- (b) the denominations in which the security will be issued and transferred;
- (c) the rate of interest;
- (d) in the case of bonds, the rates of capital appreciation which may accrue to the principal moneys;
- (e) the times and places of the repayment of the principal and payment of interest;

13. Any interest on bills, bonds and stock shall be deemed to be interest for the purposes of the Business Tax Act, 1987, and the provisions of that Act relating to withholding tax shall apply to such interest unless exempted by any order made under that Act.

Exemption from stamp duty

Other conditions for issue of securities

Interest subject to withholding tax

PART III GUARANTEES

14.(1) Where on the advice of the National Committee, the Minister is satisfied that it is in the public interest that the repayment of any principal money and the payment of the interest and other charges on any loan raised either within or outside the Republic by the Government or a parastatal body, requires a Government guarantee, the Minister shall issue such a guarantee for and on behalf of the Government.

Authority to guarantee loans

(2) The authority conferred upon the Minister by subsection (1) shall be exercised —

- (a) in accordance with the Annual Debt Strategy and borrowing plan referred to in section 29(1)(a);
- (b) so as to ensure that the net amount guaranteed in any financial year does not exceed the ceiling established by the National Committee in respect of guarantees to be given by the Government in that financial year;
- (c) subject to the recipient of the guarantee demonstrating to the satisfaction of the National Committee its repayment capacity.

15.(1) Where any guarantee is given under section 14, the parastatal organisation or other body corporate for whose benefit the guarantee is given shall reimburse the Government, in the manner that the Minister may direct —

Body benefiting from guarantee to reimburse Government all disbursements

- (a) all sums of money which the Government has paid to fulfil the guarantee;
- (b) all expenses which the Government has incurred in relation to the guarantee; and
- (c) such interest or service charge in relation to any sum of money referred to in paragraph (a) or (b).

(2) All moneys received under subsection (1) shall be paid into the Consolidated Fund.

(3) The National Committee shall issue guidelines on the method of calculating guarantee fees or the need to make provision for Government guarantees.

PART IV GRANTS

16.(1) The Minister shall have the authority to receive for and on behalf of the Government any grant made to the Government by any foreign Government or other person.

(2) Section 6 shall apply, subject to necessary modifications, in relation to any sum of money received by the Government by way of a grant.

PART V DEBT MANAGEMENT COMMITTEES

17. There is established the National Debt Management Committee.

18. The functions of the National Committee are to —

- (a) advise the Minister on matters relating to debt management including matters relating to external and domestic borrowing, issuing of government guarantees and acceptance of grants on behalf of Government;
- (b) advise on the formulation of an Annual Debt Strategy and borrowing plan;
- (c) monitor the implementation of the Annual Debt Strategy and borrowing plan approved by the Government for the ensuing quarter;
- (d) prepare quarterly debt and budget execution reports;

Authority to
receive grants

Establishment of
National Debt
Management
Committee

Functions

(e) monitor the activities relating to debt management, of all Government departments and institutions involved in the management of debt, guarantees and grants; and

(f) advise on the measures to be taken against any person for non-compliance with the provisions of this Act.

19. The National Committee consists of —

Composition

- (a) the Principal Secretary of the Ministry who shall be the Chairperson;
- (b) the Principal Secretary of the Ministry of Foreign Affairs;
- (c) the Governor of the Central Bank of Seychelles;
- (d) the Attorney General;
- (e) the Director General of the Treasury section of the Ministry; and
- (f) the Director of the Financial Planning and Control Division of the Ministry.

20.(1) Subject to subsection (2) the National Committee shall meet whenever necessary or expedient as may be advised by the Technical Committee.

Meetings

(2) The National Committee shall meet at least four times a year.

21. The National Committee regulates its own proceedings;

Proceedings

22.(1) The administrative work of the National Committee shall be carried out by a Secretariat.

Secretariat

(2) The Secretariat shall consist of not less than three and not more than five members, appointed from -

(a) among the members of the Technical Committee;

(b) the Ministry of Finance; and

(c) the Central Bank.

Establishment of
Technical Debt
Management
Committee

23.(1) There is established a sub-committee of the National Committee to be known as the Technical Debt Management Committee.

(2) The function of the Technical Committee is to provide technical advice to the National Committee in respect of the functions of the National Committee under section 18.

(3) The co-chairpersons of the Technical Committee are the Deputy Governor of the Central Bank and the Director of Public Debt of the Ministry.

(4) The members of the Technical Committee are the heads of the units involved in debt management from the institutions specified in section 19.

Sub-committees

24. Where the need arises and it is in the interest of sustainable public debt management, the National Committee may form other sub-committees to consider and report to the National Committee on any matter referred to it by that Committee.

PART VI MISCELLANEOUS

25. Any sum of money due from the Government —

(a) in respect of any foreign loan or local loan either by way of repayment or payment of interest;

(b) by way of interest on or otherwise in respect of any bond or stock issued under and in accordance with section 9;

(c) in respect of any guarantee given under section 14,

Amounts due on
loan or under
guarantee to be
charge on
Consolidated
Fund

shall be a charge on and be paid out of the Consolidated Fund without further appropriation.

26. Any debt incurred in or outside Seychelles by the Government or a parastatal organisation, and which is wholly or partly guaranteed by the Government shall constitute a debt due by the Republic and shall carry an absolute and unconditional commitment by the Government to the timely payment of the principal of the debt, and the interest on it, in accordance with the terms and conditions under which the debt was contracted.

Obligation of
Government to
pay debt

27.(1) Notwithstanding any other written law, all Government debt, regardless of its nature or the date on which it was incurred, shall have equal status in relation to claims in respect of payment of the principal and interest of that debt, and shall constitute a first claim against the Consolidated Fund into which the funds are deposited.

Status of claims
in respect of
payment of
Government
debt

(2) Claims referred to in subsection (1) shall not be subordinated to any other claim, except for obligations made in the name of the Republic and ratified by the National Assembly under appropriate treaties or conventions.

28. An agreement for a loan raised or guarantee given under this Act shall not have effect until there is published in the Gazette, an Order, made by the Minister, giving particulars of —

Loans and
guarantees to be
published

(a) the amount of the loan or guarantee;

(b) the terms for repayment of the loan or guarantee;

(c) the name of the Government, institution or person making the loan or giving the guarantee;

(d) the interest (if any) payable on the loan;

(e) the manner in which the loan shall be accounted for; and

(f) such other particulars of the loan or guarantee as the Minister may decide to include in the Order.

Responsibility of
Minister
regarding plans
and reports

29.(1) The Minister shall, within three months before the commencement of every financial year, cause to be prepared for approval by the Government —

- (a) an Annual Debt Strategy and borrowing plan which shall include
 - (i) the amount of public debt that can be incurred during the financial year;
 - (ii) the total aggregate amount of public debt that can be outstanding during the financial year;
 - (iii) foreign, local loan and guarantee limits on the basis of the ratio between public debt and the gross domestic product;
 - (iv) debt calculation methods;
 - (v) debt reporting obligations of parastatal organisations and Government; and
 - (vi) public debt limitations in the case of force majeure;
- (b) a quarterly debt strategy implementation report; and
- (c) a quarterly debt and budget execution report.

(2) After approval by the Government, the Minister shall cause to be laid semi-annually before the National Assembly the plan and reports specified under subsection (1).

30. The Minister shall, in the annual estimates of the public revenue and expenditure submitted to the National Assembly under section 29(1)(a), specify the amount required to meet the service cost on all outstanding loans raised under this Act whether by repayment of principal or payment of interest or

Minister to
specify certain
particulars in
annual estimates

other charges incurred on the loan during the financial year to which such estimates relate, and the amount expected to be raised from loans and grants during that year.

31. The authority conferred upon the Minister by sections 4 and 8 shall be exercised in line with the debt management objectives of the Annual Debt Strategy.

Authority of
Minister to be
exercised in
accordance with
National Debt
Strategy

32. The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, may provide for —

Regulations

- (a) the registration of stock issued under section 9;
- (b) the issue, transfer, conversion and replacement of bills, bonds and stock issued under section 9;
- (c) the method by which any payment in respect of bills, bonds or stock may be made;
- (d) the registration, payment of interest, repayment of principal and transfer of stock in the case of persons under legal disability;
- (e) the replacement of lost certificate of stock;
- (f) fees and charges for any services provided for in this Act;
- (g) the manner in which all loans and grants moneys both direct and indirect, shall be captured in the budget;
- (h) generally the conditions and manner for the better carrying out of the provisions of this Act.

33. Where there is conflict between this Act and any other written law in matters relating to raising of loans, receiving of

Act to prevail in
case with conflict
with other law

grants and issuing of guarantees, the provisions of this Act shall prevail.

Repeals

34. The Local Loans Act, the Loans Decree and the Treasury Bills Decree are repealed.

Savings and
transitional
provision

35. Notwithstanding section 34 —

- (a) all loans, guarantees, advances, bills, bonds and other securities issued under the Local Loans Act, the Loans Decree and the Treasury Bills Decree and subsisting immediately before the commencement of this Act, shall continue in effect and be binding in the same manner and to the same extent as if they were issued under this Act;
- (b) all statutory instruments made under the Local Loans Act, Loans Decree and Treasury Bills Decree shall, to the extent that they are not inconsistent with this Act, continue in force as statutory instruments made under this Act until amended or repealed by a statutory instrument made under this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 19th December, 2008.



Marie-Nella Azemia
Clerk of the National Assembly

