

A CONSOLIDATED VERSION

OF

THE PUBLIC DEBT MANAGEMENT ACT Act No. 5 of 2008

[Amended 14/2009, 10/2010, 36/2011, 38/2011, 26/2012]

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An Act

To amend, consolidate and modernise the laws relating to public loans, Treasury bills, bonds and similar instruments and Government guarantees for a better management of public sector debt and for related matters

ENACTED by the Parliament of Mauritius as follows –

1. Short title

This Act may be cited as the Public Debt Management Act 2008.

2. Interpretation

In this Act –

“Bank” means the Bank of Mauritius established under the Bank of Mauritius Act 2004;

“Bond” means a document incurring long-term debt, which –

- (a) in the case of an initial issue of the Bond, has a maturity date of 5 years or more from the date of its issue; or
- (b) in the case of a re-issue of the Bond, has a maturity date which may be less than the maturity period of its initial issue;

“central Government” –

- (a) means all Ministries and Departments of the Government; and
- (b) includes –
 - (i) entities operating social security schemes; and
 - (ii) agencies responsible for the performance of specialised governmental functions and operating under the authority of the Government and which are funded by transfers from the budget and by raising of funds independently;

“certificated securities” means securities issued in bearer or registered form and are evidenced by certificates;

“control”, in relation to Government-controlled, means having an effective influence in the main aspects of management;

“fiscal year” has the same meaning as in the Finance and Audit Act;

“general Government” means the central Government, regional Government and local Government;

“Government” means all Ministries and Departments of the Government;

“Government securities” means Treasury bills, Treasury notes, Bonds or Sovereign Sukuks issued by way of certificated securities or uncertificated securities;

“guarantee” means the guarantee referred to in section 8;

“international financial organisation” means –

- (a) the Association, Bank, Corporation or Fund referred to in the International Financial Organisations Act; or
- (b) such other body as the Minister may prescribe;

“issuer” means the agent or his subagent responsible for issuing Government securities to investors;

“local government” means the Municipal City Councils, Municipal Town Councils, District Councils and Village Councils set up under the Local Government Act 2011 and which exercise an independent competence as government units;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“own”, in relation to Government-owned, means having all or a majority of the shares or other forms of capital participation;

“public enterprise” means any institution providing goods and services to the public which is either Government-owned or Government-controlled, which may be engaged in either the financial or non-financial sector and which is either entirely or majority-owned or otherwise controlled by Government or by any other public institution;

“public sector” means the central Government, regional Government, local Government; and all public enterprises;

“regional Government” means the Rodrigues Regional Assembly under the Rodrigues Regional Assembly Act 2001;

“social security schemes” –

- (a) means schemes set up or established, controlled or financed by public authorities for the purpose of providing social security benefits for the community; and
- (b) includes –
 - (i) the National Pension Fund under the National Pensions Act; and
 - (ii) the National Savings Fund under the National Savings Fund Act;

“Treasury bill” means a document incurring short-term debt, which has a maturity date of 12 months or less from the date of its issue;

“Treasury note” means a document incurring medium-term debt, which has a maturity date of more than 12 months and less than 5 years from the date of its issue;

“uncertificated securities” means securities issued as bookkeeping entries pursuant to a book-entry system established by the Ministry.

[Amended 14/2009]

3. Power of Minister to raise funds

(1) The power to raise funds under subsection (2) in the name and on behalf of the Government shall be solely vested in the Minister.

(2) The Minister may, from time to time, raise funds in or outside Mauritius to finance investment projects or other commitments of Government.

(3) For the purposes of subsection (2), the Minister may enter into an agreement with a financial or banking institution, an international financial organisation or a foreign government in such manner and on such terms as he thinks fit.

(3A) The Minister may enter into such agreement, sell, purchase or otherwise acquire any immovable property or any right therein, lease movable or immovable property and generally engage in such transactions and perform such activities as may be reasonably necessary for the purpose of issuing Sovereign Sukuks in Mauritius.

(4) The Minister may enter into any other agreement for the purposes of varying the terms of an agreement entered into under subsection (3).

(5) A copy of every agreement under subsection (3), (3A) or (4) shall be laid before the National Assembly –

- (a) where the Assembly is in session, within 15 working days of the conclusion of the agreement; or
- (b) where the Assembly is not in session, within 7 working days of the next session of the Assembly.

(6) The Minister may, for the purpose of giving effect to an agreement under subsection (3) , (3A) or (4), authorise in writing any person to sign, issue and execute any endeavour or instrument.

[Amended 14/2009]

4. Advances by Bank

In accordance with section 58 of the Bank of Mauritius Act 2004, the Bank may grant, in a fiscal year, advances to cover negative net cash flows of the Government.

5. Issue of Government securities

(1) The Minister may authorise the issue of Government securities in such type, form and manner, and in such terms and conditions, as may be prescribed.

(2) Government securities under subsection (1) shall, subject to subsection (3), be issued in book-entry or in physical form.

(3) Government securities in physical form shall be identified by their series of issuance, distinctive serial numbers, face amount, and may be in either registered or bearer form.

(4) On the commencement of this Act, Government securities shall, save in exceptional circumstances, be issued in book-entry form.

(5) The Minister shall take steps to encourage holders of Government securities in physical form to convert them into book-entry form.

(6) Government securities issued in book-entry form shall constitute Government debt no less than if they had been issued in physical form.

(7) Where a certificate or other document of title to certificated securities is lost, stolen, destroyed, mutilated or defaced, the issuer shall, on application being made by the holder of the certificate or other document, issue a duplicate certificate or document to the holder.

(8) Any application under subsection (7) relating to a lost or stolen certificate or document shall be accompanied by a written undertaking that where the certificate or document is found, or received by the holder, it shall be returned to the issuer.

(9) For the purposes of this section, the Bank shall, on behalf of the Ministry, establish and maintain a computerised system for issuing, maintaining, servicing and redeeming the uncertificated securities.

6. Public sector debt

(1) Any debt incurred –

- (a) through the raising of loans, the issuing of securities, overdrafts or by any other means by–
 - (i) the central Government;
 - (ii) the Rodrigues Regional Assembly under section 51(c) of the Rodrigues Regional Assembly Act 2001;
 - (iii) the local Government;
 - (iv) a public enterprise, whether or not the loans are wholly or partly guaranteed by the Government;
- (b) by way of advances from the Bank to any entity in the public sector,

shall constitute public sector debt.

(2) Any debt incurred by the general Government or a public enterprise and which is wholly or partly guaranteed by the Government shall constitute a debt due by the State and 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 indebtedness was contracted.

(3) Provision for the payment of the principal of, and interest on, public sector debt in accordance with the terms and conditions of the debt shall be made in the annual budget of the general Government or public enterprise, as the case may be.

(4) Notwithstanding any other enactment, all Government debt, regardless of its nature or the date it was incurred, shall have equality of status in relation to claims in respect of payment of the principal and interest, and shall constitute a first claim against the account into which the funds are deposited.

(5) Claims referred to in subsection (4) shall not be subordinated to any other claim, except for obligations made in the name of the State and ratified by the National Assembly under appropriate treaties or conventions.

7. Public sector debt ceiling

(1) For the purposes of calculating the ceiling of public sector debt under this section –

- (a) any debt incurred by –
 - (i) the Bank;
 - (ii) Government-owned or controlled commercial banks;
 - (iii) Government-owned or controlled insurance companies; and
 - (iv) social security and savings schemes,
 and which is not guaranteed by the Government; and
- (b) any outstanding Government securities transferred to the Bank pursuant to section 10(5) of the Bank of Mauritius Act 2004,

shall not be regarded as public sector debt.

(1A) Any debt incurred by a public enterprise which satisfies the criteria set out in the Schedule shall, for the purposes of this section, not be regarded as a public sector debt.

(1B) Where a public enterprise does not fully satisfy the criteria specified in the Schedule, any debt incurred by that enterprise shall be discounted in accordance with the extent to which the enterprise satisfies the criteria and the level of risks which they represent to public finance.

(1C) (a) There shall be, for the purposes of subsection (1B), a committee which shall consist of –

- (i) not more than 5 senior public officers of the Ministry, to be appointed by the Minister;
- (ii) the Solicitor General or his representative;
- (iii) the Accountant-General or his representative; and
- (iv) the Director, Office of Public Sector Governance, Prime Minister's Office or his representative;

- (b) The committee referred to in paragraph (a) shall, every year –
 - (i) prepare a list of public enterprises pursuant to subsection (1B);
 - (ii) determine the level of discount to be accorded to the debt of each of the enterprises; and
 - (iii) identify those public enterprises, the debt in respect of which is required to be excluded from the public sector debt.
- (c) The annual exercise under paragraph (b) shall –
 - (i) be carried out in consultation with an international institution recognised for its expertise in the subject matter; and
 - (ii) be subject to the approval of the Minister.

(2) Subject to this section, the total outstanding amount of public sector debt shall, at the end of each fiscal year, not exceed 60 per cent of the Gross Domestic Product (GDP) at current market prices for that fiscal year.

(3) Subject to subsection (4), the percentage referred to in subsection (2) shall, at the end of each fiscal year, be reduced so that at the end of the fiscal year ending 31 December 2018, the percentage shall not exceed 50 per cent and that percentage shall remain the ceiling for every subsequent fiscal year.

- (4) (a) Subject to paragraph (b), the requirements of subsection (2) or (3) shall not apply in case –
 - (i) of natural disasters or other emergencies requiring exceptional expenditure;
 - (ii) where a large investment project in the public sector is deemed by Cabinet to be timely and prudent; or
 - (iii) of general economic slow-down requiring fiscal stimulus.
- (b) Any rise in the percentage at the end of a fiscal year shall not exceed 2 per cent by reference to the percentage in respect of the previous fiscal year.

(5) Where, in a fiscal year, there is an increase in percentage pursuant to subsection (4), the Ministry shall prepare a plan describing how, within the 3 fiscal years immediately following that fiscal year, the percentage of public sector debt to the Gross Domestic Product (GDP) shall be restored to the percentage referred to in subsection (3), and take steps to ensure that it is made public.

[Amended 10/2010, 38/2011]

8. Guarantees by Government

(1) (a) Subject to this section, the Minister may execute, in the name and on behalf of the Government, any instrument required to be executed for the purpose of guaranteeing, wholly or partly, the repayment of any money borrowed by the regional Government, local Government or any public enterprise for any purpose except current expenditure.

(b) The Minister may authorise, in writing, an officer of the Ministry to execute, in the name and on behalf of the Government, any instrument referred to in paragraph (a).

(2) Prior to the execution of any instrument under subsection (1), the Minister –

(a) shall take into consideration the public sector debt ceiling referred to in section 7 which, by combining the general Government debt and the other public sector debt, may effectively limit the amount of guarantees to be given in a fiscal year; and

(b) may require the regional Government, local Government or public enterprise, as the case may be, to furnish proof of its capacity to repay the money borrowed.

(3) The Minister may –

(a) as a condition of the guarantee, require a public enterprise to pay an annual fee not exceeding one per cent of the amount guaranteed; and

(b) for the purposes of guaranteeing any money under this section, impose such other conditions in such manner and on such terms as he thinks fit.

(4) Any money, the repayment of which is guaranteed under any instrument under subsection (1), shall be a charge on the Consolidated Fund and any liability incurred under it shall be paid out of the Fund.

(5) The Ministry shall maintain the official register of the stock of Government-guaranteed debt.

(6) The Ministry shall, not later than one month after the end of every quarter, prepare a report on the stock of Government-guaranteed debt and the costs incurred and the estimated costs to be incurred due to realisation of Government guarantees, and takes steps to ensure that it is made public.

[Amended 26/2012]

9. Debt management strategy

(1) The objectives of the debt management strategy shall be –

- (a) to meet the borrowing needs of Government in a manner that avoids market disruption;
- (b) to minimise the cost of the debt portfolio within an acceptable level of risk; and
- (c) to support the development of a well-functioning market for Government securities.

(2) The debt management strategy shall set risk-control benchmarks and medium term targets for the composition, currency-mix, interest rate-mix, maturity profile and relative size of the public sector debt.

(3) The Ministry shall –

- (a) prepare, within 3 months of the commencement of this Act, a debt management strategy as a primary policy tool to guide the relevant staff for managing the public sector debt; and
- (b) from time to time, review the debt management strategy and make any amendment thereto.

(4) The Ministry shall, not later than one month after the end of every quarter, prepare a report on the outstanding stock of public sector debt, its size and currency composition, interest rate-mix and maturity profile.

(5) The Ministry shall take steps to ensure that the debt management strategy, any amendment under subsection (3)(b) and the report under subsection (4) be made public.

10. Management of public sector debt

(1) The Ministry shall be responsible for the policy framework and strategy governing the management of public sector debt and for ensuring that the public sector debt is properly managed in accordance with that policy, and in particular, the Ministry shall –

- (a) be guided by the need to –
 - (i) finance the debt at the least possible cost, consistent with prudent level of risk and the Ministry's fiscal policy objectives; and
 - (ii) to develop, to the extent that market conditions, prudence and policy goals permit, a viable interest rate curve for Government borrowing, using, as appropriate, benchmark issues to help track the prevailing costs of short, medium and long term financing;
- (b) maintain the official register of the stock of public sector debt;
- (c) study and analyse public sector debt structure, debt repayment and debt restructuring and any other matter relating to public sector debt; and
- (d) monitor public sector debt ceiling referred to in section 7 and guarantees by Government under section 8;

(2) The Ministry shall, for the purposes of this section, set up and maintain an electronic monitoring system to receive electronic information relating to public sector debt, from the general Government and public enterprises.

(3) The electronic information referred to in subsection (2) shall include a 3-fiscal year financing plans and debt projections, updated annually or as required and a quarterly report of actual debt stock shall be made public.

(4) Every supervising officer or chief executive officer of general Government and public enterprises shall, for the purposes of subsections (2) and (3), submit to the Ministry –

- (a) not later than 15 days after the end of every quarter, debt data in respect of the quarter; and
- (b) not later than 30 September in every year, a 3-fiscal year financing plans and debt projections,

through the electronic monitoring system referred to in subsection (2).

[Amended 10/2010, 38/2011]

11. Agent for Government

For the purposes of issuance and management of Government debt, the Minister may appoint a different organisation, suitably qualified, in lieu of the Bank, to be the agent of Government to perform such duties and functions of debt management, and on such terms and conditions, as may be determined by the Minister.

12. Regulations

The Minister may –

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) by regulations, prescribe the procedures and processes necessary for debt issuance and management;
- (c) by regulations, amend the Schedule.

13. Transitional provisions

(1) Notwithstanding section 8(1), any instrument guaranteeing any money borrowed in respect of current expenditure by the regional Government, local Government or any public enterprise under the repealed Loans Act and the Government Guarantees (Development Purposes) Act before the commencement of this Act shall, on the commencement of this Act, remain in force until the expiry of the instrument.

(2) Pending the implementation of section 10(2), the general Government and every public enterprise shall, on the commencement of this Act, submit a certified statement to the Ministry, not later than –

- (a) 31 July 2008, specifying the amount of the loan outstanding and the amount of principal and interest in arrears as at 30 June 2008; and
- (b) one month after every quarter, specifying the amount of the loan outstanding and the amount of principal and interest in arrears as at the end of that quarter,

together with reasons for the arrears and the actions taken to settle the arrears.

14. -

15. -

16. -

SCHEDULE
[Section 7(1A)]

Criteria

1. Managerial independence, including pricing policy and employment policy
2. Transparent and stable relations with the Government, including for subsidies and transfers, quasi-fiscal activities, and the nature of the regulatory and tax regime
3. Solid governance structure, including periodic external audits, publication of comprehensive annual reports and shareholders' rights
4. Sustainable finances, including market access, less than full leveraging (debt-to-asset ratio comparable to the industry average), profitability and record of past investment
5. Absence of other risk factors, including vulnerabilities stemming from contingent liabilities