



BERMUDA

GOVERNMENT LOANS ACT 1978

1978 : 74

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[preamble and words of enactment omitted]

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Interpretation

- 1 In this Act, unless the context otherwise requires—
- “borrow”, includes the power to draw upon a credit facility;
 - “the Fund” means “The Government Borrowing Sinking Fund” established under section 12;
 - “Government” does not include any entity which is not referred to in section 101(2) of the Constitution;
 - “lender” means any person whether in Bermuda or elsewhere from whom the Government borrows money under this Act, and “loan” shall be construed accordingly;
 - “Minister” means the Minister of Finance;
 - “proper custody” means custody by the person who keeps the register of securities under section 5;
 - “Registrar” means the Registrar of Securities appointed under section 5;
 - “securities” includes any stock, bonds, bills or other instruments issued by the Government to raise money on loan.

[Section 1 amended by 1991:12 effective 28 March 1991; definition “the Fund” inserted by 2013 : 23 s. 2 effective 23 July 2013]

Authority of Minister of Finance to borrow

- 2 (1) The Minister may, in such manner and on such terms and conditions as may be agreed with the lenders, borrow sums within the limit established by section 2A:
- (2) Any agreement between the Minister and a lender under the powers conferred by subsection (1) shall be made in the name of the Government and shall be signed by the Minister or, if so authorized in writing by the Minister, by the Registrar.
- (3) As soon as practicable after the execution of an agreement under this section the Minister shall inform the Legislature.
- (4) Subject to subsection (5), any sum borrowed by the Minister shall be paid into the Consolidated Fund.
- (5) The Minister shall, in any fiscal year, pay into the Fund any amount of the sums borrowed that is in excess of the amount necessary to meet the budgetary requirements of the particular fiscal year.

[Section 2 amended by 1991:12 effective 28 March 1991; subsection (4) amended and subsection (5) inserted by 2013 : 23 s. 3 effective 23 July 2013]

Authority of Minister of Finance to provide guarantees

- 2AA (1) The Minister may provide a guarantee for money borrowed by, or any other obligation of, a third party, on such terms and conditions as may be determined by the Minister.

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(2) Any such guarantee shall be provided in the name of the Government and shall be signed by the Minister.

(3) As soon as practicable after the execution of a guarantee under this section the Minister shall inform the Legislature.

[Section 2AA inserted by 2010 : 51 s. 2 effective 9 August 2010]

Limit on the public debt

2A (1) The public debt, less the amount of any moneys at any time in the Fund, shall not exceed \$3,500,000,000.

(2) In this section,

“public debt” means—

- (a) indebtedness for money borrowed by the Government (in accordance with section 2), not including any credit facility which is available for drawing but has not actually been drawn; and
- (b) indebtedness for money borrowed by a third party and guaranteed by the Government (in accordance with section 2AA), but only if and when, and to the extent that, the guarantee obligation becomes due and payable by the Government.

[Section 2A added by 1991:12 effective 28 March 1991, amended by 1993:12 effective 22 March 1993; by 1998:13 effective 1 April 1998; by 2000: 6 s.2 effective 1 April 2000; by 2005:1 s.2 effective 1 April 2005; by 2008:7 s.2 effective 1 April 2008; by 2009:4 s.2 effective 25 March 2009; Section 2A subsection (1) amended by 2010 : 12 s. 2 effective 1 April 2010; subsection (2) amended by 2010 : 51 s. 3 effective 9 August 2010; subsection (2) amended by 2011 : 7 s. 2 effective 24 March 2011; subsection (1) amended by 2012 : 6 s. 2 effective 27 March 2012; Section 2A subsection (1) amended by 2013 : 4 s. 2 effective 22 February 2013; Section 2A subsection (1) amended by 2019 : 43 s. 2 effective 13 September 2019; Section 2A subsection (1) amended by 2020 : 15 s. 2 effective 16 March 2020; Section 2A subsection (1) amended by 2020 : 40 s. 2 effective 5 August 2020]

Power to issue security or other instruments

3 (1) For the purpose of giving effect to the terms and conditions of any agreement which may be entered into by the Minister with a lender in respect of any borrowing under this Act, the Minister may issue securities on such terms and conditions as may be necessary.

(2) Any security issued by the Minister under subsection (1) shall be signed on behalf of the Government by the Minister or, if so authorized in writing by the Minister, by the Registrar.

Appropriation of loans

4 Any sum borrowed by the Minister under this Act shall be applied and appropriated to the purposes for which it was borrowed:

Provided that any part of such sum which is not required to be applied to those purposes may be applied to such other purposes as may be approved by the Minister.

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Minister of Finance to appoint a Registrar of Securities

5 (1) The Minister shall appoint a Registrar who shall keep a register of the securities issued under this Act, and which shall be open to inspection by any person on payment of a fee of five dollars.

(2) The appointment of the Registrar and the address at which the register may be inspected shall be notified to the public by the Minister by a notice in the Gazette.

[The Accountant General (ex officio) was appointed Registrar of Securities by GN 76/1979]

(3) The Registrar may make arrangements whereby he may be assisted in the performance of his functions under this Act by such persons (whether or not public officers) on such terms (including remuneration) and conditions as he thinks fit; but no such arrangements shall be made without the Minister's prior approval.

[Section 5 amended by 1993:12 effective 22 March 1993]

Register of securities

6 (1) The register shall contain entries of all securities with the names and addresses of the holders, the amounts to which they are entitled, the dates of the issue of the securities and such other particulars as the Minister may determine.

(2) The register, on its mere production from proper custody, or a copy thereof or extract therefrom certified by the Registrar as a true copy or extract, shall be evidence of all matters therein, and, as regards persons entered therein as holders of securities, of their title to those securities.

(3) Subject to section 9 no notice of any trust in respect of any security shall be entered in the register or be receivable by the Registrar or the Government.

Register may be closed for payment of interest

7 (1) The Registrar may, for such period not exceeding fourteen days as he may from time to time appoint, prior to each payment of interest on loans, close the register as regards transfers, on publication in the Gazette of not less than seven days' notice of such closure.

(2) The persons who on the day of such closure are entered on the register as the holders of securities shall be entitled to the interest then next payable thereon.

Security standing in name of person under disability

8 (1) When a security stands in the name of an infant or person of unsound mind jointly with another person not under legal disability, the Registrar may pay such security or the interest thereon to the person not under disability, or to any person producing a power of attorney duly executed by the person not under disability authorizing the person producing the same to receive the amount of such security or the interest thereon.

(2) The Registrar may, before making payment, require proof to his satisfaction of the alleged infancy or unsoundness of mind, or of the due execution of the power of attorney, by affidavit, or in such other manner as he may reasonably require.

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Transfer of securities

9 Securities may be transferred as follows—

- (a) the transfer shall be made by the issue of a new certificate and the cancellation of the old certificate on instructions signed by the transferor or his duly authorized agent to the satisfaction of the Registrar and the transferee's name shall be entered on the register in place of the transferor's;
- (b) the estate representative of a deceased holder of a security shall alone be recognized by the Registrar as having title to the security registered in the name of the deceased person, or any interest thereon;
- (c) the person becoming entitled to any security or interest thereon in consequence of the death or bankruptcy of, or any devolution in law from the holder thereof, shall produce such evidence of title as the Registrar may require, but such person may transfer the security to another person without himself being registered.

Minister of Finance may make regulations

10 (1) The Minister may make regulations as to the issue, management, and transfer of securities and may from time to time vary and revoke any such regulations.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

(3) Any discretion of power by this Act vested in the Registrar shall be exercised subject to and in accordance with the directions of the Minister.

Payment to attorney of lender

11 All amounts payable to a lender under this Act may be paid to his lawful attorney appointed by power duly executed by the lender, and the Registrar may, before acting under such power, require the person producing the power to adduce satisfactory evidence by affidavit or otherwise of the legal capacity of the lender and the due execution of the power.

Sinking fund

12 (1) There is hereby established a sinking fund, to be called "The Government Borrowing Sinking Fund", which shall be maintained and managed by the Minister under and in accordance with this section.

(2) In each financial year, there may be paid into the Fund out of the Consolidated Fund—

- (a) an amount equal to two and one-half per centum of the public debt outstanding at the end of the next preceding financial year; or
- (b) such other amount representing such per centum of the public debt outstanding as the Minister may deem appropriate, upon taking into consideration the annual budget.

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(2A) In each financial year, there shall be paid into the Fund out of the Consolidated Fund—

- (a) any amount of the sums borrowed under section 2(1) that is in excess of the amount necessary to meet the budgetary requirements of the particular financial year; and
- (b) an amount consisting of the whole or part of the purchase money for land sold by the Minister responsible for works and engineering, as approved by the Legislature, under section 8(2A) of the Public Lands Act 1984.

(3) The expression “public debt” in subsection (2) of this section and in subsection (1) of section 12A means the public debt as defined in subsection (2) of section 2A but excluding the amount of any loan—

- (a) guaranteed by the Government; or
- (b) secured by land; or
- (c) *[repealed]*
- (d) made by the Government to the Bermuda Housing Corporation; or
- (e) that is being amortised; or
- (f) that is paid into the Fund under subsection (2)(b).

(4) Where the Minister determines that a contribution for purposes of subsection (2) shall be paid into the Fund in any financial year and where a contribution required to be paid into the Fund under subsection (2A) is payable in any financial year, such contribution shall be so paid during that financial year.

(4A) No interest shall be incurred where a contribution referred to in subsection (4) is not paid during the financial year it was determined as payable under subsection (2) or required to be paid under subsection (2A).

(5) In this section “the Bermuda Housing Corporation” means the Corporation established under section 2 of the Bermuda Housing Corporation Act 1973 and continued under section 4 of the Bermuda Housing Act 1980.

[Section 12 replaced by 1993:12 effective 22 March 1993; amended by 1998 : 13 effective 1 April 1998; amended by 2009:4 s.3 effective 25 March 2009; subsections (2), (3) and (4) amended by 2013 : 23 s. 4 effective 23 July 2013; subsection (3)(c) repealed by 2015 : 14 s. 2 effective 1 April 2015; subsection (2) amended by 2016 : 9 s. 2 effective 28 March 2016; subsection (2) repealed and substituted, and subsection (2A) inserted by 2019 : 22 s. 2 effective 8 July 2019; subsection (4) repealed and substituted, and subsection (4A) inserted by 2019 : 22 s. 3 effective 8 July 2019]

Application of Sinking Fund

12A (1) Subject to subsection (1B), moneys at any time in the Fund may be applied—

- (a) to reduce, purchase or cancel the public debt; or
- (aa) to pay interest on the public debt if the Minister so determines; or
- (b) by way of investment under the Public Funds Act 1954.

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(1A) If the Minister does not determine that interest on the public debt be paid out of the Fund in any given financial year the said interest shall be paid out of the Consolidated Fund.

(1B) Moneys in the Fund which consist of proceeds of loans paid in the Fund under section 12(2)(b) shall only be applied—

- (a) under subsection (1)(b) by way of investment; and
- (b) against future year deficits.

(2) Net income from investment undertaken pursuant to paragraph (b) of subsection (1) shall be paid into the Fund.

[Section 12A inserted by 1993:12 effective 22 March 1993; amended by 2009:4 s.4 effective 25 March 2009; subsection (1) amended and subsection (1B) inserted by 2013 : 23 s. 5 effective 23 July 2013; subsection (1)(a) amended by 2019 : 22 s. 4 effective 8 July 2019]

Suspension of annual contribution to the Fund

12AA *[Repealed by 2019 : 22 s. 5]*

[Section 12AA repealed by 2019 : 22 s. 5 effective 8 July 2019]

Adjustment of the Fund

12B If at any time the amount of money in the Fund is, in the opinion of the Minister, more than sufficient to cancel the total amount of the public debt, the Minister may transfer into the Consolidated Fund an amount equal to the amount by which the moneys in the Fund exceed the total amount of the public debt.

Accounts and audit

12C (1) The Minister shall cause proper accounts, and proper records in relation to the accounts, of the Fund to be kept, and shall cause to be prepared in respect of each financial year a statement of the accounts of the Fund in such form as the Minister may direct.

(2) Within six months after the end of each financial year the Minister shall send to the Auditor a copy of the statement of the accounts referred to in subsection (1) for that financial year.

Auditors report

12D The Auditor shall examine every statement of accounts received by him under section 12C(2) and shall make a report in writing on the statement to the Minister.

Annual report to the Legislature

12E The Minister shall lay before each House of the Legislature a copy of the report referred to in section 12D.

[Sections 12B to 12E inserted by 1998 : 13 effective 1 April 1998]

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Payment of expenses out of the Consolidated Fund

13 Subject to section 12, all expenses of and incidental to the issue of securities and to the repayment of the principal moneys borrowed under this Act, and all expenses incurred in carrying out the provisions and objects of this Act, shall be paid out of the Consolidated Fund.

[Section 13 repealed and replaced by 2009:4 s.6 effective 25 March 2009]

Repeal and saving

14 *[omitted]*

Commencement

15 *[omitted]*

[Assent Date: 28 December 1978]

[This Act was brought into operation on 1 February 1979 by GN 75/1979]

[Amended by:

1983 : 6
1984 : 11
1991 : 12
1993 : 12
1998 : 13
2000 : 6
2005 : 1
2008 : 7
2009 : 4
2010 : 12
2010 : 51
2011 : 7
2012 : 6
2013 : 4
2013 : 23
2015 : 14
2016 : 9
2019 : 22
2019 : 43
2020 : 15
2020 : 40]