



*EXTRAORDINARY*

**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
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26<sup>th</sup> March, 2021

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# PUBLIC DEBT MANAGEMENT ACT, 2021

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No. 6 of 2021

## PUBLIC DEBT MANAGEMENT ACT, 2021

**AN ACT TO CONSOLIDATE THE LAW RELATING TO THE MANAGEMENT AND CONTROL OF PUBLIC DEBT IN THE BAHAMAS AND TO PROVIDE FOR GOVERNANCE ASPECTS, HIGH LEVEL POLICY OBJECTIVES AND INSTITUTIONAL ARRANGEMENTS FOR THE PRUDENT MANAGEMENT OF THE GOVERNMENT'S DEBT, THE GIVING OF GUARANTEES AND GRANTING OF LOANS, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR ANCILLARY THERETO.**

[Date of Assent - 26<sup>th</sup> March, 2021]

Enacted by the Parliament of The Bahamas

### PART I - PRELIMINARY

#### 1. Short title and commencement.

- (1) This Act may be cited as the Public Debt Management Act, 2021.
- (2) This Act shall come into force on such date or such different dates as the Minister may, by notice in the *Gazette*, appoint.

#### 2. Interpretation.

In this Act, unless the context otherwise requires—

“Agency” means an entity of the Government that is not a Ministry or a Department and is not a Government Business Enterprise and each Agency shall be listed in the *Fourth Schedule* of the Public Finance Management Act, 2021;

- “annual borrowing plan”** means the borrowing plan to operationalize the debt management strategy in the current financial year;
- “annual budget”** shall have the meaning as defined in section 2 of the Public Finance Management Act, 2021;
- “auction”** in relation to the issue of Government securities, means an invitation to the public for submission of bids, either in sealed envelopes or through electronic means, for subscribing to Government securities, in the manner as the Minister may direct;
- “Auditor-General”** means the Auditor-General appointed pursuant to Article 136 of the Constitution;
- “bank”** means a bank as defined in section 2 of the Central Bank of The Bahamas Act, (No. 24 of 2020);
- “Bahamas registered stock”** includes Bahamas Government stock;
- “buyback”** means the purchase of Government security in the open market;
- “Central Bank”** means the Central Bank of The Bahamas established by section 3 of the Central Bank of The Bahamas Act, (No. 24 of 2020);
- “central securities depository”** means the central securities depository established under section 62;
- “Committee”** means the Debt Management Committee established by section 6;
- “company”** means a company incorporated under the Companies Act, (Ch. 308).
- “Consolidated Fund”** means the Consolidated Fund referred to in Article 128 of the Constitution;
- “Debt Management Office”** means the Debt Management Office established by section 5;
- “debt management strategy”** means the medium-term public debt management strategy formulated under section 11.
- “Director”** means the Director of Debt Management appointed under section 5;
- “derivative”** means a contract between two or more persons under which the value of the contract is derived from, and is dependent on, the value of an underlying asset, such as a commodity, currency, or a security;
- “electronic”** means relating to technology and having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
- “financial institution”** means a person authorized under any law, for the time being in force, to provide financial services in the nature of,

loans, advances or other credit facilities to its customers, acquisition of shares, stock or debentures issued by corporates and the other services as the Minister may specify by notice in the *Gazette*, from time to time;

**“financial intermediary”** means a bank, financial institution or other person admitted as a member of a central securities depository under section 63;

**“Financial Secretary”** means the principal financial advisor to the Minister of Finance and the managerial head of the Ministry responsible for finance;

**“financial year”** means the twelve months beginning on 1<sup>st</sup> July in any year;

**“fiscal deficit”** means the excess of expenditure over revenue as forecast in the annual budget;

**“Government Business Enterprise”** means an entity owned or controlled by the Government that provides services in the market or undertakes commercial activities and is specified in the *Fifth Schedule* of the Public Finance Management Act, 2021;

**“government guarantee”** means a legal obligation to pay a loan or other monetary obligation or to perform an act or obligation that is defaulted on by the borrower;

**“government loan”** means the money raised,-

- (a) by the issue and sale of Government securities; and
- (b) by entering into a loan agreement with any bank or financial institution, the government of any other country or with any international organization or foreign organization;

**“government securities”** or **“securities”** means any debt instrument made out and issued under this Act or any other enactment for defining or registering the indebtedness of the Government to lenders and includes:

- (a) treasury bills;
- (b) treasury notes;
- (c) debentures;
- (d) Bahamas registered stocks;
- (e) Bahamas Government stocks;
- (f) land bonds, equity investment bonds, national development bonds, national savings bonds and other bonds;
- (g) promissory notes; and

(h) the other documents or writings as are commonly known as securities, or designated by the Minister by order as securities, for the purpose of this Act;

**“international organization or foreign organization”** includes, a commercial bank, a development bank, an investment bank or a fund operating under the laws of a foreign country or any multilateral financial agency;

**“lending”** means a loan issued by or on behalf of the Government to any entity in the private or public sector, using public money, which includes funds borrowed by the Government;

**“Minister”** means the Minister of Finance;

**“organization”** means a bank, financial institution, or the other person or partnerships as the Minister, from time to time, may specify by notice in the *Gazette*;

**“prescribed”** means by regulations made under this Act or directions;

**“public debt”** means all liabilities that require payments of interest or principal by the public sector to a resident or non-resident creditor, currently or in the future and includes the public debt specified in Article 134 of the Constitution;

**“public entity”** means a ministry or department of the Government or an Agency and shall not include an entity classified as a Government Business Enterprise;

**“public sector”** means for the purposes of “public debt” in this Act, includes a public entities and Government Business Enterprises, but does not include the Central Bank of The Bahamas, Insurance Commission of The Bahamas, Securities Commission of The Bahamas, and other entities as may be notified in the *Gazette* by the Minister from time to time;

**“publish”** or **“published”** means publishing the document on a website administered by the Government or the Debt Management Office in a place on the website that is readily accessible by the public and for a period of not less than five years from the date of making the document available on the website;

**“register”** means the register of holders of stock and other Government securities maintained by the registrar, whether in electronic form or any other form, in accordance with section 27;

**“registered stock”** or **“stock”** means Bahamas registered stock with maturity equal to or exceeding one year issued under this Act or any existing enactment and whose nominal value is registered in the name of the owner in the register;

**“registrar”** means the person appointed as registrar under section 19;



“**repo**” means an instrument for borrowing funds by selling securities with an agreement to repurchase the said securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed;

“**reverse repo**” means an instrument for lending funds by purchasing securities with an agreement to resell the said securities on a mutually agreed future date at an agreed price which includes interest for the funds lent;

“**sinking fund**” means a separate account made up of segregated contributions by the Government to accumulate funds for the redemption of public debt;

“**switch**” means an exchange of one security for another to change the maturities of bonds in the debt portfolio;

“**treasury bill**” means short-term securities with maturities of one year or less issued at a discount from face value.

### **3. Primacy of this Act.**

This Act shall supersede all Acts that are inconsistent with this Act, and the Fiscal Responsibility Act, 2018 and the Public Finance Management Act, 2021.

## **PART II - OBJECTIVES OF PUBLIC DEBT MANAGEMENT**

### **4. Public debt management objectives.**

The Minister shall oversee and manage the public debt to achieve the following objectives—

- (a) ensuring that financing needs and the payment obligations of the Government are met in a timely manner at the lowest possible cost over the medium to long term, consistent with a prudent degree of risk;
- (b) promoting the development and efficient functioning of the domestic Government securities market, and
- (c) ensuring that the public debt is managed consistent with the general principles of responsible fiscal management, the fiscal responsibility principles, and the fiscal objectives in sections 6 through 8 respectively, of the Fiscal Responsibility Act, 2018

## PART III - ESTABLISHMENT OF AUTHORITIES

### 5. Establishment of Debt Management Office.

- (1) There shall be established within the Ministry responsible for finance, a Debt Management Office.
- (2) The Debt Management Office shall be under the management of a person who shall be knowledgeable and experienced in public debt management, and the formulation or implementation of macro-economic policies, and shall be designated as the Director of Debt Management.
- (3) The Director shall be responsible for the functions of the Debt Management Office and shall report to the Financial Secretary.

### 6. Establishment of Debt Management Committee.

- (1) The Minister shall establish an advisory committee to be called the Debt Management Committee.
- (2) The Committee shall consist of five ex-officio members and one member appointed by the Minister.
- (3) The following officials shall be ex-officio members of the Committee —
  - (a) the Financial Secretary, who shall be the chairman;
  - (b) the Deputy Financial Secretary in charge of debt management;
  - (c) the Governor of the Central Bank or any officer of the Central Bank recommended by the Governor;
  - (d) the Accountant-General; and
  - (e) the Director.
- (4) The member of the Committee appointed by the Minister shall be an employee of a public entity or Government Business Enterprise who is knowledgeable or experienced in public debt management, public expenditure, or the formulation or implementation of macro-economic policies.
- (5) A public officer appointed by the Financial Secretary shall act as secretary to the Committee.
- (6) The *Schedule* shall have effect with respect to the procedure of the Committee.

## **PART IV - FUNCTIONS AND RESPONSIBILITIES OF AUTHORITIES**

### **7. Functions of the Debt Management Office.**

The functions of the Debt Management Office with respect to the management of the public debt shall take into consideration development targets of The Bahamas, maintenance of confidence and stability of the markets, macroeconomic balances and other relevant parameters to—

- (a) manage the public debt portfolio, including government guarantees and lending, in accordance with the public debt management objectives set out in section 4;
- (b) develop, implement and review the debt management strategy annually on a rolling basis, in accordance with section 12;
- (c) prepare and publish an annual borrowing plan consistent with the debt management strategy;
- (d) prepare and publish an indicative issuance plan for government securities in the domestic market;
- (e) provide inputs to the Minister with respect to borrowing and lending by Government;
- (f) carry on administration of all domestic and external debt of the Government, in accordance with this Act;
- (g) assess the risks in issuing any guarantees, and prepare reports on the method used for each assessment and submit the results thereof to the Financial Secretary for transmission to the Minister;
- (h) facilitate the recovery of any payments, including interest and other costs incurred by Government, due to the honouring of outstanding guarantees;
- (i) prepare annual reports on outstanding guarantees, lending by Government and debt of Agencies and Government Business Enterprises;
- (j) assess the credit risk in any lending, and prepare reports on the method used for each assessment and submit the results thereof to the Financial Secretary for transmission to the Minister;
- (k) process requests from eligible entities for borrowings based on assessment of credit risks, cost and risks trade-off;
- (l) monitor and keep track of debt levels of all entities eligible for borrowings;
- (m) keep timely, comprehensive and accurate records of outstanding Government debt, guarantees, and lending in an appropriate database;

- (n) advise on all debt servicing obligations of the Government;
- (o) prepare and publish the public debt statistical bulletins;
- (p) prepare forecasts on public debt servicing and disbursements as part of the annual budget exercise;
- (q) assist the Minister in negotiating or renegotiating the terms and conditions of Government loans with lenders;
- (r) execute documents and be the custodian of all original Government loan contracts and debt administration records;
- (s) assist the Minister to fulfil the reporting obligations under this Act;
- (t) compile, verify and report on all Government domestic arrears and design a strategy for the settlement of those arrears;
- (u) maintain an inventory and facilitate the payment of share capital subscriptions to international financial institutions;
- (v) monitor the disbursements of loans in accordance with the agreed disbursement schedules;
- (w) prepare necessary securitization modules whenever it is deemed expedient that outstanding arrears or any other liability shall be settled by securitization;
- (x) prepare debt information for the fiscal strategy report, Pre-Election Economic and Fiscal Update, Mid-Year Review, financing estimates, financial statements of the Government, as required under the Fiscal Responsibility Act, 2018;
- (y) submit to the Committee for review, the debt management strategy, annual borrowing plan, indicative issuance calendar, proposals for issuance of guarantees and lending, and other proposals as are required to be submitted to the Minister for consideration or for obtaining the approval of the Minister; and
- (z) perform other functions as may be determined by the Minister.

## **8. Functions of the Committee.**

The functions of the Committee with respect to the management of the public debt, are to—

- (a) assist and advise the Minister on matters relating to the management of the public debt, guarantees and lending, the borrowing of money for the Government and other matters as may be referred to it for that purpose by the Minister;
- (b) provide overall guidance to the Debt Management Office on domestic and foreign borrowings, guarantees and lending, and ensure consistency of public debt management policy with macroeconomic policies;

- (c) review the debt management strategy, the annual borrowing plan, the indicative issuance calendar, the proposals for issuance of guarantees and lending, and other proposals as may be submitted to it by the Debt Management Office for consideration or for obtaining the approval of the Minister;
- (d) recommend the debt management strategy and the annual borrowing plan to the Minister;
- (e) monitor the implementation of the debt management strategy and annual borrowing plan; and
- (f) perform other functions as may be assigned by the Minister.

## **9. Functions of the Financial Secretary.**

- (1) The functions of the Financial Secretary in relation to the management of the public debt, are to —
  - (a) issue directions, from time to time, for the proper implementation of the intent and objectives of this Act and for the effective discharge of the respective roles and functions of the Debt Management Office and the Committee;
  - (b) issue directions with respect to each issue of Government securities;
  - (c) exercise administrative supervision of the Debt Management Office;
  - (d) provide general guidance to the Committee as its Chairman;
  - (e) review the risk assessment reports on issues of guarantees and lending operations of the Government submitted to the Minister by the Debt Management Office;
  - (f) oversee the domestic public debt, external public debt, guarantees, lending, consistent with the fiscal strategy report and the annual budget;
  - (g) monitor aggregate limits on domestic public debt, external public debt, guarantees and lending, consistent with, the fiscal strategy report and the fiscal policy approved within the annual budget process;
  - (h) assist the Minister in the discharge of his functions under this Act.
- (2) The directions issued pursuant subsection (1)(b) with respect to a new issue of stock shall include —
  - (a) the name of the stock;
  - (b) the amount of stock to be issued;
  - (c) the denominations of the stock;
  - (d) the currency of the stock;

- (e) the dates in each year on which the half-yearly interest on the stock shall be payable;
- (f) provision for any sinking fund to be established for the redemption of the stock; and
- (g) the date of redemption of the stock.

#### **10. Responsibilities of the Minister in the management of public debt.**

The responsibilities of the Minister in relation to the management of the public debt, are to—

- (a) cause the annual borrowing plan to be prepared;
- (b) authorize portfolio management operations, including derivatives and swaps;
- (c) exercise borrowing powers on behalf of the Government;
- (d) negotiate or renegotiate the terms and conditions of Government loans with lenders;
- (e) restructure, refinance, novate or convert government loans from one form into another;
- (f) appoint the registrar, underwriters, agents, internal auditors and other agencies as set out in this Act;
- (g) exercise the lending powers on behalf of the Government, including lending to foreign governments;
- (h) issue guarantees;
- (i) review and recommend the debt management strategy to the Cabinet;
- (j) establish sinking funds;
- (k) report to Parliament on the performance of the debt management function and cause publication of information as specified in this Act;
- (l) authorize payments on all public debt, including the administration of all guarantees, contingent liabilities, and lending;
- (m) cause the Debt Management Office to maintain original documents evidencing the public debt, books and accounts of all borrowing and lending arrangements, including contingent liabilities;
- (n) implement the debt management strategy;
- (o) authorize other activities as are necessary for the smooth execution of the debt management function;
- (p) monitor and manage fiscal risks to the public debt;
- (q) appoint and remove the member of the Committee; and

- (r) approve, in consultation with the responsible Minister, all borrowings of Agencies and Government Business Enterprises that are not publicly listed.

## **PART V - PUBLIC DEBT MANAGEMENT**

### **11. Medium-term debt management strategy.**

- (1) The Debt Management Office shall formulate a debt management strategy that has a medium term focus in the context of the longer term projections.
- (2) The debt management strategy shall—
  - (a) aim at achieving the objectives of debt management as set out in section 4;
  - (b) guide the Government's borrowing policies and debt management operations;
  - (c) assess the range of costs and risks to the debt portfolio and the preferred risk tolerance of the Government; and
  - (d) take into account the Government's fiscal policy, annual budget, fiscal strategy report, macro-economic environment, market conditions and other relevant factors.
- (3) The Debt Management Office shall forward the debt management strategy to the Committee for review.

### **12. Approval of debt management strategy.**

- (1) By the third Wednesday in October in every year, the Committee shall make a recommendation to the Financial Secretary, in writing, setting out a debt management strategy for the Government for the forthcoming annual budget and for at least two subsequent financial years.
- (2) The Financial Secretary shall forward the debt management strategy to the Minister.
- (3) The Minister shall review and forward the debt management strategy received under subsection (2) to the Cabinet for approval, along with his recommendations, and the Cabinet may approve the debt management strategy recommended by the Minister, with or without amendments.
- (4) The debt management strategy approved under subsection (3) shall be tabled in the House of Assembly at the same time as the fiscal strategy report.
- (5) The Minister shall cause the debt management strategy to be published.

- (6) The House of Assembly shall debate the debt management strategy and shall inform the Minister, no later than the 31<sup>st</sup> January in any year of any recommendations on the debt management strategy.
- (7) If the Minister decides to amend the debt management strategy in response to the recommendations made by the House of Assembly, the amendment shall be made and a revised debt management strategy shall be tabled in the House of Assembly as soon as practicable and shall be published within seven calendar days of tabling.

### **13. Annual borrowing plan.**

- (1) The Minister shall cause the annual borrowing plan to be prepared within a period of fourteen calendar days after the approval of the annual budget by Parliament.
- (2) The annual borrowing plan shall be consistent with the limits approved under the Fiscal Responsibility Act, 2018 and the annual budget and shall state—
  - (a) the projected borrowing needs of the Government, as provided in the annual budget approved by Parliament for the current financial year; and
  - (b) the various categories of debt instruments to be issued by the Government during the financial year and estimated nominal amount under each category of debt instrument.
- (3) In preparing the annual borrowing plan, the Debt Management Office shall take into account—
  - (a) the debt management strategy approved under section 12;
  - (b) the annual cash flow forecast for the Government;
  - (c) the market outlook; and
  - (d) the other factors as are deemed relevant.

### **14. Portfolio management operations.**

- (1) The Minister may authorize portfolio management operations, including roll-overs, swaps and other derivative transactions, buybacks, switches and pre-payment of Government debt instruments, taking into account the debt management objectives set out in section 4 and the debt management strategy.
- (2) Portfolio management operations under subsection (1) include entering into Master Repurchase (repo) Agreements with financial institutions and undertaking repo and reverse repo transactions under that agreement, as part of cash management operations, and undertaking transactions for lending securities to or borrowing securities from the persons as may be



approved by the Minister, to support the domestic bond market development and other forms of collateralised lending or borrowing.

- (3) The Minister, through the Financial Secretary, shall cause the transactions under this section to be executed by the Debt Management Office and issue directions for appropriately accounting and monitoring the exposures.

#### **15. Payment for portfolio management operations.**

Any money that is required to be paid by the Government for portfolio management operations, including swaps and other derivative transactions, buybacks and switches, shall be charged to the Consolidated Fund and shall be paid without further appropriation.

## **PART VI - BORROWING**

#### **16. Minister's authority to borrow.**

- (1) The Minister shall be the sole borrowing agent for the Government and shall borrow money in accordance with this Act and for purposes set out in section 18 and within the ceiling approved by the Parliament under the Fiscal Responsibility Act, 2018 and the Fiscal Strategy Report.
- (2) The authority of the Minister to borrow for the purposes set out in section 18 shall include authority to borrow, either within or outside The Bahamas, from any person, organization, foreign government, international organization or foreign organization by—
  - (a) entering into Government loan agreements or line of credit agreements;
  - (b) issuing securities; or
  - (c) creating any other debt instrument, in local or any foreign currency.
- (3) The Minister shall not make a change in the form of the public debt or part of the public debt that has the effect of increasing the present value of the public debt, except with the approval of Parliament.
- (4) The money borrowed under this section shall be paid into the Consolidated Fund.
- (5) Where all or part of the amount of the Government security to be issued is in foreign currency, the provisions of the Exchange Control Regulations Act (Ch. 360), shall not have effect in relation to the Government securities issued under this Act.

**17. Authority to borrow not to be delegated.**

The Minister shall not delegate the authority to borrow money conferred by section 16 to any other person.

**18. Purposes for which the Minister may borrow.**

- (1) The Minister may borrow for the following purposes—
  - (a) to meet cash shortfalls during the execution of the annual budget;
  - (b) to finance investment and infrastructure projects undertaken by the Government;
  - (c) to finance the fiscal deficit;
  - (d) to maintain a credit balance in the Government's demand account held with the Central Bank at levels determined by the Minister, having regard to the liquidity requirements for timely discharge of the financial obligations of the Government under this Act;
  - (e) to refinance or reschedule existing public debt, including the repayment, buyback or exchange of Government loans or Government securities;
  - (f) to replenish the external reserves;
  - (g) to lend to foreign governments, Agencies and Government Business Enterprises or the other persons as Parliament may approve, subject to the lending provisions in this Act;
  - (h) to fulfil obligations generated from Government guarantees invoked, subject to the guarantee provisions in this Act;
  - (i) to establish sinking funds for repayment of Government securities and Government loans;
- (2) The Minister may, in addition to the purposes set out in subsection (1) borrow in the following exceptional circumstances—
  - (a) sudden and unexpected events arising from external shocks resulting in a significant economic downturn;
  - (b) national security considerations;
  - (c) natural disasters; or
  - (d) the other exceptional needs as may be specified by the Minister, by order.
- (3) Any borrowing by the Minister pursuant to subsection (2) shall be subject to affirmative resolution of the House of Assembly.

**19. Minister's power to appoint underwriters etc. for borrowing.**

- (1) The Minister shall have the power to appoint underwriters, managers and other persons as deemed necessary for Government borrowing.

- (2) The Minister may, on the terms and conditions as the Minister deems fit, enter into an agreement with a bank, financial institution, or other person for the purpose of appointing the bank, financial institution, or other person to act in any of the following capacities for, or in the connection with, the borrowing of money under this Act—
- (a) an underwriter;
  - (b) a manager;
  - (c) a dealer;
  - (d) a trustee;
  - (e) a registrar; or
  - (f) an administrative agent.

**20. Renegotiation of terms and conditions.**

The Minister may renegotiate with creditors and vary the terms and conditions with their consent for—

- (a) repayment of a Government loan prior to its due date of repayment;
- (b) extending the date of repayment;
- (c) changing the rate of interest;
- (d) conversion of a Government loan from one form into another;
- (e) consolidation of two or more Government loans into a single loan;  
or
- (f) changing any other terms and conditions.

**21. Payment of principal and interest.**

The public debt of The Bahamas, including the interest on that debt, sinking fund payments and redemption moneys in respect of that debt, and the costs, charges and expenses incidental to the management of that debt, shall be a charge on the Consolidated Fund, as required by Article 134 of the Constitution.

**22. Equal treatment to all creditors.**

All creditors of the Government shall be treated equally and equitably in the matter of repayment and servicing.

## **PART VII - ISSUANCE OF GOVERNMENT SECURITIES**

### **23. Restrictions on creation or issuance of security.**

- (1) The Financial Secretary shall, in respect of each issue of Government security under this Act, specify by directions published in the *Gazette* the particulars as may be considered necessary.
- (2) The date of redemption of any Government security shall not be later than sixty years from the date of issue.
- (3) Where the Minister deems it expedient to reserve an option to redeem any Government security at any date earlier than the date of redemption specified by the directions under subsection (1), the Minister shall by the directions further specify the terms and conditions on which the Government security may be redeemed at any earlier date.

### **24. Form, type and manner of securities.**

Government security shall be issued in physical form, book entry form, dematerialised form or in any other form, type and manner and on terms and conditions in the domestic and the international markets as may be prescribed.

### **25. Procedure for issuing securities.**

The method, procedure and mechanisms for issue of Government securities shall include auction, private placement, syndication, offer for sale by tender, offer for sale at fixed price or any other method as may be prescribed.

### **26. Private placement of or market making in securities.**

The Minister, for the purpose of issuing Government securities, may appoint one or more banks or financial institutions for private placement of securities and or for market making activities.

### **27. Registrar to maintain register of holders of government securities.**

- (1) A register of holders of Government securities shall be maintained by the registrar.
- (2) The registrar shall keep a register of each issue of Government security under this Act in which all the Government securities and all transfers of and all dealings in the Government securities shall be registered and in which shall be entered all matters required to be entered in the register.
- (3) Save as otherwise provided under this Act, no notice of any trust in respect of any Government security shall be received by the registrar or by the Government.

- (4) The registrar shall issue to every holder of government securities a certificate in the prescribed form as proof of ownership.

**28. Proof of entries in the register.**

- (1) The entries in the register shall be conclusive evidence of the facts, matters, particulars, and transactions to which those entries relate.
- (2) A copy of any entry in the register, certified in writing by the registrar to be a true copy of the original entry, shall be received in evidence in any judicial proceedings.

**29. Securities issued in physical form.**

- (1) Government securities issued in physical form shall be identified by the series of issuance, distinctive serial numbers and face value.
- (2) Government securities issued in physical form will be issued in the names of specific holders.

**30. Securities issued in book entry form.**

- (1) Where Government securities are issued in book entry form, the entries in the records, whether physical or electronic, shall include the names of all the holders, the amount and the description of the security.
- (2) Legal title of the Government securities issued in book entry form may be acquired, evidenced, pledged and transferred electronically.
- (3) No person shall be entitled to any Government security issued in book entry form unless that person is registered as the stockholder in respect of that security.
- (4) No person shall be registered as the holder of any Government security issued in book entry form, except upon payment in full of the purchase price for that Government security.

**31. Joint holding of securities.**

Where Government securities are held by two or more persons jointly, the holders shall nominate in the prescribed form, the name of the person to whom the certificate shall be issued.

**32. Transfer of securities.**

- (1) Government securities shall be transferred in the manner as may be prescribed.
- (2) The transfer of title to any Government security shall become final only upon the execution of the instrument of transfer as may be prescribed and upon the registration of the transferee as the holder by the registrar.

**33. Procedure for issue etc. of securities to be prescribed.**

The procedure for the issue, administration, delegation of powers, registration, transfer, recording of third party rights, repayment of principal and payment of interest on Government securities held in joint names, settlement in the event of the death of any holder, redemption, conversion, consolidation, splitting of Government loans of any form, procedure connected with the matters and payment of interest on Government securities issued in any form shall be as prescribed.

**34. Restrictions on inspection of the books of registrar.**

- (1) No person shall be entitled to inspect, or to receive information derived from any Government security in the possession of the registrar or any register, book or other document kept or maintained by or on behalf of the registrar in relation to Government securities, except on the terms and conditions and on payment of the fee, as may be prescribed.
- (2) Subsection (1) shall not apply to the Auditor-General.

**35. Liability of Government to pay principal and interest.**

- (1) The Government shall pay to the person registered for the time being as the holder the principal sum represented by that security and the interest due, in accordance with the provisions of this Act, at the rate and on the dates according to the terms of issue.
- (2) Where any amount has become payable on any date as interest on any Government security, no interest on that amount shall, after that date, be paid or payable by the Government to any person in any circumstances.
- (3) No person shall be entitled to claim interest on any Government security in respect of any period which has elapsed after the earliest date on which demand could lawfully have been made for the repayment of the principal amount due on the security.

## **PART VIII - LENDING BY GOVERNMENT**

**36. Restrictions on lending.**

Save as expressly authorized by this Act or any other enactment, the Government shall not lend money to any person or organization, whether in The Bahamas or elsewhere, or to a foreign government.

### **37. Policy framework for lending by Government.**

- (1) The Director shall, in consultation with the Committee, prepare the policy framework for lending by Government and shall publish the policy framework after approval by Cabinet.
- (2) The policy framework for lending by Government shall be consistent with the fiscal policy, the annual budget and the debt management strategy and shall include—
  - (a) the limits on total government lending to foreign governments, or other persons as Parliament may approve;
  - (b) the overall limits for lending;
  - (c) the methodology for risk assessment of government lending, including the borrower's ability to repay the loan;
  - (d) the guidelines for determination of market-based interest rate for government lending;
  - (e) the guidelines for approving and processing loans;
  - (f) the guidelines for addressing the issues arising out of non-servicing of loans; and
  - (g) the power of the Minister to realize collaterals.
- (3) The Director may, in consultation with the Committee, amend the policy framework for lending by the Government.
- (4) Any amendment under subsection (3) shall not have effect until the amendment has been approved by Cabinet and published.

### **38. Government lending by Minister.**

- (1) The Minister may, after consultation with the Committee and on being satisfied that it is necessary or expedient in the public interest so to do, lend money on the terms and conditions as the Minister deems fit, to any organization, person, international organization, foreign organization or foreign government.
- (2) Every lending under this Act shall be from an appropriation made under the provisions of the Public Finance Management Act, 2021.
- (3) The Minister may appoint a person to act on behalf of the Minister as agent to enter into any contract or lending arrangement, which shall specify the terms and conditions of lending.

**39. Lending to foreign governments.**

- (1) The Minister, after consultation with the Committee, may lend money on the terms and conditions as the Minister deems fit, to a government of a foreign country for the purpose of assisting the economic development of that country and for the welfare of its citizens.
- (2) Any lending by the Minister under subsection (1) shall be subject to affirmative resolution of both Houses of Parliament.

**40. Responsibilities of the Minister in relation to lending.**

- (1) In relation to lending under this Part, the Minister shall ensure that lending —
  - (a) is made for the purpose and within the aggregate limit approved by the Cabinet;
  - (b) is made after assessing the level of risk involved in lending and the borrower's ability to repay that loan; and
  - (c) included in the annual budget and is reported in the financial statements of the Government.
- (3) The Minister shall cause to be retained all original documents pertaining to Government lending, for not less than seven years from the date on which they are repaid and require the Debt Management Office to maintain a comprehensive and accurate database of Government lending.

**41. Collateral to be in the name of the Accountant-General.**

- (1) The collaterals, if any, taken in respect of lending under this Act, shall be in the name of the Accountant-General.
- (2) The Minister may exercise any power, perform any function, enforce any right, and realize the collateral in accordance with the policy framework for lending.

## **PART IX – GUARANTEES**

**42. Policy framework for giving Government guarantees.**

- (1) The Director shall, in consultation with the Committee, prepare the policy framework for giving Government guarantees and shall publish the policy framework after approval by Cabinet.
- (2) The policy framework for giving Government guarantees published under subsection (1) shall include the following—



- (a) the persons and organizations eligible to obtain guarantees and the eligibility criteria;
  - (b) the maximum limit for the total amount of contingent liabilities in respect of Government guarantees that can be outstanding, at any time;
  - (c) guidelines for approving and processing Government guarantees;
  - (d) guidelines for dealing with the processing of claims for the enforcement of Government guarantees in the event of default by a person, organization, or foreign government; and
  - (e) the power of the Minister to realize collaterals and recover the amount paid through a court of competent jurisdiction.
- (3) The Director may, in consultation with the Committee, amend the policy framework for giving Government guarantees.
  - (4) Any amendment under subsection (3) shall not have effect until the amendment has been approved by the Cabinet and published.

#### **43. Restrictions on giving guarantees.**

No guarantee for discharge of any debt or other obligations shall be issued on behalf of or in the name of the Government, except as expressly provided for by this Act or by a resolution of House of Assembly made prior to issuance of the guarantee.

#### **44. Guarantee that imposes a liability on the Government.**

- (1) A guarantee shall—
  - (a) comply with this Act and any other Act authorizing the guarantee and if there is a conflict between the Acts, this Act shall prevail;
  - (b) be a formal guarantee and not a letter of comfort or other communication purporting to commit the Government to obligations in the nature of a guarantee that is inconsistent with this Act;
  - (c) meet the criteria for guarantees as may be specified in directions or by regulations;
  - (d) comply with the fiscal responsibility principles in the Fiscal Responsibility Act, 2018, the fiscal objectives in the fiscal strategy report, and be consistent with the debt management strategy; and
  - (e) comply with the limit on the amount of guarantees approved in the annual budget or by resolution of Parliament.
- (2) The Government shall not be liable for any implied guarantees asserted by any person and shall only be liable for formal guarantees given in accordance with this Act.

- (3) A guarantee that contravenes this Act shall be null and void.

**45. Government guarantee to be in public interest.**

- (1) The Minister, may on being satisfied that it is necessary or expedient in the public interest so to do, give in writing, a guarantee for the discharge of the debt or other obligations of a person, organization or foreign government created under a contract or arrangement entered into with a financial institution.
- (2) No guarantee shall be given for the discharge of any debt or other obligation under subsection (1) unless the guarantee is—
- (a) consistent with the fiscal strategy report submitted under the Fiscal Responsibility Act, 2018 and limits set out in the annual budget;
  - (b) consistent with the terms or conditions of the policy framework for giving Government guarantees; and
  - (c) within the permissible level of risk as determined by a prudent risk assessment exercise.
- (3) The Minister may appoint a person to act on the behalf of the Minister as agent to issue a guarantee and for discharging the financial obligations undertaken on behalf of any person, organization or foreign government in accordance with the policy framework for giving Government guarantees.

**46. Responsibilities of the Minister in giving guarantees.**

- (1) The Minister shall manage Government guarantees in accordance –with the fiscal responsibility principles in the Fiscal Responsibility Act, 2018, the fiscal objectives in the fiscal strategy report and the debt management strategy.
- (2) The Minister shall ensure that appropriate skills, processes and systems are in place in the Debt Management Office to manage risks related to guarantees.
- (3) The Minister shall cause to be retained all original documentation pertaining to a Government guarantee for not less than seven years from the date on which the underlying loans are repaid or the guarantee is released.

**47. Collateral for guarantee.**

- (1) The Minister may require adequate collaterals to be furnished, in the form as the Minister deems fit, up to the value of the guarantee, by the person, organization, or foreign government, for the discharge of whose debt or other obligations the guarantee is given.

- (2) The value of the guarantee shall be calculated by using the foreign exchange daily mid-rate applicable on the day the payment is made on the guarantee if the collateral is denominated in a currency other than the currency in which the guaranteed amount is designated.

**48. Payment under guarantees to be made from Consolidated Fund.**

- (1) Where a guarantee is invoked because the person, organization, or foreign government for whose benefit the guarantee was given has committed a default in the payment of any amount guaranteed under the provisions of this Act, the Minister shall, upon being satisfied that the default has been made, direct the payment of the amount out of the Consolidated Fund.
- (2) No further appropriation or authority shall be required for making payment under subsection (1) or for incurring any expense or for paying any fee in connection with the payment.
- (3) Where any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee, the Minister may take steps to realize any collateral provided under section 47.

**49. Insufficient collateral.**

- (1) Where any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee and the collateral provided is not sufficient to cover the liability incurred, the Minister may, by notice, direct the person, organization, or foreign government for whose benefit the guarantee is given, to pay the amount of shortfall, together with interest at a rate and at a time and in a manner as the Minister may determine, having regard to market conditions.
- (2) If the person, organization, Agency, Government Business Enterprise or foreign government fails to pay the amounts mentioned in the notice, within the time allowed, the Minister may, by proceedings brought in a court of competent jurisdiction, recover that amount as a debt due to the Government.
- (3) The Minister shall pay into the Consolidated Fund any amount recovered under subsection (1) or (2).

**50. Minister to table in Parliament reports relating to Government guarantees.**

- (1) Not later than ninety calendar days after the end of each reporting period, the Minister shall table in the Parliament, a report on all Government guarantees given under this Part during that reporting period.
- (2) In subsection (1), “reporting period” means each half of every financial year.

- (3) The report tabled under subsection (1) shall include—
  - (a) any guarantee that has been invoked;
  - (b) any payments on the guarantees; and
  - (c) an assessment of the risk of a guarantee being invoked and the estimated cost of honouring the guarantee.
- (4) If Parliament is not in session for the ninety days' period mentioned in subsection (1), the Minister shall table the report within 15 sitting days after the Parliament next sits.

## **PART X - SINKING FUNDS**

### **51. Establishment of sinking funds.**

- (1) The Minister may establish sinking funds for payment of the amount due at maturity on any government security and loan issued under this Act.
- (2) The Minister shall, as part of the annual budget, disclose the particulars of government securities and loans to be redeemed from the sinking funds.

### **52. Appointment and removal of trustees.**

- (1) The Minister shall appoint any number of trustees as are deemed necessary for the effective administration of the sinking funds.
- (2) The Minister shall confer on the trustees powers and assign to them functions as are deemed expedient for the smooth administration of the sinking funds.
- (3) The Minister may, at any time after giving reasonable notice in writing to the trustee concerned, vary the powers or functions of the trustee.
- (4) The Minister may, after giving reasonable opportunity of being heard, remove a trustee from office;
- (5) The Minister may fill the vacancy resulting from the removal of a trustee from office, the death or the retirement of a trustee, by appointing another trustee.

### **53. Payment into sinking fund.**

- (1) The Minister shall pay from the Consolidated Fund, to the trustees of each sinking fund in every financial year, amounts as are necessary for repaying the amount due at maturity on the government securities or loans.
- (2) No further appropriation or authorization shall be necessary for making the payment from the Consolidated Fund under subsection (1).

- (3) All or any part of the money in the sinking fund may be invested in the manner as may be authorized under the Public Finance Management Act, 2021.
- (4) Any income from investments and all profits arising from the realisation of any investments shall be paid into the sinking fund.

**54. Administration of sinking fund.**

- (1) All moneys received by the trustees of a sinking fund under section 53 or the income derived from investments or otherwise, shall, until required by subsection (4)—
  - (a) be invested in bonds, stock or Treasury bills or stock issued by a public entity or Government Business Enterprise; or
  - (b) be invested in fixed income securities issued by sovereign, sub-sovereign, agency supranational organizations, under such credit conditions as might be prescribed and agreed to with the trustee;
  - (c) be used, to purchase, at the earliest favourable opportunity in the opinion of the trustees, the bonds or securities issued in connection with the Government loan for which the sinking fund was established.
- (2) The trustees of a sinking fund may vary the portfolio of investments made pursuant to subsection (1)(a).
- (3) Bonds or stock purchased by the trustees pursuant to subsection (1) (b) shall be cancelled and shall not be re-issued.
- (4) The trustees shall pay the moneys and deliver the investments held by them to the Government for redeeming the securities issued in connection with the Government debt for which the sinking fund was established.

## **PART XI - AUDIT OF GOVERNMENT DEBT AND REPORTING**

**55. Annual audit by Auditor-General's Office.**

- (1) The books and accounts of the Debt Management Office relating to the public debt management functions, including the lending, and guarantee obligations of the Government, shall be audited annually by the Auditor-General.
- (2) The scope of the audit under this section and the powers, duties and functions of the Auditor-General or the auditor designated under section 59 shall be governed by the provisions of the Public Finance Management Act, 2021 and the Financial Administration and Audit Act, 2010.

- (3) Upon completion of the audit under this section, a report shall be submitted in accordance with the provisions of the Public Finance Management Act, 2021 and Financial Administration and Audit Act, 2010.
- (4) Upon receipt of a copy of the report submitted under subsection (3), the Debt Management Office shall take appropriate action within a reasonable time on the shortcomings pointed out or the suggestions for improvement, and shall provide a report on the action taken to the Financial Secretary for submission to the Minister.

**56. Internal Audit.**

- (1) The Internal Audit Department shall have the same duties and powers with respect to the Debt Management Office as are conferred on it under the Public Finance Management Act 2021.
- (2) The Internal Audit Department shall make a report on the outcome of any audit of the public debt management activities conducted to the Minister who may issue directions for compliance to the Debt Management Office as deemed fit.

**57. Audit by independent external auditors.**

- (1) The Minister may, at any time in writing, direct an audit of all or any of the public debt management activities to be undertaken by independent external auditors appointed by the Minister.
- (2) The results of the audit shall be tabled in Parliament by the Minister and published within a period of 30 calendar days from the date of receipt of the final report from the auditors appointed under subsection (1).

**58. Report on debt management function to Parliament.**

The Minister shall table in the Parliament, along with the financial statement and annual report for the financial year, a report on debt management activities, including lending and guarantee obligations.

**59. Borrowings by Agencies and Government Business Enterprises.**

- (1) The Minister, in consultation with the responsible Minister, shall approve all borrowings of an Agency or a Government Business Enterprise.
- (2) This section shall not apply to a Government Business Enterprise that is a publicly listed company.

**60. Agencies and Government Business Enterprises to report liabilities and debt obligations to the Debt Management Office.**

- (1) Every Agency and Government Business Enterprise shall submit to the Debt Management Office details and copies of its borrowing no later than

five working days from the date of signing a loan agreement, obtaining an overdraft, or issuing securities.

- (2) Every Agency and Government Business Enterprise shall, furnish to the Debt Management Office, on or before the last day of each month, a report on the status of each of its debt obligations, whether guaranteed or not, as at the end of the previous month.

#### **61. Public debt statistical bulletins.**

No later than thirty calendar days after the end of each quarter of the fiscal year, the Debt Management Office shall prepare and publish a public debt statistical bulletin for the quarter which shall set out the following—

- (a) the outstanding stock of all public sector debt;
- (b) the size and currency composition of the public sector debt;
- (c) the interest rate mix of the public sector debt; and
- (d) the maturity profile of the public sector debt.

## **PART XII - CENTRAL SECURITIES DEPOSITORY**

#### **62. Establishment of Central Securities Depository.**

- (1) The Central Bank may establish a central securities depository within the Central Bank or facilitate the establishment of a central securities depository as an independent company or corporation, outside the Central Bank.
- (2) The central securities depository established under subsection (1) shall be registered in the books of the registrar as the holder of the Government securities issued in book entry form.

#### **63. Approval of guidelines and admission of members.**

- (1) The central securities depository shall, with the prior approval of the Central Bank, issue guidelines for admission of financial intermediaries as members and for specifying the rights, liabilities and obligations of the members.
- (2) The central securities depository may admit financial intermediaries as members in accordance with the guidelines.

#### **64. Types of accounts of financial intermediaries.**

- (1) Each financial intermediary admitted as a member of the central securities depository shall open an account called the “securities account” with the central securities depository for holding Government securities acquired

in its own name and an account called the “constituent account” for holding the Government securities on behalf of its constituents.

- (2) The investors in Government securities may hold the Government securities issued in book entry form in the accounts maintained by them with the financial intermediary or the central securities depository.

**65. Central Securities Depository and financial intermediaries to hold securities in trust for beneficial owners.**

- (1) The central securities depository, or the financial intermediary, shall hold the Government securities in trust for investors and the investors shall have all the beneficial interest, with respect to coupons and maturity proceeds, in the Government securities in which they have invested.
- (2) The investors who are the beneficial owners of the Government securities held by them in the accounts maintained with the central securities depository, or financial intermediaries, may create third party rights in those securities in the nature of a pledge, charge, lien or mortgage in accordance with the regulations.

**66. No creditor, liquidator, etc. of a Central Securities Depository or financial intermediary to have claim against beneficial owners.**

No creditor of the central securities depository or financial intermediary or liquidator or receiver appointed by law with respect to the central securities depository or financial intermediary shall have any claim against the Government securities held in trust by the central securities depository or financial intermediary for the benefit of the investors.

## **PART XIII - MISCELLANEOUS**

**67. Code of Conduct.**

- (1) In the management of public debt, the public officers and other persons associated with the issue, subscription, administration, transfer, record maintenance, market making or in any other capacity, shall be subject to a code of conduct and conflict of interest guidelines regarding management of their personal financial affairs.
- (2) The code of conduct and conflict of interest guidelines shall be specified by rules made by the Minister.

**68. Financial misconduct.**

- (1) A public officer or other person with responsibility for public resources, commits an offence of financial misconduct if, without lawful authority



under this Act or other lawful authority, that person wilfully or recklessly

- (a) borrows money on behalf of the Government, Agencies or Government Business Enterprises or repays or converts an existing loan;
  - (b) issues public securities, or varies their terms and conditions;
  - (c) lends money or other assets on behalf of the Government, Agencies or Government Business Enterprises;
  - (d) issues guarantees or indemnities on behalf of the Government, Agencies or Government Business Enterprises; or
  - (e) issues securities for loans made to the Government, Agencies or Government Business Enterprises.
- (2) A charge of financial misconduct under this Act—
- (a) against any public officer shall be investigated, heard and disposed of as required by the Constitution and the Public Service Commission Regulations; or
  - (b) against any officer of an Agency or Government Business Enterprise shall be investigated, heard and disposed of as required by other Acts, codes of ethics or codes of conduct and the terms of appointment or employment applicable to that person.

#### **69. Regulations.**

- (1) The Minister may make regulations, as may be necessary and expedient, for the proper implementation of the intent and objectives of this Act.
- (2) Any regulations made pursuant to subsection (1) shall be subject to affirmative resolution of the House of Assembly.

#### **70. Minister or Financial Secretary to issue Directions.**

The Minister or Financial Secretary may, for the proper implementation of the intent and objectives of this Act or for effective discharge of their respective roles and functions under this Act issue, from time to time, by notice in the *Gazette*, directions as deemed necessary.

#### **71. Repeal and saving.**

- (1) The provisions of existing enactments dealing with the matters relating to public debt management as are dealt with in this Act, are repealed.
- (2) The Bahamas Registered Stock Act (Ch. 362), Electricity Loan (1952) Act,(No. 24 of 1953), the Development Loans Act, 1990 (Ch. 382) and the General Loan and Stock Act (Ch. 383) are repealed

- (3) The guarantees given by the Government for the benefit of the following —
- (a) the Bahamas Development Bank;
  - (b) The Bahamas Mortgage Corporation;
  - (c) the Public Hospital Authority;
  - (d) the Educational Loan Authority;
  - (e) the Clifton Heritage Authority;
  - (f) the Bridge Authority;
  - (g) the Water & Sewerage Corporation;
  - (h) the Educational Guarantee Fund Act;
  - (i) Lucayan Renewal Holdings Ltd;
  - (j) Small Business Development Centre,
- shall be deemed to have been given under this Act and shall be acted upon accordingly and notwithstanding anything contained in those enactments, all future guarantees shall be given under this Act.
- (4) Notwithstanding the repeal, anything done or any action taken in exercise of the power conferred by or under those enactments shall be deemed to be valid and the rights and obligations arising out of the loans granted and guarantees given under the repealed provisions outstanding at the time of coming into force of this Act shall survive even after the coming into force of this Act.

## SCHEDULE

### (Section 6)

#### Debt Management Committee

**1. Procedures of the Committee.**

The Committee may regulate its meetings and procedure as the Committee deems fit.

**2. Tenure of appointed member.**

The appointed member of the Committee shall hold office for a period not exceeding three years and shall be eligible for re-appointment.

**3. Removal and resignation of appointed member.**

- (1) The appointed member of the Committee may be removed from office by the Minister if the member—

- (a) is incapable of performing the functions of office by reason of mental or physical incapacity;
  - (b) is guilty of misconduct under any Act or regulations governing the public service;
  - (c) is guilty of financial misconduct;
  - (d) has committed an offence punishable with imprisonment;
  - (e) has been absent from three consecutive meetings of the Committee without leave of the Chairman; or
  - (f) the Minister considers the member unsuitable to the position after considering reviews of performance of the member.
- (2) The appointed member of the Committee may, at any time, resign from office by notice in writing to the Minister which shall take effect on the date specified in the notice.

#### **4. Quorum.**

The quorum at a meeting of the Committee shall be four.

#### **5. Meetings.**

- (1) The Committee shall meet not less than once per quarter or at other times as may be necessary for the transaction of business.
- (2) The Committee shall cause minutes of all its meetings to be taken by the secretary to the Committee, signed by the Chairman, and kept in the proper form as a public document.
- (3) The Chairman, may invite any other person whose expertise the Committee may require to carry out its functions to take part in the deliberations of a meeting.

#### **6. Voting.**

Each Committee member shall have one vote but the Chairman shall, where there is an equality of votes, have a casting vote.