CHAPTER 575

GOVERNMENT BORROWING AND MANAGEMENT OF PUBLIC DEBT ACT

AN ACT to provide for the governance aspects, high level policy objectives and institutional arrangement for prudent management of the Government's debt, cash position, and liquidity and reserve funds and to provide for matters connected therewith or ancillary thereto.

1st September, 2017*

ACT XXII of 2017.

Part I

Preliminary

Short title .

1. The short title of this Act is the Government Borrowing and Management of Public Debt Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"Accountant General" means the Accountant General of the Government of Malta;

"auction" means a public invitation for submission of sealed bids or through electronic submissions for stock or securities issued by the Government of Malta, in such manner as the Minister may direct;

"buyback" means the purchase of the Government of Malta debt security by the Government of Malta in the open market;

"Central Government Debt" refers to the debt of the Central Government but excludes Extra Budgetary Units;

"Central Securities Depository" has the same meaning as is assigned to it by article 2 of the Financial Markets Act; Cap. 345.

"claims", in respect of Government securities and any debt instruments, include both the principal repayment and the interest due if any on the said securities and any debt instruments;

"Committee" means the Public Debt Management Advisory Committee established by article 68;

* See Legal Notice 216 of 2017.

Cap. 330.

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

"Consolidated Fund" has the same meaning as is assigned to it by article 102 of the Constitution of Malta;

"Constitution" means Constitution of Malta;

"conversions and switches" mean an exchange of one security for another security at any time;

"credit line" means a commitment made in advance by a credit institution to grant on demand to the Government of Malta up to a prescribed amount and subject to agreed terms and conditions;

"debt instrument" means a non-negotiable government debt instruments including Retail Savings Bonds of the Government of Malta issued under this Act or any Act of Parliament for defining and registering the indebtedness of the Government of Malta to lenders;

"debt security" means negotiable government debt security including T-Bills, Stocks, Registered Stocks and other negotiable debt securities issued under this Act or any Act of Parliament for defining and registering the indebtedness of the Government of Malta to lenders;

"deficit" means an excess of Government expenditure over revenue;

"Directorate" means the Debt Management Directorate established by article 64;

"exceptional circumstances" has the same meaning as in the Fiscal Responsibility Act;

"Government" means the Government of Malta unless otherwise specified;

"Government General Account" includes all the accounts held in the name of Government of Malta but excludes departmental accounts held with the Central Bank of Malta;

"holder", in relation to any debt security means any natural or legal person in whose name or names the debt security is entered or registered in the register. In relation to any debt instruments, holder means any natural person in whose name or names the debt instrument is entered or registered in the register;

"loan" means the raising of money: by the issue and sale of "registered stock" or "stock" or other debt security with a maturity of more than one year issued by the Government of Malta, by the issue

of debt instrument, and by entering into any bilateral agreement between the Government of Malta and the Government of any other country, multilateral institutions, or from any local banks, or with any international or foreign organisation, fund or other institution;

"Malta" has the same meaning assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for finance;

"offering circular" means a circular to be issued by the Treasury Department to announce the issuance of debt securities with maturity above one year and to specify amongst others the sum of money to be raised, the mode or modes of raising such debt securities; the coupon interest payable on these securities; the date or dates when the interest on the securities shall be payable; the settlement date; the date of redemption of the debt security and the governing law;

"pre-financing" means the procedure in which the Government of Malta floats a second stock in order to pay off the first stock at the maturity date;

"prepayment" means paying an outstanding loan of the central government prior to its maturity, including the repayment of a loan, and to repurchase or exchange of securities of the Government of Malta from the open market;

"public debt" has the same meaning as is assigned to it by article 106 of the Constitution of Malta;

"public entity" refers to any Government Foundation, Statutory entity and other organisation in which the Government holds 51 per cent in ownership or over which the Government has effective control or where 51 per cent or over of its income comes from public monies or from monies it receives by virtue of any law;

"publication" means that the Accountant General may make use of any media available to disseminate the information to the market including but not limited to the Treasury Department website, the Gazette and the stock exchange;

"Register" means the Treasury Department's Register of holders of stock, other government debt securities and debt instruments as maintained in accordance with article 31;

"registered stock" or "stock" means Government of Malta stock with maturity exceeding one year issued under the provisions of this Act and whose nominal value is registered in the name of the owner in the register;

"Registrar" means the Treasury Department or the Treasury Department's designated Registrar;

"Resolution Committee" means the Committee established within the Malta Financial Services Authority through the Malta Financial Services Authority Act and which is responsible for the resolution of credit institutions and investment firms;

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"sinking fund" means a sinking fund established in terms of article 58;

"Treasury bill" means a short-term debt security with a maturity of one year or less issued typically at a discount from face value.

Part II

Scope

The aim of the Act.

3. The scope of the Act covers the governance aspects, high level policy objectives and institutional arrangement for prudent management of the Government's debt, cash position, and liquidity and reserve funds.

Part III

Government Debt Management Operations

Authority to borrow.

4. The Government may borrow money, both in Malta and outside Malta in any currency and in such manner as provided by or under:

(*a*) this Act; and

(*b*) any other Act of Parliament that expressly authorises the borrowing of money for any purpose mentioned in the Act and up to such amount or amounts as may be authorised by the said Act.

Minister vested with authority to borrow.

5. The authority to borrow money for or on behalf of the Government shall vest solely in the Minister by entering into loan agreements, line of credit agreements, issuing securities or creating any other debt instruments, either in local and any foreign currency.

Terms and conditions of borrowing.

6. For the purpose of raising funds the Minister is hereby authorised to borrow on such terms and conditions as the said Minister may approve.

Objectives of public debt management.

7. The primary objectives of public debt management shall be:

(*a*) to ensure that the financing needs of the Government including its debt service payment obligations are met in a timely manner;

(*b*) funds are raised in a prudent and cost effective manner that seeks to achieve the lowest possible medium to long-term borrowing costs consistent with an acceptable level of risk; and

(*c*) to support the development and functioning of the domestic financial market.

Borrowing purposes.

8. The Minister may borrow funds both in Malta and outside Malta pursuant to article 18, for the following purposes only:

(*a*) to finance the deficit;

(*b*) to maintain an adequate level of liquidity in the General Government Bank Account in accordance with article 55;

(*c*) to form sinking funds against loans of the Republic of Malta in accordance with article 58 and to acquire securities already issued and securities issued under this Act in accordance with article 58;

(*d*) to finance lending operations by the Government which will be subject to specific acts authorizing such lending in accordance with article 53;

(*e*) to raise a sum of money not exceeding 2% of the maximum amount that can be borrowed for that year, to finance on-lending operations of small amounts for the benefit of the Maltese economy and society;

(*f*) to fulfil the obligations generating from Government guarantees called;

(*g*) to refinance prepayments of central Government debt;

(*h*) to pre-finance future borrowing requirements;

(*i*) to directly protect the economy of Malta;

(*j*) to handle financial or natural or environmental catastrophes or for any other national emergency as approved by Parliament;

(*k*) to refinance outstanding loans which are due for redemption during the relevant year;

(*l*) to meet monetary liquidity requirements connected with cash flows as part of cash management;

(*m*) to effect portfolio changes as and when required in line with Government's debt management policies; and

(*n*) to finance any other expenditure as the Minister may authorise from time to time.

The raising of money by way of loan. S.L. 330.09 Cap. 330.

9. (1) The Minister may, in pursuance of the Recovery and Resolution Regulations made under the Malta Financial Services Authority Act:

(*a*) further to a recommendation by the competent authority in consultation with the Resolution Committee, raise a sum of money by way of loan for the purpose of providing precautionary recapitalisation measures in favour of credit institutions in view of preserving financial stability; or

(*b*) further to a resolution action taken by the Resolution Committee in consultation with the competent authority, raise a sum of money by way of loan for the purpose of providing public backstop measures; or

(*c*) in close cooperation with the Resolution Committee, raise a sum of money by way of loan for the purpose of providing extraordinary public financial support through financial stabilisation tools.

(2) For the purpose of sub-article (1), the Minister is hereby authorised to borrow sums of money on such terms and subject to such conditions as the said Minister may approve under the provisions of this Act for such amount not exceeding any amount which the House of Representatives may from time to time by resolution authorise.

Raising and lending of money in terms of the Loan Facility Agreement with the Single Resolution Board.

10. (1) The Minister may represent the Republic of Malta when entering into the Loan Facility Agreement with the Single Resolution Board in pursuance of Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010.

(2) The Minister may, in terms of the Loan Facility Agreement between the Republic of Malta and the Single Resolution Board referred to in sub-article (1), raise a sum of money by way of loan for the purpose of lending to the Single Resolution Board an unsecured loan facility of up to sixty-six million euro (€66,000,000).

(3) For the purposes of sub-articles (1) and (2), the Minister responsible for finance is hereby authorised to borrow sums of money on such terms and subject to such conditions as the said Minister may approve under the provisions of this Act for an amount which in total does not exceed sixty-six million euro (€66,000,000).

Limits on debt and borrowing.

11. To ensure sustainable levels of debt, the debt burden during any year shall be subject to a limit as specified by the fiscal rule in the Fiscal Responsibility Act.

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Exceptions.

12. The requirement in article 11 may not be met only as a result of exceptional circumstances.

Limits on gross borrowing and pre-financing.

13. (1) The gross borrowing of the Government during any year shall be subject to limits implied by article 11 and the Budget Measures Implementation Act relevant for any specific year.

(2) Subject to approval from the Minister and market conditions, the gross borrowing during any year can exceed the limit specified in the Budget Measures Implementation Act by not more than ten percent for purposes of debt management operations aimed at minimising the cost of borrowings, avoiding financing under market uncertainty and to reduce the risk exposure of the debt portfolio.

(3) In the absence of the enactment of the Budget Measures Implementation Act for a relevant fiscal year, the Government may borrow in the interim to redeem any outstanding debt maturing and to make interest payments and any other charges associated with such debt.

(4) The maximum amount of outstanding debt held by Central Government at any time, held separately in the form of Treasury Bills, Bilateral Loans and debt instruments, is subject to a statutory instrument that has to be laid before Parliament and approved by a resolution of Parliament.

Monies raised paid into the Consolidated Fund.

14. All money so raised though borrowings shall be paid into the Consolidated Fund.

Payments related to public debt to be charged upon public revenues.

15. (1) So long as any interest is payable under this Act in respect of any debt security and any debt instrument, the Minister shall, on the date on which the interest on such debt securities and other debt instruments falls due, appropriate out of the general revenue and assets of the Government of Malta a sum sufficient to meet all interest payable on that date and shall authorise the Accountant General to pay such interest out of the sum so appropriated.

(2) For any public debt contracted or issued, as specified

under article 14, all payments related to such debt in respect of interest, sinking fund, redemption monies, and any other charges and expenses incidental to the management of that debt shall be payable out of the general revenue and assets of the Government and charged to the Consolidated Fund and other public funds of the Government without the need of any further appropriation other than this Act.

Minister to prepare medium-term debt management strategy.

16. (1) In every financial year, the Minister shall prepare a medium-term debt management strategy, which shall set forth the Government's strategic priorities, that guides the Government's borrowing policies and debt management operations, and seeks to achieve the objectives established in article 7, by assessing the range of cost and risks to the debt portfolio.

(2) The medium-term debt management strategy shall be prepared annually with a minimum of a three year rolling basis for the government's debt management together with the description of any underlying assumptions. The strategy shall set out the Government's debt management plans for the forthcoming budget year and the two subsequent years.

(3) The medium-term debt management strategy shall be recommended by the Committee and approved by the Minister before being tabled to the House of Representatives.

(4) For every year, the medium-term debt management strategy shall be approved by the Minister not later than two weeks following the approval of the Government's medium term fiscal policy strategy.

Medium-term debt management strategy.

17. The medium-term debt management strategy should take into account:

(*a*) the future borrowing needs of the Government; and

(*b*) the current conditions and medium-term outlook on macroeconomic and market conditions; and

(*c*) macroeconomic and other shocks to which the economy is exposed; and

(*d*) any other factors which may be related to the market development and the public debt management strategy.

Annual borrowing plan.

18. (1) For every fiscal year, the Government shall prepare an annual borrowing plan as approved by the Minister, which covers the projected borrowing needs of the Government.

(2) The annual borrowing plan shall be based on the

determined medium-term debt management strategy, annual cash flow forecast of the Government and market outlook.

(3) The annual borrowing plan shall be published and shall include the total Government's gross long-term borrowing along with an indicative quarterly calendar for domestic market issuance of Government securities with maturities of more than one year.

(4) For every year, the first annual borrowing plan shall be published by not later than the end of January of the relevant financial year.

(5) For every year, an updated annual borrowing plan shall be approved and published not later than two weeks of the approval of the Government's medium-term debt management strategy for the relevant financial year.

(6) The annual borrowing plan may be updated at least once a year with the approval of the Minister.

Loan agreements.

19. The Government may, subject to the provisions of this Act and any other Act, borrow money by a loan or line of credit agreement concluded with the government of any other country, multilateral institutions and funds, or from any local banks, foreign banks or international financial institutions.

Loan agreements with other governments and multilateral institutions.

20. The loan agreements entered between the Government and other foreign governments and multilateral institutions and funds must be in accordance with any existing international treaty of the Government.

Minister to seek advice.

21. The Minister, while approving the terms and conditions of any loan agreement and line of credit, shall seek advice on the financial and legal implications to mitigate any future financial and legal risk arising out of such obligation.

Delegation of authority.

22. The implementation of entering into bilateral loan agreement may be delegated by the Minister to the Accountant General including the power to effect the loan, negotiate and determine the terms and conditions of the said loan and to sign the loan agreement on behalf of and on account of the Government.

Issuance of debt securities and debt instruments.

23. (1) Except as expressly authorised by article 4 and any other Act, the Minister shall not, borrow any money through loans for any other purpose.

(2) Whenever the Minister is authorised to issue debt securities under this Act, such securities may be issued either on the domestic or the international market as the said Minister may direct.

(3) Whenever the Minister is authorised to issue debt

instruments under this Act, such debt instruments shall be issued in the domestic market as the said Minister may direct.

Method of issuance of debt securities and debt instruments.

24. (1) The issuance of debt securities and debt instruments shall be carried out by the Treasury Department, by any method approved by the Minister, including an auction, private placement, syndication, offer for sale by tender, offer for sale at fixed price or any other method deemed appropriate.

(2) The Treasury Department may issue debt securities and debt instruments either directly or through the appointment of one or more financial institutions, as considered appropriate, to manage the sale of the debt securities and debt instruments on behalf of the Government.

(3) In pursuance of sub-article (2) to appoint one or more financial institutions for placement of securities and, or market making activities, the Treasury Department may enter into any contract or agreement relating to such terms and conditions that it may consider appropriate.

Publication of offering circular and Prospectuses.

25. (1) With the exception of Treasury bills each issue of debt securities under this Act, before such debt security is issued, on obtaining approval from the Minister, the Treasury Department shall specify the issuance amount and the relevant terms and conditions and cause such offering circular to be published. The terms and conditions of the offering circular shall apply in conjunction with the General terms and conditions of the General Prospectus of the Government Securities.

(2) There shall be General Prospectus for Treasury Bills and their issuance shall be governed by the terms and conditions of the said prospectus.

(3) The issuance of debt instruments shall be governed by the terms and conditions of the relevant prospectus. Before such debt instrument is issued, on obtaining approval from the Minister, the Treasury Department shall cause the publication of the prospectus including the amount on issue and the terms and conditions of the offer.

Sale of securities.

26. (1) The sale of debt securities, with the exception of Treasury bills, shall be effected on the basis of an indicative quarterly issuance calendar approved by the Minister, which provides more detailed information on the issuance and constitutes an integral part of the annual borrowing plan established in article 18 which may be revised in the course of the year.

(2) The Accountant General shall immediately after the approval publish the indicative quarterly issuance calendar.

Power of Treasury Department to accept or reject tenders.

27. The Treasury Department shall have the power, on behalf of and on account of the Government, to accept or reject tenders including non-competitive tenders related to local market issuances or offers that have been submitted including the determination of the cut-off price in an auction.

Possibility of issuance of security other than by auction.

28. The Treasury Department shall have the power, on behalf of and on account of the Government, to issue securities other than by auction, based on the terms and conditions as specified in any other Act.

Procedure for issuance other than by auction.

29. (1) In the case where the securities are issued in another manner other than by auction, the Minister shall approve the terms and conditions of the issuance, including the investment memoranda/prospectus.

(2) In the case where the securities are issued in a manner other than by auction and their issue has been included in the annual financing programme, approved by the Minister in accordance with article 18, the Treasury Department shall have the power to issue and sign agreements, on behalf of and on account of the Government, which shall regulate the sale of the said securities.

Terms and conditions of securities.

30. The terms and conditions of securities issued may also include collective action clauses, in consonance with the prevailing international capital market conventions or any treaty agreed by the Government, the regulation of which shall be effected by indentures included in the prospectus for issuance of specific securities.

Registration.

31. (1) Each issue of debt securities or debt instruments under this Act shall be registered and maintained electronically in an uncertified form by the appropriate entry in the register of the Treasury Department, or its designated Registrar, by entering therein the name and address of the holders, the amount thereof, coupon interest rate payable, all transfers of and all dealings in such debt securities issued, and such other particulars as may, from time to time, be considered necessary by the Treasury Department or as prescribed in regulations made under this Act.

(2) For the purposes of sub-article (1) the Register of debt securities is currently held and maintained by the Central Securities Depository (CSD) of the Malta Stock Exchange. The Minster may however, by regulation under this Act, designate any recognised electronic central securities depository to provide the services and functions of a registrar in terms of sub-article (1).

Portfolio management and other operations.

32. (1) The Government may engage into portfolio management operations including buybacks, switches, pre-payments and pre-financing operations. The Government may engage into repurchase (repos) and reverse repurchase (reverse repos) based on a

Master Repurchase (Repo) Agreement with financial institutions as part of cash management operations. The Government may further engage in a securities lending facility to support debt market development and other forms of collateralised lending.

(2) The Minister shall have the power to authorise any portfolio management and other operations as referred to in sub-article (1), which may be delegated to the Treasury Department to undertake specialised debt management operations.

Power of the Minister to exercise certain powers.

33. The Minister shall have the power and authority to exercise, from time to time, the following powers or any of them as may be desirable for the sound and efficient management of public debt:

(*a*) to authorise the early redemption, in full or in part, securities issued either before or after the commencement of this Act, subject to any contrary provision in the respective prospectus;

(*b*) to authorise the conversion of any existing security under the terms and conditions of any other securities issued as a result of the conversion;

(*c*) to authorise any arrangement for conducting operations with respect to buy-back or exchange of existing securities.

Other powers of the Minister.

34. (1) The powers conferred on the Minister by article 33 shall include the power to authorise the Treasury Department to make such arrangements as may be necessary to create and issue under this Act such amount of securities for the purpose of carrying out any arrangement in pursuance of article 33(*a*), (*b*) and (*c*).

(2) In the exercise of his powers under article 33, the Minister shall have regard to the recommendation of the Committee.

(3) Any arrangement authorised by the Minister under article 33 may be effected on a voluntary basis to holders of existing securities. The Accountant General shall publish immediately after the approval the terms and conditions of any offer and arrangements authorised under sub-article (1).

Swaps and hedging transactions.

35. (1) The Minister shall have the power and authority on behalf of the Government to engage in swaps and other hedging transactions provided that such transactions support the objectives of debt management strategy to mitigate currency and, or interest rate risks:

Provided that in the exercise of his powers the Minister shall have regard to the recommendation of the Committee.

(2) The Treasury Department shall execute such transactions under this article and appropriately account and monitor such exposures.

Reporting.

36. (1) The Treasury Department, at the end of the financial year, shall prepare and submit to the Minister an annual report on the management of the central government debt. The Minister shall cause such report to be published and tabled in the House of Representatives.

(2) The annual report shall, *inter alia*, include the following:

(*a*) an analysis of the developments in the domestic and international capital markets;

(*b*) information on the debt management strategy prevailing during the reporting period, with a report on performance against the stated targets;

(*c*) statistics on the outstanding public debt portfolio and on related debt flows during the fiscal year, including changes in the relevant risk indicators;

(*d*) exposure on individual hedging transactions with implications for overall currency and interest rate risk;

(*e*) the size of the sinking funds and lending balance and any changes to these balances in the fiscal year; and

(*f*) developments with regard to the assessment of the creditworthiness of the Republic of Malta.

Tabling of annual report.

37. The Annual Report shall be tabled in the House of Representatives before the end of March of the following year.

Obligation to maintain comprehensive and accurate records.

38. The Treasury Department shall maintain comprehensive and accurate records of all central Government debt outstanding, in an appropriate database.

Transitional provisions. Repeal and saving.
Cap. 133.
Cap. 161.
Cap. 213.
Cap. 229.

39. (1) (*a*) Subject to the provisions of sub-article (2), upon the entry into force of this Act, the Malta Treasury Bills Act, Local Loans (Registered Stocks and Securities) Ordinance and Development Loan Acts, and all subsidiary legislation made under such Acts and Ordinance, shall be repealed.

(*b*) Any reference to the Local Loans (Registered Stock and Securities) Ordinance in the Ecclesiastical Entities (Properties) Act shall

be read and construed as a reference to this Act.

(2) The powers, rights and obligations of the Government in respect of loans entered into and debt securities issued in pursuance to the laws and regulations which are repealed under sub-article (1)(a), shall continue to apply and the loan agreements entered into and terms and conditions of debt securities issued prior to the coming into force of this Act shall remain in force.

Part IV

Government Guarantees

Authority to issue guarantee.

40.[*] (1) Notwithstanding the provisions of any other law and subject to the provisions of this Part, the Government through the Minister may provide financial guarantees to a third party in Malta for the benefit of the economy in Malta.

(2) Such guarantees referred to in sub-article (1) may be provided in respect of any debt obligation of the beneficiary.

(3) The Minister may authorise the guarantee of the repayment of the principal of, and the payment of interest and other charges thereon, in the event that the guarantee beneficiary defaults on any authorised borrowings.

Guarantees restricted to third parties situated in Malta.

41.[†] No guarantee shall be provided to a third party outside Malta:

(*a*) unless there is an existing law as part of an international treaty; and

(*b*) the Minister on the advice of the Treasury Department approves the terms and conditions for issuance of the guarantee.

Signature on guarantee.

42.[‡] Any guarantee given under article 40 may be signed by the Minister or any person authorized in writing by the Minister to do so.

Limit on guarantee.

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43.[§] (1) The Minister shall manage the financial guarantees of the Government in accordance with the relevant provisions of the Fiscal Responsibility Act.

(2) The ceilings on issuance of Government guarantees shall be based on the medium-term fiscal policy statement for the forthcoming budget year and two further years conditional on the

* Not yet in force.

† Not yet in force.

‡ Not yet in force.

§ Not yet in force.

revenue forecasts and consistent with the fiscal rules.

(3) The ceiling on government guarantees for the forthcoming budget year shall be included in the Budget Measures Implementation Act.

Charge on Consolidated Fund.

44.[*] (1) All amounts required for the payment of sums in pursuance of a guarantee given under this Act and for the payment of all interest and other charges on those sums shall be charged upon and shall be payable out of the Consolidated Fund.

(2) Where the Minister is satisfied that there has been any default in the payment of any amount guaranteed under the provisions of this Act, the Minister shall direct the payment of such amount out of the Consolidated Fund.

(3) All liabilities in the form of central Government debt and in the form of obligations under guarantees authorized under this Act shall rank *pari passu*.

(4) Any money paid by the Government under a loan guarantee given under this Part and any expenses incurred in relation to the guarantee may be incurred without further appropriation than this Part.

Constitution of debt and recovery of money paid under the guarantee.

45.[†] (1) The money paid in terms of article 44(4) shall constitute a debt due to the Government from the beneficiary concerned.

(2) A debt referred in this sub-article (1) may be paid over such period of time and on such terms and conditions as the Minister deems proper; or may be written down by the Minister in accordance with an appropriation, by or under the authority of an Act of Parliament.

(3) This Part does not limit or affect any other rights that the Government may have as a guarantor.

Assessment of requests for guarantees.

46.[‡] The Treasury Department shall assess requests related to guarantees for the consideration of the Minister, accompanied by a statement setting out -

(*a*) the details of a risk assessment exercise undertaken with respect to the issue of the guarantee and a determination as to the quality and level of risk involved; and

[*] Not yet in force.

[†] Not yet in force.

[‡] Not yet in force.

(*b*) an assessment of the financial risk for the Government stemming from the total outstanding amount in respect of all other guaranteed loans.

Fee.

47.[*] (1) Where a loan is guaranteed under this Act, the borrower shall, unless the Minister otherwise determines, pay to the Government a fee reflecting the credit risk at such rate and in such manner as may be prescribed in regulations made under this Act.

(2) Such guarantee fee charged as referred to in sub-article (1) shall be paid into the Consolidated Fund.

Reporting on guarantees.

48.[†] (1) The Minister shall, at the time of the annual budget, disclose the stock of guarantees outstanding pursuant to article 3(*a*)(ii) of the Fiscal Responsibility Act.

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(2) At the end of each fiscal year the Treasury Department shall report on the ceilings on guarantees issued by the Government through the Ministry for Finance pursuant to article 15(5)(*e*) of the Fiscal Responsibility Act for the forthcoming budget year and the further years.

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Reassessment of the financing risk.

49.[‡] The Treasury Department, at regular intervals and at least on an annual basis, shall conduct a reassessment of the financing risk from a sample of the stock of outstanding guarantees with balances outstanding above a particular threshold to be determined by the Minister. The Minister shall be informed in writing of the results of the findings of the reassessment.

Records.

50.[§] The Treasury Department shall maintain comprehensive and accurate records of all outstanding government guarantees, in an appropriate database.

Report to be furnished to the Minister.

51.[**] All beneficiaries benefiting from Government Guarantee shall, notwithstanding anything to the contrary in any other law or document, furnish to the Minister, on or before the last day of each month, a report on the status of all of its debts and other liabilities whether guaranteed or not, as at the end of the preceding month.

Request for information.

52.[††] For the purpose of monitoring, reporting and assessment of the risk of Government guarantees, the Treasury Department shall have the power to request and receive from the beneficiaries of government guarantees and credit institutions any analytical information concerning the guarantees.

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[*] Not yet in force.

[†] Not yet in force.

[‡] Not yet in force.

[§] Not yet in force.

[**] Not yet in force.

[††] Not yet in force.

Part V

Government Lending Operations, cash and Reserves Management.

Government lending.

53. Other than the on-lending amount authorised under article 8(*e*), the Government shall not lend money to an organisation or a public entity, whether in Malta or elsewhere, or to a government of another country except as expressly authorised by a resolution or an Act of Parliament.

Authority to lend money.

54. The authority to lend money for or on behalf of the Government shall vest solely in the Minister by entering into loan agreements or inter-creditor agreements, either in local and any foreign currency, and based on the terms and conditions as approved by any other Act of Parliament.

Liquidity buffer stock.

55. (1) For every fiscal year, the Treasury Department shall prepare a proposal with regard to the desired size of the liquidity buffer stock of the Government that may be authorised under article 8 (b) in the form of the minimum and maximum liquidity levels in the General Government Account for the administration of cash management, taking into account:

(*a*) the prevailing market conditions and cash volatility;

(*b*) the current credit facilities of the Government;

(*c*) the forecast of timely cash flows and cash reserves; and

(*d*) any other factors related to determining the appropriate liquidity buffer stock.

(2) The proposal referred to in sub-article (1) shall be updated at least every quarter and shall be approved by the Minister.

Decision on liquidity buffer stock.

56. The first decision with regard to the indicative liquidity buffer stock for cash management shall be taken within three months, at the latest, from the time this Act comes into force.

Responsibility for retaining liquidity buffer stock.

57. The Treasury Department shall be responsible for retaining the liquidity buffer stock by borrowing the necessary funds in time.

Sinking funds.

58. (1) The Minister may decide to form a sinking fund for the repayment of any loan and for the purpose to repurchase government debt securities already issued.

(2) In the case the Minister decides to establish a sinking fund for the repayment of any loan of the Government, there shall be

annual contributions in the said fund in accordance with the terms and conditions published, or any other agreement governing the said loan. The Minister shall appropriate out of the general revenue and assets of the Government of Malta a sum determined in accordance with the rate specified in the terms of the agreement or in any terms and conditions governing the said loan as contributions to the sinking fund established for the purpose of redeeming that loan and shall thereafter make a like timely appropriation up to the full repayment of the loan.

(3) The Minister may further authorise the appropriation, out of the general revenue and assets of the Government of Malta, of a contribution towards the sinking fund established specifically to repurchase loans already issued.

Investment of sinking fund.

59. (1) All moneys appropriated under article 58(2) as contributions to the sinking fund established for any loan shall be placed at interest or invested in such stocks or securities or in such other investment or classes of investments, including stocks or securities issued under the provisions of this Act, as the Minister may from time to time direct.

(2) The interest, dividends, bonus and other profit of any investment of any part of any sinking fund shall be placed at interest or invested as directed by the Minister so as to form part of the sinking fund in like manner as moneys appropriated under article 58(2) as contributions to the sinking fund.

Regulations of special sinking fund.

60. (1) The Minister may make regulations on how the special sinking fund may operate.

(2) The Minister may from time to time authorise changes to the regulations referred to in sub-article (1).

Cessation of contributions to sinking fund.

61. Notwithstanding anything to the contrary contained in this Act, if at any time the Accountant General is satisfied that the sinking fund of any loan raised under the provisions of this Act shall be sufficient with further accumulations of interest but without further payments of contributions, to enable the loan to be redeemed at the time fixed for its redemption, the Accountant General shall be authorised in such event to suspend further contributions to that sinking fund:

Provided, however, that the contributions to that sinking fund shall be recommenced if the Accountant General at any time is no longer satisfied that the sinking fund with further accumulations of interest shall be sufficient for the redemption of that loan.

Expenses to be paid out of sinking fund.

62. There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the investment and

management of that fund and the repayment of the loan for which that fund was established.

Deficiency in sinking fund to be a charge upon revenue.

63. Where no sinking fund is established or in the event of the sinking fund established for any loan under this Act being found, at the time fixed for the repayment of that loan, to be insufficient for such redemption, the loan shall be repaid or the deficiency shall be made good out of the general revenue and assets of the Government without any further appropriation other than this Act.

Part VI

Public Debt Management Directorate

Establishment of the Public Debt Management Directorate.

64. There shall be a Directorate known as the Debt Management Directorate, (hereinafter referred to as "the Directorate"), to perform the functions relating to the management of central Government debt and the borrowing of money under article 4 as entered into or issued in accordance with articles 19 and 24 of this Act and any other directions that may be given by the Minister under the provisions of this Act.

Management of the Directorate.

65. (1) The Directorate shall be established within the Treasury Department under the responsibility of the Minister for finance.

(2) The Directorate shall be under the management of a public officer who shall be known as the Director, Debt Management, hereinafter referred to as "the Director", and who shall be appointed by the Prime Minister.

Functions of the Directorate.

66. Detailed functions of the Directorate shall be made by regulations giving better effect to the provisions of article 64.

Duties and functions of the Director.

67. (1) The Director shall lead and manage the Directorate in the delivery of its key objectives and shall be in charge of the day- to-day management and operations of the Directorate. The Director shall be responsible and report to the Accountant General and shall perform such other duties in relation to the Directorate as may, from time to time, be assigned to him by the Permanent Secretary answerable to the Minister.

(2) The representation of the Directorate in legal and judicial proceedings shall lie in the Director.

Public Debt Management Advisory Committee.

68. (1) There shall be established a Committee, appointed by the Minister, to be known as the Public Debt Management Advisory Committee (in this Act referred to as "the Committee"), to assist and advise the Minister on matters relating to the management of public debt, the borrowing of money for the central Government and any other such matters as are referred to it

for that purpose by the Accountant General.

(2) The functions of the Committee in relation to the management of the public debt shall be to:

(*a*) advise the Minister on policy issues regarding debt management strategic options and risk management framework;

(*b*) monitor the implementation of the annual debt management strategy and borrowing plan approved by the Government for the current financial year;

(*c*) advise on an indicative issuance programme for government securities; and

(*d*) provide overall guidance to the Government borrowing programme.

Part VII

Cessation of liability and Prescription

Cessation of liability to pay interest.

69. (1) Where an amount has become payable on any date as interest due on any debt security or any debt instruments on which demand could lawfully have been made, no interest on that amount shall, after that date, be paid or payable by the Government to any other person in any circumstances.

(2) No person shall be entitled to claim interest on any government security or any debt instrument issued under this Act in respect of any period which has elapsed after the earliest date on which demand could lawfully have been made for the payment of the principal amount due on such securities or debt instruments.

Prescription.

70. Claims in respect of government securities or debt instruments issued under this Act shall become prescribed unless presented within six years from the maturity date of the respective government security or debt instrument issued.

Part VIII

General

Power of the Minister to make regulations.

71. The Minister may make regulations for the purpose of giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing may make regulations with respect to:

(*a*) the management of the public debt;

(*b*) a code of conduct (including conflict of interest

guidelines) for persons employed in the management of the public debt;

(*c*) the manner in which, and the conditions subject to which, monies may be raised and repaid, including the payment of interest;

(*d*) procedures for borrowing;

(*e*)* the issue of guarantees, including the terms and conditions subject to which guarantees may be given;

(*f*) the issue, administration, registration, transfer, redemption and payment of interest on and the holding of uncertified government securities and debt instruments;

(*g*) third-party rights in or over government securities and debt instruments;

(*h*) the keeping and maintenance of the Register and any other register required to be kept and maintained pursuant to this Act; and

(*i*) any other matter required by this Act to be prescribed.

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* Not yet in force.