

No.

Public Debt Management Act

2010

ACT

Supplement to the Sierra Leone Gazette Vol. CXLII, No. 13

dated 24th March, 2011

SIGNED this 14th day of March, 2011.

DR. ERNEST BAI KOROMA,
President.

LS

No. 2



2011

Sierra Leone

The Public Debt Management Act, 2011.

Short title.

**Being an Act to provide for the management of the public debt
of Sierra Leone and for other related matters.**

[24th March, 2011.] Date of commencement.

ENACTED by the President and Members of Parliament in this
present Parliament assembled.

PART I—PRELIMINARY

Interpretation. **1.** In this Act, unless the context otherwise requires—

“borrowing” means the procedures for creation of financial liabilities by conclusion of loan agreements, issuance of government securities and entering into supplier’s credit agreements;

Act No. 6 of 1991. “Constitution” means the Constitution of Sierra Leone, 1991;

“financial year” means the period beginning from the 1st of January to 31st December of the same year;

“Government guarantee” means an explicit undertaking by the Government to guarantee fulfillment of obligations for which the guarantee is issued; but does not include letters of intent, letters of comfort or similar letters;

“Government securities” includes, treasury bills, treasury bonds, bearer bonds, registered stocks and Government promissory notes;

Act No. 1 of 2004. “local council” means a local council established under the Local Government Act, 2004;

“Minister” means the Minister responsible for finance; and “Ministry” shall be construed accordingly;

“public debt” includes all financial liabilities created as a result of borrowing by the Government, local councils and public enterprises, and includes outstanding liabilities that have been securitized by issuance of Government securities;

“public enterprise” means any body corporate established by or under an Act of Parliament, and companies in which the Government has a majority shareholding; but does not include the Bank of Sierra Leone and financial institutions part or all of whose business is to lend or borrow money;

“supplier’s credit agreement” means an agreement whereby goods or services delivered or supplied to the Government are to be paid for at some future date extending beyond the end of the financial year within which the goods or services are delivered or supplied.

PART II—AUTHORISATION AND BORROWING PURPOSES

2. (1) Subject to section 118 of the Constitution, the Minister shall have sole authority to borrow money on behalf of Government by concluding loan agreements, issuing Government securities, or entering into supplier’s credit agreements and to issue Government guarantees, both in Sierra Leone and elsewhere and in local and foreign currencies.

Minister to borrow on behalf of Government.

(2) The Minister shall have sole authority to sign loan and supplier’s credit agreements for and on behalf of Government.

3. (1) The Government may borrow—

Borrowing purposes.

(a) to finance Government budget deficits;

(b) to maintain a credit balance on the treasury main account at a level determined by the Minister;

- (c) to provide such Government loans or credits to local councils, public enterprises and any other entity as may be approved by Parliament;
- (d) to honour obligations under outstanding Government guarantees;
- (e) to refinance outstanding debt or repay a loan prior to its date of repayment;
- (f) to immediately protect, mitigate or eliminate effects caused by a natural or environmental disaster or any other national emergency;
- (g) to replenish the international reserves;
- (h) to meet requests by the Bank of Sierra Leone to issue Government securities for the sole purpose of supporting monetary policy objectives; and
- (i) any other purpose as Parliament may by resolution, approve.

(2) Where Government borrowing is for any of the purposes stated in paragraph (f) of subsection (1), the Minister shall as soon as is practicable but in any event not later than ten working days after the conclusion of the borrowing, inform Parliament about the terms and conditions of the loan.

Moneys borrowed to be paid into Consolidated Fund.

4. All moneys raised under section 3 shall be paid into the Consolidated Fund and shall form part of it or shall be paid into some other public fund of Sierra Leone either existing or created for the purposes of the loan.

PART III—DEBT MANAGEMENT OBJECTIVES AND STRATEGY

5. The objectives of public debt management are to ensure that Government's financing needs and its payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk, and to promote development of the domestic debt market. Objectives of debt management.

6. (1) A medium term public debt management strategy shall be formulated annually on a rolling basis by the Minister and approved by Cabinet. Debt management strategy.

(2) The public debt management strategy shall be based on the objectives stated in section 5 and shall take into account-

- (a) the macroeconomic framework;
- (b) future borrowing requirements of Government;
- (c) market conditions; and
- (d) such other factors as may be relevant for the development of the strategy.

(3) The public debt management strategy shall include proposed guidelines or specified targets for acceptable risks in the debt portfolio, as well as planned measures to promote development of the domestic debt market.

(4) On the approval of the public debt management strategy, all Government borrowings and other debt management activities shall be undertaken in compliance with the strategy.

PART IV—PROCEDURES FOR BORROWING AND OTHER
DEBT MANAGEMENT OPERATIONS

Issuance of Government securities in Sierra Leone.

7. (1) The issuance of government securities in Sierra Leone for debt management purposes shall be by way of auction or such other method as the Minister shall approve.

(2) The sale of Government securities for debt management purposes by way of auction shall be effected in accordance with an auction calendar approved by the Minister.

(3) The auction calendar shall be published in advance and may include the auction date, type and tenor of securities and maximum amounts to be issued in the auction.

(4) The Minister shall have sole authority to accept on behalf of Government, bids submitted in an auction.

(5) Where Government securities are to be issued other than by auction, their terms and conditions shall be subject to the prior approval of the Minister.

Issuance of Government securities for monetary purposes.

8. (1) The proceeds of Government securities issued in support of monetary policy objectives shall be deposited in an account at the Bank of Sierra Leone and shall be used to redeem those securities only.

(2) Any cost to Government resulting from issuance of Government securities in support of monetary policy objectives shall be fully reimbursed by the Bank of Sierra Leone, unless the Minister directs otherwise.

Issuance of Government securities outside Sierra Leone.

9. (1) Subject to subsection (2), the issuance of Government securities outside Sierra Leone shall be in such mode as the Minister shall approve.

(2) The terms and conditions of securities issued outside Sierra Leone shall be subject to the approval of Parliament.

10. A loan agreement between Government and an international financial institution or a foreign government or other foreign creditor shall not come into operation unless its terms and conditions have been approved by Parliament.

Foreign loans.

11. The Minister may, with the consent of the lender and upon such terms and conditions as the Minister may determine—

Minister may repay, convert and consolidate loans.

(a) repay a loan prior to its date of repayment;

(b) renegotiate the terms and conditions of a loan;

(c) convert a loan from one form into another; or

(d) consolidate two or more loans into a single loan.

12. The Minister may, in consonance with the debt management objectives and an approved strategy, undertake portfolio management operations including swaps and other derivative transactions, buybacks and switches.

Debt management operations.

PART V—GOVERNMENT GUARANTEES

13. (1) Where the Minister is satisfied that it is in the public interest, he may on behalf of Government issue loan guarantees and other forms of guarantees for the benefit of any person, entity or project in such manner and on such terms and conditions as may be approved by Parliament.

Government guarantees.

(2) Prior to the issuance of any Government guarantee, the risk to Government for such guarantee shall be assessed.

(3) A beneficiary of a Government loan guarantee shall pay to Government such risk fee as the Minister shall determine unless Parliament resolves otherwise.

Beneficiary to reimburse all costs.

14. The beneficiary of a loan guarantee shall reimburse or pay Government, as the case may be, in such manner as the Minister shall direct—

- (a) all moneys paid by Government to fulfill the guarantee;
- (b) all expenses incurred by Government in relation to the guarantee; and
- (c) interest on all moneys paid by Government to fulfill the guarantee.

PART VI—GOVERNMENT LENDING

Government lending.

15. (1) Subject to section 118 of the Constitution, where the Minister is satisfied that it is in the public interest, he may on behalf of Government provide loans or credits to local councils, public enterprises and any other entity on such terms and conditions as may be approved by Parliament.

(2) Prior to extending a loan or credit pursuant to subsection (1), the risk to Government in providing such loan or credit shall be assessed.

PART VII—BORROWING BY LOCAL COUNCILS AND PUBLIC ENTERPRISES

16. (1) On the commencement of this Act, borrowing by local councils and public enterprises shall be in accordance with this Act and every provision in any enactment, including the articles and memorandum of association of companies, in existence immediately before such commencement relating to borrowing by local councils and public enterprises shall be read and construed with such modification as will enable effect to be given to the provisions of this Part.

Regulation of borrowing by local councils and public enterprises.

(2) Where there is a conflict between a provision in this Act and that of any other enactment, the provision in this Act prevails.

17. (1) Subject to this section, a local council may borrow funds only within Sierra Leone, and only up to such limit as may be determined by the Minister.

Borrowing by local councils.

(2) For the purposes of subsection (1), the Minister after consultation with the Minister responsible for local government shall prescribe an annual borrowing limit for each local council based on its capacity to repay and such other considerations as the Minister may determine.

(3) Notwithstanding subsection (1), a local council intending to borrow above the limit prescribed in subsection (2) shall obtain prior approval of the Minister through the Minister responsible for local government.

18. A local council shall submit to the Ministry a record of its borrowing not later than ten working days from the date of signing of a loan agreement or obtaining an overdraft, as the case may be, and shall upon request submit to the Ministry data on its total outstanding debt.

Local councils to submit data on borrowings.

Borrowing by public enterprises. **19.** (1) Subject to this section, a public enterprise may borrow funds within Sierra Leone up to such limit as may be determined by the Minister.

(2) All external borrowings of a public enterprise shall be subject to the prior approval of the Minister.

Public enterprise to submit data on borrowings. **20.** (1) A public enterprise shall submit to the Ministry a record of its outstanding debt and new borrowings including overdrafts not later than twenty working days after the end of every quarter.

(2) A public enterprise shall upon request, submit to the Minister such information or data on its outstanding debt and borrowing including overdrafts as he may specify.

PART VIII—REPORTING TO PARLIAMENT

Annual report. **21.** (1) Not later than three months after the end of the financial year, the Minister shall furnish Parliament with an annual report on Government debt management activities, guarantees and lending.

(2) The annual report shall include—

- (a) information on the debt management strategy and its rationale and how the strategy has been implemented over the course of the financial year;
- (b) information on the contribution of the debt management strategy and debt management activities in achieving the debt management objectives;
- (c) a list of all outstanding borrowing by Government;
- (d) a list of all outstanding lending including a classification of the loans according to their probability of default; and

(e) a list of all guarantees issued by Government including a classification of guarantees according to their probability of being called.

22. The Minister shall publish by Government Notice the terms and conditions of a loan for the information of the public.

Minister to publish information on loans.

PART IX—PUBLIC DEBT MANAGEMENT DIVISION

23. (1) There is hereby established within the Ministry, a Public Debt Management Division which shall, under the supervision of the Financial Secretary, be responsible for the conduct of debt management activities in connection with Government debt, lending and guarantees, local council debt and public enterprise debt.

Public Debt Management Division.

(2) The Division shall be headed by a Director who shall report to the Financial Secretary.

24. The functions of the Public Debt Management Division shall be—

Functions of the Public Debt Management Division.

- (a) to prepare an annual medium-term debt management strategy in accordance with section 6;
- (b) to prepare an annual borrowing plan;
- (c) to prepare the auction calendars referred to in section 7;
- (d) to participate in negotiations with creditors, and advise the Minister on all Government borrowings;

-
- (e) to assess the risks in issuing any guarantees, and prepare reports on the method used for each assessment and the results thereof for the attention of the Minister;
 - (f) to facilitate the recovery of any payments including interest and other costs incurred by Government due to the honoring of outstanding guarantees;
 - (g) to prepare annual reports on outstanding guarantees;
 - (h) to assess the credit risk in any lending, and prepare reports on the method used for each assessment and the results thereof for the attention of the Minister;
 - (i) to prepare annual reports on outstanding lending by Government;
 - (j) to process requests from local councils and public enterprises for borrowings pursuant to subsection (3) of section 17, in the case of local councils and subsection (2) of section 19 in the case of public enterprises;
 - (k) to monitor and keep track of debt levels of all local councils and public enterprises;
 - (l) to prepare annual reports on the debt of local councils and public enterprises;
 - (m) to keep timely, comprehensive and accurate records of outstanding Government debt, guarantees and lending in an appropriate database;

-
- (n) to advise on all debt servicing obligations of the Government;
 - (o) to prepare and publish debt statistical bulletins regularly;
 - (p) to prepare forecasts on Government debt servicing and disbursements as part of the yearly budget preparation;
 - (q) to store all original loan contracts and debt administration records in a safe place;
 - (r) to compile, verify and report on all Government domestic arrears and design a strategy for the settlement of those arrears;
 - (s) to maintain an inventory and facilitate the payment of share capital subscriptions to international financial institutions;
 - (t) to monitor that the disbursements of loans raised by Government are in accordance with agreed disbursement schedules;
 - (u) to prepare necessary securitization whenever it is deemed expedient that outstanding arrears or any other liability shall be settled by securitization;
 - (v) to perform such other functions as may be determined by the Minister.

PART X—MISCELLANEOUS

Power to delegate. **25.** (1) The Minister may delegate in writing any of his functions under this Act, to the Financial Secretary or to any other public officer, except the power to make regulations.

(2) The delegation of the function under subsection (1) shall not divest the Minister of the responsibility for the function or the exercise of any power hereunder.

Power to hire consultants, etc. **26.** The Minister may, where he considers it expedient to do so, hire or retain the services of such professionals, consultants, and experts, as may be necessary for the proper and effective performance of his functions under this Act.

Consequences of unauthorized loans. **27.** The Government shall not be bound by the terms of any loan contracted or purported to be contracted for or on its behalf by any person other than the Minister or a public officer, authorized in writing in that behalf, by the Minister.

Consequences of unauthorized guarantees. **28.** The Government shall not be bound by the terms of any guarantee issued in respect of any obligation otherwise than by or under the authority of the Minister.

Consequences of unauthorized financial transactions by local councils and public enterprises. **29.** The Government or a local council or public enterprise shall not be bound by the terms of a financial transaction which purports to bind a local council or a public enterprise to any future financial commitment where the transaction is entered into by any person otherwise than in accordance with this Act.

Exercise of borrowing powers. **30.** Where in any enactment a body or person is empowered to borrow money or contract a loan, that power shall only be exercised with the approval of the Minister and in accordance with this Act

Regulations. **31.** The Minister may, by statutory instrument make such regulations as he may consider necessary for the purpose of carrying into effect the provisions of this Act.

Passed in Parliament this 22nd day of February, in the year of our Lord two thousand and eleven.

VICTOR A. KAMARA,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR A. KAMARA,
Clerk of Parliament.