

## PUBLIC FINANCE (BORROWING POWERS) ACT 2008

### Principal Act

<b>Act. No. 2008-13</b>	<i>Commencement (LN. 2008/054)</i>	24.7.2008
	<i>Assent</i>	23.7.2008
Amending enactments	Relevant current provisions	Commencement date
Act. 2009-14	ss. 2, 3(1), (1)(i), (2)(v) & (4), 11, 12	26.3.2009

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AN ACT TO PROVIDE FOR THE RAISING OF LOANS BY THE GOVERNMENT OF GIBRALTAR FOR VARIOUS PURPOSES AND FOR MATTERS RELATING THERETO.

**Title and commencement.**

1.(1) This Act may be cited as the Public Finance (Borrowing Powers) Act 2008.

(2) This Act comes into operation on the day appointed by the Government and different days may be appointed for different provisions and for different purposes.

**Interpretation.**

2. In this Act, except in so far as the context otherwise requires—

“Minister” means the Minister with responsibility for Public Finance;

“Public Debt” means the principal sum of any debt arising from any borrowing of money by the Government the repayment of which the Government or the revenues of Gibraltar or the Consolidated Fund are liable under any law or under any agreement regulating or relating to such borrowing;

“Cash Reserves” means the total amount of cash held by the Government in the Consolidated Fund and the Improvement and Development Fund;

“Aggregate Public Debt” means the total amount of Public Debt owing by the Government;

“Net Public Debt” means the Aggregate Public Debt less the Cash Reserves;

“Gross Domestic Product” means the latest annual figure of Gibraltar’s Gross Domestic Product published by the Statistics Office of the Government of Gibraltar;

“Consolidated Fund Recurrent Annual Revenue” means the annual Recurrent Revenue of the Consolidated Fund for the financial year ended on 31st March last;

“Annual Debt Service Ratio” means the ratio of debt interest payments, over a full period of twelve months at interest rates applicable to

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Public Debt at that time, to the Consolidated Fund Recurrent Annual Revenue.

## Power to borrow.

3.(1) Subject to the provisions of this Act, the Government may, with the prior approval of the Minister, from time to time, in addition to any other sums of money that it is for the time being authorised to borrow under any law, borrow any sum or sums of money provided that the Government shall not draw down or incur any additional Public Debt nor without the leave of the House by Resolution draw on the Cash Reserves in manner that will cause—

- (i) the Net Public Debt after such borrowing or drawing to exceed the higher of £200,000,000 or the lower of—
  - (a) forty per cent of Gibraltar's Gross Domestic Product; or
  - (b) 80% of Consolidated Fund Recurrent Annual Revenue; or
- (ii) the Annual Debt Service Ratio to exceed 8%

(2) For the purposes of any person (including but without prejudice to the generality of the foregoing the lender of any Public Debt), a Certificate of the Financial Secretary shall be conclusive as to the level or extent at any time, or in respect of any specific period of time, of any of the following—

- (i) Aggregate Public Debt
- (ii) Gross Domestic Product;
- (iii) Consolidated Fund Recurrent Annual Revenue;
- (iv) Annual Debt Service Ratio;
- (v) Net Public Debt.

(3) Any sum of money to be borrowed by the Government under this Act may be borrowed in any one or more of the following ways, namely—

- (a) by the issue of registered debentures on subscription by the public or by any section of the public, or person; or
- (b) from any one or more other persons, on such terms as may be agreed between the Government and that person or persons.

(4) For the purpose of managing debt interest payments, the Government may from time to time, with the prior approval of the Minister, enter into interest rate swap agreements provided that the total notional principal sum under such swap agreements does not exceed the Aggregate Public Debt.

**Amount of debentures.**

4. Every debenture issued under this Act shall be a sum of £100 or any multiple thereof.

**Registration of debentures.**

5.(1) The Financial Secretary shall cause every debenture issued under this Act to be registered in a register to be kept for that purpose.

(2) The Financial Secretary shall cause a certificate of registration, in the prescribed form (if any) to be issued to the registered owner of every debenture issued under this Act.

**Transfers of debentures.**

6.(1) Every debenture issued under this Act shall be transferable by entry in the register.

(2) Every transfer shall be made in such manner and subject to such conditions, if any, as may be prescribed.

**Interest on debentures.**

7. All money that is raised on the issue of a debenture under this Act shall bear interest at such rate as may be specified in the prospectus inviting subscriptions for that debenture or otherwise specified in the instrument creating that debenture.

**Payment of interest on debentures.**

8. The interest on the principal money represented by each debenture issued under this Act shall run from the day named for the purpose in the debenture and shall be paid half-yearly, at the office of the Financial Secretary, on such dates as may be specified in the prospectus inviting subscriptions for that debenture or in respect of such other periods and on such other dates as may be specified in the instruments creating that debenture.

**Redemption of debentures.**

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9.(1) Every debenture issued under this Act shall be redeemable at par on such date as may be specified in the prospectus inviting subscriptions for that debenture or on such date or dates as may be specified in the instrument creating the debenture.

(2) From and after the date of redemption of any debenture issued under this Act all interest on the principal moneys represented by the debenture shall cease and determine, whether payment of the principal moneys shall have been demanded or not.

(3) Notwithstanding subsection (1), the Government may, at its option, redeem at par any debenture issued under this Act at any time before the date of redemption on giving not less than six months' notice of its intention so to do.

(4) Notwithstanding subsection (3) the Government may, in respect of a specific debenture or specific debentures exclude its right under that subsection.

(5) The Government may at any time—

- (a) redeem any debenture issued under this Act by purchase in the market; and
- (b) transfer any such debenture to any other person, at a price not less than that for which it purchased it and any debenture so transferred by the Government shall be subject to all the provisions of this Act relating to debentures.

## **Cancellation of debentures.**

10. On—

- (a) the repayment of the principal moneys represented by a debenture issued under this Act; or
- (b) the redemption of a debenture issued under this Act the debenture shall be delivered to the Financial Secretary who shall cancel and retain it for a period of five years.

## **Loan agreements and interest rate swap agreements.**

11. Every agreement referred to in sections 3(3)(b) and 3(4) shall be made in writing, in the name of the Government, and shall be signed on behalf of the Government by the Financial Secretary or by any person authorised in writing by the Minister for the purpose.

**Loan agreements and interest rate swap agreements to be tabled.**

12. Every agreement specified in section 11 shall be laid on the table of the Parliament at the next meeting of the Parliament commencing after the date on which the agreement is made.

**Application of money borrowed.**

13. All sums of money borrowed by the Government under this Act shall be applied and appropriated at the discretion of the Minister without further authority than this section, to—

- (a) the Consolidated Fund; or
- (b) the Improvement and Development Fund for development purposes; or
- (c) the repayment of any other Public Debt.

**Sinking funds.**

14.(1) The Financial Secretary may establish one or more sinking funds to provide for the repayment of any money borrowed under this Act, and for the payment of all interest and other charges payable on money so borrowed.

(2) Every fund so established shall be a special fund within the meaning of section 18 of the Public Finance (Control and Audit) Act.

(3) The Financial Secretary may from time to time transfer from the Consolidated Fund into any sinking fund established under this section, such amounts as he may think fit.

**Securities.**

15.(1) The Government may issue, in addition to debentures, any bonds, stock, promissory notes or other securities for the repayment of any money borrowed under this Act, on such terms and conditions (not being inconsistent with the terms on which the money has been borrowed) as it may determine.

(2) Any security issued under subsection (1) shall be issued in writing in the name of the Government of Gibraltar and shall be signed on behalf of the Government by the Financial Secretary or by any person authorised in writing by the Minister for the purpose.

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(3) All debentures and other securities issued under this Act, and all instruments of transfer or sale relating to such debentures and other securities, shall be exempt from stamp duty.

## **Validity of agreements and securities.**

16.(1) Notwithstanding anything contained in any other law, every agreement specified in section 11, and every debenture and other security issued under this Act, shall be valid and enforceable and shall have full force and effect according to their tenor.

(2) The provisions of this Act shall not affect or prejudice the recoverability by the lender of any moneys borrowed by the Government, nor the ability of the Government to pay interest thereon.

## **Interest and repayments to be charged on Consolidated Fund.**

17. All money borrowed under this Act, and all interest and other charges payable on money so borrowed pursuant to every debenture and to every agreement specified in section 11, and all money, interest and other charges payable under any other security issued under this Act, shall be charged upon and shall be payable out of the Consolidated Fund, without further appropriation than under this section.

## **Regulations.**

18.(1) The Minister responsible for finance may from time to time make regulations for all or any of the following purposes—

- (a) prescribing the form of debentures and other securities issued by the Government under this Act, and the manner in which they shall be issued;
- (b) providing for registers of securities issued under this Act and for the transfer of such securities;
- (c) providing for the exemption wholly or partly of any debenture, agreement or security made or issued under this Act or of any income derived by any person under any such debenture, agreement or security, from any tax, duty, charge or fee payable by law in respect of any such debenture, agreement, security or income;
- (d) for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

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(2) Regulations made under this Act may make different provision for different classes of security.

**Saving.**

19. Nothing in this Act shall be construed as derogating from any other lawful power of the Government to borrow money or to issue securities.

**Repeal.**

20. The Borrowing Powers Act, 1988 is repealed.