Chapter 4

Government Borrowing and Management of Public Debt Act, 2017

Introduction

The year 2017 marked an important milestone in the legislation regarding public finances, with the passing of new legislation in July entitled **Government Borrowing and Management of Public Debt Act, 2017** (Act No XXII – CAP 575). All the provisions of the Act came into force as from 1 September 2017 with the exception of certain articles (see Table 4.1).

This Act consolidated and rationalised different pieces of legislation related to Government borrowing, such as the Malta Treasury Bills Act, 1952, the Local Loans (Registered Stock and Securities) Ordinance, 1959, and the Development Loan Acts of 1971 and 1972. This legislation also introduced new features that were not covered by the previous legal framework, such as in relation to Government guarantees. The aim of the Act is to contribute to a stronger governance system, as well as more transparency and prudency in terms of the management of Government debt, its cash position and liquidity and the reserve funds.

Table 4.1 Legislative process for the enactment of the Act

Date	Details
24 June 2017	The Minister for Finance presented Motion Number 10 allowing for the first reading of the Government Borrowing and Management of Public Debt Bill.
28 June 2017	The first reading was held during sitting number 6 of the plenary session of the Parliament.
18 July 2017	The second and third readings were held through sitting number 19 of the plenary session of the Parliament.
19 July 2017	Act No. XX11 of 2017, entitled the Government Borrowing and Management of Public Debt Act, 2017, was published by means of a notification in the Government Gazette.
1 September 2017	Through Legal Notice 216 of 2017, the Minister for Finance has brought into force all the provisions of this Act, with the exclusion of articles 40 to 52 as well as paragraph (e) of article 71 which shall come into force at a future date to be established by the Minister for Finance.

Source: Parliament of Malta

Main features of the Act

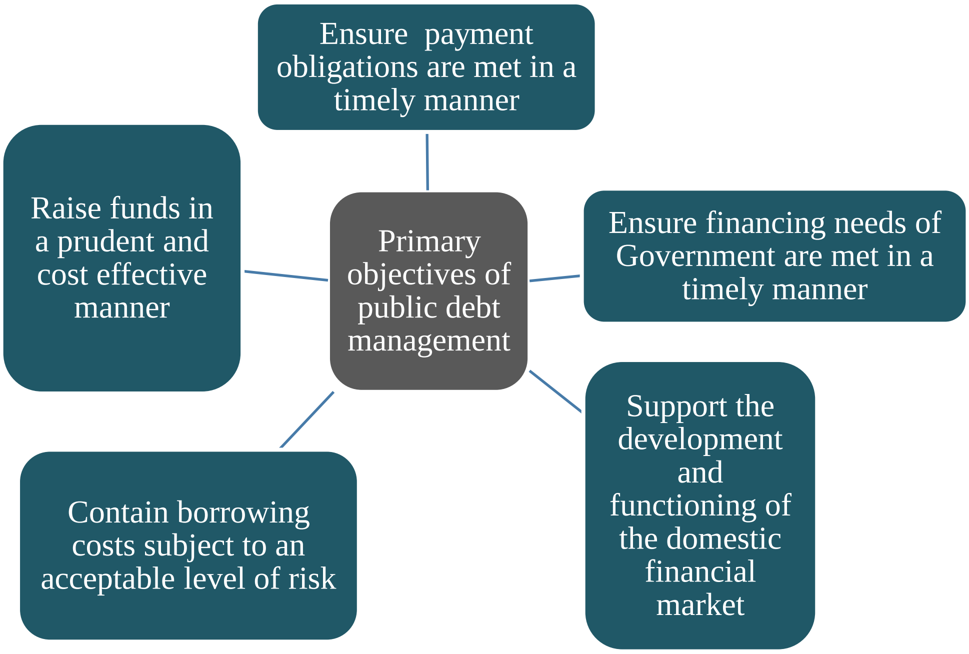
The salient characteristics of this new legislation are illustrated in Table 4.2 which lists some of the key articles of the Act, whose content is further elaborated in Diagram 4.1 and Tables 4.3 to 4.6.

Table 4.2 Specific key articles of the Act

Article number	Focus	Reference diagram / table
7	Underscores the primary objectives of public debt management in Malta	4.1
8	Specifies the reasons which permit the Minister for Finance to borrow funds	4.3
16 - 17	Sets out the requirements for a medium-term debt strategy	4.4
40 - 52	Sets out the requirements for the issuance of Government guarantees	4.5
68	Outlines the functions of the Public Debt Management Advisory Committee	4.6

Source: Government Borrowing and Management of Public Debt Act, 2017

Diagram 4.1 Primary objectives of public debt management in Malta



Source: Article 7, Government Borrowing and Management of Public Debt Act, 2017

Table 4.3 Permitted borrowing by Government

To finance the fiscal deficit
To maintain adequate liquidity and meet liquidity requirements
To form sinking funds
To finance prepayments of debt or future borrowing requirements
To fulfil financial obligations generating from Government guarantees
To refinance outstanding loans
To effect portfolio changes
To finance specific lending operations by the Government which are supported by a resolution or Act of Parliament
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
To directly protect the economy of Malta
To finance any other expenditure as the Minister may authorise from time to time

Source: Article 8, Government Borrowing and Management of Public Debt Act, 2017

Table 4.4 Features of the medium-term debt strategy

Is prepared annually with a minimum of a three-year rolling basis (that is, the current year and the two subsequent years).	Specifies underlying assumptions used to prepare the strategy.
Is recommended by the Public Debt Management Advisory Committee and approved by the Minister for Finance before being tabled in the House of Representatives.	Must be approved by the Minister for Finance no later than two weeks following the approval of the Government's medium-term fiscal strategy.
Takes into account future borrowing needs of Government.	Takes into account the medium-term outlook regarding macroeconomic and financial conditions and of exposure to possible shocks.

Source: Article 16, Government Borrowing and Management of Public Debt Act, 2017

One of the most important innovative features of this new legislation is Part V which deals with Government guarantees. To date, the Government's contingent liabilities were broadly governed by administrative controls rather than legislation. Thus, the new provisions will fill a very significant gap in the legislative framework regarding public finances. However, the relative articles 40 to 52 have not yet come into force, pending the finalisation of the necessary technical procedures.

The new legislation specifies that the Government, through the Minister for Finance, may provide financial guarantees to a third party for the benefit of the economy in Malta. 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. The Treasury Department shall assess requests related to guarantees for the consideration of the Minister, accompanied by a specific statement regarding the assessment of the associated risks (see Table 4.5).

Table 4.5 Statement details in relation to Government guarantees

The Treasury must provide:
• 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 • an assessment of the financial risk for the Government stemming from the total outstanding amount in respect of all other guaranteed loans

Source: Article 46, Government Borrowing and Management of Public Debt Act, 2017

"To manage guarantees effectively, governments need to have a complete understanding of their portfolio of guarantees and associated risks; develop tools and techniques for evaluating guarantee proposals; consider appropriate risk mitigation measures; and adopt suitable budgeting, accounting, and disclosure practices."

IMF (2017)
How to Strengthen the Management of Government Guarantees

The Act specifies that the ceilings on the issuance of Government guarantees shall be based on the medium term fiscal policy statement for the forthcoming budget year and two further years. The ceilings are conditional on the revenue forecasts and must be consistent with the fiscal rules as specified in the Fiscal Responsibility Act. The ceiling on government guarantees for the forthcoming budget year shall be included in the Budget Measures Implementation Act.

Table 4.6 Functions of the Public Debt Management Advisory Committee

Advise the Minister for Finance on policy issues regarding debt management strategic options and risk management framework.	Monitor the implementation of the annual debt management strategy and borrowing plan approved by the Government for the current financial year.
Advise on an indicative issuance programme for government securities.	Provide overall guidance to the Government borrowing programme.

Source: Article 68, Government Borrowing and Management of Public Debt Act, 2017

The MFAC's opinion regarding the Act

The Council welcomes this Act as it has many positive features. Besides contributing to consolidate and rationalise different pieces of legislation governing Government borrowing, the Act also provides for modern day exigencies of debt management that were not covered by the previous legislative framework. These include portfolio management operations such as repurchase and reverse repurchase transactions and securities lending.

More significantly, the Act introduces important measures that should contribute to a stronger governance system, better planning and more transparency. In particular, the Council notes with satisfaction the introduction of a more effective framework governing the issuance of Government guarantees, thereby facilitating better controls on the Government's outstanding contingent liabilities. As had been highlighted in an article on Fiscal Risks in the MFAC's 2016 Annual Report, the Government's contingent liabilities represent an additional risk to Malta's public finances, due to the marked sectoral concentration of Government guarantees and the relatively high level of such guarantees in proportion to GDP. Therefore, the Council considers the introduction of new legislation to govern guarantees as highly instrumental to contribute to a more robust fiscal governance mechanism. The MFAC therefore would like to encourage the Authorities to bring into force all the articles dealing with Government guarantees as early as possible.

The Council also notes favourably the new role being assumed by the Treasury Department in terms of the Act to monitor more closely the situation regarding Government guarantees and to prepare risk management assessments in connection with such guarantees. The strengthening of the cash and reserve management operations within the Treasury Department is another positive development. Also noteworthy is the thrust being given by the new legislation whereby the Government's borrowing operations should be viewed within the context of a medium-term debt strategy.

The Council also considers positively the upgrading of the institutional status of the Debt Management function by providing a legal basis to both the Public Debt Management Directorate and the Public Debt Management Advisory Committee.

MFAC recommendations regarding the Act

While the MFAC views the Act as a highly positive development within the context of enhancing the fiscal governance framework, it feels that certain aspects of the legislation may need some additional clarification and could also possibly benefit from some slight legislative fine-tuning in due course, when the Act comes up for review. More specifically, the Council would like to present the following comments and proposals for the consideration of the Ministry for Finance.

(i) Article 8 of the Act authorises the Minister to borrow funds for two types of on-lending operations, namely lending operations in terms of Article 8(d) in accordance with Article 53, or lending operations of “small amounts for the benefit of the Maltese economy and society” in terms of Article 8(e). Whereas according to Article 8(d) operations are subject to express authorisations in terms of specific Resolutions or Acts of Parliament, it will be useful to clarify what sort of administrative controls will be in place in respect of Article (e) operations to ensure proper governance and adequate transparency.

(ii) Article 8(i) authorises the Minister to borrow funds “*to directly protect the economy of Malta*”. This term appears to be somewhat too open ended. It is suggested to provide some additional clarification regarding the context where this sub-article could possibly be triggered off, such as in exceptional circumstances.

(iii) Article 12 provides that the limit on the debt burden (as specified in the Fiscal Responsibility Act) “*may not be met only as a result of exceptional circumstances*”. It is suggested to clarify the meaning of “*exceptional circumstances*”, such as by providing that “*exceptional circumstances*” would have the same meaning as in Article 2(1) of the Fiscal Responsibility Act.

(iv) Article 12 provides that in exceptional circumstances the debt burden limit may not be met. It would be useful to clarify what control mechanism will be in place to govern the amount by which the debt burden limit may not be met, for instance by qualifying that failure to meet the limit will not endanger fiscal sustainability in the medium term. The latter qualification would be reflecting the same principle that is specified in Article 8(4)(b) of the Fiscal Responsibility Act, and would thereby provide for greater clarity and better safeguards to fiscal soundness.

(v) Article 18(3) provides that the Government's annual borrowing plan shall include "*an indicative quarterly calendar for domestic market issuance of Government securities with maturities of more than one year.*" Currently the annual issuance calendar published by the Treasury Department also makes a reference to the Treasury Bill issuance programme. Moreover, the Treasury Department currently publishes on a monthly basis a calendar of weekly auctions of Treasury Bills showing the tenor, the auction date as well as the issue and settlement dates. The regular publication of this Treasury Bill calendar has proved very useful for money market participants. It is therefore suggested to include a reference also to a Treasury Bill issuance calendar in Article 18(3). For the same reasons, it is suggested to delete the words "with the exception of Treasury Bills" in Article 26(1).

(vi) Article 27 provides that the Treasury Department shall have the power to accept or reject tenders "*related to local market issuances*". This text might give the impression that such power of the Treasury Department to accept or reject tenders would be applicable only to local issuances and would not be available in the case of international issuance. It is suggested to clarify the position in order to facilitate that the Treasury Department would have sufficient flexibility in respect of all types of issuances, thereby also ensuring a level playing field.

(vii) Article 43(3) provides that "*the ceiling on government guarantees for the forthcoming budget year shall be included in the Budget Measures Implementation Act.*" While this is a welcome additional control mechanism, the Council would like to suggest that the way in which the guarantee ceilings will operate can be further clarified. In particular, it would be desirable to introduce a legally binding ceiling on the overall stock of outstanding guarantees to instil more discipline and greater commitment to keep within prudent exposure limits. This would foster stronger fiscal sustainability over the medium-term.

(viii) Article 48(1) provides that the Minister shall disclose the stock of outstanding guarantees at the time of the annual budget. It is suggested that this disclosure would include a full list of all the individual outstanding Government guarantees and letters of comfort and the relevant information rather than just one figure for the overall amount of outstanding guarantees.

(ix) Article 58 provides for the creation of sinking funds for the repayment of loans and the repurchase of debt securities. The Council would like to suggest that, in the event that an undue level of risk is identified on the basis of the risk assessment exercise conducted by the Treasury Department regarding Government guarantees in terms of Article 49, additional appropriations may be made by the Minister to the Contingency Reserve established in terms of Article 31 of the Fiscal Responsibility Act as a precautionary fiscal buffer.

(x) Article 60(1) refers to "*the special sinking fund*". It is suggested to clarify why the sinking fund under article 60(1) is being called "special" and whether the nature of this sinking fund is different from the sinking funds referred to in article 58 of the Act.

(xi) Article 68 provides for the establishment of the Public Debt Management Advisory Committee. The Council would like to suggest that the composition of this Committee would also be specified in the Act to ensure better accountability and transparency.

The Council would like to invite the Authorities to take the above proposals into consideration and in due course to study the possibility of legislative amendments at the opportune time in the future when the Act comes up for review.