

TITLE 11 - FINANCE
CHAPTER 10 - FISCAL RESPONSIBILITY AND DEBT MANAGEMENT ACT
2020



Republic of the Marshall Islands
JepilpilinKeEjukaan

FISCAL RESPONSIBILITY AND DEBT MANAGEMENT
ACT 2020

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FISCAL RESPONSIBILITY AND DEBT MANAGEMENT
ACT 2020

AN ACT to provide for enhanced fiscal responsibility and debt management, and for related matters.

Commencement:

May 1, 2016

Source:

P.L. 2020-30

§1001. Short title.

This Act may be cited as the Fiscal Responsibility and Debt Management Act 2020.

§1002. Interpretation.

(1) In this Act,

“**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;

“**budget circular**” means the information circular created in the manner prescribed, that is issued in the second quarter of the current fiscal year that entails budget ceilings in accordance with Government priorities and available financial resources and includes the Government’s current and future looking economic and financial outlook;

“**debt**” means all financial liabilities created as a result of borrowing by the Government and state-owned enterprise and includes outstanding liabilities as a result of the issuance of Government securities;

“**financial year**” means the period beginning from the 1st of October in one year to 30th of September of the next year;

“**General Fund**” means the fund created under Article VIII Section 3 of the Constitution of the Government;

“**Government**” means the Government of the Republic of the Marshall Islands;

“**long-term**” means more than five years;

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

“**Government securities**” includes, where applicable, treasury bills, treasury bonds, bearer bonds, registered stocks, Government promissory notes and such other securities as may be prescribed;

“**loan**” means any form of financial credit for goods or services, granted to or on behalf of the Government or to a state-owned enterprise;

“**medium-term**” means three to five years;

“**medium-term budget investment framework**” means a “medium-term budget investment framework” within the meaning of Article V of Title X of The Compact of Free Association agreement between the United States of America and the Marshall Islands amending the Agreement of June 25, 1983 concerning the Compact of Free Association as amended, Majuro April 30, 2003;

“**Minister**” means the Minister of Finance or such person acting as designee of the Minister of Finance;

“**Ministry**” means the Ministry of Finance as created pursuant to s. 105 of the *Financial Management Act*;

“**prescribed**” means prescribed by the regulations;

“**regulations**” means the regulations made under this Act;

“**Secretary**” means the Secretary of Finance or such person acting as designee of the Secretary of Finance;

“**short-term**” means one to three years;

“**state-owned enterprise**” means a state-owned enterprise within the meaning of the State-Owned Enterprises Act 2015;

“**statement of responsibility**” means a statement that is in such form and meets such criteria as is prescribed;

“**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;

“**U.S. GAAP**” means generally accepted accounting principles promulgated by the U.S. Governmental Accounting Standards Board [GASB].

PART I – FISCAL RESPONSIBILITY

§1003. Principles of responsible fiscal management.

- (1) The Government shall pursue its policy objectives in accordance with the following principles of responsible fiscal management:
 - (a) reducing total debt to levels that will provide a buffer against factors that may impact adversely on the level of total debt in the future by ensuring that, until those levels have been achieved, total operating expenses in each financial year are less than total operating revenues in the same financial year;
 - (b) once levels of total debt have been reduced to provide a buffer, maintaining those levels by ensuring that, on average, over a reasonable period of time in the circumstances, total operating expenses do not exceed total operating revenues;
 - (c) achieving and maintaining levels of total net worth that provide a buffer against factors that may impact adversely on total net worth in the future;
 - (d) managing the fiscal risks facing the Government;

- (e) pursuing policies that, in the circumstances, are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years; and
 - (f) ensuring compliance by establishing monitoring and reporting mechanisms.
- (2) Despite subsection (1), the Government may depart from the principles of responsible fiscal management if the departure from those principles is temporary in the circumstances and meets the criteria prescribed.
- (3) In managing the fiscal risks facing the Government, the Government shall ensure that the budget and fiscal strategy of the Government are within such debt limits and targets as may be prescribed.

§1004. Generally accepted accounting principles.

All financial statements and forecast financial statements included in reports and updates required under this Act shall be prepared in accordance with U.S. GAAP.

§1005. Economic policy statement.

- (1) The Minister shall present to the Nitijela for each financial year, an economic policy statement, that sets out the Government's fiscal strategy for that year and that includes an economic and fiscal update prepared by the Ministry, in such manner and with such content as may be prescribed.
- (2) The Minister shall present the economic policy statement and the Budget for the financial year to which the statement relates at the same time.
- (3) The economic policy statement shall:
- (a) state the Government's medium-term objectives for fiscal policy and, in particular, for the following variables:
 - (i) total operating expenses;
 - (ii) total operating revenues;
 - (iii) the level of total debt;
 - (iv) the level of total net worth;

- (b) explain how the medium-term objectives accord with the principles of responsible fiscal management;
 - (c) state the period to which the medium-term objectives relate commencing with the financial year to which the economic policy statement relates;
 - (d) indicate whether the medium-term budget investment framework is consistent with such long-term fiscal strategy and other matters that may be prescribed; and
 - (e) contain a risk analysis of the consequences of not following the principles of fiscal responsibility and debt management.
- (4) In addition to the requirements of subsection (1), an economic policy statement shall contain the following elements:
- (i) The budget circular.
 - (ii) An annual economic and fiscal update, including economic and fiscal forecasts, a statement of tax policy, and key assumptions under which the budget was formulated.
 - (iii) If a long-term fiscal strategy has been prescribed, an annual budget statement evaluating the targets of the long-term fiscal strategy with an assessment of the achievement of the principles of fiscal responsibility, presented at the time of budget delivery.
 - (iv) If a long-term fiscal strategy has been prescribed, a fiscal envelope developed as a result of the long-term strategy, on an annual basis.
 - (v) such other elements as may be prescribed.
- (5) The economic and fiscal update shall:
- (a) contain economic and fiscal forecasts that relate to-
 - (i) the financial year to which the update relates; and
 - (ii) each of the next three financial years;
 - (b) contain a statement of tax policy; and
 - (c) be accompanied by a statement of responsibility.
- (6) When producing the economic policy statement, the medium-term objectives from the current economic policy statement shall be

assessed to determine if they are consistent with the medium-term objectives set out in the previous years' economic policy statement.

- (7) Where the objectives are inconsistent, the economic policy statement should set out where it is inconsistent and provide reasons therefore and propose corrective action.

§1006. Economic forecasts.

- (1) The economic forecasts contained in the economic and fiscal update prepared under this Act shall, for each of the 3 financial years to which they relate, include forecasts of movements in Republic of the Marshall Islands in relation to:
 - (a) gross domestic product (including the major components of gross domestic product);
 - (b) consumer prices;
 - (c) unemployment and employment; and
 - (d) current account position of the balance of payments.
- (2) The economic forecasts shall also include a statement of all significant assumptions underlying the forecasts indicated in the medium-term budget investment framework.

§1007. Fiscal forecasts.

- (1) The fiscal forecasts contained in the economic and fiscal update prepared under this Act shall, for each of the 3 financial years to which they relate, include forecast financial statements.
- (2) In addition to the forecast financial statements, the fiscal forecasts shall include:
 - (a) a statement of borrowings that reflects the forecast borrowing activities for each of those financial years;
 - (b) any other statements that are necessary to fairly reflect-
 - (i) the forecast financial operations for each of those financial years; and
 - (ii) the forecast financial position at the end of each of those financial years.

- (3) The fiscal forecasts shall also include:
 - (a) a statement of the Government's net position from the most recent annual audited financial statements of the Government;
 - (b) in relation to each forecast financial statement, comparative budgeted and estimated actual figures for the previous two financial years immediately before the current financial and for the three years following the current financial year;
 - (c) a statement of all significant assumptions underlying the fiscal forecasts; and
 - (d) a statement that shows the sensitivity of the fiscal forecasts to changes in economic conditions.

§1008. Presentation of Economic policy statement.

- (1) The Minister shall present to the Nitijela an economic policy statement:
 - (a) not later than 31 August in each financial year; or
 - (b) if the Nitijela is not in session on 31 August and an economic policy statement has not been presented in that financial year, as soon as possible after the commencement of the next session of the Nitijela.
- (2) The economic policy statement shall, for the financial year commencing on 1 October after the statement is presented, state the broad strategic priorities by which the Government will be guided in preparing the Budget for that financial year, including:
 - (a) the overarching policy goals that will guide the Government's Budget decisions;
 - (b) the policy areas that the Government will focus on in that year; and
 - (c) how the Budget for that year accords with the Government's intentions referred to in the most recent fiscal strategy report or the amended Government's intentions under subsection (3).
- (3) The economic policy statement shall, if the Government's intentions have changed from those indicated in the most recent fiscal strategy report, indicate those amended intentions and explain how they accord with the principles of responsible fiscal management and the

medium-term objectives in the most recent fiscal strategy report or the Government's amended medium-term objectives.

§1009. Statement on long-term fiscal strategy.

- (1) If a long-term fiscal strategy has been prescribed, the Ministry shall prepare a statement on the long-term fiscal strategy of the Government and present it to the Nitijela with the budget.
- (2) The strategy shall set out all significant assumptions underlying any projections included in the strategy.
- (3) The Ministry shall update the long-term fiscal strategy every 4 years unless there is a significant economic event to necessitate the strategy being updated before 4 years.
- (4) The long-term fiscal strategy shall accompany the annual budget statement for that year and the budget statement shall indicate whether it aligns with the long-term fiscal strategy, and if not, how it differs and why.

§1010. Annual statement of tax policy.

If the economic and fiscal update contains a statement of tax policy, the statement of tax policy shall set out:

- (a) a summary and quantitative assessment of tax policy that has resulted in any material change to the tax revenue forecasts for the financial year to which the update relates and at least the next three financial years; and
- (b) the basis for determining whether or not a particular tax policy should be included in that summary.

§1011. Half-year economic update.

- (1) The Minister shall, not earlier than January 1 nor later than March 31 in each financial year:
 - (a) arrange to be published a half-year economic update prepared by the Ministry; and
 - (b) present the update to the Nitijela.
- (2) If a half-year economic update has not been presented by April 30 in a financial year because Nitijela has not been in session since the date

that the update was published, the Minister shall present the half-year economic update as soon as possible after the next meeting of Nitijela.

§1012. Disclosure of policy decisions and other circumstances that may influence future fiscal situation.

- (1) An economic and fiscal statement prepared under this Act shall incorporate, to the fullest extent possible that is consistent with the limits on Government disclosure requirements, all Government decisions and all other circumstances that may have a material effect on the fiscal and economic outlook.
- (2) If the fiscal implications of Government decisions and other circumstances referred to in subsection (1) can be quantified for particular years with reasonable certainty by the day on which the forecast financial statements are finalized, the quantified fiscal implications of those Government decisions and other circumstances shall be included in the forecast financial statements.
- (3) If the fiscal implications of Government decisions and other circumstances referred to in subsection (1) cannot be quantified for or assigned to particular years with reasonable certainty by the day on which the forecast financial statements are finalized, those Government decisions and other circumstances shall be disclosed in the statement of specific fiscal risks of the Government required under this Act.

§1013. Limits on disclosure requirements

Disclosure of policy decisions do not apply to a decision, circumstance, or statement if the Minister determines that:

- (1) to incorporate that decision, circumstance, or statement in an economic and fiscal update is likely to:
 - (a) prejudice the substantial economic interests of Republic of the Marshall Islands;
 - (b) prejudice the security or defence of Republic of the Marshall Islands or the international relations of the Government;

- (c) compromise the Government in a material way in negotiation, litigation, or commercial activity; or
 - (d) result in material loss of value to the Government; and
- (2) there is no reasonable or prudent way the Government can avoid this prejudice, compromise, or material loss,
- (a) in the case of a circumstance, by making a decision before the day on which the forecast financial statements are finalized;
 - (b) in the case of a decision or circumstance, by incorporating in the update the fiscal implications of that decision or circumstance, or the nature of that decision or circumstance, but without reference to its fiscal implications; or
 - (c) in the case of a statement, by incorporating that statement in the update.

§1014. Publication of statements and updates on website in advance of presentation to Nitijela

The Minister may arrange for an economic policy statement or a half-year economic update required under this Act to be posted on the Ministry website in advance of their being presented to the Nitijela.

§1015. Notification and availability of reports, statements, or updates

The Minister, or as the case requires, the Secretary, shall arrange to be posted on the Ministry website such notices as may be prescribed.

§1016. Power of Secretary to obtain information

- (1) The Secretary may request any department or any entity that manages an asset or liability of the Government, to supply to the Secretary any information that is necessary to enable the preparation of any fiscal forecasts and projections required under this Act.
- (2) A request under this section,
 - (a) shall be in writing; and
 - (b) may state the date by which, and the manner in which, the information requested shall be provided.
- (3) If a date is stated in a request, that date shall be reasonable having regard to the time limits prescribed by this Act for presenting to the

Nitijela, or for publishing, the report or update for which the information is being requested.

- (4) A department or entity to whom the request is made shall comply with the request.
- (5) A department or entity not in compliance shall result in the Attorney-General utilizing his authority under Section 609 of the Office of the Attorney-General Act of 2002.

PART II - DEBT MANAGEMENT

AUTHORIZATION AND BORROWING PURPOSES

§1017. Borrowing purposes.

- (1) The Government may borrow:
 - (a) to finance Government budget deficits;
 - (b) to maintain a credit balance on the General Fund at a level determined by the Minister;
 - (c) to provide such Government loans or credits to state-owned enterprises as may be approved by the Nitijela;
 - (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; and
 - (g) any other purpose as the Nitijela may by resolution approve.
- (2) Where Government borrowing is for any of the purposes stated in paragraph (1) (f), the Minister shall as soon as is practicable after the conclusion of the borrowing, inform the Nitijela about the terms and conditions of the loan at any time when is in session.

§1018. Minister to borrow on behalf of Government

- (1) The Minister shall have 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 the Republic of the Marshall Islands and elsewhere and in local and foreign currencies with the approval of the Cabinet.
- (2) The Minister shall have authority to sign loan and supplier's credit agreements for and on behalf of Government with the approval of the Cabinet.
- (3) All instruments for a loan under this Chapter shall, prior to their execution by the Minister, be approved by the Attorney-General and the Secretary of Finance.

LOANS AND GOVERNMENT DEBT**§1019. Minister shall report on proposed new government debt**

- (1) Before the Government binds itself under any agreement in relation to proposed new debt, the Minister shall provide to the Cabinet a report on the proposal that includes information on the following matters:
 - (a) how the proposed new debt fits within the current economic, financial, or fiscal policies of the Government provided and publicised for the purposes of, and in accordance with, the Act, including any relating to loans and securities;
 - (b) amortisation estimates;
 - (c) how the service burden over the life of the proposed new debt will affect the Government's overall financial well-being; and
 - (d) an assessment of the sustainability of overall government debt, taking into account the proposed new debt.
- (2) The Minister shall provide a summary of the report to the Nitijela and the Public Accounts Committee.
- (3) A summary of the report shall be posted on the Ministry website and be made available for inspection by the public free of charge.

- (4) Where the Government is the guarantor of a loan, the Minister shall, prior to the issuance of a Government guarantee, determine the viability of the loan, taking into account the following matters:
 - (a) the level of risk associated with the guarantee;
 - (b) the financial well-being of the party in whose favour the guarantee is granted; and
 - (c) the relevant financial planning and business management documents of the party in whose favour the guarantee is granted.

§1020. Debt service requirements.

In determining the debt service requirements for a loan, the Secretary shall advise the Minister and take into account the following matters:

- (a) calculation of the contribution shall reflect the amortization of existing government debt;
- (b) calculation of the contribution shall reflect estimates of the amortization of proposed new debt; and
- (c) where government debt is payable in foreign currency, calculation of the contribution shall reflect an amount that the Secretary considers sufficient to offset fluctuations in exchange rates.

§1021. Moneys borrowed to be paid into or out of General Fund.

- (1) All moneys raised under this Part shall be paid into the General Fund.
- (2) All sums relating to the following matters shall be paid out of the General Fund;
 - (a) sums under an agreement relating to a loan to the Government;
 - (b) sums in terms of a guarantee relating to a loan to a public corporation; and
 - (c) sums under any contract, bond or promissory note or other document executed pursuant to such agreement or guarantee.

- (3) The Secretary shall maintain proper accounts and records in the General Fund or other designated fund relating to each loan raised under this Part.

DEBT MANAGEMENT OBJECTIVES AND STRATEGY

§1022. Objectives of debt management.

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.

§1023. Debt management strategy.

- (1) A medium-term public debt management strategy shall be formulated annually on a rolling basis by the Minister and approved by Cabinet.
- (2) The public debt management strategy shall be based on the objectives of debt management approved by Cabinet 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.
- (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.

GOVERNMENT GUARANTEES

§1024. Government guarantees.

- (1) Where the Minister is satisfied that it is in the public interest, the Minister may on behalf of Government issue loan guarantees and other forms of guarantees for the benefit of any entity or project in such manner and on such terms and conditions as may be approved by the Nitijela.
- (2) Where the Government is the guarantor of a loan, the Minister shall, prior to the issuance of a Government guarantee, determine the viability of the loan, taking into account the following matters-
 - (a) the level of risk associated with the guarantee;
 - (b) the financial well-being of the party in whose favour the guarantee is granted; and
 - (c) the relevant financial planning and business management documents of the party in whose favour the guarantee is granted.

§1025. Beneficiary to reimburse all costs.

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

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

BORROWING BY STATE-OWNED ENTERPRISES

§1026. Borrowing by state-owned enterprises.

- (1) On the commencement of this Act, borrowing by state-owned 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 state-owned enterprises

shall be read and construed with such modification as will enable effect to be given to the provisions of this Part.

- (2) A state-owned enterprise may borrow funds within the Republic of the Marshall Islands up to such limit as may be determined by the Minister with the approval of the Cabinet.
- (3) All external borrowings of a state-owned enterprise shall be subject to the prior approval of the Minister.

§1027. State-owned enterprise to submit data on borrowings.

- (1) A state-owned 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 state-owned enterprise shall upon request, submit to the Minister such information or data on its outstanding debt and borrowing including overdrafts as the Minister may specify or as is prescribed.

REPORTING TO NITIJELA

§1028. Annual report.

- (1) The Minister shall furnish the Nitijela with an annual report on Government debt management activities, guarantees and lending not later than six months after the end of the financial year.
- (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, the terms of the loans, whether the loans are guaranteed and the probability of their default; and

- (e) such matters as the Cabinet considers necessary or desirable to clarify or explain the contents of the report or such matters as may be prescribed.

§1029. Minister to publish information on loans.

- (1) The terms and conditions of Government loans shall be posted on the Ministry website and be made available for inspection by the public free of charge.
- (2) Where matters referred to in this Part are required to be posted on the Ministry website the website shall indicate where copies of the matter are available for inspection by members of the public.

PUBLIC DEBT MANAGEMENT

§1030. Debt management by Ministry.

- (1) The Ministry shall, under the supervision of the Secretary of Finance, be responsible for the conduct of debt management activities in connection with Government debt, lending and guarantees, and state-owned enterprise debt.
- (2) The functions of the Ministry in regards to debt management shall be those functions that are prescribed.

MISCELLANEOUS

§1031. Power to delegate.

- (1) The Minister may delegate in writing any of the Minister's functions under this Act, to the Secretary of Finance or to any other public officer, except the power to make regulations.
- (2) The delegation of a function of the Minister shall not divest the Minister of the responsibility for the function or the exercise of any power hereunder.
- (3) A person to whom a function of the Minister has been delegated shall not sub-delegate that function to another person.

§1032. Power to hire consultants, etc.

The Minister may, where the Minister 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 the Minister's functions under the Act.

§1033. Consequences of unauthorized loans.

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 on that behalf, by the Minister.

§1034. Consequences of unauthorized guarantees.

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.

§1035. Consequences of unauthorized financial transactions by state-owned enterprises.

The Government or a state-owned enterprise shall not be bound by the terms of a financial transaction that purports to bind a state-owned enterprise or local government to any future financial commitment where the transaction is entered into by any person otherwise than in accordance with this Act.

§1036. Exercise of borrowing powers.

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.

§1037. Regulations.

- (1) The Secretary with the concurrence of the Minister shall, subject to the approval of Cabinet, have the power to make regulations pursuant to the *Administrative Procedure Act 1979 (MIRC 1)*,

- (a) prescribing any matter referred to in the Act as being prescribed;
 - (b) defining any term for the purposes of the Act and this regulation;
 - (c) adopting by reference, in whole or in part, and with such changes as the Secretary considers necessary, any code, standard, guideline or procedure and require compliance with the thing as adopted;
 - (d) prescribing forms and providing for their use;
 - (e) prescribing matters that might constitute a fiscal risk for Government;
 - (f) respecting long-term fiscal strategies;
 - (g) prescribing additional contents of an economic policy statement;
 - (h) respecting loans and debt management;
 - (i) prescribing how the Ministry shall manage short-term economic objectives;
 - (j) respecting any matter that the Minister considers necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) A regulation may be general or specific in its application.
- (3) Any regulation made may be made applicable to different classes of matters dealt with under this Act.

§1038. Repeal.

The *Government Borrowing Act 1985* (Title 11, MIRC Chapter 10) is hereby repealed.

§1039. Effective Date

This Act shall take effect on the date of certification in accordance with Article IV Section 21 of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

