

Zimbabwe

State Loans and Guarantees Act

Chapter 22:13

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State Loans and Guarantees Act

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State Loans and Guarantees Act

Chapter 22:13

Commenced on 1 July 1974

[This is the version of this document at 31 December 2016 and includes any amendments published up to 31 December 2017.]

[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]

AN ACT to provide for the raising, administration and repayment of loans by the State and for the giving of guarantees in respect of certain loans; and to provide for matters incidental to or connected with the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the State Loans and Guarantees Act *[Chapter 22:13]*.

2. Interpretation

In this Act—

“**bond**” means a document issued in pursuance of Part II acknowledging a debt and binding the State to pay a specified sum at a stated time or on special conditions, and includes a debenture or other form of certificate of indebtedness;

“**financial year**” means the period of twelve months ending on the 30th June in any year;

“**local authority**” means a municipality, town or rural district council;

“**Minister**” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**State loan**” means a sum of money borrowed in terms of Part II;

“**statutory corporation**” means a corporate body established directly by an enactment having the force of law in Zimbabwe for special purposes;

“**stock**” means stock issued in pursuance of Part II;

“**Treasury bill**” means a Treasury bill issued in pursuance of Part II.

Part II – Provisions relating to state loans

3. Borrowing powers

- (1) The President may authorize the Minister to borrow, subject to this Act, a sum of money for any purpose considered by the President to be necessary or expedient.
- (2) The aggregate of the amounts that may be borrowed in terms of subsection (1) in any financial year by way of loans raised within Zimbabwe less any amounts repaid on those loans during that financial year shall not exceed thirty *per centum* of the general revenues of Zimbabwe in the previous financial year:

Provided that the limit fixed in terms of this subsection may be exceeded in any financial year if the Minister obtains the authority of a resolution of Parliament to do so.

[subsection amended by Act 11 of 1997]

4. Manner of raising State loans

- (1) The Minister may, when so authorized in terms of section three, borrow money upon such conditions as he may fix.
- (2) Without derogation from the generality of subsection (1), the Minister may, in terms of that subsection, borrow by way of—
 - (a) the issue of bonds or stock; or
 - (b) the issue of Treasury bills; or
 - (c) an advance or bank overdraft.

5. Certain State loans exempt from tax

The Minister may fix as a condition of a State loan that the capital and the interest payable thereon shall be exempt, either in whole or in part, from—

- (a) all taxes, present and future; or
- (b) any particular tax;

payable in terms of any enactment and, if the Minister does so provide, the capital and the interest payable thereon shall be so exempt.

Provided that the Minister shall not exercise the power conferred by this section in relation to a State loan where the capital is represented by securities that are registered in Zimbabwe unless Parliament has, by resolution, approved the exercise of such power in relation to that particular State loan.

6. Proceeds of State loans

The proceeds of all State loans shall be brought to account in the Consolidated Revenue Fund or, if the Minister so directs, in the National Development Fund established in terms of section 30 of the Audit and Exchequer Act [Chapter 22:03].

7. Security for State loans and expenses in connection therewith

All State loans and expenses or charges incurred thereon or in connection therewith shall be secured and charged upon the assets and general revenues of Zimbabwe, and all such securities shall rank equally without priority.

8. Repayment of State loans and payment of expenses in connection therewith

Subject to Part III, the Minister shall, as circumstances require, pay from the Consolidated Revenue Fund, which is hereby appropriated to the purpose, moneys required to repay any State loan and any expenses or charges incurred thereon or in connection therewith.

Part III – Sinking funds

9. Interpretation in Part III

In this Part—

“**cancelled**”, in relation to bonds or stock, means cancelled in terms of subsection (3) of section thirteen;

“**sinking fund**” means a sinking fund established in terms of section ten;

“**trustees**” means trustees appointed in terms of section eleven.

10. Establishment of sinking funds

The Minister, in the case of a State loan raised by means of the issue of bonds or stock—

(a) for a period of six years or more, shall, unless he is satisfied that arrangements for the repayment of the State loan are such as not to require the establishment of a sinking fund, establish a sinking fund;

(b) for a period of less than six years, may establish a sinking fund;

for the purpose of redeeming the State loan.

11. Trustees for sinking funds

(1) For the administration of a sinking fund the Minister shall appoint trustees upon whom he shall, subject to this Part, confer and impose such functions as he may consider expedient.

(2) The Minister may at any time—

(a) vary the functions of a trustee; or

(b) remove a trustee from office; or

(c) in the event of the removal from office, death or retirement of a trustee, appoint a trustee in his place; or

(d) appoint additional trustees.

12. Payment into sinking funds

(1) The Minister shall pay to the trustees of each sinking fund in each financial year for the benefit of the fund such amount as he may determine, which shall not be less than—

(a) one and one-half *per centum* of the nominal value of the bonds or stock issued in connection with the State loan for which the sinking fund was established; and

(b) in the case of bonds or stock issued in connection with the State loan for which the sinking fund was established which have been cancelled, a sum equal to the interest which would have been payable had the bonds or stock not been cancelled.

(2) Payments into a sinking fund in terms of subsection (1) shall be made out of the Consolidated Revenue Fund, which is hereby appropriated to the purpose.

13. Application of moneys in sinking funds

(1) All moneys received by the trustees of a sinking fund, whether paid in terms of section twelve or arising by way of investment or otherwise, shall—

(a) until required in terms of subsection (4), be invested in bonds, stock or Treasury bills or stock issued by a local authority or statutory corporation; or

(b) be used to purchase, at the earliest favourable opportunity in the opinion of the trustees, the bonds or stock issued in connection with the State loan for which the sinking fund was established.

(2) The trustees of a sinking fund may vary any investment made in terms of paragraph (a) of subsection (1).

- (3) Bonds or stock purchased by the trustees in terms of paragraph (b) of subsection (1) shall be cancelled and not re-issued.
- (4) When moneys held by trustees of a sinking fund and investments for the time being representing those moneys are required for the purpose of redeeming the bonds or stock issued in connection with the State loan for which the sinking fund was established, the trustees shall deliver the moneys and investments to the State for that purpose.

Part IV – Provisions relating to guarantees by the state

14. Interpretation in Part IV

In this Part—

“**approved authority**” means—

- (a) the government of a foreign country or territory approved by the Minister; or
- (b) a bank or other institution approved by the Minister which is incorporated in a foreign country or territory;

“**debtor**” means the person whose indebtedness or other obligation is guaranteed by the Minister in terms of paragraph (a), (b) or (c) of subsection (1) of section fifteen;

“**guarantee**” means a guarantee given in terms of subsection (1) of section fifteen;

“**Reserve Bank**” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [Chapter 22:10].

15. Power to give guarantees

- (1) The Minister may, subject to this Part, in such manner and upon such conditions as he thinks fit, guarantee the repayment of the capital of, and the payment of expenses or charges incurred on or in connection with—
 - (a) any indebtedness or other financial obligation raised, incurred or established, as the case may be, inside or outside Zimbabwe by a person approved by the Minister for purposes which will, in the opinion of the Minister, promote employment or the development of natural resources or the tourist industry or are otherwise in the public interest or in the interests of the economy of Zimbabwe; or
 - (b) any indebtedness or other financial obligation raised, incurred or established, as the case may be, outside Zimbabwe for the purposes of the trustee of the District Development Fund referred to in the District Development Fund Act [Chapter 29:06] or a statutory corporation or local authority; or
 - (c) any loan granted by the Reserve Bank to an approved authority for the purpose of—
 - (i) the purchase of goods grown, produced or manufactured in Zimbabwe or for the acquisition of services provided from Zimbabwe; or
 - (ii) the development of a project within a country outside Zimbabwe.
- (2) Without derogation from the generality of subsection (1), the Minister may, in fixing the conditions of a guarantee in terms of paragraph (a) or (b) of that subsection, require the debtor to provide for all or any of the following matters—
 - (a) appropriating and duly applying the moneys or other benefits concerned for the purpose or purposes approved by the Minister in terms of paragraph (a) or (b) of subsection (1), as the case may be;

- (b) charging on the general income and assets of the debtor or any other income or assets which may be available for the purpose, the capital of the indebtedness or other financial obligation concerned and any interest, charges or other expenses incurred or accrued therein or in connection therewith, and the repayment to the Consolidated Revenue Fund of any amount paid in terms of paragraph (a) of section seventeen;
- (c) raising or securing the raising of sufficient money to meet the liabilities referred to in paragraph (b).
- (3) The aggregate of the amounts that may be guaranteed in terms of paragraphs (a), (b) and (c) of subsection (1) in any financial year in respect of indebtedness or other obligations raised, incurred or established, as the case may be, within Zimbabwe shall not exceed forty *per centum* of the general revenues of Zimbabwe in the previous financial year:

Provided that the limit fixed in terms of this subsection may be exceeded in any financial year if the Minister obtains the authority of a resolution of Parliament to do so.

16. Security for guarantees

Any liability of the State in connection with a guarantee shall be secured and charged upon the assets and general revenues of Zimbabwe and all such securities shall rank equally without priority.

17. Payments in connection with guarantees

The Minister shall—

- (a) as circumstances require, pay from the Consolidated Revenue Fund, which is hereby appropriated to the purpose, moneys required to be paid in connection with a guarantee; and
- (b) pay into the Consolidated Revenue Fund—
 - (i) any sum received by way of repayment of any moneys paid in terms of paragraph (a); and
 - (ii) any fees paid in connection with a guarantee.

18. Disclosure of information concerning guarantees

- (1) Subject to subsection (2), when a guarantee is given the Minister shall, on one of the seven days on which Parliament next sits after the date such guarantee was given, lay before Parliament a statement relating to that guarantee.
- (2) If, in the opinion of the Minister, the national interest requires that the giving of a particular guarantee or the name of a debtor in respect of which a guarantee has been given should not be disclosed, the Minister shall withhold the statement or the name of the debtor, as the case may be, for such period as he considers necessary in the circumstances.
- (3) Notwithstanding any other enactment, no information shall be given in any report, including a report to be laid before Parliament, whether such report is required by law or otherwise, concerning any guarantee referred to in subsection (2) until such time as the Minister has authorized that such information may be given.

Part V – General

19. Minister to be exempt from certain obligations

The Minister or a registrar or agent appointed in terms of this Act shall not be under any obligation as regards the due fulfilment of a trust, whether express, implied or constructive, to which bonds, stock or Treasury bills may be subject, notwithstanding that the Minister, registrar or agent has had notice that the bonds, stock or Treasury bills are held subject to the trust.

20. Registrar to make entries necessary to give effect to court orders

A registrar appointed in terms of this Act shall, upon being served with an order of a court of competent jurisdiction which relates to a bond or stock or has the effect of vesting a bond or stock in a person, make all entries in the appropriate register which it is necessary to make for the purpose of giving effect to the order.

21. Forgery of securities

(1) Any person who—

- (a) forges a bond, stock certificate or Treasury bill; or
- (b) makes use of or attempts to make use of a forged bond, stock certificate or Treasury bill with intent to defraud;

shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act No. 22 of 2001]

(2) For the purposes of subsection (1), a person shall be deemed to forge a bond, stock certificate or Treasury bill if he—

- (a) makes a false bond, stock certificate or Treasury bill;
- (b) falsifies a genuine bond, stock certificate or Treasury bill, whether by alteration, addition, effacement or otherwise;

knowing it to be false with the intention that it shall be used or acted upon as genuine, whether within Zimbabwe or not, and any bond, stock certificate or Treasury bill so made or falsified shall be deemed to be forged.

22. Powers of Minister

The Minister may—

- (a) establish registries for the registration of bonds or stock;
- (b) appoint registrars, agents and any other persons necessary for the raising, issuing, management and repayment of State loans or for the doing of any act which, in terms of this Act or any agreement relating to a State loan, may or shall be done by the Minister, registrar, agent or other such person;
- (c) make arrangements for—
 - (i) the conversion and replacement of securities issued in terms of this Act or a repealed law;
 - (ii) the payment of interest on State loans;
- (d) fix the fees and charges which shall be payable for the giving of a guarantee or the performance of services for which provision is made under this Act;
- (e) provide for any other matter which, under this Act or any agreement relating to a State loan, is necessary or convenient to be provided for.

23. Regulations

The Minister may make regulations relating to the registration, issue and transfer of and the payment of interest on bonds or stock.