

ACT 335
LOANS ACT, 1970

ARRANGEMENT OF SECTIONS

Local Loans

SECTION

1. Raising of loans.
2. Authentication of agreements.

External Loans

3. Authority to raise external loans.
4. External loan agreements.
5. Power to issue bonds.

Approvals

6. Approval of Minister for statutory corporation's loans.
7. Approval of terms and conditions of loans.
8. Payment of moneys into the Consolidated Fund.
9. Repayment of loans charged on the Consolidated Fund.

Guarantees

10. Guarantees by Government.
11. Approval of Parliament of terms of agreement.
12. Minister to seek approval of Parliament.
13. Guarantee by Government of loans effected by Bank of Ghana.
14. Restriction on prescribed body borrowing.
15. Minister's powers in event of default by prescribed body.
16. Repayment of sums of money paid under guarantee.

Miscellaneous

17. Issue and management of loans.
 18. Inclusion of statement of loan transactions in public accounts.
 19. Regulations.
 20. Application of Financial Administration Act, 2003.
 21. Application of Exchange Control Act, 1961.
 22. Interpretation.
 23. Repeals.
-

ACT 335
LOANS ACT, 1970¹

AN ACT to provide for the raising of loans by the Government and for related purposes.

Local Loans

1. Raising of loans

(1) The Government may, subject to article 181 of the Constitution and this Act, raise within the Republic whether on behalf of itself or any other public institution or authority, an amount of money which is agreed between the Government and the lender.

(2) An agreement for a loan shall not be submitted to the Cabinet for its approval except after consultation with the Minister.

(3) The Minister may, for the purposes of subsection (1),

- (a) borrow money by the issue and sale of securities in the form, for the separate sums, at the rates of interest and on the terms and conditions approved by the Minister, and
- (b) enter into a contract or an agreement relating to the borrowing of the money or the issue or sale of securities relating to the contract or agreement on the terms and conditions approved by the Minister.

(4) The Government may borrow under subsections (1) and (2) the sums of money that are required for the payment of the securities issued under subsection (2) and are maturing or have been called for redemption.

2. Authentication of agreements

(1) A contract and an agreement entered into and securities issued under section 1 shall be signed by the Minister or a person designated by the Minister in writing and in the case of securities shall be countersigned by any other person designated by the Minister.

(2) The Minister may direct that there shall be substituted for the signatures in the proper handwriting of one or both of the persons authorised under this section to sign or countersign securities, facsimiles of the signatories printed from engraving and the substitution shall be effected accordingly.

(3) Where both the signature and counter-signature on a security issued under this section are to be printed, they shall only be printed on the securities, together with the distinguishing marks, from engraving after the securities have been delivered to the Minister or the Bank of Ghana.

1. The Act was assented to on 3rd July, 1970.

*External Loans***3. Authority to raise external loans**

(1) Subject to article 181 of the Constitution and to this Act, the Government may, whether on behalf of itself or any other public institution or authority and in the manner and on the terms and conditions agreed between the Government and the party by whom the external loan is to be granted, enter into an agreement providing for the raising by the Republic of an external loan.

(2) An agreement for the raising of an external loan shall not be submitted to the Cabinet for its approval except after consultation with the Minister.

4. External loan agreements

An agreement to be entered into for the purposes of section 3 shall, subject to section 7, be executed for and on behalf of the Government by the Minister or by any other person designated in writing by the Minister for that purpose.

5. Power to issue bonds

(1) The Minister may issue the necessary bonds, promissory notes or any other instruments and on the terms and conditions that are necessary for the purpose of giving effect to the terms of a loan agreement entered into in accordance with this Act.

(2) A bond, promissory note or any other instrument issued under subsection (1) may be signed by the Minister or by any other person designated in writing for that purpose by the Minister.

*Approvals***6. Approval of Minister for statutory corporation's loans**

Except where the Minister otherwise directs by legislative instrument generally or in the case of a particular corporation or class of corporations, a statutory corporation shall not raise a loan without the prior approval in writing of the Minister.²

7. Approval of terms and conditions of loans

The terms and conditions of a loan obtained by the Government under this Act or under any other enactment shall not come into operation unless it has been laid before Parliament and approved by a resolution of Parliament in accordance with article 181 of the Constitution.

8. Payment of moneys into the Consolidated Fund

(1) The moneys received in respect of a loan referred to in section 7 shall be paid into the Consolidated Fund and form part of that Fund, or into any other public fund either existing at the time of the loan or created for the purposes of the loan and shall be applied for purposes for which it was obtained and in accordance with the agreement under which it was obtained.

(2) Where a sum of money has become payable out of the moneys paid into the Consolidated Fund or any other public fund under subsection (1) under an agreement by

2. Statutory corporation for the purposes of this Act would include a public corporation as defined in article 295 of the Constitution.

which a loan is granted for a purpose prescribed under the agreement, the money is a charge on the Consolidated Fund or that other public fund into which the money has been paid under subsection (1).

9. Repayment of loans charged on the Consolidated Fund

The moneys required for the discharge of the loans obtained under this Act, and also for the payment of the interest and any other charges in relation to the loans and the principal and interest on the securities are hereby charged on the Consolidated Fund and shall be paid in accordance with the terms and conditions of the relevant applicable agreement.

Guarantees

10. Guarantees by Government

(1) Subject to article 181 of the Constitution and to this Act, the Government may guarantee a loan on the terms and conditions that are agreed by the parties to the agreement providing for the guarantee including the requirement of the payment of a commission for affording the guarantee.

(2) An agreement under subsection (1) may be signed on behalf of the Government by the Minister or by any other person designated in writing by the Minister.

(3) An agreement providing for a guarantee by the Government of a loan shall not come into operation unless the terms and conditions of the agreement have been laid before Parliament and approved by a resolution of Parliament.

(4) Where money fails to be paid by the Government, in satisfaction of an obligation guaranteed by the Government that money shall be charged on the Consolidated Fund.

11. Approval of Parliament of terms of agreement

(1) Parliament may by resolution approve standard terms and conditions of agreements for the purposes of sections 7 and 10 and up to the limits that Parliament may by resolution prescribe.

(2) Where Parliament approves the terms and conditions under subsection (1), an agreement entered into by the Government on the terms and conditions so approved and within the limits prescribed by Parliament shall come into operation in accordance with its terms and without the need for further approval of Parliament.

(3) Parliament may, despite anything in this section, by resolution request that a particular agreement or class of agreement shall be brought before it for further approval before it comes into operation.

(4) An agreement in respect of which a request has been made pursuant to subsection (3) shall not come into operation without the approval of Parliament.

(5) Parliament may by resolution, revoke or vary an approval granted under subsection (1) so far as concerns an agreement to be entered into after the revocation or variation.

(6) The Minister shall lay before Parliament an agreement entered into by virtue of an approval granted under subsection (1) as soon as practicable after it has been entered into.

12. Minister to seek approval of Parliament

The Minister is responsible for laying before Parliament for its approval the terms and conditions of a loan or guarantee, the terms and conditions of which are required by the Constitution and by this Act to be laid before, and approved by, a resolution of Parliament.

13. Guarantee by Government of loans effected by Bank of Ghana

Subject to section 10, where a prescribed body is desirous of raising a loan and the terms of the agreement under which the loan is to be raised require a guarantee of the loan by Government, the Government may, if the Minister has, with the concurrence of the Bank of Ghana and before the raising of the loan, given approval in writing to the terms and conditions subject to which the loan is to be raised, by writing request the Bank

- (a) to guarantee the discharge by the prescribed body of its obligations in respect of the loan, and
- (b) to undertake any other obligations as may be provided for in the agreement relating to the loan and the Bank shall comply with that request.

14. Restriction on prescribed body borrowing

Without prejudice to the general effect of section 6, during a period in which a guarantee or any other undertaking given by the Bank of Ghana in respect of a prescribed body remains in force under section 13, that body shall not, except with the consent in writing of the Minister, raise a further loan requiring a guarantee by the Government.

15. Minister's powers in event of default by prescribed body

- (1) Where the Minister is satisfied that there is reasonable cause to believe
 - (a) that a prescribed body is likely to fail or be unable to discharge an obligation under an agreement concluded under section 13, and
 - (b) that the Bank of Ghana is or may become liable under a guarantee or any other undertaking given by it under section 13 in respect of that obligation,

the Minister may by writing give or authorise any other person to give the directions to the prescribed body that the Minister thinks necessary or desirable, to ensure that satisfactory arrangements are made by the prescribed body to enable that body duly to discharge its obligations under the agreement or under this Act.

- (2) For the purposes of section (1), where the prescribed body is a statutory corporation or any other body for which responsibility has been assigned by the President or by an enactment to a Minister, that Minister shall not exercise powers under this subsection except after consultation with that other Minister.

- (3) A prescribed body shall comply with the directions given to it under subsection (1) despite anything to the contrary, and where that body is a statutory corporation this section shall, for the purpose of giving effect to the directions, override an enactment under which that body exists.

- (4) Where a sum of money becomes payable by the Bank of Ghana under a guarantee or an undertaking given by that Bank under section 13 that sum of money shall be charged on the Consolidated Fund.

16. Repayment of sums of money paid under guarantee

(1) Where a sum of money is paid out of the Consolidated Fund in respect of a liability incurred by the Bank of Ghana under a guarantee or any other undertaking given under section 13 in respect of a loan raised by a prescribed body, that body shall repay that sum together with interest and any other charges on that sum of money at the same rate as is payable on the loan under the agreement relating to the loan into the Consolidated Fund in the manner and at the time or by the instalments directed by the Minister.

(2) Where a sum of money is paid out of the Consolidated Fund under subsection (1) the Minister shall as soon as possible after the end of each financial year beginning with the financial year in which the sum was paid and ending with that in which the liabilities in respect of that sum and the interest payable on that sum is finally discharged by the prescribed body concerned, lay before Parliament a statement relating to that sum of money.

*Miscellaneous***17. Issue and management of loans**

(1) The Minister shall maintain a system of books and records

- (a) showing the moneys authorised to be borrowed and the loans authorised to be guaranteed under this Act,
- (b) containing a description and record of the moneys so borrowed and securities issued and the loans so guaranteed, and
- (c) showing the amounts paid in respect of the principal of, or interest on, the moneys so borrowed.

(2) The Bank of Ghana shall annually and as often as required by the Minister in writing, give to the Minister a statement giving an account in the form and terms and containing the information that the Minister may direct of the transactions in connection with the performance of its functions under the relevant provisions of the Bank of Ghana Act, 2002 (Act 612).

(3) The Minister may provide for the creation and management of a sinking fund with respect to an issue of securities, or with respect to the securities issued under this Act.

18. Inclusion of statement of loan transactions in public accounts

An annual statement of the transactions effected under sections 1, 3 and 10 shall be included in the public accounts.

19. Regulations

The Minister may, by legislative instrument, make Regulations or make other orders that are necessary or expedient to provide for the management of the public debt and the payment of interest on the public debt including Regulations or orders

- (a) for the inscription or registration of securities and prescribing the effect of the inscriptions or registration;

- (b) for the transfer, transmission, exchange, redemption, cancellation and destruction of any securities including provisions
 - (i) for the transmission, transfer or redemption of securities as a result of a judgment of a Court or of death, dissolution or bankruptcy of the registered owner of the securities;
 - (ii) for prescribing the conditions on which the transfer, transmission, exchange and redemption of securities registered in the names of infants or any other persons not of full capacity to enter into ordinary contracts may be made;
- (c) for the issue of securities or the making of payments in respect of damaged, lost, stolen or destroyed securities or interest coupons and the register pertaining to those securities and prescribing conditions for the issue or payments;
- (d) requiring guarantees to be given to the Bank of Ghana in the manner and by the persons as are specified in the Regulations or orders before the Bank is authorised to make entry in a register maintained by the Bank for the purposes of this section;
- (e) authorising the correction by the Bank of Ghana in the circumstances as are specified in the Regulations or orders of errors in the register and otherwise authorising the rectification of the register; and
- (f) generally for the better carrying into effect of the provisions of this Act.

20. Application of Financial Administration Act, 2003

The provisions of the Financial Administration Act, 2003 (Act 654) which relate to Government contracts shall not apply to a transaction under this Act unless the Minister otherwise directs.

21. Application of Exchange Control Act, 1961

This Act shall have effect subject to the Exchange Control Act, 1961 (Act 71) and to a statutory instrument made under that Act, but subject to that a transaction or thing duly affected in accordance with this Act is valid and of full force and effect despite anything to the contrary.

22. Interpretation

In this Act, unless the context otherwise requires,

“**external loan**” means a loan raised from

- (a) the government of a country other than Ghana, or
- (b) a person, body or an institution whether resident in the Republic or outside, being a loan raised in currency other than Ghana currency or a loan the repayment of which is to be made in currency other than Ghana currency;

“**guarantee**” includes an undertaking to repay a loan whether conditioned on a default or not;

“**loan**” includes an overdraft and the moneys lent or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which

- (a) moneys from the Consolidated Fund or any other public fund may be used for repayment, or
- (b) moneys from a fund by whatever name called established for the purposes of repayment whether in whole or in part and whether directly or indirectly may be used for repayment;

“**Minister**” means the Minister responsible for Finance;

“**prescribed body**” means

- (a) a body corporate established by an Act or by a statutory instrument made under an Act,
- (b) a company or partnership in which the Government has a controlling interest being a company or partnership which is registered under the Companies Act, 1963 (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152),
- (c) any other company or partnership, whether the Government has an interest in it or not, which is registered under the Companies Act, 1963 (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152);

“**securities**” include securities of the Government or of any other country approved by the Minister and bonds, notes, deposits, certificates, debentures and treasury bills.

23. Repeals

*Spent.*³

3. The section provided:

“(1) The following enactments are hereby repealed:

- (a) Paragraphs 25, 26, 27, 28, 29 and 30, the word “loan” appearing in paragraph 13 and the proviso to paragraph 46 (1) of the Financial Administration Decree, 1967 (N.L.C.D. 165),
 - (b) the External Loans Decree, 1968 (N.L.C.D. 246), and
 - (c) the provisions relating to the External Loans Decree, 1968 in the Second Schedule to the Constitution (Consequential and Transitional Provisions) Decree, 1969 (N.L.C.D. 406).
- (2) Notwithstanding the repeal of the enactments referred to in subsection (1) of this section, any loans or other transactions or statutory instruments existing thereunder immediately before the commencement of this Act shall continue in effect under the corresponding provisions of this Act.”