

INTERNATIONAL MONETARY FUND

# The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practices

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Gullo, Olya Kroytor, Yan Liu, Mia Pineda, and Ron Snipeliski

**WP/24/29**

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**2024  
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**WORKING PAPER**

**IMF Working Paper**  
Legal Department

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Prepared by **Karla Vasquez, Kika Alex-Okoh, Alissa Ashcroft, Alessandro Gullo, Olya Kroytor, Yan Liu, Mia Pineda, and Ron Snipeliski**

Authorized for distribution by Rhoda Weeks-Brown  
February 2024

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**ABSTRACT:** Debt opacity burdens the public and can exacerbate debt vulnerabilities in many countries. Both low-income and developing countries and emerging market economies have critical gaps in debt transparency, and the implementation of international standards and guidelines has lagged. The paper surveys the legal frameworks of sixty jurisdictions and reveals the critical weaknesses that hinder debt transparency, which include weak reporting obligations, limited coverage of public debt, inadequate monitoring, unclear borrowing and delegation processes, unfettered confidentiality arrangements and weak accountability mechanisms. Because laws entrench practices and bind the discretion of policy makers and debt managers alike, subjecting them to public scrutiny, legal reform is a necessary part of any solution to the problem of hidden debt, though it may entail a difficult and time intensive process in many jurisdictions.

**RECOMMENDED CITATION:** Vasquez, Karla, Kika Alex-Okoh, Alissa Ashcroft, Alessandro Gullo, Olya Kroytor, Yan Liu, Mia Pineda, and Ron Snipeliski. 2024. "The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practices." IMF Working Paper No. 24/29, International Monetary Fund, Washington, DC.

JEL Classification Numbers:	F34, F35, H63, H68, H11, K00
Keywords:	sovereign debt; transparency; disclosure; legal institutions
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<sup>1</sup> The authors would like to thank Sebastian Grund and Roshak Momtahn for their contributions and Ali Abbas, Emre Balibek, Deborah Brautigam, Anna Gelper, Mitu Gulati, Plamen Iossifov, Yinqiu Lu, Tomas Magnusson, Martin Marcone, Susan Maslen, Bill Northfield, Diego Riveti, Arindam Roy, Manrique Saenz, Alessandro Scipioni, Eriko Togo, and Mark Weidemaier for their insightful comments and suggestions.

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## Glossary

ABP	Annual borrowing plan
AE	Advanced economies
BCG	Budgetary central government
CCA	Central Compiling Agency
CD	Capacity Development
CG	Central government
CL	Contingent liability
DeMPA	Debt Management Performance Assessment
DLP	Debt Limits Policy
DM	Debt management
DMS	Document Management System
DMO	Debt Management Office
DSA	Debt sustainability analysis
EBF	Extrabudgetary fund
EM	Emerging market economy
EU	European Union
FOI	Freedom of Information
FTC	Fiscal Transparency Code
FTE	Full transparency Evaluation
FRL	Fiscal responsibility laws
FSAP	Financial Sector Assessment Program
FX	Foreign exchange
GDP	Gross domestic product
GFSM	Government Financial Statistics Manual
GG	General government
IIF	Institute of International Finance
IFI	International Financial Institution
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
LIDC	Low income developing countries
LMO	Liability management operations
MoU	Memorandum of Understanding

MoF	Ministry of finance
MPA	Joint IMF/WB Multipronged Approach to Address Debt Vulnerabilities
MTDS	Medium-term debt management strategy
MTFF	Medium-term fiscal frameworks
NDA	Non-disclosure agreement
NPI	Nonprofit institution
OECD	Organization for Economic Cooperation and Development
PC	Public corporations
PDM	Public debt management
PFM	Public financial management
PPP	Public-private partnership
PRGT	Poverty Reduction and Growth Trust
PSDS	Public Sector Debt Statistics Guide
SAI	Supreme audit institutions
SDR	Special drawing rights
SOE	State-owned enterprise
SPV	Special Purpose Vehicle
TA	Technical Assistance
UNESCO	United Nations Educational, Scientific, and Cultural Organization
U.S. GAO	United States Government Accountability Office
WB	World Bank



# I. Introduction

**1. Debt opacity can exacerbate public debt vulnerabilities in many countries.** Countries, particularly LIDCs and EMs, now face a changing creditor landscape with new official creditors and a wide array of commercial creditors, a migration to off-balance sheet liabilities with large fiscal risks including those from contingent liabilities (CLs), as well as the increasing use of collateralized debt and debt with collateral-like features.<sup>1</sup> The significant increase in public debt and CLs due to the deep economic scars from the pandemic and the impact of the war in Ukraine is pushing LIDCs and some EMs to debt distress. These vulnerabilities are exacerbated by debt opacity, as a substantial share of debt is not disclosed or unrecorded in major databases, which keeps creditors, rating agencies or even borrower countries themselves in the dark. Further, borrower confidentiality agreements have become broader in scope and more widely used in recent years, further limiting disclosure of debt information.

**2. The costs of debt opacity to the economy and ordinary citizens are well-known.** Undisclosed debt can have dire macroeconomic effects, sapping investor confidence, increasing borrowing costs and putting debt sustainability in peril. Without a full and accurate picture of their outstanding debt and CLs and their terms and conditions, borrowers cannot properly assess fiscal risks and make informed decisions to ensure debt remains sustainable. Similarly, creditors cannot conduct appropriate risk assessments for their lending decisions and help, together with other stakeholders, resolve debt distress when needed. The credibility of debt and fiscal management is undermined, impacting borrowing costs and hampering negotiations to resolve debt distress. Hidden debt can also undermine accountability for the use of public resources.

**3. Debt transparency features prominently in several public and private sector initiatives.** For instance, the IMF and World Bank have been implementing the Multipronged Approach (MPA) since 2018 to address debt vulnerabilities based on four mutually reinforcing pillars: i) strengthen debt transparency, ii) support capacity development in public debt management, iii) provide suitable tools to analyze debt developments and risks, and iv) adapt the IMF's and World Bank's lending policies to better address debt risks and promote efficient resolution of debt crises.<sup>2</sup> The IMF and World Bank G20 Operational Guidelines for Sustainable Lending is a diagnostic tool designed to enhance sustainable financing by promoting information sharing between creditors and borrowers. The OECD Debt Transparency Initiative has established a data repository on private sector lending to low-income countries. UNCTAD and the Commonwealth Secretariat's debt management and recording systems help strengthen the capabilities of member countries to record, monitor and report public debt information to submit loan-level information to the World Bank's Debt Reporting System. On the private sector side, the Information Note for Voluntary Principles for Debt Transparency developed by the Institute of International Finance (IIF) provides a template for carveouts from confidentiality clauses allowing the submission of debt data to the OECD. The Bretton Woods Sovereign Debt Working Group aims to promote solutions incentivizing transparency for borrower and creditor countries.

**4. Despite these initiatives, critical gaps in debt transparency in LIDCs and EMs remain.** Debt transparency can be regarded through the prism of various international standards and guidelines<sup>3</sup> as an all-

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<sup>1</sup> IMF (2020)

<sup>2</sup> IMF and World Bank (2020)

<sup>3</sup> Namely, the Fiscal Transparency Code, the 2014 Government Financial Statistics Manual, the Public Sector Debt Statistics: Guide for Compilers and Users of 2011, and the OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015.

encompassing concept entailing the comprehensive, accurate and timely availability of data on public debt (both granular and on an aggregate basis), debt management operations and debt-related risks. Gaps observed in evaluations and assessments performed by the IMF and the World Bank on their members against such standards include: narrow coverage of debt limited to the central government and debt securities and loans; underreporting of extrabudgetary units (EBFs), social security funds, SOEs and public-private partnerships (PPPs), other contingent liabilities, collateralized debt and debt with collateral-like features, and domestic non-marketable debt and swap lines;<sup>4</sup> fragmentation of institutional arrangements for public debt monitoring and reporting; and lack of public debt audits to ensure quality of data disclosure.

**5. While international standards and guidelines focus on transparency in debt management and fiscal reporting practices, they assign a subsidiary role to the soundness of primary legislation.** This paper aims to fill this gap by conducting an independent analysis of the legal frameworks in debt transparency of sixty jurisdictions. The sample represents a wide range of legal systems, forms of government, institutional arrangements, income levels and geographic composition (see Annex 1 for the list of selected jurisdictions). The paper conducted a legal analysis of all relevant legal instruments governing public debt related frameworks of each country in the sample (e.g., Constitutions, debt management and debt reporting laws, public financial management laws, fiscal responsibility laws, transparency laws, audit and statistics laws, and SOE laws). To a limited extent, subsidiary legal sources such as regulations, by-laws, and Memorandum of Understandings (MoUs) were also examined, given that the operational framework around borrowing, recording, accounting of debt and its repayment is typically found also at the level of secondary legislation.<sup>5</sup> While the analysis is mainly centered on borrowing countries' legal frameworks, the paper also explores the role of laws in creditor countries in fostering debt transparency—such as by strengthening reporting requirements on lending data to foreign public sector entities. This paper reflects advisory practices of the IMF's Legal Department, drawing from general legal principles, also in aspects yet to be covered by international standards and guidelines. It provides country examples, recognizing that this level of detail would be valuable to policymakers and public officers alike.

**6. This paper found specific vulnerabilities in the legal frameworks that hinder debt transparency.** Gaps and weaknesses include problems with the legal definition of public debt - meaning statutory definitions are limited to the central government or to specific debt instruments and allow certain forms of sovereign debt to escape oversight. Across the globe, legal requirements for debt disclosure are inadequate. Less than 50 percent of countries surveyed require debt management and fiscal reports. And that is not all: borrowing authorization provisions are often vague and lack a clear process for delegating that authority. Debt management offices often lack the authority to monitor and collect information from many public sector entities that incur considerable debt. There are few laws that regulate the confidentiality of public debt, which leave policy makers excessive discretion to label debt contracts confidential for national security or other reasons. Accountability mechanisms, from SAI mandates to oversight by the legislature, do not cover debt and debt operations fully.

**7. While recent publications<sup>6</sup> covered the role of legal frameworks in debt transparency, this paper provides a comprehensive and detailed guidance drawing from good practices.** Such guidance is particularly needed on the design of legal reform targeting the sources of debt vulnerability, namely subnational and extrabudgetary liabilities, contingent liabilities, and complex financial instruments that are not

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<sup>4</sup> World Bank Group (2022)

<sup>5</sup> This paper focuses mainly on the analysis of constitutions and primary laws, which have a longer lasting and more stable status.

<sup>6</sup> Rivetti (2021); Maslen & Aslan (2022)

subject to legal requirements. While public debt data reporting requirements should be legally mandated, countries should also undertake other priority reforms. These reforms are premised on a consistent and clear definition of public debt across all relevant legislation. Clear and unambiguous borrowing powers and proper delegations of that authority at all levels of government as well as clarifying responsibilities among public entities for the monitoring and reporting of public debt are also priorities. Laws can also support the accountability exercised by state audit institutions and the Legislature vis a vis public debt transparency. Of paramount importance are legal provisions that regulate narrow exceptions to disclosure and provide clear guidance on the conditions and scope of confidentiality. Standardized confidentiality clauses could be developed, with the IMF staff playing a role similar to the one it played in the development of collective action clauses (CACs) for international sovereign bonds and majority voting provisions (MVPs) for sovereign syndicated loans.<sup>7</sup>

**8. *This paper is organized as follows.*** Section II explains the scope and objectives of public debt transparency, the applicable international standards and guidelines and the role of domestic legal frameworks. Section III seeks to define public debt in legal frameworks and to elaborate its institutional coverage. Section IV provides an overview of common legal challenges that hinder reporting and disclosure of public debt, including the impediments to the disclosure of granular information and the legal mechanisms to overcome them. Section V discusses the supporting framework for debt transparency, including the borrowing authority, governance arrangements for debt consolidation and disclosure, and the sanctions regime. Section VI examines the balance between transparency and confidentiality, suggesting legal mechanisms to avoid the abuse of confidentiality clauses. Section VII describes the accountability mechanisms for public debt disclosure, by looking at the role of legislature, external audit and supreme audit institutions (SAIs). Section VIII concludes with recommendations. A list of references is provided at the end.

## II. Debt Transparency: The Concept and the Role of Domestic Legal Frameworks

*Key elements of debt transparency include timely, comprehensive, accurate and consistent debt data, and key information on public debt management and debt-related risks. International standards provide important guidance to support debt transparency, but their implementation is lagging, especially in LIDCs and EMs. Main challenges relate to limited institutional and instrumental coverage of debt reporting; underreporting of local government, EBFs, social security funds, SOEs and contingent liabilities; and misreporting on complex financial instruments, such as collateralized debt and debt with collateral-like features in project finance transactions. Domestic legal frameworks should address these challenges and support full implementation of standards by defining with more granularity public debt and CL disclosure requirements and the supporting legal mechanisms enabling such disclosure.*

### A. How is Debt Transparency Defined and Why is it Important?

**9. While there is no universally accepted definition of debt transparency, key elements can be drawn from relevant international standards, guidelines and good practices.** Approaches to debt transparency

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<sup>7</sup> IMF (2023)

in the international community are diverse, ranging from the more intuitive but narrowly constructed notion of debt transparency as “disclosure” of public debt data, to the most comprehensive ones including information on debt operations.<sup>8</sup> In line with relevant international standards and guidelines, this paper takes this more comprehensive approach, encompassing the following elements of debt transparency:

- *Public availability of comprehensive, accurate, timely and consistent public sector debt data*, including on the terms and conditions of lending and other non-financial conditions that impact debt service capacity;<sup>9</sup>
- *Publication of key information pertinent to public debt management*, including i) *static information* such as borrowing authority and delegation mechanisms for all public sector entities, institutional arrangements, and information on enforcement mechanisms related to debt transparency obligations; and ii) *debt management operations*, including disclosure of liability management operations and debt restructurings; and
- *Disclosure of debt-related risks*, including contingent liabilities (e.g., from SOE, SPVs and EBFs borrowing and climate-related risks).<sup>10</sup>

**10. Calls by creditors and the general public for greater public debt transparency have intensified in the last few years.** Debt transparency serves multiple purposes:

- *Promoting sustainable borrowing and lending practices.* For *borrowers*, it is essential to properly plan, authorize, manage, monitor and communicate debt and control performance, including through external audit mechanisms. This could potentially reduce borrowing costs. For *creditors*, debt transparency addresses information asymmetries—facilitating risk assessments in the normal course of business, potentially reducing perceptions of credit risk, and assisting coordination in the context of debt restructuring.
- *Enabling effective fiscal management.* Enhanced information on public debt helps inform the government of its current fiscal position and assess costs and benefits of policy changes and potential risks. It also allows external stakeholders to monitor fiscal and debt developments and establishes credibility of the country’s fiscal plans in support of market confidence. It is also important that data on public debt is consistent and comparable across jurisdictions.
- *Empowering the international community*, including IFIs such as the IMF and WB, to assess debt vulnerabilities and sustainability, including for financial assistance programs in a manner that appropriately safeguards their resources. Credit rating agencies give credit for increased debt transparency—which has knock-on impact on credit ratings, impacting borrowing costs for the sovereign—as well as SOEs and private sector borrowers.
- *Supporting effective and efficient ESG reporting.* Improved debt transparency will be especially valuable if/when a sovereign develops an Environmental, Social and Governance (ESG) framework. Reporting requirements are one of the core pillars of managing an efficient and effective ESG

<sup>8</sup> This broad approach is also taken in the IMF and World Bank, Update on the Joint IMF-WB Multipronged Approach to Address Debt Vulnerabilities, 2020

<sup>9</sup> IMF and World Bank (2014)

<sup>10</sup> Fiscal Transparency Code, IMF (2019) and C-PIMA (2021)

framework. Transparency and accountability can help the sovereign to gain high scores with second party opinion providers, as well as securing better pricing (lower costs) from ESG investors.<sup>11</sup>

## B. IMF Policies and International Standards and Guidelines

**11. International standards and guidelines provide key elements that foster debt transparency.** The most relevant international standards and guidelines include:

- *The IMF/WB Revised Public Debt Management Guidelines of 2014* (Revised PDM Guidelines) contains institutional and operational foundations to promote sound policies and practices for managing public debt and reducing a country's vulnerability to domestic and external shocks.<sup>12</sup>
- *The Fiscal Transparency Code* (FTC) sets the broad standards for fiscal reporting, including of debt-related information, fiscal forecasting and budgeting, fiscal risk analysis and management, and in resource revenue management.<sup>13</sup>
- *The 2014 Government Financial Statistics Manual (2014 GFSM)* provides economic and statistical reporting principles to be used in compiling and presenting fiscal statistics. Of direct relevance for debt transparency, it outlines the principles for, among others, institutional coverage and sectorization of the public sector, definition and classification of liabilities, debt related operations, PPPs, government guarantees and other contingent liabilities, valuation and other accounting rules.
- *The Public Sector Debt Statistics: Guide for Compilers and Users of 2011* (PSDS Guide) provides guidance on measuring, compiling, using, and presenting public sector debt statistics, to promote availability, quality and timeliness of debt information and enable international comparability.
- Some principles on SOEs' debt disclosure can be found in *international standards and guidelines on corporate governance* (OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015) and *securities regulation* (set by the International Organization of Securities Commissions).

In addition, assessment criteria have been developed by the private sector to strengthen sovereign investor relations which also contribute to improving public debt transparency.<sup>14</sup>

**12. Together, these international standards and guidelines provide extensive direction on the key elements enabling debt transparency.** For example, with regards to *public debt data disclosure*, they recommend: i) robust and comprehensive disclosure on public debt data with a broad institutional and debt

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<sup>11</sup> For more on sovereign ESG bond issuance, see Linder and Chung (2023)

<sup>12</sup> While the Revised Public Debt Management Guidelines primarily refer to the central government level, most of the principles can be applied to other levels of government (e.g., subnational).

<sup>13</sup> The Fiscal Transparency Code has a broad coverage of the public sector, specifying different levels of coverage depending on the level of practice (basic, good and advanced).

<sup>14</sup> The Institute of International Finance (IIF), focusing on emerging markets, has developed and implemented a set of 20 criteria for evaluating investor relations and 23 criteria for evaluating data dissemination practices. A review of emerging market borrowers on adherence to these practices is published annually in the Implementation Report of the Principles. The IMF staff has also published working papers discussing good practices recommendations for effective investor relations. See for example Knight, J. and Northfield, B. (2020).

instrument coverage; ii) disclosure of explicit and implicit contingent liabilities (CLs);<sup>15</sup> and ii) disclosure of the public debt management framework and debt management strategies and operations. See Table 1 for a summary of these standards and guidelines. With regards to *the supporting mechanisms enabling public debt disclosure*, international standards and guidelines prescribe that at a minimum domestic frameworks should include: i) clear borrowing authority and powers to undertake other debt management operations; ii) operational autonomy for debt managers; (iii) strong institutional arrangements for debt recording and compilation and dissemination of debt-related information; and iv) robust internal and external control and oversight mechanisms to provide assurance of data integrity.<sup>16</sup> At the same time, it is important to note that international standards and guidelines to a large extent do not purport to capture granular (e.g., contract-level) information on public debt.

**Table 1. Public Debt Data and CL Disclosure—Key Elements provided by international Standards and Guidelines**

Revised PDM Guidelines	FTC	PSDS Guide/GFSM
<i>Public debt data</i>		
Monthly/quarterly reports on <ul style="list-style-type: none"> <li>• Outstanding debt stock</li> <li>• Composition of debt liabilities by currency denomination, maturity and interest rate</li> <li>• Domestic and external debt statistics (issuance, debt service, risk indicators such as residual maturity and average cost, debt stock by type of investor, etc.)</li> </ul>	Fiscal reports (in-year budget execution reports, fiscal statistics, annual financial statements) that include a balance sheet of all debt and liabilities.	Summary table with gross debt at nominal and market value, by: <ul style="list-style-type: none"> <li>• type of instrument;</li> <li>• maturity;</li> <li>• currency of denomination;</li> <li>• type of interest rate;</li> <li>• residency of creditor</li> </ul> Detailed tables on: <ul style="list-style-type: none"> <li>• creditor classified by institutional sector;</li> <li>• debt service payment schedules of outstanding gross debt</li> </ul> Memorandum tables: <ul style="list-style-type: none"> <li>• Debt-service arrears</li> <li>• Reconciliation market/nominal value</li> <li>• Financial derivatives position</li> <li>• Average interest rates by original maturity and type of instrument</li> </ul> Disclosure of aggregate Information: the information supplied by entities outside CG will not be separately disclosed and will only be published in the form of statistical aggregates (except explicit permission)
<i>Contingent liabilities</i>		
Information of contingent liabilities should be disclosed in public accounts, including their cost and risk; valuation—face value or appraisal; and budget allowance for expected losses and/or notes to budget tables and financial accounts.	Stock of contingent liabilities should be annually disclosed, including all government guarantees, their beneficiaries, and the gross exposure.	A register of significant CLs is encouraged. CLs should be disclosed as memorandum items including, guaranteed debt, other one off guarantees and explicit CL such as legal claims, indemnities, uncalled share capital, etc.

<sup>15</sup> The disclosure of implicit contingent liabilities should be carefully designed to avoid moral hazard risks. Such disclosure could increase market expectations that, for example, governments will bail out an entity facing financial difficulties, distorting prudent judgment by the market of the entity's balance sheet. Such risks should be properly mitigated. See recommendations for the disclosure of fiscal risks in Section IV, B.

<sup>16</sup> See Annex 2 with a detailed disaggregation of the relevant standards.

Revised PDM Guidelines	FTC	PSDS Guide/GFSM
<i>Static framework disclosure</i>		
<ul style="list-style-type: none"> <li>• PDM legal framework</li> <li>• Organizational structure (including governance framework, DMO structure, delegation of responsibilities)</li> <li>• Design of debt instrument</li> </ul>		<ul style="list-style-type: none"> <li>• The legal framework for the collection of statistical information including type of entities that can be approached for data, responsibilities of the compiling agency, penalties for non-reporting, misreporting and late reporting.</li> <li>• Statistics dissemination process, concepts, definitions, classifications, and methodology.</li> </ul>
<i>DM Strategies and operations</i>		
<ul style="list-style-type: none"> <li>• Medium-Term Debt Strategy Document (DM objectives, macroeconomic environment, evaluation of debt stock, key risk factors)</li> <li>• Annual report on outcomes of the DM strategy disclosed to Parliament and the public (with material operations, derivatives statistics and rationale for their use)</li> <li>• DM operations in primary market (borrowing plans and terms and conditions of new issues)</li> </ul>		
<i>Institutional coverage</i>		
<ul style="list-style-type: none"> <li>• Central Government</li> </ul>	<ul style="list-style-type: none"> <li>• Central government (<i>basic practice</i>)</li> <li>• General government (<i>good practice</i>)</li> <li>• All Public Sector, including public corporations: by subsector and consolidated (<i>advanced practice</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• All Public Sector including public corporations and by subsector</li> </ul>
<i>Debt instrument coverage</i>		
<ul style="list-style-type: none"> <li>• Main financial obligations</li> </ul>	<ul style="list-style-type: none"> <li>• All debt-securities and loans (<i>basic practice</i>)</li> <li>• Liabilities-debt instruments and other contractual liabilities, such as trade payables, lease contracts, financial liabilities related to PPPs, equity holdings of public corporations, other liabilities arising from insurance, pension, standardized guarantee schemes (<i>good and advanced practice</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Debt instruments (SDRs, currency deposits, securities, loans, insurance, pension, standardized guarantee schemes and other accounts payable/receivable)</li> </ul>

**Source:** Authors' elaboration based on relevant standards included in the 2014 GFSM, PSDS Guide, the FTC and the Revised PDM Guidelines.

**13. Several IMF policies also promote public debt transparency both in the context of surveillance and lending.** With respect to surveillance, IMF members are required to provide data that is deemed necessary for the IMF to exercise its surveillance mandate (Article VIII, Section 5 of the IMF Articles of Agreement). This data is understood to include, at the minimum, debt data related to the central government, with decomposition across various categories (including currency, maturity, residency/non-residency). When

members request financial assistance from the IMF, they need to provide any information that is relevant to program implementation and ensure that adequate safeguards for the IMF financing are in place. For members with debt vulnerabilities, this includes granular information on debt holders under the Debt Limits Policy (see Box 1 below for details).

### Box 1. Selected IMF Policies and Debt Transparency

**Debt Limits Policy (DLP):** The DLP establishes the framework for using conditionality in IMF-supported programs with members facing public debt vulnerabilities.<sup>1</sup> The most recent update of the DLP (2020) seeks to further enhance transparency by including an explicit expectation that critical debt data disclosure gaps should be addressed upfront in IMF-supported programs. The 2021 Guidance Note also requires that a table with the profile of debt holders is included in program documents, which features information on the stock of public (external and domestic debt and subcategories of creditors/instruments), creditor composition (multilateral, bilateral, bonds, commercial, other international), debt service for at least three years, collateralized debt, and domestic debt.

**Multi-Pronged Approach (MPA):** The first of the four pillars of the joint IMF-WB MPA seeks to enhance debt transparency by supporting the production and publication of comprehensive and consistent debt data by borrowers, improve access to data from borrowers and creditors, and enhance creditor outreach through investor relations initiatives.<sup>2</sup> It sets out that debt transparency is primarily the borrower's responsibility while also emphasizing the IMF's and the WB's in supporting borrowers to increase their capacity to record, monitor, and report on public debt, develop effective legal frameworks, implement institutional and legal reforms, and disseminate debt data to international databases.

**Debt Sustainability Analysis (DSA):** The IMF's frameworks to ascertain the sustainability of members' public debts require adequate disclosure of debt data. For instance, the IMF-World Bank Debt Sustainability Framework for Low-income Countries (LIC DSF) features an expectation for near-complete coverage of public sector debt, supported by standardized reporting.<sup>3</sup> Similarly, the Sovereign Risk and Debt Sustainability Analysis for Market Access Countries (SRDSF)<sup>4</sup> requires that comprehensive and detailed information on public debt is presented in a standardized way. The IMF-WB DSA framework for low-income countries stipulates the obligation to include all future payments of interest and/or principal from the debtor to creditors, which also includes fully committed but undisbursed amounts of recently contracted loans or still-active projects.

**IMF arrears policies:** The IMF's sovereign arrears policies, which apply when a member is requesting IMF financing but has arrears outstanding to its creditors, include a number of expectations to increase transparency. Under the Lending into Arrears policy, the debtor should share relevant information with all relevant creditors on a timely basis including a comprehensive picture of the outstanding debt stock and its terms so as to meet the good faith criterion.<sup>5</sup> Under the Lending Into Official Arrears Policy to Official Bilateral Creditors (LIOA), assessment of the good faith criterion will consider whether the sovereign debt has provided official bilateral creditors "relevant information" on a timely basis.<sup>6</sup>

<sup>1</sup> IMF (2021b).

<sup>2</sup> IMF (2020d).

<sup>3</sup> IMF (2018c).

<sup>4</sup> IMF (2022a).

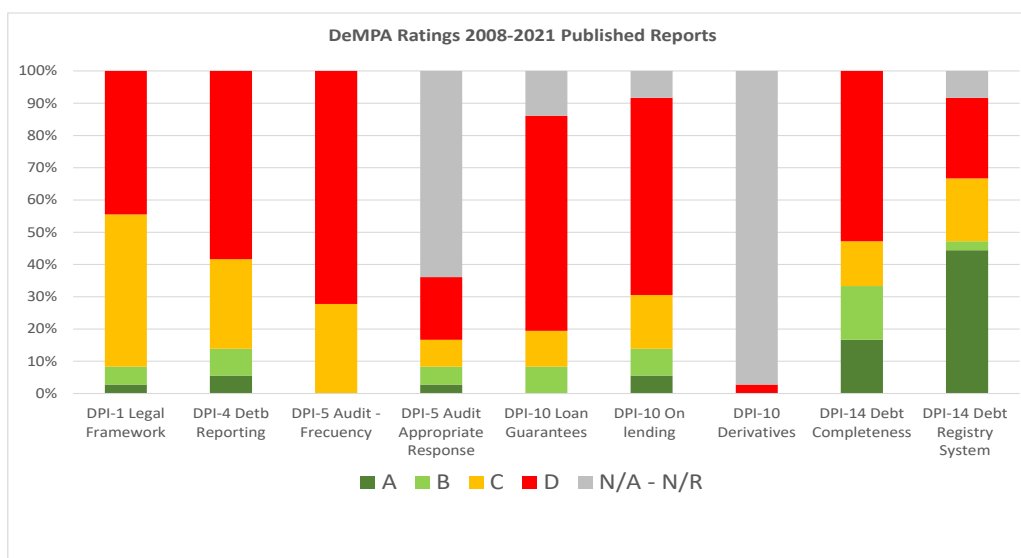
<sup>5</sup> IMF (2022b).

<sup>6</sup> IMF (2022b).



### Box 2. DeMPA and FTE Results on Key Indicators supporting Key Elements for Debt Transparency

The **DeMPA** is a performance assessment methodology for central government debt management activities. Since its release, 37 country evaluation reports were made publicly available. Based on these reports, key debt transparency related challenges include i) publication of statistical bulletin on central government debt, loan guarantees and debt related operations, ii) decision-making on the issuance of loan guarantees, on-lending and use of derivatives, iii) comprehensive debt management system that records, monitors and accounts effectively for all debt and debt-related transactions, including debt restructuring, and iv) financial and compliance audits.

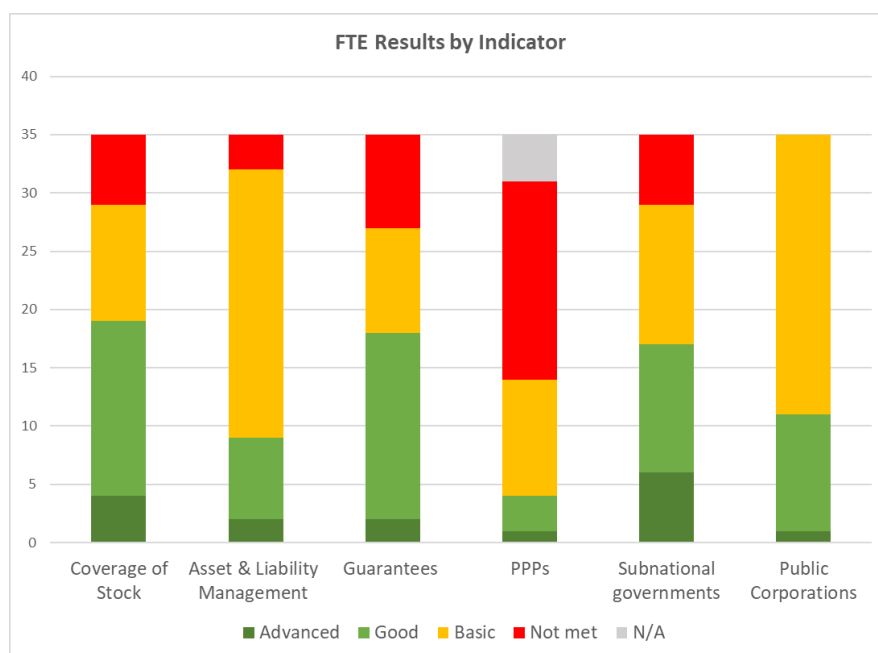


**Source:** Authors' elaboration, based on published information at <https://www.worldbank.org/en/programs/debt-toolkit/dempa> Based on selected indicators (out of 14): DPI-1 Legal framework<sup>1</sup>, DPI-4 Debt Reporting and Evaluation, DPI-5 Audit, DPI-10 Loans guarantees, on lending and derivatives, and DPI-14 Debt-related records. As per the 2021 DEMPA Methodology score A is sound practice; score B is between minimum requirements and sound practice, score C indicates that the minimum requirements for the indicator have been met; and score D indicates that minimum requirements have not been met, signaling a performance deficiency which requires corrective action.

The **FTE** assesses country practices against the FTC, including reporting practices and quantification of fiscal risks. An analysis of the 35 publicly available country evaluations points to the most pressing challenges, including i) narrow coverage of stocks in fiscal reports; ii) low level of disclosure of all assets and liabilities and significant risks, with the large majority of countries only disclosing a narrower set of debt transactions (securities and loans); iii) low level of disclosure of government guarantees, their beneficiaries and the gross exposure; iv) significant shortcomings in PPPs related disclosure; and v) deficient disclosure on the financial condition and performance of subnational government and key SOE's financial aggregates including assets and liabilities.

<sup>1</sup> DEMPA DPI-1 assesses whether laws cover the authorization to borrow, borrowing purposes and objectives, definition of debt instruments, transparency on DMS requirements and the framework for guarantees and on-lending.

### Box 2. DeMPA and FTE Results on Key Indicators supporting Key Elements for Debt Transparency (Continued)



**Source:** Author's elaboration, based on published information at <https://www.imf.org/en/Topics/fiscal-policies/fiscal-transparency>. Based on selected indicators of Pillar I and II related to debt reporting (1.1.2 on coverage of stocks in fiscal reports, 3.2.2 on assets and liability management, 3.2.3 on guarantees, 3.2.4 on PPPs, 3.3.1 on subnational governments and 3.3.2 on public corporations).

<sup>1</sup> DEMPA DPI—1 assesses whether laws cover the authorization to borrow, borrowing purposes and objectives, definition of debt instruments, transparency on DMS requirements and the framework for guarantees and on-lending.

## C. Implementation Shortcomings of International Standards and Guidelines

**1. Full implementation of international standards and guidelines is lagging across the globe, posing greater challenges for LIDCs and EMs.** Evaluations and assessments against international standards and guidelines performed by the IMF and World Bank and other international partners, such as the DeMPA or the FTE, evidence large implementation gaps. Common problems identified include *narrow coverage* of the budgetary central government and debt securities and loans, with *significant underreporting* of debt from local government, EBFs, social security funds, SOEs and PPPs, and of complex financial instruments such as collateralized debt in project finance transactions, debt with collateral-like features, domestic non-marketable debt, and swap lines. Government guarantees also have low reporting rates, and so do newly contracted debt, including details on terms and conditions of borrowing. See Box 2 for a summary of findings.

## D. The Role of Domestic Legal Frameworks

**2. A robust domestic legal framework transforms the soft law nature of international standards and guidelines to legally binding rules.** Without the support of mandatory minimum requirements in legal instruments, implementation of international standards and guidelines and good practices may be hindered by incentives for borrowers to favor debt opacity so as to, for example, improve access to new financing and conceal non-compliance with fiscal rules, including debt ceilings. Specifically, domestic legal instruments should:

*With respect to the disclosure of public debt data and CLs:*

- impose a *positive duty to disclose*: key information pertinent to public sector debt data, including on the terms and conditions of borrowing; debt-related risks, including on debt-related CLs; policies, strategy and operations on public debt management; and static legal framework on borrowing and debt management governance.

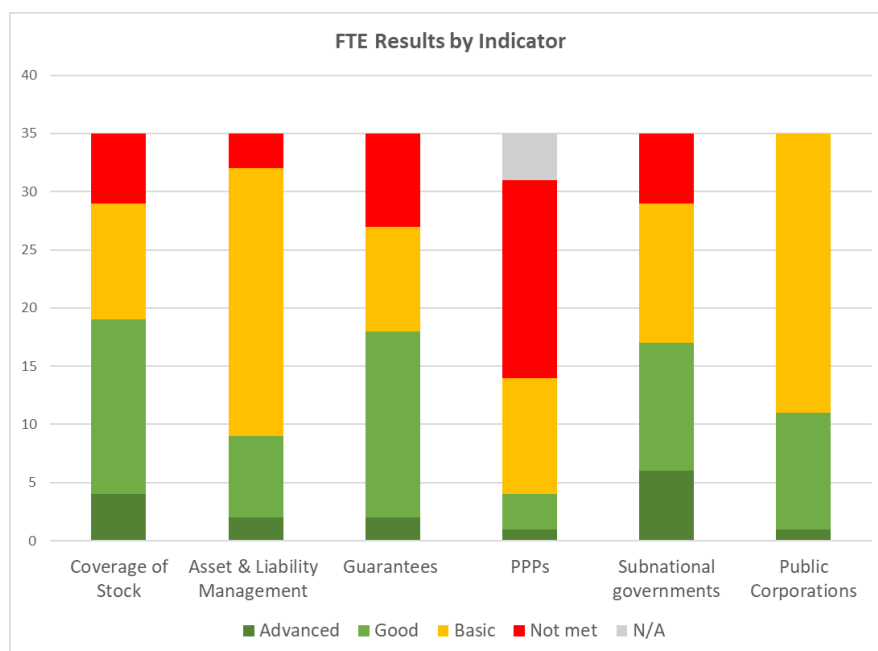
*With respect to the supporting legal mechanisms enabling transparency:*

- define the *institutional and debt instrument coverage* of public debt that will be used for different purposes, including for debt authorization and management, fiscal reporting, scope of application of fiscal rules, and statistical reporting;
- establish a clear *authority to borrow* and undertake debt-related transactions;
- lay out the *institutional arrangements* for public debt recording, monitoring, reporting and disclosure, including the obligation of information sharing between public sector entities;
- authorize limited circumstances where *exemptions to public debt disclosure* can be granted and provide legal mechanisms to limit their abuse;
- define the *accounting and statistical framework and standards* for public debt disclosure;
- establish the *internal and external audit* framework;
- define legal mechanisms for *accountability to legislative bodies and the public*; and
- as appropriate, regulate *legal rights* and processes for stakeholders, including citizens and legislators to demand information or to challenge validity in court.

**3. The legal framework backing debt transparency consists of a wide variety of legal instruments.**

The complex system of interrelated instruments can include constitutions, supranational frameworks (which may become part of domestic law), and primary laws, such as public debt management (PDM) laws, public financial management (PFM) laws, fiscal responsibility laws (FRL), statistics laws, laws defining accounting standards, some provisions in central bank laws, subnational government laws, SOE laws, and transparency laws. For example, in Mexico the legal underpinnings for public debt transparency are found in at least five legal instruments (Box 3). Strong coherence among legal instruments is required to ensure effectiveness of debt transparency provisions.

### Box 2. DeMPA and FTE Results on Key Indicators supporting Key Elements for Debt Transparency (Continued)



**Source:** Author's elaboration, based on published information at <https://www.imf.org/en/Topics/fiscal-policies/fiscal-transparency>. Based on selected indicators of Pillar I and II related to debt reporting (1.1.2 on coverage of stocks in fiscal reports, 3.2.2 on assets and liability management, 3.2.3 on guarantees, 3.2.4 on PPPs, 3.3.1 on subnational governments and 3.3.2 on public corporations).

<sup>1</sup> DEMPA DPI—1 assesses whether laws cover the authorization to borrow, borrowing purposes and objectives, definition of debt instruments, transparency on DMS requirements and the framework for guarantees and on-lending.

### Box 3. Mapping the Legal Provisions supporting Debt Transparency—Case of Mexico

The mapping of the complex legal basis for public debt disclosure in Mexico is set below:

		Constitution	PDM Law	PFM Law	Transparency Law	Parastatal Law
Public debt and CL disclosure	Debt data		X	X	X	
	Institutional scope	X	X			
	Instrument coverage		X			
	CLs/guarantees		X	X	X	
	Legal framework and regulations		X		X	
	DM strategy					
Supporting legal mechanisms enabling public debt disclosure	Authority to borrow	X	X			X
	Public Debt Limits or processes to define them	X	X	X		
	Institutional arrangements for debt recording, compilation and disclosure		X			
	Debt records/registry		X			
	Powers of CG to collect debt data		X	X		
	Reporting requirements of PS entities to central govt		X	X		
	Exemptions to disclosure (Reserved/confidential)				X	
	Accounting and statistical standards					
	Internal controls					X
	External audit	X				
	Accountability to legislative bodies and the public	X				

*Source: Authors' elaboration, based on the country's legislation.*

**4. Subsidiary legislation further supports debt transparency.** The criteria for choosing which elements are enshrined in laws versus subsidiary legislation (e.g., regulations, decrees, instructions, circulars) are largely influenced by the constitutional division of powers between the legislative and the executive (i.e., how much regulatory power is the legislative willing or permitted to delegate to the executive branch), legal traditions and PFM models of each jurisdiction. These criteria may also be determined by more practical considerations, such as whether legal reform is feasible in a particular time or context or whether good practices can be implemented more swiftly and effectively, through executive action.

### III. Legal Definition and Coverage of Public Debt

*While public debt may be defined differently in legal frameworks, international standards and guidelines provide guidance on its key aspects (dimensions), which are the institutional and instrumental coverage. With respect to the former, a narrow coverage of public debt including the budgetary central government only is the main challenge. With respect to the latter, the coverage is often limited to government securities and loans, leaving out more complex instruments (e.g., supplier's credit agreements, account payables, derivative instruments such as swaps) that must be classified as liabilities in the balance sheet. Further, alignment of domestic accounting and statistical practices with international standards and guidelines is frequently deficient and not required by law. To support a comprehensive perimeter for debt transparency, the law should ensure consistency and clarity in the concept of public debt, aiming for a broad coverage of the whole public sector and of all debt instruments.*

#### A. Institutional Coverage—Whose Debt?

##### **Concept, International Standards and Guidelines**

**The principle of public debt transparency should apply to the entire public sector.**<sup>17</sup> While taking into account capacity constraints, international standards and guidelines promote the disclosure of public debt information at all levels of government. The *Revised PDM Guidelines* recommend that debt management and debt data disclosure encompass the main financial obligations that are included in the “central government’s mandate” but clarify that this principle may be useful for other levels of government as well.<sup>18</sup> The *FTC* recommends that fiscal reports provide a comprehensive overview of fiscal activities of the “public sector and its sub-sectors.”<sup>19</sup> The *PSDS Guide*, in line with the *2014 GFSM*, recommends the disclosure of the core information on public debt statistics of the entire public sector, in aggregate and disaggregated form<sup>20</sup>, covering: i) general government (GG),<sup>21</sup> including central government (CG)<sup>22</sup> (budgetary central government (BCG),<sup>23</sup> extrabudgetary units (EBFs), and social security funds), state government and local government, and ii) public corporations (PC), including non-financial and financial (deposit-taking and others).<sup>24</sup>

<sup>17</sup> Per the 2014 GFSM (2.63), the public sector “consists of all resident institutional units controlled directly, or indirectly, by resident government units—that is, all units of the general government sector and resident public corporations.”

<sup>18</sup> Revised Guidelines for Public Debt Management, IMF and World Bank (2014).

<sup>19</sup> Fiscal Transparency Code IMF (2019) Principle 1.1.1., at p. 1.

<sup>20</sup> Public Sector Debt Statistics Guide, IMF (2013), at p. 7, 14 pp. 2.20-2.58.

<sup>21</sup> Per the 2014 GFSM (2.58), the general government sector “consists of resident institutional units that fulfill the functions of government as their primary activity.” It comprises “[a]ll government units of central, state, provincial, regional, and local government, and social security funds ... imposed and controlled by those units” and “[a] all nonmarket NPIs [nonprofit institutions] that are controlled by government units” (2014 GFSM 2.58). General government is a component of the public sector.

<sup>22</sup> Per the 2014 GFSM (2.85), the central government subsector “consists of the institutional unit(s) of the central government plus those nonmarket NPIs that are controlled by the central government. The political authority of the central government extends over the entire territory of the country.”

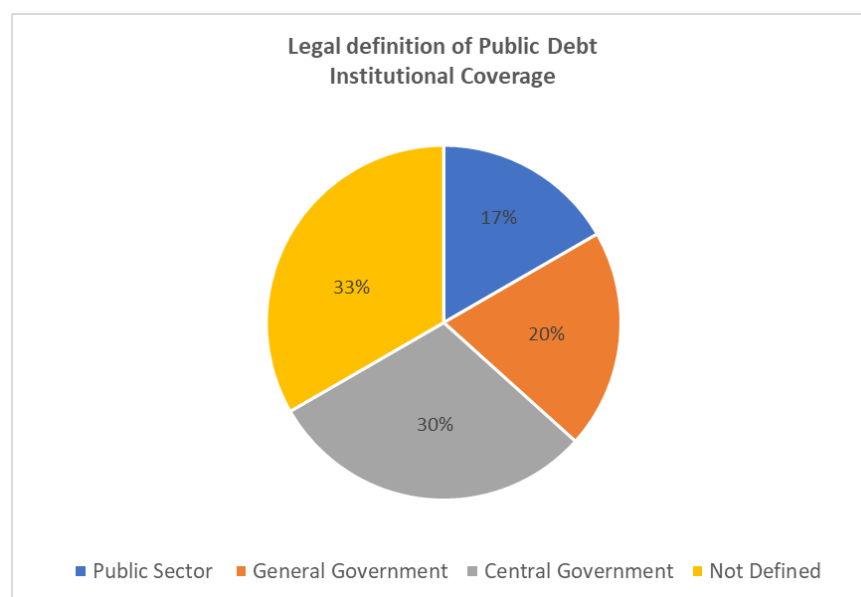
<sup>23</sup> Per the 2014 GFSM (2.81), the budgetary central government is “often a single unit of the central government that encompasses the fundamental activities of the national executive, legislative, and judiciary powers.”

<sup>24</sup> IMF (2014), IMF (2020)

### Common Practices and Legal Issues

**5. The majority of the jurisdictions surveyed limit the definition of “public debt” to the budgetary central government debt.**<sup>25</sup> In our sample, 30 percent of the countries define public debt as that of central government entities, 20 percent as that of general government, and 17 percent as that of public sector (e.g., *Mauritius, Mexico, Moldova, Sierra Leone*). See Figure 1. Most of the jurisdictions with central government coverage refer to the narrower coverage of “budgetary central government,” and only a few jurisdictions (e.g., *Mexico*) explicitly include extrabudgetary entities. LIDCs appear to have a narrower coverage (central government) where the concept of public debt is usually associated with the management of securities and loans by the Ministry of Finance (Figure 2). Some countries do not define the institutional coverage in the law or do not define it clearly.

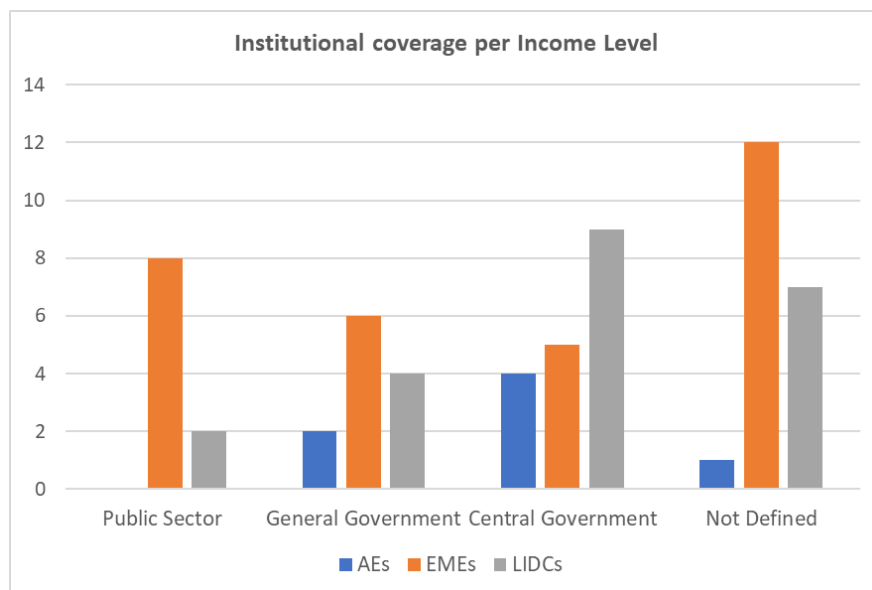
Figure 1. Institutions Covered within the Notion of Public Debt



**Source:** Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

<sup>25</sup> In the analysis of the relevant legislation, the reference to “government debt” or “State debt” is interpreted to be to that of central government, unless the relevant domestic law specifies otherwise. The terms “government” and “state” in most of the jurisdictions analyzed is defined as that of central government or, if not defined, seem to imply central government (particularly in PFM and PDM laws). It is recognized, however, that the meaning of the definition of “government” may differ across jurisdictions (for more detail, see, e.g., Arslanalp et al. (2020), pp. 59-61).

Figure 2. Institutions Covered within the Definition of Public Debt per Income Level



Source: Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**6. The specific purpose of an institutional coverage is determined by the location of the definition of public debt in the legal framework.** Definitions of public debt can be found in different types of laws and will be usually associated with the specific purpose of the relevant law:<sup>26</sup>

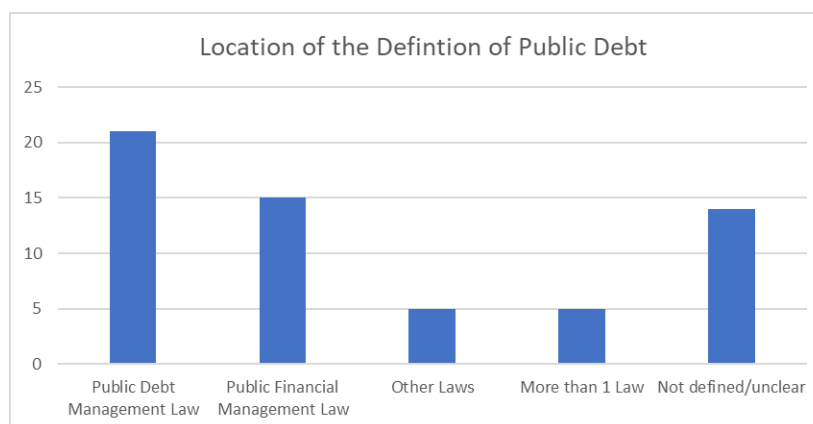
- *PDM laws* have provisions related to the government's borrowing authority, debt management, and controls of other public sector entities' borrowing powers, as well as reporting obligations. These laws tend to have a narrower coverage, limited to central government debt.
- *PFM laws* usually define obligations for fiscal reporting and monitoring contingent liabilities. These laws appear to have a broader definition to cover the whole public sector.
- *Fiscal responsibility laws* define numerical and procedural fiscal rules which are long-lasting constraints on fiscal policy on budgetary aggregates (e.g., expenditure, debt, revenues, deficits). They can have a varying coverage, depending on the scope for the computation of the relevant fiscal rules, such as debt ceilings.

In our sample, the most prevalent practices seem to define public debt either in the PDM or PFM laws (Figure 3).

<sup>26</sup> Not all countries use the term "public debt". Unless stated otherwise, in this paper the term "public debt" in the domestic context encompasses the broadest institutional coverage of the relevant notion envisaged in the law of a particular jurisdiction.



Figure 3. Location of the Definition of Public Debt



Source: Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**7. Three main legal issues hamper a comprehensive institutional coverage of public debt, and therefore debt transparency.** *First*, in jurisdictions where multiple definitions of public debt coexist, consistency may be problematic. Such inconsistencies may arise from having several definitions in different laws (e.g., Angola<sup>27</sup>), or having different notions of public debt in the same law (e.g., Seychelles<sup>28</sup>). When the institutional coverage of public debt is associated with the debt management responsibilities or fiscal reporting of different levels of government, this may also create diverse and inconsistent definitions of public debt. *Second*, unclear language in the coverage and definition of public debt is a frequent shortcoming. Laws may lack clear definitions of certain terms, such as “government borrowing,” “borrowing on behalf of the Republic,” “state debt,” “government debt,” “national debt”.<sup>29</sup> It may be difficult to interpret such provisions unless subsidiary regulations clarify their coverage. *Finally*, other challenges lie in explicit exclusions or inconclusive attributions. In some jurisdictions, the liabilities of certain public entities may be explicitly excluded from the definition of public debt. Other laws do not provide a conclusive attribution of whether the liabilities of entities (e.g., extrabudgetary funds, trust funds, and special purpose vehicles), will be considered public debt. Overall, these shortcomings make it unclear which entities' liabilities constitute public debt, which undermines the applicability or effectiveness of debt reporting and disclosure obligations. Furthermore, such differences may have an impact on comparability of debt at the international level if reporting is not aligned with international standards and guidelines.

**8. A more fundamental challenge for debt transparency is that in many countries the legal classification of public sector entities is not in line with the 2014 GFSM's sectorization.** For certain types of public entities which are granted more administrative, budgetary, and financial autonomy (decentralized entities, EBFs), it may be difficult to establish public debt disclosure obligations when these

<sup>27</sup> In Angola's Public Debt Law, “public debt” covers the *general government* (Article 2), whereas in the Fiscal Responsibility Law, the coverage is the broader *public sector*, which includes public corporations (Article 2 and 4, and Legislative Decree on Public Entities and the SOE Framework Law). Fiscal reporting reforms are ongoing to clarify the coverage of reporting, bring the sectorization of the public sector in line with the 2014 GFSM, and gradually increase the capacity for a full public sector coverage.

<sup>28</sup> In *Seychelles*, the institutional coverage of “public debt” refers to “government” only, whereas “local debt” and “foreign debt” definitions also mention “parastatals” (PDM Act, Section 2).

<sup>29</sup> For example, the notion of “public debt” in the law may cover the entire public sector (*Ecuador, Sierra Leone, Zambia*), the general government (*Albania*), or the budgetary central government (*Kenya, Malawi, Uganda*). The reference to “State” or “government” debt may be to the general government (*Lithuania, Mongolia, North Macedonia*) and to central government (*Ghana*).

entities are classified outside of the central government sphere.<sup>30</sup> Additionally, monitoring frameworks of the central government over these entities are often lax even though they might be performing governmental functions and do not operate under commercial criteria.<sup>31</sup> Annex II compares the legal public sector classification in Egypt and Mexico with 2014 GFSM sectorization criteria.

### Good Practice Recommendations

**9. Addressing these issues requires a multi-pronged approach.** Domestic legal frameworks should:

- i) *Avoid inconsistent definitions across different legal instruments.* This can be done by including a single definition of public debt throughout the different laws (PDM/PFM laws/FRLs), which will cover, to the extent possible, the whole public sector. Also, cross-referencing definitions among legal instruments is highly recommended.<sup>32</sup> However, there can be qualified departures from this approach. If a differentiated institutional coverage is needed among legal instruments (or within one legal instrument), the carveouts from the single definition should be explicitly defined.<sup>33</sup> The use of a single and institutionally broad definition of public debt would allow the Ministry of Finance to have a complete view and oversight of debt liabilities of the central government, local governments and SOEs. It would not necessarily result in a change to the debt management responsibilities even if fragmented between various departments and agencies. For those cases, legislative clarifications on the allocation of responsibilities for debt management will be needed in the relevant instruments.
- ii) *Use clear terms when defining the institutional coverage of public debt.* This could be achieved by aiming to use a single definition of “public debt” (or equivalent alternative term) throughout the relevant legal instruments within a jurisdiction, while recognizing specific cases pertaining to each country (as described in the previous point). In case of capacity constraints, the law could enable a phased broadening in the coverage. The institutional coverage of public debt should be defined in the law, while more detailed guidance could be left to secondary legislation (depending on legal traditions).<sup>34</sup>
- iii) *Include in the legal definition of public debt EBFs, public trusts funds, and SPVs, in line with international standards and guidelines.* While these entities may be covered by broader public sector categories, for the avoidance of doubt some jurisdictions have explicitly listed them in the law (e.g., *Federation of Bosnia and Herzegovina* includes “off-budget funds”<sup>35</sup> and *Mexico* includes some but not

<sup>30</sup> See also Dippelsman et al. (2012).

<sup>31</sup> The importance of a precise definition of government, including the units covered by or excluded from such definition, is also raised in the context of the design and implementation of IMF-supported programs (see Dziobek et al. (2013)).

<sup>32</sup> See, for example, the PDM Law and FRL of *Thailand*. Section 4 of the PDM Law states “public debt means a debt incurred by the Ministry of Finance, a State agency or a State enterprise through raising of loans or a debt guaranteed by the Ministry of Finance” and Section 4 of the FRL states “public debt means the public debt under the law on public debt administration”.

<sup>33</sup> For example, in *Ecuador* the Organic Budget Code, Article 8 and 123 defines “public debt” as that of the whole public sector. At the time of the introduction of the fiscal responsibility framework, the law reform made reference to the existing concept of public debt specifying a narrower institutional coverage for the purposes of computation of the debt rule: “the consolidated balance of public debt of the non-financial public sector and Social Security entities shall not exceed 40 percent of GDP.”

<sup>34</sup> For additional discussion on the scope and definition of public debt, see Addo Awadzi (2015).

<sup>35</sup> “Off-budget funds” are defined as legal entities established pursuant to the law and financed from the “earmarked taxes and nontax revenues or contributions.” Law on Debt, Borrowing and Guarantees in the Federation of Bosnia and Herzegovina (FBiH), Articles 2 and 8. Federation of Bosnia and Herzegovina is one of the two Entities within Bosnia and Herzegovina (Article 3 of the Constitution of Bosnia and Herzegovina).

all trust funds).<sup>36</sup> Proper reporting of these entities' liabilities goes in hand with appropriate authorization processes, oversight, and control over their borrowing—often a key source of debt opacity.

- iv) *Align the legal classification of public sector entities with international statistical standards.*<sup>37</sup> When this is not the case, countries face challenges in reporting public debt both in aggregate and disaggregated form. A legal reclassification in line with the 2014 GFSM's sectorization has positive impact not only for accurate fiscal and statistical reporting but also for broader sound debt and financial management. Legal reform should thus be pursued, with the appropriate phasing for implementation. In case of constitutional limitations to a reclassification, the legal reform should ensure that the different categories of public entities governed by any special treatment are subject to equivalent strict and rigorous principles of debt transparency.

## B. Debt Instrument Coverage—What is Considered Debt?

### *Concept and International standards and guidelines*

**10. International standards, guidelines and initiatives provide guidance on the instrumental coverage of public debt and on their reporting and statistical treatment.** Public debt represents a subset of liabilities in the public sector balance sheet. A liability is an obligation of one entity (debtor) to provide funds or other resources to another entity (creditor). It is normally established through a legally binding contract that specifies the terms and conditions of the payment(s) to be made, and the payment according to the contract is unconditional.<sup>38</sup> Liability may also arise by other means, e.g., based on a law, or judicial awards. The criterion to define a liability as debt is that future payments of interest and/or principal (e.g., the volume of funds borrowed) are due by the debtor to the creditor. On this basis, the following are considered public *debt instruments*: debt securities; loans; insurance, pension, and standardized guarantee schemes; special drawing rights (SDRs); currency and deposits; and other accounts payable, including those that are overdue, i.e., arrears.<sup>39</sup> International standards also provide guidance on the statistical treatment of all debt-related arrangements, including complex transactions, such as PPPs, collateral and collateral-like debt, and trade credits.<sup>40</sup> With regards to debt-like instruments, such as currency and interest rate swaps used on behalf of the government or to finance government activities, the G20 Note on Strengthening Public Debt Transparency provides additional recommendations on effective data collection and recording.<sup>41</sup>

<sup>36</sup> Under the Federal Public Debt Law (Article 1) only the trust funds where Federal Government is the settlor/grantor are under the scope of the law.

<sup>37</sup> For example, in *Federation of Bosnia and Herzegovina*, the Law on Debt, Borrowing and Guarantees mandates the classification of institutional units for purposes of defining *total public federation debt* (as well as, e.g., public federation debt, public debt of a city or a municipality) to be in line with the EU statistical methodology (Article 2).

<sup>38</sup> Public Sector Debt Statistics Guide IMF (2013) at p. 35. paragraph 3.5. From the legal perspective, the concept of liability is closely linked with the concept of "obligations".

<sup>39</sup> Public Sector Debt Statistics Guide IMF (2013) at p. 37.pp. 3.17

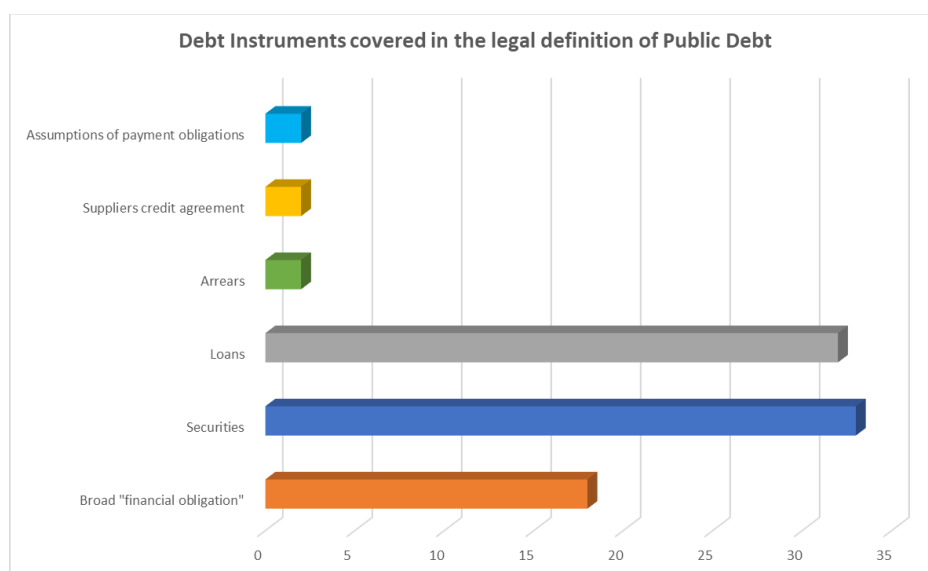
<sup>40</sup> IMF, (2020b), at pp. 15-16.

<sup>41</sup> G20 (2018).

### Debt Instrument Coverage in Legal Frameworks and Common Legal Challenges

**11. The majority of domestic legal frameworks surveyed do not adopt a comprehensive coverage of debt instruments.** More than a half of jurisdictions observed adopt a narrow coverage of debt instruments, restricted to loans and/or securities (Figure 4).<sup>42</sup> Only 18 countries define debt as a broad financial obligation or have an open-ended list in the law. Few countries explicitly include arrears, suppliers credit agreements, and/or assumptions of payment obligations under guaranteed loans in the definition of public debt (e.g., *Ecuador, Ghana, Zimbabwe*). Countries with a wider coverage refer to “liabilities” or “balance sheet” when requiring fiscal reports (e.g., annual financial statements).<sup>43</sup> Some countries have explicit exclusions of certain instruments from debt coverage e.g., monetary obligation to cover temporarily cash positions within the fiscal year, or currency swaps (*Austria, Ecuador*). Government guarantees are explicitly mentioned in public debt coverage in more than 15 countries.<sup>44</sup>

Figure 4. Legal Definition of Public Debt – Debt Instrument Coverage



Source: Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**12. There seems to be a strong relationship between the instrumental and institutional coverage of public debt.** On the one hand, jurisdictions that define public debt within the contours of central government entities tend to restrict debt instrument coverage to those within the MoF or DMO responsibilities (generally

<sup>42</sup> Particularly in PDM laws, the narrower debt instrument coverage may be a consequence of the restricted mandate of the debt management office which typically does not cover pension and other non-financial liabilities. These liabilities would be managed, monitored and reported by other fiscal agencies.

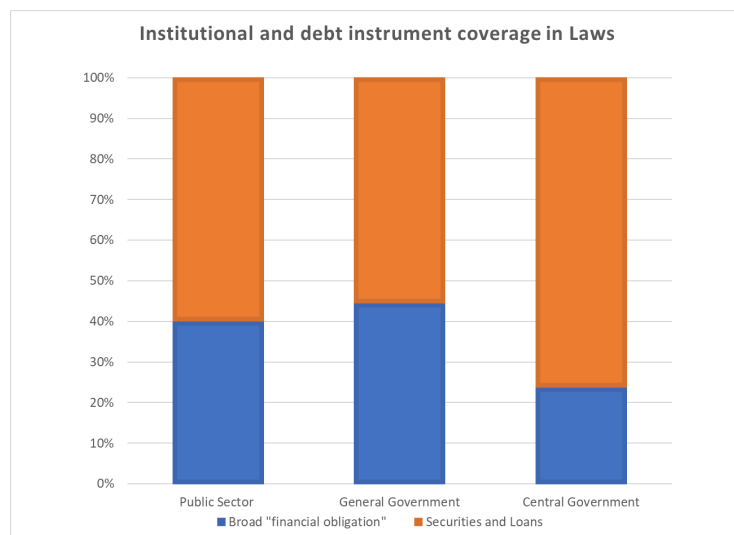
<sup>43</sup> In *North Macedonia*, debt instruments are mentioned in the context of borrowing powers: “borrowing shall mean procedure for incurring financial liabilities by concluding a loan agreement and/or issuance of debt securities by the state or the municipality, municipalities within the City of Skopje and the City of Skopje (PDM Law Article 2).

<sup>43</sup> These include *Canada, Austria, Jamaica, Mauritius, Ghana, and Uganda*. Only two of these countries include the definition of “liability” in the law (*Ghana and Uganda*). For example, the PFM Act of *Uganda* provides that “liability” means a liability measured in accordance with generally accepted accounting practice and includes a liability that is contingent on an uncertain future event (Section 3 PFM Act).

<sup>44</sup> For instance, *Armenia, Georgia, Lithuania, Mongolia, Vietnam, Zambia, and Zimbabwe*.

issuing securities and contracting loans). On the other hand, jurisdictions that assign a broader institutional coverage to the definition of public debt (general government or public sector) also tend to have a broader debt instrument coverage (Figure 5). As a caveat, it is possible that countries expand the universe of disclosure, through regulations, instructions, or manuals. However subsidiary legislation cannot remedy the shortcomings of an inadequate legal basis in primary law, exposing the government to legal challenges, weak enforcement powers and also being more susceptible to changes due to political pressures.

**Figure 5. Legal Definition of Public Debt—Relationship between Institutional and Debt Instrument Coverage**



*Source: Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.*

### 13. An analysis of these legal provisions reveals the following additional challenges:

- *Coverage is limited to a narrow exhaustive list.* An exhaustive and closed list in the law, often covering only loans and government securities, could pose a risk that certain debt instruments (despite their economic nature as liabilities) are not subject to reporting and disclosure, including when robust accounting and statistical norms are not in place in the jurisdiction. This is often the case, for example, for supplier's credit agreements, liabilities derived from PPPs, and expenditure arrears.
- *Certain types of debt instruments are explicitly excluded from the coverage of public debt.* This may be the case, for example, for short-term Treasury financing instruments (*Austria*, and *Ecuador*).<sup>45</sup> Risks of hidden debt are high, particularly if there are no reporting and disclosure requirements or a clear statistical treatment. (See Box 4 summarizing the case of Ecuador).
- *Coverage of atypical and complex financial instruments is unclear,* raising questions on whether and how they should be recorded and reported. Instruments such as financial derivatives, including swaps, may give rise to debt-like obligations, with similar economic effects as undisclosed borrowing in the

<sup>45</sup> These instruments are usually defined as securities repaid by the end of the fiscal year used to cover temporarily cash positions. For example, in *Austria* Section 78(2) of the Federal Organic Budget Act states that "Monetary obligations entered into by the Federal Minister of Finance in order to temporarily increase the cash position are only deemed to create financial debt to the extent that such obligations are not repaid within the same fiscal year."

event of default.<sup>46</sup> Recent experience on pre-financing contracts with oil traders and collateralization of unrelated assets exposed similar recording and disclosure-related issues.<sup>47</sup>

- *Inclusion of explicit government guarantees in the definition of public debt.* While not yet actual liabilities, contingent liabilities are a source of fiscal risk and should be disclosed. Some jurisdictions have a combined a public debt and government guarantee ceiling (e.g., *Ukraine*). Problem arises also if legislation conceptually confuses them with a liability, rather than imposing monitoring, recording and disclosure requirements as CLs. See also Section IV.B.

#### **Box 4. Ecuador—Explicit Exclusion of Short-Term Treasury Instruments from the Legal Definition of Public Debt**

The Organic Budget Code in Ecuador, until its reform in 2020, provided that “*any securities or treasury paper having a term of less than 360 days*” were excluded from the definition of public debt. This provision addressed the constitutional requirement that public debt may only finance capital expenditure and not current expenditure (golden rule). Liquidity constraints led the government to resort to the use of these instruments (CETES by its acronym in Spanish) as a medium-term financing instrument instead of a cash management tool, as originally conceived. The rollover and continued issuance of the instrument created a structural debt stock that reached 5 billion USD in 2016. Regarding disclosure, the stock of CETES was not reported as debt in public debt management publications nor in fiscal or statistical reports.

The *2020 reform of the Organic Budget Code* aimed to address this issue, within the limits of the constitutional restrictions on borrowing.

- Recognizing the need for a cash management instrument to address short-term liquidity needs, the exclusion of short-term cash management instruments from the definition of public debt was maintained. However, short-term cash management instruments are now explicitly included in the computation of the debt ceiling.
- Robust restrictions were introduced to avoid abuse, including i) maximum maturity (360 days), ii) annual limit on the stock of 8 percent of total expenditure and iii) a requirement that an annual report of issuance and reduction is included in the annual budget law.
- Debt bulletins are now required to include a report on the stock of CETES, in line with statistical standards.

*Source:* Authors’ elaboration based on the country’s legislation and debt bulletin reports available [here](#).

### **Good Practice Recommendations**

**14. To support debt transparency, domestic legal frameworks should adopt a comprehensive definition of “debt instrument,” in line with international standards and guidelines.** This could be achieved by:

- Adopting a definition that recognizes the economic equivalent functions of the debt instruments (substance over form).* In line with the PSDS Guide, one fundamental element to define debt is that

<sup>46</sup> See further references to financial derivatives disclosure in Section IV.D: for example, financial derivatives are among the transactions subject to disclosure under the IIF voluntary principles.

<sup>47</sup> G-20 (2018). See also Vivares (2018). More detailed considerations on collateralized debt instruments are included in Section V.C.

future payments of interest and/or principal are due by the debtor to the creditor. This approach provides scope to classify as debt new and/or atypical instruments that may not be explicitly referenced in the legislation. It will be important to assess practical implementation of this broad guidance given by the law, and implementing regulations or manuals will be useful in this respect.<sup>48</sup>

- ii) *Avoiding a closed list of debt instruments in the law.* Having a closed and strictly defined list in the law may increase the risks of regulatory arbitrage. It will also create the need to amend the law in the future when new debt instruments are created, thus undermining the stability of the law. The open-ended list may still include guidance associated with the powers of the relevant entities or referencing the notion of debt.<sup>49</sup>
- iii) *Ensuring that the definition of public debt is consistent across existing laws.* As in the case of institutional coverage and with the same caveats, it is recommended to include a single definition of public debt in one law (PDM or PFM laws), and have other laws simply cross-reference that definition.
- iv) *Requiring that the law supports the implementation of accounting and statistical principles in line with international standards and guidelines.* To ensure that the economic nature of the debt instruments prevails, some PFM legal reforms have included requirements to align national accounting and statistical rules with international standards and guidelines (*Ecuador, Mauritius*).
- v) *Providing for an appropriate legal treatment of guarantees and other contingent liabilities.* This should include appropriate information and disclosure requirements, even though guarantees may not be included in the definition of public debt (see Section IV.B for further detail).

## IV. The Legal Framework for Public Debt and Contingent Liabilities Disclosure: Common Challenges and Suggested Good Practices

*From the borrowing countries' perspective, the legal framework must require disclosure of i) debt data and contingent liabilities and ii) policies, strategies, and operations on public debt management. However only few countries surveyed require in their primary laws this level of disclosure. While legal requirements for fiscal reporting (with debt data) are more frequently found, they usually have a narrow coverage (limited to central or general government). Reporting requirements for SOEs are fragmented in several legal instruments, and usually only refer to financial statements and annual reports. Notably, most countries do not require disclosure of loan-level information of financial and non-financial terms of debt contracts. From the creditors' perspective, initiatives calling for transparency have so far relied on voluntary disclosure and political support. The leap from voluntary to mandatory disclosure will require significant legislative revisions and sustained stakeholder support.*

<sup>48</sup> For example, in Ecuador, public debt is defined as "all obligations acquired by public sector institutions under which the borrowing institution obtains financial resources for its own use, subject to the repayment to the creditor of the principal and/or interest at one or more future dates."

<sup>49</sup> The wording of an open-ended provision on debt instruments may include "other instrument which gives rise to a debt payment liability" (*Vietnam*), or broader notions of monetary liability (*Rwanda*), or financial obligations (*Turkey*).

## A. Disclosure Requirements for Public Debt

### *International Standards and Guidelines*

**15. International standards and guidelines provide the key elements that should be included in domestic legal frameworks to ensure both the “ability” and “willingness” to disclose public debt.** To foster effective public debt disclosure, domestic legal frameworks should provide for: i) the legal powers to disclose public debt and contingent liabilities without inappropriate restrictions or limitations (“ability” to act),<sup>50</sup> and ii) a legal obligation to disclose this information (to buttress the public authority’s “willingness” to act). The latter should be commensurate to the technical and institutional capacity of countries to execute them.

**16. Disclosure of public debt takes place through a variety of reports and publications and at various stages of its authorization, issuance, and monitoring.** International standards and guidelines recommend several levels of granularity of disclosure of public debt information (Table 2). None of these standards require or encourage disclosure at a transactional level, with the exception of the IMF Guide for Resource Revenue Transparency, which recommends the disclosure of contractual risks and obligations arising from debts with direct or indirect collateralization of future resource production.<sup>51</sup> International consensus is building on the need of more granular information on public debt data, particularly to support validation and reconciliation between creditors and borrowers.

**17. All the international standards and guidelines highlight key principles for public debt disclosure while recognizing the capacity constraints for their implementation.** Public debt information should be disclosed in a regular and timely manner, and with adequate access to the public. This said, the standards consider the different levels of institutional capacity among countries. For example, the PSDS Guide recognizes the technical capacity constraints and intra-government coordination challenges. The FTC distinguishes among ‘basic,’ ‘good,’ and ‘advanced’ practices, each one with varied institutional coverage and/or granularity of information required. The Revised PDM Guidelines emphasize that the relevance of some principles varies based on the wide range of institutional structures and different stages of development.

### *Status Of Domestic Legal Frameworks for Public Debt Reporting and Common Challenges*

**18. Legal requirements for public debt disclosure are uncommon across jurisdictions.** *Public debt management publications* are rarely required by primary law (Figure 6). Of our sample, less than ½ of the countries require in their laws to publish MTDSs and ABPs. Legal provisions mandating preparation and submission of annual debt management reports to Parliament are more frequent. Only 37 percent of the countries surveyed require publication of debt bulletins and other debt data reports. In turn, ½ of countries have legal requirements for publishing *fiscal and statistical debt reports*, commonly found in PFM laws, such

<sup>50</sup> Restrictions and limitations may stem from, e.g., national security concerns or contractual confidentiality clauses. Further discussion on this is incorporated into Section VI of this paper.

<sup>51</sup> Guide on Resource Revenue Transparency IMF (2007).



as annual financial statements or accounts generally audited and presented to Parliament. Less than ¼ of countries require disclosure of loan-level information (Figure 7).<sup>52</sup>

**Table 2. Public Debt Disclosure Requirements Recommended by International Standards and Guidelines**

Static publications	Debt management publications	Debt data publications
<ul style="list-style-type: none"> <li>• <i>Legal and regulatory framework</i> for debt management.</li> <li>• <i>Governance framework</i> of the debt management office and structure.</li> <li>• <i>Borrowing powers and delegation</i> of responsibilities and design of debt instruments.</li> <li>• <i>Regulations and procedures</i> for primary issuance and secondary market operations. (Revised PDM Guidelines)</li> <li>• <i>Statistics dissemination process</i>, concepts, definitions, classification and methodology for public debt to be published (PSDS Guide Para 6.16).</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Medium-term debt management strategy</i> (MTDS) setting out the government's desired composition of its debt portfolio considering the debt management objective, cost-risk preferences, and the projected funding requirement (Revised PDM Guidelines Principle 2.1).</li> <li>• An <i>annual borrowing plan</i> (ABP) operationalizing the MTDS which includes details on how the strategy will be implemented and how gross funding requirements will be met.</li> <li>• <i>Issuance calendar</i> for government debt securities may also be published (Principle 6.2).</li> <li>• An <i>annual debt management report</i> prepared, published and submitted to Parliament evaluating whether public debt management operations conformed to the MTDS, and the reasons for any variance. Discloses the macroeconomic environment, borrowing activity and debt composition, "materially important" aspects of debt management operations, rationale for the use of derivatives and aggregate statistics on the derivatives' portfolio (Principle 2.2, 2.6. and FTC)</li> </ul>	<p>Publication at a central government level of <i>monthly and/or quarterly reports</i> on:</p> <ul style="list-style-type: none"> <li>• outstanding debt stock, and</li> <li>• composition of debt liabilities by currency denomination, maturity and interest rate.</li> </ul> <p>To the extent possible, countries should also disclose <i>monthly and/or quarterly statistics</i> on</p> <ul style="list-style-type: none"> <li>• domestic and external debt and loan guarantees,</li> <li>• issuance/disbursements debt service payments,</li> <li>• risk indicators (e.g., average residual maturity, average cost),</li> <li>• debt due in one year or less and debt stock by type of investor.</li> </ul> <p>"<i>Standard terms and conditions</i>" of the relevant debt instruments should be available, including, collective action clauses, if applicable (Principle 2.2 and PSDS Guide para 6.16)</p> <p><i>Fiscal reports</i> should include a balance sheet of all debt and liabilities and be published in a regular and timely manner in i) in-year budget execution and fiscal statistics reports on a monthly or quarterly basis, and ii) annual financial statements or accounts (FTC).</p>

**Source:** Authors' elaboration based on relevant standards included in the PSDS Guide, the FTC and the Revised PDM Guidelines.

<sup>52</sup> Disclosure of individual loan contracts is envisaged in the legislation of *Indonesia* and *Thailand*. In *Seychelles*, publication of specific information on a loan is a condition for such loan coming into effect. Notably, in *Mexico* transaction-level information and contracts are published under the requirements of Freedom of Information laws. See Annex 3 for a detailed description on these requirements.

Figure 6. Legal Provisions Requiring Publication of Debt-Related Information: Requirements  
Public Debt Disclosure Requirements in Laws

Source: Author's elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

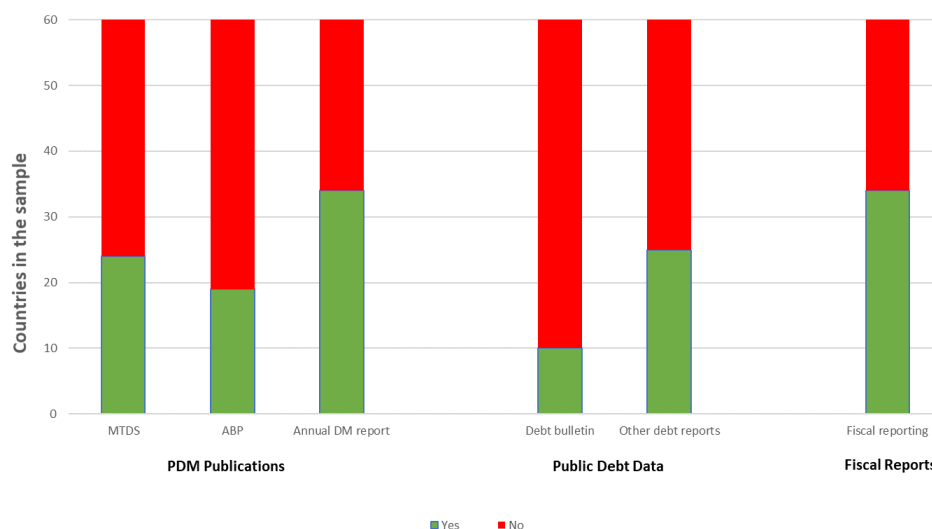
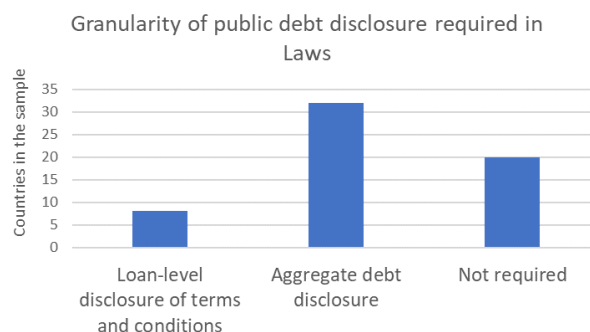


Figure 7. Legal Provisions Requiring Loan-Level Disclosure  
Granularity of Debt Disclosure required in Laws



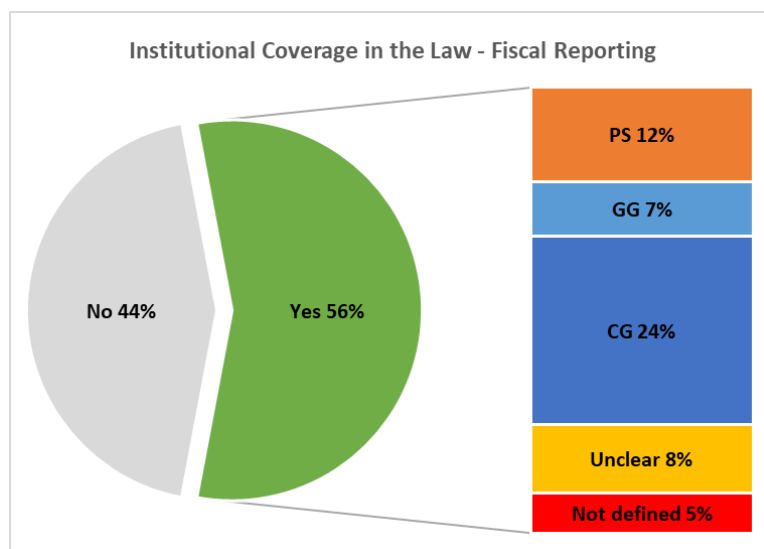
Source: Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**19. Even when the law mandates the preparation of debt-related reports, it may not impose an obligation to publicly disseminate them.** In some jurisdictions these reports are treated as internal documents to be produced by government agencies for debt and fiscal management purposes and are not published or made available to the public. In addition, where publication is mandated, the form and place of publication is very rarely specified. Publication in the official gazette may be less accessible and user friendly than the MoF's website. In some countries, submission to Parliament does not ensure a wider access by the public, unless expressly mandated. Sometimes, the law gives the disclosing agency the discretion to choose

the publication channels. This uncertainty on dissemination not only hamper debt transparency but also could ultimately undermine trust vis-à-vis a wide variety of stakeholders i.e., creditors, credit rating agencies, IFIs, Parliament, citizens at large.

**20. Institutional coverage of debt reporting obligations is often narrow.** Most laws surveyed require disclosure of the central government debt only, despite the presence of numerous public entities with borrowing authority such as decentralized entities, EBFs, SOEs and subnational and local government. This is the case predominantly for the annual debt management report and fiscal and statistical reporting (e.g., in-year and budget execution reports, annual financial statements or accounts). In particular, a few jurisdictions do not define the institutional coverage of reporting obligations (2–5 percent) and several have ambiguous provisions (8–15 percent). See Figure 8. Half of the jurisdictions surveyed have legal provisions requiring a centralized public debt registry and statistical reporting covering either the public sector (PS), general government, or central government, but overall disclosure prescribed in the law among the surveyed jurisdictions remains limited (Figure 9). This said, the coverage of public debt reporting is informed by each publication’s objectives and the legal definition of “public debt” adopted in each jurisdiction, as discussed in Section III above.<sup>53</sup> The law may require the preparation of other reports that may have a broader coverage. For example, fiscal risk statement could cover the entire public sector and include risks (including contingent liabilities) arising from SOE management, PPP implementation, among others.

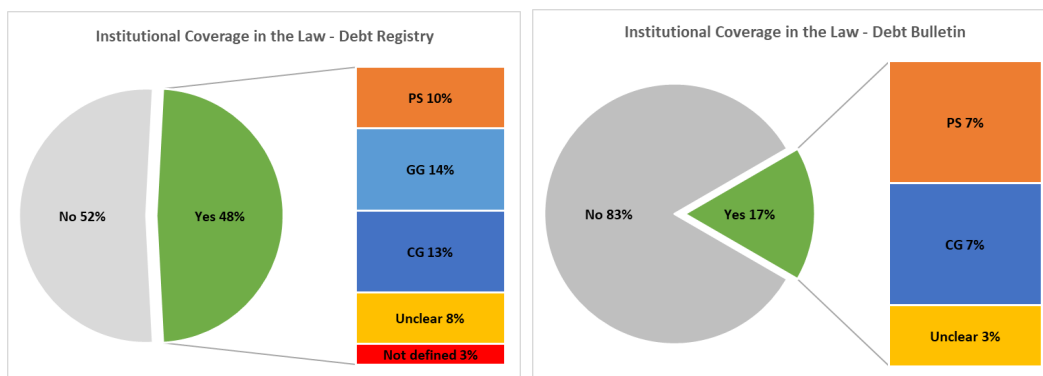
Figure 8. Institutional Coverage in the Law of Annual Debt Management Reports and Fiscal Reports



Source: Author’s elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

<sup>53</sup> The annual debt management report constitutes a statement of performance on the public debt managed by the responsible agency and may therefore leave out liabilities of institutions outside the mandate of the relevant agency. Annual financial statements are typically based on the information produced by the government.

Figure 9. Institutional Coverage in the Law of Debt Registry and Debt Bulletin or Other Statistical Reports



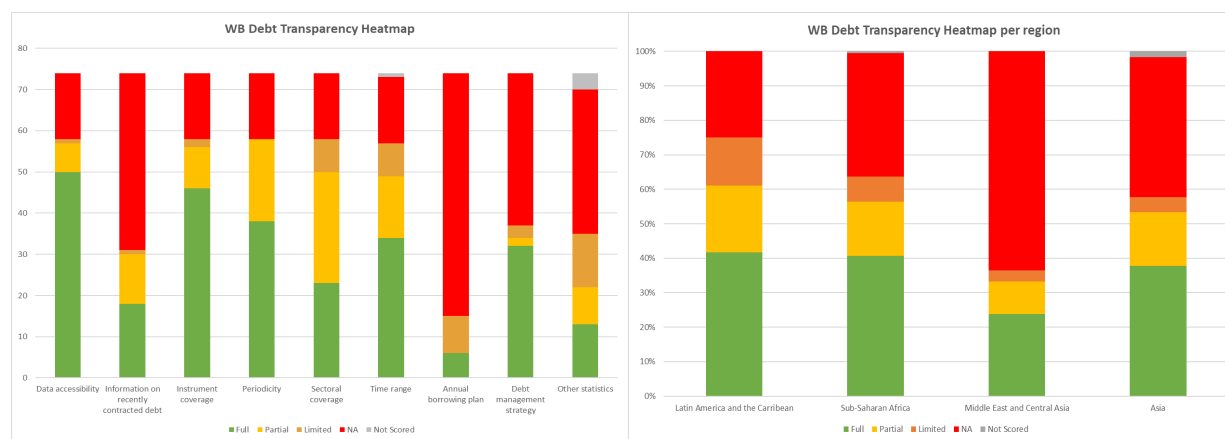
Source: Author's elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**21. In countries with fiscal responsibility legal frameworks, reporting and monitoring requirements seem to be more rigorous.** Reporting is key to ensure compliance with fiscal rules and in turn positively contributes to other elements of debt transparency, such as the institutional and instrumental coverage and frequency and mode of information disclosure. (See Annex 4 on the approaches taken by Angola and The Bahamas). However, reporting requirements under fiscal rules legislation may not envisage a significant level of granular loan-level information.

**22. The opacity surrounding non-financial information is another area of concern among stakeholders, particularly relevant for addressing debt in distress.** Information may be lacking on matters such as governing law, default and acceleration clauses, debt collateral (especially involving natural resources), termination events, and seniority of creditors. This has an impact on the assessment and management of debt performance and risks and on debt restructuring processes. Even though it may be difficult to disclose this information due to the length and volume of loan level data, requirements could be put in place while implementation challenges are progressively addressed. Equally important will be the adoption of rules and procedures governing non-disclosure which will be examined in Section VI.

**23. It may still be the case, however, that some of public debt management publications can be produced and published even in the absence of legal requirements.** In some countries, internal incentives for improving debt and fiscal management practices at the domestic level and external demand for debt transparency drive the disclosure beyond legal requirements. These practices are often codified in subsidiary legislation. In fact, the absence of legal obligations for disclosure in the primary law often does not impose a hard constraint to countries for adopting good practices. For example, in Cameroon project related loan contracts with foreign creditors entered into between 1999 and 2017 were published absent legal requirements. In Kenya, the granular terms of all individual public debt contracts are published. This said, for the majority of LIDCs and EMs, assessments on debt disclosure practices, including those shown in the WB Debt Transparency Heatmap, largely mirror the shortcomings found in domestic legal frameworks surveyed (Figure 10), with Asia, Central Asia and Middle East showing greater gaps. The law, while not the decisive element, is clearly important in supporting effective outcomes in implementation of reforms and their enforceability.

Figure 10. WB Debt Transparency Heatmap



*Source: Authors' elaboration based on selected indicators of the 2022 World Bank Debt Transparency Heatmap. The Heatmap assesses public debt dissemination practices in the 74 International Development Association (IDA) countries conducted on the basis of the information available on national authorities' websites.*

### Good Practice Recommendations

#### 24. Well-defined legal provisions on debt reporting will help align practices with international standards and guidelines and foster debt transparency.

A stronger legal basis is crucial to signal a commitment to report debt data in a manner that is both timely and relevant for policy analysis, and more broadly, for transparency and accountability. Sound legal provisions for debt-related publications (both for fiscal and debt management reporting) should contain several key elements including: i) roles and responsibilities for the preparation and approval of the specific publication; ii) frequency for preparation and updates; iii) general minimum content of the publication, while leaving flexibility to the Executive to define in regulations detailed format and content; and iv) channel and timeframe for publication that promote timeliness and active dissemination.<sup>54</sup> See Box 5 for country examples of well-crafted provisions.

<sup>54</sup> The law must mandate specifically the public dissemination of debt-related reports. This to avoid that debt reports are treated as internal documents. Publication should be also made through accessible mediums, such as the MoF website. Obligations to publish in the official gazette may be kept depending on administrative and legal traditions; however, such disclosure may be less accessible and user friendly.

### Box 5. Examples of Well-Crafted Legal Provisions Requiring Debt-Related Publications

The following are examples of jurisdictions with robust legal provisions requiring the preparation, approval and publication of debt related reports.

- **MTDS:** i) define the timeframe horizon for the strategy (, *Armenia, Lao, Peru, Vietnam*); ii) assign responsibilities for its preparation and approval (*Bosnia and Herzegovina, Bulgaria, Rwanda, Uganda*); iii) link the strategy to debt management objectives (*Serbia*); iv) provide an open list of minimum content, such as, costs and risks embedded in the current debt portfolio, future borrowing requirements, macroeconomic framework, market conditions, etc. (*Benin, Jamaica, Mongolia, North Macedonia, Poland, Seychelles*); v) require that debt operations are compliant with the strategy; and vi) mandate medium and date of publication (*Bosnia and Herzegovina, Ghana*).
- **ABP:** i) require that the document be prepared on an annual basis and updated as needed (*Bosnia and Herzegovina, Rwanda*), ii) assign responsibilities for its preparation and approval (*Mauritius, Seychelles, Sierra Leone, Thailand, Vietnam*), iii) link the ABP with the MTDS (*Kenya, Moldova, Mongolia*), iv) specify, in general terms, the minimum content, such as, planned borrowing operations over the year, borrowing instruments to be used, and the indicative timing of these borrowing (*Liberia, South Korea, Uganda*), v) require publication (*Bosnia and Herzegovina, Ghana, Kenya*).
- **Annual Debt Management Report:** i) designate responsibilities for its preparation or approval (*Austria, Canada, Ghana, Jamaica, Uganda, Seychelles*), ii) specify the minimum content that permit assessing the outcome of public debt operations, such as macroeconomic developments, market conditions under which debt management operations took place during the year, borrowing activity, debt composition, debt management indicators, yield curves, etc. (*Bosnia and Herzegovina, Mozambique, Turkey*), and iii) in addition to submission to Parliament (as a standalone document or together with the annual financial statements), require publication within a specified deadline (*Albania, Azerbaijan, Bulgaria, Jamaica, Mexico*). A few jurisdictions surveyed grant the MoF the explicit power to set the form and content of the report (*Lithuania*). Others require semiannual updates on new borrowing, guarantees, repayments, rescheduling or other LMO or debt restructuring operations (*Liberia*). Some jurisdictions require the disclosure of the terms and conditions of individual loan contracts (*Indonesia, Thailand*).
- **Statistical bulletins:** i) specify timeline for publication (semiannual, quarterly or monthly), and ii) determine their minimum content e.g., outstanding stock, composition of debt liabilities classified by external/domestic currency, type of instrument, interest-rate basis, maturity, type of creditor, creditor residency, contingent liabilities, information on issuance/disbursements debt service payments, and risk ratios/indicators (*Ghana, Mauritius, Mozambique, Rwanda, Thailand*). Some jurisdictions also require that these bulletins include other type of information, such as the use of derivatives (*Ghana*), project finance loans and PPPs (*Turkey*), financial terms of loan agreements (*Ghana*), and expenditure arrears (*Mauritius*). To ensure accessibility, legal provisions may also require that such documents be published on the official website of the MoF or Government (*Azerbaijan, Benin, Bulgaria, Ghana, Thailand, Sierra Leone, Vietnam*). Some jurisdictions require that disclosure of debt data is in line with international statistical standards (*Ecuador*).

**Source:** Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**25. Where technical capacity for debt disclosure needs to evolve, the law can provide for a phased implementation of reforms.** Countries that pursue legal reform may lack political support or may face

implementation challenges to align their laws with international standards. A phased execution built in the law allows the authorities to secure internal consensus and gradually develop needed capacity. Similarly, for those countries that have already adopted good debt reporting practices in secondary legal instruments (e.g., regulations, guides, manuals) they can decide to codify these practices in the law to prevent deviations in times of political turmoil or economic crisis.

**26. Laws could also include additional debt reporting requirements to ensure a more granular disclosure of borrowing operations.** Proposals for a higher granularity of debt data dissemination, including loan-level information, have been steadily brought to the fore by academia, economic think tanks and other international organizations to address debt reporting gaps and prevent information asymmetries flowing from non-disclosure. Options to design the legal obligation to disclose transaction-level information include:

- *Information on newly contracted debt.* Some countries require the publication of terms and conditions of loan agreements (*Seychelles, Sierra Leone, Thailand*<sup>55</sup>), or in periodic reports (*Jamaica*).<sup>56</sup>
- *Borrowing in extraordinary circumstances.* Borrowing for extraordinary circumstances (e.g., natural disasters, financial system stability) may trigger additional disclosure obligations (*Canada*).<sup>57</sup>
- *Decisions on borrowing authorizations.* A few jurisdictions require the publication of decisions per transaction (*Federation of Bosnia and Herzegovina*<sup>58</sup>) or in aggregated manner (*Ghana*).<sup>59</sup>
- *General, standard financial and non-financial terms and conditions of public debt instruments.* Ideally, loan-level disclosure would cover the contracted and disbursed loan amounts, currency denomination, interest rate, fees, penalties, repayment terms, governing law, majority restructuring provisions, sovereign immunity waiver, and all material debt covenants that could subordinate other claims of the government or could give recourse to assets.

**27. Legal provisions supporting public debt recording systems are also fundamental to strengthen debt transparency.** While operational functionalities and management of the systems should be left to regulations, the law could define key elements of debt registry operation, such as:

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<sup>55</sup> In Seychelles, terms of repayment, debtor identification, interest rate, the amount of debt, and other items, such as the purpose of the facility and the manner in which debt should be accounted for, are published in the Official Gazette, and publication is a condition to put the debt agreement into effect. In *Sierra Leone*, the MoF must publish by government notice the terms and conditions of new loans. In Thailand, the MoF must publish in the Government gazette the following information within 60 days from conclusion of a loan agreement by a central government entity or an SOE: source of loan, currency, amount, conversion of foreign currency to Thai baht, interest rate, fees, expenses, discount, repayment period of principal, use of loan proceeds, and conditions and terms of the transaction.

<sup>56</sup> The MoF must prepare quarterly reports on new loans by the Government raised within six weeks of each quarter, including the amounts raised, purposes of the loans, and terms and conditions.

<sup>57</sup> "Each fiscal year, the MoF must table in each House of Parliament (the House of Commons and the Senate) a report on money that has been borrowed under extraordinary circumstances (and that is due at the end of that fiscal year) within 30 days on which each House of Parliament is sitting on after the Public Accounts are tabled in the House of Commons (Financial Administration Act, s.49). A similar, longer-term report must also be tabled by the MoF in each House of Parliament every three years (Borrowing Authority Act, s.8)."

<sup>58</sup> Borrowing decisions are required to be published in the Official Gazette within 10 days of their adoption (Article 100 of the FBiH PDM Law).

<sup>59</sup> Parliament publishes a list of loans, conventions, treaties and other debt-related agreements on a four-year cycle. [Parliament of Ghana, \(2017-2021\)](#).

- The *government entity responsible for managing the debt records*, e.g., the MoF, the Debt Management Office (DMO) or the central bank.<sup>60</sup> The law could also require the minimum content of the records and mandate the adoption of regulations on the management, procedure and deadlines for collection of data.<sup>61</sup>
- *The principles that should govern the debt records*, including timeliness, comprehensiveness, and accurate records (*Ghana, Nigeria*). The law could also require *the integration to the financial management and information systems* of the country (*Argentina, Peru*).
- *Clarifying the institutional coverage* of the debt registry, which will depend on the institutional set up for debt compilation and reporting in each jurisdiction (see Section IV). The registry may also encompass local government (*Albania, Kenya*) and SOEs (*Federation of Bosnia and Herzegovina, Mauritius*). Where debt recording is not centralized, laws could require that entities outside the central government with borrowing powers maintain detailed records of borrowing and debt service as prescribed by the MoF (*Rwanda*).

## B. Disclosure Requirements for Contingent Liabilities

### *Concept, International Standards and Guidelines*

**28. Contingent liabilities (CLs) are typically not recognized as debt due to the uncertainty over whether or not a payment will be required.**<sup>62</sup> CLs are payment obligations whose timing and amount are contingent on the occurrence of a particular discrete and uncertain future event or a series of future events. CLs can be explicit or implicit. Explicit CLs include statutory or contractual arrangements that give rise to conditional requirements to make payments of economic value. Examples include guarantees, indemnities, and letters of comfort.<sup>63</sup> Implicit CLs do not arise from a statutory or contractual source but are based on public expectations, political pressures, or the overall role of the state as society understands it, although they may raise moral hazard concerns.<sup>64</sup> Examples include solvency support of the banking sector, discharging obligations of subnational governments, assuming unguaranteed debt of public sector units, and climate change-related risks.

**29. While CLs are not debt per se, their disclosure is essential for debt transparency.** Information on CLs is essential to account for fiscal risks that may materialize. For borrowers, CLs disclosure enhances debt management planning, by facilitating the determination of budget allowances for expected losses. For creditors, it provides critical information on the potential liabilities the jurisdiction is facing and their impact on

<sup>60</sup> Domestic laws define the MoF as entity responsible for recording public debt in Albania, Angola, Bosnia and Herzegovina, Brazil, Bulgaria, Ecuador, Ethiopia, Georgia, Lao, Lithuania, Mexico, Moldova, North Macedonia, Mongolia, and Somalia and Vietnam. Fewer laws assign direct responsibility to the DMO for the debt recording systems (Argentina, Ghana, Kenya, Sierra Leone). In Liberia, the central bank is the responsible authority. Other laws stipulate that the MoF's responsibility for debt records is without prejudice to the attributions of the central bank on debt recording (Brazil) or is in consultation with the central bank (Rwanda).

<sup>61</sup> Mexico requires that the amounts and characteristics are recorded in the system. Some jurisdictions require that government guarantees or on-lending are kept in the registry as well (*Albania, Bosnia and Herzegovina, Kenya, Serbia*).

<sup>62</sup> 2014 GFSM 7.251 et seq.

<sup>63</sup> Fiscal Transparency Code (2019)

<sup>64</sup> Government Finance Statistics Manual 2014



the borrower's repayment ability. CLs, in particular from government guarantees, SOEs debt and PPPs, are a significant source of fiscal risks for LIDCs and EMs.

**30. International standards and guidelines provide detailed guidance on the recording and disclosure of CLs.** They emphasize the importance of a clear legal framework for explicit CLs, governing their issuance, monitoring, disclosure, and budget allowance for expected losses (Revised PDM Guidelines and FTC). Government guarantees should abide to stricter disclosure by transaction, including identification of beneficiaries and gross exposure (FTC). A comprehensive assessment of all fiscal risks from CLs should be disclosed as part of the annual budget documents, and a register of significant CLs should be established (FTC, PSDS Guide).

### ***Practices and Common Legal Challenges***

**31. Domestic legal frameworks governing CL disclosure often present multiple weaknesses hampering transparency.** While most of the jurisdictions surveyed have specific legal provisions for the authorization and the issuance of loan guarantees, few have provisions to ensure appropriate disclosure on flows, stock, beneficiaries and risks associated with them. Legal disclosure requirements for the broader universe of CLs are also deficient. Jurisdictions with quantitative ceilings on government guarantees issuance seem to have in place better reporting and monitoring frameworks.<sup>65</sup>

**32. Other weaknesses may hinder the disclosure of CLs.** These include: a narrow coverage on the types of CLs (e.g., loan guarantees), unclear definition of what constitutes a CL or its classification (in particular in the case of PPPs), and lack of requirements for budgeting for expected losses in the budget process, which usually incentivizes disclosure.

### ***Good Practice Recommendations***

**33. In line with international standards and guidelines, the government's exposure to CLs should be regularly disclosed; good practices recommend that these disclosure requirements be included in the law.** At a minimum:

- **For loan guarantees**, typically one of the largest components of a government's guarantee portfolio, legal frameworks should require the disclosure of the following information for each guarantee: i) type, intended purpose, beneficiaries, and expected duration; ii) total gross financial exposure (i.e., the maximum amount guaranteed); iii) fees charged, iv) crystallized guarantees, iv) any reimbursement, recovery, or counterclaim by the government of crystallized guarantees; and v) where feasible, estimate of the likely fiscal cost (expected payments).<sup>66</sup> The requirements and operational processes for granting loan guarantees should also be clearly disclosed.
- **For the broader universe of CLs**, legal frameworks should require disclosure of fiscal risks by the relevant fiscal oversight agency, such as through a fiscal risk statement.<sup>67</sup> This ensures that such

<sup>65</sup> See also [Cebotari \(2008\)](#).

<sup>66</sup> Saxena (2017). Alternatively to item (v), aggregated estimate the guarantees fiscal cost may be disclosed.

<sup>67</sup> It should be noted that the institutional coverage of fiscal risk reporting and fiscal risk statement coverage as required by law may be broader than that of other reports.

information is duly integrated with the budget process and that the analysis of fiscal risks is subject to an independent assessment and scrutiny by other stakeholders (e.g., parliaments, and the public).<sup>68</sup>

**34. Designating in the law a central authority for information management and registry of government guarantees can also help enhance transparency.** The legal framework could assign the MoF or DMO the responsibility to maintain a registry on government guarantees (e.g., *Albania, Canada, Georgia, Ghana, Moldova, Mongolia, Rwanda*). The relevant powers should include the authority to require information from contractual parties. Some laws surveyed provide granular requirements on the information to be maintained in the registry.<sup>69</sup>

**35. To the extent possible, the legal framework should mandate that disclosure of CLs be integrated into debt management publications and fiscal reports.** The integration of CL disclosure into public debt management and the budget process, to the extent feasible, contributes to effective monitoring and mitigation of fiscal risks. This could help make the cost of guarantees explicit when issued and ensure budgetary provision in case the guarantee is called. Good practices for CL disclosure in the budget process and public debt management and other considerations are described below. Box 6 provides a few country examples of legal requirements for disclosure.

- *Debt management reports* may need to be limited to the disclosure of explicit CLs, such as guarantees. Even where debt managers are not responsible for the issuance of guarantees, it is good practice to report on the stock and flow of guarantees (outstanding and new guarantees) in debt statistics and the annual debt management report. Such disclosure in debt management reports is done in the context of debt sustainability analysis (credit risk).
- *MTDS reports* would generally include only the guarantees that are being called/serviced or likely to be serviced in the future for the management of market risk.
- *Considerations for not disclosing CLs.* For those guarantees with high probability of being called, aggregate disclosure of budgetary provisions on guarantees could be considered instead of transaction level information when necessary to avoid creating moral hazard risks.

<sup>68</sup> IMF (2019).

<sup>69</sup> The PFM Act of *Liberia* mandates that SOEs and public financial institutions report to the MoF on guarantees issued to them. In *Albania* the registry is instructed to include and update every three months information on the borrower, lending institution, loan amount guaranteed, currency of the loan, and loan balances.

### Box 6. CLs Disclosure Requirements Integrated with Debt Management Publications and Fiscal Reporting

PDM and PFM laws of several jurisdictions surveyed prescribe CL disclosure requirements defining the coverage of disclosure, timing, content and, if applicable, submission to Parliament.

- **MTDS.** In *Jamaica*, information on loan guarantees and other explicit CLs is required to be included in the MTDS, together with the corresponding risk assessment.
- **Annual Debt Management Report** commonly presented to Parliament. In *Federation of Bosnia and Herzegovina*, the annual debt management report, presented with the annual budget implementation report, must include information on the issued guarantees, including amounts and debtors.<sup>70</sup> A similar requirement exists in *Seychelles*. In *Ghana*, the annual debt management report should contain a list of outstanding government guarantees, with amount and beneficiaries. In *Jamaica*, the law prescribes that the report should include flow and stock of government guarantees and explicit CLs, including composition (currency, maturity, interest rate). In *Uganda*, PFM regulations detail the content of information to be disclosed, including outstanding guarantees, called guarantees and recovered amounts from called guarantees.
- **Fiscal Strategy Document, Budget Framework Paper.** In *Belize, Ghana, Jamaica, and Uganda* the PFM laws require that the fiscal strategy document contains a fiscal risk statement including the analysis of CLs and PPPs.
- **Annual budget.** In *Ghana, Uganda, and Rwanda* the law prescribes that the annual budget law includes detailed information on CLs and government guarantees.
- **Debt bulletins or other statistical reports.** In *Bulgaria, Moldova, and Mozambique* the law requires quarterly public debt reports to include guarantees granted. *Mauritius* requires the disclosure of estimated costs of their realization.
- **Annual financial statements or public accounts.** PFM laws in *Angola, Austria, Canada, Ethiopia, Mauritius, Moldova, Uganda, and Zambia* require a statement on CLs.
- **Other reporting requirements.** In *Belize*, the Parliament's resolution authorizing the Government to issue a loan guarantee specifies the terms and conditions that must be published in the Official Gazette within two weeks. Similarly, in *Federation of Bosnia and Herzegovina* contracts for government guarantees can only be signed after the decision on the issuance of the guarantee by the competent authority has been published in the Official Gazette.

**Source:** Authors' elaboration based on a survey of domestic legal frameworks across sixty jurisdictions.

**36. Addressing weaknesses in the legal framework for fiscal oversight of CLs can also enhance transparency.** In addition to strengthening disclosure requirements, good practices recommend that the legal framework for CLs clearly defines the roles and responsibilities of the relevant entities (MoF, DMO, fiscal risk unit, line ministries, parliament, SAI). In many LIDCs surveyed, a central oversight body for risk identification, mitigation, and budget allocation has proved useful. For government guarantees, the legal framework should include a number of provisions regarding i) the authority for issuance and approval; ii) the purposes and conditions for granting a guarantee; iii) obligations of lenders and borrowers; iv) requirements for risk mitigation tools, such as limits on aggregate stock or flow, credit risk assessment, payment of fees

<sup>70</sup> Article 87 of the Law on Debt, Borrowing and Guarantees of the FBIH.

(risk-based or flat), authorization of only partial guarantees, and collateral; and v) sanctions for noncompliance.

## C. SOE Debt Reporting Framework

### *International Standards and Guidelines*

**37. International standards and guidelines provide some recommendations for disclosure of SOE debt by the government and by the SOE themselves, mostly in aggregate form.** Public debt statistical and fiscal transparency standards put emphasis on the reporting of SOE borrowing data in aggregate form and/or consolidated with the rest of the government sector. Transparency and reporting practices of SOE's financial and non-financial information is rather linked with standards applicable to listed companies. More specifically:

- **Reporting by the government.** The PSDS Guidelines and the FTC recommend that SOE debt should be reported and that such reporting clearly identifies the institutional coverage, provides the criteria used for categorizing a public entity as an SOE, and that the data be presented separately from that of the general government debt. These standards also recommend countries to collect SOE borrowing information (at least for the largest companies). However, recommendations on the publication of this information are limited to statistical aggregates<sup>71</sup> or consolidated with the sovereign's debt and other financial data. Other standards and practices suggest that governments prepare and publish SOE annual aggregate reports, which should primarily focus on financial performance and the value of the SOEs (OECD Guidelines on Corporate Governance of SOEs), and report on liabilities stemming from SOEs' operations in aggregate form (European Union's statistical framework). See Annex V for a summary of the key recommendations in these standards.
- **Disclosure by the SOE.** SOEs should be subject to the same disclosure requirements as listed companies and have in place the same high-quality accounting, compliance and auditing standards applicable to listed companies (OECD Guidelines on Corporate Governance of State-Owned Enterprises). This includes preparing externally audited financial statements (following IFRS<sup>72</sup> or national accounting standards in line with international standards<sup>73</sup>), publishing periodic reports (annual and half-yearly) and revealing material events. The International Organization of Securities Commissions (IOSCO)<sup>74</sup> and the International Accounting Standards Board have developed standards describing the desired content and criteria for these disclosures (see Annex V), which generally provide for reporting of aggregate information.

<sup>71</sup> Public Sector Debt Statistics Guide, IMF (2013), at p. 37 pp. 3.16

<sup>72</sup> Reporting under International Financial Reporting Standards (IFRS) is designed to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors. IFRS guidelines on disclosure of financial liabilities are designed to meet the financial market's needs for reliable information on an entity's current and future cash flow requirements and the overall composition/characteristics of the debt portfolio, such as maturity profile, average or ranges of interest rates or borrowing currency.

<sup>73</sup> E.g., International Public Sector Accounting Standards (IPSAS).

<sup>74</sup> The International Organization of Securities Commissions (IOSCO) develops principles and standards for the regulation of entities admitted to trading in capital markets.

### **Current Practices and Common Legal Issues**

**38. SOE debt has increased significantly in the last three decades.** In some countries, SOE debt exceeds 20 percent of GDP and in several cases constitutes half or more of the public sector debt stock. In others, SOE external debt exceeds 25 percent of the countries' exports of goods and services. SOEs bonds account for one third of the entire emerging market sovereign hard currency debt.<sup>75</sup> In some jurisdictions, 90 percent of public corporations' debt may be concentrated in the largest five companies.<sup>76</sup> The absence of explicit guarantees on SOE debt does not isolate governments from fiscal risk. In fact, 80 percent of the realization of contingent liabilities results from implicit forms of liability. Moreover, governments assumed SOE debt obligations even when they had no prior knowledge of the obligations<sup>77</sup>. Also, the information related to SOE bailouts and budgetary transfers to SOEs is usually inexistent and/or not accessible. In other cases, SOE debt may be used for off-balance sheet borrowing by central government, causing problems with transparency in the whole exposure of the borrowing country, including FX obligations.<sup>78</sup> Despite increasing levels of SOE debt, reliable information is lacking.<sup>79</sup> For example, out of the 56 countries evaluated by the WB's Public Debt Reports Heatmap, only six complied with the full institutional coverage by including information on SOE debt.

**39. From the legal perspective, challenges are multiple.** In 29 surveyed jurisdictions,<sup>80</sup> some of the common challenges identified in their legal frameworks are:

- *Most countries do not subject their SOEs to the same disclosure requirements as listed companies.* Laws generally require SOEs to report in line with the disclosure framework for listed companies only if their shares or securities are traded in the capital markets, which may cover a small number of SOEs in each jurisdiction surveyed.<sup>81</sup> Therefore, non-listed SOEs are often subject to lower transparency requirements, generally in line with general company law rules.<sup>82</sup>
- *Even if SOEs comply with listed companies' disclosure requirements, levels of data granularity on firms' borrowing are uneven across countries.* The United States has one of the most rigorous debt-related disclosure requirements for listed companies, including the date of and parties to loan agreements, the amount of the loan, the maturity date, interest rate, collateral description, main terms

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<sup>75</sup> IMF Fiscal Monitor April (2020).

<sup>76</sup> Public Sector Debt Statistics Guide (2013).

<sup>77</sup> Malik et al (2021).

<sup>78</sup> [G30 \(2020\)](#).

<sup>79</sup> IMF (2020d).

<sup>80</sup> Albania, Antigua and Barbuda, Australia, Azerbaijan, Bhutan, Bosnia and Herzegovina, Cambodia, Georgia, Ghana, Jamaica, Kenya, Lao, Liberia, Mauritius, Mozambique, New Zealand, North Macedonia, Pakistan, Philippines, Rwanda, Sierra Leone, Somalia, South Africa, Sweden, Thailand, Uganda, Vietnam, Zambia and Zimbabwe.

<sup>81</sup> Out of 29 countries surveyed, only Sweden requires SOEs to report following listed companies' disclosure regulations. Similarly, the [OECD report](#) on disclosure and transparency practices in SOEs found that also Brazil, Chile, Estonia and France subject SOEs to the same disclosure requirements as listed companies, while Norway instructs that SOEs "should strive" to do so. In Mexico, the laws that govern the state hydrocarbons and power companies require them to report and disclose information following the capital market's regulations, regardless of their listing status. Thailand's SOE policy mentions that reporting requirements are "similar" to listed companies.

<sup>82</sup> Where SOEs adopt a corporate form under company law, they are usually required to prepare financial statements and file them with the company or commerce registry, which are not always publicly accessible or free.

and conditions<sup>83</sup>, with many companies disclosing full loan agreements. See Annex 6 for a summary of the main debt-related disclosure requirements in the capital markets of selected countries.

- *While almost all countries surveyed require SOEs to prepare annual reports and audited financial statements, their minimum contents are generally not defined by law.* Where requirements exist, they are often on disclosure of data in aggregate form, and therefore granular information on borrowing operations is scarce or nonexistent.<sup>84</sup>
- *Ineffective enforcement mechanisms hamper compliance with transparency requirements.* Many countries surveyed do not have in place a robust sanctions' framework and/or effective enforcement mechanisms to ensure implementation of reporting requirements by SOEs, although listed SOEs are generally subject to stricter compliance frameworks. Among the most common weaknesses are: the lack of powers of the MoF to monitor debt reporting obligations of SOEs<sup>85</sup>; poorly defined institutional responsibilities in the sanction regime and/or nature of the wrongdoings/violations; inadequate sanctions, or not proportional to the severity of the violations, and therefore not sufficient to deter non-compliance.<sup>86</sup>
- *While SOE financial information may be prepared and shared with the government, there is often no explicit requirement in the law to make it public.*<sup>87</sup> Certain reports remain internal intragovernmental information that is not disclosed to the public.

### Good Practice Recommendations

**40. A robust legal framework is key to improving disclosure on SOE debt by governments and SOEs.** With due regard to the firm's size and capacity, the law should include the obligation to disclose SOE debt with a precise description of the entity, body or public official responsible for publication, and details on the information to be disclosed, the periodicity and timeliness, the means for publication, and the applicable sanctions and enforcement mechanisms in case of non-compliance. The government should also have the legal mandate and powers needed to collect information and to issue related regulations that further specify these requirements. Laws and legal instruments defining such requirements should be public and easily

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<sup>83</sup> Form 8-K issued by the Securities and Exchange Commission.

<sup>84</sup> *Ghana, Kenya, Lao, Liberia, Mauritius, North Macedonia, Sierra Leone and South Africa* require their SOEs to prepare reports on their debt for transmittal to government (MoF), but no obligations to make them public exists. In *Rwanda*, public entities must maintain detailed records and accounts of borrowing and debt servicing in accordance with instructions prescribed by the MOF. In *Federation of Bosnia and Herzegovina*, SOEs must prepare and publish reports on debt and annual reports on debt management.

<sup>85</sup> Particularly critical in jurisdictions with decentralized ownership model of SOEs.

<sup>86</sup> Institutional sanctions are primarily aimed at correcting noncompliance. Escalating sanctions is critical e.g., from submission of correction plans, enhanced reporting, low fines for severe violations, to others such as suspension of discretionary central government transfers, asset disposal requirements, borrowing authorizations. A well-defined gradation of sanctions also helps eliminate the discretion in the application of the sanction which could subject the Ministry of Finance or central authority to political pressure.

<sup>87</sup> *Azerbaijan, Mozambique and Vietnam* require SOEs to publish annual reports and financial statements on their websites. *Bhutan, Pakistan, Sierra Leone, Somalia, South Africa and Zimbabwe* require that SOEs accounts be laid before Parliament.

accessible.<sup>88</sup> Strengthening the ownership function, corporate governance, and financial oversight of SOEs would also help enhance debt transparency.<sup>89</sup>

**41. More granular information on SOE debt could be required by domestic legal frameworks to facilitate broader accountability.** Debt information disclosed according to capital markets standards may be useful to investors, creditors and performance evaluation bodies and for purposes of fiscal risks monitoring and mitigation. However, stakeholders engaged in broader accountability of SOE activities including the legislature and external audit bodies may need more detailed information to scrutinize individual borrowing operations.<sup>90</sup> In this regard, international standards and guidelines could further include recommendations for more granular SOE debt-related disclosures.<sup>91</sup>

## D. Creditor-Based Disclosure

**42. Calls on creditors to enhance their efforts to advance the global debt transparency agenda have been gaining traction.** Several recent initiatives recommend both sovereign and private lenders to disclose *transaction-level financial information* (e.g., amount of loans, beneficiary, use of proceeds, interest rate, maturity, structure and amount of collateral) and *non-financial information* (e.g., governing law, extent of waiver of sovereign immunity, dispute resolution mechanisms). These initiatives include: i) the 2017 G20 Operational Guidelines on Sustainable Financing (the “G20 Operational Guidelines”) and the relevant 2019 Diagnostic Tool (the “Diagnostic Tool”)<sup>92</sup> which offer guidance to official creditors on responsible lending practices (including on collateralized transactions) and provide specific recommendations on information sharing and coordination of stakeholders; and ii) the 2019 IIF Voluntary Principles for Debt Transparency (the “IIF Voluntary Principles”),<sup>93</sup> which set out a disclosure framework on lending to sovereigns by private lenders with the exception of monetary policy transactions, short-term trade finance operations, and IFI lending. Table 3 describes their main features.

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<sup>88</sup> Including SOE ownership policies, SOE transparency policies, corporate governance codes, SOE laws, dedicated SOE laws, PFM and PDM laws and regulations, accounting laws, company laws, capital market laws, individual SOE’s articles of incorporation or bylaws and performance contracts/agreements or similar instruments.

<sup>89</sup> Recommendations to that effect are described in the OECD Guidelines on Corporate Governance of SOEs and the World Bank SOE Toolkit.

<sup>90</sup> For instance, verification of compliance with applicable laws and regulations, performance monitoring, adherence to market conditions, existence of conflicts of interests, public scrutiny and deterrence of corruption and, in general, supporting the overall principle of transparency in government operations as a public good.

<sup>91</sup> See for example the case of Mexico where transparency legislation mandates disclosure of granular information on SOE borrowing. See Annex III.

<sup>92</sup> More information at: IMF G20 Operational Guidelines for Sustainable Financing – Diagnostic Tool IMF (2019c)

<sup>93</sup> IIF (2019)

Table 3. Creditor-Based Initiatives for Transaction-Level Debt Disclosure

Element	G20 Guidelines	IIF Voluntary Principles
Entities subject to disclosure requirements	Sovereign creditors	Private creditors
Institutional coverage of sovereign debt	“Sovereign debtors” (not explicitly defined)	“Public sector entities”: sovereign (central) government; sub-sovereign government; public corporations; entities guaranteed by any of the above which represents debt liabilities.
Transactions subject to disclosure	Lending and financing agreements	Financial transactions and guarantees. <sup>94</sup> Exceptions include local currency, monetary policy and trade finance transactions)
Types of information to be disclosed	<ul style="list-style-type: none"> <li>- amount of the loan</li> <li>- use of proceeds</li> <li>- interest rate</li> <li>- maturity and grace period</li> <li>- collateralization</li> <li>- applicable currency</li> </ul>	<ul style="list-style-type: none"> <li>- borrower</li> <li>- guarantor</li> <li>- type of financing</li> <li>- ranking</li> <li>- applicable currency</li> <li>- interest rate</li> <li>- intended use of proceeds</li> <li>- governing law</li> <li>- extent of waiver of sovereign immunity</li> <li>- dispute resolution mechanism</li> <li>- applicable collateral/security</li> </ul>
Mode of disclosure and frequency	<p><i>Strong practice.</i> Loan-by-loan information for all country’s official creditor agencies published by a government agency on a website and updated regularly.</p> <p><i>Sound practice.</i> Government creditor agencies disclose loan-by-loan to the IMF and the WB on existing exposure to borrowers and new lending at least on an annual basis.</p>	Relevant information should be publicly disclosed for each transaction. <sup>95</sup>
Confidentiality	<i>Strong practice.</i> Publicly available templates are used by creditor; creditor refrains from confidentiality clauses.	Relevant carveouts (including regarding confidentiality provisions) should be respected, to enable public disclosure.
Nature and applicability	Voluntary, endorsed by G20 countries	Voluntary nature. Initially applicable to foreign currency debt of PRGT eligible countries. <sup>96</sup>

Source: Authors’ elaboration based on the 2017 G20 Operational Guidelines on Sustainable Financing and the 2019 IIF Voluntary Principles for Debt Transparency.

**43. Implementation of these initiatives is ongoing.** At the *national level*, in line with the G20 Operational Guidance, some countries have started publishing information on their sovereign lending. For example, the UK publishes information on total sovereign exposure of UK Export Finance and Foreign, Commonwealth

<sup>94</sup> These include loans, debt securities not subject to public disclosure, repos, other forms of asset backed lending or commercially equivalent arrangements, financial derivatives (excluding derivatives entered into solely for hedging purposes), financial transactions with private parties in PPP projects.

<sup>95</sup> The Implementation Note clarifies that “The information provided will be publicly available to all users at no cost”. See IIF, Implementation Note: IIF Voluntary Principles for Debt Transparency, June 2019

<sup>96</sup> The IIF Voluntary Principles state “whilst these new voluntary Principles for Debt Transparency are relevant for all countries, initially the priority will be to apply them in respect of financial arrangements entered into with PRGT-eligible countries.”



and Development Office by recipient country.<sup>97</sup> *Canada* is publishing information on loans to national governments, including loan-level information for individual borrowing countries.<sup>98</sup> At the *international level*, in March 2021 the OECD announced the launch of the Debt Transparency Initiative,<sup>99</sup> aiming to operationalize the IIF Voluntary Principles by providing a platform for private sector lenders to submit reports on transaction-per-transaction information including use of proceeds, as well as country-specific information on outstanding debt. So far reporting has been very limited. In 2021, the Paris Club published information on the total claims per country but with limited granularity.<sup>100</sup>

**44. Absent legislative requirements, implementation of disclosure by creditors largely depends on political support.** More recently, the Bretton Woods Committee proposed that domestic legal frameworks in creditor countries include mandatory disclosure by large financial institutions of lending arrangements with sovereigns.<sup>101</sup> The leap from voluntary to mandatory disclosure will require significant legislative revisions and widespread and sustained stakeholder support.

**45. There might also be legal impediments for countries that may wish to voluntarily disclose more granular loan level information.** National legal frameworks (either from the borrower or the lender's jurisdiction, or from other relevant jurisdictions) may include limitations on disclosure. Such limitations may be specific and limited to circumscribed types of information (e.g., names, addresses under privacy laws) or be informed by and based on public policy considerations (e.g., freedom of information acts).<sup>102</sup>

## V. The Supporting Legal Framework for Public Debt Disclosure: Common Challenges and Suggested Good Practices

*Reporting requirements are essential, but not sufficient. They also need to be supported by robust legal mechanisms for public debt and financial management. Debt transparency can be hampered by weak borrowing frameworks for entities outside of the central government, unclear delegation of borrowing powers, fragmented institutional arrangements for debt data collection and disclosure, and lack of proper monitoring and oversight. Collateralized debt operations and debt with collateral-like features raise legal challenges, associated with the type of public asset subject to collateralization, authorization processes, and inadequate granularity of required disclosure. Domestic legal frameworks should be strengthened in these areas to support debt transparency.*

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<sup>97</sup> H.M Treasury (2021)

<sup>98</sup> [Government of Canada \(2021a\)](#). Also, Government of Canada (2021)

<sup>99</sup> [OECD](#).

<sup>100</sup> [Paris Club \(2021\)](#)

<sup>101</sup> The Bretton Woods Committee (2022).

<sup>102</sup> For more information, see Maslen and Aslan (2022).

## A. Borrowing Authority Framework

### *International Standards and Guidelines*

**46. International standards and guidelines recognize the importance for debt transparency of clearly defining the borrowing authority in the legal framework.** The *Revised PDM Guidelines* recommend that the legal framework should clarify i) the entity that exercises borrowing authority, its mandate and powers, as well as the delegated authority; ii) limitations to the borrowing authority; and iii) the processes regarding borrowing operations, in general and/or with regard to individual transactions. Clarity on borrowing authority is also important for liability management operations (LMOs) and debt restructuring. These provisions help hold the relevant entities accountable for their actions. In some cases, they may even impact the validity of debt.

### *Common Legal Issues*

**47. Weaknesses in the legal framework may hinder transparency.** Difficulties may arise with regards to:

- i) *unclear allocation of roles and responsibilities among public authorities in the borrowing authorization process* (e.g., Parliament/Cabinet/MoF/DMO). Domestic legal frameworks may not clearly specify if borrowing powers can be delegated, and if so, to whom, and the scope of delegated powers. Lack of clarity on borrowing powers and delegation may increase risks of unauthorized borrowing, making it more prone to non-disclosure;
- ii) *unclear restrictions and/or limits to borrow* e.g., borrowing purpose, debt ceilings (on the stock and on the flow) and qualitative restrictions on the type of borrowing (for instance borrowing allowed for capital expenditure but not for recurrent expenditure). In the case of borrowing by entities outside the central government, there might be in place administrative controls from the central government, including requiring different levels of authorization (per individual transaction, per type of borrowing, or with a threshold amount), timing of approval (ex-ante /consultation or ex-post), extent of control exercised (terms and conditions in the contract need to be approved), restrictions (some entities may not be permitted to issue securities, acquire foreign loans and/or conclude derivative contracts); and
- iii) *complex or differentiated processes and exemptions applicable to different types of borrowing* (e.g., per type of instrument, size of borrowing transaction, local/foreign borrowing).

**48. Misalignments between subnational borrowing and the broader intergovernmental fiscal relations may hamper transparency.** The rationale for allowing subnational governments to borrow is a policy question ultimately related to the constitutional set-up and intergovernmental fiscal relations defined by law. Common challenges arise when the law does not i) provide consistency of the borrowing powers with their financial autonomy, ii) define clearly the central government's powers to limit such financial autonomy, so as to ensure their fiscal soundness, and iii) mandate debt reporting requirements to central government.

**49. EBF borrowing may also pose complex legal issues.** Most countries surveyed have autonomous public sector bodies established by special statute to provide specific governmental services.<sup>103</sup> These may

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<sup>103</sup> EBFs, in this paper, refers to general government accounts, entities or funds, often with separate banking and institutional arrangements that are not included in the annual state (federal) budget law and the budgets of subnational levels of government.

include independent regulatory agencies and statutory funds (social security, deposit insurance, infrastructure funds, etc.). Regardless of the policy considerations on whether to grant borrowing powers to EBFs, legal issues may arise in the monitoring and control of their debt, in particular when a strong central financial oversight function is not in place. It may even serve as a perverse incentive for creditors and borrowers to take advantage of legal gaps. Some countries have established an outright prohibition to borrow (*Rwanda*) or a requirement of prior executive approval (*Jamaica, South Africa, UK, Zambia*).

**50. For SOEs, another layer of complexity comes into play.** SOEs can be established under company laws as stock corporations or by a statutory instrument (e.g., law or decree), as non-corporatized entities or bodies. The ability to borrow for stock corporations may be implicit in their commercial or for-profit mandate or may be included in their founding documents (bylaws). Non-corporatized entities often require a specific legal provision that allows them to borrow. Further complications may arise from a double-tier authorization, which is often in place:

- an *internal authorization*, regarding the SOE's decision-making bodies (e.g., management, board of directors and shareholder's meeting); and
- an *external authorization*, regarding the MoF, line or parent ministry, holding company or ownership entity, Cabinet or Council of Ministers or Parliament).

### **Good Practice Recommendations**

**51. Several good practices can support a sound and transparent borrowing authorization framework.** These include:

- *Clear authorization to borrow, comprising the definition of powers, roles, and responsibilities within the borrowing process.* The law should outline the institutional structure and the borrowing powers of the relevant entities according to the constitutional setup of the country. Specific elements include i) a specification of the entity ultimately responsible for approving the borrowing (if multiple entities are involved, their powers should not overlap); ii) clear criteria and conditions, as well as restrictions for borrowing; iii) well-defined special authorizations that may be required for certain debt instruments or type of transactions deemed more critical;<sup>104</sup> and iv) strict disclosure requirements of these borrowing powers, processes and decisions to the public to promote accountability. See Box 7 for a discussion of the authorization process for external loans and publication in Rwanda.
- *Sound delegated authority to borrow (if any).* A delegation framework should specify the participating entities, the powers that can be delegated, any limitations or conditions, and the process of delegation, as well as the impact on reporting requirements. This framework should follow the principles of delegation under general administrative law, including transparency on the individual delegation decisions. See Annex 7 for examples of delegation framework defined in law.

<sup>104</sup> In *Ghana* (Constitution and PFM Act) loans and international business transactions require authorization by Parliament. LMOs are approved by the MoF, except for derivatives (including swaps) which must be approved by Parliament. In *Nigeria* (DMO Act) and *Federation of Bosnia and Herzegovina* (Article 27 of the PDM Law) external loans must be approved by the Parliament of the Federation. In *Argentina*, Congress needs to approve by law any financing program or public credit operation carried out with the IMF, as well as any increase in the amounts of those programs or operations (Article 2 of Law 27612).

- *Adequate reporting and disclosure requirements on complex financial instruments*, such as financial derivatives and collateralized borrowing and borrowing with collateral-like features (*Gambia, Ghana, Kenya*).<sup>105</sup>

**52. Clear borrowing authority for entities outside the central government and related controls by central governments contribute to debt transparency.** A balance should be struck between operational autonomy of entities outside the budgetary central government and appropriate oversight. The law should specify the administrative controls over the borrowing of these entities. In LIDCs, administrative controls from central government on borrowing may help ensure that effective constraints, risk analysis, and reporting requirements apply to all public sector entities, even if the central government may not be liable for the debts of the entire public sector. See Annex 8 for country examples.

**In addition, the borrowing framework for SOEs should be anchored in well-defined roles, procedures and timeframes for approvals.** The legal framework should specify not only the corporate body or government authority responsible for approving SOE borrowing, but also their powers to determine the information necessary to evaluate borrowing requests, as well as reasonable timeframes that balance market opportunity with the time needed for the analysis of the approving body. Documents containing borrowing approvals for SOEs (both internal and external) should be disclosed or at least be made public upon request. Some jurisdictions may empower the MoF to establish particular conditions and limits in each approval or to require coordination with the sovereign's own debt operations (Mexico).<sup>106</sup> Restrictions on borrowing terms or collateral or any applicable fiscal rules to SOEs may also apply.

**53. Any revisions to the exercise of borrowing authority in emergency situations should not hinder proper reporting of such debt.** In case of a declared emergency the Executive may be temporarily vested with budgetary powers, which may include borrowing powers that were not granted to it before.<sup>107</sup> This must be subject to conditions clearly defined by enabling legislation. Such extraordinary legislative powers should be counterweighted by reporting and oversight mechanisms, including by ex-ante or ex-post Parliamentary approval.

**54. Legal effects on the validity of debt should be clearly defined in case of noncompliance with the borrowing authorization framework.** While many countries surveyed guarantee the liability of the State as a borrower regardless of a breach of the legal framework (*Moldova, Sweden, Tanzania*), in some countries unauthorized debt is explicitly invalidated by law (*Brazil, Nigeria, Seychelles, South Africa, Suriname*). A separate case is *Seychelles*, the effectiveness of the contract is subject to the publication of its key terms. In general, the legal framework should establish the legal consequences resulting from non-compliance with the debt authorization provisions. This includes establishing clear legal effects on the validity of the

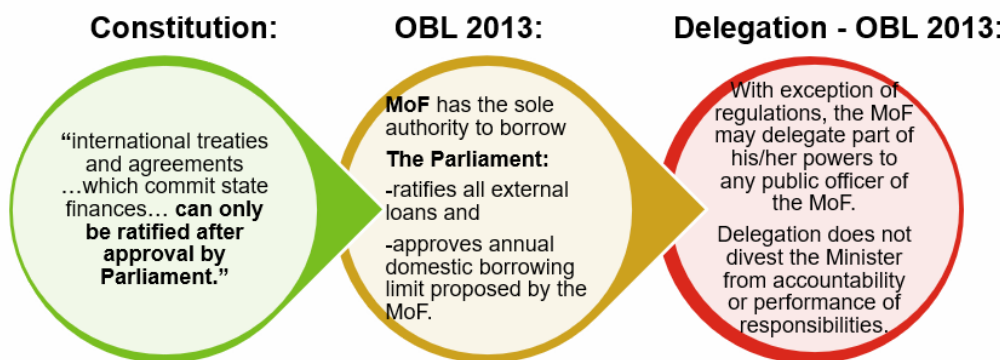
<sup>105</sup> A number of countries surveyed require greater scrutiny and transparency for these kinds of transactions. In *Ghana*, parliamentary approval is required for financial swaps and other derivative transactions (Section 64 of the PFM Act). In *Gambia*, the Cabinet must approve derivative transactions (Section 44 of the Public Finance Act); in *Kenya*, the Cabinet Secretary can approve derivative transactions only if they are in the public interest and terms and conditions are disclosed and approved by Parliament. The terms of derivative transactions must also be published (Section 56 of the Public Finance Act).

<sup>106</sup> This is the case with *Petroleos Mexicanos* (PEMEX) and *Comision Federal de Electricidad* (CFE).

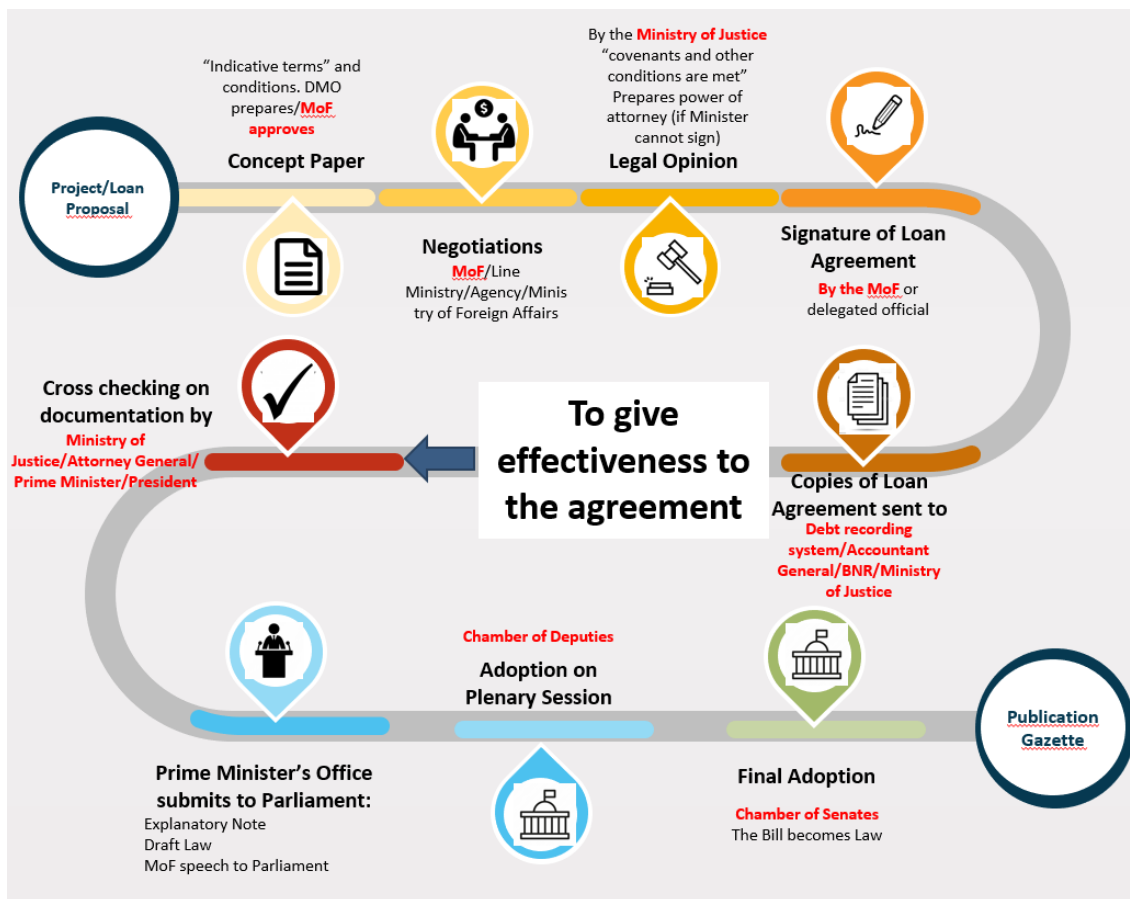
<sup>107</sup> For example, in *Argentina*, the Law on solidarity and Productive Recovery for COVID-19 delegated public debt responsibilities, including borrowing authorization, to the Executive.

**Box 7. Clear Borrowing Authorization for External Loans and Delegation—Case of Rwanda**

Rwanda’s legal framework for external borrowing encompasses provisions in the Constitution and the Organic Budget Law (OBL). The division of powers within the Executive (Ministry of Finance, Debt Management Office, Ministry of Justice) is well-delineated and the effectiveness of the debt operation lies directly on the ratification of Parliament.



In addition, further detail of the borrowing process is provided in the OBL Regulations. To note are the disclosure requirements, along the decision-making process.



Source: Authors’ elaboration, based on cited legislation.

**55.** instruments that support the debt obligation and on the disbursed funds, as well as the disciplinary, administrative and criminal sanctions for government officials.

**56. Clear and sound domestic laws for borrowing authorization may be taken into account by foreign courts in assessing legal validity of external sovereign debt (Box 8).**<sup>108</sup> An increasing share of sovereign debt instruments is governed foreign law. For example, more than 90 percent of all outstanding international sovereign bonds are governed by either New York or English law, giving courts in those jurisdictions an outsized influence in this market.<sup>109</sup> Loan contracts are more heterogeneous; the choice of law and choice of venue may be the creditor's domestic law, the borrower's domestic law, New York or English law, and the relevant court or arbitration forum. A survey of recent litigation in US and English courts shows that when assessing the validity of sovereign debt instruments, foreign courts typically review whether the government's agent either had actual authority or apparent authority to bind the sovereign debtor. Actual authority refers to the legal capacity of the agent, such as the debtor's Minister of Finance or the Debt Management Office, to enter into valid and lawful transactions. Assessing actual authority usually involves a comprehensive analysis of the borrower's domestic laws, notably those governing public debt management. In the absence of actual authority, foreign courts may find that the agent had apparent authority if the creditors could reasonably rely on the debtor's representations. The legal standard to establish apparent authority tends to be guided by the instrument's governing (foreign) law, but courts, under certain circumstances, may also take into account the domestic borrowing authorization process of the borrower. Against this backdrop, accessible clear and uniform domestic borrowing authorization frameworks can help increase legal certainty and support the consideration of domestic laws in foreign court proceedings.

#### **Box 8. Foreign Courts Considerations when Assessing Validity of Sovereign Debt Instruments \***

**When assessing the validity of foreign law debt instruments, foreign courts may, under certain circumstances, analyze the pertinent rules in the issuer's domestic law.** Specifically, in lawsuits pertaining to sovereign debt obligations, US and English courts analyze the relevant contractual language as well as the scope for applying their choice-of-law rules, both of which may result in the application of local law to assess the instrument's validity.<sup>1</sup> Notably, if the contract's governing law clause does not expressly exclude New York choice-of-law rules, the relevant rules under domestic law may be applied to determine issues related to validity.<sup>2</sup> Equally, New York courts have resorted to applying domestic law of the jurisdiction that has the most significant relationship to the underlying transaction.<sup>3</sup>

**The analysis of domestic law rules is central to determine whether the government debtor's agent had *actual* authority to enter into a transaction on behalf of the sovereign.** Even if the governing law clause expressly excludes New York choice-of-law rules, US federal courts<sup>4</sup> applying New York law have looked to the issuer's domestic law to determine if actual authority to borrow existed.<sup>5</sup> If the foreign court (i.e. U.S. or English court) found that the agent had actual authority, which means the agent acted in accordance with the relevant domestic rules, the government is bound to the debt contract. Similarly, English courts have reviewed the existence of actual authority on the basis of the pertinent domestic law requirements, in particular those relating to authorization.<sup>6</sup>

**By contrast, the assessment of *apparent or ostensible* authority is usually done by reference to foreign (New York or English) law.** Even in the absence of actual authority, a government debtor may still be bound to a contract if the acting agent had apparent or ostensible authority.<sup>7</sup> New York jurisprudence suggests that apparent authority is assumed when the creditors

<sup>108</sup> Foreign courts are those that are not in the issuer's jurisdiction. Standard international sovereign debt agreements are often governed by foreign law and lawsuits are subject to the jurisdiction of foreign courts.

<sup>109</sup> See IMF, *The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors—Recent Developments, Challenges, and Reform Options*, September 2020, <https://www.imf.org/-/media/Files/Publications/PP/2020/English/PPEA2020043.ashx>.

reasonably relied on the sovereign's representations in the transaction.<sup>8</sup> The legal (though not factual) assessment whether apparent or ostensible authority existed is done from an English law perspective, which requires reviewing whether the state, as principal, represents that a person has authority to act on its behalf.<sup>9</sup>

**English and New York precedents suggest that there may be ways to reduce the enforcement prospects of debt issued in contravention of domestic law requirements.** With regards to *actual authority*, the likelihood of foreign courts taking into account domestic law greatly increases if the contract's governing law clause expressly states that issues relating to authorization are governed by domestic law.<sup>10</sup> At a minimum, such governing law clauses could leave room for the application of the foreign jurisdiction's choice-of-law rules. With regards to *apparent authority*, the precedents suggest that debtor governments should strive to put creditors on notice regarding debt authorization laws. Additionally, governments can link authorization with public acts, like waiving sovereign immunity in borrowing contracts, which cannot be subject to apparent authority.<sup>11</sup>



\* Prepared by Sebastian Grund (IMF Legal Department)

<sup>1</sup> Specifically, they review whether the contract's governing law clause allows for the application of New York choice-of-law rules; if this is the case, New York courts may apply such rules, which could result in the application of local laws.

<sup>2</sup> See *Themis Capital, LLC v. Democratic Republic of Congo*, 626 Fed. Appx. 346, 348 (where the Second Circuit affirms the trial court's application of New York choice-of-law rules resulting in the application of local law to determine actual authority).

<sup>3</sup> As the trial court in *Themis* reasoned: "where a commercial transaction is with a foreign state and that state is found to have the most significant relationship to the transaction, New York law must look to the law of [the foreign state] to determine the actual authority of an agent of the [state's] government." See *Themis Capital, LLC v. Democratic Republic of Congo*, 881 F. Supp. 2d 508, 521 (partially quoting from *Republic of Benin v. Mezel*).

<sup>4</sup> There is more uncertainty in how state courts in New York approach this issue. In *IRB-Brasil*, New York's highest state court held that by selecting New York through the governing law provision, the (non-sovereign) parties were excluding the state's choice-of-law rules—even if such an exclusion is not expressly stated. See *IRB-Brasil Resseguros, S.A. v Inepar Invs., S.A.*, 20 N.Y.3d 310, 315 ("express contract language excluding New York's conflict-of-laws principles is not necessary").

<sup>5</sup> In *Exim's* case against Liberia, the district court judge reasoned that the application of New York substantive law requires an assessment of local law to determine actual authority, citing *Themis*. See *Export-Import Bank of the Republic of China v. Cent. Bank of Liber.*, 2017 U.S. Dist. LEXIS 56477, \*9.

<sup>6</sup> *Law Debenture Trust Corp plc v Ukraine*, [2023] 3 All ER 175 (reviewing the Ukraine Budget Code as well as the authority of the Cabinet of Ministers of Ukraine under the relevant domestic law rules to assess the Minister's actual authority).

<sup>7</sup> "Apparent" and "ostensible" authority tend to be used interchangeably by New York and English courts.

<sup>8</sup> Under New York law, *Storr* provides an example of when a creditor's reliance on a sovereign's representative was unreasonable: the debt was signed by the Indonesian ambassador to Syria. As ambassadors do not usually sign off on sovereign debt, this should have triggered a duty to inquire. Such an inquiry reasonably would have led to discovery of the Indonesian government repeatedly communicating that such notes were fraudulent and unauthorized. See *Storr v. National Defence Sec. Council of the Republic of Indon.-Jakarta*, 1997 U.S. Dist. LEXIS 15890, \*11. In *Indosuez and IRB-Brasil*, state courts applied the doctrine of apparent authority to hold foreign corporate debtors liable to pay their creditors. In *Themis*, a sovereign debt case, the trial court found that both actual authority and apparent authority existed. Upon finding that actual authority existed, the appellate Circuit court did not review apparent authority. See *Indosuez Int'l Fin. B.V. v. Nat'l Reserve Bank*, 98 N.Y.2d 238; *IRB-Brasil Resseguros, S.A. v Inepar Invs., S.A.*, 20 N.Y.3d 310.

<sup>9</sup> *Law Debenture Trust Corp plc v Ukraine*, [2023] 3 All ER 175 (noting that "we are satisfied that the Minister of Finance did have ostensible authority to sign the Trust Deed and to issue the Notes on behalf of Ukraine, on the instructions of the CMU, and that the CMU had ostensible authority to pass resolution 904 authorising the Minister to proceed.")

<sup>10</sup> Weidemaier and Gulati (2021) provide an example of a Brazilian bond issued in 2017. See W. Mark C. Weidemaier & Mitu Gulati, UNLAWFULLY ISSUED DEBT, 61 Va. J. Int'l L. 553, 560 (2021).

<sup>11</sup> See *Themis Capital, LLC v. Democratic Republic of Congo*, 881 F. Supp. 2d 508, 523.

**Source:** Authors' elaboration, based on cited case law

## B. Governance Arrangements for Public Debt Consolidation and Disclosure – Legal Issues

### *Concept And International Standards and Guidelines*

**57. Governance arrangements for timely and comprehensive public debt consolidation and disclosure are essential for debt transparency.** Domestic legal frameworks define the responsibilities of the authority collecting the information and the duties of the public entities required to provide such information.

**58. International standards and guidelines provide guidance on domestic institutional arrangements in this area.** The *Revised PDM Guidelines* recommend a clear allocation of roles and responsibilities among government institutions for managing central government debt (central bank, DMO, MoF), including for debt reporting. The *FTC* highlights the importance of coordination and disclosure of fiscal relations and performance across the public sector. It also recommends subnational governments and public corporations to disclose information on financial performance individually and as a consolidated sector. The *PSDS Guide* calls for a “*strong and well-organized institutional setting*” for compilation and dissemination of public sector debt statistics. It also promotes the overall primary responsibility of a central compiling agency (CCA) to collect data, supported by appropriate legal basis, including powers to collect data from public and private entities and enforcement mechanisms for non-compliance (P6.13 and 6.10).<sup>110</sup>

### *Common Legal Issues*

**59. Domestic legal frameworks surveyed generally have complex institutional arrangements for debt reporting, making coordination challenging.** Institutional arrangements may be *designed*, for example, to serve different types of reporting (statistical, fiscal, debt management), levels of government, types of borrowing entities, or types of debt instruments. For instance, central banks may be responsible for reporting on SDRs, currency, and deposits. Government entities, such as the Treasury or the Accountant General, may be responsible for account payables. DMOs may be responsible for reporting on securities, loans, and government guarantees. Units in the MoF may be dedicated to compiling information on SOEs or local government.

**60. Common challenges that may result in underreporting debt liabilities include:**

- *Lack of clear and adequate powers in the legal framework of the entities responsible for collecting information or for debt disclosure.* This weakness may be exacerbated by i) inadequate corresponding duties by public sector entities (SOEs, local governments) to provide information; ii) limitation on the types of information that can be requested from public sector entities; and iii) absence of adequate enforcement mechanisms.
- *Fragmented institutional arrangements and lack of appropriate coordination mechanisms.* The presence of multiple entities in charge of authorizing, monitoring, and overseeing public debt may pose coordination challenges for consolidating public sector debt data. The entity responsible for

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<sup>110</sup> The PSDS Guide notes that authorities are usually prohibited from using the information supplied for any purpose other than statistics compilation - a safeguard ensuring the independence of the statistics function from other government activities. Also, information by individual public sector entities outside the GG should not be separately disclosed and only published as statistical aggregates (except with explicit permission from an individual entity to disclose information) (P6.13).



consolidation may be dependent on various sources of information, facing risks of loss of information in the compilation chain.

- *Unclear legal requirements on recording debt information.* The legal framework may lack clear provisions on the responsible entity, data to be recorded, timing of recording, and consequences of failure to record.

### **Good Practices**

#### **61. The legal framework should strengthen the mandate for debt compilation and disclosure, including clear coordination mechanisms among public sector entities.**

- *Strengthening the legal mandate* should follow a two-pronged approach. *First*, the MoF or designated central agency needs to have clear legal authority to obtain necessary information from public sector entities (including independent entities such as SOEs, EBFs, social security entities) and from other parties to the debt obligation (including private entities). *Second*, the legal framework must define the corresponding obligation of public entities to comply with the requirement to provide information on a regular and *ad hoc* basis, in the format that the designated compiling agency determines, and establish enforcement mechanisms for non-compliance. See Box 9 for the legal reform pursued by Ecuador in 2019.
- *Enhancing legal mechanisms to facilitate coordination.* This involves clarifying in the law the responsibilities of the MoF, DMO and other agencies, as well providing legal basis for the integration between the Financial Information Management System and the Debt Management Information System.<sup>111</sup>
- *Clear requirements and process for debt recording of subnational government and SOE debt.* The law could require that the local authority or SOE maintain a record on their borrowings, report debt information to the MoF/DMO as required, including submitting additional information upon request. A database of records on outstanding subnational and SOE debt could be kept by the MoF/DMO.

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<sup>111</sup> Proite (2020).

### Box 9. PFM Reform Strengthening the Information Provision Component. Case Of Ecuador

The **Organic Budget Code** reform aimed to ensure the timely collection and accurate compilation of fiscal data produced by PS entities. Intragovernmental reporting obligations were strengthened with regards to:

- *Budgetary and financial information*: PS entities must share budgetary and financial information as prescribed by the Code and technical norms (Art. 152)
- *Fiscal risk management*: General state budget, decentralized autonomous governments, social security entities and SOEs must prepare their fiscal management documents and cooperate with the MoF.

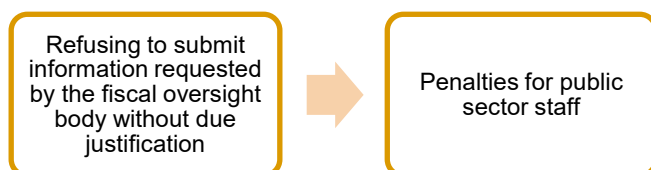
The **Regulation to the Organic Budget Code** established more granular reporting obligations to the MoF on public debt operations and required entities to ensure permanent access to the economic, financial, and budget information through their webpages (Art. 185).

Law and regulations also incorporated sanctions for non-compliance with information provision requirements:

#### Institutional sanctions<sup>1</sup>



#### Personal sanctions<sup>2</sup>



<sup>1</sup> Organic Budget Code Art. 152, Organic Budget Code Regulation Art. 211

<sup>2</sup> Organic Budget Code Arts. 178, 179

## C. Collateralized Debt Instruments and Collateral-Like Arrangements

### Concept And International Standards and Guidelines

**62. The use of collateralized debt obligations and quasi-collateral or collateral like arrangements may add another level of complexity to transparency concerns.** Debt collateralization involves the granting to a creditor of rights over an asset or revenue stream that allows the creditor to rely on such collateral to secure repayment of the debt in case of the borrower's default.<sup>112</sup> Collateral is a common feature in many debt transactions and may be a useful tool for improving financial terms. It may be in the form of existing or future asset (stock) or a future flow or stream and may or may not be directly linked to the relevant loan contract.<sup>113</sup> "Collateralized debt" would thus imply a debt that is underpinned by something pledged as

<sup>112</sup> IMF (2020c) at p. 4.

<sup>113</sup> For more information on collateral in the form of future flow receivables, see IMF (2003).

security that will be forfeited in case of default. The use of “collateral-like” or “quasi-collateral” transactions is also possible. In these types of transactions, there is no lien or other formal security interest but rather a protection or credit enhancement. Such protections or enhancements are expected to be used continuously while the loan is being repaid and would not be regarded as “collateral” (i.e., something that is forfeited in case of default), but rather they provide comfort to the borrower and the lender that default is less likely. Examples of these credit enhancements are commodities prepayments, ringfenced revenue receivables, minimum balance required in escrow accounts or other type of deposit or proceeds accounts. Use of collateralized debt, or collateral-like, arrangements in sovereign borrowing often raises transparency concerns<sup>114</sup> From a policy perspective, while these arrangements could help lower the borrowing rate, they may: i) complicate debt management and increase the probability of overborrowing; ii) reduce budget flexibility, especially if revenue streams are earmarked; and iii) hamper debt restructuring efforts, as creditors with collateral or collateral-like arrangements are reluctant to restructure their claims, and debt service capacity and risks of debt distress are difficult to assess, or may be incompatible with the existing negative pledge clauses.<sup>115</sup>

**63. Certain international standards and guidelines promote good practices for disclosure of collateralization in debt transactions.** Reporting collateralization against natural resource revenues is mentioned in the *Fiscal Transparency Handbook*.<sup>116</sup> The 2014 GFSM defines asset-backed securities and collateralized debt obligations as “arrangements under which payments of interest and principal are backed by payments on specified assets or income streams.”<sup>117</sup> Various policy analyses of global and financial issues, such as the G30 report on Sovereign Debt and Financing for Recovery, note that “disclosure requirements should include guarantees, security arrangements, offtake commitments, loans linked to forward commodity sales, and any other contingent obligation of the central government.”<sup>118</sup>

### Common Legal Challenges

**64. Aside from policy considerations, collateralized debt and collateral-like transactions raise several legal challenges.** In the sample of countries surveyed, only a few incorporated in their PFM or PDM frameworks explicit legal provisions. In particular:

- Most countries do not define in their laws *who authorizes debt collateral over state assets or future receipts* (e.g., the MoF, Cabinet, Parliament) and consequently what approval process should be followed. This may be further complicated in cases where the loan agreement is executed by an SOE or SPV, where the authority to pledge collateral may be less clear and may vary depending on the ownership of the assets.
- Few countries define the *type of assets which can be subject to collateralization or in collateral-like transactions*. Only a few PFM or PDM legal frameworks focus on prohibitions on the posting of certain

<sup>114</sup> See Rivetti (2021) and Gelper et al. (2021). A dataset containing information on 100 loan contracts between Chinese state-owned entities and government borrowers in 24 developing countries.

<sup>115</sup> IMF (2020c) at p. 9; IMF (2020e) at pp. 2, 34.

<sup>116</sup> Principle 3.2.2. EITI, (2020), recommends that such reporting covers “interest rates, fees, repayment schedules and restructuring terms as well as the parties to agreements”.

<sup>117</sup> Government Finance Statistics Manual (2020).

<sup>118</sup> G30 (2020).

assets as collateral, such as international reserves (*Azerbaijan*), present and future assets of petroleum funds (*Uganda*), regional property (*Indonesia*), repos and derivative transactions (*Lithuania*).

- Rarely do the laws stipulate *the specific reporting requirements for collateralized debt or collateral-like arrangements or the granularity of the information to be disclosed*. This may be particularly challenging in countries where a clear legal classification of the underlying transaction as public debt or liability is not clear, in which case granular data requirements may not apply automatically. Furthermore, even if classified as a liability, the collateral (or quasi-collateral) part of the debt arrangements may not be subject to specific reporting requirements.<sup>119</sup>

### Good Practice Recommendations

**65. Stronger disclosure requirements should apply to these types of transactions.** The availability of information on collateral and collateral-like features is particularly important as it helps determine the assets available for repayment.<sup>120</sup> The legal framework should include:

- *Disclosure requirements based on a clear and broad notion of security/collateral and collateral-like arrangements*, including all transactions where a borrower pledges an asset or future income to a lender to secure the repayment of a loan. This may help resolve issues with collateral-like transactions (e.g., resource-backed loans), which should also be subject to clear reporting requirements.<sup>121</sup>
- *A clear and comprehensive coverage* of the underlying debt transaction<sup>122</sup> and the type of public entity (to capture advance payments, SOEs and SPVs, etc.). The application of accounting and statistical rules in line with international standards and guidelines could also be supported by the legal framework.
- *Authorization and procedural requirements for entering into collateral agreements with regards to public debt and using collateral-like features*. This includes defining which entity may pledge state assets as collateral (e.g., central government only or SOEs or other autonomous entities). The authorization process may envisage a special procedure (e.g., parliamentary approval based on a specified threshold).<sup>123</sup> A clear state asset management framework should clarify what assets are considered “state assets” and the restrictions or prohibitions on the types of assets that can be pledged as collateral. In considering the pertinence of collateral-like features, governments could require an independent valuation of the credit enhancement (both the legal and financial aspects)

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<sup>119</sup> In some cases, the legal nature of the transaction does not allow a clear-cut classification as public debt. For example, commodity barter transactions or pre-purchase agreements related to forward sales of commodities, while considered as upfront payment for future delivery of goods or services, also create an obligation for repayment over an extended period of time, and therefore constitute a liability. See IMF, (2020) at p. 17.

<sup>120</sup> See Maslen and Aslan (2022), p. 13.

<sup>121</sup> IMF (2020b) at p. 17.

<sup>122</sup> Regarding the type of debt transaction, economic nature should prevail over form to prevent regulatory arbitrage.

<sup>123</sup> IMF (2020c) at p. 13; see also Rivetti (2021).

including a cost/benefit analysis of the transaction, as well as an assessment of whether the transaction complies with a public policy objective.<sup>124</sup>

- *Increased granularity of debt disclosure requirements to enhance accountability.* These requirements should cover, among others, the nature of assets or future revenues used as security and the nature of projects financed through collateralized debt or benefitting from collateral-like arrangements.<sup>125</sup>

## VI. Harmonizing Transparency and Limited Needs for Confidentiality

*The principle of transparency, recognized in most constitutions and legal frameworks, assigns public bodies the obligation to publish key information to support accountability, and demands that exceptions be clearly and narrowly stipulated by law and justified only in narrow circumstances (e.g., national security, need to protect proprietary information). To avoid abuse of Executive discretion, the legal framework should provide clear guidance on the conditions and scope of confidentiality arrangements in public debt contracts, parliamentary oversight, and other safeguard mechanisms such as administrative or judicial remedies. Freedom of information legal frameworks can play an important role for public debt disclosure. Confidentiality policies should define with adequate granularity the key elements described above, as is the case for other areas of public financial management (e.g., procurement, natural resources contracting, PPPs).*

### A. Confidentiality as an Exception to Transparency

#### *Concept And Rationale*

**66. The principle of transparency is critical not only for public sector good governance and accountability but also for its economic performance—therefore, exceptions should be narrowly defined by law.** Government documents are assumed to be public unless explicitly exempted by law. This “right to know” or *right to access to information held by public authorities* recognized in most constitutions and further developed in administrative law and/or FOI laws<sup>126</sup> and alike legislation, requires following the principle of maximum disclosure, assigns public bodies the obligation to publish key information, and demands that exceptions be clearly and narrowly stipulated by law and subject to strict “harm” and “public interest” tests.<sup>127</sup> Common exceptions to this principle include international relations, public order, public health and safety, law enforcement, effective economic and monetary policy formulation, economic interests of the state, personal privacy and commercial confidentiality.

<sup>124</sup> See, for example, Section 20(2) of the Public Debt Management Act of *Grenada* (available [here](#)), whereby the Minister of Finance may provide a guarantee if “the purpose of the underlying loan is for a public purpose and that the proposed guarantee is itself expected to serve a specific public policy purpose and the guarantee is evaluated to be the most appropriate mechanism for achieving that public policy objective.” Other similar examples include value for money assessments in public-private partnership projects performed and transaction-specific safeguards, such as transparent and competitive selection of counterparties in commodities prepayment arrangements and choice of revenue streams in the context of ringfenced revenue receivables.

<sup>125</sup> A World Bank report on Public Debt Transparency in Uganda emphasized the importance of including “a section on collateralized debt in the Annual Debt Report”. World Bank (2021). “.

<sup>126</sup> See UNESCO (2019). This section will not discuss the human rights’ angle of access to information.

<sup>127</sup> Mendel (2008)

**67. At a contractual level, the public sector has long employed confidentiality clauses and non-disclosure agreements (NDAs) also for legitimate reasons.** As in the case of the private sector, confidentiality has also been steadily used by the government in outsourcing arrangements for public works and service delivery. Confidentiality clauses, included in several types of instruments such as loan contracts, are often premised on the usage of a contractor or supplier's proprietary information, such as trade secrets or financial data, and aim to ensure a level playing field for potential suppliers and to avoid collusion.<sup>128</sup> In other situations, the duty of confidentiality exists due to the nature of the relationship between the parties, such as between State financial institutions and their clients.

### *International Standards and Guidelines*

**68. Current debt-related international standards and guidelines provide limited guidance on how to tackle confidentiality issues.** In public debt management and fiscal and statistical standards, only one reference is found on the treatment of confidential information, in relation to the fiscal regime for revenue generation from natural resource sectors. The FTC Handbook<sup>129</sup> proposes that where legal impediments exist (e.g., clauses requiring confidentiality of agreements), an effort should be made to remove these by the parties' mutual agreement. More developed international guidance is set by various standards and statements on the right to information legislation.<sup>130</sup>

## **B. Common Issues in Domestic Legal Frameworks**

**69. Absent appropriate safeguards in the legal framework, the classification of public information as reserved or secret could be prone to misuse.** In many countries, laws on State secrecy or other laws regulating reserved and/or classified information permit to exclude certain information from public knowledge due to a risk of damage to national security and/or public interests (e.g., sensitive military or intelligence data, foreign government information). When the legal framework does not provide clear guidance on the conditions and scope, declassification, parliamentary oversight, or other safeguards mechanisms, risks of unjustified concealment of information may arise. Exemptions to full disclosure of public information are mostly found in FOI laws<sup>131</sup> but the interaction between these laws and the disclosure obligations for public debt and CL information is often not clear. Some FOI laws also adopt very broad concepts and grounds for confidentiality, seeking to cover the wide-ranging and diverse activities and functions of the entire public sector. An indiscriminate application of these broad concepts and grounds to the treatment of public debt

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<sup>128</sup> OECD (2009)

<sup>129</sup> IMF (2019a)

<sup>130</sup> See for example the 2000 Annual Report UN Special Rapporteur on Freedom of Opinion and Expression, 2002 Recommendation of the Committee of Ministers of the Council of Europe (COE Recommendation), the Joint Declaration adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, Principles adopted by the Commonwealth Law Ministers (Commonwealth Principles), the Declaration of Principles on Freedom of Expression in Africa, the Inter-American Declaration of Principles on Freedom of Expression, the Aarhus Convention.

<sup>131</sup> For Example, the FOI Act in the *US* provides for several exceptions to full disclosure such as protection of national security, trade secrets or commercial or financial information that is confidential or privileged, individual's personal privacy, and information related to the supervision of financial institutions. *Sweden's* Publicity and Secrecy Act provides that confidentiality applies to the Government, the Riksbank and the Debt Office information relating to the central government's fiscal policy, monetary policy or foreign exchange policy if it can be assumed that the purpose of decided or anticipated measures will be counteracted if the information is disclosed. *New Zealand's* Official Information Act explicitly allows the withholding of government information if there is a likely risk to damage the economy by disclosing prematurely decisions on economic or financial policies related to borrowing of money.

information may create opportunities for unjustified classification (Box 10 includes two cases where the hidden debt had at its origin the declaration of national security and interests).

### Box 10. Public Debt and CL Information Declared as Reserved/Secret—Case Studies

#### ‘Tuna bonds scandal’ in Mozambique.

In 2016, it was revealed that three Mozambique state-owned companies (ProIndicus, MAM and EMATUM) had contracted loans valued at approximately USD 2.2 billion, in violation of legally required procedures. The projects comprised the protection of the coastal zone, development of the fishing industry and the acquisition of infrastructure and facilities (mainly vessels). The MoF authorized five separate guarantees in connection with these loans which were not approved by the Parliament, did not receive an opinion from the Public Prosecutor, and were therefore in breach of Mozambique’s budget law. One of the main reasons indicated by the Enquiry Commission of Parliament and by the external audit report is the **claim that such transactions were a matter of national security** and the documentation forming the basis of the government guarantee requests was subjected to less scrutiny.

#### Secret and reserved classification of documents related to internal and external borrowing in Ecuador.

In 2010, three Resolutions by the MoF of Ecuador declared all administrative acts, contracts and documentation related to operations of public indebtedness (internal and external) as **secret and reserved until the full repayment of capital and interests or other financial costs**. In a *special audit report in 2018, the General Comptroller of Ecuador* concluded that the MoF did not provide the legal and technical reasoning that demonstrates that those transactions could generate losses or conditions unfavorable to the interests of the State, as required by the Budget Code (Art. 137). Also, the resolutions limited access to information to general citizens and to the external audit, harming monitoring of public debt operations. The audit report further recommended that:

- The declaration of reserved/secret information linked to public debt operations, by means of resolution, be limited to the cases determined by law, that is when its disclosure “may cause damage or unfavorable conditions to the interests of the States” and the reasoning must be duly justified.
- After the subscription of the credit operation, all the information and documentation be made available to the public through the MoF’s website. In any case, the declaration of reserved/secret information may not extend beyond the placement of bonds or signing of contracts.

*Source: IMF, Republic of Mozambique: Selected Issues (Selected Issues Paper 18/66), March 2018; Independent audit by Kroll related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A., June 2017; Special report on the legality, sources and uses of the internal and external public debt, Comptroller General of the State of Ecuador, April 2018*

### 70. The lack of specific limitations in the law on confidentiality of debt-related information may have contributed to a sharp increase in the use of non-disclosure agreements at the contractual level.

Some limited degree of confidentiality may be needed to preserve market integrity, specifically by reducing the risk of leaks of market-sensitive information in the issuance of government securities before the transaction is completed. Moreover, in the course of its borrowing activities, the government holds a growing complexity of information, which can be to some extent shielded by other privacy and data protection laws. However, guidance on the proper use of confidentiality for debt-related operations is often lacking. Over the past decades, the use of confidentiality clauses has increased in various public debt contracts, more recurrently in bilateral non-marketable loans, creating the following legal challenges:

- *Duty to maintain confidentiality, cui bono?* A rather recent phenomenon in loan contracts has been requiring that the duty to maintain confidentiality falls upon the borrower alone.<sup>132</sup> This represents a

<sup>132</sup> More common in bilateral loans linked to project financing. See Aid Data (2021).

reversal of roles. Lenders traditionally assumed such burden as recipients of information from the borrower, who provides, for example, data as evidence of its capacity to repay the loan, and in compliance with the lender’s informational requirements for due diligence or debt sustainability analysis.<sup>133</sup>

- *Confidentiality clauses too broad in scope.* This has been especially the case in countries with weak transparency frameworks where the use of blanket or general clauses on confidentiality increases the risk of concealment of important financial and non-financial information of public debt operations.
- *Ineffective exception to the exception.* Several bilateral loan contracts contain the proviso that acknowledges existing laws as exceptions to confidentiality: “the Borrower shall not disclose any information... in connection with this Agreement to any third party *unless required by applicable law.*” However, while such proviso aims to promote more transparency than confidentiality, in many jurisdictions it might be ineffective. As noted in Section IV, generally legal frameworks do not mandate the disclosure of granular loan information; therefore, the proviso does not offer any real safeguard against opacity. See Box 11 for a mapping of these challenges.

### Box 11. Legal Challenges of Broad Confidentiality Clauses in Public Debt Contracts

Broad clauses in debt contracts requiring confidentiality of the entire agreement (which include an intended “safeguard” of the exception to disclose the agreement if required by law) are often ineffective without supporting legislation which provides clear guidance on conditions ensuring such disclosure.

#### Sample clause from a government debt contract

“The **Borrower** shall **keep all the terms, conditions, and the standard of fees hereunder or in connection with this Agreement strictly confidential.** Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with the Agreement to **any third party unless required by applicable law.**”

The onus of confidentiality falls solely on the borrower.

It could be interpreted in two equally detrimental ways: either the borrower is required to keep the entire agreement confidential, or the existence of the agreement itself is confidential.

Ineffective exception to the exception to disclosure if required by law.

Source: Aid Data ([https://www.documentcloud.org/documents/20509406-rwa\\_2020\\_528](https://www.documentcloud.org/documents/20509406-rwa_2020_528)).

## C. Good Practice Recommendations

**71. The law should clarify the interaction between secrecy laws and confidentiality of public debt related information.** Modern laws related to access to information are being recalibrated in the spirit of advancing transparency, while recognizing that the Executive branch should have the authority to classify and control access to information bearing on national security considerations. Reforms aim at balancing transparency obligations and other public interests by: i) limiting the scope or conditions for classified

<sup>133</sup> Gelpert et al. (2021)



information and levels of confidentiality; ii) providing for declassification criteria and processes; and iii) requiring parliamentary oversight (see Annex 9 on the reforms in *Japan, Moldova, and Poland*). In the interest of legal certainty, PDM and PFM laws could clarify the applicability of these elements to debt-related sensitive information.

**72. Two approaches may be considered, depending on the strength of the FOI frameworks in each jurisdiction.** *Where a robust FOI framework is in place,*<sup>134</sup> PFM or PDM laws could expressly cross-reference the FOI law. This promotes consistency across domestic legal frameworks, in particular if the FOI law contains clear prescriptions for debt disclosure and narrow grounds for confidentiality. *Where a FOI framework is nonexistent, weak or not well implemented,* a robust framework regulating confidentiality could be introduced in public debt-related laws, to ensure that Executive discretion is not abused. This proposed framework could define the scope or conditions and time limits of confidentiality and establish mechanisms for external scrutiny through administrative or judicial remedies. While core elements regulating confidentiality may not be present in most public debt-related legislation, they have long been integrated in other areas of public financial management laws, e.g., on public expenditure, procurement, and extractives industries. See Annex 10 for country examples.

**73. However, the law may not be able to provide all the necessary guidance, and confidentiality policies will need to be developed.** Governments will need to adopt intelligible criteria and processes for non-disclosure through confidentiality policies for debt contracting setting out: i) what type of debt information could be subject to non-disclosure; ii) term/length of validity of the confidentiality agreement; iii) exemptions (e.g., the information is already publicly available or made available to Parliament or state audit institutions, court orders are issued); iv) consequences for non-compliance; and iv) management of confidential information. These core elements have been long integrated in other areas of public administration. For instance, *Australia* has adopted policies on the use and disclosure of confidentiality clauses in government contracts (See Box 12).

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<sup>134</sup> Despite the difference across jurisdictions in FOI laws, some common elements are considered good practice and are recommended by international standards and guidelines. The most relevant principles for debt transparency include: i) recognize the principle of maximum disclosure, ii) public bodies are under the obligation to actively publish and disseminate key information, iii) requiring to have a culture of open government and therefore promote better record maintenance, iv) that exceptions are clearly and narrowly drawn and subject to strict harm/public interest tests, and that v) requests for information are rapidly and fairly attended and refusals have an independent review. See Mendel, T. 2003

### Box 12. Policies on the Use and Disclosure of Confidentiality Provisions in Government Contracts. the Case of Australia

The Department of Finance in Australia has adopted policies to regulate confidentiality in government contracting, in particular related to the procurement cycle.

#### Legal Basis

- [Privacy Act \(1988\)](#), the [Freedom of Information Act 1982 \(FOI Act\)](#) and the [Australian Government Protective Security Policy Framework](#).

#### Confidentiality test

- Two types of confidentiality clauses:
  - *General*-restate legislative obligations for confidentiality (under the Privacy Act) or standard confidentiality contractual provisions in government templates.
  - *Specific*-protecting for example confidential intellectual property, commercial sensitive information (trade secrets, internal costing information, profit margins, pricing structure, etc.)
- In case the proposed confidentiality clause departs from the standardized model, the following criteria must be met:
  - information is identified, precise and specific;
  - has the quality to be confidential i.e., commercially sensitive; and
  - is likely to adversely impact the party's commercial interest and competitive advantage.

#### Management of confidentiality

- Confidentiality clauses do not prevent the contract to be disclosed.
- Central record of confidentiality provisions (keep track of type of information to be kept confidential, timeframe for validity of the clause, current state of information, manage disclosure-public versions).

*Source:* See [Confidentiality throughout the Procurement Cycle | Department of Finance](#) Other examples are the Queensland Government policies on the [Use and disclosure of confidentiality provisions in government contracts \(hpw.qld.gov.au\)](#)

**74. International institutions and academics have proposed the use of standardized confidentiality clauses in public debt contracts to promote transparency.** With some variance, these proposals suggest that the adoption by lenders and borrowers of market standard confidentiality clauses may help to restrict to the minimum extent possible the information that cannot be disclosed and that over time secrecy will be ruled out completely with market practice. The key policy rationale for using confidentiality clauses is to keep certain information confidential, such as information that is proprietary, commercial/price sensitive or related to national security secrets.<sup>135</sup> Given the variety of sovereign debt instruments, creditors, and their legal characteristics, different levels of contractual standardization may be necessary. Additionally, depending on the law governing the debt agreement and its respective framework for the disclosure of public debt instruments, full alignment between the contract and the governing law would be needed—otherwise the standardized contractual clause would be overridden by a statutory provision under governing law. Where authorized by law, confidentiality clauses can exempt some financial terms of the debt contract from

<sup>135</sup> Maslen and Aslan (2022), p. 15.

disclosure; however, aggregated information on debt position, borrowing and average terms of debt should always be disclosed. Finally, standardized confidentiality clauses will need to be applied to new contracts only, giving rise to the need to address the outstanding stock issue.<sup>136</sup>

**75. This said, at the domestic level, confidentiality clauses in public debt contracts should also be tightly regulated.** At a minimum, confidentiality clauses should include: i) which information is subject to non-disclosure, who owns this information, and who bears the responsibility for non-disclosure; ii) are there instances of permissible disclosure? (e.g., if necessary to comply with applicable law, stock exchange rules, or if the data becomes part of the public domain); iii) how long is the duty of non-disclosure required for? and iv) appropriate carve-outs for the lender and the borrower that grant them the right to disclose information. For example, for borrowers, the carve out should reserve the right of public officials to prepare and publish reports or studies required by legislation using information derived from information or data related to the subject matter of the contract. For lenders the carve-out could enable them to disclose information to international databases such as the IIF/OECD. Other general carve outs will likely cover disclosure mandated by law, regulations, judiciary or other competent authorities, etc.<sup>137</sup> See Box 13 for an example of the key elements for confidentiality clauses that could be considered.

### Box 13. Exploring Key Elements for Confidentiality Clauses

Approaches to non-disclosure agreements differ, largely depending on the lender and the nature of the transaction. The widespread call for debt transparency queries whether a model confidentiality clause can be advocated. Given the variety in market practices, the formulation of such model clause is challenging. However, in drafting confidentiality clauses, it would be well-advised to consider the following:

1. Stating at the outset of the clause that the financing agreement can be published or made publicly available in records, subject to appropriate redactions with respect to confidential information;
2. Describing clearly and precisely the type of information that amounts to confidential information. As an alternative to enumerating information, the clause may establish the criteria or a confidentiality test (see Box 11 as an example);
3. Identifying the party (lender, borrower, or both) that has the duty to maintain confidentiality. A reference to the owner of the confidential information may also help to clarify the obligation;
4. Specifying instances of permissible disclosure. Typical examples include: (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by applicable legislation or regulation (iii) where the information has entered the public domain, etc.
5. Stipulating the term of the confidentiality clause. The term within which information is treated confidential must be limited to a reasonable period. It is worth noting that some jurisdictions consider perpetual clauses or those that do not specify a duration as an unreasonable restraint on trade or anti-competitive;
6. Establishing the option for mutual agreement on disclosure, possibly incorporating a process that allows for the determination of whether information can be released to third parties on the basis of the established criteria or confidentiality test;
7. Affirming that the existence of the agreement itself or its annexes and amendments is not confidential.

**Source:** Author's elaboration on various samples of confidentiality agreements, including the Loan Market Association, multilateral development banks' contracts with sovereigns, and AidData

<sup>136</sup> IMF (2023).

<sup>137</sup> Useful examples on extractive industry can be found at clauses published in Rosenblum et al (2009).

## VII. Accountability Mechanisms for Debt Transparency

*Transparency enables accountability. Domestic laws should ensure i) a robust oversight role of the legislature over public debt disclosure, and ii) proper scrutiny by independent institutions, such as SAIs, including to provide assurance of debt data integrity. Robust debt management legal frameworks and borrowing objectives are critical and decisive for LIDCs to guide the Executive operations, define adequate institutional arrangements for debt disclosure and approval of borrowing operations, and monitor debt. To fulfill their oversight role, legislatures must have sound processes, institutions, and staff with technical capacity. SAIs, through their financial, compliance and performance audits, also play a fundamental role in supporting the disclosure of sovereign debt. Among the weaknesses that prevent SAIs from auditing public debt effectively are a narrow mandate, insufficient access to information, and conflicting definitions of public debt. Granting SAIs a broad set of powers to support the effective exercise of their responsibilities and protect them from undue political pressures would address those challenges.*

### A. Accountability: The Concept and Essential Features

**76. The concepts of transparency and accountability are closely linked as proper transparency enables robust accountability.** It has been long recognized that public officials and the institutions in which they operate should be held accountable for their actions. The concept of ‘accountability’ reaching back to the term *comptes à rendre*, to render accounts,<sup>138</sup> in its modern formulation, includes observation, information, and sanctions.<sup>139</sup> While accountability procedures are not intended primarily to reveal hidden debt (they are not investigative), the formal dialogue consisting of questions, answers, and evidentiary data is one of the ways to ensure that public debt—opaque and complex—becomes transparent. Transparency, in turn, is a building block for other aspects of public policy including accountability.<sup>140</sup> But not all transparency is equally effective, in particular for accountability purposes. Dissemination of information should be relevant and accessible presented in plain and readily comprehensible language and formats appropriate for different stakeholders (creditors, credit rating agencies, Parliament, citizens). The dissemination of information should retain the details necessary for analysis, evaluation, and inquiry, and it should also be timely and accurate.

**77. Each jurisdiction constructs its own public accountability system in line with its constitutional framework, form of government and administrative traditions.** Irrespective of the structure, such a system generally comprises a set of objectives, norms, procedures, and institutional arrangements, including the Legislature, independent institutions, such as SAIs, courts, and the public at large (voters).

### B. Legislature’s Role in Enhancing Debt Transparency

**78. International standards and guidelines promote the Legislature’s role in public debt in the context of broader accountability and transparency goals.** The Revised PDM Guidelines recommend

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<sup>138</sup> Dubnik, (1998).

<sup>139</sup> Przeworski, (1999).

<sup>140</sup> Ferry et al (2015)

that the Legislature receive an annual report on debt management operations and strategy outcomes. The way in which the legislature, in reviewing reports and questioning debt managers through hearings, holds the Executive and debt managers accountable is a matter of domestic legal framework construction and legislative procedures and norms.

#### 79. The precise role of the Legislature in debt transparency varies widely across jurisdictions.

Specifically, the Legislature may be involved in:

- **Establishing the statutory scheme for public debt management**, thus prescribing debt management objectives to guide borrowing decisions and clearly specifying the roles and responsibilities for the institutions involved in debt management.
- **Approval of borrowing operations** through the setting of annual borrowing ceilings and/or ratification or signing of individual loan agreements, for instance, where external loans are often used to fund critical infrastructure projects.<sup>141</sup> The power of the Legislature during the ratification process may also be restricted (for instance, it may only approve or reject a loan agreement rather than request amendments).
- **Overseeing debt and debt management in all phases of the budget cycle:**
  - In *budget formulation*, when pre-budget statements are submitted to the Legislature to scrutinize the macroeconomic projections and debt management strategy proposed by the government, including fiscal risks and contingent liabilities, if disclosed (*Australia, Austria, Nigeria, New Zealand, South Africa*).
  - In the *annual budget approval*, by scrutinizing the debt limits for the fiscal year, granular information of the composition of the debt stock (*Ghana*), and a debt sustainability analysis (*Federation of Bosnia and Herzegovina*).<sup>142</sup>
  - During *budget execution*, by receiving regular reports on debt management and debt stock (*Mexico*).
  - During the *ex-post oversight process*, by examining end-year budget execution reports, annual financial statements, and separate annual debt management reports, which will assess whether public debt management operations conformed to the medium-term strategy and the reasons for any variance. See Section IV.A. on the content of these reports and country examples.

**80. Legal authority does not ensure in itself proper scrutiny.** The law is necessary but not sufficient. To fulfill its oversight role throughout the public debt cycle, the Legislature must have sound processes, institutions, and staff with technical capacity. Several legislatures have a committee system (finance, budget, or economic committee), allowing for specialization among the MPs and a profounder scrutiny. For example, the U.S. law requires the Secretary of the Treasury to send the annual public debt report not to Congress in general, but to two specific committees—the House Committee on Ways and Means and the Senate

<sup>141</sup> This authority can be exercised in different forms: i) Legislature ratifies the loan agreement before it become effective (*Ghana, Poland, Rwanda*), ii) ratification is only required upon certain threshold (*Congo, Ethiopia*), and iii) some exceptions may be granted (*Lebanon* in case of urgency, *Uruguay* for agreements or contracts that the Executive Power, Autonomous Entities, and Decentralized Services enter into with international organizations). See Inter Parliamentary Union, (2013).

<sup>142</sup> Article 26 of the Law on the Budgets in the Federation of Bosnia and Herzegovina requires the draft budget to be accompanied by explanatory notes, containing, among other things, “information on current and long-term liabilities arising from external and domestic debt of the Federation ..., with a debt sustainability analysis.”

Committee on Finance.<sup>143</sup> This requirement aims not only to include nonpartisan oversight, which the committee structure entails, but to also ensure that the reports reach the committees with the staff with the capacity to review the reports.

**81. Finally, two distinct considerations are particularly important to address today's challenges to debt transparency.** One is the role of the Legislature in transaction level approvals, and the other one is access to confidential information by the Legislature to ensure oversight. Some good practices include:

- *Balancing efficiency and accountability for transaction level approvals by the Legislature.* In some jurisdictions, the legislative approval of external loan transactions may be necessary to ensure the accountability of the Executive. For example, legislature involvement in loan approval or in the ratification process may enable verification that the Executive has undertaken a rigorous economic analysis during the planning, allocation, and implementation phases of the public investment framework.<sup>144</sup> However, legislative involvement in individual borrowing transactions may cause delays. Some jurisdictions have thus opted for ex-post oversight rather than transaction-level approvals.
- *Confidential debt information, whether due to contract clauses or statutory concessions, should not be exempt from legislative oversight.* Debt-related confidential information need not preclude legislative accountability on behalf of the public. Just as legislative committees review confidential or classified intelligence or national security information, so they should review debt information classified as confidential or restricted through closed or special hearings (e.g., *Kenya, Uganda, US, Zimbabwe*). See Annex 11 for more detail on the legal provisions in these countries.

## C. State Audit Institution's Role in Enhancing Debt Transparency

**82. As state auditors, external to the executive, SAIs are a crucial part of the broader debt transparency regime.** SAIs have a core mandate to review the effectiveness and proper use of public resources. Their work embraces a broad range of audits, from compliance to financial and increasingly, performance. When SAIs release audit reports to the public or convey them to relevant public agencies or to the legislature, action can be taken to rectify errors, improve systems or policies, or hold officials accountable for the abuse of public funds. SAIs also play a fundamental role in supporting the disclosure of sovereign debt. SAIs aim to review and assess information on public spending and revenue, and on public debt, in particular, through clear, objective, factual audit reports conducted and produced according to international standards and guidelines.<sup>145</sup>

**83. SAIs employ, in the context of public debt, a wide range of financial, compliance and performance audits.** *Financial audits* can cover a variety of debt reports including operational reports, statistical reports used for periodic bulletins, reports that accompany or reconcile accounts in financial statements, reports related to budget preparation. *Compliance audits* assess whether debt related activity and reports are consistent with relevant legal and regulatory provisions. For example, they would assess

<sup>143</sup> Both committees contain not only senators and representatives of seniority but expert staff.

<sup>144</sup> Key elements of the robust public investment management frameworks are described in the IMF Public Investment Management Assessment tool available at [What is PIMA \(imf.org\)](https://www.imf.org/what-is/PIMA).

<sup>145</sup> European Court of Auditors (2022).

whether borrowing operations followed prescribed procedures and authorizations (especially important for cases of hidden or undisclosed debt) and if debt reports meet national and international requirements. These audits can also assess whether non-disclosure agreements or clauses are consistent with law and regulation<sup>146</sup> and may offer an opinion on the need for a new law or regulation to address such clauses.<sup>147</sup> The compliance audit works best in tandem with the financial audit of government financial statements because the latter can uncover inconsistencies in data, followed by the need to review underlying loan agreements and the terms of securities instruments or even the suspicion that such unreported sovereign debt instruments exist. Finally, *performance audits* focus on making government processes and procedures on public debt more efficient. However, despite strong international support, their use remains limited. This said, for the more pressing problems on debt disclosure, more traditional audits, such as financial and compliance audits, will likely reveal inconsistencies that bring undisclosed debt to light.

### **Formulation of the Mandate (Mandate for Public Debt Audits)**

#### **84. SAIs should enjoy a broad mandate to audit public debt and debt management operations.**

Whether of the Judicial or Westminster model,<sup>148</sup> SAIs need the authority and the related specific powers to perform audits of public debt. This authority and specific powers (mandate) may be set forth in the constitution or in more detailed fashion in an SAI's enabling legislation or related public finance legislation. But the authority for an SAI to audit public debt may also derive from the general powers to audit the government's financial statements, which necessarily include loans contracted, government securities issued, and debt service payments. The audit examines the data to determine if the information is accurate, and if the public debt information, in particular, has been disclosed "accurately and adequately."<sup>149</sup> Annex XII includes country examples of statutory mandates and related powers of SAIs.

**85. A narrow institutional coverage of the SAI's mandate could also hamper debt transparency.** It may be due to the lack of legal authority of some SAIs to audit the whole public sector, i.e., the central government, subnational government, and public corporations. For example, some SAIs are authorized to audit only the central government's finances and thus public debt contracted by the center (e.g., *Namibia's* mandate to conduct audits on the "state revenue fund"). In general, SAIs should have a broad coverage, including all public sector entities (e.g., *Italy, Argentina*).<sup>150</sup> Specific considerations may be made for central

<sup>146</sup> Compliance audits should enable the SAI to examine these agreements and request the documents, notwithstanding the non-disclosure or confidentiality clause, based on the SAIs mandate.

<sup>147</sup> INTOSAI (2020).

<sup>148</sup> As institutions SAIs generally fall into two categories. In the Judicial model, for which the French Cour des Comptes is the consummate example, the SAI is a Court with jurisdictional powers and responsibilities; consequently, sanctions on officials responsible for mismanagement of public funds will be applied by the SAI itself. (See Paris Declaration of SAIs with Jurisdictional Functions [https://www.tcu.es/tribunal-de-cuentas/export/sites/default/galleries/pdf/transparencia/DeclaracionPARIS\\_EFS-EN.pdf](https://www.tcu.es/tribunal-de-cuentas/export/sites/default/galleries/pdf/transparencia/DeclaracionPARIS_EFS-EN.pdf)). In contrast, in the Westminster model the SAI is not a jurisdictional body; its findings are directed to the legislature. Should the audits of Westminster style SAIs include evidence of corruption, those findings are directed to the law enforcement bodies which will apply the appropriate sanctions. (Examples include the Auditor-General of South Africa, the Comptroller and Auditor General of the U.K.). The foregoing distinction is not exhaustive, as within those two models are various structures and forms, some with a single head, such as an Auditor-General or Comptroller and Auditor-General, others are headed by a collegial body, such as a board or senate.

<sup>149</sup> INTOSAI (2020) at p.73.

<sup>150</sup> Italy's Court of Auditors can carry out audits on Ministries, Public authorities and state agencies, including independent authorities; public funded bodies, regions, provinces, municipalities, metropolitan cities and their in-house providing companies. Law 20/1994. In Argentina, the National Audit General is, by virtue of the Argentine Constitution, entrusted with the management, auditing, and legality review of all the activity of the centralized and decentralized National Public Administration.

banks, where the scope of scrutiny might be limited and/or delegated to external independent private auditors. This said, where SAIs do not have a broad coverage, expanding SAI's coverage needs to be carefully considered to avoid the unintended effect of weakening the institution, in particular if there are insufficient resources and technical capacity. SAIs' authority over public debt can also expand over time. For example, under the Philippine Constitution<sup>151</sup>, the Commission on Audit (COA) has the power to perform post audit on government-owned and/or controlled corporations (GOCCs) with original charters. Later, COA's audit jurisdiction was expanded to include GOCCs created under the Philippine Corporation Code. See also the U.S. GAO's gradual accumulation of audit authority over public debt reports in Annex XIII.

### ***Insufficient Access to Information***

**86. To effectively exercise their functions and responsibilities, SAIs should enjoy a broad set of powers.** The key elements are the authority to undertake audits, ideally of various kinds, on certain entities or accounts, and the requisite legal powers, such as:

- *the power to obtain information (Principle 3 of the Mexico Declaration)* extended to information held by third party entities outside the public sector and complimented by penalties for refusals or the ability to report refusals to the legislature (e.g., *Indonesia, Namibia*); and
- *the power to report or obligation to disclose the audit results (Principles 5 and 6 of the Mexico Declaration)*. Absent such powers some SAIs may be subject to legal restraints on the form and manner of publication, hindering debt transparency.<sup>152</sup>

**87. However, full discretion is not always recommended, particularly when it may subject the SAI to undue political pressures.** Mandatory duties to specifically audit public debt, enshrined in law, can also protect the SAI. The execution of such duties engenders a direct relationship with the legislature. Mandatory duties also reduce the untrammelled discretion that could make the SAI more vulnerable to external or political pressure, by insulating the SAI from the pressure not to audit or to audit less controversial entities or accounts.

## **VIII. Conclusions**

**88. Hidden, undisclosed, and opaque debt is not a theoretical matter and can be costly for debtors, creditors, citizens and the system as a whole.** The costs are well-known undisclosed debt can undermine debt sustainability and investor confidence and increase borrowing costs. Lack of full and accurate information about a country's outstanding debt and contingent liabilities prevent both borrowers and creditors from properly assessing risks and making informed borrowing and lending decisions. Debt opacity also complicates debt restructuring efforts, as debt service capacity and risks of debt distress are all the more difficult to assess. At the extreme, massive amounts of unaccounted public debt can shock an economy when exposed. This, in turn, harms ordinary people who suffer the effects of a weakened currency, spiraling

<sup>151</sup> Article IX-D of the Constitution of 1987.

<sup>152</sup> For instance, the enabling law of Mozambique's SAI specifies that the "Decisions determined by the Public Accounts Section of the Administrative Court may be published." (Article VI of Law No. 14/2014). The SAI may publish the final decision taken on the audit report after all appeals have been exhausted, but it is not obligated by law to publish the full audit report or a summary of its findings.



inflation, and the austerity inherent in any debt restructuring. Accountability, too, collapses without accurate information about the use of public resources, increasing the risks for corruption.

**89. Cognizant of the scale and scope of the problem, international standard setting bodies have promoted debt transparency, but critical implementation gaps remain.** Clear and detailed guidance on public debt disclosure can be found in international standards and guidelines for sound public debt management, fiscal transparency, and statistical reporting. As a complement, several public and private sector initiatives aim to promote creditor disclosure of transaction-level financial information through voluntary adherence (e.g., G20 Operational Guidelines on Sustainable Financing and IFF Voluntary Principles for Debt Transparency). Despite all these efforts, critical implementation gaps remain, particularly in LICs and EMs. Limited coverage of debt reporting, underreporting of local governments, EBFs, SSIs, SOEs, and misreporting on complex debt instruments comprise the most urgent challenges.

**90. Full implementation of international standards and guidelines in domestic legal frameworks is significantly inadequate.** A survey of sixty jurisdictions identified several shortcomings in domestic laws. The coverage of public debt is often limited to government securities and loans, which excludes more complex instruments (e.g., supplier credit agreements, accounts payable) that must be classified as liabilities in the balance sheet. Further, alignment of domestic accounting and statistical practices with international standards is generally deficient and not required by law. Reporting and dissemination requirements are scarce or inadequate at best. A bare minimum of laws requires the disclosure of loan-level information of the terms of debt contracts. More broadly, weak borrowing frameworks for entities outside the central government, unclear delegations of borrowing powers from the Minister of Finance down, fragmented institutional arrangements for debt data collection and disclosure, and the absence of proper monitoring and oversight further hamper debt transparency.

**91. Determined and prompt actions are needed to strengthen domestic legal frameworks in order to address the numerous drawbacks of opaque debt.** In particular, legal frameworks play a preeminent role in entrenching good practices and binding the discretion of policy makers and debt managers. Moreover, new sources of debt vulnerability, the subnational and extrabudgetary liabilities, contingent liabilities, and complex financial instruments have mushroomed because, among other things, they are not subject to legal requirements, or outside the reach of statutes or within the interstices within statutes. While recognizing that there is no one-size-fits all approach, this paper has outlined a methodology that can be used to assess the gaps and weaknesses in domestic legal frameworks and design the key priority reforms for promoting debt transparency, including:

- ensuring consistency and clarity in the legal concept of public debt;
- providing a clear authorization to borrow, and a clear delegation process;
- enhancing the institutional arrangements for debt monitoring and management;
- ensuring that the law regulates narrow exceptions to disclosure and provides clear guidance on the conditions and scope of confidentiality, as well as parliamentary oversight; and
- strengthening the oversight role of the legislature over public debt disclosure and proper scrutiny by independent institutions such as SAIs.

**92. The design and implementation of legal reforms to strengthen debt transparency should be tailored to country specific circumstances.** Legal reform is a time-consuming and complex process. Policymakers will need to garner sufficient political support, determine the scope and ambition of the reform, and sequence the implementation in a way that both addresses resource constraints and facilitates gradual

development of institutional capacities. In countries where legal reform may not be feasible in the short-term, a pragmatic approach would be to adopt secondary legislation in case flexibility is afforded by the current laws. Depending on the constitutional framework and the distribution of rule-making powers between the legislative and executive branches and the legal systems, some areas may be strengthened by the executive. For example, broadening debt disclosure requirements, strengthening the institutional frameworks for public debt compilation, recording and dissemination, and adopting policies for monitoring and regulating confidentiality agreements generally fall under the ambit of executive authority. Other areas, such as clarifying the legal definition of public debt to ensure an adequate perimeter at the institutional and debt instrument level, enhancing the borrowing authorization framework and tightly defining the exceptions to disclosure and scope of confidentiality agreements, likely require legal reform/legislative fixes. In the short or medium term, legal reform is crucial in advancing debt transparency as outlined in this paper.

**93. The IMF will continue to foster debt transparency in collaboration with borrowing countries, creditors, international financial institutions and other stakeholders.** The IMF promotes the development of the international standards and guidelines examined in this paper and the direct dissemination of public debt information through the Special Data Dissemination Standard (SDDS), and the enhanced General Data Dissemination System (e-GDDS) and the SDDS Plus. While the priority should be the implementation of those international standards and guidelines in domestic legal frameworks, some further improvement is warranted to support the disclosure of granular debt information under standards and guidelines. Several IMF policies support public debt transparency both in the context of surveillance and IMF lending (e.g., DLP, MPA, DSA, Lending to Arrears Policy). Moreover, the IMF provides extensive technical assistance and training to help its member countries strengthen their debt management frameworks. In particular, recognizing the challenges faced by the membership on debt transparency and rising debt vulnerabilities, the Legal Department of the IMF has increased and broadened its capacity development delivery on legal frameworks for public financial and debt management. Work in this area has taken a variety of forms, including desk reviews of members' legal frameworks, diagnostic missions, discussions of specific legal, regulatory and supervisory issues, institution' building, preparation of draft laws, regulations and instruction manuals. The Legal Department's work thus far reveals that focused, well-sequenced and prioritized actions to strengthen legal frameworks, buttressed by political support, is the cornerstone of the collective effort to advance debt transparency across the globe.

## Annex I. List of Countries and Laws Surveyed

	Country	Laws Analyzed
1.	Albania	<ul style="list-style-type: none"> <li>- Law on Concessions, State Borrowing, Debt and Guarantees</li> <li>- Organic Budget Law</li> <li>- Law on Entrepreneurs and Companies</li> </ul>
2.	Angola	<ul style="list-style-type: none"> <li>- Public Debt Law</li> </ul>
3.	Antigua & Barbuda	<ul style="list-style-type: none"> <li>- Finance Administration Act</li> <li>- Finance and Audit Act</li> </ul>
4.	Armenia	<ul style="list-style-type: none"> <li>- Public Debt law</li> <li>- Treasury System Law</li> </ul>
5.	Australia	<ul style="list-style-type: none"> <li>- Financial Management and Accountability Act</li> <li>- Charter of Budget honesty Act</li> <li>- Public Governance, Performance and Accountability Act</li> <li>- Auditor General Act</li> </ul>
6.	Austria	<ul style="list-style-type: none"> <li>- Federal Budget Act</li> <li>- Federal Act on Court of Audit</li> </ul>
7.	Azerbaijan	<ul style="list-style-type: none"> <li>- Accounting Law</li> <li>- Law on Budget System</li> <li>- Law on Public Debt</li> </ul>
8.	Bhutan	<ul style="list-style-type: none"> <li>- Audit Act</li> <li>- Public Finance Act</li> </ul>
9.	Bolivia	<ul style="list-style-type: none"> <li>- Law on Public Administration, and</li> <li>- Executive Resolution on Basic Norms of the Public Debt System.</li> </ul>
10.	Brazil	<ul style="list-style-type: none"> <li>- Public Finance Management Law</li> <li>- Fiscal Responsibility Law</li> <li>- Law on Court of Accounts</li> </ul>
11.	Bulgaria	<ul style="list-style-type: none"> <li>- Government Debt Act</li> <li>- Markers in Financial Instruments Act</li> <li>- Public Finance Act</li> </ul>
12.	Cambodia	<ul style="list-style-type: none"> <li>- Law of Public Enterprises</li> <li>- Law on Public Finance System</li> </ul>
13.	Cameroon	<ul style="list-style-type: none"> <li>- Law on the State's Financial Regime</li> <li>- Public Contracts Code</li> </ul>
14.	Canada	<ul style="list-style-type: none"> <li>- Borrowing Authority Act</li> <li>- Financial Administration Act</li> </ul>
15.	Chile	<ul style="list-style-type: none"> <li>- Public Financial Management Law</li> <li>- Law on Fiscal Responsibility</li> </ul>
16.	Colombia	<ul style="list-style-type: none"> <li>- Fiscal Responsibility Law</li> <li>- Organic Budget Law</li> </ul>
17.	Ethiopia	<ul style="list-style-type: none"> <li>- Financial Administration Act</li> </ul>

18.	France	<ul style="list-style-type: none"> <li>- Organic Budget Law</li> <li>- Commercial Code</li> </ul>
19.	Georgia	<ul style="list-style-type: none"> <li>- Budget Code</li> <li>- Law on Entrepreneurs</li> <li>- Law on Public Debt</li> <li>- Law on Public Internal Financial Control</li> </ul>
20.	Ghana	<ul style="list-style-type: none"> <li>- Public Financial Management Act</li> </ul>
21.	Indonesia	<ul style="list-style-type: none"> <li>- Law on State Finance</li> <li>- Act Concerning State Treasury</li> </ul>
22.	Italy	<ul style="list-style-type: none"> <li>- Budget Law</li> </ul>
23.	Jamaica	<ul style="list-style-type: none"> <li>- Public Debt Management Act</li> <li>- Financial administration and Audit Act</li> </ul>
24.	Kenya	<ul style="list-style-type: none"> <li>- Public Finance Management Act</li> </ul>
25.	Korea	<ul style="list-style-type: none"> <li>- National Finance Act</li> <li>- National Accounting Act</li> </ul>
26.	Lao P.D.R.	<ul style="list-style-type: none"> <li>- Law on Public Debt Management</li> </ul>
27.	Liberia	<ul style="list-style-type: none"> <li>- Public Finance Management Act</li> </ul>
28.	Lithuania	<ul style="list-style-type: none"> <li>- Law on State Debt</li> </ul>
29.	Malawi	<ul style="list-style-type: none"> <li>- Public Finance Management Act</li> </ul>
30.	Mauritius	<ul style="list-style-type: none"> <li>- Public Debt Management Act</li> <li>- Finance and Audit Act</li> </ul>
31.	Mexico	<ul style="list-style-type: none"> <li>- Fiscal Responsibility Law</li> <li>- Public Debt Law</li> <li>- Transparency and Access to Information Law</li> </ul>
32.	Moldova	<ul style="list-style-type: none"> <li>- Law on Public Finance and Budgetary and Fiscal Responsibilities</li> <li>- Law on Public Sector Debt, State Guarantees and State Credit</li> </ul>
33.	Mongolia	<ul style="list-style-type: none"> <li>- Law about Debt Management</li> <li>- Budget Stability law</li> <li>- Budget Sustainability Law</li> </ul>
34.	Morocco	<ul style="list-style-type: none"> <li>- Organic Finance Law</li> </ul>
35.	Mozambique	<ul style="list-style-type: none"> <li>- Law on Public Debt and State Guarantees</li> </ul>
36.	Nepal	<ul style="list-style-type: none"> <li>- Loan and Guarantees Act</li> <li>- Public Debt Act</li> </ul>
37.	New Zealand	<ul style="list-style-type: none"> <li>- Public Finance Act</li> <li>- State Owned Enterprises Act</li> </ul>
38.	Nigeria	<ul style="list-style-type: none"> <li>- Fiscal Responsibility Act</li> </ul>
39.	North Macedonia	<ul style="list-style-type: none"> <li>- Public Debt Law</li> </ul>
40.	Pakistan	<ul style="list-style-type: none"> <li>- Public Finance Management Act</li> <li>- Fiscal Responsibility and Debt Limitation Act</li> </ul>
41.	Peru	<ul style="list-style-type: none"> <li>- Law on National Debt System</li> </ul>
42.	Poland	<ul style="list-style-type: none"> <li>- Public Finance Act</li> </ul>

43.	Rwanda	- Organic Law on State Finance and Property
44.	Senegal	- Organic Finance Law
45.	Serbia	- Public Debt Law
46.	Seychelles	- Public Debt Management Act
47.	Sierra Leone	- Public Debt Management Act - Government Budgeting and Accountability Act
48.	Somalia	- Public Financial Management Act
49.	South Africa	- Public Finance Management Act
50.	Spain	- Organic Law on Budgetary Stability and Financial Sustainability - Law on Transparency and Access to Public Information
51.	Sweden	- Budget Act
52.	Switzerland	- Financial Budget Act
53.	Thailand	- Public Debt Management Act - Budget Procedure Law - Fiscal Responsibility Act
54.	Timor-Leste	- Budget and Financial Management Law - Public Debt Management Law
55.	Turkey	- Law on Regulating Public Finance - Public Finance Management and Control Law
56.	Uganda	- Public Finance Management Act
57.	United Kingdom	- National Loans Act
58.	Vietnam	- Law on Public Debt Management - Law on State Owned Enterprises - Law on Publishing Information about State Owned Enterprises
59.	Zambia	- Loans and Guarantees Authorization Act - Public Finance Management Act
60.	Zimbabwe	- Public Debt Management Act - Public Finance Management Act

## Annex II. Public Sector Legal Classification vs. 2014 GFSM Sectorization

The following tables compare the differences between the legal classification of public sector entities and to the 2014 GFSM sectorization criteria.

**Case of Egypt.** In Egypt, similar to many countries, legal form prevails over economic nature for the classification of public sector entities.<sup>153</sup> This prompts the classification of Economic Authorities (EAs) and Public Business Sector Companies (PBSCs) outside the general government, although some of them only conduct governmental functions with budget support and do not perform commercial activities. Currently, the fiscal position (asset and liabilities) and associated risks remain disclosed at a very aggregate level.<sup>154</sup> The coverage, quality, and timeliness of fiscal reporting of these entities could be enhanced if opting for a reclassification in line with international standards and guidelines, including required legal reform.

Current Legal Classification	GFSM Sectorization		
	General Government		PCs
	CG	Social Security	
Central Government			
Local Government			
Public Service Authorities			
Social Security Entities			
Economic Authorities			
Public Business Sector Companies			
Joint Ventures			

**Case of Mexico.** The legal classification of public sector entities has an effect on federal budget allocation and on the dissemination of fiscal statistics. The complex legal institutional set-up complicates centralized compilation and disclosure of a complete picture of public sector liabilities.<sup>155</sup> Fiscal reporting over certain non-parastatal entities, such as the non-organic funds, remains partial despite the substantial risk the management of their assets and liabilities represents for the government (net worth is approximately 3 percent of GDP).<sup>156</sup> The prospects for efficient and effective sovereign asset-liability management could be improved by a simplification of the forms of trust funds and more comprehensive reporting of all parastatal entities.

<sup>153</sup> Egypt, State General Budget Law of 1973, the Government Accounting Law of 1981, Public Business Sector Companies Law of 1991, and the Law governing Public Authorities of 1963

<sup>154</sup> International Budget Partnership (IBP). 2020. Open Budget Survey 2019 Questionnaire: Egypt.

<sup>155</sup> International Monetary Fund (IMF). 2021. "Mexico: Technical Assistance Report—Strengthening Public Assets and Liabilities Management," Washington, DC.

<sup>156</sup> International Monetary Fund (IMF). 2018. "Mexico: Fiscal Transparency Evaluation," Country Report No. 2018/289, Washington, DC.

Current Legal Classification	GFSM Sectorization				
	CG			PCs	
	BCG	EBFs	Social Security	Financial	No-Financial
Federal Government					
Decentralized					
Organic Trust Funds					
State-Owned Productive Companies					
Companies with a Majority State Ownership					
Non-Organic Trust Funds					

## Annex III. Transaction Level Information and Loan Contracts Published—The Case of Mexico

Regulations to the Transparency Law<sup>157</sup> require all public entities to publish and update the information related to the obligations or loans that constitute public debt (internal and external), which have been contracted in terms of the provisions of the Constitution of the United Mexican States, the constitutions of the federal entities, the Federal Public Debt Law, the Federal Fiscal Coordination Law and other regulations on the matter. The following information must be published in the transparency portal on a quarterly basis:

- Criterion 1 Fiscal year
- Criterion 2 Reporting period
- Criterion 3 Accredited (obligated subject that contracts the obligation)
- Criterion 4 Name of the executing agency of the public resource
- Criterion 5 **Type of obligation**: Simple credit / Credit in checking account / Stock issue / Guarantee of timely payment (GPO) / Contracts for service provision projects (PPS)
- Criterion 6 **Creditor** (Institution that granted the loan)
- Criterion 7 **Date of signature of the contract or legal instrument**
- Criterion 8 **Original amount** contracted, which appears in the contract or legal instrument in which the obligation was contracted
- Criterion 9 **Interest rate term** agreed in the contract or legal instrument
- Criterion 12 Due date of the debt
- Criterion 13 Resource affected as a source or guarantee of payment
- Criterion 14 **Destination for which the obligation was contracted**
- Criterion 15 Balance as of the reporting period
- Criterion 16 Hyperlink to the authorization of the debt proposal that has been presented, if applicable
- Criterion 17 Hyperlink to the list of negative resolutions to the contracting of financing for entities other than the federal government
- Criterion 18 **Hyperlink to the contract or legal instrument in which the obligation was contracted**
- Criterion 19 Document or instrument in which modifications have been specified
- Criterion 20 **Hyperlink to information on public debt, published by the MoF**
- Criterion 21 **Report sent to the MoF** that contains the list of all loans and payment obligations
- Criterion 22 **Hyperlink to the Public Account** report sent to the MoF or equivalent
- Criterion 23 Date of registration.

<sup>157</sup> General Transparency Law and regulations available at [Normatividad en Transparencia - Gobernación \(gobernacion.gob.mx\)](https://www.gob.mx/normatividad-en-transparencia)



## Annex IV. Fiscal Rules' Reporting Legal Framework – The Case of The Bahamas and Angola

**The Bahamas.** The 2018 Fiscal Responsibility Act establishes a long-term objective of reducing central government debt to 50 percent of GDP.<sup>158</sup> The timeframe for achieving this goal has been revised several times, and as of 2021 was postponed to FY2030/31.<sup>159</sup> The law states that debt fiscal objectives are to be expressed as a percentage of GDP and as a nominal debt limit in the Fiscal Strategy Report and are to be included in the Annual Budget.<sup>160</sup> The following documents cover regular reporting as per the Fiscal Responsibility Act:

- *Fiscal Strategy Report*, prepared by the Minister of Finance on behalf of the Government on a yearly basis and presented to the Cabinet and then to the Parliament and the Fiscal Responsibility Council; the report is to be published on the day of submission to the Parliament<sup>161</sup> and includes the “level of debt by external source, domestic source and total,” as well as the level of financial and performance guarantees.”<sup>162</sup>
- *Pre-election Economic and Fiscal Update*, published by the Minister of Finance no later than 20 days before the day of general Parliament elections, includes information on net and gross debt for the current year and next three years and level of guarantees.<sup>163</sup>
- *Mid-year review*, submitted to the Parliament by the Minister of Finance every February and published, includes net and gross debt for the current year and next three years, as well as level of guarantees.<sup>164</sup>

**Angola.** The recently adopted Fiscal Responsibility Law not only establishes a long-term debt anchor of 60 percent debt-to-GDP ratio, but also envisages detailed in-year and end-year reporting requirements.

- First, an *MTDS* was introduced, to be updated and published at least on a yearly basis (or when there are “significant changes in macroeconomic assumptions”), includes, among other things, description of the costs and risks of the existing debt portfolio; description of the future environment for debt management, including fiscal and debt projections, and recommended strategy analysis supporting it.<sup>165</sup>
- Second, the *Fiscal Strategy Document*, to be published by the Executive on a yearly basis and updated after six months (the update is also to be published) should include, among other things, a

<sup>158</sup> The Bahamas [Fiscal Responsibility Act](#) 2018, First Schedule, section 3.

<sup>159</sup> Davoodi, H. R., Elger, P., Fotiou, A., Garcia-Macia, D., Lagerborg, A., Lam, W. R., Pillai, S. 2022. “Fiscal Rules at a Glance: An update 1985-2021,” Fiscal Affairs Department, International Monetary Fund, Washington, DC.

<sup>160</sup> The Bahamas [Fiscal Responsibility Act](#) 2018, First Schedule, section 4.

<sup>161</sup> The Bahamas Fiscal Responsibility Act 2018, Sections 9 and 10. The Parliament may recommend revisions to the Fiscal Strategy Document, which, if adopted by the Minister of Finance, may be reflected in the amended Fiscal Strategy Report, also to be published.

<sup>162</sup> The Bahamas Fiscal Responsibility Act 2018, Second Schedule, Section 5.

<sup>163</sup> The Bahamas Fiscal Responsibility Act 2018, Section 11 and Third Schedule.

<sup>164</sup> The Bahamas Fiscal Responsibility Act 2018, Section 12 and Fourth schedule.

<sup>165</sup> Angola FRL, Article 13.

declaration of compliance with fiscal rules, including the debt rule, as well as an explanation of policies and measures taken.<sup>166</sup>

- Third, the *quarterly and annual fiscal reports* to be published by the Executive, are to include information on the execution of, among other things, debt rule, as well as the breakdown of the relevant variables in accordance with the MTF, by subsector and consolidated.<sup>167</sup>
- Furthermore, the Executive must prepare and publish an *evaluation report every five years* on the adequacy of fiscal rules.<sup>168</sup>

This new reporting framework requires enhanced monitoring of public debt, not only of central government but also of public corporations (within the scope of the debt rule).

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<sup>166</sup> Angola FRL, Article 12. The law specifies the dates on by which the publication and updates are to take place.

<sup>167</sup> Angola FRL, Article 17 and 18

<sup>168</sup> Angola FRL, Article 11

# Annex V. International Standards, Guidelines and Jurisdictional Examples on SOE Debt Reporting

## Public Sector Debt Statistics—Guide for Compilers and Users (PSDS)

Chapter Five: Public Corporations' debt should be reported and presented separately from general government debt. All public sector debt tables should indicate the institutional coverage, which depends on data availability and analytical needs. It is recognized that countries may not have the information available to compile the presentation tables for all the subsectors of the public sector and that data should be compiled on a best-efforts basis and according to country circumstances. Information collection on SOE debt should be done at the individual instrument level for the larger corporations and via surveys for smaller ones.

## Fiscal Transparency Code

Fiscal reports<sup>169</sup> should provide a comprehensive, relevant, timely, and reliable overview of the government's financial position and performance and of the fiscal activities of the public sector and its subsectors (one of which is the public corporations subsector—SOEs) according to international standards and guidelines, including all entities engaged in public activities. Reporting on the entire public sector (which would include public corporations) is recommended under the more advanced transparency practices of the Code. The government should regularly publish comprehensive information on the financial performance of public corporations.

## European Union

With the adoption of the Enhanced Economic Governance Package (the "six-pack") in 2011<sup>170</sup> EU member states are required to publish relevant information on contingent liabilities with potentially large impacts on public budgets, including liabilities stemming from the operation of public corporations and their extent. This new data collection represents a step towards further transparency of public finances in the EU by giving a more comprehensive picture of EU Member States' financial positions. Data disclosure is in aggregate form and covers government-controlled units reporting liabilities higher than 0.01 percent of GDP in the sectors of non-financial corporations and financial corporations.<sup>171</sup>

## OECD Guidelines on Corporate Governance of SOEs<sup>172</sup>

The OECD Guidelines on Corporate Governance of State-Owned Enterprises recommend that SOEs should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance and auditing standards as listed companies, further noting that SOEs should report material financial and non-financial information in line with high quality internationally recognized standards of corporate disclosure, and including areas of significant concern for the state as an owner and the general public. The Annotations to the Guidelines explain that (i) when deciding on the reporting and disclosure requirements for SOEs, some consideration should be given to enterprise size and commercial orientation, (ii) that where SOEs are large or where state ownership is motivated primarily by public policy objectives, the enterprises concerned should implement particularly high standards of transparency and disclosure, and (iii) a high level of disclosure

<sup>169</sup> Fiscal Reports are defined in the Code as: Retrospective reports on fiscal developments including in-year and year-end budget outturn/execution reports, fiscal statistics, and annual financial statements.

<sup>170</sup> [Council Directive 2011/85 on requirements for budgetary frameworks of the Member States](#)

<sup>171</sup> [https://ec.europa.eu/eurostat/cache/metadata/en/gov\\_cl\\_esms.htm](https://ec.europa.eu/eurostat/cache/metadata/en/gov_cl_esms.htm)

<sup>172</sup> [OECD Guidelines on Corporate Governance of State-Owned Enterprises](#)

is particularly important when SOEs have a significant impact on the state budget or on the risks carried by the state.

The Guidelines also recommend that governments, as owners of SOEs, should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs, which should primarily focus on financial performance and the value of the SOEs, but should also include information on performance related to key non-financial indicators. The aggregate report should provide key financial indicators including turnover, profit, cash flow from operating activities, gross investment, return on equity, equity/asset ratio and dividends. Good practice calls for the use of web-based communications to facilitate access by the general public.

### International Organization of Securities Commissions (IOSCO)

In view of the core goals of protecting investors, ensuring that markets are fair, efficient and transparent and reducing systemic risk, Principle 16 of the *IOSCO Objectives and Principles of Securities Regulation*<sup>173</sup> refers that “there should be full, accurate and timely disclosure of financial results, risk and other information which is material to investors’ decisions”. This should include disclosure to investors of current and reliable information necessary to make informed investment decisions on an ongoing basis and may pertain to specified transactions, periodic reports and ongoing disclosure and reporting of material developments.<sup>174</sup> Principle 18 also states that “accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.

Considering that disclosure of high-quality information to the markets on an ongoing basis is crucial, the *Principles for Periodic Disclosure by Listed Entities*<sup>175</sup> state that issuers should be required to make certain periodic reports, such as annual reports and other interim reports, in which certain prescribed disclosures must be provided at regular intervals to the public. Regulators may wish to adapt the Principles according to the characteristics of the issuer or the securities involved.

- *Annual report*—At a minimum, listed companies should be required to provide audited financial statements<sup>176</sup> according to high quality internationally accepted accounting standards, that cover the entire prior financial year in their annual reports. The audit report must be given by an independent audit firm that is subject to oversight by a body that acts and is seen to act in the public interest. The annual report should also identify significant changes reflecting all material events that could have an impact on an investor’s decision making. Useful information includes changes that have a significant impact on the issuer’s financial condition, performance or its ability to fulfil its obligations on the securities it has issued. An example of recommended debt-related disclosures is the level of

<sup>173</sup> [IOSCO Objectives and Principles of Securities Regulation](#). The IOSCO Objectives and Principles of Securities Regulation have been endorsed by both the G20 and the Financial Stability Board (FSB) as the relevant standards in this area. They are IOSCO’s main instrument to develop and implement internationally recognized and consistent standards of regulation, oversight and enforcement. They form the basis for the evaluation of the securities sector for the Financial Sector Assessment Programs (FSAPs) of the International Monetary Fund (IMF) and the World Bank.

<sup>174</sup> Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation [Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation](#)

<sup>175</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD317.pdf>

<sup>176</sup> According to the Principles for Periodic Disclosure by Listed Entities, a complete set of consolidated financial statements should at least include: (i) a balance sheet; (ii) income statement; (iii) statement showing either (a) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (b) all changes in equity (including a subtotal of all non-owner movements in equity); (iii) cash flow statement; (iv) related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; (v) if not included in the financial statements, a note analyzing the changes in each caption of shareholders’ equity presented in the balance sheet; (vi) distributions to equity holders, such as dividends, are also typically included in the financial statements, and (vii) comparative financial statements that cover the issuer’s most recent financial years.

borrowings at the end of the period covered by the financial statements and the characteristics and maturity profile of borrowings.

- *Interim periodic reports*—should contain information that will enable investors to track the performance of a company over regular intervals of time and should provide sufficient financial information to enable investors to assess the current financial status of a company.
- *Information characteristics*—The information provided in the periodic report should also be timely and the size of the issuer may be taken into consideration when establishing the due dates for periodic reports. Information disclosed in a periodic report should be presented in a clear and concise manner without reliance on boilerplate language and should be stored to facilitate public access to it.

Issuers' reports of material events that occur between periodic reports supplement the extensive disclosure that is provided on an annual and quarterly basis. According to the *Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities*<sup>177</sup>, listed entities should have an ongoing disclosure obligation requiring revelation of all information that would be material to an investor's investment decision. Implementation of this principle can be done either by (i) a comprehensive list of prescribed disclosure items that are presumptively material (as for example in the USA) or by a general obligation to disclose all information that may affect an investor's assessment of a listed entity's value and prospects, with some jurisdictions indicating a list of events that typically can be considered material (as applied in the EU).

### International Financial Reporting Standards<sup>178</sup>

**Conceptual Framework for Financial Reporting**—The objective of general-purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions relating to providing resources to the entity. Other parties, such as regulators and members of the public other than investors, lenders and other creditors, may also find general purpose financial reports useful. However, those reports are not primarily directed to these other groups. General purpose financial reports provide information about the financial position of a reporting entity, which is information about the entity's economic resources and the claims against the reporting entity. Financial reports also provide information about the effects of transactions and other events that change a reporting entity's economic resources and claims. Both types of information provide useful input for decisions relating to providing resources to an entity

Specific sections of these standards address borrowing-related information disclosures:....

**IFRS 7: Financial Instruments Disclosures**—requires entities to provide disclosures in their financial statements that enable users to evaluate (i) the significance of financial instruments for the entity's financial position and performance, and (ii) the nature and extent of risks arising from financial instruments to which the entity is exposed and how the entity manages those risks. Together, these disclosures provide an overview of the entity's use of financial instruments and the exposures to risks they create. Relevant required debt-related disclosures are the following.<sup>179</sup>

- Balance sheet: the carrying amount of financial instruments by category either on the face of the balance sheet or in the notes.

<sup>177</sup> [\\*Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities \(iosco.org\)](#)

<sup>178</sup> [IFRS - IFRS Standards Navigator](#)

<sup>179</sup> [financial\\_instruments\\_guide\\_maze.pdf \(pwc.com\)](#)

- Financial liabilities at fair value through profit or loss: for loans and liabilities designated at fair value through profit or loss, the change in fair value that is attributable to credit risk and how that amount is determined.
- Income statement: the net gains/net losses for each of the categories of financial liabilities as well as total interest expense.
- Disclosures in respect of any accepted and pledged collateral.
- Defaults of principal/interest in respect of loans payable and any other breaches of loan agreements that permit the lender to demand repayment.

**IFRS 9: Financial Instruments**—Establishes principles for the financial reporting of financial liabilities that will present relevant and useful information to users of financial statements for their assessment of the amounts, timing and uncertainty of an entity's future cash flows. It requires an entity to recognize a financial liability in its statement of financial position when it becomes party to the contractual provisions of the instrument.

**IAS 24: Related Party Disclosures**—Government controlled entities shall disclose transactions with the government, specifying the name of the government and the nature of its relationship with the reporting entity (i.e. control, joint control or significant influence) and the nature and amount of each individually significant transaction information in sufficient detail to enable users of the entity's financial statements to understand the effect of related party transactions on its financial statements.

**IAS 37: Provisions, contingent liabilities**—A contingent liability is not recognized in the statement of financial position. However, unless the possibility of an outflow of economic resources is remote, a contingent liability is disclosed in the notes.

## Annex VI. Main Debt-Related Disclosure Requirements for Listed Companies—Selected Jurisdictions

Country	Disclosure of borrowing information...					Regulation details extent of information to be disclosed (for any disclosure requirement in A, B, D or E)	Disclosure of granular information on each borrowing operation is required	Observations
	A	B	C	D	E			
	Required regardless of materiality	Required only if materially relevant	Debt information specifically considered material	Required when issuer grants guarantee/collateral	Required in case of issuer default or breach			
<b>Australia</b>		X				No	No	
<b>Brazil</b>	X			X		Yes	No	<p>Level of indebtedness including: sum of current and non-current liabilities, debt ratio (current plus non-current liabilities, divided by equity) and any other indebtedness index (per issuer's choice) indicating: the method used to calculate the index and an explanation of why this index is appropriate for the correct understanding of the financial situation and the level of indebtedness</p> <p>For guarantees: indication of the amount of the issuer's obligations according to different maturity periods (less than a year, between 1 and 3 years, between 3 and 5 years and longer than 5 years).</p>
<b>China</b>		X	X	X	X	Yes	No*	<p>Annual reports shall disclose major contracts, including guarantees, specifying the amount and period and the object of the guarantee.</p> <p>For external guarantees, disclose amount and balance of external guarantees, as well as the amount and balance of guarantees granted to its subsidiaries.</p> <p>The total amount of guarantees, and the proportion to its subsidiaries' net assets, as well as a list of the balance of guarantees to shareholders, actual controller and associated parties whose asset-liability ratio is 70 percent or more, and the part of the money which exceeds 50 percent of the company's net assets</p>

								<p>Shanghai SE:</p> <p>Companies that guarantee transactions shall specify the amount, method of payment (cash, equity, interest or asset swap, etc.), terms of payment or installment arrangements, conditions precedent, effective date and effective term, as well as any special or supplementary clauses</p> <p>Total amount of guarantees by the company and its subsidiaries, total amount of guarantees granted to subsidiaries and the percentage of both amounts to the listed company's latest audited net assets</p> <p>Total amount of guarantees by the company and its subsidiaries, total amount of guarantees granted to subsidiaries and the percentage of both amounts to the listed company's latest audited net assets, including a copy of the agreement, a general description of the transaction, whether the parties are related, the counterparty, and other particulars on the transaction, such as name, book value, valuation and whether any relevant assets were subject to mortgage or pledge or involve the right of the third party.</p> <p>*Granularity provided for only for issuers in the Shanghai SE that guarantee transactions.</p>
<b>Colombia</b>		X			X*	Yes	Yes	<p>On agreements which give rise to material financial obligations, the date of initiation of the obligation, a brief description of the operation, the amount, terms and form of payment and, as applicable, a brief description of any clauses that may accelerate payments or increase the obligation's amount and any recourse mechanisms available to issuer against third parties, as well as any other term or condition that is material to the issuer including any limitations on the economic rights of its securities holders.</p> <p>*Events that result in the acceleration of its direct financial obligations or those of its subsidiaries, including the date of the event and a brief description of the operation, the amount of the accelerated obligation and the terms of payment and any other material obligation that can arise as result of the acceleration.</p>
<b>European Union</b>		X*				No	No	<p>Issuers of securities must disclose any changes in the rights of holders of such securities, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates</p> <p>*As part of half yearly reports, not of ongoing reporting requirements</p>
<b>France</b>				X		No	No	A state of guarantees and collaterals granted by the company.
<b>Ghana</b>		X*			X	No	No	* Only if the directors consider it material.
<b>Hong Kong</b>	X*			X	X	Yes	No**	<p>Issuers must disclose their breach of loan agreements for loans that are significant to its operations</p> <p>Issuers that grant guarantees to affiliates that exceed 8 percent of the assets ratio, must disclose the operation, including the value, banking arrangements utilized by the affiliates which will be guaranteed, and the terms, including interest rate, method of repayment, maturity date, and any security. Where any percentage ratio (assets, profits, revenue, consideration, equity capital) is more than 5 percent and less than 25 percent, must make a disclosure that contains the identity and principal business activities of the parties, the date</p>



								<p>of the transaction, the value and the reasons for entering into the transaction and expected benefits</p> <p>*Initial listing: total amount of debt securities, term loans and the total amount of all other borrowing or indebtedness (guaranteed, unguaranteed, secured and unsecured) and the total amount of any contingent liabilities or guarantees.</p> <p>*Annual report: directors' comment on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements, and the maturity profile of borrowings and committed borrowing facilities, the capital structure of the group in terms of maturity profile of debt and obligation, type of capital instruments used, currency and interest rate structure, and the extent to which borrowings are at fixed interest rates.</p> <p>Others: When issuer enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder and breach of such an obligation will cause a default in respect of loans that are significant to the issuer's operations, the issuer must disclose (1) the aggregate level of the facilities that may be affected by such breach; (2) the life of the facility; and (3) the specific performance obligation imposed</p>
<b>India</b>		X			X	Yes	No*	<p>Listed companies who borrowed from banks and financial institutions must disclose any event of default on payment or instalment of obligations of such loans, including revolving facilities, disclosing the nature of the obligation, the name of the lender, date of default and current default amount, the total principal amount, tenure, interest rate and whether it is secured or not.</p> <p>*Disclosure granularity only provided for events of default.</p>
<b>Mexico</b>		X	X	X		No	No	<p>Issuers must disclose (i) the sum of loans, credits and financing operations entered into by the issuer since the filing of the latest trimestral report, when the sum amount is equal or greater of 5 percent of total assets liabilities and consolidated capital of the issuer, (ii) the granting, amendment or substitution of collateral that represent a significant percentage of the issuers consolidated capital, (iii) restructures or amortizations of the issuer's most important liabilities, (iv) breaches of payment of interests and capital of securities and other liabilities, and (v) <u>granting</u> of loans, credits or other financing operations that represent a significant amount of the issuer's consolidated capital.</p>
<b>Nigeria</b>	X*				X	Yes	Yes**	<p>*Company's capital structure, including borrowings and maturity dates</p> <p>Other: For wholly owned SOEs, issuance of debt through the stock exchange by publishing in the official Gazette or any other official document a notice that includes: the beneficiary of the loan, the amount to be raised and the mode used, the interest rate, the time in which half-yearly and quarterly interest payments will be due, and any other necessary information.</p> <p>**Only for listed SOEs.</p>
<b>Philippines</b>	X			X	X	Yes	No	<p>Annual report: (i) long term debt information, including type of obligation, amount, interest rates, number of periodic installments and maturity dates (ii) Regarding guarantees given to</p>

								<p>other issuers, the guaranteed issuer, the total amount guaranteed and outstanding and the nature of the guarantee.</p> <p>Breach with respect of any indebtedness of the issuers or its significant subsidiaries exceeding 5 percent of the total assets of the issuer and its consolidated subsidiaries.</p> <p>Quarterly Reports: The available data are aggregated by maturity category, type of borrower and creditor, currency, and creditor country among others</p>
<b>Spain</b>		X	X*			No	No	<p>*Circular 4/2009 contains an <u>indicative</u> list of types of information that could be considered relevant, including debt or convertible warrants operations, the issue, modification, amortization or maturity of financial instruments and the concession, renewal, termination or restructure of loans.</p>
<b>United States</b>		X				Yes	Yes	<p>Item 1.01—material definitive agreements or amendments there to: the date and parties to the loan agreement, the amount of the loan, the maturity date, the interest rate, collateral description, main terms, conditions and events of default. Issuers also attach a copy of the full loan agreement.</p> <p>Item 2.03—direct financial obligation (a long-term debt obligation, finance lease obligation, operating lease obligation, short-term debt obligation that arises other than in the ordinary course of business) that is material to the registrant: date, identity of parties, brief description of the transaction or agreement creating the obligation amount terms of its payment, terms under which it may be accelerated or increased other terms and conditions of the transaction or agreement that are material.</p>

**Sources:** Authors' elaboration, based on the following legislation:

*Australia:* [ASX Listing Rules](#) (3.1, 3.18); *Brazil:* [CVM Resolution No. 80](#); *China:* [Law of the People's Republic of China on Funds for Investments in Securities](#), CSRC Rules [No. 21](#) and No. [22](#), [Rules Governing the Listing of Stocks on Shanghai Stock Exchange](#); *Colombia:* [Decree 2555 of 2010](#); *European Union:* [The European Transparency Directive](#); *France:* [Commerce Code](#); *Ghana:* [Listing Rules for the Ghana Stock Exchange](#); *Hong Kong:* [Exchange Listing Rules](#); *India:* [Securities and Exchange Regulations](#); *Mexico:* [CNBV Issuers' circular](#) (Article 50–IV); *Nigeria:* [Securities and Exchange Commission's Rules, Investments and Securities Act](#); *Philippines:* Securities and Exchange Commission [Rule 68](#) (Annex 68–J, Schedules D and F), [Form 17–C](#) (item 7); *Spain:* [Securities Markets Law](#) of March 17, 2023 (Art 227), [Order EHA/1421/2009](#), [Circular 4/2022](#); *United States:* Securities and Exchange Commission's [Form 8–K](#) (current report)

## Annex VII. Country Examples on Delegation of the Borrowing Authority Defined by Law

The following countries have legislated delegation of the borrowing authority in PDM and PFM laws:

### ***Authorization to delegate borrowing powers:***

- *Canada:* The DoF may delegate to any DoF officer any of the powers, duties and functions of the DoF for public debt management.

### ***Set-up requirements for the act to delegate and assignment of responsibilities:***

- *Jamaica:* Under the PDM Act, the MoF may, by instrument in writing, authorize any person to sign, issue or execute any document for the purpose of giving effect to an agreement; an authorization shall not prevent the Minister the exercise of the function;
- *Rwanda:* With the exception of powers to issue regulations, the Minister of Finance may delegate part of his/her powers and responsibilities to the Permanent Secretary and Secretary to the Treasury or any other public officer of the MoF. Such delegation does not divest the Minister of Finance from the accountability relating to the exercise of delegated power or the performance of the assigned responsibilities. The Minister may suspend, change or revoke any delegated power given to any delegated person, or any decision taken by the delegated persons if it is clear that they do not fulfill their responsibilities in an appropriate manner;
- *Zambia:* The MoF may, by statutory order, delegate to such public officer as may be specified in the order the performance of any function conferred upon the Minister under the PDM Act, except the power to make statutory instruments.

### ***Prohibition to delegate certain borrowing powers:***

- *Ghana:* Delegation of the power to raise loans is prohibited.

## Annex VIII. Country Examples of Direct Controls of Subnational Borrowing

Direct controls from the center may come in the form of i) annual limits on the overall debt of individual jurisdictions (or some of its components, such as external borrowing); ii) review and authorization of individual borrowing operations (including approval of terms and conditions); iii) centralization of all government borrowing with on-lending to subnational governments for approved purposes (e.g., investment projects).

- **Ghana.** PFM Act provides that local government authority may borrow funds only (a) from within the country, and (b) up to the limit determined by the Minister in consultation with the Minister responsible for Local Government, and consistent with the medium-term debt strategy and annual borrowing and recovery plan.
- **Kenya.** The Constitution provides that a county government may only borrow if the national government guarantees the loan, and it is approved by Parliament. The PFM Act grants county governments authority to borrow by raising loans and issuing government securities subject to certain conditions. Thresholds/ limits for county government borrowing, and guarantees provided by national government on such loans are set by parliament.
- **Rwanda.** Under the Organic Law on State Finances, local governments are authorized to borrow by means of loans for development projects only in accordance with the law establishing sources of finances and property of Districts and the City of Kigali and their use. They do not have authority to give and approve securities on their general property.
- **Uganda.** PFM Act provides that local government may raise loans and issue guarantees but must seek the MoF approval prior to proceeding.

## Annex IX. Well-Defined Exceptions to Full Disclosure of Public Information—Country Examples

While core elements regulating confidentiality may not be present in most public debt-related legislation, they have been long integrated in other areas of public administration. Many countries have legislated the limits to exceptions that can be applied to the principle of full disclosure of public documents.

### Limiting the scope or conditions for classified information and levels of confidentiality:

- **Japan**—Act on the Protection of Specially Designated Secrets (Article 3)
- **Poland**—Law for the Protection of Classified Information (Article 5)
- **Moldova**—State Secrets (Article 5)

### Providing for declassification criteria and processes:

- **Japan**—The Act requires the termination of the designation when it no longer meets Article 3's conditions (Article 4)
- **Poland**—The Law requires the managers of the organizational units to carry out at least once every 5 years review of the classified information to determine whether these still meet the statutory protection conditions (Article 6)
- **Moldova**—The Law provides the grounds for declassification and a mechanism for citizens and organizations to request declassification (Article 13 and 14)

### Requiring Parliamentary oversight:

- **Japan**—The government is required to report annually to Parliament the state of the designation of secrets and the termination of the designation, among others (Article 19).
- **Moldova**—the Parliament has control over the legislation and expenditures, and obliges state bodies to submit information (Article 28).
- **Poland**—The report regarding compliance of state security services is submitted to the Parliament's Special Services Commission (Article 13).
- **Hungary**—Law on the Development, Implementation and Financing of the Hungarian Section of the Budapest—Belgrade Railway Reconstruction Project (Article 2).<sup>1</sup>

<sup>1</sup>For instance, premised on the notion that the realization of the project is one of overriding public interest and that disclosure may endanger foreign policy and foreign economic interests, *Hungary's* National Assembly gave authority to the minister responsible for foreign affairs to decide whether to grant a request for access to information in connection with the financing of the Hungarian section of the Budapest-Belgrade railway reconstruction project. Such approach would enable other constitutional controls over the particulars of the delegation, such as those exercised by the Judiciary.

## Annex X. Regulating Confidentiality in Public Financial Management—Country Examples

- **Circumscribing the scope of confidentiality.** PFM laws generally enumerate specific circumstances where ‘expenditure’ (*Kenya’s* PFM Regulations)<sup>2</sup> or ‘economic and fiscal information’ (*Jamaica’s* Financial Administration Act<sup>3</sup> and *New Zealand’s* Public Finance Act)<sup>4</sup> may be classified as confidential on the basis of security, commercial or economic interests, or when compromising the government in a material way in negotiation, litigation or commercial activities, etc. In addition, some countries may define types of information which cannot be subject to confidentiality. For example, in *Sao Tome and Principe*, financial information of oil related contracts cannot be exempted from the general rule of disclosure.<sup>5</sup> Similar formulations could be introduced for public debt information.
- **Setting conditions for confidentiality.** In line with international standards and guidelines and FOI legislation, various domestic legislations have established confidentiality tests setting forth strict criteria to assess specific information that may be withheld from publication. For instance, *Australia’s* procurement rules<sup>6</sup> provide a four-pronged “confidentiality test,” namely: i) specific identification; ii) commercial sensitivity of the information; iii) the information would cause unreasonable detriment to the owner of the information or another party”; and iv) the information was provided under the understanding that it must remain confidential. The *United Kingdom’s* Public Contracts Regulations, mirroring the Freedom of Information Act,<sup>7</sup> provides that the contract be published on a public database except when it would “be contrary to public interest,” or would “prejudice the legitimate commercial interests of a party or prejudice fair competition”.<sup>8</sup> Similar approaches could be explored for confidentiality clauses on public loan contracts.
- **Declaring nullity of confidentiality clauses which violate the law.** For instance, some countries reinforce the primacy of transparency in their legal frameworks on natural resource governance by declaring the nullity and voidness of confidentiality clauses that prevent the publication of agreements (*Mining Code of Guinea*) or the access to key documents (*Sao Tome and Principe’s* Oil Revenue Law).<sup>9</sup>

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<sup>2</sup> Section 101 of the PFM Regulations.

<sup>3</sup> Section 48E of the Financial Administration Act.

<sup>4</sup> Sections 26U and 26V of the Public Finance Act.

<sup>5</sup> Sao Tome and Principe allows for exemptions on the basis of proprietary information to the extent that confidentiality is protected by national law, treaty, or some other form of international law (Article 20.2) but states in no uncertain terms that financial information are not exempted (Article 20.3).

<sup>6</sup> See Section 7.23 of the Commonwealth Procurement Rules and paragraph 9 of the Guidelines on the Confidentiality throughout the Procurement Cycle.

<sup>7</sup> Section 41 and Section 43 of the Freedom of Information Act.

<sup>8</sup> Section 108 of the Public Contracts Regulations.

<sup>9</sup> Article 217-II, Mining Code of Guinea; Article 20.1, Oil Revenue Law of Guinea.

## Annex XI. Parliamentary Scrutiny of Confidential Information—Country Examples

**U.S. Senate rules** state that hearings may be closed for specific reasons, including national security information, confidential financial or commercial information.<sup>10</sup> Such requirements need not be purely procedural, by law the President of the U.S. is required to keep the Senate Select Committee on Intelligence fully informed of intelligence activities. Members of that committee are entitled to access intelligence sources and methods, programs and budgets.<sup>11</sup> The committee generally meets in closed session. This demonstrates that labeling a contract or debt instrument/issuance confidential need not preclude legislative accountability on behalf of the public. The oversight body, in this case the Legislature, sets the standard for confidential information, not the agency held accountable, such as the SOE or its board, to take one common example. The presentation of ‘classified expenditures’ as a single line item in the budget ensures confidentiality of defense and national security matters is respected.

**Uganda’s PFM Act**<sup>12</sup> sets out a procedure for controls and external scrutiny for classified expenditure which is subject to deliberation by a Parliamentary committee in a closed session. Accounting officers are required to establish appropriate systems of internal control in respect of transactions categorized as classified expenditure, and to submit financial statements that properly account for such expenditures to the Minister of Finance, the Accountant General and the Auditor General, who shall examine and audit these statements.

**Kenya’s PFM Regulations**<sup>13</sup> provide that accounting officers can be required to disclose information or any other document on the nature of confidential information to a Parliamentary committee.

**Zimbabwe’s PFM Act**,<sup>14</sup> while recognizing potential risks to the national interest may stem from certain disclosures of government guarantees, provides a process for Parliamentary oversight. The Public Accounts Committee receives disclosures, with a stipulation that written leave of the Minister shall be required in case of disclosure by the Committee or any of its members.

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<sup>10</sup> U.S. Senate rules, Rule XXVI, paragraph 5(b).

<sup>11</sup> The law narrowly permits the President to limit access to cover action activities to the Chairman and Vice Chairman of the Committee, the Chairman and Ranking Member of the House Intelligence Committee, and the House and Senate leadership in certain, highly specific situations.

<sup>12</sup> Sections 24 and 54 of the PFM Act, 2015; Section 24 of the PFM Regulations, 2016.

<sup>13</sup> Section 101.7 of the PFM Regulations.

<sup>14</sup> Section 71.2 of the PFM Act.

## Annex XII. Statutory Mandate and Related Powers of SAIs—Country Examples

Broad Mandate	Specific Mandate
<p><b><u>European Court of Auditors</u></b> Article 287 of TFEU 1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices, or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.</p>	<p><b><u>Brazil Federal Court of Accounts</u></b> <b>1988 Federal Constitution</b> Art.71 External control, under the responsibility of the National Congress, will be exercised with the assistance of the Court of Auditors of the Union, which is responsible for: I—appraise the accounts rendered annually by the President of the Republic, by means of a prior opinion, which shall be prepared within sixty days of receipt; IV—carry out, on its own initiative, the Chamber of Deputies, the Federal Senate, the Technical Committee or inquiry, inspections and audits of an accounting, financial, budgetary, operational and property nature in the units administrative offices of the Legislative, Executive and Judiciary Powers, and other entities referred to in item II. (see also Art.33, Para.II;70; 72, Para I, 74, Para I; 161)</p> <p><b>Organic Law of the Court of Accounts</b> Art. 1 The Federal Court of Accounts, an external control body, is responsible, under the terms of the Federal Constitution and in the form established in this Law: III—appraise the accounts rendered annually by the President of the Republic, pursuant to art. 36 of this Law; Art. 36. It is incumbent upon the Federal Court of Accounts, as established in the Internal Regulation, to assess the accounts provided annually by the President of the Republic, upon prior opinion to be prepared within sixty days from your receipt. The accounts will consist of the general balance sheets of the Union and the report of the central body of the system of internal control of the Executive Power over the execution of budgets referred to in § 5 of art. 165 of the Constitution Federal.</p> <p><b>Article 59 of the Fiscal Responsibility Law (paragraph I, subsection III)</b> that the Courts of Audit will alert the Powers when they verify that the amount of the consolidated and securities debts, of the credit operation and concession of warranties are above 90 percent (ninety per cent) of the respective limits.</p>
<p><b><u>Auditor-General of Namibia</u></b> <b>Namibian Constitution</b> Article 127. The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament and shall report annually to the National Assembly thereon.</p>	<p><b><u>Auditor-General of Namibia</u></b> <b>State Finance Act 31 of 1991</b> Section 25. Duties of Auditor-General 25. (1) The Auditor-General shall-(a) subject to the provisions of subsection (3), investigate, examine and audit-(i) the account-books, accounts and registers referred to in section 4; (ii) the statements and accounts referred to in sections 12 and 13; (iii) any other account-books, accounts and registers prescribed under section 24; Section 12 (b) a statement setting out-(i) the total <i>debt</i> as a charge to the State Revenue Fund; (ii) the <i>amount of such debt</i> incurred and redeemed during the financial year; (iii) the interest paid in respect of all such <i>debt</i>; and (iv) the <i>expenditure incurred in connection with such debt</i>; Republic of Namibia 13 (c) a statement setting out the revenue received under the different heads of revenue shown in the estimate of revenue; (d) such other statements and accounts as the Auditor-General may require after consultation with the Permanent Secretary: Finance</p>
<p><b><u>Accounting Chamber of Ukraine</u></b> <b>Constitution of Ukraine</b> Article 98. The Accounting Chamber shall, on behalf of the Verkhovna Rada of Ukraine, exercise the control over the revenues of the State Budget of Ukraine and the use thereof. The organization, powers and operational procedures for the Accounting Chamber are determined by the law.</p>	<p><b><u>Accounting Chamber of Ukraine</u></b> <b>The Chamber of Accounting Act of 1996</b> and as amended in 2015, provided the Accounting Chamber with the authority to conduct both financial and performance audits on “operations to internal and external public debt, government guarantees servicing and repayment of public and publicly guaranteed debt.” Article 7 of the Law on the Chamber of Accounting of 2015</p>



## Annex XIII. U.S. GAO's Accumulated Audit Authority Over Public Debt Reports

GAO's mandate, meaning its authority to conduct a variety of audits and the specific powers to do so, has developed and expanded over the course of a century. The *Budget and Accounting Act, 1921* created GAO and authorized it to investigate the use of federal funds and to conduct investigations ordered by specified congressional committees. The Act also gave GAO the authority to obtain agency records and information and enforcement power. Subsequent legislation, such as the *Legislative Reorganization Act of 1970* and the *General Accounting Office Act of 1980*, elaborated this core mandate.<sup>15</sup> At present, GAO's general authority is found in 31 U.S.C. §712.

*The Comptroller General shall-(1) investigate all matters related to the receipt, disbursement, and use of public money”.*

All matters related to the use of public money can be interpreted to encompass public debt (debt transactions, activities, documents, and information related to debt). In addition, GAO was granted additional **specific authorities**:

- **To conduct particular audits**, including on public debt, as stated in 31 U.S.C. 717(b) “(b) The Comptroller General shall evaluate the results of a program or activity the Government carries out under existing law—(1) on the initiative of the Comptroller General; (2) when either House of Congress orders an evaluation; or (3) when a committee of Congress with jurisdiction over the program or activity requests the evaluation.”
- **To have access to information**, codified at **31 U.S.C. § 716(a)**, which requires each agency to give GAO “such agency records as the Comptroller General requires to discharge [his or her] duties ... (including audit, evaluation, and investigative duties)”

**To audit the Federal Consolidated Financial Statements** since FY 1997 implementing the Government Management Reform Act of 1994. By statute the financial statement of the U.S. reflects the overall financial position, including assets and liabilities, and the result of operations of the executive branch. GAO has the inherent authority to audit federal debt reports. Specifically, GAO audits Fiscal Service's Schedules of Federal Debt annually to determine whether, in all material respects, (1) the schedules are fairly presented and (2) Fiscal Service management maintained effective internal control over financial reporting relevant to the Schedule of Federal Debt.

<sup>15</sup> Additional Legislation includes the GAO Access and Oversight Act of 2017 and the CARES Act, Pub. L. 116-136, div B, title IX § 19010, Mar. 27, 2020, [134 Stat. 579](#), as amended by the Consolidated Appropriations Act, 2021, [Pub. L. 116-260, div. N, title II, § 282](#), Dec. 27, 2020, [134 Stat. 1984](#).

## References

- Addo Awadzi, E. 2015, “Designing Legal Frameworks for Public Debt Management,” IMF Working Paper No. 15/147 (Washington: International Monetary Fund).
- African Commission on Human and Peoples’ Rights, 2019, Declaration of Principles on Freedom of Expression and Access to Information in Africa, (Banjul, The Gambia).
- Arslanalp, S., Bergthaler, W., Stokoe, Ph., and Tieman A. F., 2020, *Concepts, Definitions and Composition In: Sovereign Debt*. Edited by S. Ali Abbas, Alex Pienkowski, and Kenneth Rogoff, (Oxford University Press).
- Cebotari, A. 2018, “Contingent Liabilities: Issues and Practice,” IMF Working Paper No. 2008/245 (Washington: International Monetary Fund).
- Council of Europe Committee of Ministers. 2002, Recommendation Re c(2002)2 of the Committee of Ministers to member states on access to official documents.
- Davoodi, H. R., Elger, P., Fotiou, A., Garcia-Macia, D., Lagerborg, A., Lam, W. R., Pillai, S. 2022, “Fiscal Rules at a Glance: An update 1985-2021,” Fiscal Affairs Department, (Washington: International Monetary Fund).
- Dippelsman, R., Dziobek, C., and Gutiérrez Mangas C. A. 2012, “What Lies Beneath: The Statistical Definition of Public Sector Debt: An Overview of the Coverage of Public Sector Debt for 61 Countries,” Staff Discussion Note 12/09, (Washington: International Monetary Fund).
- Dubnik, M. 1998, “Clarifying Accountability: An Ethical Theory Framework.” In *Public Sector Ethics: Finding and Implementing Values*, edited by Charles Sampford and Noel Preston, 78–92. Routledge.
- Dziobek, C., Jiménez de Lucio A. F., and Chan, J., 2013, “Definitions of Government in IMF-Supported Programs,” IMF Technical Notes and Manuals 13/01, (Washington: International Monetary Fund).
- Erkkila, T. 2020, *Transparency in Public Administration*, Oxford University Press.
- European Court of Auditors. 2022, Public Audit in the European Union.
- Eyraud, L., Hodge, A., Ralyea, J., Reynaud, J. 2013, “How to Design Subnational Fiscal Rules: A Primer,” How to Note 20/01, (Washington: International Monetary Fund).
- Ferry, Laurence, Peter Eckersley, and Zamzulaila Zakaria. 2015, “Accountability and Transparency in English Local Government: Moving from ‘Matching Parts’ to ‘Awkward Couple.’” *Financial Accountability and Management* 31 (March): 345–61. <https://doi.org/10.1111/faam.12060>.
- Gelpern, Anna, Sebastian Horn, and Christoph Trebesch. 2021. “How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments.” *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3840991>.
- Government of Canada. “National Governments Including Developing Countries.” Last modified January 1, 2021. <https://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2021/vol1/s9/gecpd-ngidc-eng.html>.
- Group of Thirty. 2020, “[Sovereign Debt and Financing for Recovery after the COVID-19 Shock: a Preliminary Report and Conclusions of the Working Group](#)” October, (Washington).
- Group of Twenty. 2017. “Operational Guidelines for Sustainable Financing.” March.
- H.M Treasury, 2021, “UKEF and FCDO Sovereign Exposure by Recipient Country Outstanding and Arrears.” Last Modified November 8, 2021. <https://www.gov.uk/government/statistics/report-on-outstanding-debt->

[owed-by-other-countries-to-her-majestys-government-2/ukef-and-fcdo-sovereign-exposure-by-recipient-country-outstanding-and-arrears.](#)

Institute for International Finance. 2019, “Voluntary Principles for Debt Transparency.” Last modified June 10, 2019. <https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>.

Institute for International Finance. 2022, “IIF Voluntary Principles for Debt Transparency-Implementation Note.” Last modified January 13, 2022. <https://www.iif.com/Publications/ID/4741/IIF-Voluntary-Principles-for-Debt-Transparency-Implementation-Note>.

Inter-American Commission on Human Rights. 2000, Declaration of Principles on Freedom of Expression.

International Budget Partnership (IBP). 2020, Open Budget Survey 2019 Questionnaire: Egypt. Accessed December 7, 2022. <https://internationalbudget.org/sites/default/files/2020-05/egypt-202002150030.pdf>

International Institute for Sustainable Development. 2019, “UNESCO Finds 125 Countries Provide for Access to Information.” Accessed December 5, 2022. <https://sdg.iisd.org/news/unesco-finds-125-countries-provide-for-access-to-information/>.

International Monetary Fund (IMF). 2020, *Fiscal Monitor: State-Owned Enterprises: The Other Government*, April, (Washington: International Monetary Fund).

International Monetary Fund (IMF). “What is PIMA” What is PIMA (imf.org)

International Monetary Fund, (IMF). 2003, “Assessing Public Sector Borrowing Collateralized on Future Flow Receivables”, June, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2007, “Guide on Resource Revenue Transparency”, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2014, “Public Sector Debt Statistics Guide”, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2014, “Government Finance Statistics Manual”, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2014, “Revised Guidelines for Public Debt Management”, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2018a, “G20 Notes on Strengthening Public Debt Transparency” (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2018b, “Mexico: Fiscal Transparency Evaluation,” Country Report No. 2018/289, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2018c, “Guidance Note on the Bank-Fund Debt Sustainability Framework for Low Income Countries,” (Washington: International Monetary Fund).

International Monetary Fund (IMF) 2019a, Fiscal Transparency Code, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2019b, “Ukraine: Technical Assistance Report–Strengthening Public Financial Management,” Country Report No. 2019/355, (Washington: International Monetary Fund).

International Monetary Fund (IMF). 2019c, “G20 Operational Guidelines for Sustainable Financing–Diagnostic Tool,” (Washington: International Monetary Fund).

- International Monetary Fund (IMF)., 2020a, “The Evolution of Public Debt Vulnerabilities in Lower-Income Economies,” IMF Policy Paper No. 20/003, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2020b, “Public Sector Debt Definitions and Reporting in Low-Income Developing Countries,” IMF Policy Paper 2020/005, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2020c, “Collateralized Transactions: Key Considerations for Public Lenders and Borrowers,” IMF Policy Paper No. 2020/010, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2020d, “Update on the Joint IMF-WB Multipronged Approach to Address Debt Vulnerabilities,” IMF Policy Paper No. 2020/066, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2020e, “The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors—Recent Developments, Challenges, and Reform Options,” IMF Policy Paper No. 2020/043, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2020f, “Collateralized Transactions: Key Considerations for Public Lenders and Borrowers,” (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2021a, “Mexico: Technical Assistance Report – Strengthening Public Assets and Liabilities Management,” Country Report No. 2021/261, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2021b, “Guidance Note on Implementing the Debt Limits Policy in Fund Supported Programs,” (Washington: International Monetary Fund).
- International Monetary Fund (IMF). 2022a, “Staff Guidance Note on the Sovereign Risk and Debt Sustainability Framework for Market Access Countries,” (Washington: International Monetary Fund).
- International Monetary Fund (IMF). 2022b, “Reviews of the Fund’s Sovereign Arrears Policies and Perimeter”, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2022c, “Tenth Review of the International Monetary Fund’s Data Standards Initiatives”, (Washington: International Monetary Fund).
- International Monetary Fund (IMF)., 2023, “Making Public Debt Public—Ongoing Initiatives and Reform Options,” IMF Policy Paper No. 2023/034 (Washington: International Monetary Fund).
- International Organization of Supreme Audit Institutions (INSTOSAI), “Audit of Public Debt Management: A Handbook for Supreme Audit Institutions.” INTOSAI Development Initiative. <https://www.idi.no/work-streams/professional-sais/albf-handbook>.
- Inter-Parliamentary Union “Parliamentary Oversight of International Loan Agreements & Related Processes.” 2013, <https://www.ipu.org/resources/publications/reports/2016-07/parliamentary-oversight-international-loan-agreements-related-processes>.
- Knight, J., and Northfield B., 2020, “Sovereign Investor Relations: From Principles to Practice” Working Paper No. 2020/204, (Washington: International Monetary Fund).
- Linder, Peter and Chung, Kay, 2023, “Sovereign Investor Relations: From Principles to Practice”, Working Paper No. 23/58. (Washington: International Monetary Fund).
- Maslen, S. and Aslan, C., 2022, “Enhancing Debt Transparency by Strengthening Public Debt Transaction Disclosure Practices” EFI Insight, (Washington, DC: World Bank)

- Morsy, Hanan. 2020, "Debt Transparency, Accountability and Reporting in Africa."  
[https://www.afdb.org/sites/default/files/2021/02/15/ecgf-fist\\_webinar\\_debt\\_transparency\\_fversion1.2.pdf](https://www.afdb.org/sites/default/files/2021/02/15/ecgf-fist_webinar_debt_transparency_fversion1.2.pdf).
- Mendel, T. 2003, *Freedom of Information: A Comparative Legal Survey*: United Nations Educational Scientific and Cultural Organization (Paris, France: UNESCO).
- OECD. "Debt Transparency—<https://www.oecd.org/finance/debt-transparency/>.
- OECD. 2009, "Principles for Integrity of Public Procurement"
- OECD. 2015, "Guidelines on Corporate Governance of State-Owned Enterprises."
- OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition | OECD iLibrary ([oecd—ilibrary.org](https://www.oecd-ilibrary.org)).
- OECD. 2020, Transparency and Disclosure Practices of State-Owned Enterprises and their Owners: Implementing the OECD Guidelines on Corporate Governance of State-Owned Enterprises. *Transparency–Disclosure–Practices–SOEs.pdf* ([oecd.org](https://www.oecd.org)).
- Paris Club. "The Paris Club Releases Comprehensive Data on Its Claims as of 31 December 2021," <https://clubdeparis.org/en/file/3718/download?token=Tza05W2>.
- Parliament of Ghana. 2021, Record of Loans, Conventions, Treaties and Other Agreements.
- Proite, A. 2020, "Recording Monitoring, and Reporting Public Debt—Organizing a Back Office: A Guidance Note," Discussion Paper No. 18, (Washington: International Monetary Fund).
- Przeworski, A., Stokes, S., Manin, B. 1999, "Democracy, Accountability, and Representation," Cambridge University Press.
- "Resource-Backed Loans: Sustainable Debt or Pending Threat?" <https://eiti.org/news/resource-backed-loans-sustainable-debt-or-pending-threat>.
- Rivetti, D., 2021, "[Debt Transparency in Developing Economies](#)" (Washington: World Bank).
- Rosenblum, P., and Maples, S. 2009, "Contracts Confidential: Ending Secret Deals in the Extractive Industries," Revenue Watch Institute.
- Saxena, S. 2017, "How to Strengthen the Management of Government Guarantees," Fiscal Affairs Department How to Note IMF How to Note, (Washington: International Monetary Fund).
- Ter-Minassian, T., ed. 1997, *Fiscal Federalism in Theory and Practice* (Washington, DC).
- The Bretton Woods Committee. 2022, "Debt Transparency: The Essential Starting Point for Successful Reform."[https://www.brettonwoods.org/sites/default/files/documents/SDWG\\_Debt\\_Transparency\\_The\\_Essential\\_Starting\\_Point\\_for\\_Successful\\_Reform.pdf](https://www.brettonwoods.org/sites/default/files/documents/SDWG_Debt_Transparency_The_Essential_Starting_Point_for_Successful_Reform.pdf).
- United Nations Conference on Trade and Development. 2012, "Principles on Promoting Responsible Sovereign Lending and Borrowing." [https://unctad.org/system/files/official-document/gdsddf2012misc1\\_en.pdf](https://unctad.org/system/files/official-document/gdsddf2012misc1_en.pdf)
- United Nations Economic and Social Council Commission on Human Rights, 2000, [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), E/CN.4/2000/63.

United Nations Economic Commission for Europe. 1998, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus, Denmark: Aarhus Convention).

Vivares, Ernesto, ed. 2018, *Regionalism, Development, and the Post-Commodities Boom in South America*. (Cham: Springer International Publishing).

World Bank. 2021, "Public Debt Transparency in Uganda", MTI Insight, (Washington DC: World Bank Group).

World Bank Group. 2014, "Corporate Governance of State-Owned Enterprises: A Toolkit.", (Washington: World Bank).

Corporate Governance of State-Owned Enterprises ([worldbank.org](http://worldbank.org)).

World Bank Group. 2022, "Debt Transparency: Debt Reporting Heat Map." (Washington: World Bank Group).

World Bank Group, International Monetary Fund. 2018. "Improving public debt recording, monitoring, and reporting capacity in low and lower middle-income countries: proposed reforms—G20 note," Working Paper No. 128723, (Washington: World Bank Group).



**PUBLICATIONS**