INTOSAI WGPD
Working Group on Public Debt

2023

Understanding Public Debt Authorization, Contracting, and Legal Framework of Different Countries

(A Compendium Document)

Quality Assurance Certificate of the Chair of the Working Group on Public Debt (WGPD)

This is to certify that *Understanding Public Debt Authorization, Contracting, and Legal Framework of Different Countries (A Compendium Document)* which is placed at level 2 of Quality Assurance as defined in the paper on "Quality Assurance on Public goods developed outside Due Process" approved by the INTOSAI Governing Board in November 2017 has been developed by following the Quality Assurance processes as detailed below:

(i) The project proposal was developed by the Project Team composed of WGPD member-SAIs namely Fiji, Lithuania, Portugal and led by North Macedonia; and was approved by the then-WGPD Chair Michael G. Aguinaldo in February 2021;

(ii) The Project Team thereafter commenced preparations for the Exposure Draft, which included drafting and circulation of survey-questionnaire, collation of survey responses, and analysis of survey results;

(iii) In March 2022, the Project Team updated the project title as well as its objective based on the WGPD Technical Working Group proposal and the survey responses received from the member SAIs in 2021;

(iv) The Exposure Draft (ED) was approved by the WGPD Chair in July 2022 and was formally endorsed to the INTOSAI Knowledge Sharing Committee (KSC);

(v) Following the 45-day QA protocol for projects placed at QA level 2, the ED was posted at the INTOSAI KSC Community Portal for public exposure until September 30, 2022;

(vi) This Endorsement Version is the outcome of the revised ED in consideration of the comments received during the exposure period, analysis by the Project Team, and review by the WGPD-Technical Working Group.

The product developed is consistent with relevant INTOSAI Principles and Standards. The structure of the product is in line with the drafting convention of non-IFPP documents.

The product will be subject to review and updating by the WGPD Steering Committee every three years, or as necessary. As this paper is not directly linked to a specific ISSAI, no expiry clause is included.

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Chair, Working Group on Public Debt
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Quality Assurance Certificate of the Chair of the Knowledge Sharing and Knowledge Services Committee

Based on the assurance provided by the **INTOSAI Working Group on Public Debt (WGPD)** and the assessment by the Goal Chair, it is certified that **"Understanding Public Debt Authorization, Contracting and Legal Framework of Different Countries (A Compendium Document)"** which is placed at level **2 (two)** of Quality Assurance as defined in the paper on "Quality Assurance on public goods developed outside Due Process" approved by the INTOSAI Governing Board in November 2017, has been developed by following the Quality Assurance processes as detailed in the Quality Assurance Certificate given by the Working Group Chair.

The product will be **subject to review by the WGPD Steering Committee every three years**, or as necessary. As this paper is not directly linked to a specific ISSAI, no expiry clause is included.

Girish Chandra Murmu
Chair of Knowledge Sharing and
Knowledge Services Committee

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Acronyms and Abbreviations

BTr	Bureau of the Treasury
DeM	Debt Management
DeMPA	Debt Management Performance Assessment
GDP	Gross Domestic Product
GS	Government Securities
IDI	INTOSAI Development Initiative
IMF	International Monetary Fund
INTOSAI	International Organization of Supreme Audit Institutions
ISSAI	International Standards of Supreme Audit Institutions
MoF	Ministry of Finance
nROSS	National Registry of Scriptless Securities
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
PD	Public Debt
PDM	Public Debt Management
RA	Republic Act
SAI	Supreme Audit Institution
UNCTAD	United Nations Conference on Trade and Development
UNITAR	United Nations Institute for Training and Research
WB	World Bank
WGPD	Working Group Public Debt

Introduction

Public debt (PD) has increased sharply in many countries in recent years, particularly during and after the Great Recession and the sudden occurrence of the Coronavirus Disease 2019 or COVID-19. Nowadays, in many governments, PD is a significant part of total liabilities. Thus, it is essential for Supreme Audit Institutions' (SAIs) to strengthen its independent external oversight of PD Management (PDM) in a country and in publicly reporting on the results of their audit.

This project was initiated and presented at the 2019 INTOSAI Annual Meeting and is included in the Working Group on PD (WGPD) Work plan 2020-2022 in Strategic Goal 1 - Enhanced expertise of SAIs in the audit of PD. As a key strategic activity, it aims to improve the adoption/implementation of professional pronouncements on the audit of PD by providing a useful reference guide for public debt auditors on the specific subject matter.

In the international PD experience, there are different ways of authorizing PD. Some countries endorse the overall annual borrowing, and some parts of the borrowing through their authorities for approval, most often the Parliament. Some countries approve the borrowing strategies and the borrowing plan. There are examples of countries that regulate this in the law or part of their internal procedures and good practices.

The process for obtaining financing and assuming sovereign debt obligations and liabilities should be transparent. Governments have a responsibility to put in place and implement a comprehensive legal framework that clearly defines procedures, responsibilities, and accountabilities. They should particularly put in place arrangements to ensure the proper approval and oversight of official borrowings and other forms of financing, including guarantees made by State-related entities.[1]

Under Due Authorization, Principle 3 of the United Nations Conference on Trade and Development (UNCTAD) Principles on Promoting Responsible Sovereign Lending and Borrowing: Lenders have a responsibility to determine, to the best of their ability, whether the financing has been appropriately authorized and whether the resulting credit agreements are valid and enforceable under relevant jurisdiction/s.

One of the elements of the budget process is to evaluate the borrowing needs of the upcoming year. Borrowing needs consist of the difference between revenue and expenditure and the amount of debt that falls due next year. Parliament normally sets a limit on the annual net borrowing. Having borrowing needs, the borrowing program is prepared. The program contains information on which borrowing instruments will be used to finance borrowing needs. Borrowing instruments have to fulfill the Debt Management (DeM) strategy (if it exists). A DeM strategy is a plan that is ideally reviewed annually, preferably as part of the budget process. The strategy commonly includes parameters or strategic benchmarks and all borrowings should be within limits, such as:

- Ratio of foreign debt to domestic debt;
- Maximum share of debt that can fall due during one and two budget years;
- Maximum ratio of floating-rate to fixed-rate debt; among others.

In relation to borrowing instruments, Government has to consider the type (loan or securities, domestic or foreign), maturity, currency, whether floating rate or fixed rate obligation. For every borrowing instrument, there is a specific type of agreement (contract). A debt contract is a

[1] See UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing, Transparency, Principle 10

binding obligation to repay funds to a lender. Governments are agents of the State and, as such, when they contract debt obligations, they have a responsibility to protect the interests of their citizens.

Governments can borrow money from domestic or international capital markets mainly by issuing securities or by taking out loans. Decisions are taken usually in accordance with PD managers' annual borrowing needs evaluation but also could be on a case-by-case basis. The process must observe a special legal framework.

Loans are public credit operations based on a contract that ensures the fulfillment of clauses agreed upon by the parties and typically contains, among others, the financial conditions, use of the financing resources, pre-conditions, events of default, and governing law and clauses on jurisdiction. The parties involved in these operations are the lender and the borrower, the latter being the one who borrows an amount of money from the former. The parties to a loan contract may be natural persons, legal entities, banks, or governments.

When the sovereign borrows funds from a commercial bank in the country, the terms and conditions of the loan contract are relatively simple; basically, they just state the financial conditions of the loan. In addition, these loans are of course governed by the local legislation of the country.

On the other hand, from a legal perspective, it is more complicated when the sovereign borrows funds from foreign creditors/investors, either by means of loan contracts or by issuing debt instruments in foreign markets. In this case, the sovereign is treated as any other borrower and lenders demand to have guarantees that the sovereign will repay the funds borrowed as per the loan contract. Since most of these loans are not guaranteed (unsecured debt), the only protection that the lenders may get is the construction of guarantees in the loan contract.

This project intends to help auditors in planning their audits by providing a collection of sound practices/examples in the procedures and coverage of PD authorization, contracting, and the legal framework. Building on the experience and expertise gained from Project Team, they developed a questionnaire that was circulated among INTOSAI WGPD members. Seven SAIs namely Georgia, Lithuania, North Macedonia, Philippines, Portugal, Romania, and US GAO provided responses to the questionnaire.

The *Understanding Public Debt Authorization, Contracting, and Legal Framework of Different Countries* consists of three Chapters: Chapter 1 – *Understanding the Legal Framework for Public Debt*; Chapter 2 - *Sound Practices in Debt Contracting Process,* and Chapter 3 – *Sample Indicative Questions and Overview of the Audits Conducted by the Participating SAIs.*

This document is produced within the INTOSAI WGPD procedures by a team of SAIs: North Macedonia as a team leader, Portugal, Lithuania, and Fiji and with help from focal persons from SAI Philippines.

Considering the relative importance of this subject, the WGPD believes that this document may extend its usefulness to the fullest if more SAIs and relevant authorities or organization can provide inputs on their experiences and expertise on the subject matter.

Chapter 1. Understanding the Legal Framework for Public Debt

1.1. *The SAI's Mandate in Public Debt Management (PDM)*

In most countries, the legislature has the borrowing power of the central government, sometimes delegated to the executive with periodic monitoring. The members of the legislature and the public must rely on the independent audits performed by the SAI to determine whether the executive's PD reports show the true condition of PD and its most relevant details. In this context, SAIs are very important.

The SAI's legal mandate defines audit objectives, scope, and reporting obligations. Some SAIs may have the legal authority to conduct compliance audits of budget resources but not financial and performance audits of PD. SAIs play an accountability role in PD reporting and management. On the other hand, regular audits of PD help to make PD managers accountable for their PD actions. Also, audit reports may enhance the transparency of PD issues, depending on their ability to communicate clearly key debt information to legislators and citizens.

SAIs, according to their mandates, may play a central role in exercising independent external oversight on PDM in a country and in publicly reporting on the results of their audit. SAIs carry out financial, performance, and compliance audits on the subject matter of PDM. The audits carried out and the reporting procedures depend on the legal mandate and reporting procedures established in the country. In all countries, there is a regulation for the mandate of the SAI to audit the PD, while in some countries, the mandate for PDM Audits is also regulated in the Constitution of the country.

The role of SAIs in PD auditing includes giving their own observations regarding the economic implications of the PD, giving recommendations regarding the process of gathering and disclosing relevant data, enhancing the understanding of the exposures, and giving their comments regarding noncompliance of debt transactions carried out against formal rules.

Examination of the legal framework is a required audit procedure for understanding the environment in which PD operations are executed. Therefore, when performing a financial, compliance, or performance audit of PD, SAIs need to have a good understanding of the PDM legal framework.

There are standardized audit steps that SAIs must take when they plan audits of PD. Therefore, SAIs should follow adopted planning procedures and incorporate to the extent possible the INTOSAI standards under ISSAI 100 (Fundamental Principles on Public-Sector Auditing), ISSAI 200 (Financial Audit Principles), ISSAI 400 (Compliance Audit Principles), and ISSAI 300 (Performance Audit Principles), respectively. In addition, GUID 5250 (Guidance on the Audit of Public Debt) and the INTOSAI Development Initiative (IDI) -WGPD Handbook on Audit of Public Debt Management provide specific guidance to plan and conduct audits of PD.

Moreover, international institutions/organizations have produced and published methodologies and guidelines which regulate and help in understanding the PDM legal framework. Some of them are listed below:

- International Monetary Fund (IMF) Working Paper on Designing Legal Frameworks for Public Debt Management
- IMF and World Bank Public Debt Management Guidelines 2014

- World Bank Debt Management Performance Assessment (DeMPA) Methodology
- UNCTAD Principles on Sovereign Lending and Borrowing Frameworks
- UNITAR Document 1: A General Overview of Legal Issues in debt Management, 2004

1.2. *The Legal Framework of Public Debt*

A robust legal framework is critical for effective PDM, given the centrality of law to PD. While political and economic factors tend to influence debt policies and the quality of debt management practices, a good legal framework helps to promote discipline, transparency, and accountability, all of which are critical to achieving sustainable debt[2].

The PDM legal framework typically comprises a complex maze of laws at various levels. These could include all or some combination of supranational, national, and sub-national legal frameworks. In some cases, supranational rules[3] may become part of the domestic law of the various member states, subject to any constitutional requirements for the formal adoption of treaties at the national level[4].

The scope of the domestic legal framework governing PDM may vary. These may include Constitutions, as well as primary legislation (Acts of Parliament, Laws, Decrees, as the case may be) which provide the broad legislative architecture within which PD is contracted and managed. This is usually supplemented by a secondary legal framework (executive orders, decrees, ordinances, and so forth) to elaborate on the operational aspects of the framework[5].

Below are the sources of the legal framework for borrowing on behalf of the state and PDM of the respondent SAIs:

- In Georgia, these are the Law on PD, Organic Law on Economic Freedom, and Budget Code of Georgia;
- In Lithuania, the legal framework for borrowing and PDM is regulated by the Law on State Debt of the Republic of Lithuania No. I-1508;
- In North Macedonia, the legal framework for borrowing is stated in the PD Law and through various secondary legislations such as the Rulebook on the Manner and Procedure for Issuance and Payment of Government Securities;
- For the Philippines, the legal framework for borrowing is stated in the Constitution, through various primary legislations issued by the Congress such as Republic Act (RA) No. 4860 and RA No. 8182, and secondary legislations issued by the executive branch of the government under relative Executive Orders, and other issuances such as Department Orders and Presidential Decrees;
- In Portugal, borrowing on behalf of the state is covered under the Portuguese Constitution, laws on PDM, Organic Budget Law, and other laws related to the PD;
- In the United States of America (USA), the legal framework is regulated by the Constitution and by the Law on PD;
- Government loans are held in the Arab Republic of Egypt based on PDs; these decrees are submitted to the House of Representatives for approval. Based on

[2] See IMF Working Paper, Designing Legal Frameworks for PDM, paragraph 3.
[3] Supranational frameworks could affect PDM in a given jurisdiction. Examples: the EU's Treaty of Maastricht, and the Stability and Growth Pact (SGP); and treaties of the Eastern Caribbean Currency Union, the West African Economic and Monetary Union, and the Central African Economic and Monetary Union.
[4] See IMF Working Paper, Designing Legal Frameworks for PDM, paragraphs 9 and 10.
[5] Ibid, paragraph 11.

Article (31) of the Unified Public Finance Law (Law 6 for the year 2022), it is not permissible for any of the administrative authorities to contract a loan or obtain financing that is not included in the state's general budget without the approval of the House of Representatives; and

- In Austria, the legal framework for borrowing and PDM at the federal level is regulated by the Federal Budget Accounting Act (Federal Law Gazette I No. 139/2009) and the Austrian Federal Financing Act (Federal Law Gazette No. 763/1992).

According to the IDI-WGPD Handbook on Audit of PDM, primary legislation should include, among others, the clear authorization by Parliament to the executive branch of government to approve borrowing on behalf of the sovereign, specified borrowing purposes, and clear DeM objectives or goals[6]. The respective legislations of all the participating SAIs, state provisions on which entity is entitled to borrow on behalf of the State, the specified borrowing purposes, and the annual mandatory reporting to the Parliament or similar bodies covering DeM activities. However, among the participating SAIs, only Romania, Portugal, North Macedonia, and Lithuania have legal provisions about having clear DeM objectives or goals, while a requirement to develop a medium-term DeM strategy is included as well in the legislations of Georgia, Portugal, and North Macedonia.

1.3. Legal Mandate to Borrow and to Issue Guarantees on Behalf of the State

A key legal question that needs to be answered in understanding the legal framework for PD is who exercises borrowing authority on behalf of the state. The government's authority to borrow is perhaps as fundamental to sovereignty as its power to tax and spend. This may be provided for in the Constitution and/or in primary legislation such as Public Finance Management-type laws, debt management laws, and others[7].

In a number of jurisdictions, the Constitution mandates the Legislature to delegate borrowing authority to the Executive by an Act of Parliament, within a broad framework set out under legislation. From a legal standpoint, such delegation implies authority for the Executive to borrow, subject to any constraints imposed by the Legislature. Typically, such authority to borrow on behalf of the State is delegated to the Ministry of Finance (MoF)[8].

Moreover, aside from the authority to borrow on behalf of the State, the SAIs also need to understand whether the State has the authority to issue guarantees on borrowings incurred by others. In several jurisdictions, the legal framework specifies whether the power to issue a guarantee is granted to the executive branch, which is also commonly delegated to the MoF, or to one or more guarantee entities. In case the power to issue guarantees is also delegated to one or more guarantee entities, such entities must operate within the limits set by the State. For example, in Lithuania, as shown in Box 1 their Law on State Debt gives the government the right to establish guarantee entities, of which any guarantees of a guarantee institution shall be signed by the head of the guarantee institution or a person authorized by him has the authority to sign guarantees and must operate within the limits set by the government.

[6] For additional lists of what should be included in the primary legislation, see pages 30-38 of Chapter 2: Auditing the Legal Framework for PDM https://www.idi.no/elibrary/professional-sais/audit-lending-and-borrowing-frameworks/1249-audit-of-public-debt-management-handbook-for-sais-v1/file

[7] See IMF Working Paper, Designing Legal Frameworks for PDM, see paragraph 39

[8] Ibid, paragraph 44

Box 1 illustrates some of the legal mandates of the participating SAIs on borrowing on behalf of the state and its authority to issue state guarantees.

Box 1: Legal Provisions on the Borrowing Authority on Behalf of the State and to Issue State Guarantee

- ***Georgia*** - Based on the Law of Georgia on PD, the Parliament of Georgia shall ratify agreements in relation to the borrowing of external PD or the issuance of public guarantees for debt. The MoF of Georgia has the exclusive right, with the consent of the Government, and in consultation with the National Bank of Georgia, to enter into agreements for borrowing funds in the national and other convertible currencies and to give public guarantees for loans.

- ***Lithuania*** - Article 3 of the Law on State Debt of the Republic of Lithuania, provides that when borrowing on behalf of the State and in managing on-lent loans, state guarantees, and other liabilities, the Government shall be represented by the MoF. The MoF shall among others, in accordance with the procedure laid down by the Government: (a) borrow funds on domestic and foreign markets by taking loans and issuing government securities and other debt instruments; (b) set the characteristics and conditions of the issuance of government securities; and (c) carry out operations with government securities on domestic and foreign markets.

  According to Article 6, State Guarantees, a decision to grant a state guarantee to a loan which exceeds 40 million Lithuanian Litas shall be taken by the Seimas on a proposal of the government, while a decision to grant a state guarantee which does not exceed 40 million and to an international financial institution shall be taken by the government pursuant to the Law of the Republic on the approval of financial indicators of the state budget and municipal budget for the corresponding year, treaties of the Republic or the agreements signed on the basis of these treaties or other laws.

  Moreover, Article 8 of the same law, gives the government the right to establish guarantee entities. Likewise, the State shall guarantee the discharge of a guarantee institution's obligations under guarantees in respect of credit institutions of the Republic of Lithuania and foreign states and financial lease (leasing) companies.

- ***North Macedonia*** - According to Article 16 of PD Law for Borrowing by Concluding Loan Agreement, the Government of the Republic of North Macedonia shall conclude loan agreement on behalf of the Republic, while the MoF shall sign such agreement on behalf of the Government of the Republic of North Macedonia. The legislative, judicial, and executive branch shall commence the borrowing procedure by submitting a borrowing initiative to the Government, which shall mandatorily include an opinion by the MoF. Representatives from the MoF and other authorized representatives from the Government shall mandatorily participate in the borrowing procedure. Issuers referred above shall conclude loan agreements upon adoption of a special law for each new foreign borrowing at foreign lenders, or decision by the Government for each new borrowing at domestic lenders.

  Also, under article 17 of PD Law for Borrowing by Issuance of Government Securities on the domestic and international market shall be issued by the MoF, on behalf of the Republic, upon decision adopted by the Government, determining the maximum amount of net borrowing through government securities.

Meanwhile, Article 21 of the same law, the Government of the Republic of North Macedonia may issue sovereign guarantee on behalf of the Republic in case of borrowing by PD issuer. Projects, financing of which requires the issuance of sovereign guarantee, shall fulfill the following criteria: (a) shall be in compliance with the strategic documents of the Government of the Republic of North Macedonia, and (b) co-financing resources shall be provided to the end of smooth project implementation. MoF shall assess the creditworthiness of the PD issuer requiring issuance of sovereign guarantee on the basis of analysis of the financial position and its outlook during the guaranteed period, including analysis of the liquidity, solvency and profitability indicators of public enterprises and companies and budget and financial performance indicators of municipalities and public institutions established by the Republic.

- ***Philippines*** - Article VII, Section 20 of the 1987 Philippine Constitution authorizes the President to contract foreign loans with prior concurrence from the Monetary Board. The constitutional provision is implemented through various laws, such as RA No. 4860, as amended, which grants the same authority to the President for contracting foreign indebtedness for economic development purposes. Moreover, Section 1 of RA No. 245, as amended, authorizes the Secretary of Finance, with the approval of the President of the Philippines, after consultation with the Monetary Board, to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his judgment may be necessary, and to issue therefor evidence of indebtedness of the Philippine Government.

  Under Section 3 of the RA No. 4860, the President is also authorized, on behalf of the Republic to guarantee, upon such terms and conditions as may be agreed upon, foreign loans extended directly to, or bonds for sale in international markets issued by, corporations owned or controlled by the Government.

- ***United States of America (USA) -*** the Constitution empowers Congress to borrow money on the credit of the United States. Congress has authorized the Secretary of the Treasury to borrow monies to operate the federal government within a statutory debt limit. Title 31, U.S. Code authorizes the Department of the Treasury (Treasury) to prescribe the debt instruments and otherwise limit and restrict the amount and composition of the debt.

- ***Austria –*** Federal financial debts may only be incurred by the Federal Minister of Finance in accordance with the amount specified in the Federal Budget Act or in a special federal act. The Federal Financing Act assigns the management of PD to the Austrian Treasury, which is hereby authorized to act in the name and for the account of the Republic of Austria. Particularly it is assigned to incur financial debts for the Federation, to enter into swaps and other credit transactions, to restructure the credit transactions, to service the credit transactions, and to act as the central liquidity manager of the Federation according to the Budget Accounting Act.

Source: Responses on Survey Questionnaire and Various Laws of the Participating SAIs

1.4. *Restrictions/Limitations on Borrowing and Guarantee Powers of the State*

There are a number of ways in which limits can be placed on the powers of the state to borrow or issue guarantees. First, the legal framework can impose limits on how much the government can borrow/guarantee each year. Second, the legal framework can charge a specific party with the authority to set limits on the state's borrowing powers.[9]

Debt ceilings could be in nominal or relative terms. Nominal ceilings are absolute numbers (e.g. value in a specific currency) that serve as the upper limit for debt. In most jurisdictions, the debt ceiling is expressed as a percentage of gross domestic product (GDP) whether historical or forecasted. Debt ceilings could also be categorized in terms of debt stocks and flows. Many countries have introduced fiscal rules that limit the stock of debt by which the amount of debt at any point in time is limited.

Limitations on the borrowing and guarantee powers of the government of the participating SAIs are shown in Box 2.

Box 2. Legal Provisions on the Limitations of Borrowing and Issuing Guarantee

In Terms of Amount and Period Limit

- ***Georgia*** **–** Article 3 of Law on PD of Georgia states that the limits for the PD, including the total amount of domestic and external debts, as well as the sum of the public guarantees issued for domestic and external debts, shall be defined each year in absolute and relative terms by the Law of Georgia on the State Budget. Moreover, under the Law of Georgia on the State Budget, the Parliament shall approve limits (maximum amount) of the public domestic debt, public external debt, and public guarantees for domestic and external loans for the relevant year.

- ***Lithuania*** **–** Per Article 3 of Law on State Debt of Lithuania, limit on yearly net borrowing shall be taken, on a proposal of the Government, by the Seimas of the Republic when approving the state budget of a relevant year. Moreover, Article 8.2 of the same law provides that the Government shall annually establish limits on obligations under guarantees for each guarantee institution. These limits may not exceed a limit established in the Law of the Republic on the approval of financial indicators of the state budget and municipal budgets of the relevant year.

- ***USA*** - PD Act of 1941, Congress and the President set a single overall limit of 65 billion US dollars on the amount of Treasury debt obligations that could be outstanding at any one time.

- ***Philippines*** - As to the debt arising from the issuance of government securities, the President issues Special Authority in favor of the Secretary of Finance and the Bureau of the Treasury (BTr) specifying the maximum number of Treasury bills and Treasury bonds to be issued for the year having maturities of one year or more but not exceeding 25 years from the date of the issue. Meanwhile, for debt arising from foreign loans not contracted under

[9] UNITAR Document: A General Overview of Legal Issues on Debt Management, pages 11 to 12, Limits on the Borrowing and Guaranteeing Powers of the State

the Official Development Assistance (ODA) Act, the total amounts of loans, credits, or indebtedness, excluding interests and other banking charges shall not exceed United States Dollars (USD) 10 billion or its equivalent in other foreign currencies at the exchange rate prevailing at the time of loans, credits or indebtedness and shall not be less than 10 years.

On the other hand, under Section 3 of RA 4860, the total amount of loans, creditors or indebtedness incurred, and the proceeds of bonds, securities or other evidences floated or issued, which may be guaranteed shall not be more than USD7.5 billion or its equivalent in other foreign currencies at the exchange rate prevailing at the time the guarantee is made excluding interest and other normal banking charges imposed or charged by the multilateral and other international financial institutions.

- ***Austria*** – The Federal Budget Accounting Act together with the annual Federal Budget Act define the annual limit on borrowing and the parameters for the management of the federal government's debt (e.g. the maximum tenur, maximum single issue, maximum interest rate).

In Terms of Percentage to GDP

- ***Georgia* -** the Organic Law of Georgia on Economic Freedom imposes maximum limits on macroeconomic parameters. In particular, the ratio of government debt to GDP shall not be more than 60 percent.

- ***North Macedonia* -** Article 8 of the PD Law provides that the PD limit shall be determined on the basis of the PD to GDP ratio. Based on the Revised 2022-2024 PDM Strategy of North Macedonia, the limit on the total PD level in the medium and long run shall not exceed 60 percent of GDP and the short-term maximum limit on net borrowing (domestic and external) on the basis of general government debt in 2022 is set at EUR 750 million.

In Terms of Rate Limit

- ***Philippines* -** There is no rate limit on PD. However, ODA carve-outs from the limits set under RA No. 4860 shall have interest rates not exceeding 7 percent, as provided under Section 3 of RA No. 8182, and provided that there are no available comparable financial instruments in the capital market.

Source: Responses on Survey Questionnaire and Various Laws of the Participating SAIs

Aside from the limitation on how much a government can borrow or guarantee, in several jurisdictions, the legal framework also specifies for which the government can borrow. As can be seen in Box 3, the legal framework authorizes the government to borrow in order to finance the budget deficit or any lawful expenditures or to finance more specific purposes such as government projects and granting of on-lent used to finance state projects, among others.

Box 3. Government's Borrowing Purposes

- ***Georgia*** – Article 15 of PD Law states that the government securities shall be issued for: (a) covering short-term cash deficits and financing a budget deficit; and (b) promoting the development of the securities market and accomplishing other objectives defined by the annual budget law. Meanwhile, Article 23 of the same law states that the funds received from external PDs shall be used for the purposes defined by the Law on Georgia on the State Budget;

- ***Lithuania*** – Article 4 states that the government may borrow on behalf of the state for the following purposes: (a) to finance the deficit of the State Budget as well as to balance state cash flows; (b) to finance state investments earmarked in the State Budget; (c) to grant on-lent loans used to finance state investment projects; (d) to cover the State debt, also to accumulate the financial resources used to cover the State debt; (e) to cover the debt liabilities of state social security funds as wells as to balance the cash flows of these funds; (f) to discharge the guarantee obligations assumed by the State under the State guarantees granted; and (g) to achieve goals stipulated in the Law of the Republic on the Approval of Financial Indicators of the State Budget and Municipal Budgets for the corresponding year and other goals, where a separate law has been passed to this end;

- ***North Macedonia*** – Article 12 of PD Law states that the MoF may, on behalf of the Republic, borrow up to the amount necessary to finance the budget deficit and finance the liabilities on the basis of the government debt for the current and the next two fiscal years. The government debt shall be incurred and used for: (a) financing projects and investments; (b) supporting balance of payments and foreign currency reserves; (c) fostering development of financial markets; (d) refinancing of the liabilities on the basis of the government debt, also including early debt repayment before the maturity date, and/or early redemption of debentures issued by the state; (e) on-lending to PD issuers; and (f) financing liabilities assumed by the municipalities, municipalities within the City of Skopje and the City of Skopje, among others;

- ***Philippines*** – Under Section 1 of RA No. 4860, as amended by Presidential Decree No. 351, the President is authorized to contract debt to: (a) undertake industrial, agricultural or other economic and social development projects and feasibility studies; (b) lend the proceeds of such loans, credits or indebtedness to government-owned or controlled corporations to finance development projects which are authorized by the charters of such corporations or by law; and (c) lend the proceeds of such loans, credits or indebtedness to the Development Bank of the Philippines and/or the Land Bank of the Philippines which shall administer said proceeds in accordance with the agreement with the foreign creditor for relending to individuals, partnerships, cooperatives, associations or private corporations, whose capital stock, if not fully subscribed, is open to subscription by the general public, as well as government-owned or controlled corporations, and to local governments to meet the direct and indirect foreign exchange requirements including peso costs for such industrial, agricultural and other economic development projects, subject to the provisions of the charter, rules and regulation of said bank and to the terms and conditions agreed upon by the government and the institution providing financing for projects;

- ***Portugal*** – Loans and debt securities are issued to deal with State financial needs; and

- ***USA*** – The law provides a broad purpose for issuing debt securities. Specifically, the Secretary of the Treasury may borrow on the credit of the United States Government amounts necessary for expenditures authorized by law and may issue bonds of the Government for the amounts borrowed and may buy, redeem, and make refunds.

Source: Responses on Survey Questionnaire and Various Laws of the respondent SAIs

In countries like Lithuania and the Philippines, their legal frameworks also include provisions on which the state can issue a guarantee. For example, in Lithuania, Article 4 of Law on State Debt provides that the government may, on behalf of the State, provide a State guarantee for (a) the loans used to finance state investment projects and used for implementing the objectives set in the Law of the Republic of Lithuania on Financial Sustainability; (b) state-supported loans referred to in the Law on Higher Education and Research; and (c) the loans taken by a legal person of the Republic of Lithuania or a branch of an enterprise of the European Economic Area State established in the Republic of Lithuania, where such loans are taken for the purpose of refinancing an on-lent loan or a State guaranteed loan. Moreover, the guarantee institutions in Lithuania may grant guarantees for (a) the loans taken from credit institutions of the Republic and foreign states and used to finance investments and/or used to supplement the working capital; and (b) payment of the price, or part thereof, of the new (unused) industrial equipment and/or new (unused) installations specified in agreements on the financial lease (leasing) of the new (unused) industrial equipment and/or new (unused) installations concluded with financial lease (leasing) companies.

Meanwhile, in the Philippines, RA No. 4860, as amended by Presidential Decree No. 81, states that the proceeds of the guaranteed loan shall be used to undertake industrial, agricultural, or other economic development purposes or projects authorized by law or by their respective charters.

1.5. *Legal Effect of Debt Ceiling and Enforcement Mechanisms*

Based on the IMF Working Document on designing legal frameworks for PDM, the legal framework should be explicit about the effect of the debt ceiling. In some jurisdictions, the legal framework invalidates debt contracted in breach of the ceiling. In a number of countries, debt ceilings may be enforced through mandatory requirements for reporting, and/or adjustment or corrective measures that are required when the ceiling is reached, example of these is shown in Box No. 4 below:

Box 4. Enforcement Mechanism of Debt Ceiling

- ***Brazil*** - Federal, state, and municipal audit courts are each required to warn their constituents when debt and contingent liabilities reach over 90 percent of their respective limits under the Fiscal Responsibility Law;

- ***Hungary*** - Hungary's 2011 Constitution establishes a PD ceiling of 50 percent of GDP and requires Parliament to reject any budget measures which would result in the level of PD exceeding this ceiling;

- ***Moldova*** - The legal framework provides that an increase in the state's internal debt limit is to be reflected in subsequent amendments of the state budget law for the respective year;

- ***Poland*** - The Public Finance Law imposes restrictions on public expenditures when debt exceeds between 43 percent and 48 percent of GDP, although the constitutional debt limit is 60 percent of GDP;

- ***Slovak Republic*** - The 2012 Fiscal Responsibility Law imposes a set of automatic enforcement mechanisms where the 60 percent debt to GDP ceiling is close to being breached. Among other things, the MoF is required to issue an open letter when the debt ratio reaches between 50 percent and 53 percent of

GDP, and an expenditure freeze applies when it reaches between 55 percent and 57 percent of GDP. A balanced budget requirement is applicable when the debt/GDP ratio reaches between 57 percent and 60 percent, and a confidence vote is required when the debt ratio exceeds 60 percent of GDP; and

- ***USA*** - Under the U.S. legal framework, the Treasury does not have authority to borrow above the statutory ceiling, although it is able to issue additional debt in amounts equal to maturing debt. Once reached, only Congress can suspend or increase the ceiling. Until suspended or increased by Congress, the Treasury must deviate from its normal cash and debt management operations, using "extraordinary measures" to avoid exceeding the debt limit.

Source: IMF Working Document on Designing Legal Frameworks for PDM

Chapter 2. Sound Practices in Debt Contracting Process

The debt contracting process is a very important public activity as the countries' fiscal performance depends on its management. This Chapter reviews debt contracting process practices applied by various countries.

2.1 DeM Strategy and Objectives

The primary aim of DeM is to raise the required amount of funding at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk, but it can also be critical to macro-financial stability and financial sector development. To achieve this aim, the government prepares the plan known as the DeM strategy that the government intends to implement over the medium term in order to achieve DeM objectives. Not every country's legislation covers a requirement to develop a DeM strategy. For example, in the Philippines there is no provision in the legislation that requires to develop a DeM strategy, however, the MoF or Department of Finance (DOF) adopts a set of DeM objectives drawn from internationally-accepted principles and submits a three-year financing program as part of the annual Budget of Expenditures and Sources of Financing.

The DeM strategy is usually expressed in a written document that is regularly updated and circulated to relevant government agencies. In some countries, this document may be formally presented to a legislative body (Parliament or Congress). It is also recommended that the DeM strategy be published. For example, in Lithuania, the MoF prepares a DeM strategy which covers a period of three (3) years and reviews it annually, although this process is not regulated by legal acts. The strategy is approved by the government and made publicly available. Similarly, in Portugal, the MoF develops a medium-term strategy which is annually reviewed and revised, and made available to the public.

A formal and explicit debt management strategy, expressly agreed to by high-level authorities and policymakers, can help build broad-based support for responsible financial stewardship. These elements all serve to enhance good governance and accountability. Also, the central bank of a particular country can be consulted on the strategy formulation process and its consistency with monetary policy implementation. Although this practice is not yet widely observed, countries like Romania and Georgia consult the central bank during the strategy formulation process, while in the USA, the central bank communicates regularly with the Treasury but does not coordinate its monetary policy to align with DeM strategy.

2.2 Annual Borrowing Plan

The annual borrowing plan should be developed in accordance with the debt management strategy (if prepared) and help its implementation. The annual borrowing plan contains the specifics of debt instruments to be issued, and the size and timing of the new borrowing. For example, in Georgia, the MoF prepares an annual borrowing plan that is included as an annex to the annual budget law approved by Parliament. Each draft borrowing plan is discussed and approved by the Debt Committee chaired by the MoF. The budget law stipulates the maximum amount of net domestic issuance.

When setting the desired debt structure, it is important to monitor and assess the risks in the debt structure and consider the financial and other risk characteristics of the government's cash flows. In particular, the debt manager should carefully assess and manage the risks associated with foreign currency and short-term or floating-rate debt, and ensure there is sufficient access to cash to avoid the risk of not being able to meet financial obligations when they fall due. Most countries hold cash balances so that they can fulfill their financial obligations on time, even when their ability to raise funds in the market is temporarily restricted or very costly.

For example, in the Philippines before the auction, BTr conducts cash flow forecasting to determine the level of existing indebtedness, and the amount to be borrowed. The BTr does not need to choose which instrument to issue since it depends on the authority given by the President. Since the President gives the BTr the authority to issue Treasury bonds and Treasury bills, it regularly conducts auctions for these securities.

Similarly, the borrowing plan in Lithuania is also based on the cash flow forecast. Cash flow forecast is conducted on a daily basis, and although the borrowing plan isn't reviewed as often but actual borrowing (amount and timing) is performed depending on the newest data.

2.3 Debt Instruments and Its Contracting Process

Governments can use different instruments to raise domestic and foreign debt. However, they can be the same for both markets. The government should strive to achieve a broad investor base for its domestic and foreign debt instruments, with due regard to cost and risk, and should treat investors equitably.

Debt instruments represent legal agreements concluded between one or several creditors that provide the funds, and the debtor, who receives and uses the funds. For every debt instrument, there is a specific type of agreement. Agreements specify the terms for the release and reimbursement of the funds and often stipulate specific conditions for their use.

Commonly, the two main categories of debt instruments are loans and debt securities. Sovereign loans are public credit operations based on a contract that ensures the fulfillment of clauses agreed upon by the parties. The parties involved in these operations are the lender of money and the borrower. The parties to a loan contract may be individuals, legal entities, banks, or governments. A debt security is a debt instrument that can be bought or sold between two parties (one of which is the government) and has basic terms defined, such as the notional amount (the amount borrowed), interest rate, and maturity.

Based on the nature of the parties involved, there are different types of loans: bilateral, multilateral, and private. Bilateral loans are those through which a government lends money to another country. In this case, the borrower is the country receiving the funds and committing itself to repay to the lender the principal plus interest in the terms agreed upon. When a multilateral body (e.g. World Bank Group, European Investment Bank, African Development Bank) grants a loan to the government of one of its member countries, it is a multilateral loan, and if the lender is a private company or private financial institution, it is considered to be a private loan.

A loan is a financial instrument that is created when a creditor lends funds directly to a debtor and receives a nonnegotiable document as evidence of the asset. This category includes overdrafts, mortgage loans, loans to finance trade credit and advances, repurchase agreements, financial assets, and liabilities created by financial leases.

Trade credit and advances and similar payable/receivable accounts are not loans. Loans that have become marketable in secondary markets should be reclassified to debt securities. However, if traded occasionally, the loans are not reclassified to debt securities.

PD also can be raised by using debt securities of various maturities. Bonds and notes are debt securities with an original maturity of over one year. They are usually traded in financial markets. These instruments provide the holder with regular income (coupon) and a return of the principal value on redemption. In addition, governments also issue short-term debt instruments (often called money market instruments) with maturities of less than one year. Other governments issue green bonds, the proceeds of which are used for the implementation of green projects, and have retail markets.

There are also other binding debt instruments different from debt securities and loans used to raise PD. For example, in Portugal, forwards, swaps, and swap options are also used in addition to loans and debt securities.

As mentioned in GUID 5250 (item no. 48), to design and carry out a financial audit, a performance audit, or a compliance audit of PD, the auditor gains a sufficient grasp of the borrowing markets and the many forms of financial instruments. These might include:

- The financial markets' operational traits and risk profile of the environment in which the PD managers work (i.e. the state, dependability, and efficacy of PD instrument main and secondary markets);
- The nature of the financial instruments utilized by PD managers;
- Developed guidelines for debt instruments;
- The techniques used to value financial instruments. This might be especially crucial in cases where the audited entity uses derivatives it could have intricate characteristics.

Loan Contracting Process

The main role of negotiating and executing all financial transactions related to the issuing of debt on behalf of the government is performed by the MoF, Parliament, Treasury Department, etc. The lender is chosen according to the procedure set forth in the secondary legislation. The decision on the interest rates, maturity, and other characteristics of debt instruments is made by evaluating the proposals of lenders and then choosing the best offer.

In some counties, there are policies that include a clear delegation of responsibilities of those involved in debt contracting developed. For example, in North Macedonia, PD issuers (Government, municipalities, public enterprises established by the state or the municipalities) initiate the borrowing process. Public institutions established by North Macedonia and municipalities shall commence the borrowing procedure upon consent of the MoF. Representatives from the MoF and other authorized representatives from the Government of the Republic of North Macedonia shall mandatorily participate in the borrowing procedure.

In some countries, public entities responsible for initiating the borrowing, and choosing of instruments are specialized structures within the MoF. However, for some countries, like Georgia, the corresponding spending institutions initiate the borrowing for investment loans and the MoF chooses different instruments.

The borrower has the right to have a copy of the contract, the amount corresponding to the loan as agreed upon in the contract, and to receive the settlement documents, such as the payment request from creditors, and justifications of payment, as specified.

The main conditions under which the government can take multilateral, bilateral loans, or loans from a foreign government are set in the law on PD or similar primary legislation documents. They include the purposes for which the government can borrow and limits on the annual net borrowing or the outstanding debt.

Debt Securities Contracting Process

Government bonds or debt securities are issued via auction, syndicate, and private placement. The methods for sale used are competitive bids, and negotiated sales. To the extent possible, debt issuance should use market-based mechanisms, including competitive auctions and syndications based on published calendars as stated by all seven SAIs. In the primary market for government securities, best practice suggests that governments typically use, where feasible, market-based mechanisms to raise funds.

For domestic currency borrowings, this typically involves auctions of government securities, although syndications have been successfully used by borrowers that do not have a need to raise funds on a regular basis or are introducing a new instrument to the market. For example, in Lithuania, the auction participants (primary dealers) submit bids in the auctions and the MoF decides the cut-off rate of the issuance amounts taking into account the market conditions, submitted bids, and borrowing needs. In the US, the Department of the Treasury is responsible for determining which securities and how much to issue.

Presented below are the debt securities contracting practices of Lithuania, North Macedonia, and the Philippines.

Box 5. Debt Securities Contracting Process of Lithuania, North Macedonia and the Philippines

- In ***Lithuania***, the terms of the Government Securities (GS) issuance are published at least 5 working days in advance of the auction. The announcement of the auction in the auction organizer's (Nasdaq Vilnius) system is made at 9 a.m. of the auction day. The bidding procedures are set in the Auction rules. Orders for the auction are being accepted from 9 a.m. till 10:30 a.m. on the auction day. A list of bids in order from the lowest yield to the highest yield is prepared and sent to the Auction Commission at the MoF. The Auction Commission made up of officials of the MoF and acting under the regulation of the order of the MoF makes a decision on the GS amount or highest approved yield and informs the auction organizer. The commission has 30 minutes for this decision. Successful bidders receive information directly from the auction organizer at midday (12 p.m. of the auction day), whereas the aggregated results of the auction are announced both by Nasdaq Vilnius and the MoF by the close of business on the auction day. Settlement is carried out on the day set in the terms of the GS issuance (usually T+2 or T+5).

- In ***North Macedonia***, according to Rulebook on the Manner and Procedure for Issuance and Payment of Government Securities Issuer of government securities (secondary legislation) Article 5 – 1 the issuer of government securities Issuer shall decide the amount of each issue of government securities, sold through an auction. The issuer, prior to each issue, shall decide whether the issue of Government securities denominated in national currency shall be with or without a foreign exchange clause. Besides the operations referred to in paragraphs 1 and 2 of this Article, the issuer shall perform the following operations as well:

- Preparing and publishing the calendar;
- Maintaining functional access to the electronic system;
- Defining and announcing Prospectus for each issue;
- Determining the coupon interest, if the government bonds are sold at a pre-determined coupon;
- Authorizing and announcing the results from the held auction;
- Checking the payment of the purchased government securities;
- Submitting authorization to the agent for registering the ownership of the government securities acquired on the primary market;
- Paying the due government securities;
- Paying the government bonds coupons; and
- Monitoring the trade in government securities on the secondary market.

The issuer shall inform the public, on its website and the website of the agent and/or on other media, about the calendar at the beginning of the period to which it refers, about each issue of government securities, as well as about the results thereof. Market intermediaries and the institutionalized markets shall notify the issuer and the agent daily on the concluded transactions with government securities on the institutionalized markets and out of the institutionalized markets, using appropriate forms.

- **In the Philippines**, the DOF Department Order No. 141-95 does not specify the technicalities in the auction but the following are the practices of the BTr with respect to the auction of government securities:
  a. Auction Schedule for the whole month is published on the BTr website at least a week before the month. The Securities Origination Division prepares the Notice of Auction Schedule for the Auction Committee Members before the auction day;
  b. On auction day, starting at 9 a.m., GS Eligible Dealers key in their bids using the National Registry of Scriptless Securities (nRoSS) Auction Module. All tenders shall be submitted not later than 1 p.m.;
  c. Processing of bids is done by the Auction Committee via nRoSS at 1:00 p.m. of the auction day;
  d. Approval of cut-off is done by the Auction Committee;
  e. Announcement to successful bidders is done by the Auction Committee right after the auction; and
  f. Settlement of the auction is two days after the auction date.

Source: Responses on Survey Questionnaire and Various Laws of the respondent SAIs

Regulations and procedures for the primary issuance of government securities, including the auction format and the rules for participation, bidding, and allocation should be clear to all participants. Rules covering the licensing of primary dealers (if engaged) and other officially designated intermediaries in government securities, including the criteria for their selection and their rights and obligations, should also be publicly disclosed. Regulations and procedures covering secondary market operations for government securities should be made public, including any intervention undertaken by the central bank as an entity for the government's debt management operations. Easy public access to the documentation describing the legal basis for debt management policy and operations should be ensured.

In Romania, the MoF, in the case of state securities exchange operations, publishes the following elements: (a) the date of the auction, the place, and the term for submitting the offers; (b) the date of settlement of the transaction; (c) the indicative volume for the exchanged government securities; (d) identification elements of the state securities, both for the issued and exchangeable securities: type, series, annual coupon rate, maturity date, individual nominal value, (e) minimum total nominal value for which they will be deposited individual offers, if applicable; (f) the value of the interest accrued on the security at the settlement date of the transaction, both for the newly issued securities and for those that are subject to exchange; and (g) specifying whether or not non-competitive offers are accepted and, if accepted, the maximum percentage in which they must be included, as well as the categories of investors who may submit such offers.

CHAPTER 3. Sample Indicative Questions and Overview of the Audits Conducted by the Participating SAIs

3.1. Sample Indicative Questions

As mentioned in Chapter 1 and in GUID 5250 (item nos. 41-44), understanding the legal framework for PD is part of the planning process of the audit. As the auditor performs debt authorization and contracting assessment procedures, listed below are sample interview questions based on the survey questionnaire conducted in relation to this document that may help SAIs on what the auditor should ask and observe.

Objective: To determine whether there is a legal framework for PD and whether it is explicitly and clearly stated in the legislation the delegation of powers to the DeM and the limitations/restriction in borrowing and in guaranteeing, among others.

Questions	Yes	No	NA	Remarks
1. Is the legal framework for borrowing on behalf of the state and PDM regulated in your country by: a. Constitution				
b. PDM law				
c. Budget law				
d. Others (specify in the remarks column)				
2. Does the legislation covers: a. Which entity is entitled to borrow on behalf of the state;				
b. Which general government entities are entitled to borrow for their needs;				
c. Specified borrowing purposes;				
d. Clear DeM objectives;				
e. A requirement to develop long-term DeM strategy;				
f. A requirement to develop a medium-term DeM strategy;				
g. Annual mandatory reporting to the Parliament or similar body covering DeM activities; and				
h. Obligation to prepare short-term or medium-term debt borrowing plan.				
3. Is the judicial decisions can also regulate the legal framework of borrowing and PDM?				
4. Is there a parliamentary or congress authorization (or approval) to the government (to the cabinet or council of ministers, to its head executive, or directly to the MoF) to approve debt securities issuance and loan borrowing on behalf of the state? If so, specify in the remarks which act or law (primary legislation) and who was granted authorization (which member).				
5. Is there secondary legislation that clearly authorized an agency or DeM entity (or more than one of these entities) to issue government bonds, and loans or to carry out PD securities issuance?				
6. Is there a jurisprudence or principle/doctrine of law which clearly authorizes another person or entity to issue government bonds, loans, or to carry out PD securities issuances?				
7. Is the person authorized to sign the loan documents and other necessary documents related to a particular borrowing regulated? If so, specify in the remarks which legislation provides this authorization, and what are the relevant sections or clauses?				

Questions	Yes	No	NA	Remarks
8. Is there a parliamentary or congress authorization (or approval) to the executive branch of government to issue state guarantees on behalf of the state? If so, specify in the remarks which act or law (primary law), what are the relevant sections or clauses, and who was granted authorization (which member)?				
9. Is there a parliamentary or congress authorization (or approval) for one or more guarantee entities to issue loan guarantees?				
10. Is there a limitation to the amount that can be: a. Borrowed?				
b. Guaranteed?				
11. Is there a period limitation to the amount that can be: a. Borrowed?				
b. Guaranteed?				

Objective: To determine the type of instrument used to raise PD and the processes.

Questions	Yes	No	NA	Remarks
1. Is the institution responsible for negotiating and executing all financial transactions related to the issuing of debt on behalf of the government regulated?				
2. Before borrowing activities, is a cash flow forecast developed?				
3. Does an internal borrowing plan for external borrowing exist? If so, specify in the remarks how often it revised				
4. Does DeM develop a strategy for issuing and managing debt securities and loans?				
5. Are instruments used to raise public debt regulated?				
6. If your country issues debt securities, a. What type of debt securities are issued in your country? (Kindly indicate in the remarks the type of debt securities)				
b. How are debt securities issued? (Kindly indicate in the remarks the process)				
c. Do debt managers have a team of advisers and bond dealers during the underwriting process?				
d. Is the official statement (the prospectus), legal opinion, and ratings prepared?				
e. In the case of an auction, is an auction schedule (including the type of debt instruments to be issued and the scheduled dates for each issuance) is publish in advance?				
7. In the case of commercial bank loans: a. Is the PD agency (or public officials) assisted by a team of financial advisors and lawyers in the preparation and negotiation of the loan agreement?				
b. Is a legal opinion prepared?				
c. Is there a syndicate agreement used?				
8. In a case of a multilateral loan or a bilateral loan from a foreign government, are the following being regulated? a. The conditions for the government to take a multilateral, bilateral loan or loan from a foreign government?				
b. Responsible authority/department for preparing a set of projects available for funding?				
c. The authority submits proposals to multilateral financial institutions for external funding?				
d. Is a project brief prepared for each project, describing its objectives, identifying principal issues, and establishing the timetable for its further processing?				

Questions	Yes	No	NA	Remarks
e. Is it possible to gain financing first and then prepare the project?				
f. What is the process of negotiation of the loan agreement and the project implementation plan, and who (which public official) is responsible for the negotiation? (Kindly indicate in the remarks column the answers)				
9. Is the PD agency (or public officials) assisted by a team of financial advisors and lawyers in the preparation and negotiation of the loan agreement?				
10. Is the mechanisms used by the government / PDM office in a condition of incised PD in order to deal with the fluctuating exchange rate due to the effects of inflation regulated?				

Moreover, as mentioned in GUID 5250 (item nos. 49 to 66), after understanding the legal framework and instruments used in PDM, the auditors should also check whether internal controls are established and functioning in the process and perform an evaluation of risks in the PDM process.

3.2. Overview of the Audits Conducted by the Participating SAIs

The mandate of SAIs for the implementation of PDM audits is confirmed through the provided information from the questionnaire, for conducted audits in the field of PDM. Most SAIs have answered that they have performed an audit on PDM. SAIs carry out financial, performance, and compliance audits on the subject matter of PDM. The audits carried out and the reporting procedures depend on the legal mandate and reporting procedures established in the country.

Below are the types of audits conducted by the participating SAI and their coverage:

- The SAI of Georgia conducted a performance audit on PDM in 2014 and a follow-up audit in 2020 in which the implementation of various debt management activities and related functions were evaluated.
- The SAI of Lithuania conducts financial and compliance audits of PD on a yearly basis and compliance audits cover debt authorization and contracting, of debt securities and loan agreements.
- The SAI of North Macedonia, in 2021, is conducting a performance audit of PDM – borrowing activities.
- The SAI of the Philippines conducted a compliance audit on the Philippines' Legal Frameworks for PDM as of December 31, 2015.
- US GAO annually audits Treasury's Schedule of Federal Debt, beginning with fiscal year 1997. As part of the audit, they test statutory debt limit laws and laws to avoid exceeding the statutory debt limit[10]. In addition to this, US GAO has done separate periodic audits on Treasury's compliance with the federal debt limit and its effect on financial markets, for which 4 audit reports were published since 2004[11].
- Special Report on the *Audit of Cyprus PDM.* The published report with a short description can be viewed through the WGPD-COP website: https://www.intosaicommunity.net/wgpd/audit-office-of-the-republic-of-cyprus-completes-special-report-on-the-management-of-public-debt/

[10] Sample report of US GAO may be accessed via: https://www.gao.gov/products/gao-22-104592
[11] See GAO-15-476 (https://www.gao.gov/products/gao-15-476), GAO-12-701 (https://www.gao.gov/products/gao-12-701), GAO-11-203 (https://www.gao.gov/products/gao-11-203), and GAO-04-526 (https://www.gao.gov/products/gao-04-526).

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