







Promoting Good Governance and Transparency in Public Debt Management

The Legal Foundations of Public Debt Transparency



Calls for debt transparency have increased

Debt transparency has emerged as a prominent topic, due to a significant rise in public debt and increased use of complex forms of financing (collateralized borrowing, SOE and PPP debt, government guarantees, etc.)

Last July, the IMF published a Board Paper entitled *Making Public Debt Public.*

Opaque debt is the consequence of inadequate institutions and capacity ("underlying drivers") as well as "adverse incentives"...

- Limited information and accountability, make it easier for the authorities to skirt fiscal rules or to divert public funds.
- Poor transparency may help creditors to achieve better contract terms than their competitors.



July 2023

MAKING PUBLIC DEBT PUBLIC—ONGOING INITIATIVES AND REFORM OPTIONS

IMF staff regularly produces papers proposing new IMF policies, exploring options for reform, or reviewing existing IMF policies and operations. The following document(s) have been released and are included in this package:

The Staff Report prepared by IMF staff and completed on June 22, 2023

The report prepared by IMF staff has benefited from comments and suggestions by Executive Directors following the informal session on July 25, 2023. Such informal sessions are used to brief Executive Directors on policy issues and to receive feedback from them in preparation for a formal consideration at a future date. No decisions are taken at these informal sessions. The views expressed in this paper are those of the IMF staff and do not necessarily represent the views of the IMF's Executive Board.

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Transparency is integral to debt management

Debt transparency

- guides economic policy and promotes sustainable borrowing and lending practices,
- supports stable and adequate access to financing,
- contributes to macroeconomic stability and growth, and
- facilitates the assessment of debt performance and risks and debt restructuring processes.





Strengthening domestic legal frameworks – a key reform area

INTERNATIONAL MONETARY FUND

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

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

WP/24/29

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The <u>Working Paper</u> examined comprehensively the role of domestic law in promoting debt transparency

- Law is important. Strengthening the domestic laws of debtor countries help align practices with international standards by entrenching good borrowing practices, adequate institutional arrangements, and proper accountability.
- Clear and unambiguous debt disclosure requirements for the contracting
 of public debt create an incentive to disclose debt transactions and bind
 the discretion of policy makers and public debt managers on what, when
 and how to disclose debt data.
- Laws can also help enhance the control on borrowing by entities outside
 the central government, strengthen institutional arrangements for debt
 data collection and disclosure, and support monitoring and oversight of
 public debt.



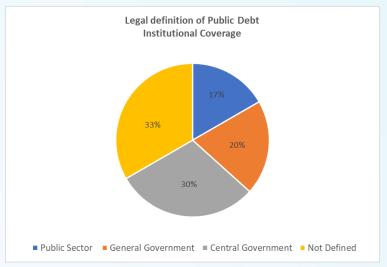
Key findings and recommendations

- 1. Definition of public debt
- 2. Legal requirements for debt disclosure
- 3. Broader governance framework
 - Confidentiality clauses
- 4. Accountability mechanisms

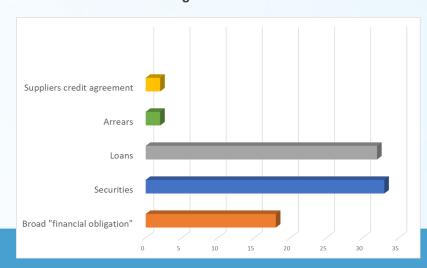


Legal definition of public debt - critical gaps

Institutional Coverage – Domestic Laws in 60 countries



Debt instrument Coverage - Domestic Laws in 60 countries



Whose Debt? Institutional coverage is narrow

 Centered in the budgetary central government debt and often not aligned with international statistical standards.

What is considered debt? Debt instrument coverage

 Narrow coverage of debt instruments, restricted to loans and/or securities; inconsistent and ambiguous definitions across legal instruments; and complex and atypical instruments not legislated and often left off-balance sheet.

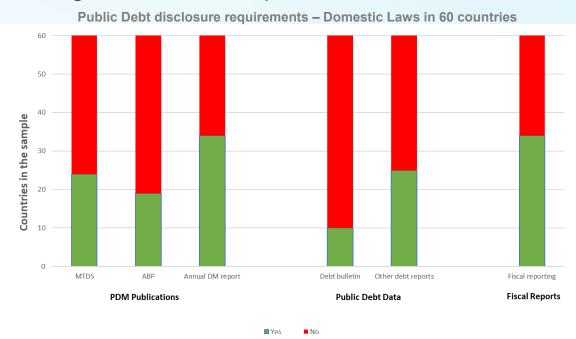
Recommendation:

 Legal definition of public debt needs to be comprehensive, meaning it covers various debt instruments (recognizing the economic equivalent functions) and all public sector entities (aligning with the 2014's GFSM's sectorization).

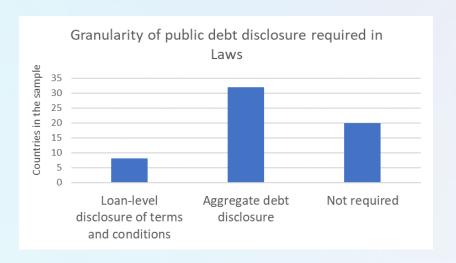


Requirements for disclosure are insufficient

Less than 50% of countries surveyed require debt management and fiscal reports



Less than 25% of countries require disclosure of loan-level information



Recommendation:

 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.



Shortcomings in the governance framework

Borrowing authority, the law should contain

- clear allocation of roles and responsibilities among public authorities in the borrowing authorization process (e.g., Parliament/Cabinet/MoF/DMO);
- criteria and conditions, as well as restrictions for borrowing;
- authorization processes for critical complex debt instruments;
- a delegation framework that specifies the relevant entities, the powers being delegated; and
- A robust delegation framework for the authority to borrow.



Shortcomings in the governance framework

Hardly any PFM and PDM laws regulate confidentiality of public debt and international standards provide limited guidance.

The law should

- Tightly define exceptions to disclosure and scope of confidentiality agreements,
- Parliamentary oversight, and other safeguard mechanisms such as administrative or judicial remedies,
- Mandate governments to adopt confidentiality policies for debt contracting setting out what type of debt information could be subject to non-disclosure (confidential) and the management of confidential information.



There are problems in accountability mechanisms

Supreme Audit Institutions

- Broad mandate to audit public debt, which may derive from the powers to audit the government's financial statements.
- Legal authority to audit the whole public sector as SOEs, though broadening the authority of the SAI should be commensurate with its institutional capacity.
- Sufficient powers to obtain information and report audit results.

Oversight by the Legislature

- Sound procedures, institutions, and staff with technical capacity.
- Level of transaction approval authority may be needed for complex transactions.
- Confidential debt information should not be exempt from legislative oversight.



Links

Making Public Debt Public: Ongoing Initiatives and Reform Options

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