GOVERNMENT DEBT MANAGEMENT: A GUIDANCE NOTE ON THE LEGAL FRAMEWORK

A guide for countries in reviewing, updating and developing their legal framework relating to government debt management

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The views expressed herein are those of the authors and should not be attributed to the Commonwealth Secretariat or any other organisation contributing to this note through their comments.

ABSTRACT

Legislation is a key component of the governance framework relating to government debt management. Good legislation underpins sound debt management: it provides strategic direction, defines and clarifies powers and supports professionalism and operational focus. It also limits potential abuses of power and promotes good governance by establishing the accountabilities for managing the government's debt liabilities. This guidance note identifies some essential provisions for debt management legislation and offers suggestions for other provisions that might be adopted, taking account of a country's specific legislative framework. Drawing on examples from across the world, the note first discusses some general issues that arise in relation to debt management legislation and how they interact with other provisions and then sets out the provisions that might be included in an integrated debt management law or Government Debt Management Act.[2]

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Acronyms

DeMPA	Debt Management Performance Assessment
DMA	Debt Management Act
DME	Debt Management Entity
FRA	Fiscal Responsibility Act
GDMA	Government Debt Management Act
GDP	Gross Domestic Product
MoF	Ministry of Finance
MOU	Memorandum of Understanding
PDC	Public Debt Committee
PDMA	Public Debt Management Act
SASD	Special Advisory Services Division (Commonwealth Secretariat)
SOEs	State-owned Enterprises
UK DMO	United Kingdom Debt Management Office

FOREWORD

Since 1983, the Commonwealth Secretariat has been supporting and building the capacity of its member countries in debt management through the provision of its debt management software, the Commonwealth Secretariat Debt Recording and Management System (CS-DRMS), as well as related training on debt data compilation, reporting and analysis. The CS-DRMS system, which is currently used in over 60 countries both within and outside the Commonwealth community, is a tool developed and provided by the Secretariat as part of its flagship debt management programme.

In response to demand from member countries in recent years, the debt management programme has been expanded to assist countries through policy advice. Such advisory support relates to various aspects of debt management including institutional arrangements on debt management, the formulation and implementation of debt management strategies and debt market development. One of the central themes of recent assistance to member countries has been the reform and strengthening of institutional arrangements, which is vital to ensure effective and efficient public debt management. In this respect, it is recognised that the legal framework is one of the core components of institutional arrangements influencing prudent debt management. Good legislation promotes good governance, provides strategic direction to borrowing decisions, defines and clarifies roles and responsibilities and supports professionalism.

This guidance note has been developed by the Commonwealth Secretariat in response to a growing need from its member countries to reform their institutional arrangements, including their legal framework for debt management. It follows from recent assistance provided by the Debt Management Section in reviewing and suggesting revisions to debt management related legislation. As well as discussing the practice in Commonwealth countries, the guidance note also draws upon the experience of non-member countries. In doing so, we believe that this note provides a comprehensive synthesis that would be useful for any country.

Jose Maurel
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INTRODUCTION

Background

1. This note is a guide for countries in reviewing, updating and developing their legal framework that applies to government debt management.

2. Legislation is a key component of the governance and high-level strategic framework applying to government debt management, i.e., the legal, administrative and accountability structures – formal and informal – that 'shape and direct the operation of government debt managers'.[3] Good legislation defines and focuses powers, but also limits potential abuses of power and establishes accountabilities for managing the government's debt liabilities aimed at promoting governance. It is a basic foundation of sound debt management policies.

3. Other important debt management issues, of both policy and practice, lie outside the legal framework. These include, for example, co-ordination with key macroeconomic policies, the design and implementation of debt management strategies, the development of local debt markets, the interaction with government cash management and a range of risk management practices. Although this note does not discuss these core elements of government debt management in detail, it touches upon some of these issues within the context of a legal framework that allows a sovereign state to adopt sound principles and practices for debt management.[4]

4. Most sovereigns have in place some basic elements of a legal framework for government debt management. This applies particularly to provisions providing clear authorisation to borrow and issue guarantees on behalf of the government, stipulating basic purposes of borrowing and requiring some reporting and auditing responsibilities.[5]

5. A growing number of developing countries in the past decade have initiated reforms to strengthen government debt management both in a strategic sense as well as operationally, through appropriate institutional and policy changes. This has required reformulating and updating the outdated legal framework for debt management in these countries. In specific cases improvements in debt management have served as the trigger for legal reforms which are needed to accommodate sound policies. Since passing new legislation can be a long, drawn-out process, and often one that cannot

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[3] Wheeler (2004, p49). In addition to the broad legal apparatus (statutory legislation, ministerial decrees, etc.), the governance framework includes processes and institutions covering: policy co-ordination, decision-making and objective setting; delegation and accountability; transparency, disclosure and reporting; the risk management framework; organisational structures; and oversight and audit.

[4] Key guidance on many of the core elements of government debt management can be found in various documents including World Bank and IMF (2001), (2003) and (2009a); World Bank (2009); and Wheeler (2004).

[5] World Bank and IMF (2009b). Preliminary results of the application of the World Bank's Debt Management Performance Assessment (DeMPA) tool in 23 countries suggest that the majority of the countries have effective legal frameworks that underpin government borrowing.

be repeated for a decade or more, some countries also included other forward-looking reforms within the legal framework. Where primary legislation was previously scattered throughout various statutes relating to public financial management, some took the further opportunity to enact an integrated debt management law.

6. Notwithstanding that the majority of developing countries have in place the basic elements of a legal framework for public debt management; there remains significant scope for improvement. Particularly relevant is the need to embody the strategic and governance elements, setting out the high-level objectives for government debt management and the requirement of a debt management strategy for achieving these objectives, and ensuring consistency with fiscal policy and monetary policy through appropriate co-ordination mechanisms and oversight. At the same time, changes in the legal framework are often crucial to enabling countries to manage their debt liabilities, especially market borrowing, actively and flexibly.

This guidance note

7. This guidance note accordingly identifies some essential provisions, i.e., those that are common to countries that manage their debt soundly. In other areas there is room for policy judgement and the guidance is more open, instead identifying and discussing elements that might be included, and the circumstances in which it might be desirable to do so. In this context, debt management laws reflect the institutional and administrative needs and constitutional practices of the countries concerned, and will have to be drafted accordingly.

8. There are three dimensions to the different practices between countries:

a) The most important is whether the legal system flows from a common law tradition, where judge-made decisions are explicitly acknowledged to be legal sources, or is based on civil law where the source recognised as authoritative is, primarily, statute-based. Common law systems also rely on statutes, passed by the legislature, but may make less of a systematic attempt to codify their laws than a civil law system.

b) A related issue is the extent to which the roles and responsibilities of officials are specified in legislation which may also constrain their activities to those roles. In other jurisdictions officials may have much wider discretion within a legal framework that is written in broad terms; but they are directly accountable for their actions, whether to parliament or to the courts.[6]

c) The boundary between primary and secondary legislation varies greatly between countries. The focus here is on primary legislation, although some suggestions are made in relation to secondary legislation. The

[6] The legislature is referred to throughout this guidance note as parliament. No distinction is made between a parliament, congress, people's assembly or similar body.

boundary will need to be audited by the legal professionals in the country concerned.

9. Many Commonwealth countries trace their legal systems back to that of England and Wales, as do some countries outside the Commonwealth (notably the United States of America). They therefore tend to have a presumption towards laws that are not codified in detail with powers, functions and objectives defined broadly, and provisions that may be more robust to innovation in the financial markets as a result. But many countries, including some Commonwealth countries, have a civil law-based tradition and the guidance note is also intended to provide direction and guidance.[7]

10. There is another consideration that impacts on how detailed the draft legislation should be. Innovation in financial markets, a volatile external environment, and changes in the government's fiscal stance all mean that debt managers need to be flexible and responsive. That argues against detailed prescriptive primary legislation and suggests instead the reliance on professionalism and accountability within a general or high-level regulatory framework. However, this may not be sensible in a less-developed environment which lacks a history of strong administration and a well-tempered relationship between the legislature and the executive. It may be more appropriate to start with more detailed provisions and gradually increase the scope for flexibility as competence of the debt management function grows.[8] This approach may nevertheless fall down if the legislature proves reluctant to relinquish control.

11. The note first discusses some general issues that arise in relation to debt management legislation and how it interacts with other provisions, and then the provisions that might be included in an integrated debt management law or Government Debt Management Act (GDMA[9]). Two annexes offer more detailed advice on the issues to be covered: Annex A on the responsibilities of the relevant ministry (usually the ministry of finance (MoF)) in relation to debt management; and Annex B on the additional provisions that might be needed were a debt management entity with some degree of autonomy to be established.

[7] The note does not offer guidance on the debt management laws that might apply under religious legal systems.

[8] A point made by Magnusson (1999). The same paper outlines some of the relevant provisions applying in Sweden.

[9] One of the issues discussed is whether the law should apply to the public sector as a whole, not only to government; in which case a Public Debt Management Act (PDMA) would be a more appropriate title.

KEY ISSUES

Essential requirements

12. The World Bank's DeMPA tool identifies the legal framework as one of the fifteen indicators in judging a country's performance against internationally recognised standards.[10] Box 1 summarises the essential requirements, with a brief commentary.

Box 1: The Essential Requirements of the Legal Framework

- *Set out the authority to borrow* (in both domestic and foreign markets). Undertake liability management operations or other debt-related transactions (such as debt restructuring and potential swaps) and issue loan guarantees. Parliament will usually have the ultimate power to borrow on behalf of central government; in some cases this power flows from the constitution. However, parliament should not be involved in individual debt management operations. The first level of delegation of the borrowing power therefore comes from the parliament down to the executive branch (whether to the president, cabinet or directly to the minister of finance). There may be further delegation (possibly in secondary legislation) within the executive branch of government to one or more debt management entities. These powers should be exclusive: there should be a single borrowing authority not multiple authorities.
- *Specify borrowing purposes*. To guard against the risk of abuse, the delegation of the borrowing power is often restricted by a statement of the purposes for which the executive can borrow or by a limit on the annual net borrowing or the outstanding debt (or both). What this might mean in practice is discussed in the main text.
- *Set clear debt management objectives*. For accountability purposes, it is important to ensure that there is a formal objective against which the government's performance can be assessed.
- *Require the preparation of a debt management strategy*, as the practical expression of the high-level objectives.
- *Specify mandatory (at least annual) reporting to the parliament on debt management activities*, including an evaluation of outcomes against stated objectives and the determined strategy.
- *Determine audit requirements*. An external audit will usually be the responsibility of the country's supreme audit institution.

The role of parliament

13. One issue that needs to be addressed is the role of parliament in decisions on borrowing (or approval of guarantees).

14. Parliament will be reassured by sound legislation and a strong governance framework with clear objective-setting, borrowing authority, reporting, accountability and audit provisions. Parliament may also have the opportunity to discuss the debt strategy aimed at meeting the stated objectives in the medium term, perhaps as part of the annual budget discussions, and to vote on the annual borrowing resolution or budget ceiling. These opportunities and requirements should be sufficient to meet

[10] World Bank (2009)

parliament's need for consultation or accountability to compensate for its delegation of responsibilities to the executive – responsibilities which are eventually implemented by government departments or agencies. **It is strongly recommended that parliamentary control does not extend to individual borrowing decisions**. Nor should it approve other operational decisions, such as buy-backs, exchanges or swaps. Parliamentary involvement adds a potentially cumbersome, time-consuming and over-politicised step in the decision-making process when time is often of the essence for market borrowing. It is usually more appropriate for parliament to approve the legislation and hold ministers and officials accountable for the debt management strategy and its execution.[11] The publication, ideally in statute, of the high-level debt management objective is an important part of this understanding with parliament, by identifying the benchmark against which the executive is held accountable.

15. There may be exceptions to this recommendation where parliamentary approval is required for external loan agreements that are classified as treaties. In general, approval for project-related loans and credits is less problematic as the deadlines are less pressing, even if administrative and parliamentary time is spent to little purpose. However, the need for additional approval procedures for longer-term borrowing might distort decision making, creating an undesirable incentive for shorter-term borrowing.

16. In some countries where parliamentary approval is required, the government asks parliament to approve a borrowing programme rather than individual transactions. This can prove an acceptable compromise, but it is still not ideal, unless it allows some flexibility.

Borrowing limits

17. Some debt management laws include limits on borrowing. In particular, some Eastern European countries with an eye to joining the euro area include a requirement that the debt/GDP ratio is no higher than 60 percent (the Maastricht criterion). Many countries outside the euro area also include medium to long-term debt limits which are legally binding to underpin their fiscal consolidation plan. For countries with high public debt and experiencing fiscal sustainability issues, the adoption of fiscal rules with debt limits endorsed by legislation, either formally through a law (typically a Fiscal Responsibility Law) or informally through a review requirement by the parliament, can aid meeting objectives for medium-term fiscal and debt sustainability. It is, however, imperative that such quantitative fiscal rules including debt limits are expressed in legislation only if the targets are realistic, there is adequate political commitment and appropriate compliance mechanisms are in place to achieve such targets.[12]

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[11] Anecdotal evidence in Uganda suggests that even when Parliament has the legal responsibility to approve individual loans, the Government retroactively submitted for approval by the Parliament only after the external loan had already been contracted and partially disbursed (see Uganda Debt Network (2008)).

[12] See Lienert (2010).

18. Debt limits can be applied with respect to a single indicator or multiple indicators. Such limits may be expressed as nominal amounts, as ratios of key economic aggregates, and they may apply to debt stock or flows. The scope of the limits may apply to central government debt, sub-national debt, government guaranteed debt or the entire public sector debt. Finally, such limits may apply to 'gross' debt or 'net' debt depending on the significance of debt-related assets of the government. Typically, however, debt limits are expressed as ratios of debt-to-GDP, debt service to revenue receipts and borrowings to capital expenditure.[13]

19. However, including debt ratios as a fiscal stability tool in primary legislation for debt management can be problematical. If they are too low they may constrain responses at the time of financial stress, given the time lags involved in passing new legislation. If too high, they may not be meaningful. Moreover, when such legislated debt limits are not backed up by the requisite fiscal limits within a medium-term fiscal framework, they may turn out to be arbitrary, which in turn risks non-compliance.[14]

20. An alternative and preferable approach is that an annual borrowing limit is set consistently with the financing requirement implied by the annual budget (it would be modified in the event of a supplementary budget). The annual borrowing limit may be expressed either as a nominal amount or as a ratio of GDP, or even as a ratio of revenue receipts (see Box 2 for a description of borrowing limits in Brazil). Indeed, it would be good practice to publish the debt management strategy and annual financing plan at the same time as the annual budget.

21. The limit would be specified in the annual budget law or resolution. It may not be exactly the same as the financing requirement indicated in the budget documentation; some flexibility is needed, both to cope with unanticipated shocks (which have to be managed before new parliamentary authority can be secured) and with non-debt management borrowing requirements (e.g. issuing Treasury bills as part of liquidity management operations or for liability management purposes). There are more examples in the next section.

[13] The Golden Rule of fiscal policy states that over the economic cycle, governments should only borrow to pay for investment purposes that benefit future generation. A crude measure for this purpose is to limit gross borrowing to capital expenditure incurred by the government within any year.

[14] The Public Debt Management Act (2008) in Mauritius is an example in this regard. The Act stipulates a public debt (including non-guaranteed debt of the public enterprises) ceiling of 60 percent of GDP following its enactment in 2008 and further prescribes reduction of the debt stock so that the total debt stock does not exceed 50 percent by the end of 2013 and thereafter. However, debt ratios have not been supported with legally binding fiscal balance ratios that would seek to achieve such debt limits. Faced with significant budgetary pressure in the wake of the global economic slowdown, the government is now on the verge of piercing the original debt ceiling of 60 percent and further recognises that it will not remain within the reduced ceiling of 50 percent by 2013. This has necessitated amendment of the Act within two years of its enactment. The problem has been exacerbated by including the public sector, especially its non-guaranteed debt, within the ambit of the debt ceiling.

Box 2: Borrowing Limits in Brazil

As part of its golden rule, Brazil's constitution prohibits borrowing by the federal government in excess of its capital expenditure in any fiscal year. This is reinforced through Brazil's Fiscal Responsibility Act (Article 30) which requires the Federal Senate (parliament) to stipulate annual limits on borrowing for all levels of government.

As per the current requirements, credit operations excluding the amortisation of debt is limited to 60 per cent of the net current revenue for the central government and to 16 percent for other tiers of government (states, federal district and municipalities). For the latter category, a further limit on their debt service is stipulated at 11.5 percent of their net current revenue. In addition to such borrowing limits, ceilings are also imposed on the stock of net consolidated debt as per the Federal Senate resolution of 2001. The current limit is at 350 percent of the net current revenue for the federal government.

Separate long-term ceilings for the states and municipalities are also stipulated on the net consolidated debt stock, which needs to be achieved by 2017. For the states and municipalities, the long-term target limits are 200 and 120 percent of their net current revenue, respectively. In case of any divergence from this long-term target for these sub-national governments, a minimum reduction of the debt (one-fifteenth of the divergence) is prescribed as part of the legal requirement.

The legislative vehicle

22. Most countries have a complicated legal history and debt management provisions may be included in a variety of laws that deal also with other issues. This may include laws on fiscal responsibility, on the budget or on financial administration. Specific provisions may be found in audit or securities legislation; or in the central bank law, which might for example identify the bank's agency role in relation to debt management or the scope, if any,[15] for the bank to lend to the government.[16] Some Commonwealth countries (e.g. Jamaica) have a series of acts that cover loans from various foreign creditors and the issuance of specific securities.

23. There are benefits from bringing debt management provisions together into a single integrated government (or public) debt management law (a GDMA) that supports reforms being made to improve the professionalism and focus of debt management functions. A coherent and complete act also makes it easier for auditors and parliament to monitor compliance; and more straightforward for officials' accountability reporting.

24. There are some areas of potential overlap. Even if there is a freestanding debt management law, the annual limits on net borrowing may be set under the annual budget or appropriation law. Some countries may be contemplating a Fiscal Responsibility Act (FRA) alongside a GDMA.

25. There is no firm prescription for the provisions that are appropriate for a FRA and those appropriate for a GDMA, but for the most part the issues covered are somewhat different. The FRA focuses on the fiscal stance in the

[15] Direct borrowing from the central bank is not desirable, and is prohibited by law in many countries. Where it is permitted, the circumstances should be narrowly and specifically defined.

[16] There may also be a need to specify how government's operations in the financial market relate to the securities and financial regulation laws that apply to the private sector.

period ahead, and also the government's accountability for its fiscal objectives. The GDMA includes a wider range of powers and authorities as well as accountability and reporting requirements in respect specifically of debt management objectives.

26. Relatively few countries have both, and in practice the FRA-equivalent or the GDMA-equivalent (or the budget or financial administration act) has to be stretched to cover the necessary ground. But where both are contemplated a suggested boundary would be as follows:

a) The FRA should include provisions that are focused primarily on macroeconomic policy and fiscal policy within that. This might include the path for total debt, and the accountability of government for meeting that path.

b) The GDMA should relate to debt management specifically, i.e., decisions about the structure of debt, rather than the level of debt, and on the execution of policy.

27. The distinction still leaves an area for decision, i.e. which act should refer to debt or borrowing limits. Insofar as the limit was linked to the government's fiscal stance in the period ahead, the FRA might be more appropriate.

Establishing a debt management entity

28. The introduction of a debt management entity (DME) or similar[17] to manage government debt with some degree of autonomy may require changes in primary legislation. It may be possible to establish a DME by administrative act (as was done in the UK and Australia) although that is perhaps unusual. The coverage and detail will depend in part on policy, but also on local practice, and understandings between the legislature and the executive.

29. The key provisions are likely to cover:

a) The powers and responsibilities of the DME; and interaction with other units, including a public debt committee (PDC) or similar.

b) Delegation, accountability and reporting; and scrutiny responsibilities.

30. Some countries detail in primary legislation the precise functions of officials, going beyond their high-level objectives; but that can be highly constraining, inhibiting response to changes in the external environment.

31. Annex A outlines the provisions that might be needed to set up a DME.

[17] The debt management entity refers to a single entity with responsibility for debt management. Such an entity may be a unit, department or semi-autonomous office or other designation.

THE GOVERNMENT DEBT MANAGEMENT ACT

Introduction

33. This section sets outs, in broad terms, the provisions that might be included in a GDMA. The issues identified reflect sound international practice.[18] But debt management laws also reflect the institutional and administrative needs and constitutional practices of the countries concerned, and will have to be drafted accordingly. Specific drafting advice is not offered here since that depends heavily on local practice.[19]

34. **The scope of the GDMA.** Debt management should encompass the main financial obligations over which the central government exercises control. How far the provisions can go beyond central government and also apply to government agencies, sub-national tiers (provincial governments for federal states and local governments) and to other parts of the public sector (such as state-owned enterprises (SOEs)) depends on the respective political and legal powers of these entities and the financial relations between them.[20] Thus while the law may address debt of central government in its entirety, it may also wholly or partially address general government or public sector debt. It is not uncommon for the law to prevent sub-national governments or SOEs from borrowing overseas (except insofar as the government on-lends project loans, or provides guarantees). On-lending and issuance of guarantees may be subject to statutory conditions. Even where there is no direct control over sub-national tiers or SOEs, the law may as a minimum require them to provide data to the debt managers so that they can monitor aggregate public sector debt (see also below).

> **Examples:** South Africa's Public Finance Management Act 1999 requires a provincial treasury to, 'ensure that its fiscal policies do not materially and unreasonably prejudice national economic policies' (Section 18). Vietnam's Law on Public Debt Management 2009 allows sub-national authorities to invest 'only in socio-economic development projects [consistent with budgetary authorities] and…in projects capable of generating returns for debt repayment'. (Article 37)

35. **Control of sub-national borrowing**. There are three types of concerns that may be reflected in the debt legislation:

a) That the aggregate of sub-national borrowing does not undermine the government's macroeconomic policy stance. Some countries have an integrated budget that covers sub-national tiers and hence their borrowing. Many countries otherwise control borrowings and/or impose

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[18] See for example Wheeler (2004, p52) and World Bank (2009, p15).

[19] Some examples can be found in De Angelis (2006).

[20] The General Law of Public Debt in Mexico (Ley General de Deuda Pública, 1976 with amendments in 1995) entitles the Ministry of Finance to authorise indebtedness of some non-financial public entities which are under the Government's direct budgetary control. At the same time, as part of managing the Federal Government debt, the law empowers the Ministry of Finance to authorise and co-ordinate the financing of public entities which are outside the Government's direct budgetary control.

limits on the borrowing of sub-national tiers (which may be in the budget or related laws).[21]

b) That borrowing is properly appraised and does not unduly stretch the province or municipality concerned – hence exposing central government's guarantee (implicit or explicit). The law may specify borrowing terms or require prior approval.

c) That borrowing by the municipalities in the domestic financial markets does not constrain the government's own borrowing; such restrictions may be imposed in regulation, or by administrative decision.

Example: Slovenia's Public Finance Act 1999. 'Local governments may borrow funds on the basis of prior approval of the minister responsible for finance and under the terms and conditions laid down by the act regulating the financing of local governments...Should it be impossible to balance the implementation of the budget due to uneven inflow of receipts, local governments may borrow liquidity funds not exceeding 5 percent of the last budget duly adopted...local governments shall be obliged to report to the ministry responsible for finance on the borrowing and repayments of principal according to the methods and within the deadlines determined by the minister responsible for finance'. (Article 85)

Suggested provisions

36. **Authority to borrow**. It must be clear that the state has authority to borrow, and to issue guarantees (although in some countries guarantees may be extended to public sector bodies only). This authority will often be set out in the constitution.

Example: The Constitution of India. 'The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed'. (Section 292)

37. **Public debt is a direct obligation of the government**. Such a provision is usually recommended to reduce any concern by investors or creditors that a government could renege on its obligations, perhaps by deciding to repudiate any obligations incurred by a previous government.[22] A slightly different concern is that the minister may borrow without properly securing the authority of parliament or consistently with other legislative parameters; and investors need to know where they stand in such circumstances and the risk of the government repudiating the debt. However,

[21] In India, Article 293 of the Constitution provides state governments with the executive power to borrow exclusively from domestic sources while prohibiting foreign borrowing. The Article further stipulates that a state with any outstanding debt from the central government requires the consent of the central government to borrow. By virtue of being a major creditor to the states, the central government in practice controls the market borrowings of the states by placing a quantitative ceiling on the market borrowing of each state during a financial year. This is complemented with individual fiscal responsibility acts that stipulate fiscal rules for all of the states. In sharp contrast, Brazil has an integrated Federal Fiscal Responsibility Law that sets the terms, conditions and limits on the borrowing by states, district federations and municipalities. Mexico, on the other hand, has individual public debt laws in nearly all states for the management of the states' debt. In Vietnam, Article 26 of Decree 60/2003 limits most provinces' borrowing for capital investment to 30 percent of the annual investment budget.

[22] 'Odious debt' concerns of course may pull in the other direction.

decisions should be made in accordance with the law, and to avoid doubt it may instead be appropriate to make explicit that debts that are not authorised in line with the procedures laid down will not be recognised.[23] The need for provisions in this area depends to an extent on perceptions of the governance processes and structures and the political stability of the country concerned. Creditors may be willing to accept the opinion of the minister of justice or attorney general as to the minister's authority to commit the government.

38. **Debt management objective**. The GDMA should establish a high-level debt management objective, which underpins the government's accountability for debt management. The typical objective is of the form: 'to ensure that the government's financing needs and its payment obligations are met at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk, and to meet any other goals such as developing and maintain an efficient market for government securities'.[24]

39. **Debt management strategy**. A medium-term debt management strategy is a useful tool to make operational the high-level objectives for debt management (which are ideally embodied in the GDMA). The requirement for a strategy has increasingly been adopted in debt management legislation. A debt management strategy is usually approved by the executive (either by the MoF or council of ministers) as a formal document and in some instances submitted to the parliament for endorsement as part of the annual budget process. It provides the strategic path in the medium to long-term to meeting the high-level debt management objective including ensuring its consistency with macroeconomic policies.

> **Example:** Tanzania Government Loans, Guarantees and Grants (Amendment) Act, 2003. 'The Minister shall, within three months prior to the commencement of the fiscal year...cause to be prepared for approval by the Government: an annual debt strategy and borrowing plan; a debt strategy implementation report on a quarterly basis; and a debt and budget execution reports...After approval by the Government, the Minister shall cause to be laid semi-annually before the National Assembly the plan and reports specified [above].'

40. **Quantitative limits on the debt stock or net additions to the stock**. Quantitative limits may be included, although as discussed in the previous section, this is not preferred. Where quantitative limits on debt stock are set out in the legislation, it may be useful to

> **Example:** Bulgaria's Government Debt Act 2005. 'The state budget act for the relevant year shall determine: the maximum amount of new government debt and government guarantees that may be undertaken during the year; [and] the maximum amount of government debt as at the end of the budget year'. (Article 8)

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[23] The South African Public Finance Management Act 1999 states in Section 68 that, 'if a person, other than in accordance with [the Act]…purports to issue…a guarantee, indemnity or security,...the state [and the institution concerned] is not bound by...the guarantee, indemnity, security, or other transactions'. In Turkey, the Law on Regulation of Public Finance and Debt Management, 2002, states in Article 4 that the Undersecretariat of Treasury [in charge of debt management] will not be responsible for the borrowing of any public bodies, agencies and other entities, 'where the Treasury is not a party to the relevant agreements in any way'.

[24] World Bank and IMF (2003).

include provisions for exceeding such debt limits under special circumstances, supplemented with the formal requirement of remedial measures to bring the debt position back within the prescribed limits. A related issue is the coverage of debt to which such limits apply.[25] It may also be noted that although debt limits as legal rules are intended to impose fiscal discipline on governments, governments may find ways to circumvent such limits.[26]

> **Example:** Although Poland's Constitution imposes a limit on the public debt stock (including guarantees) not to exceed 60 percent of GDP, the Act on Public Finance (2005) sets out detailed prudential and remedial procedures if the public debt-to-GDP ratio exceeds 50, 55 and 60 percent of GDP.

41. An alternative and preferable approach is that an annual borrowing limit is set consistently with the financing requirement implied by the annual budget (it would be modified in the event of a supplementary budget).

42. The limit would be specified in the annual budget law or resolution. It may not be exactly the same as the financing requirement indicated in the budget documentation. Indeed some flexibility is needed, to cope with unanticipated shocks (which have to be managed before new parliamentary authority can be secured), with changes in market rates that affect the servicing cost of new or variable borrowing, and with non-debt management borrowing requirements (e.g. as part of liquidity management, see below).[27] Thus the specified limit might be, say, 5 percent more than the financing requirement; the circumstances in which it might temporarily be exceeded might be identified; or the limit might exclude short-term borrowing, constraining the financing of any excess e.g. to Treasury bills (Tbills) only.

> **Example:** Turkey's Law on Regulating Public Finance and Debt Management 2002 allows net borrowing to be no more than 5 percent higher than the difference between the legislated budget and estimated revenues for the year. It can be increased by a further 5 percent under special procedures (Article 5).

43. In general it is desirable to avoid applying different quantitative limits to specific instruments or groups of instruments. This can distort incentives, unless they are designed for occasional use only. The mix of instruments is essentially a technical decision, governed by the debt management strategy, and any limits, whether on stock or flow, should apply to total debt.[28] Note

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[25] In Korea, a draft Fiscal Responsibility Bill presented in June 2001 was rejected by the Parliament since it could not agree whether government-guaranteed debt should be included in the definition of national debt (see Lienert (2005)).

[26] Ter-Minassian (1996) explains that governments can borrow in excess of the limits in a number of ways including reclassifying current expenditure into the capital account, creating entities whose operations are kept off-budget, using SOEs to borrow for purposes which should be funded through the government budget, and borrowing through debt instruments which are not regulated by law.

[27] Note also that the market value of debt issued may be less than the nominal value (e.g. with bonds being auctioned below par).

[28] Some Commonwealth countries have limits applying to specific classes of instruments imposed in the legislation governing that class. Those limits (and probably the relevant acts as a whole) should be repealed when a new law is introduced.

also that flow limits should be in net terms – a gross limit might affect the ability to issue Tbills that are rolled over within the year.[29]

44. **Guarantees**. The issues discussed above, and many below, apply also to guarantees or other contingent liabilities.[30] The authority to extend guarantees, and the nature of the obligation, must be clear. Such authority to issue guarantees should be complemented by a legal provision to charge guarantee fees. In the event of debt assumption when such guarantees are called, some countries also spell out the powers of the government to recover payments from the beneficiary's financial assets or revenues. Quantitative limits may also be set for guarantees; again the annual budget law may be the most appropriate vehicle.

45. **Purposes of borrowing**. Many countries' public debt laws set out the allowed purposes of borrowing. The intention is usually to constrain: to prevent profligacy or abuse as well as to reflect the government's priority in the use of resources for developmental objectives. Some countries have a policy that allows borrowing only to finance capital expenditure, although there may be provision for short-term instruments to be used to meet temporary budget deficits. However, if the allowed purposes are to be included, they must be drawn sufficiently widely to cover a number of technical cases. A possible list includes:[31]

a) Borrowing to finance the deficit – where this is acceptable policy

b) Borrowing to refinance, prepay or buyback outstanding debt

c) Borrowing to finance the investment programme

d) Support to the balance of payments of the country or the foreign currency reserves

e) Fostering the development of the financial markets

f) Supporting monetary policy objectives (e.g. issuing Tbills at the request of the central bank to drain liquidity)

g) Pre-financing or temporary financing of the liquidity connected with cash flows (i.e. as part of cash management)

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[29] The Public Credit Law 2006 of the Dominican Republic does not extend to Tbills whose maturity falls within the budget year in which they were issued. That may make a useful distinction between debt and cash management, but such a provision may risk inhibiting the regular issuance of a range of Tbills.

[30] The Public Finance and Debt Management Act of Turkey 2002 in Article 8 spells out the various provisions to issue guarantees by the Undersecretariat in respect of foreign credit received by entities; investment guarantees as part of public-private partnership involving different financial models; country guarantees and counter-guarantees.

[31] This list draws on Article 12.1 of the Public Debt Law of Macedonia – which is probably one of the most comprehensive – and the guidance notes for the World Bank's DeMPA tool. Some countries have a catch-all provision; thus the Public Finance Management Act 1999 of South Africa adds, '...any other purpose approved by the National Assembly by Special Resolution' (Section 71). It is also possible for the legislation to indicate the higher priority purposes, with others reserved for specific circumstances.

h) Payment upon issued sovereign guarantees and restructuring of public sector debt[32]

i) To finance on-lending [subject to agreed limits or purposes], which is not otherwise included in the budget (e.g. on-lending of a project-related loan to sub-nationals or public enterprises)

j) Protection or elimination of effects caused by natural or environmental disaster

46. **One sole borrowing agent**. The minister of finance or equivalent must be the sole borrowing agent for the government and able to incur liabilities on the government's behalf, to issue securities, to approve guarantees, and related tasks. No other person or body should, without the prior approval of the minister, raise any loan or issue any guarantee, or take any other action which may in any way either directly or indirectly result in a liability being incurred by the government.

47. In relation to these powers, a few additional points should be noted:

a) The legislative meaning of 'securities' or borrowing instruments generally must be sufficiently wide. Indeed it is preferable to generalise to all transactions needed for debt management. Thus the minister should normally have powers to undertake repos, currency and interest-rate swaps, and hedging transactions.[33] The powers of the minister must also extend to portfolio management operations such as loan conversions, debt swaps, switch auctions and the exercise of options (such as early redemptions). Such a power need not be open-ended, but could be used, for example only, 'in support of the objectives set out in the debt management strategy'.

> **Example:** Macedonia's Public Debt Law 2005 allows the Ministry to use, 'financial derivatives with the purpose of eliminating or reducing financial risks'. (Article 11)

b) In this context, the minister should have the power when issuing debt instruments also to set the terms and conditions. This allows the debt manager the necessary flexibility to take into account other factors, such as the cost-risk trade-off and debt market development, while also responding to investor demands.

c) It may be helpful, indeed advisable, to note the form in which securities are issued (usually in book entry or dematerialised form; although physical certificates may still be used). If it is not clear in other

[32] For the purpose of public debt restructuring, Section 15 of The Public Debt Management Act (2005) of Thailand provides authority to the Ministry of Finance to, 'repay debt for a State enterprise or a State financial institution. Such agency shall, after repayment (by Ministry of Finance), owe the Ministry of Finance in an amount equal to the amount paid by the Ministry of Finance, plus all expenses incurred in such repayment'.

[33] Although the legal framework may not prohibit debt managers from undertaking hedging activities, or use other over-the-counter products, it is of course important that only countries with adequate risk evaluation and management capacity in practice do so.

legislation, it would be useful to state that the registered owner of the security in the book-entry system has full legal title.

d) In relation to guarantees, the minister must have powers to raise charges for the guarantee (which might be risk-related). A provision may be included specifying how such receipts are brought to account or managed if held in a fund.

e) The minister's powers should also include the ability to on-lend any loan or sums raised and to set the terms and conditions of any on-lending (equally if any guarantee is called, the beneficiary must be under an obligation to repay the sums paid by the government and all related expenses. Whether that obligation is statutory or contractual is for consideration; if statutory the minister should have the flexibility to decide on the terms of repayment).

f) Powers in relation to on-lending and guarantees should include a scrutiny power for the MoF, to avoid the government being exposed to a failure to pay. This should include for example public-private partnerships where the balance of risk sharing is often obscure.

g) The ministry or debt managers should also have powers to invest (at least extending to temporary short-term cash). The legislation could indicate the range of instruments.

48. **Delegation of decisions to officials**. Unless it is already provided for in common law (as it is in the UK), it should be clear that the minister is able to delegate decisions to officials. This however does not abrogate the minister's ultimate responsibility for borrowing decisions. The minister should also have the powers to appoint agents (e.g. the central bank). References to such delegations are usually found in secondary legislation.

> **Example:** Tanzania Government Loans, Guarantees and Grants (Amendment) Act, 2003. 'The Minister may by order...delegate to any public officer specified in the order his function under this Act relating to negotiating a loan; the authority to execute on behalf of the Government any agreement or other instrument relating to a loan or guarantee raised, or given under this Act.'

49. **Powers of the ministry of finance**. Related to the powers of the minister and the purposes of borrowing are the powers of the ministry, which in some jurisdictions will be identified separately from those of the minister. How far they need to be spelt out will depend on local practice; in many cases they may be covered in secondary legislation, which has the benefit of being easier to update as institutional responsibilities change. At one extreme, in the UK there is a general power – essentially any actions by the Treasury/UK DMO) that are aimed to meet the (very broad) objectives of the relevant acts are lawful. Because of the relevance of the UK's approach to custom and practice in a number of Commonwealth countries, Box 3 sets out the UK provisions in a little more detail.

Box 3: Powers of Borrowing and Lending in the UK

The UK Treasury has wide discretion as to how it borrows or lends. It does so through two statutory funds, the National Loans Fund and the Debt Management Account. The National Loans Act 1968 was amended in 1998 to establish the Debt Management Account (DMA) – the account through which all the transactions of the DMO flow. Although the 1998 Act is a more recent and fuller expression of the available powers; the discretion available under the National Loans Fund Act is not materially different.

The legislation specifies the objectives of the account and the functions or powers that may be exercised to meet these objectives. Both are drawn broadly. Any actions by the Treasury/DMO that are aimed to meet those objectives and covered by the functions are therefore lawful.

The objectives are general: i.e. ensuring that the National Loans Fund is balanced every day (this is the formal expression of the main cash management task); facilitating borrowing; promoting the liquidity, efficiency and stability of the government securities markets; and managing the government debt portfolio. The corresponding powers are equally general – provided they are used in exercise of one or more of the stated objectives:

- The Treasury is able to manage the account in the way it considers the most efficient. (In practice these powers are exercised by the DMO).
- Sums may be held in Sterling or foreign currency.
- The Treasury may acquire or transfer any securities, and on such terms as it thinks fit.
- The Treasury may raise money in such manner and on such terms as it thinks fit. This includes by the issuance of securities, whether in or outside the UK, in sterling or foreign currency.
- The Treasury may also lend sums from the DMA for the purpose of exercising its functions, again on such terms as it thinks fit.

The same legislation also requires the preparation of Annual Accounts (with a time deadline) and their auditing by the Comptroller and Auditor General, before their presentation to Parliament. As for any Accounting Officer, the DMO's Chief Executive would be expected to be called to a Parliamentary Committee should the Comptroller judge that anything in the accounts suggested that the DMO's transactions were managed inefficiently or improperly.

50. Mauritius is a country with somewhat more elaboration, but the law is still at a fairly high-level, as set out in Box 4. At the other end of the spectrum, there is potentially a long list, as set out in Annex B.

Box 4: Section 10, Mauritius Public Debt Management Act 2008

The Ministry shall be responsible for the policy framework and strategy governing the management of public sector debt and for ensuring that the public sector debt is properly managed in accordance with that policy, and in particular, the Ministry shall:

a. Be guided by the need to:

- finance the debt at the least possible cost, consistent with prudent level of risk and the Ministry's fiscal policy objectives; and
- to develop, to the extent that market conditions, prudence and policy goals permit, a viable interest rate curve for government borrowing, using, as appropriate, benchmark issues to help track the prevailing costs of short, medium and long term financing;

b. Maintain the official register of the stock of public sector debt;

c. Study and analyse the public sector debt structure, debt repayment and debt restructuring, and any other matter relating to public sector debt; and

d. Monitor the public sector debt ceiling referred to in section 7 and guarantees by government under section 8.

The Ministry shall, for the purposes of this section, set up and maintain an electronic monitoring system to receive electronic information relating to public sector debt, from the general government and public enterprises.

The electronic information referred to in subsection 2 shall include 3-fiscal year financing plans and debt implications, updated annually or as required and a quarterly report of actual debt stock shall be made public.

51. **Authorisation for the servicing and redemption of public debt**. The GDMA should create a permanent authorisation for the payment of debt service costs, including redemption obligations. Linked with this should be a permanent or priority appropriation for all these debt servicing payments.

Example: The Jamaican Constitution provides that, 'part of any estimate of expenditure laid before [parliament] which shows statutory expenditure shall not be voted on by parliament and such expenditure shall, without further authority...be paid out of the Consolidated Fund.' Statutory expenditure includes, 'the interest on the public debt, sinking fund payments, redemption monies, and the costs, charges and expenses incidental to the management of the public debt'. (Section 116)

52. **Equal treatment for all investors**. The claims of all investors in sovereign debt should be treated equally. This provision is desirable to meet any concerns by investors or creditors that different groups may be treated differently, e.g. in the event of a debt restructuring. The need for this again depends on perceptions about the governance processes and general standing of the country. In some cases it can be adequately handled in the contractual documentation. But to avoid any doubt, it would be desirable to

Example: Mauritius Public Debt Management Act 2008. 'Notwithstanding any other enactment, all Government debt, regardless of its nature or the date it was incurred, shall have equality of status in relation to claims in respect of payment of the principal and interest, and shall constitute a first claim against the account into which the funds are deposited.'

include a suitable provision.[34] Note that this provision would not rule out preferential treatment for some category of debt management instruments, investors or transactions, e.g. tax incentives for specific groups of investors, although that would have to be covered separately.

53. **Powers to obtain relevant information**. The ministry of finance should be given powers to obtain relevant debt and guarantee information from other parts of the public sector, including from public bodies, public enterprises and state-owned companies. Certainly information is needed from these bodies to ensure that the debt managers can monitor total public sector debt and guarantees even if the main target aggregate is narrower.

> **Example:** The Macedonia Public Debt Law 2005 requires all issues of public debt to provide information within 15 days of the end of the relevant month or quarter: 'Information by the municipalities...should mandatorily contain data on the debt of public enterprises established by the municipalities.'

54. **Roles of other institutions and the relationship with other governmental bodies**. Depending on the jurisdiction, the legislation may need to specify the roles and accountabilities of other bodies associated with managing government debt, such as parliament, other ministries (such as the ministry of planning or investments) and the central bank (see also below). In some jurisdictions the primary legislation will include, for example, the central bank's role as fiscal agent; it might go on to specify e.g. the bank's responsibilities to establish and maintain a computerised system for issuing, maintaining, servicing and redeeming securities; or for running auctions. The power, if there is to be any, for the central bank to make advances to the government would usually be covered in the central bank laws. But it may be reflected in the GDMA. Separation of debt management and monetary policy objectives and responsibilities may also require legislated arrangements setting the boundary between debt and monetary policy management. Brazil provides an interesting example in this regard which included such separation spelt out in its Fiscal Responsibility Law of 2000.

> **Example:** In Mauritius the Public Debt Management Act 2008 notes that, 'In accordance with section 58 of the Bank of Mauritius Act 2004, the Bank may grant, in a fiscal year, advances to cover negative net cash flows of the Government'.

[34] A provision might also be included along the lines: 'unless otherwise provided for in any other law, the government shall not pledge or create any mortgage or security interest over public assets or resources to secure any borrowing or issuance of government securities'. That again helps to avoid concerns that some investors will be treated preferentially.

Example: Under Article 164 of the Brazilian Constitution:

- The Central Bank may not grant loans (directly or indirectly) to the National Treasury; and
- The Central Bank may buy and sell National Treasury securities to regulate the money supply or the interest rate.

Under the Fiscal Responsibility Law, Articles 35 and 39:

- Credit operations between the Central Bank and federal government are forbidden;
- The Central Bank may not issue public debt securities;
- The Central Bank may only buy federal government securities to refinance upcoming federal security debt maturing in its portfolio; and
- The federal government (through the National Treasury) may not acquire federal debt instruments in the Central Bank's portfolio unless the operation aims to reduce the securities' debt.

55. **Public Debt Committee**. If it is decided that a Public Debt Committee or similar is to be set up with decision-making powers, it should be given a legal basis. Even if only advisory, it might be advisable to provide for such a committee in legislation to ensure the co-operation and co-ordination of all concerned. Although the high-level purposes of the PDC might be in primary legislation – an example is in Box 5 – detailed terms of reference would be for secondary legislation or administrative decision. More generally, the GDMA could also include powers for the ministry to set up internal policy committees or external advisory committees; but should allow for terms of reference and membership to be promulgated separately.

Box 5: Tanzania Government Loans, Guarantees and Grants (Amendment) Act, 2003

Sections 16-18: Establishment of the Debt Management Committees

There is hereby established a National Debt Management Committee which shall be an advisory body to the Minister on all matters relating to debt management. The functions of the Committee shall be:

- to advise the Minister on matters relating to external and domestic borrowing, issuing of government guarantees and acceptance of grants on behalf of Government.
- to monitor the implementation of the Annual Debt Strategy and borrowing plan approved by the Government for the ensuing quarter.
- to prepare quarterly debt and budget execution reports.
- to advise on the formulation of an Annual Debt Strategy and borrowing plan.
- to monitor, co-ordinate and direct the activities of all government departments and institutions involved in the management of debt, grants and guarantees.
- to advise on the measures to be taken against any person for non-compliance of the provisions in the Act.

[The Act also identifies the *ex officio* membership of the committee – it is chaired by the Permanent Secretary, Treasury – and establishes a Technical Committee, chaired by the Commissioner of Policy Analysis in the Ministry of Finance, to provide advice to the National Committee.]

56. **Governance, audit, reporting and accountability processes**. The GDMA should establish the necessary governance, audit, reporting and accountability processes. These would include a requirement to publish a debt management strategy; and to report on debt management activities (as well as publish data), at least annually.

57. Some countries prefer to report to parliament more regularly, with the terms and conditions of any borrowing made during the year reported to parliament quarterly. That could be appropriate, although arguably it might be drawn more widely to cover a report on debt management operations generally (including approval of guarantees). The reporting should not require the terms and conditions of individual loans to be set out; there is no problem in the case of issued securities or borrowing from international financial institutions, but there might be constraints of commercial confidentiality in relation to commercial borrowing, where the lender will not want terms revealed to market competitors. The quarterly reports would be backed by an annual public debt management report, which would include a discussion of policy and market developments as well as the latest comprehensive data. The bulletin or annual report should also include an evaluation of outcomes against stated objectives as set out in the strategy. International good practice also entails regular reporting to parliament on contingent liabilities of the government.[35]

58. The requirement that the debt management function, as part of government, is audited by the supreme audit institution is probably covered by other legislation, covering broader financial issues; but if not, a provision should be included in the GDMA. It may include requirements as to the timetable for the submission of accounts to the auditors and their subsequent presentation to parliament. This provision may be particularly relevant for debt offices set up as an autonomous agency.

> **Example:** Section 12 of the National Treasury Management Agency Act, 1990 Ireland. 'Accounts...signed by the Chief Executive [of the NTMA] (who shall be the officer accountable for such accounts) shall be submitted as soon as may be, but not later than months after the end of the financial year of the Agency to which they relate...to the Comptroller and Auditor General for audit and a copy of the accounts as so audited shall be presented to the Minister as soon as may be and the Minister shall cause a copy of the accounts as so audited to be laid before [parliament].'

Other issues

59. **Cash management**. Provisions related to the Treasury Single Account and cash flow forecasting (including the powers to require budget units and revenue departments to supply forecast information) would normally be covered by the budget or financial administration legislation. However the

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[35] See Lienert (2010). In countries where off-budget spending is significant and takes place outside the authority of annual appropriation acts, as part of reporting requirement by the government to the Parliament, a comprehensive Fiscal Risk Statement should be provided which includes full and regular reports on all extra-budgetary spending, contingent liabilities and quasi-fiscal activities. In the absence of such transparency arrangements, it may be useful for the Parliament to avoid approving laws that authorise off-budget spending. However, this is outside the scope of the GDMA, except that debt reporting should include information of government guarantees.

GDMA may need to facilitate active cash management. This would include authorising the treasury or DME to place surplus cash in the money markets (repo or bank deposits, although bank deposits should ideally be collateralised); and to issue short-term borrowing instruments to cover cash shortfalls. This would include both repo (in more developed markets) and Tbills; and it means that there should be no restriction that limits the use of Tbills to debt management purposes only. It may be that the provisions would require consultation with the central bank.

60. **Sinking funds**. If sinking funds are established for issued securities, provisions may be needed to clarify sources of revenue and procedures for draw down of the funds; and for the management and investment of the funds' financial assets. Detail would usually be in the regulation.

61. **Other functions**. Some DMEs have been given wider responsibilities, e.g. for fund management, management of claims against government, or forward purchases of currencies or goods for other parts of government. These may need additional provisions.

62. **Taxation**. The taxation of securities and the income and gains arising, and the tax treatment of different groups of investors, are matters for the tax authority. But the GDMA could include a formal duty for the tax authority to consult with the debt manager on such questions.

63. **Expenses**. Unless it is already clear, the GDMA should specify that all expenses in relation to borrowing etc. are a proper charge on the budget. These should normally go through the budget, and not simply be netted off receipts. They may include payments to those advising on a securities issue as well as other administrative costs.

64. **Penalties**. No recommendations are made here in relation to the penalties, for officials or others, which might apply for non-compliance with the legislation. This will also be a question of local practice.

Secondary legislation

65. The issues that might be covered by secondary legislation vary greatly. In the UK for example, the arrangements for auctions are set out in an operational notice published by the DME. In many other countries, regulations, signed by the minister, possibly also agreed by parliament, will specify the conduct of auctions. The list that follows is not exhaustive, but is intended to offer a checklist of the issues that are covered by secondary legislation in at least some countries. There are others in Annexes A and B.

a) The terms of reference and procedures of the PDC or equivalent

b) Arrangements for the conduct of auctions

c) The scope and arrangements for any secondary market operations, such as repos, securities lending transactions, outright sales, bond conversions or switch auctions (a value-for-money requirement or cost saving constraint may be imposed)

d) Arrangements, if they exist, to control (or 'queue') the timing of bond issuance by non-government borrowers

e) The 'contracts' with market makers[36]

f) Arrangements for the conduct of (or constraints on) cash management operations

g) Procedures for handling project-related loans and credits (including project appraisal requirements). Associated with this are procedures for the granting of guarantees and procedures for extending on-lending, including scrutiny powers

h) Procedures for debt servicing and redemptions

i) Procedures relating to settlement, registration and the use of a local depository (although these may be covered by other legislation that applies to all securities)

j) Arrangements for managing sinking funds, guarantee funds, etc.

k) The roles, tasks and accountabilities of the DME and others with debt management responsibilities

l) The roles, tasks and accountabilities of senior officials and the procedures for their appointment (unless covered in primary legislation – see also Annex A)

m) The organisational structure of the DME

n) Detailed reporting or publication requirements

o) Agency agreement with the central bank for undertaking various debt management operations on behalf of the government which may also be reflected in the central bank act

66. The procedures for giving effect to secondary legislation will vary according to local practice.[37]

[36] In Turkey's primary legislation (Article 12 of the Law on Regulating Public Finance and Debt Management 2002), the, 'Treasury is authorised to establish the market-making system, to determine the operational principles of the system, to take all kinds of measures to ensure the smooth running of the system, or to abolish the system'.

[37] South Africa's Public Finance Management Act 1999 requires draft regulations to be published for public comment before enactment (Section 78).

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ANNEX A: ESTABLISHING A PARTIALLY-AUTONOMOUS DEBT MANAGEMENT ENTITY

Where debt management entities or partially-autonomous offices have been established under specific legislation, a range of issues needs to be covered by that legislation. The coverage and detail, and balance between primary and secondary legislation, will depend in part of the intended policy, but also on the constitutional practices, and understandings between the legislative and the executive, of the country concerned. The list below identifies the issues that are frequently addressed in legislation.

- Name, location and legal status of the agency
- Body corporate, part of the MoF, companies act, etc.
- Functions and responsibilities
- High-level responsibilities including advice to the minister and/or a PDC
- Detailed responsibilities, including for risk management and compliance – see also list in Annex B
- Any wider responsibilities, e.g. for fund management, management of claims against government, or forward purchases of currencies or goods for other parts of government
- Authority of the minister to delegate
- Means of delegation, specification of control regime, etc.
- Role and composition of advisory board or similar
- Responsibilities and powers
- Appointment procedures and payment
- Ability of MoF to meet expenses
- Arrangements for calculating management fees; powers and duties in relation to budget; powers to charge against consolidated fund
- Responsibilities of chief executive
- Status (e.g. in relation to civil service)
- Arrangements for appointment, and its terms
- Detailed powers, e.g. ability to delegate, setting pay of staff, handling of expenses, ability to recruit.

> **Example:** Section 5 of the National Treasury Management Agency Act, 1990 Ireland. 'The Government may by order delegate to the Agency the functions of the Minister specified…and any other functions of the Minister in relation to the management of the national debt or the borrowing of moneys for the Exchequer that the Minister considers appropriate and are specified in the order.'

> **Example:** The Statute of the Debt and Liquidity Management Agency, Slovakia 2003 separately specifies the issues that the agency submits to the ministry: for decision; for approval; for registration; and for execution and provision.

- Other staff provisions (e.g. superannuation)
- Reporting requirements
- In relation to minister, parliament and public
- Auditing, internal and external
- Auditing responsibilities
- Requirement for audit committee
- Approval of financial statements, and procedures for their submission
- Code of conduct issues for employees
- Scope to give advice to other parts of government

> **Example:** The Portuguese DMO (IGCP), 'may provide consultancy and technical assistance services to the central government and other public bodies as well as manage the debts of general government bodies through the conclusion of management agreements, provided these services do not conflict with its purpose'. (Decree Law 160/96)

- Requirements for consultation with the central bank or others
- A general provision setting out the scope for change (of the more detailed provisions) through separate regulation or order

ANNEX B: POTENTIAL DEBT MANAGEMENT RESPONSIBILITIES OF THE MINISTRY OF FINANCE

The responsibilities set out below may be included in primary or secondary legislation. Although identified to the ministry of finance, they may in practice be given to the DME or equivalent. The legislation may separately provide for some of the responsibilities to be given to an agent.

- Preparation, submission and execution of the debt management strategy
- Preparation and submission of the annual financing plan and its execution
- Preparation of an annual report on the implementation of the debt management strategy and of the annual financing plan
- Servicing the government's debt, and associated procedures
- Monitoring the timely servicing of public sector debt issued by sub-national tiers and the wider public sector
- Contracting project-related loans and credits, negotiating terms and on-lending arrangements, and extending guarantees as necessary (and associated tasks, including in some circumstances conducting or checking the underlying appraisals)
- Ensuring payments due to government are properly made (e.g. in respect on on-lending and reimbursement of any payments made under guarantees)
- Organising and issuing government securities, including preparation and publication of a calendar of planned issuance
- Recording of issuance of government securities; execution and monitoring of (a defined range of) transactions on the secondary market
- Creation of conditions for development of the secondary market
- Setting the criteria for selection of authorised participants (and/or market makers) on the government securities market, and monitoring their performance
- Undertaking activities for minimising the cost for servicing the state debt and the issued sovereign guarantees; and for reducing the risk related to the public debt structure and sovereign guarantees (which may separately specify debt restructuring, early redemptions, conversions, switch auctions, interest rate swaps, other derivatives, etc.)
- Managing the investment the surplus funds; of sinking or guarantee funds
- Maintaining the public debt registry; registry of sovereign guarantees; and registry of holders of government securities
- Managing operational risk in relation to the relevant functions