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EQUITABLE GROWTH, FINANCE & INSTITUTIONS INSIGHT

Enhancing Debt Transparency by Strengthening Public Debt Transaction Disclosure Practices

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Recommendations at a glance

- Borrowers and lenders should not use confidentiality clauses: (i) that amount to secrecy clauses in specific public debt transactions; or (ii) to prescribe that disclosure only be made upon full repayment, termination, or at final maturity of the loan (paragraph 26.a.).
- Borrowers and lenders should require the ability of borrowers to share complete information about individual public finance transactions with the World Bank and the IMF, given their roles in the international financial architecture, as elaborated in paragraph 26.b.
- National legal frameworks should mandate the timely public disclosure of transaction-level public debt information including the method and location for such disclosure (paragraph 26.c.).
- Borrowers should aim at a level of public disclosure of public debt transaction information that is meaningful and sufficiently granular to facilitate stakeholder awareness, scrutiny of government actions and public accountability (paragraphs 26.d., 27 and 28).
- Borrowers should use standardized approaches, where feasible, to confidentiality and disclosure in individual public debt transactions, that facilitate information sharing and public disclosure (paragraph 26.e.).



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Abbreviations and Acronyms

IFI	International Financial Institution
IIF	Institute of International Finance
IMF	International Monetary Fund
LMA	Loan Market Association
LSTA	Loan Syndications and Trading Association
MDB	Multilateral Development Bank
OECD	Organization for Economic Co-operation and Development
PDMLF	Public Debt Management Legal Framework
PRGT	Poverty Reduction and Growth Trust
SOE	State-Owned Enterprise



EXECUTIVE SUMMARY

1. Improving debt transparency is critical for promoting debt sustainability and creditworthiness assessments, increasing the accuracy of public debt information, and protecting the interests of a diverse range of stakeholders. The importance of debt transparency, the costs associated with the lack of it, and its benefits, are extensively discussed in recent World Bank literature.¹
2. One of the key factors that limits debt transparency as it relates to public disclosure and the sharing of public debt-related information, is *transaction-level* confidentiality and disclosure practices. Challenges to disclosure have become more evident during recent debt distress among borrowing countries, and the COVID-19 pandemic. The discussion in this paper reveals issues that arise from confidentiality and disclosure practices among lenders and borrowers; and highlights how these issues cause information asymmetries and undermine the interests of stakeholders. The paper concludes by proposing concrete and actionable recommendations for the World Bank, IMF and sovereigns.



1. In particular the report *Debt Transparency in Developing Economies*, published in November 2021.

Confidentiality & Transaction-Level Disclosure Practices as a Challenge to Debt Transparency:

3. Confidentiality and transaction-level disclosure practices present an important challenge to debt transparency. Greater public disclosure and sharing of transaction-level information related to public debt enhance debt transparency by:

- making public debt statistics and data more accurate;
- informing **debt sustainability assessments** with granular information that helps avoid “hidden” and “surprise” debt;
- facilitating **lender finance decisions** and creditworthiness analysis;
- minimizing **information asymmetries** between creditors and debtors. For example, without transaction-level information disclosure, the use of **collateral** and **quasi-collateral** can easily remain hidden. Similarly, a debtor’s vulnerability to economic shocks, as well as the availability of assets for liquidity and paying its unsecured creditors, are difficult to accurately assess. This is especially the case for natural resource-rich countries;
- giving the public, taxpayers, and other civil society stakeholders the opportunity to scrutinize public debt;
- enhancing the borrower’s reputation and credibility among lenders, and fostering lender/investor confidence, which might positively impact pricing and the cost of borrowing, since embedded risk premia may be reduced or removed;
- enhancing information timeliness. Indeed, the disclosure of transaction-level information can more feasibly take place in a “closer-to-real-time” timeframe, and avoid the time lags that tend to occur between the incurrence of public debt and the availability of aggregated public debt data and statistics; and
- facilitating efficient and effective **debt restructurings** and helping to **build trust among creditors**.

4. Confidentiality and disclosure practices are influenced by a wide range of incentives and factors, including:

- information that **may reasonably be considered confidential** – e.g., proprietary or technical information, such as financial calculations or formulae, and price-sensitive or commercially sensitive information;
- **domestic political considerations** (e.g., **upcoming elections**) and pressure from the public on economic matters (e.g., the **prospect of civil unrest**) may also skew a government’s willingness to disclose specific finance transaction-related information;
- reluctance to reveal the true state of strained public finances;
- corruption;
- as **bond issuers**, sovereign governments will typically be mindful of information being disclosed that could impact their position in bond markets;
- applicable law and regulation; and
- bargaining power, technical capacity, and lender pressure for confidentiality or secrecy.

5. Approaches to confidentiality and the disclosure of loan-level information vary by lender, borrower, and market. For example, in commercial loan markets that use English or New York law, relevant model form confidentiality clauses require lenders (rather than borrowers) to maintain confidentiality. Meanwhile, **multilateral development banks** usually operate under policies requiring access to information and therefore publicly disclose the terms and conditions of loans made by them. Other lender and borrower practices range along a spectrum. **Restrictive confidentiality approaches may require secrecy**, or disclosure only upon final maturity or repayment of the loan. At the other end of the spectrum are arguments in favor of the **public disclosure of entire debt contracts**, although the practical attainability of this is challenged by factors such as: (i) confidentiality clauses; (ii) rules under national information disclosure frameworks; (iii) considerations related to sovereign and lender interests; and (iv) the capacity/resources of the public and other stakeholders to analyze entire transaction documents.



Recommendations

6. In order to improve confidentiality and disclosure practices, this paper recommends approaches that differentiate the information needs across stakeholders. It is recommended that:

- borrowers and lenders **should not use confidentiality clauses to: (i) maintain secrecy** about public debt transactions; or (ii) only permit disclosure of transaction information upon full repayment, termination, or final maturity of the loan;
- borrowers and lenders should expressly acknowledge **the ability of borrowers to share complete information about individual public finance transactions with the World Bank and the IMF, given their roles in the international financial architecture.** Such support entails: (i) routinely including language in finance contracts to expressly permit the borrower, or to acknowledge the borrower's right (as appropriate), to provide (without any need to seek further consent) entire public debt transaction documentation and information to the World Bank and the IMF; and (ii) engaging with the LMA (Loan Market Association) and LSTA (Loan Syndications and Trading Association) to include a similar provision in relevant model form documents used in English and New York law markets, respectively;

- **timely public disclosure of transaction-level public debt information be mandated through national legal frameworks**, including specification of the method (digital and/or physical) and location for such disclosure;
 - **transaction-level information be publicly disclosed by borrowers** by aiming at a degree of public disclosure that is meaningful and sufficiently granular to facilitate stakeholder awareness, scrutiny of government actions, and public accountability. This could be implemented via a schedule of transaction information that forms part of the (main) debt contract and is agreed/acknowledged by transaction parties at the time of signing the deal. The borrower would be responsible for timely public disclosure of the information at an easy-to-find location(s) (e.g., website of the government's debt management office); and
 - the benefits of borrower-specific **standardization** be explored.
7. This paper recognizes that there can be sound reasons for confidentiality; and seeks to balance factors that inherently influence current practice against the interests of diverse stakeholders and the need to improve debt transparency.



PART I:

Why Transaction-Level Debt Transparency?²

- 1. Access to accurate, timely, and sufficiently granular public debt information is important for facilitating sound borrowing decisions, sovereign debt sustainability, creditworthiness assessments, and good governance.** Debt transparency³ through the availability of reliable information enables borrowers and creditors to take informed decisions. Debt transparency is also critical for effective debt restructuring. The public availability of sovereign debt information facilitates government accountability and taxpayer scrutiny of the use of borrowed funds. It also benefits borrowers by enhancing their credibility with investors, lenders and rating agencies, thus possibly contributing to reductions in borrowing costs. Transparency may also function as a disincentive for corruption. Record-high public debt levels, which became worse during the COVID-19 pandemic, have placed debt transparency in the spotlight. The importance of debt transparency, the costs associated with the lack of it, and its benefits are extensively discussed in recent literature.⁴
- 2. This paper was prompted by disclosure-related challenges and friction points that became evident during recent periods of widespread debt distress in developing countries.** As a result of instances such as: (i) the non-sharing of transaction-related information with IFIs that perform debt sustainability assessments and generate global debt information for stakeholders; (ii) revelations of “surprise” and “hidden” debt; (iii) undisclosed granting of collateral and quasi-collateral that, if disclosed, may impact creditor assessments of borrower liquidity or creditworthiness; and (iv) inter-creditor mistrust and tensions during debt restructurings; it is obvious that confidentiality clauses and/or the inadequate sharing or disclosure of transaction-level public debt information can significantly impede debt transparency. These impediments cause information asymmetries and undermine stakeholder interests. At the same time, insufficient granularity of transaction-level public disclosure leaves civil society stakeholders largely in the dark.

2. The authors of this World Bank paper are Susan Maslen (LEGFI – Corporate Finance), Legal Vice Presidency; and Cigdem Aslan (EMFMD), Macroeconomics Trade & Investment Global Practice. This paper was prepared under the leadership of Marcello Esteveo (EMFDR), Cliff Frazier (LEGFI), Doerte Doemeland (EMFMD) and Ivailo Izvorski (EMFMD). The authors would like to thank the following colleagues for their peer review: Isaias Losada Revol, Rita Ramalho, Diego Rivetti and Ximena Talero. We would also like to thank Lee Buchheit, Adam Lerrick, and Brian Pinto for their review and inputs, as well as the following colleagues from the IMF: Wolfgang Bergthaler, Sebastian Grund, Alessandro Gullo, Hoang The Pham, and Karla Vasquez Suarez. All review, inputs and comments are greatly appreciated.

3. The term “debt transparency” is used broadly in this paper to refer not only to the availability of comprehensive, detailed, timely, and consistent public sector debt data (WB 2021; and WB & IMF 2020b), but also covers the attributes of public debt operations and public debt management legal frameworks that promote public disclosure, overall systemic transparency, and clarity.

4. Examples include the World Bank’s report *Debt Transparency in Developing Economies*, published in November 2021.



3. **The purpose of this paper is to discuss common transaction-level information disclosure practices and shortcomings, to explore the variety of incentives and factors that influence them, and to propose solutions.** The discussion considers the different nature of stakeholders and their information needs and capacities. It aims at demonstrating that practices by borrowers and lenders in the realm of confidentiality, disclosure and public disclosure need to be improved. This paper concludes by making concrete recommendations aimed at influencing borrower and lender behaviors. The recommendations include a framework of loan information proposed for routine disclosure to the public by sovereign and state-owned enterprise (SOE) borrowers. Other recommendations relate to the ability of borrowers to provide information to certain IFIs. The paper also underscores the links between transaction-level confidentiality, disclosure practices, and public debt management legal frameworks (PDMLFs), by recommending the use of public disclosure mandates to boost public debt contract-related transparency.

4. **This paper complements the debt transparency work of the G20 and the G7.** It also complements the World Bank's ongoing initiative towards strengthening its Debtor Reporting System to obtain more granular debt information from borrowers. The topics discussed in this paper are integral to public debt management and debt transparency-related technical assistance by the World Bank to its member countries, as well as debt transparency-related policy actions and reforms promoted through certain World Bank operations. This paper also elaborates on our discussion of confidentiality and transaction-level disclosure in recent publications.⁵

5. **This paper is structured as follows.** Part II analyzes the nature and shortcomings in current disclosure practices related to transaction-level loan information⁶ and highlights the need for improvements which: (i) are readily "actionable"; (ii) broadly balance public and private sector interests; and (iii) complement existing private sector debt transparency initiatives. Part III concludes with recommendations to meet the challenges discussed in Part II by applying legal and policy concepts to support better disclosure practices and enhance public debt transparency.

5. In particular, the World Bank's *Debt Transparency in Developing Countries*, published in November 2021. It also builds upon issues targeted in the OECD's implementation of the IIF's *Voluntary Principles for Debt Transparency*.

6. Disclosure challenges in connection with sovereign/SOE bond issuances are beyond the scope of this paper. It is a topic that we hope to approach separately in due course. Bond issuances are subject to listing rules, selling rules, and relevant securities laws (some of which address disclosure matters) in the jurisdiction of issuance and are generally more transparent than the bilateral/syndicated loans markets. The securities laws of the jurisdiction of issuance also help underpin fairly rigorous due diligence procedures that are undertaken by underwriters vis-à-vis issuers. Additional scrutiny in connection with bond issuances is undertaken by credit rating agencies for the purposes of rating bonds. Common challenges to debt transparency in bonds include: (i) the non-availability of the legal documentation (e.g. trust deeds/indentures, agency agreements) that underlies a bond issuance; (ii) the limited availability of sovereign bond prospectuses/ offering circulars except via subscription to proprietary, commercial databases such as Perfect Information and Dealogic; and (iii) the availability in some jurisdictions of exemptions to sovereign issuers in connection with certain securities laws related to disclosures.



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PART II:

Addressing Confidentiality & Disclosure Practices in Public Debt Transactions

6. This part of the paper considers debt transparency as it relates to individual finance⁷ transactions. It focuses on issues related to confidentiality and disclosure practices. It highlights the importance of improving transparency with respect to transaction-level information and discusses some of the challenges.



7. The discussion of “*debt*” in this paper is aimed at public debt/borrowing transactions, (express) sovereign guarantees/contingent liabilities, as well as finance transactions undertaken by sovereigns and state-owned enterprises (SOEs) that may not be classified as “*debt*” in a technical sense but that have a similar economic effect as a borrowing, and that are considered “*debt-like*” or “*debt-equivalent*” instruments. Accordingly, the words “*finance*”, “*loan*”, and “*debt*” are used interchangeably in this paper.



II.A. Disclosure of Details about Individual Finance Transactions Supports Debt Transparency

7. There are numerous ways in which the availability of adequate, accurate, and timely information related to individual debt transactions supports the objectives of debt transparency:

a. The availability of transaction-level information improves the accuracy of public debt statistics.

A wide range of lenders – including international financial institutions (IFIs) such as the World Bank, the IMF, and regional development banks, as well as sovereign lenders, export-credit agencies and commercial/private lenders – and credit rating agencies, rely on the availability of meaningful sovereign and SOE debt information in order to inform their assessments and decisions. Accordingly, the role of IFIs such as the World Bank and the IMF in compiling debt reporting and publishing global public debt statistics is critical. Information from individual finance transactions is an important input in generating accurate,

aggregated and non-aggregated, portfolio-level public debt data and statistics on developing country borrowers. To the extent that information pertaining to a specific debt transaction is held under an obligation of confidentiality, it may negatively impact whether and how the relevant country feeds the deal-specific information into its debt reporting. The potential impact of unreported and undisclosed borrowings that become subsequently revealed was demonstrated recently in the case of Mozambique and the Republic of Congo, where the debt numbers for each country needed to be revised *upward* and each country was re-classified as being in debt distress (WB&IMF 2018a.).

b. Details of individual debt transactions enhance analysis of debt sustainability, creditworthiness, and compliance. Individual loan-related information is an ingredient used by lenders to assess borrower creditworthiness and

debt sustainability. It helps lenders and donors consider additional borrowing needs, appropriate levels of concessional lending or grant elements, pricing, and repayment capacity. Transaction-level debt information is also critical for assessing debt restructuring prospects and determining comparable treatment among creditors in the context of debt suspension and restructuring initiatives. Moreover, the availability of individual transaction-level information offers clearer insights to lenders about borrower performance and compliance with certain loan covenants (e.g., negative pledge, permitted lien clauses, and financial ratios) under existing debt. If sufficiently granular information is provided, such information also indicates if there are novel transaction features.

c. Information from individual finance transactions can help to fill gaps owing to the time lags inherent in generating public debt statistics.

Considerable time lags tend to occur between the incurrence of public debt and the availability of public debt data and statistics (WB&IMF 2020b and 2018a). In addition, since public debt statistics tend to be aggregated in presentation, it can be challenging to ascertain the inclusion of a specific debt and to cross-compare information from different data sources. The disclosure of information about individual finance transactions can more feasibly take place in “real-time” than aggregated debt statistics, and thereby offer stakeholders solid information on a borrower’s most recent debt finance activities. Information about a borrower’s most recent individual finance transactions is also an important ingredient towards lender due diligence.

d. The availability of transaction-level debt information facilitates efficient and effective debt restructurings by building trust among creditors and ensuring that agreed debt restructurings are sustainable. The recent example of Zambia illustrates the tensions and mistrust that can arise among creditors in a debt restructuring context where information pertaining to certain debts is not disclosed. A group representing

roughly 40% of Zambia’s bondholders (including sophisticated players like hedge funds) did not accept a request from Zambia for a suspension of interest payments on bonds. The non-acceptance was because there was inadequate sharing of information about how the borrower proposed to handle other debts owed to different (large) lenders, namely Chinese lenders estimated to hold roughly US\$ 3 billion of debt (Stubington and Fletcher, 2020). Bondholders were essentially concerned that if they agreed to a standstill/suspension of payments, then the saved monies would be diverted to pay the other creditors on-time and without any discount (i.e., essentially a “free-riding” concern). Given their concerns about comparable treatment across creditors, bondholders continued to hold out, and, in November 2020, Zambia defaulted on a bond interest payment due to the failure to agree on terms. In this overall context, the importance of disclosure of transaction-level debt information is clear, whether that be around the time that debt is incurred, or at the time of debt restructurings/suspensions.

e. The disclosure of collateral and collateral-like features in individual finance transactions is critical for debt transparency.

The giving of collateral⁸ or quasi-collateral in a sovereign borrowing may allow access to finance that the borrower would otherwise not have; or offer pricing/maturity terms more favorable than otherwise available. The availability of information about the existence of collateral or quasi-collateral in a public finance transaction is particularly important. A lack of disclosure, or lack of timely disclosure, causes information asymmetries in assessing the debtor’s vulnerability to economic shocks; and the nature and scope of assets available to a borrower as a source for repaying unsecured creditors. This is especially relevant for sovereign borrowers that have economies heavily reliant on one sector for national revenues – e.g., commodity/natural resource exports, or the export of a single commodity such as oil (WB, 2021).

8. As used in this paper, a debt instrument is “collateralized” when the creditor has rights over an asset or revenue stream that would allow repayment of the debt if the borrower defaults on its payment obligations. In a legal sense, collateralization typically entails a borrower granting liens/security interests over a specific asset(s) or future receivables to a lender as security against repayment of the loan (although interpretations may vary by jurisdiction). The concept of “collateral-like features” as used in this paper refers to arrangements that do not entail the formal granting of a security interest, but that have a similar economic effect. Collateral-like features often give lenders that know about them a “first mover advantage”, for instance in being able to withdraw funds from a debtor’s deposit/collection account ahead of other legally unsecured lenders. Collateral-like features or structures in a transaction are sometimes also referred to as “quasi-collateral”, “quasi-security”, and “commercial security”.

- f. **In recent years, the use of escrow accounts, debt service reserve accounts, and deposit accounts in public debt transactions have gained increased attention.** An example entails the use of a deposit account, which is established separately from the loan repayment account(s). The deposit account may be opened in the name of the borrower or in the name of an associated entity (such as an oil-producing SOE), and is held at, and managed by, the lender. The purpose of the deposit account is to hold the proceeds of certain (reliable, separately contracted) commodity sales as a kind of commercial or quasi-collateral. Under such a transaction structure, the lender will have a broad contractual right to dip into the monies in the deposit account to pay itself if the borrower is late, looks like it will be late, or otherwise defaults on making relevant loan repayments. In this example, the funds delivered into the deposit account stem from commodity sales transactions that are completely *unrelated*⁹ to the loan made by the lender. The benefit of this kind of structure to a lender is reinforced where there is no disclosure about the existence of the deposit account. Even if other lenders/IFIs are aware of the *commodity sales*, if they have no way of knowing about the existence and function of the deposit account (due to confidentiality, a practice of not disclosing, or due to insufficiently granular disclosure), then this opaqueness reinforces the practical dedication of the deposit account proceeds *solely for the benefit of the specific lender(s)*. As noted above, a lack of disclosure of transaction-specific information like this complicates assessments of debt sustainability, creditworthiness and seniority; and may cause mispricing in other loans (Gelpern et. al., 2021).
- g. **From a public interest perspective, publicly available debt transaction information offers an opportunity for greater scrutiny of government actions and easier verification of the proper use of proceeds.** This in turn promotes government accountability and helps disincentivize or “weed out” corruption. Taxpayers and other stakeholders have a vested interest in being able to access information related to the various debts generated by sovereign borrowers. This is because the citizens of the country are indirectly burdened with the repayment of public debt, whether through their taxes; the need for increased production towards exports that

defray debt; or by foregoing government services or subsidies that shrink in times of budget deficits and fiscal austerity. An absence of public disclosure denies the public the opportunity to scrutinize debt. As noted above, scrutiny is especially important when national assets of any kind (whether cash, gold reserves, revenue streams from resource sales, or physical infrastructure, such as power stations and ports) are used as collateral or quasi-collateral; or where lenders have step-in/control rights over assets or revenue streams that become activated in a default. Similarly, to the extent that a sovereign lends to other sovereigns, then taxpayers and civil society stakeholders in the sovereign lender country also have a stake in accessing information about loans made by their governments, as well as any accommodations made due to borrower repayment difficulties (Gelpern, 2018).

- h. **Disclosing transaction-level debt information may improve the experience of borrowers.** Transparent transaction-level information may enhance the borrower’s reputation and credibility among lenders, foster lender/investor confidence, and may positively impact pricing and the cost of borrowing, since embedded risk premia may be reduced or removed (Mustapha & Olivares-Caminal 2020). In addition, where a sovereign borrower is able to share transaction-specific information over the life of that transaction, then the borrower may more readily seek advice or technical assistance about how best to navigate payment difficulties and budgetary troubles that arise.

8. **Non-disclosure undermines debt transparency and the interests and roles of the full range of stakeholders.** There is relative interdependence among the interests and roles of stakeholders when it comes to debt transparency. As outlined above, key stakeholders include: (i) the public; (ii) borrowers; (iii) lenders, creditors, donors, and credit rating agencies; and (iv) IFIs (which may also be lenders) that are tasked with generating global debt data, conducting debt sustainability assessments, and providing emergency funds in times of crisis. While the specific nature of their interests as well as their capacity to analyze transaction-level information differ, the ability of each of these stakeholders to protect their interests and perform their roles is impacted where there is an absence of meaningful disclosure.

9. Collateral *per se* is not a bad thing. See WB&IMF, 2020a., for an explanation of how “related” and “unrelated” collateral are viewed differently.



II.B. Incentives and Factors that Influence Confidentiality and Disclosure Practices

9. Confidentiality *per se* is not unreasonable.

Reasonable drivers for keeping certain information confidential (or, in some instances, confidential for just a limited period of time) include where the information is proprietary or technical (e.g., financial calculations or formulae), price-sensitive or commercially sensitive (e.g., interest rates, fee information). These drivers may be present on either the lender or the borrower side. Arguably, the reasonableness of these drivers varies depending on the context, parties, circumstances, and jurisdiction.

10. Other drivers of confidentiality are inherently more subjective and not necessarily reasonable from a purely disclosure-oriented perspective.

From a sovereign's perspective, domestic political considerations (e.g., upcoming elections) and pressure from the public on economic matters (e.g., the prospect of civil unrest) may also skew a government's willingness to disclose detailed finance transaction-related information. This may be particularly the case in a restructuring context, or when the needs for funds are pressing and finance is negotiated fast, or government procedural corners are cut. In such situations, borrowers may be reticent to disclose transaction details, not just

at the time of incurring the debt but also over the life of the loan. Other drivers of non-disclosure may include a fear of revealing the true state of strained public finances; lender pressure for confidentiality or secrecy; and corruption (Group of Thirty, 2020).

11. Hesitations to publicly disclose may also stem from a sovereign borrower's bond market position.

Additional disclosure considerations may arise (justifiably or otherwise) where the sovereign borrower is also an issuer in the bond markets. As bond issuers, sovereign governments will typically be mindful of information being disclosed that could impact: (i) the pricing of their bonds, especially if they plan to soon go to the markets to raise funds; (ii) the trading of their bonds in the secondary markets; (iii) investor perceptions; and (iv) their credit rating. However, the more concerning the relevant information is, the more likely it is that such information *ought* to be disclosed. The reality of these factors indicates that while confidentiality clauses in individual debt transactions have a practical impact on public disclosure and other information sharing, they are just one aspect of the overall equation in debt transparency outcomes.

12. Factors under national legal frameworks may also influence a sovereign's approach to disclosure.

National legal frameworks from either the sovereign borrower or that apply to the lender may be relevant to public disclosure considerations. Examples include the following:

a. Public disclosure may be informed by rules emanating from domestic legislation *outside* the borrower country's public debt management legal framework.

While the instances of public debt contracts being impacted by national laws may be limited in nature and scope, examples of relevant laws include those about access to information, privacy and data protection, freedom of information, national security, and public procurement. Rules under these kinds of laws may impact disclosure by specifying the timing of disclosure (e.g., disclosure within or after a specific period), requiring a certain level of disclosure, or by limiting or precluding disclosure. They may also stipulate the modalities for disclosure, such as requiring the redaction of information, or the provision of summary information. Examples include the following:

- i. Under privacy laws, signatory names and personal details, banking details, addresses, signature panels, and other information may not be disclosable.
- ii. Under freedom of information laws, while the transactions and activities of many central government departments may be subject to disclosure requests from the public, there will inevitably be cases where individual transactions (or parts thereof) are exempted and not disclosable under the relevant legal frameworks. With respect to sensitive subject matters, freedom of information legal frameworks (in countries where they exist) often entail public policy balancing acts, where the interests of public disclosure are weighed against strategic or other national interests. Obviously, these public policy balancing acts are open to conveniently broad interpretation by sovereigns that wish to preclude disclosure. An example of a public finance contract excluded from disclosure in this context may include finance to purchase intelligence equipment.

Similarly, national security laws may preclude disclosure of public debt contractual information for the purchase of things like military equipment.

- iii. Laws such as Ecuador's *Organic Law on Transparency and Access to Public Information* support debt transparency by requiring public disclosure of a certain amount of information related to external and local public debt transactions.¹⁰

b. The laws and regulations of other jurisdictions may also influence public disclosure by borrowers.

Sovereign borrowers (and lenders, whether sovereign or otherwise) may be bound by laws or regulations of the jurisdiction in which they operate or that is chosen as governing the relevant debt contracts. One such example is privacy laws (such as Europe's *General Data Protection Regulations*) that seeks to apply trans-nationally and may prescribe rules of redaction and information handling protocols.

13. Bargaining power and negotiating capacity may also impact the borrower's ability to reject strict or non-market-standard confidentiality clauses.

In most loan settings, the bargaining power and negotiating capacity of a developing country borrower (or its SOE) is weaker than that of the lender. It is also typical for a lender to control the drafting process for finance documents.¹¹ Borrowers may compensate for any deficit in technical and negotiating capacity by engaging appropriate legal counsel or other advisors. Even with sound advice, other dynamics may exist to tilt the bargaining power away from the borrower. For example, if an oil-rich sovereign borrower is experiencing large budget deficits at a time when oil prices are very low, and the cost of servicing external debt rises due to steep foreign exchange movements, these factors may impact bargaining dynamics and the terms that the borrower is willing to accept. In such a scenario, the borrower may be more inclined to focus its negotiating energies on the speed with which the deal can be closed, and core terms such as loan pricing and tenor, while being more accommodating to any lender requests for bespoke or non-market-standard confidentiality arrangements (or, for that matter, other mechanics, such as the provision of collateral).

10. See Article 7 of *Ley Organica De Transparencia Y Acceso a La Informacion Publica*.

11. This plays out firstly because it is usual practice for lender's legal counsel to "hold the pen" when it comes to drafting and negotiating loan/finance documentation. Secondly, in drafting the documentation, it is customary for the lender's usual documentation related to the specific financial product to be used. In the case of a commercial lender, such documentation is usually based on market-standard model forms (see paragraph 16) which are then tailored to reflect the lender's preferences, protect the lender's key interests particular to the transaction, and be consistent with the lender's deal-management systems. This tailored documentation is typically the starting point for a negotiation with the borrower.



II.C. Approaches to Confidentiality and Disclosure in Public Debt Transactions

14. Confidentiality/disclosure clauses¹² are widely used in financial transactions. Contractual approaches to confidentiality vary depending on the nature of the lender, the borrower and market practice. They are commonly used in loan agreements entered into by commercial/private lenders, export-import banks, export credit agencies, and some international financial institutions. Confidentiality clauses are also used in loans to sovereigns made by state-owned banks (Gelpern et al, 2021). Although not absolutely clear, it is likely that confidentiality clauses are also deployed in some sovereign-to-sovereign loans (WB & IMF, 2019a). In this way, confidentiality clauses (of some sort or other) are more-or-less a norm in finance documents. As a practical matter, since one cannot necessarily know if the non-disclosure of a borrowing is due to the existence of a confidentiality clause, disclosure practice is also significant.

15. While the exact wording of confidentiality/disclosure clauses depends on the context and the parties, they have some common components, including the following:

- a. The parties identify what sort of information constitutes confidential information.
- b. The clause indicates *whether the confidentiality obligations are mutual or only apply to one or some of the parties* and in what circumstances. Sometimes the obligation applies to all parties except about how they handle their own information.

- c. A list is used to *identify upfront frequently occurring situations when disclosure is permitted*. Examples include: (i) where required by a court, relevant tribunal or due to litigation; (ii) where required by applicable law or regulation; (iii) for the purpose of consulting professional advisors such as lawyers and accountants; (iv) sharing with subsidiary or associated entities for specified purposes, usually with the caveat that any such party is also required to maintain the information as confidential; (v) with the consent of the other party or parties.
- d. Clauses also often state that where any confidential information enters the public domain through no fault of a party bound to maintain confidentiality, then such information is no longer considered confidential information. The clause may include a stipulation limiting the time for which the relevant information is considered confidential. Confidentiality/disclosure clauses used by government agencies and IFIs may refer to their ability to disclose information in accordance with the applicable policies and procedures of their organizations.

16. Among commercial lenders, the starting point for drafting a loan facility is usually the relevant prevailing market-standard model form. Frequently used jurisdictions/governing laws include England and New York, and the main model forms for commercial lenders in these markets are generated by the Loan Market Association (LMA),¹³ and the Loan Syndications

12. In this paper the term “confidentiality clause” is used interchangeably with “disclosure clause”. Finance agreements used by commercial and private lenders typically use the term “confidentiality”. In the case of IFIs, a confidentiality provision may be referred to as either a “confidentiality” or a “disclosure” clause. The use of the term “disclosure” in finance agreements is more common in the case of IFIs that have a focus on the public sector. See paragraph 18 for elaboration about the approach of IFIs to disclosure. Accordingly, the terms “confidentiality” and “disclosure” represent alternate ways of addressing the same or similar substantive points, as applicable to the context of the parties.

13. The Loan Market Association (the LMA) is based in the UK with a membership of over 750 organizations, such as banks and law firms, and over 65 countries. It aims at improving liquidity, efficiency, and transparency in the primary and secondary syndicated loan markets. Among other things, the LMA aims for its model form loan agreements to be widely used in commercial loan markets across Europe, the Middle East and Africa. LMA model forms are available to members.

and Trading Association (LSTA), respectively. Provisions are usually adapted by the parties for their contexts as needed, such as altering the model form to cater to a sovereign borrower or SOE context, etc. Such adjustments may include making changes to the form of confidentiality clause, whether at the suggestion of the lender or the borrower.

17. The LMA's model form confidentiality provision¹⁴ is drafted to protect the borrower's interests by requiring the lender(s)/arranger(s) to maintain confidentiality. This reflects a private banker's broad obligation of confidentiality to its customer. Among the carve-outs that permit lenders to disclose confidential information are: (i) where the disclosure would be required under applicable law and regulation; (ii) disclosure to relevant parties for the purpose of consulting with professional advisors (e.g., lawyers) and auditors on the condition that any such party also be required to maintain confidentiality; and (iii) disclosure with the consent of the borrower. On the other hand, the borrower's obligation to maintain confidentiality is limited to price-sensitive information about funding rates. This narrow obligation emanates from the LIBOR Code of Conduct which requires lenders to obtain confidentiality undertakings from relevant parties to whom funding rate information is divulged – i.e., in this case, the borrower. The confidentiality clause used in the LSTA model form credit agreement¹⁵ is drafted along similar lines in that the obligation of confidentiality is largely placed on the lenders, banks, and agents rather than the borrower. A confidentiality clause along these lines would not limit the ability of a sovereign borrower to share information with the IMF, the World Bank and other IFIs. Such a confidentiality clause also does not expressly preclude public disclosure by the borrower of key transaction information.¹⁶

18. Many multilateral development banks (MDBs) operate under a policy framework oriented towards public disclosure in their lending operations. For example, IBRD and IDA are subject to the *World Bank Policy on Access to Information*.¹⁷ The policy entails numerous documentation classifications and

categories, with corresponding protocols for the handling of information. In general, whilst the World Bank maintains confidentiality (among other instances) when requested by third parties, and for a time-bound period in connection with internal deliberative materials, the overall orientation of the policy framework aims at greater public disclosure in connection with Bank operations. This orientation also syncs with the public sector nature of most of the World Bank's activities. IBRD's and IDA's lending terms and conditions, which are standardized across borrower categories, are publicly available.¹⁸ Instead of a confidentiality clause, IBRD/IDA lending documentation (through the relevant set of *General Conditions*) refers to the Bank's right to disclose in accordance with its *Policy on Access to Information*. In addition, World Bank operations are subject to public disclosure requirements at various stages throughout their life cycle. Other multilateral development banks such as the Asian Development Bank,¹⁹ the African Development Bank²⁰ and the Inter-American Development Bank²¹ also publish the terms and conditions for their loans.

19. The approaches to confidentiality adopted by the range of other lenders vary. The nature of model form finance documents used by sovereign lenders, export-credit agencies (ECAs), and state-owned banks varies by lender. To the extent that an ECA or state-owned bank lends in a particular commercial context, much of the model form (including confidentiality and disclosure provisions) adopted may be similar to models used by commercial and private sector lenders in the relevant markets. In most cases, adjustments to contractual language are made to account for the institutional context of the lender, and perhaps also depending on whether the loan is non-concessional or concessional in nature. G20 sovereign lenders commit to a range of good transparency-related lending practices (WB&IMF 2019a.). ECAs commit to lending practices that observe debt sustainability (OECD 2018) in financing activities with low-income countries, although notably the relevant guidelines do not provide specific guidance on *public disclosure with respect to individual transactions*.

14. The LMA has a range of model forms. The model referred to here is the *Single Currency Term Facility Agreement for use in Developing Market Jurisdictions*.

15. The LSTA model referred to is the *Form of Credit Agreement* dated October 19, 2017 and re-posted on January 10, 2018 and the relevant clause is section 9.12 *Treatment of Certain Information; Confidentiality*.

16. Having said that, from a practical and relationships perspective, a borrower may be well-advised to check any proposed public disclosure (including the extent of same) with the lender/agent in advance. See the discussion in section E below about disclosure of entire contracts and entire parts of contractual text.

17. <https://www.worldbank.org/en/access-to-information>

18. <https://www.worldbank.org/en/topic/lawjusticeanddevelopment/publication/general-conditions>

19. <https://www.adb.org/documents/series/loan-regulations>

20. <https://afdb.org/en/documents/document/general-conditions-applicable-to-loan-guarantee-and-grant-agreements-of-the-afdb-and-the-afg-23881>

21. <https://www.iadb.org/en/legal-resource-center/general-conditions-sovereign-guaranteed-loan-contracts>



Box 1 - Implementation of the IIF's Voluntary Principles for Debt Transparency

- 1. In 2019 the Institute of International Finance (IIF), a global association representing the financial industry, published *Voluntary Principles for Debt Transparency* (the “IIF Voluntary Principles”)** aimed at the public disclosure of certain transaction-specific information in connection with foreign currency borrowings by sovereigns and sub-sovereigns (e.g. SOEs), and sovereign guarantees.¹ The following points are noteworthy in respect of this initiative: (i) the IIF Voluntary Principles pertain to disclosure to be put into action by private sector lenders (not specifically by borrowers); (ii) as the name suggests, adherence to the IIF Voluntary Principles by private sector lenders is *voluntary*; (iii) the IIF Voluntary Principles are not yet operational and so there is no clear indication of the degree of likely uptake among private sector lenders; and (iv) under the IIF Voluntary Principles, private sector lenders will provide the relevant information (roughly within 60-120 days of funds flowing in the relevant transaction) to a repository/reporting entity to be hosted by an international financial institution. The G20 supported the IIF Voluntary Principles in 2019 (G20, 2019 at paragraph 6).
- 2. OECD as repository/ reporting entity.** In March 2021, it was announced that the Organization for Economic Co-operation and Development (OECD) will act as the repository/reporting entity for implementation of the IIF Voluntary Principles. The OECD will publish information on its website. The initiative under which the OECD will collect, analyze, and report the transaction data to operationalize the IIF Voluntary Principles is called the *Debt Transparency Initiative* and it is presently in the first phase of a multiphase pilot program.
- 3. Transaction information matrix template.** The OECD and relevant stakeholders generated a form matrix² document that functions as the template, containing information fields, onto which private sector lenders and their borrowers will enter the financial transaction information to be publicly disclosed. It is envisaged that the matrix will be an annex or schedule to the relevant loan/finance document and the completion of the schedule itself will be a condition precedent to the financial closing of relevant public debt transactions. The public disclosure of the transaction-level information set out in the matrix template would help to reveal the type of granular information necessary to tackle the challenges outlined in this paper. To this end, the *loan-level data offer additive value that aggregated data cannot*. Nevertheless, it is proposed that initially only aggregated datasets will be publicly disclosed. In contrast, the IIF Voluntary Principles envisaged public disclosure of *un-aggregated, transaction-level information from the matrix/schedule*, not aggregated datasets. The OECD's rationale for such an initial approach is to help persuade hesitant private sector lenders about participating in the initiative.
- 4. Focus on low-income borrower countries.** The Debt Transparency Initiative will *initially* focus on public debt arrangements with PRGT-eligible countries (OECD, 2021). This proposal is consistent with the IIF Voluntary Principles themselves which note that in adverse economic circumstances, PRGT-eligible countries (i.e., low-income countries eligible for certain concessional finance from the IMF) are more likely to encounter repayment difficulties with market-rate debt, and debt sustainability challenges. *At some point, application to a broader subset of borrower focus would better enhance debt transparency.*

NOTES:

1. The IIF Voluntary Principles exclude numerous types of transactions such as bond transactions; trade finance and overdraft transactions with a maturity of 12 months or less; transactions where an official export-credit agency is a party, unless such agency requests public disclosure; transactions where an international development institution or multilateral development organization is also a party (on the basis that such organizations usually already have public disclosure rules and practices in place); transactions involving central banks related to liquidity or regulatory requirements.
2. A preliminary form of the matrix is available at: <https://www.oecd.org/finance/OECD-Debt-Data-Transparency-Initiative.htm>



II.D. The Use of Confidentiality Clauses to Maintain Secrecy or to Prescribe Delayed Disclosure

20. Confidentiality clauses which specifically require secrecy actively undermine debt transparency.

Lenders and borrowers should restrict²² confidentiality requirements that seek to keep a borrowing secret by invoking secrecy only for information that *cannot* be disclosed by law.²³ This also applies when disclosure (whether *public* disclosure, or disclosure to relevant third parties including the World Bank and the IMF) of *any information at all* is prohibited up until final maturity or full repayment of the loan. The reason is that such disclosure is not *timely* and, since repayment periods in loans can be long, delayed disclosure is generally not overly meaningful. When these types of confidentiality requirements are deployed by lenders it indicates an intention to hide loan data from other lenders and market participants; and it creates information asymmetries that: (i) increase the risk of crises; and (ii) undermine international efforts towards debt transparency and sustainability. This is especially the case where the relevant loan includes collateral or quasi-collateral, such as the deposit/escrow account structures referred to above in paragraph 7.f. As highlighted in paragraph 17,

confidentiality clauses requiring secrecy are also out of step with prevailing commercial market practice. To the extent that secrecy clauses are deployed by sovereign lenders or their agencies, such practice would demonstrate “room for improvement” according to recent sovereign lender self-rating diagnostic tools (WB&IMF 2019b.).²⁴

21. If a borrower agrees to keep loan information secret, then the borrower will likely also find itself in breach of undertakings previously made in favor of other lenders (including IFIs). As noted above, this includes breaches of obligations related to negative pledge and permitted lien clauses, but also extends to periodic reporting and information-sharing undertakings, as well as impeding the compilation of accurate debt sustainability assessments. In addition, previously undisclosed or hidden debt may hamper the ability of the borrower to obtain fresh finance or to successfully undertake debt restructuring activities if the country enters financial distress.

22. The context envisaged for this statement is mainly loans made for an investment, development/ infrastructure or commercial purpose, irrespective of lender type. As discussed in paragraph 12, it is recognized that there may be certain instances under sovereign borrower or lender legislation, such as national security laws, where disclosure is exempted/secracy is required.

23. Such secrecy clauses might include carve-outs permitting the borrower to disclose certain information where the borrower is required to do so by law, or for the purpose of obtaining advice (e.g., legal and accounting advice), or where the borrower otherwise obtains the prior consent of the lender(s). Given the overall language of such clauses as stipulating a default position of secrecy, these carve-outs still do not achieve much, from a transparency perspective, in improving the nature of the clause. A better outcome could be achieved, however, where a sovereign borrower falls within the “required by law” carve-out because public disclosure of transaction-level information is mandated under its public debt management legal framework (PDMLF), as recommended in paragraph 26.c.

24. A “strong practice” in the same sovereign lender diagnostic tool is to refrain from using confidentiality clauses (WB&IMF 2019b.).

II.E. How About the Public Disclosure of *Entire* Public Debt Contracts or Entire Parts thereof?

22. The public disclosure of *whole/entire* public debt contracts by borrowers is sometimes put forward as a solution for improving gaps in debt transparency and for avoiding the information asymmetries and other problems that flow from non-disclosure. To the extent that the public disclosure of entire contracts, or entire parts thereof, is a practice in some countries or is legally required as part of their transparency and accountability mechanisms, such public disclosure is encouraged. At the same time, we recognize that, in the context of *finance* transactions, it is less straightforward than it sounds. Some relevant considerations include the following:

a. The debt contract(s) may contain a confidentiality clause that limits or precludes the borrower from publicly disclosing contract text. As a result, the borrower will need to seek the (written) consent of the other party or parties *before* publicly disclosing the entire contract, or parts of the contractual text. To the extent that a loan is already effective, sovereign borrowers/SOEs may determine that seeking consent after the fact (i.e., after a contract is signed and effective) is not feasible since they prefer, strategically, to limit consents and other requests to matters that are critically important to the borrower over the life of the loan (e.g., repayment or performance issues). The Extractives Industry Transparency Initiative (EITI) is an example of an initiative that, among other things, aims at full contract disclosure (EITI, 2019). While things continue to develop and evolve, with respect to encouraging disclosure of the full text of relevant contracts, EITI noted in a 2020 report that confidentiality clauses, among other factors, continue to impact the ability of countries to disclose contracts (EITI 2020; EITI 2017).²⁵

b. A country may have legislation that operates to limit or preclude the public disclosure of public debt contracts or parts of contracts. An example is Ecuador. As noted above (paragraph 12.a. iii.), Ecuador's *Organic Law on Transparency and Access to Public Information* supports debt transparency by requiring²⁶ the public disclosure of certain information related to individual public debt transactions. Information disclosed on Ecuador's websites is extensive and includes monthly lists of public loan transactions with details such as the purpose of indebtedness, debtor of record, executing agency, lender name, maturity, amount borrowed, amount disbursed, and amount to be disbursed.²⁷ Nonetheless, *when it comes to providing a link to download the relevant contract(s)*, the provision of such link is excluded in most instances and marked as "not applicable" due to the application of a different law, the *Organic Code of Planning and Public Finances (the "Organic Code")*.²⁸ Article 137 of the Organic Code enables discretion for the Ministry of Economy and Finance not to disclose public debt contracts if, among other things, disclosure would be contrary to the interests of the country. Even in countries like Ecuador that demonstrate a commitment towards transparency of loan-level information, the public disclosure of entire contracts (or entire parts thereof) raises additional legislation-based considerations.

c. Supporting an approach that requires the disclosure of *entire* public debt contracts could place borrowers in sticky negotiating situations. Examples of relevant scenarios and considerations include the following:

25. The types of documents presently publicly disclosed in EITI implementing countries that we reviewed (e.g., Philippines, Liberia, Malawi) include profit-sharing agreements, mineral production sharing agreements, joint venture agreements, concession agreements, service contracts, mineral development agreements and mineral exploration licenses. While these are contracts related to oil, gas and mining *exploration and exploitation*, they are *not finance and loan documents* related to such activities. The publication of finance documents likely poses different disclosure dynamics than exploration-related licenses and award documents, with the latter falling more squarely within the sovereign's discretion on terms.

26. See Article 7 I) of the *Ley Organica De Transparencia Y Acceso a La Informacion Publica*.

27. See the lists of public debt contract-related information available at the following website of Ecuador's Ministry of Economy and Finance: <https://www.finanzas.gob.ec/transparencia/>

28. See Article 137 of the *Codigo Organico De Planificacion Y Finanzas Publicas*. For example, see references in the following transaction list: <https://www.finanzas.gob.ec/wp-content/uploads/downloads/2022/02/octubre-2021-1.pdf>

- i. **It may be that a lender simply will not agree to finance a loan arrangement that permits the public disclosure of the *entire* debt contract or *entire parts* of it.** In addition, borrowers need to prioritize their issues for negotiation and even though a lender may readily support a sovereign or SOE borrower’s public disclosure of the existence or nature of a transaction and key details, the same lender (particularly private lenders) may balk at the idea of public disclosure of *entire* contracts or *entire* parts of contract text. Even among lenders that accept the importance of improving public disclosure for debt transactions, the precise drafting of clauses such as covenants, representations and warranties, and events of default remains sensitive.
- ii. In addition, even where a debt contract (such as one that follows the LMA model forms) does not expressly restrict a sovereign borrower’s ability to publicly disclose most transaction-level information, the **borrower would be well-advised—as a relationship matter, rather than a legal matter—to consult its lender(s)** and obtain written acknowledgement or consent prior to publicly disclosing entire contracts or entire parts of contractual text.
- iii. **It may prove challenging for borrowers to successfully negotiate the insertion of language into debt contracts expressly permitting the borrower to publicly disclose entire contractual text.** In addition, since some of the contractual clauses belie the lender’s risk assessment of the borrower, public disclosure of entire contracts or entire parts of contractual text may come at the cost of obtaining optimal loan pricing. From the perspective of maintaining strong ongoing business and lending relationships, haggling over the public disclosure of *entire* contracts may not be a borrower’s best use of its bargaining chips.
- iv. The **sensitivities surrounding the public disclosure of entire finance contracts, or entire parts thereof**, is perhaps signaled by the limited degree to which finance contracts are currently disclosed by sovereign/SOE borrowers. For example, the Philippines²⁹ and Sierra Leone³⁰ currently disclose some entire

finance contracts, offering a high degree of transparency. The majority of debt contracts disclosed, however, are loans and grants from multilateral development banks and other IFIs, which, as noted above, tend to be specifically oriented towards public disclosure. While this public disclosure may completely reflect the borrowing portfolios of these countries (i.e., no loans from private and sovereign bilateral lenders), the more general absence of full contractual disclosure by other countries arguably indicates the **challenges associated with publishing *entire* contracts entered into with non-MDB lenders.**

- d. **Is publicly disclosing the entire document a *fit-for-purpose* approach?** There is a tendency to refer to “*the*” debt contract when discussing sovereign debt matters, which suggests that finance is routinely provided through a single document. While a loan operation may entail a single document, the reality is that loans (particularly commercial loans or loans that are highly structured or collateralized) often entail a suite of lengthy legal documents which operate together to lay out the transaction. For example, depending on the deal, a loan agreement may be accompanied by a fiscal agency agreement, syndication-related documents, sale and purchase agreement(s), payment direction documents, account management agreement, security documents, fee letters, etc. Where there is a suite of transaction documents, the public disclosure of an entire loan agreement (or part thereof) would not necessarily convey a complete picture of the deal without some form of disclosure of the remaining suite of documents. At the same time, **if a suite of transaction documents is publicly disclosed in its entirety, making sense of the complexities of a deal is a considerable task requiring technical capacity.** To some extent, the same is true for a singular loan agreement. The question arises as to whether a “data dump” approach – i.e., the disclosure of entire contracts *actually* serves *the interests of the public and civil society* (Gelpern 2018), and whether they have the capacity and resources to analyze the information. Their capacity and resource levels are in contrast to private lenders/ market players, which have the ability to analyze large quantities of documents.

29. See <https://www.dof.gov.ph/data/fin-agreements/>

30. See <https://www.parliament.gov.sl/loans.html>



e. **Redacting contracts requires resources and capacity.** As noted above (paragraph 12), from an administrative perspective, prior to any public disclosure of an *entire* contract, a sovereign borrower may need to redact details (e.g., account numbers, signature panels etc.) or perform other actions based on requirements under applicable laws and regulations. Any such redaction process requires staffing, time and technical capacity.

23. An Alternative Approach? From this perspective, the publication of entire debt contracts or entire portions of contractual text lies at one end of a **continuum of debt disclosure-related approaches**. It raises questions of sensitivity, willingness, and practical attainability due not only to being more complicated than it sounds, but also because it is distant from most current practices in public debt transaction disclosure. As noted above, for some lenders (e.g., MDBs), public disclosure of entire contracts may be acceptable, yet in other contexts it raises sensitive issues and challenges for borrowers to obtain the concurrence of lenders. At first sight, the idea of disclosing entire debt contracts sounds useful. However, finance transactions tend to be complex and, although lenders and IFIs have the capacity to wade through lengthy debt contracts or suites of transaction documents, the capacity and resources of the public and civil society stakeholders to do so

is not obvious. Accordingly, a more feasible approach to public disclosure, which also meets the information needs of the public while avoiding other challenges elaborated above, is the completion of a template for transaction-level information which could be included as a schedule to the loan/transaction agreement and agreed by transaction parties, at the time of signing, for public disclosure. Public disclosure of the information schedule could be made by the borrower on an easy-to-find website within a reasonable period thereafter. See the recommendations in Part III at paragraphs 26.d, 27 and 28 for more details.

24. Public debt management legal frameworks (PDMLFs) may be used to mandate transaction-level public disclosure. The contribution of PDMLFs to debt transparency objectives is achieved when certain key features are present (WB, 2021). Box 2 provides a list of key elements in public debt management legal frameworks that enhance debt transparency. These points are further elaborated in Annex 1. To the extent that a PDMLF mandates the timely public disclosure of transaction-level public debt information, the PDMLF underscores the sovereign's commitment to debt transparency and can operate, in conjunction with other measures (discussed in Part III below), to ensure a level of public disclosure that is meaningful in the context of each transaction.



Box 2 - Elements of Public Debt Management Legal Frameworks that Enhance Debt Transparency

A borrower's public debt management legal framework (PDMLF) is the main instrument defining the decision-making and operational mechanisms for incurring and managing public debt. Elements of a PDMLF that contribute to debt transparency include the following:

- Clear delegation of authority to create debt from the legislature to the executive.
- Information stating the functions, responsibilities, and roles of the relevant minister(s) (or other authorities) and different government agencies, such as the debt management office, in creating and managing public debt.
- Rules and procedures related to the debt authorization cycle to facilitate the legitimate creation of compliant debt.
- Clear definition of what constitutes public debt, the nature of permitted instruments (including debt-like instruments) and permitted uses of debt proceeds.
- Explanation of requirements related to the publication of debt management strategies and debt reporting.
- Requirements related to enhanced scrutiny and/or approval for public debt that entails collateral, quasi-collateral, lender step-in rights, novel features or unusual risk levels.
- Rules related to the public disclosure of the public debt management legal framework itself.

These elements are discussed in more detail in Annex 1. In addition, in Part III of this paper a recommendation is made that PDMLFs mandate the timely public disclosure of transaction-level information in respect of public debt. The recommendation also discusses modalities and approaches to such public disclosure.



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PART III:

Recommended Approaches for the Disclosure of Transaction-Level Public Debt Information

25. This part of the paper identifies concrete approaches and recommendations for borrowers and other actors to take towards enhancing debt transparency in individual public debt transactions to overcome the challenges discussed in Part II.
26. **The approaches recommended below differentiate the information needs across stakeholders and aim at a baseline of adequate and meaningful disclosure to the public.** By distilling the various points discussed above, we recommend an approach to confidentiality and disclosure of transaction-level public debt information, which takes into account the *different* information needs, and functions, of key stakeholders. At the same time, the approach is ambitious. It recognizes that there can be sound reasons for confidentiality; and seeks to balance factors that inherently influence current practice



against the interests of diverse stakeholders and the need to improve debt transparency. Accordingly, we recommend the following approaches be adopted in respect of new borrowings (i.e., on a prospective basis):

a. Refrain from using confidentiality clauses: i. that amount to secrecy clauses requiring the existence of, and information related to, public debt transactions to be kept secret; and ii. to prescribe that disclosure only be made at final maturity, termination, or upon full repayment.

As outlined above (see paragraphs 7.f., 20 and 21) secrecy causes major information asymmetries and gaps, and can skew pricing, debt restructuring progress, and assessments of debt sustainability and creditworthiness. Similarly, provisions that permit public disclosure only at final maturity or full repayment are harmful because such delayed disclosure is neither timely nor meaningful. We recommend that lenders and borrowers alike refrain from the use of secrecy provisions in public debt transactions.

b. Recognize the borrower's right to provide complete information about individual public debt transactions to the World Bank and the IMF as the IFIs that, among other things, generate global public debt statistics, conduct debt sustainability assessments and provide emergency financing in times of crisis.

i. In recognition of the roles that the World Bank and the IMF play within the international financial architecture, this recommendation supports affording them the broadest and most detailed level of access and information sharing by sovereign and SOE borrowers. **This recommendation proposes:**

1. routine inclusion in finance documents involving sovereign and SOE borrowers of language expressly permitting the borrower, or expressly acknowledging the borrower's right (whichever is appropriate), to share complete information (including transaction documents) with the IMF and the World Bank without any need to seek additional/subsequent lender or party

consent,³¹ and irrespective of the type of lender or debt/debt-like instrument; and

2. engagement with the LMA and LSTA to include a similar provision in relevant model form documents used in English and New York law markets, respectively.³²

As noted above, express acknowledgement/consent is useful for practical purposes and relationship management even if the relevant contract does not otherwise expressly limit disclosure. The ability to provide complete documentation and detailed transaction-level information to the World Bank and the IMF is necessary in light of their roles in performing debt sustainability assessments and global debt statistic compilation functions, as well as their lender-of-last resort function and roles in debt restructurings. These IFIs typically maintain strong relationships with their member countries and formidable global convening powers. Their functions and roles are more important than pure lending volumes and extend to the provision of services to the international community that uniquely demand debt transparency.

ii. As a practical matter, such information-sharing-related language would facilitate *timely* access by the relevant IFIs to public debt contracts, and *timely* availability of information related to salient events that arise over the life of individual debts (e.g., about disputes, payment standstills, moratoria, suspensions, re-profiling, and restructurings).

c. Mandate, through national legal frameworks, the public disclosure of transaction-level public debt information.³³

i. Legislative requirements specifying the degree of public disclosure of transaction-level information will limit the discretion of the borrowing authority/debt management office to decide whether or not to disclose

31. Any requirement for the borrower to seek further or later consents could lead to delay or impediment to the relevant disclosures/ information-sharing. Invariably, there are multiple reasons why borrowers might hesitate to seek consents after the fact (i.e., after legal agreements have already been executed and/or have become effective) and, as a result, the possibility of delay is best minimized by language that is upfront and expressly permissive of such information-sharing.

32. As far as engagement with the LMA/LSTA for these model form amendments goes, perhaps it could be explored to make use of any similar engagement with the LMA/LSTA currently underway or contemplated by the official sector.

33. It is recommended that such legislative provisions operate on a prospective basis so as not to disrupt existing contractual arrangements, which may otherwise fall short of such requirements if they contain confidentiality or non-disclosure undertakings. For existing contracts, sovereign borrowers would need to analyze confidentiality and disclosure-related provisions in each contract and seek appropriate consents from lenders and other relevant parties prior to making public disclosure.

loan-level information. It is envisaged that such requirements would be in addition to, and separate from, any existing legislative requirements for public debt reporting of *aggregated* debt data by the sovereign. Additionally, in the case of SOEs, it is recognized that their operations and reporting functions do not typically fall within the authority of the government debt management office or ministry of finance. While it would not likely be feasible to require (and supervise) transaction-level disclosure by many of a country's SOEs, if an SOE is critical to the national economy – for example, a commodity-exporting SOE that generates significant national revenues or dominates the main export revenue-earning sector(s) of the sovereign's economy; or an SOE that could be regarded as being “too big to fail” – then such SOE should be required to make transaction-level disclosure of its debts and any granting of collateral/quasi-collateral over its assets. Public disclosure of transaction-level debt information by the sovereign and economy-critical SOEs would also help reveal scenarios where a central government borrows for its own purposes but uses the assets of its SOEs as collateral or quasi-collateral (e.g., oil sales). If a borrower's public debt management legal framework or other legislation requires the timely public disclosure of transaction-level information, then public finance contracts would need to comply. This would influence and improve contract-related confidentiality and disclosure practices. It may also positively impact investor and other perceptions of the credibility and reliability of information, and ultimately translate into cost savings or improved pricing for the borrower. It also helps sovereign and SOE borrowers push back against requests for secrecy or unjustified confidentiality when negotiating, with the ability to cite legislation and public policy in support.

- ii. It is recommended that the legal framework clearly identify the authority or government office responsible for timely public disclosure of transaction-level debt information, as well as any penalty to be imposed for failure or non-compliance.

- iii. **Confidentiality should be an exception rather than a norm.** One of the challenges in this respect is attaining the right balance between legislative requirements and executive flexibility or discretion. While the primary legislation can broadly mention the requirement for disclosure and reporting, leaving the details to the executive, it is recommended that the legislature specify the rules regarding the level of detail, frequency, and timeliness of the transaction-level debt information to be disclosed. Clear transparency principles determined at the legislative level are harder to modify if contained in primary legislation. The PDMLF may reasonably include or contemplate limitations to public disclosure on grounds that certain information is subject to national or strategic interests, or other considerations. In some cases, those interests could also be addressed by making public disclosure on a delayed basis (i.e., once the sensitive information is no longer sensitive) or only in summary form. Comprehensive legislative rules minimize scope for ambiguity; and may be beneficial where they leave little to no discretion to a council of ministers, finance minister or the head of the debt management office in terms of what needs to be made publicly available.

- d. **Aim at a level of *public* disclosure of public debt transaction information that is meaningful in the context of the transaction, and sufficiently granular to facilitate stakeholder awareness, scrutiny of government actions and public accountability.**

- i. **Types of information to be publicly disclosed.** We recommend that the types of transaction-level public debt information listed in paragraphs 27 and 28 be publicly disclosed by sovereign borrowers (irrespective of whether such borrower is a low-income, middle-income or high-income country) and SOE borrowers.³⁴ The list of elements proposed for public disclosure is fairly ambitious relative to current practices. **It is envisaged that such public disclosure becomes routine.**

- ii. **Timing of public disclosure.** The public disclosure of relevant transaction-level

34. To the extent that public disclosure is contemplated for a public debt contract that is already in place and to which confidentiality is attached, the borrower would need to obtain appropriate prior written consent from relevant parties before publicly disclosing contract information.

information should be made by borrowers in a timely fashion. Different factors (e.g., law or regulation; borrower resources and capacity constraints) may influence the timing of public disclosure. Absent other salient factors, it is proposed that a reasonable period for public disclosure to take place is **as soon as practicable following effectiveness of the financing**; or otherwise between **two to four months after the date on which funds move** or are disbursed in connection with the borrowing.³⁵

- iii. **Modality of public disclosure.** In general, and specifically for cases where there are concerns or limitations among the relevant parties, or prescribed under applicable law and regulation with respect to public disclosure, it is **recommended that borrowers and lenders add an annex or schedule to the (main) debt contract** (and to any subsequent material amendments/ supplementary agreements). Such annex/schedule would **set out the information relating to the whole transaction that will be publicly disclosed**. The complete annex/schedule is envisaged as a condition precedent to the effectiveness of the debt transaction. The use of an annex/schedule is beneficial because it facilitates a clear understanding among the parties, at the time of contracting the financing, about the specific nature of the proposed public disclosure and its compliance with applicable law and regulation. In cases where the borrower's right to publicly disclose is not limited under the relevant contract(s) or by law, the schedule concept may still be helpful as a practical template that could be used by borrowers to scale up and systematize the presentation and publication of transaction-level information. It may also help manage expectations and relationships with transaction counterparts. **The schedule itself (or just the information from it) could then be made publicly available by the borrower.**
- iv. **Location for public disclosure.** In terms of location, it is envisaged that public disclosure of the transaction-level information be made

via the sovereign borrower's website or, as relevant, the SOE's website. Having said that, in the case of sovereigns, the location(s) for public disclosure (digital and physical), or the means of facilitating access to public information, may vary based on the borrower's legislation and local circumstances. It is recommended that applicable rules address the following:

1. **Location specifically dedicated to debt disclosure.** To the extent that contract-related information is already required, as part of the approval, ratification or signing process, to be published in the national gazette (or similar bulletin authorized to publish official public or legal notices), a separate/different publication location should be mandated and dedicated for the public disclosure of transaction-level debt information.
2. **The importance of an easy-to-find location for public disclosure.** A logical place for digital public disclosure might be the website of the national debt office, borrowing authority or the ministry of finance, with links to this website being placed on relevant sub-pages and related government websites. Bearing in mind that lenders or members of the public may not have specialized knowledge of how the relevant borrower government is organized or the full gamut of its websites, the relevant website or subpage should not be obscure or difficult to find, since that would defeat the purpose of public disclosure.
3. **Searching and finding information.** As digital disclosure of transactions builds, information should be readily searchable.
4. **Retention of information over time.** Information should be retained on relevant websites over time and not removed. Transaction-level debt information should remain publicly available at least until the final maturity, repayment, termination/ cancellation or restructuring (as applicable) of the finance.

35. This latter timeframe is the same timeframe suggested in connection with the IIF Voluntary Principles (see Box 1 above). Under the IIF Voluntary Principles, it is envisaged that private sector lenders will, within 60-120 days (i.e., two to four months) of funds first moving under a transaction, furnish the matrix template to the OECD (which is the reporting host/ repository for the initiative).

5. Financial costs and other resources.

Without a doubt, building borrower capacity, scaling up staffing and other resources to make timely public disclosure of transaction level debt information, as well as managing the information over time, all require formidable commitment and financial investment.

e. Borrowers should explore the benefits of standardizing how they approach disclosure-related contractual matters, and pair standardization with staff guidance.

Sovereign and SOE borrowers may apply this to confidentiality and disclosure in individual public debt transactions. Market-specific model forms such as those discussed in paragraphs 16 and 17 may offer a useful starting point for amending and inserting provisions that cater directly to specific public, or other, disclosure needs of the borrower. Useful alternatives to having standard confidentiality and disclosure language may simply be a list of relevant considerations with *practical guidance* for the borrower's staff and negotiators about the borrower's legislative, public policy, contractual or corporate (as applicable) imperatives on the topic. Accordingly, while the borrower may not manage to negotiate the exact same language in disclosure-related clauses across all of its debt contracts, it could use a standard approach that ensures it still achieves its main objectives in connection with disclosure. Standardization in its best form allows for gradation and prioritization of issues. Standardization coupled with internal guidance can help borrowers to: (i) resist upfront, or negotiate downwards, any lender requests for unreasonable confidentiality provisions; and (ii) recognize and examine the operational, legal, and other consequences of excessive confidentiality provisions. Standardization and guidance may also help to resist novel and overly complex confidentiality clauses because they help borrowers recognize the practical implementation challenges that such clauses pose, especially if they run counter to disclosure obligations that the borrower owes to other lenders, or counter to mandates for public

disclosure under domestic legislation. An important caveat with respect to standardization is to ensure that there is adequate flexibility to deviate, and to take into account approaches across different debt instruments, markets, and jurisdictions.

27. Public debt transaction details recommended for public disclosure.

In elaboration of the recommendation in paragraph 26.d.i above, the following public debt transaction-level information should be publicly disclosed by borrowers,³⁶ *irrespective of the type of lender*:

- a. core financial and legal terms and conditions along the lines detailed in paragraph 28 below;
- b. names of the legal documents (including finance documents, security documents, project documents, credit insurance or similar credit enhancement and support documents, side letters etc.) that make up the transaction. This information offers a useful overview of a transaction, given that they often entail multiple documents or even suites of documents;
- c. plain English (or plain other language, as applicable) summary, or if instructive, a diagram of the transaction structure/design. These are useful for providing a snapshot of money flows, parties/entities involved, and the mechanics of a deal; and
- d. over the life of a transaction: a summary of the nature of material amendments or supplemental agreements or side letters, including transfers and assignments of interests among lenders (where known to the borrower), entered into in connection with the transaction.

28. Core financial and legal terms and conditions to be publicly disclosed.

The following transaction elements should be publicly disclosed as "core" financial and legal terms and conditions:

- a. identify the parties involved in the transaction(s) and specify the role(s)/capacity or capacities in which they act (e.g., lender, borrower, guarantor, lead arranger, cash account agent, fiscal agent, bond trustee, security trustee, etc.);

36. Sovereign debt restructurings are complex and highly sensitive. Trust and transparency between a borrower and its various creditors is crucial for the success of a debt restructuring. Such disclosure and communications may be robust from a borrower to its creditors; yet public disclosure in connection with sovereign debt restructurings is entirely separate. We recognize that lenders, perhaps more so than borrowers, may be the appropriate entities to make public disclosure in the sovereign debt restructuring context. In addition, complex considerations related to the timing of public disclosure and tactical considerations related to the negotiation of debt restructurings would also come into play. Accordingly, disclosure (between a borrower and its creditors) and public disclosure in connection with debt restructurings is beyond the scope of this paper.

- b. identify the type of loan/finance (e.g., committed/uncommitted, term loan, revolving, master facility, forward sale agreement, guarantee);
- c. currency denomination, loan/finance amount, the conditions of any possible increase in the amount or renewal, applicable interest rate/cost of financing;³⁷
- d. tenor or maturity of the loan/finance (excluding transactions with maturities of 12 months or less) and, as applicable, amortization or repayment profile;
- e. the existence of any grace period(s) and its length;
- f. the intended use of proceeds and duration of the availability/drawdown period;
- g. the nature of any collateral or quasi-collateral provided (e.g., the nature of any escrow, deposit and collection account arrangements);
- h. priority among parties – i.e., subordination, or any seniority, among lenders; and
- i. governing law, dispute resolution mechanism, lender step-in rights, and details of the extent of any sovereign immunity waiver.

29. Improving upon current *public disclosure practices*.

The approach to *public disclosure by borrowers* recommended above in paragraphs 26.d, 27 and 28 is broadly consistent with the approach originally proposed under the IIF Voluntary Principles. In the case of the IIF/OECD initiative (see Box 1 above), the disclosure process is proposed to be initiated by *private sector lenders* that will submit the agreed, completed matrix template of transaction-level information to the OECD. However, for the time being, the OECD proposes to publicly disclose only *aggregated* information and not the transaction-level granularity from the matrix

templates. The recommendations above are intended to create synergies by proposing a similar public disclosure modality – i.e., a schedule/annex to the main financing contract setting out publicly disclosable information (that also factors in, and complies with, any applicable law and regulation). The recommendations above build on these ideas by proposing the extension of the use of such schedule/ annex concept to *all public debt (including debt-like) transactions* (not just external debt – i.e., irrespective of currency or lender residency etc.), with *all lender types* (i.e., beyond private sector lenders) and propose *that the public disclosure actions be taken by borrowers* (whether such borrower is a developed or developing country, or an economy-critical SOE).

30. A robust borrower-led and administered system of public disclosure of transaction-level information could be established in phases, but nonetheless entails formidable capacity, as well as set-up and maintenance costs. At the same time, it is **ultimately more sustainable, incentivized and accountability-driven, and possibly more accurate**, than relying fully on aggregated debt data or on debt information generated by third parties. **The case for borrower-led public disclosure of transaction-level debt information is strengthened where borrowers experience clear upsides from their disclosure activities** in the form of market perception, ratings improvements, enhanced public/lender trust in the borrower, and possible cost savings and pricing improvements. Apart from the need for greater debt transparency, borrower-led public disclosure of transaction-level information would also offer a valuable source of information for debt data reconciliation across different sources. Finally, the recommendations above are also broadly consistent with the diagnostic tool of the *G20 Operational Guidelines for Sustainable Financing*.

37. Consistent with the approach to be taken in connection with the IIF Voluntary Principles, it is anticipated that the interest rate/cost of financing could be specified as falling within one of a number of specific ranges.



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ANNEX 1:

Elements of Public Debt Management Legal Frameworks that Enhance Debt Transparency

- 1. A borrower's public debt management legal framework (PDMLF) is the main instrument defining the decision-making and operational mechanism for incurring and managing new debt.** In its PDMLF a country determines the rules and procedures for the creation of debt (including debt-like) contracts and debt management operations. Such rules enhance debt transparency, ensure that the debt is put towards its intended purposes, and help mitigate the prospect of corruption. Sound national PDMLFs consist of debt management-related primary and secondary legislation, as well as lower-level guidance documents.
- 2. The PDMLF facilitates the objectives of multiple stakeholders.** At the borrower level, the legal framework sets out a list of rules and procedures to ensure that debt management operations are legally compliant and decision-making processes are predictable. From the lender's perspective, the legal framework facilitates the collection of data and information to assess the creditworthiness of the country and to verify *ex ante* and *ex post* compliance with applicable laws (Buchheit & Gulati, 2010). For the public and civil society, the legal framework enables oversight of the governance of public debt and enhances accountability.
- 3. The PDMLF includes delegation of authority from the legislature to the executive and regulates the execution of debt operations.** The legislature, which is vested with the authority to engage the credit of the country on behalf of taxpayers (Buchheit & Gulati, 2010), regulates, through the national legislation, the delegation of its authority to the executive branch. The PDMLF sets out the procedures and processes to be followed at the executive level when undertaking borrowing and debt management operations. Examples of such procedures include: (i) the required approvals (e.g., ministerial or parliamentary approval or pre-authorization, ratification, etc.); (ii) the designation of officials with actual authority to sign a contract; (iii) the steps for contract approval/ratification and effectiveness; (iv) the delegation of responsibility for generating the country's legal opinions; and (v) the unit or team responsible for undertaking the

technical debt negotiations. It is vital to define the rules, procedures, and processes for incurring debt so that debt is legitimately created and complies with the legislation. Clarity in the rules also helps minimize the likelihood of creating contestable debt, including court interpretations that go against the country or that result in unintended enforcement or rejection of debt claims.

- 4. Institutional set-up, roles, and responsibilities.** The PDMLF outlines the debt management institutional set-up so that lenders and other stakeholders are aware of the roles and responsibilities of different branches of government and their agencies. The most important of these institutions is the government office, usually the debt management office located in the finance ministry, tasked with carrying out debt operations.
- 5. Authority to create debt and the authorization cycle.** A sound PDMLF includes clear rules, procedures, and processes for the debt management office to follow to contract debt or issue guarantees on behalf of the government. An example is the seeking of required approvals prior to the signature of the contract by the persons vested with the *actual authority* to sign.
- 6. Definition of “debt” and the limits of debt management.** To ensure transparency, the PDMLF clearly and comprehensively establishes the national debt policies that facilitate the creation of lawful debt, and the tracking by all interested parties of the compliance of public debt with legislation. These policies consist of the debt management objectives, the debt management strategy (i.e., requiring the publication of a debt management strategy that describes a plan to manage the costs and risks of a country’s debt portfolio in line with its policies), and the permitted characteristics of sovereign guarantees and debt. Such characteristics include: (i) the definition of debt; (ii) permitted purposes of borrowings; (iii) types of instruments, including debt-like instruments; (iv) sources of funding; or (v) permitted use of proceeds.
- 7. Level of scrutiny.** The legislature in borrowing countries determines the degree of scrutiny it desires when deciding on the type of transactions or conditions for which the authority to borrow will be delegated to the executive. It is common in many developing countries for the legislature to require the approval or ratification of sovereign guarantees or foreign law loans from bilateral, official and private sector lenders. On the other hand, the issuance of market-based domestic debt (treasury bills and bonds) is usually delegated to the executive branch, sometimes up to a certain limit once the legislature determines the standards for the terms and conditions. The riskier the debt operation for the sovereign (e.g., the secured/collateralized nature of a transaction, or the existence of collateral-like features), the higher (e.g., council of ministers or parliament) the required level of the approving body must be. In addition, new or unusual financing structures should have extra scrutiny and require authorization from a higher level. Such enhanced scrutiny inherently leads to more transparency.
- 8. Mandating public disclosure of transaction-level information and debt reporting.** Countries are encouraged to mandate in their PDMLF the public disclosure of timely and comprehensive transaction-level borrowing information (on a prospective basis); and to include the requirement to publish regular public debt reports containing aggregated and non-aggregated data and statistics. These actions enable stakeholders to understand a country’s level and composition of debt, its lenders, details on individual transactions, and the use of proceeds. Such scrutiny promotes government accountability and makes it harder to mask corrupt behavior.

- 9. Where and how to publish transaction-level debt information and other debt data.** The PDMLF defines the mode (digital or physical) and place of disclosure of relevant debt data and information. In determining an appropriate place, it is important to consider whether information disclosed will be catalogued and maintained in that place over the long term. For example, a National Gazette or Council of Ministers' legal documents are usually places where officially published information is catalogued and identified for long-term record-keeping and cross-reference purposes. To the extent that a borrower website is operated such that information is removed after a period of time, then such a location may prove counter-productive for the purposes of facilitating adequate public disclosure of debt information. This is particularly the case because loans may have long tenors and being able to find out information about them will remain an imperative over time. Accordingly, it is important that information, whether disclosed on a debt management office website or elsewhere, be properly maintained and available over many years, ideally with a search function to help find information over the passage of time.
- 10. Public Disclosure of the PDMLF (itself).** A PDMLF that is accessible to different stakeholders and readily "find-able" is key for understanding the debt-management operations of a country. It also facilitates lender financial and legal due diligence with greater certainty that the lender can discover all relevant rules (instead of just some rules). Although it may depend on how a country's legislation is arranged, it is user-friendly if stakeholders can find *all* relevant public debt management legislation in one place. Where relevant legislation appears across multiple locations or websites, the use of cross-referencing links is useful.
- 11. Compliance with national legislation.** It is important that countries clearly define the consequences of not complying with their PDMLF. Some countries¹ include in their national legislation articles to declare a contract void if the rules under the PDMLF are not followed.
- 12. Compliance as a tool to enforce disclosure?** It is sometimes proposed that sovereign borrowers explore the feasibility of using compliance as a tool to enforce disclosure and reporting requirements to the extent that the PDMLF states that non-disclosure of information according to debt transparency requirements makes a debt contract invalid. Any such proposed approach would, however, need to be carefully applied, and only on a *prospective* basis -- not retroactively applied to existing debt contracts. Moreover, the viability of such an approach would likely be challenging in practice if lenders view such requirements as a disincentive to provide finance to the borrower in the first place; or where the requirements in the PDMLF for transaction-related transparency are not sufficiently clear or not readily available to lenders. In addition, lenders may view such an approach as generating increased risk, since lenders are not in control of a borrower's domestic public disclosure processes and there may be a perception of moral hazard involved with the risk of government failure to properly and timely undertake the required disclosures in accordance with relevant law/regulation. Any time that risks or uncertainty are created, this may interrupt lending flows or negatively impact pricing. Other complications, which may impact the enforceability of such an approach in practice, is where a debt contract is governed by the laws of a foreign jurisdiction.

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