Institutional Governance Framework for Debt Management

DRAFT

Overview of Debt Legal Landscape

External

- Loan contracts in foreign jurisdiction eg Bank loan with UBS
- Bond contracts in foreign jurisdictions especially New York and London
- Conditionalities and covenants in official bilateral lending
- Commercial contracts in official lending and borrowing in foreign jurisdiction
- Conditionalities and covenants in official borrowings from multilateral development banks
- Conditionalities and covenants in official borrowings from other multilateral/ international separate legal entities such as Global Climate Fund
- Bilateral and multilateral bilateral investment agreements
- Multilateral agreements such as WTO

Internal

- Domestic public debt instruments and its corresponding legal rights and obligations
- Legal framework for PDM and governance may be more consolidated in some jurisdiction than others
- Some use public financial management or budget laws to provide for PDM governance issues
  - However, PFM legislation in different jurisdictions provide for debt management with varying degrees of detail.
  - These include budget system laws, fiscal responsibility laws, cash management etc
  - Given that public debt is an integral part of the PFM framework, PFM laws tend to contain some provisions on public debt. Level of details depends
- Several jurisdiction have dedicated debt legislation
- Yet others a mix of constitution, primary and secondary legislations
- Finally all jurisdictions will have legislation that are not specifically public debt or PFM related laws but whose provisions may have implications for public debt management. Usually wrt central banks.
- In Fiji it would appear that its primary legislation on debt falls under the PFM legal framework

Ref: Elsie Addo Awadzi, Designing Legal Framework for Public Debt Management, IMF WP/15/147. July 2015

From Legal landscape to legal framework for debt management

"Most countries have a complicated legal history and debt management provisions may be included in a variety of laws that deal also with other issues…..This may include laws on fiscal responsibility, on the budget or on financial administration…..Specific provisions may be found in audit or securities legislation or in central bank law.

……..There are benefits from bringing debt management provisions together into a single integrated government debt management law that supports reforms being made to improve the professionalism and focus on debt management functions. A coherent and complete Act also makes it easier for auditors and parliament to monitor compliance; and more straightforward for officials' accountability and reporting."

Arindam Roy and Mike Williams, "Government Debt Management: A Guidance Note on the Legal Framework," Commonwealth Secretariat Oct 2010 . Pg 7

Reasons for a public debt management legal framework

The legal framework

1. *provides strategic direction,*
2. *defines and clarifies powers*
3. *supports professionalism and operational focus in public debt management*
4. *limits potential abuses of power*
5. *promotes good governance by establishing accountability for managing the government's debt liabilities.*
6. *could contribute much to achieve lower borrowing costs*
7. *prevent waste and inefficiency in public debt management.*

The legal framework comprises both primary legislation (laws enacted with approval of the legislature) and secondary or delegated legislation (rules, regulations, executive orders etc.).

Box 1: The Essential Requirements of the Legal Framework

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

Source: Commonwealth paper pg 4

Mandate to Borrow & Who Can Borrow

- Govt's authority to borrow is perhaps as fundamental to sovereignty as its power to tax and spend. This may be provided in the constitution and/or primary legislation
- However, this authority is usually not absolute. It's often subject to controls designed to promote discipline, prudence and accountability and consistent with overall fiscal policy and public financial management objectives
- A key legal question is who exercises borrowing authority on behalf of the state
- In many jurisdiction, the Constitution mandates the legislature to delegate borrowing authority to the Executive by an Act of Parliament, within a broad framework set out under legislation
- Typically, such authority is delegated to the MoF. The Minister may in turn delegate his borrowing authority to other public officials or entities within boundaries permitted by law.

Objectives of Public Debt Management

- Typically articulated as govt's financing needs and its payment obligations are met at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk
- Some jurisdictions include other objectives to reflect national development priorities

- *Q: What are the implications of couching objectives narrowly in terms of prudent financial management or more broadly to encompass other economic purposes?*
- *Q: What should the objectives of public debt management for Fiji be, given its current debt burden, economic conditions and national priorities, taking into consideration both its short- and longer-term needs? How should it be enshrined in its statutes?*

When you can borrow

Purposes of Borrowing – Many countries' public debt laws set out the allowed purposes of borrowing

- Borrowing to finance the deficit (NB: depends whether this is structural. If so, should be financed by revenue or some other non-debt creating source of financing)
- Borrowing to refinance, prepay or buyback outstanding debt
- Borrowing to finance capital/ investment program – "Golden Rule" – For example, Nigeria, government borrowing by all tiers of Government may only be used for capital expenditures and human development.
- Protection or elimination of effects caused by natural or environmental disaster
- Support to the balance of payments or the foreign currency reserves
- Fostering the development of domestic debt market
- Supporting monetary policy objectives (issuing Tbills at the request of CB to drain liquidity)
- Temporary financing of cash flows (part of cash management)
- Payment upon issued sovereign guarantees and restructuring of public sector debt
- To finance on-lending

When you can’t borrow

Borrowing limits– Some debt management laws include limits on borrowing. Debt limits can be applied with respect to a single indicator or multiple indicators. Such limit may be expressed as nominal amounts, as ratios of key economic aggregates and they may apply to debt stock or flows….Typically debt limits are expressed as ratios of debt to gdp, debt service to revenue receipts and borrowings to capital expenditure

- Maastricht admission criterion for Easter European Countries no more than60% of GDP
- Constitutional ceilings – Eg Hungary. This elevates the ceiling to the level of the superior law of the jurisdiction
- Statutory ceilings - Fiscal rules with debt limits endorsed by parliament, typically a Fiscal Responsibility Law
- Through parliament approved medium term fiscal or debt strategies
- Ministerial actions

The legal framework should be explicit about the effect of the debt ceiling. In some jurisdictions, debt contracted in breach of ceiling is invalidated. Debt ceilings may also be enforced through mandatory requirements for reporting or adjustments or corrective measures that are required when the ceiling is reached

Legal Requirement for Debt Management Plan

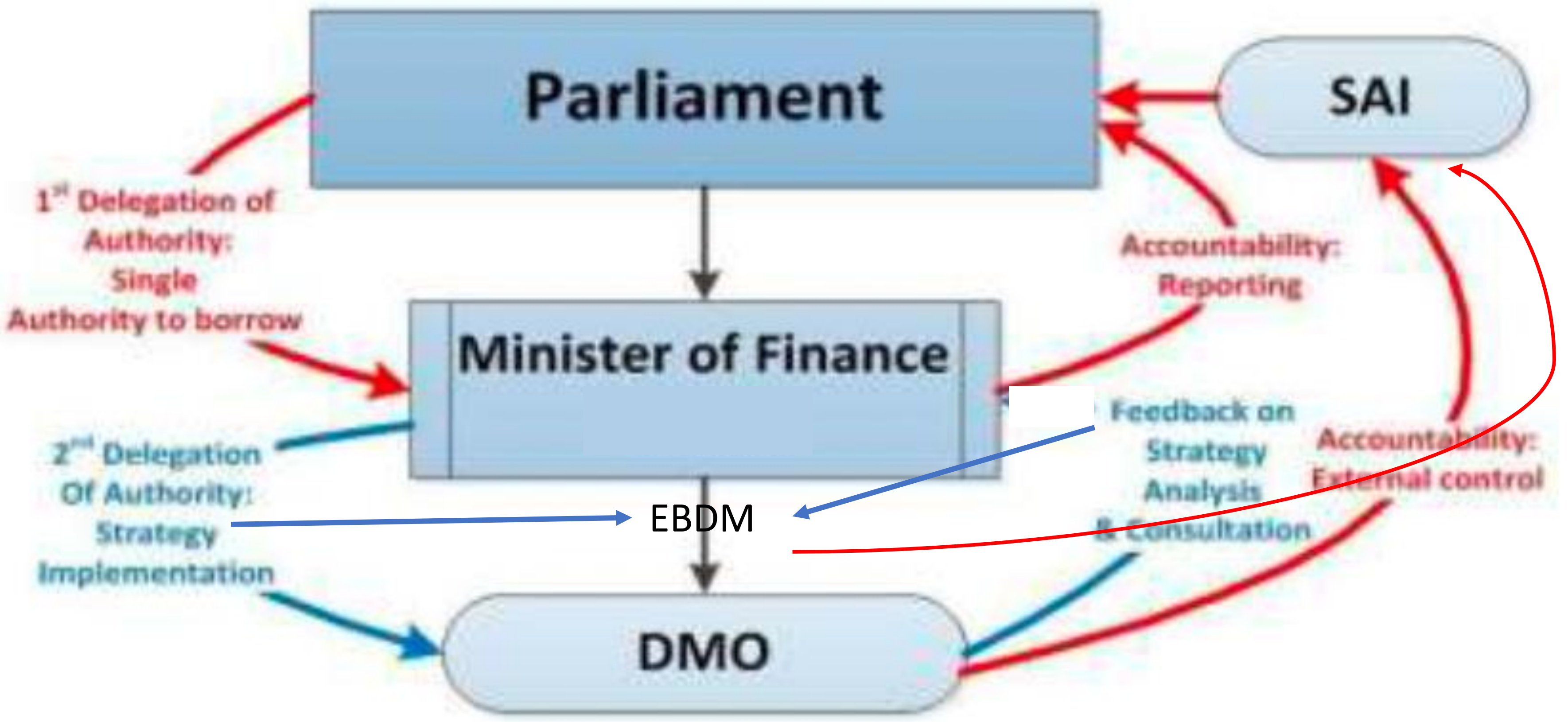
- Certain jurisdictions make the preparation of a **Medium Term Debt Management Strategy** (MTDS) a mandatory requirement
- MTDS is considered one of the key elements of a good debt management framework
- A sound legal basis for the preparation of the MTDS is useful. Some jurisdictions require it on an annual rolling basis, consistent with the medium term budget framework
- Legal framework should clarify scope of debt to be covered and responsibilities for developing and giving effect to MTDS.
- Operationally this is typically authored by the Executive board of the Debt management, assisted by the DMU.
- Legal framework should provide explicitly for the approval of the MTDS by the cabinet and the legislature. MTDS shall be published and made available to the public.
- Nonetheless, MTDS is a policy and not legal document.
- **Annual borrowing plans** is also an important element to good debt management, which Fiji issued for the first time in 2021. It elaborates and supports the implementation of the MTDS.
- Operationally it should be authored by the DMU, to be approved by the Executive Board and Parliament. And made available to the public
- **Debt Sustainability Analysis** have become a common feature in a number of jurisdictions.
- Providing a statutory basis for DSA could help to formalize and entrench the practice. Legal framework should clarify the responsibilities for the preparation and approval of the DSA, and the frequency of their preparation. MoF should be responsible for the preparation of the DSA at the technical level, with the results presented to Cabinet for consideration. It should also be required that the results be presented to Parliament by the Minister of Finance for consideration.
- Operationally, it should be prepared by the DMU in close coordination with the macroeconomic/ fiscal policy/ trade departments and central bank
- Legal framework shall also provide for more frequent reviews and other necessary analyses to ensure that debt is managed in a manner consistent with the objectives and targets set out in the MTDS, Annual borrowing plans and DSAs, as required by the MoF and/ or the legislature

Guarantees, Contingent Liabilities, On-Lend

- Work in Progress

Institutional Framework

Institutional Framework



UNCTAD Guidelines on Responsible Sovereign Lending and Borrowing. 2013 pg 35

Role of Parliament/ Legislature

Authority/ Approval/ Accountability (Oversight)

- Parliament’s legislative role includes "setting a legal framework for public debt management that provides strategic direction to borrowing decisions and clearly specifies the roles and responsibilities for the institutions involved in debt management."
- Developing and modernising debt management legislation is "key to putting the processes in place required for governments to provide Parliament and the public with the necessary information for public debt to be effectively scrutinised.”
- Parliament retains authority to review, evaluate and pass new legislations to ensure that the Executive has performed and adhere to principles and purposes agreed to in exercising its delegated power for effective debt management
- Parliament retains the authority to ratify and issue loan agreements, particularly loans contracted abroad and classified as treaties.
- Parliamentary approval is needed for contingent liabilities, or information on contingent liabilities should be provided to Parliament.

Role of Government

Exercise, Effective, Accountable

- The government is required to report to Parliament annually on its debt management activities, including plans for the upcoming fiscal year and activities of the previous year.
- The government is required to draft and table a strategy that sets out the Medium-Term Debt Strategy for how it will achieve its debt management objectives. The MTDS should be updated or revised regularly.
- The objectives for debt management are clearly defined and publicly disclosed along with stock and composition of its debt and financial assets, and relevant legislation. The measures of cost and risk that are adopted are explained.

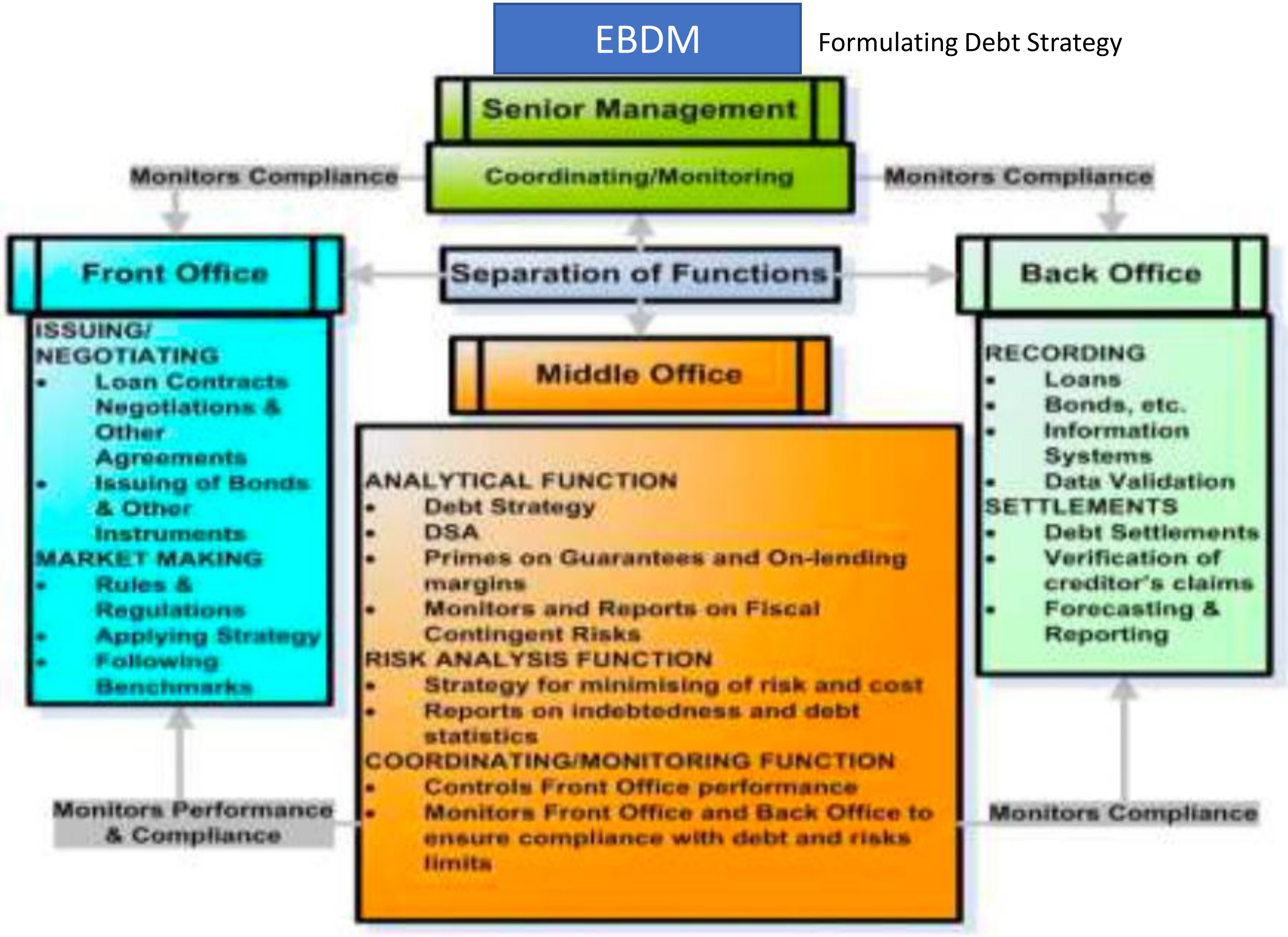
- The legal framework typically provides explicitly for debt management powers to be exercised solely by the Minister of Finance on behalf of Government and subject to the established framework.
- Institutional arrangements to support the Minister of Finance in debt management is quite commonplace such as the establishment of DMU, delegating authority to officials or entities to borrow and manage the debt on his behalf.
- The legal framework should provide clear statutory backing for such delegation as well as provide powers for the minister to appoint agents and advisors.
- The oversight role of the cabinet in debt management should be provided in the legal framework. Good practices in debt management suggests that cabinet should exercise some oversight over the debt management function, including by approving the MTDS and reviewing debt related reports before their submission to the Parliament. Cabinet may also approve annual debt and guarantee ceilings, borrowing and guarantee transactions.
- Perform internal audit of its debt management responsibilities and activities. Debt managers’ performance, systems and control procedures are audited regularly

Role of Executive Board for Debt Management and DMO

Executive Debt Management	⇒	**Direction and Organization**
Policy function	⇒	Strategy
Regulatory function	⇒	Structure
Resourcing function	⇒	Staffing and systems
Operational Debt Management	⇒	**Debt Dynamics and Practice**
Controlling/coordinating/ monitoring	⇒	Control, coordinate, and monitor
BACK OFFICE		
Recording function	⇒	Debt data and statistics
Operating/monitoring functions	⇒	Debt operations settlement and monitoring
MIDDLE OFFICE		
Analytical function	⇒	Analysis and financial strategy
Risk analysis function	⇒	Minimize cost and risk
FRONT OFFICE		
Issuing/negotiating function	⇒	Securities, loans, and restructuring agreements
Market-making	⇒	Government securities trading

UNCTAD Guidelines on Responsible Sovereign Lending and Borrowing. 2013 pg 37. Originally from Enrique Cosio-Pascal, The Debt Office and The Effective Debt Management Functions: An Institutional and Operational Framework.

DMO's Internal Controls: Segregation of the Debt Management Functions



•Segregation of duties really has to do with ensuring that no one person has sole control over the lifespan of a transaction (initiating, approving, recording, verifying).

•Segregation of duties therefore provides protective controls.

UNCTAD Guidelines on Responsible Sovereign Lending and Borrowing. 2013 pg 38

Role of the DMU

- Centralisation of all debt functions in one single unit or agency reduces fragmentation and enhances coordination in debt management
- Primary legislation in several jurisdiction provide explicitly for the establishment of the DMU and clarify its legal status and functions.
- The legal framework should require the involvement of the DMU in all technical analyses leading to borrowing and lending decisions as well as those related to the creation of contingent liabilities
- It should also mandate the DMU prepares the MTDS and annual borrowing plans.
- The legal framework should support operational autonomy of the DMO.
- The legal framework should provide for the establishment of an executive board for debt management which is responsible for the MTDS, Annual Borrowing Plans and risk strategy, and the effective functioning of the DMU. (pls refer to schema above)
- The legal framework should provide for its annual audit

Role of Central Banks

- In many jurisdictions central banks acts as fiscal agent of government, especially with regards to the domestic debt market

Role of SAI

Evaluate, Encourage accountability

- The Supreme Audit Institution is independent of the executive branch
- Debt management activities should be audited annually
- Plays a central role in exercising oversight on public debt management
- Publicly reports on audit results and to Parliament
- Audit should cover every aspect of the debt management process. Ensures that debt management objectives comply with procedures and policies and that all borrowings is appropriately recorded and financially accurate.
    - Financial
    - Compliance with primary, secondary legislation and internal controls
    - Performance
    - Legal framework for PDM
- (It should also establish its audit criteria for auditing the different aspects of the debt management process as mentioned above)

Auditing Debt Strategy: Substantive and Procedural

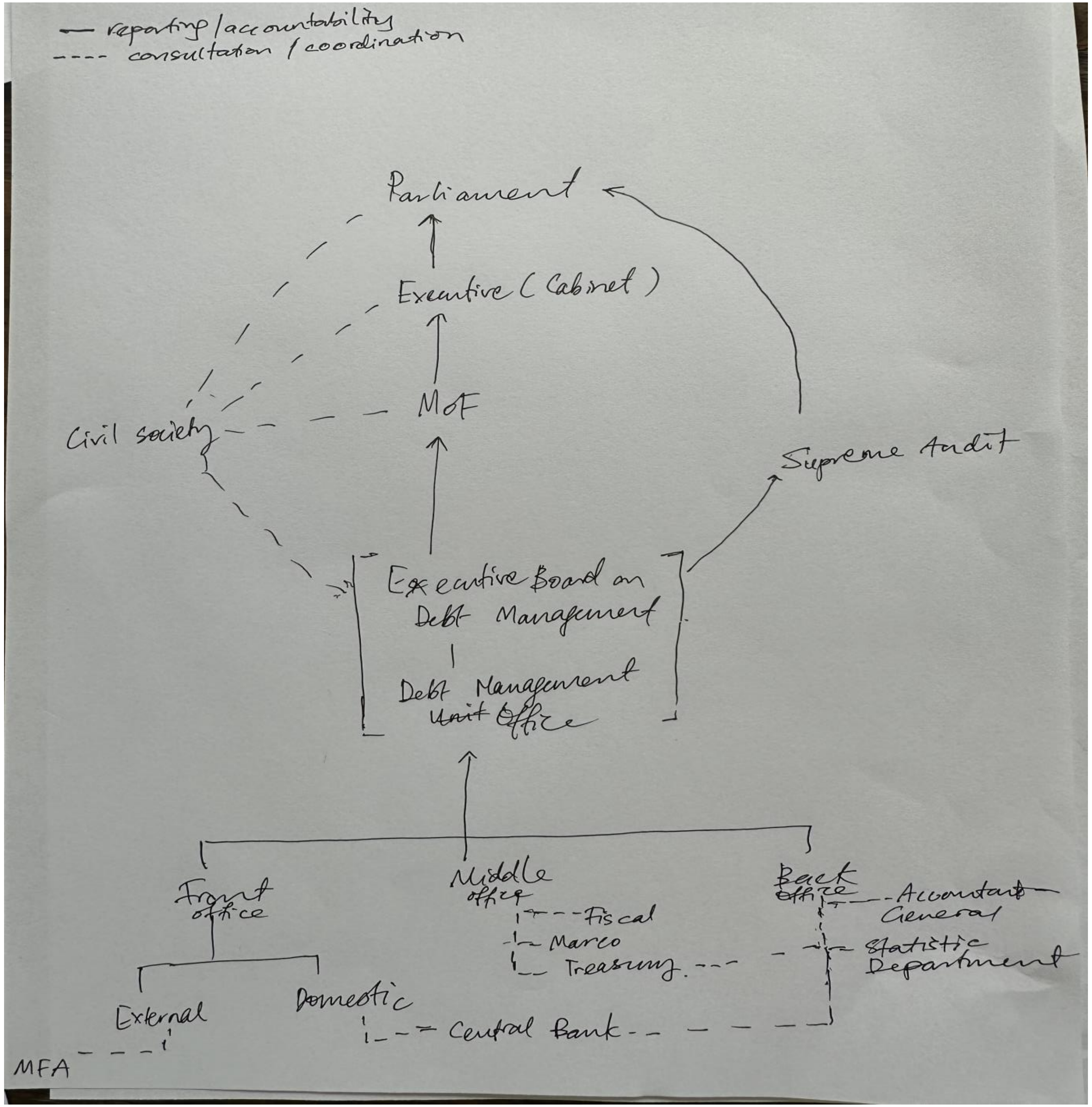
Key Questions

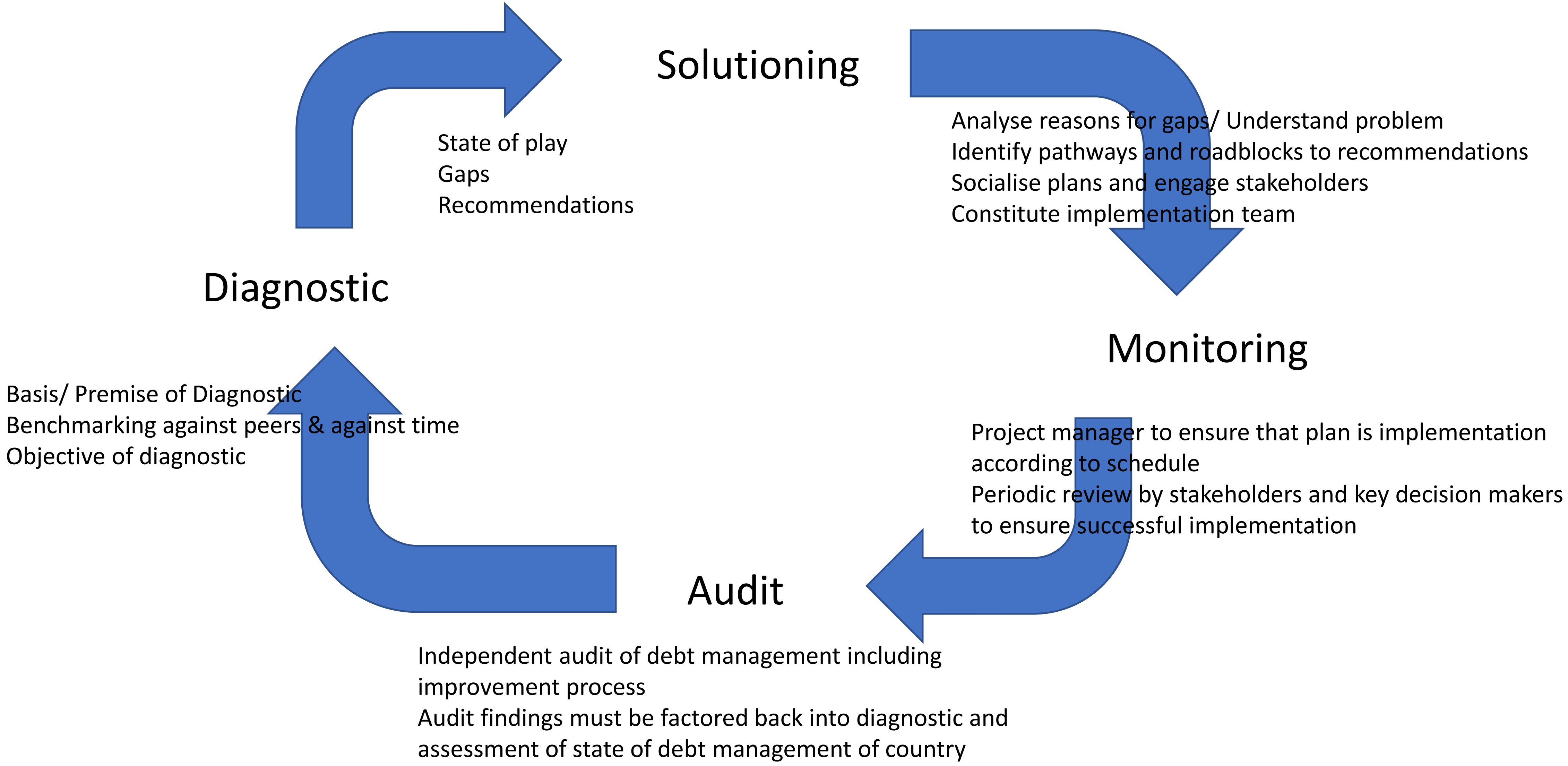
- Is the Strategy framework clear?
- Is debt management objectives clearly defined in the strategy
- Are the borrowing strategy transparent?
- Are reports publicly available for accountability?
- What institutional frameworks would facilitate implantation of debt strategy?
- Do the regulations meet international standards?
- Are borrowing decisions transparent?
- Is borrowing made in line with a sound macro fiscal framework and government budget?
- Is implementation of strategy monitored?
- Is there sufficient capacity to enforce them?

Other Institutions/ Agencies

- State Pension Fund
- SOEs
- Treasury – Cash management
- State Investment Vehicles
- Ministry of Foreign Affairs
- Ministry of Trade
- Attorney General
- Judiciary

Pulling it altogether




Solutioning
State of play
Gaps
Recommendations
Analyse reasons for gaps/ Understand problem
Identify pathways and roadblocks to recommendations
Socialise plans and engage stakeholders
Constitute implementation team
Diagnostic
Monitoring
Basis/ Premise of Diagnostic
Benchmarking against peers & against time
Objective of diagnostic
Project manager to ensure that plan is implementation according to schedule
Periodic review by stakeholders and key decision makers to ensure successful implementation
Audit
Independent audit of debt management including improvement process
Audit findings must be factored back into diagnostic and assessment of state of debt management of country

5P+5W Establishing Institutional Governance Structure

		Who	What	When	Why	How	Resources/ reference
	Clear chain of accountability	Executive, MoF, CB, Parliament, DMU Executive Board on Debt Management (EBDM)	- Scope of Public Debt - Purpose - Borrowing - Lending - Guarantees - Limits - Strategy - Implementation - Reporting - Review - Recommendations	Annual/ Quarterly	Enhance legitimacy Prevent corruption Improve credit rating Better debt management	Constitution, Primary legislation, Secondary legislation Consolidated legislation Budget cycle Debt Management Committee (Executive Board on Debt Management)	DeMPA, UNCTAD Principles Westminster Project for Democracy Common practice (3rd party legislation) Local practice (administrative law, political norms, bureaucratic dynamics)
	Well defined objectives and powers	Executive, MoF, CB, Parliament, DMU, EDBM SAI, SOEs, Private Sector	As above		Enhance legitimacy Prevent corruption Enhance operational efficiencies	Constitution, Primary legislation, Secondary legislation Consolidated legislation	As above
	Clearly defined role and responsibilities of DMU and related parties	DMU, MoF, CB, EDBM	Implementation of Strategy Strategy formulation Liability management operations Cash management Data collection Analyses Reporting Coordination with other policies	Annual Quarterly Monthly	Enhanced debt management Greater accountability and transparency Minimise corruption Build competencies Improve credit rating	Primary and secondary legislation Parliamentary hearings Internal reviews Audit Debt management committee	As above
	Independent audit	SAI, AG, DMU, MoF, CB	All of the above including regulatory compliance audit Capacity audit	Annual	Enhance legitimacy Minimise corruption Could improve credit rating	Primary legislation Parliamentary hearings Debt Management Committee	ITOSAI guidelines on public debt audit. UNCTAD, Common Practice, Local Practice
	Feedback Loop and Inclusivity	Civil Society, Pte Sector, Unions, Press		Annual	Enhance legitimacy Minimise corruption Enhance debt management competencies	Primary legislation MoF public consult Parliamentary hearings	

Legal framework and Governance of Debt Management in Fiji

FIJI ISLANDS
OFFICE OF THE AUDITOR-GENERAL
Excellence in Public Sector Auditing

Name of audit: ***Performance Audit Report on Public Debt Management***
Publishing details: http://www.oag.gov.fj/

FIJI

AUDIT OBJECTIVE:

To assess whether public debt management is effective and efficient to achieve long- term sustainability and financial stability. In particular, the following two sub-objectives were the focus of the audit:

1. to ascertain whether the government borrowings are done in an economical and sustainable way and whether contingent liabilities are properly considered when the estimates are formulated during the budget preparation
2. to establish whether the public debt and contingent liability are properly recorded and reported.

AUDIT SCOPE:

The audit approach was a result-oriented performance audit in accordance to International Standards of Supreme Audit Institutions. The audit reviewed the past four years (2010 to 2013). If necessary, data before 2010 was analysed to determine the cause and effect that led to the relevant recommendation.

AUDIT FINDINGS AND CONCLUSION:

The determination of Fiji's Government's borrowing needs and whether appropriate consideration is placed on contingent liability in the budget process:

1. The continuous growth of government debt is a direct result of the increasing fiscal deficits (government expenditure exceeding revenue) for the past five years. Debt and Cash Flow Management Unit within the Ministry of Finance has minimum influence in the consideration of new loans approved by Cabinet during the budget process. The external borrowing is increasing because there is no cap stated in the debt policy. The majority of loans usually secured by government in one fiscal year is to repay previous debts, which increase the total debt level for government.
2. Contingent liability is not budgeted for unless a government guarantee has been 'called'. The potential impact of contingent liability on the whole economy has not been fully considered in the budget process.

Is a reporting system in place that provides complete, accurate and timely reports on the Fiji's Government's public debt?

1. The public debt reporting needs to be required under the law and the current debt reporting system lacks consistency in the reporting of debt maturity. A debt management information system that is in place was not put to its optimal use. There were also some inconsistencies in the reporting of some debt maturities and the Annual Debt Report was not consistently applied for the past three years.
2. The reporting of contingent liability lacks defined timelines and there were inconsistent amounts reflected in the contingent liability reports. There were also inconsistent amounts of contingent liabilities reported. The supply of relevant information required from government-guaranteed entities was not forthcoming. The Ministry of Finance does not require audited financial statements from government guaranteed entities.

GENERAL AUDIT RECOMMENDATION:

1. The government's fiscal deficits need to be reduced to lower the national debt level. DCFMU needs to be more regularly involved in the budget process so that the national debt level is considered consistently across all aspects of the budget process where borrowing is needed. The debt policy should consider a borrowing cap for overseas loans to stimulate domestic financial market growth as stated in the debt policy. DCFMU should promote a surplus budget to be incorporated slowly into the budget process so that the government avoids accumulating debt for debt repayments.

2. The budget process should consider the contingent liability in one fiscal year and also consider the overall impact it might provide if added together with the government debt.

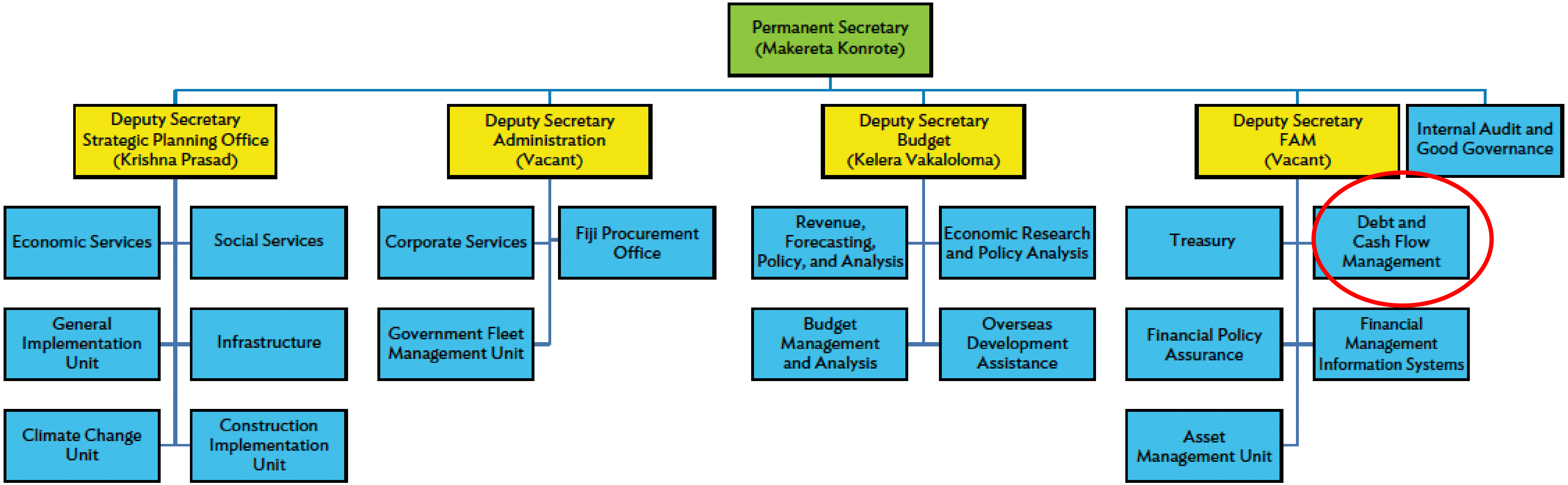
3. The reporting requirements for public debt are legally required or mandated in the *Financial Management Act 2004*. The debt management software should be upgraded to maximise its full worth. DCFMU should ensure that the content of the debt reports and contingent liability reports are consistent across years.

4. Reporting timeliness needs to be introduced for DCFMU reporting contingent liabilities. Contingent liability reports also need to be consistent in their content and the amount reported. The supply of relevant information from government-guaranteed entities should be regulated.

PACIFIC REGIONAL REPORT ON PUBLIC DEBT MANAGEMENT. By PASAI and ITOSAI. 2015?


Data accessibility
Instrument coverage
Sectorial coverage
Information on recent contracted loans
Periodicity
Time lag
Debt Management Strategy
Annual borrowing plan
Other debt statistics / contingent liabilities (CLs)
Afghanistan
Bangladesh
Benin
Bhutan
Burkina Faso
Burundi
Cabo Verde
Cambodia
Cameroon
Central African Republic
Chad
Comoros
Congo, Dem. Rep.
Congo, Rep.
Côte d'Ivoire
Djibouti
Dominica
Eritrea
Ethiopia
Fiji
Gambia, The
Ghana
Grenada

Figure 1: Ministry of Economy Organization Structure



FAM = financial and asset management division.
Source: Ministry of Economy.

The debt and cash flow management unit raises, manages, and retires debt at the lowest possible long-term cost and at an acceptable degree of risk

PUBLIC FINANCIAL MANAGEMENT SYSTEMS—FIJI : Key elements from a financial management perspective. By ADB 2017. Pg 8

Financial Management (Amendment) Act 2021.

Section 5 amended

3. The Principal Act is amended by deleting section 5 and substituting the following—

"Principles of responsible fiscal management

5. The management of the public finances of the Republic of Fiji, including the preparation and execution of a budget, is to be guided by the following principles—

(a) Accountability: the Government is accountable to Parliament for the way it carries out its responsibilities in relation to the management of public finances;

(b) Comprehensiveness: all revenue and expenditure must be included and appropriated in the budget and recorded on a gross basis;

(c) Fiscal discipline: the budget must be prepared in accordance with a medium term fiscal framework and the Government must ensure that it meets its fiscal objectives as specified in the fiscal strategy subject to economic shocks;

(d) Specificity: all expenditure of budget sector agencies must be made solely for the specific purpose of appropriations;

(e) Sustainability: the budget must achieve and maintain a prudent level of outstanding government debt and an appropriate balance between revenue and expenditure subject to economic shocks;

(f) Transparency: the roles of those entrusted with financial management functions must be clearly specified in this Act or any subsidiary legislation made under this Act, and timely and reliable financial information on the budget, budget sector agencies and off-budget State entities must be made publicly available; and

(g) Value for money: all expenditure of budget sector agencies must be made through the effective, efficient, economical, equitable and ethical utilisation of financial and non-financial resources to achieve the best possible development outcomes over the life of an activity related to the expenditure.".

Commentary:

While debt is not specifically mentioned, it arguably falls within the remit of public finance management which the government is explicitly accountable to the Parliament for, and by extension, it is also accountable to parliament for its debt management responsibilities. This opinion is bolstered by the direct mention and inclusion of public debt in sub para (e).

By this argument all principles of responsible fiscal management apply to debt management

On sustainability: prudent level of outstanding government debt is not defined. What is a prudent level of debt? What is outstanding government debt? Does it include contingent liabilities? Is it only for current fiscal year? etc

4 Section 6 amended

4. The Principal Act is amended by deleting section 6 and substituting the following—

"*General responsibility of the Minister on fiscal management*

6. The Minister is responsible for managing the financial affairs of the Government in accordance with the requirements of the Constitution of the Republic of Fiji, this Act and the principles of responsible fiscal management, including the following—

(a) managing revenue and expenditure in such a way as to achieve prudent levels of debt;

(b) managing prudently the fiscal risks of the Government;

(c) ensuring that a fiscal strategy considers the likely impact of the fiscal strategy on present and future generations and the interaction between fiscal policy and monetary policy; and

(d) ensuring that the Government's financial resources are managed effectively and efficiently.".

Section 6A inserted

5. The Principal Act is amended after section 6 by inserting the following new section—

"*Responsibilities of permanent secretary responsible for finance*

6A. Subject to the provisions of this Act, the permanent secretary responsible for finance is responsible for the following—

(a) performing the functions and duties specified under this Act and any subsidiary legislation made under this Act to be the functions and duties of the permanent secretary responsible for finance;

(b) the administration of the Ministry;

(c) advising the Minister on matters pertaining to the implementation of this Act and any subsidiary legislation made under this Act; and

(d) assisting the Minister in the discharge of his or her responsibilities under this Act and any other written law.".

Commentary:

Minister of finance is legally responsible for fiscal management and in this regard, be responsible for achieving prudent levels of debt. Reading this together with previous para on sustainability still leaves the same ambiguities. Namely, what is a prudent level of debt? What is outstanding government debt? Does it include contingent liabilities? Is it only for current fiscal year? etc

The perm sec for finance is also legally obligated and empowered to make decisions on matters of fiscal management which includes public debt management.

Section 12 inserted

8. The Principal Act is amended before section 13 by inserting the following new section—

"*Fiscal strategy*

12.—(1) The Ministry must prepare a fiscal strategy which—

(a) is to be based on the principles of responsible fiscal management;

(b) sets out the Government's fiscal objectives for the medium term;

(c) sets out the Government's financial targets or limits for the medium term, relating to—

(i) revenue, expenditure and borrowing as a proportion of gross domestic product;

(ii) government debt stock and government debt servicing as a proportion of gross domestic product; and

(iii) contingent liabilities as a proportion of gross domestic product;

(d) reviews the performance of the previous 2 financial years against the financial targets or limits for the medium term and includes a statement comparing the financial targets or limits with, for each type of financial target or limit, the actual results for the previous 2 financial years; and

(e) reviews the performance of the current financial year against the financial targets or limits for the medium term and includes a statement comparing the financial targets or limits with an estimate of the results for the current financial year.

(2) The Minister must submit the fiscal strategy to Cabinet for approval no later than 6 months before the annual budget.

(3) The Minister must, at the sitting of Parliament immediately after the fiscal strategy is approved by Cabinet, table the fiscal strategy in Parliament for Parliament's information only.

(4) The permanent secretary responsible for finance must publish the fiscal strategy on an official government website on the same day the fiscal strategy is tabled in Parliament.".

Commentary:

Minister of finance is legally required to articulate financial targets as part of its fiscal strategy. Such targets with regards to debt must be represented in relation to GDP.

Insofar as debt figures/ targets are part of fiscal strategy is must be submitted by the MoF to the cabinet for approval at least 6 months before the annual budget.

Once approved by the cabinet, the minster must present to the Parliament for information only.

The perm sec for finance has to publish the said strategy

Section 59A inserted

28. The Principal Act is amended after section 59 by inserting the following new section—

"Debt management strategy

59A.—(1) The Ministry must—

(a) prepare a debt management strategy which sets out the Government's plans to source financing and manage associated costs and risks; and

(b) review any debt management strategy in place and make any amendment, where required.

(2) The objectives of a debt management strategy are to—

(a) minimise the medium to long term cost of government debt within prudent levels of risk; and

(b) support the development of a well-functioning domestic market for debt securities.

(3) The permanent secretary responsible for finance must publish the debt management strategy on an official government website.".

Section 60 amended

29. Section 60 of the Principal Act is amended by—

(a) deleting the heading and substituting "Debt management operations"; and

(b) deleting subsection (2) and inserting the following new subsections—

"(2) The Minister must approve debt management operations which include call options, bond switches and buy backs, which are consistent with the debt management strategy to achieve the necessary government objectives to manage debt.

(3) A transaction or an arrangement or operation of a kind referred to in subsections (1) and (2) must not be entered into unless it is consistent with the debt management strategy.".

"Pre-election economic and fiscal update

27A.—(1) The Minister must, within 14 days after the commencement of the campaign period for a general election, ensure that a pre-election economic and fiscal update prepared by the Ministry is published on an official government website.

(2) The pre-election economic and fiscal update must outline—

(a) the current fiscal performance and outlook of the economy for the medium term;

(b) the level of debt stock;

(c) contingent liabilities;

(d) major fiscal risks; and

(e) any other socio-economic indicators.

Commentary:

The Ministry of Finance is obliged to prepare a debt management strategy which must include the following:

- government's plan to source financing (borrowing plans)
- Show and articulate the costs and risks associated with such financing plans
- Show and articulate how these costs and risks are to be managed

Ministry of Finance must also review its existing strategy and make necessary amendments.

The mandated scope of the strategy does not explicitly include other critical analytical tasks necessary for debt management such as evaluating sustainability, risk analysis at portfolio level, addressing key drivers of debt, etc

Objectives of the strategy legally spelt out as:

- minimizing cost of debt within prudent levels of risk
- Develop well-functioning domestic market for debt securities

First objective leaves a lot of operational scope. Is this to be achieved at portfolio or instrument levels. What is a prudent level of risk? How is this measured? Is debt management strategy to be seen only from fiscal responsibility perspectives? What if borrowings are made under some other statutory purpose? What if these two objectives are at odds with one another?

What should a well functioning domestic market for debt securities look like for a small economy and limited financial sector like Fiji? What purpose does it serve?

Part 9A inserted

30. The Principal Act is amended after section 64 by inserting the following new Part—

"PART 9A—INTERNAL AUDIT

Internal auditors

64A.—(1) The permanent secretary responsible for finance must ensure that an internal audit is conducted to determine whether the financial affairs, operations and activities of a department are being performed economically, effectively and efficiently, in compliance with all relevant written laws and with due regard to the principles of responsible fiscal management.

(2) The Minister may authorise that an internal audit is conducted to determine whether the financial affairs, operations and activities of any other budget sector agency or an off-budget State entity are being performed economically, effectively and efficiently, in compliance with all relevant written laws and with due regard to the principles of responsible fiscal management.

(3) The permanent secretary responsible for finance may authorise that—

(a) a special audit is conducted to determine whether the financial affairs, operations and activities of a budget sector agency or an off-budget State entity are being performed in compliance with all relevant written laws and with due regard to the principles of responsible fiscal management; and

(b) an audit of the accounts of any recipient of a government grant is conducted to the extent necessary to ensure that any condition of the grant has been complied with.

(4) The permanent secretary responsible for finance may, with the agreement of the Minister, appoint a person employed by the Ministry or any other person as an internal auditor to conduct the audits under subsections (1), (2) and (3).

(5) Responsible authorities must give full, free and unrestricted access to all functions, premises, assets, personnel records, accounting records, returns and other documentation and information to an internal auditor appointed that the permanent secretary responsible for finance deems necessary to conduct the audits under subsections (1), (2) and (3).

(6) Notwithstanding subsections (1) to (5), the permanent secretary responsible for finance must not authorise the audit of an independent office unless the audit has been requested in writing by the responsible authority for the independent office.

Internal audit charter

64B. The Ministry must—

(a) prepare an internal audit charter which sets out—

(i) the standards and procedures consistent with international standards and procedures for the professional practice of internal audit; and

(ii) the functions and powers of internal auditors; and

(b) publish the internal audit charter on an official government website.

Internal audit committee

64C.—(1) There must be at least one internal audit committee to have oversight of internal audits and the work of internal auditors.

(2) The Minister must determine the composition, membership and specific functions and powers of each internal audit committee.

Internal audit committee charter

64D. The Ministry must—

(a) prepare an internal audit committee charter which sets out—

(i) the standards and procedures of internal audit committees; and

(ii) the general functions and powers of internal audit committees; and

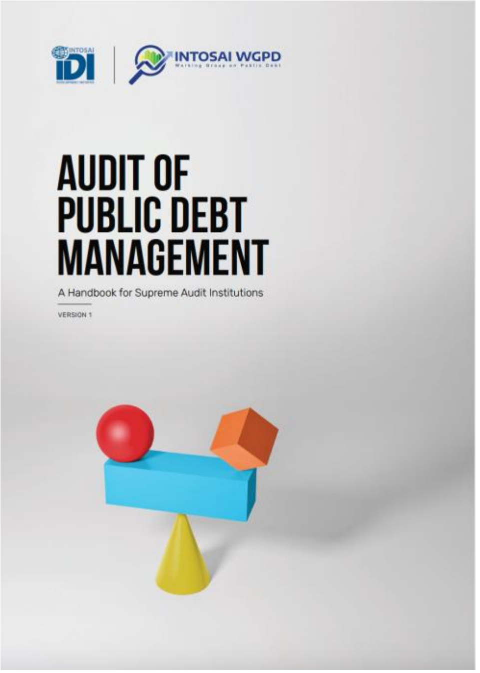
(b) publish the internal audit committee charter on an official government website.".

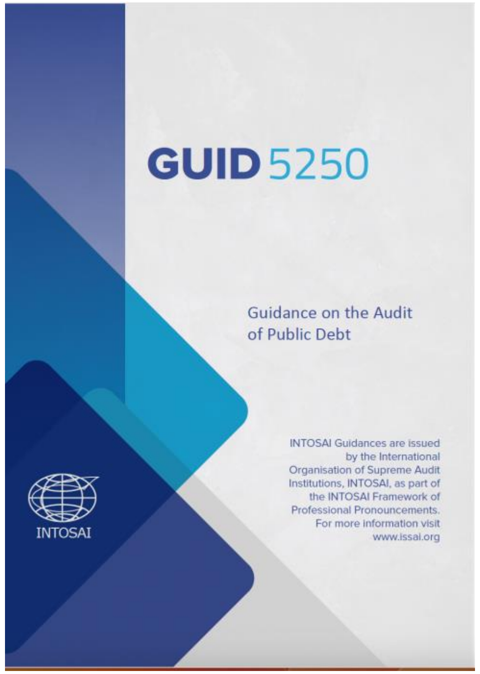
Further comments

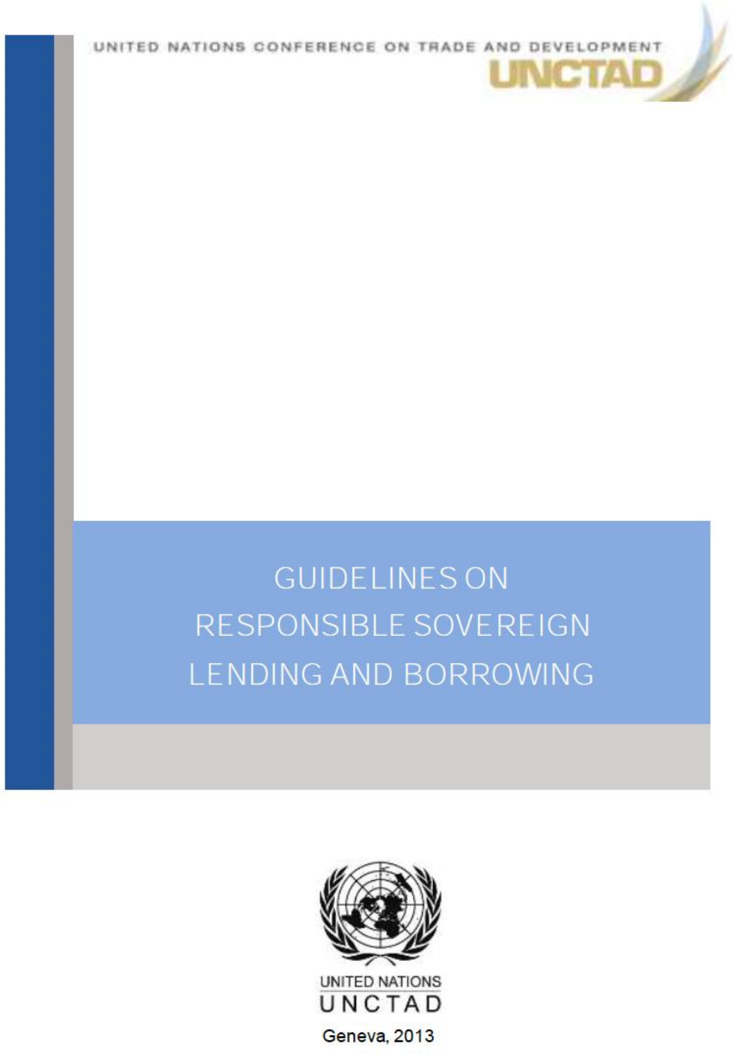
- Fiscal strategy (which arguably includes debt strategy) is to be approved by cabinet only. Parliamentary approval is not required.
  - Perhaps this is captured in the budget process. Nonetheless, strategy is where the thinking, trade offs, policy setting and prioritization takes place. Parliament should be involved in this process including debt strategy
- Wrt to accountability, there does not appear to be provision for external audit by auditor general or SAI, which should report to parliament to ensure genuine independence and accountability. As for the internal audit, does not specify where it ultimately goes and what follow ups there are. It notably does not mention the role of parliament in the internal audit.
- Given the elevated status of debt in the legislation and the impact it has on the economy, the current set up of the debt management unit (pls see diagram) does not seem to be appropriately situated. Head of debt unit appears to report to department head who then reports to perm sec who reports into the minister. Debt management unit should be elevated given the importance and cross cutting nature the issue
- Debt management functions seems to be spread across various sub-departments. It would make sense to centralise and consolidate. It so far that there are joint issues such as cash management or investment, there should be well delineated coordination. Relationships and dealings of DMU with other agencies should also be direct such as with central bank for instance or other SOEs.
- Seems that the executive decision making in relation to debt is handled by perm sec and/or minister. There should be a formal executive board for debt management that is responsible for debt strategy. Board could be constituted by senior/ high ranking officials and members of parliament. In any case this is not explicit, which should be so.
- Note to self: need to read the principal legislation of 2004 to see whether other issues are covered
- Based on this amendment alone, several good practices missing. Limits, purpose, power to borrow, guarantee, ceilings, etc not covered. Parliament not given specific roles and responsibilities and mandate over debt issues, except indirectly through budget process. Given the potential magnitude of the issue, debt should be given dedicated attention.

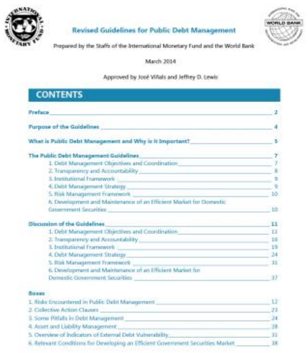
Legal Basis for Auditing of Public Debt Management

- **Constitution: Independence of SAI and accountability to parliament**
  - 151(1) – the Auditor General is appointed by the President
  - 152(5) – In the performance of his or her functions or the exercise of his or her authority and powers, the Aud-Gen shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as prescribed by written law
  - 152(1) – At least once a year, the Aud-Gen shall inspect, audit and report to the Parliament on a) public accounts of the state b) the control of public money… c) all transactions with or concerning public money….
  - 152(2) – In the report, the AG, must state whether in his or her opinion – a)all transactions with or concerning public money… have been authorized by or pursuant to this Constitution or any written law
- **Audit Act of 1969**
  - Annual financial audit of the whole of government, all govt entities, government commercial companies and statutory authorities
  - Performance audits of government entities








Revised Guidelines for Public Debt Management

Prepared by the Staffs of the International Monetary Fund and the World Bank

March 2014

Approved by José Viñals and Jeffrey D. Lewis

CONTENTS

Notes

Central bank	The SAI	The Ministry of Finance
Active in sovereign debt markets	Plays a central role in exercising oversight on public debt management	Has the authority to borrow on behalf of the government
Sells debt securities to finance the purchase of assets	Publicly reports on audit results and to Parliament in the Westminster system	Responsible for setting the debt structure and debt managemnet strategy
	Audits the government's consolidated financial statements	Monitors the debt situation to ensure that it remains sustainable
	Conducts value-for-money or performance audits	Ensures spending decisions don't negatively affect the country's credit rating
	Examines the government's compliance with rules and regulations	

Why these features in debt management governance are important

Key Elements of a Debt Management Law[4]

Element	Justification	Risk, If Excluded
1. The legal framework clearly sets out the authority to borrow. This borrowing power is regulated by a statement of purpose, which establishes eligible borrowing objectives, and may be restricted by a borrowing limit defined in terms of a debt ceiling or an annual borrowing limit.[5]	Specifying the borrowing purpose safeguards against borrowing for speculative investments or to finance expenditures that have neither been included in the annual budget nor approved by the parliament or congress in some other fashion.[6]	Failing to specify purposes for borrowing can result in government incurring debt for expenses that are not prudent or cost-effective.
2. The parliament retains the authority to ratify and issue loan agreements, particularly loans contracted abroad and classified as treaties.	Deters the occurrence of imprudent borrowing without the appropriate government accountability; and supports the accountability of the government for all public liabilities.	There have been cases in which the government illegally bypassed parliament's ratification role, which have had negative impacts for both the economic health of the country and the political reputation of those who negotiated these loans in secret.
3. Parliament approves contingent liabilities or information on contingent liabilities is provided to parliament.	Helps to ensure that parliament and the public are aware of the contingent liabilities that are being taken on by the government.	The risk associated with lack of parliamentary approval or control of contingent liabilities is that unrecorded debt suddenly needs to be paid when an unexpected event occurs. This can alter a country's actual debt burden leading to debt distress or high risk of debt distress.

Element *(Continued)*	Justification	Risk, If Excluded
4. Government is required to report to parliament annually on the government's debt management activities including plans for the upcoming fiscal year and activities of the previous year.	Improves fiscal transparency and provides information on how the government's budget will be financed.	The risk associated with the government's non-reporting of its debt management activities is that corrective action (or the opportunity for corrective action) is not taken to address imprudent borrowing on the part of the government or its debt management unit. Consequences could include excessive external debt, high levels of short-term borrowing and failure to obtain the best possible terms of a loan.
5. Government is required to draft and table a strategy that sets out the medium-term framework for how the government will achieve its debt management objectives. The Medium-Term Debt Strategy (MTDS)[7] should be updated or revised regularly.	Raises the profile of debt management activities and objectives, prevents ad hoc and frequent changes and strengthens transparency.	In the absence of a medium-term debt strategy, governments may not be properly analyzing or tracking the following key information, which may result in a higher debt burden: (a) tracking the cost and risk of existing debt; (b) analyzing potential sources of finance; (c) analyzing alternative debt management strategies; (d) analyzing the medium-term macro-policy and market environment.