

## *Public Debt and Improvement of Laws on Public Debt Management in Vietnam*

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### **Abstract**

In the highly unstable context of current world economy, public debt has become a hot issue that many countries are concerning. In Vietnam, in the industrialization and modernization progress, the country needs more capital and technology to restructure the economy and facilitate economic development, social stability and sustainable direction. Over the years, Vietnam has organized to mobilize capital through various forms of debt, such as government bonds, ODA, etc. In fact, Vietnam's public debt is now so high and having an upward trend, while the budget deficit is increasingly heavy and investment is non-stop expanding leading to inflation and rising interest rates. This has caused Vietnam's debt situation to become more serious. In the meanwhile, public debt management in Vietnam has really been focused in recent years, which is marked by the promulgation of Public Debt Management Law. Besides, the laws on public debt management is incomplete and not compatible with international standards such as the shortage of the concept of public debt, the regulations on issuing, using, paying plan and management of all kinds of public debts, regulations on publicizing, monitoring the information of public debt. Therefore, some suggestions for improvement of Vietnam's public debt management laws can be withdrawn based on some guidelines of World Bank and International Monetary Fund and experience of China.

Keywords: public debt management, law, Vietnam

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## Introduction

Vietnam's public debt is now extremely high and experiencing an upward trend while the growing budgetary deficit and continuous investment is leading to inflation and rising interest rates. This has caused Vietnam's debt situation to become more serious. In the six years from 2006 to 2012, public debt had increased sharply from 91,757 billion VND (22.7%) to 989,300 billion VND (41.1%) and the public debt to GDP ratio grew significantly from 41.5 % to 55.6%.<sup>1</sup> However, public debt management (PDM) in Vietnam has been under focus in recent years, marked by the issuance of the Law on Public Debt Management in 2009 which is incomplete and not compatible with international standards. Therefore, improving the legal framework concerning PDM has become an imperative issue in Vietnam.

This paper aims to analyze the situation of PDM in Vietnam, to explore the shortcomings of the present laws, and to suggest some solutions for the management of public debt in the future. In this research, guidelines on the legal framework for PDM laid out by international organizations, as well as the experiences of China is selected as comparative targets to make recommendations for the management of public debt in Vietnam in the future.

This paper is structured as follows: Part 1 will introduce an overview of public debt. Part 2 will review the situation of PDM in Vietnam. Part 3 points out some shortcomings of current laws on PDM in Vietnam, while Part 4 and Part 5 explore the suggestion of international organizations and the experiences of China on setting the legal framework for PDM. Finally, suggestions for improving the laws on PDM in Vietnam will be made in Part 6.

### 1. Overview of public debt

It is evident that public debt is an inevitable solution to financing a budget deficit and for development investment. From a legal perspective, the definition of “public debt” is crucial because “it has implications for the types of public institutions and instruments that are governed by the requirements of the PDM legal framework.”<sup>2</sup> However, currently, “there is no universally accepted definition of ‘public debt’ and various jurisdictions define this differently, with varying policy implications.”<sup>3</sup> Therefore, it is important that the legal framework of a given jurisdiction clarifies the scope of public debt.

In the narrow sense, public debt includes the debt obligations of a central government, local government, and the government guaranteed debts of independent organizations. In most countries, public debts comprise government debts and government

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<sup>1</sup> See, HOANG NGOC NANG HONG, THUC TRANG NO CONG VA QUAN LY NO CONG O VIET NAM [Status of Public Debt and Public Debt Management in Vietnam] (September 17, 2013), *available at* <http://tapchitaichinh.vn/nghien-cuu-trao-doi/nghien-cuu-dieu-tra/thuc-trang-no-cong-va-quan-ly-no-cong-o-viet-nam-31983.html> (visited January 7, 2016)

<sup>2</sup> International Monetary Fund, *Designing legal frameworks for public debt management*, 15/147 INTERNATIONAL MONETARY FUND WORKING PAPER 1, 12 (2015), *available at* <https://www.imf.org/external/pubs/ft/wp/2015/wp15147.pdf> (visited January 7, 2016)

<sup>3</sup> *Id.*, at 12

guaranteed debts.<sup>4</sup> In some jurisdictions, public debt also includes debts of local government (such as in Vietnam,<sup>5</sup> Taiwan,<sup>6</sup> and Romania<sup>7</sup>) and debts of state owned enterprises (SoEs) (such as in Macedonia<sup>8</sup> and Thailand<sup>9</sup>).

According to international organizations and some countries, “public debt” is defined in a broad sense. The International Monetary Fund (IMF) and the World Bank (WB) often refer to a public debt as a “debt of the general government and in some cases, the debt of the entire public sector”<sup>10</sup> and the debts that are collected from debt instruments.<sup>11</sup> In another report, the IMF considers “public debt” as the debt of the entire public sector, “which includes financial and nonfinancial public enterprises and the central bank.”<sup>12</sup>

This approach is also relatively similar to the notion of public debt in the Debt Management and Financial Analysis System of the United Nations Conference on Trade and Development,<sup>13</sup> in the Guidance on Definition and Disclosure of Public Debt of the International Organization of Supreme Audit Institutions,<sup>14</sup> and in some countries such as Mauritius<sup>15</sup> and Moldova.<sup>16</sup>

It is undeniable that “[w]hether the broader public sector debt is included or excluded from the scope of application of the legal framework will vary from country to

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<sup>4</sup> Vuong Dinh Hue, *Improving public debt management* (April 15, 2011), available at <http://english.tapchiconsan.org.vn/Home/Focus/2011/169/Improving-public-debt-management.aspx> (visited February 17, 2016)

<sup>5</sup> See, Article 1, Vietnam’s Public Debt Management Law (2009)

<sup>6</sup> See, The Amendment of Taiwan’s Public Debt Act (2013)

<sup>7</sup> See, Law No. 273/2006 on Public Finance and the GUO no 64/2007 concerning public debt, and Căruntu Roxana Corina, *Public debt: Structure and Characteristics – Romania’s case* (March, 2013), p.31, available at [http://www.utgiu.ro/revista/ec/pdf/2013-03/5\\_Caruntu%20Roxana%20Corina.pdf](http://www.utgiu.ro/revista/ec/pdf/2013-03/5_Caruntu%20Roxana%20Corina.pdf) (visited January 7, 2016)

<sup>8</sup> See, Article 2, Law on Modifications and Amendments to the Law on Public Debt No. 35/11 of Republic of Macedonia (2011)

<sup>9</sup> See, Section 4, Thailand’s Public Debt Management Act, B.E. 2548 (2005)

<sup>10</sup> See, *supra* note 2 and International Monetary Fund and World Bank, *Guidelines for Public debt management* (2014)

<sup>11</sup> There are six different instruments that comprise gross debt: debt securities; loans; other accounts payable such as trade credits and advances and miscellaneous other items due to be paid or received; Special Drawing Rights (SDRs) which are international reserve assets created by the IMF and allocated to its members to supplement existing reserve assets; currency and deposits; insurance, pension and standardized guarantee schemes. See, International Monetary Fund, *Public Sector Debt Statistic – Guide for Compilers and Users* (2013), p.3, available at <http://www.tffs.org/pdf/method/2013/psds2013.pdf> (visited January 7, 2016)

<sup>12</sup> INTERNATIONAL MONETARY FUND, FISCAL MONITOR – PUBLIC EXPENDITURE REFORM: MAKING DIFFICULT CHOICES 89-90 (2014), available at <https://www.imf.org/external/pubs/ft/fm/2014/01/pdf/fm1401.pdf> (visited January 7, 2016)

<sup>13</sup> See, United Nations Conference on Trade and Development, *Debt Management and Financial Analysis System Programme* (2011), available at [http://unctad.org/en/Docs/gdsdmfasmisc2011d1\\_en.pdf](http://unctad.org/en/Docs/gdsdmfasmisc2011d1_en.pdf), (visited February 17, 2016)

<sup>14</sup> See, International Organization of Supreme Audit Institutions, *Guidance on Definition and Disclosure of Public Debt* (1995), p.9, available at [http://www.issai.org/media/13000/issai\\_5421e.pdf](http://www.issai.org/media/13000/issai_5421e.pdf), (visited January 7, 2016)

<sup>15</sup> See, Section 6 (1) and (2), Mauritius’ Public Debt Management Act (2008)

<sup>16</sup> See, Article 2, Moldova’s Organic Law No. 419 on Public Debt, State Guarantees and State On-lending (2006). Accordingly, “public debt” also includes the debt from internal and external borrowings of enterprises where the State or/and administrative-territorial unit own more than 51%.

country, depending on the nature of the political and institutional framework.”<sup>17</sup> In fact, it is not necessarily obligatory for all members of the above international organizations to adhere to these definitions. These definitions are some guidelines on public debt statistics that help researchers, statistical experts, and users of statistical data to properly use data in accordance with their analytic purposes. IMF member countries are encouraged to collect, aggregate, and report on public debt data under the standard definition of IMF to create consistency among statistics, aggregation, and classification, and to allow for comparison of public debt data between countries.

## 1. The situation of PDM in Vietnam

In fact, Vietnam’s public debt has been increasing sharply for a long time, whereas PDM has only been a focus in recent years, marked by the promulgation of the Public Debt Management Law in 2009. In recent times, the state has issued many legal documents that are part of an important legal base regulating PDM activities. The situation of PDM can be described as follows:

First, all public debts have been paid fully and timely up to now, so Vietnam has not entered into insolvency yet. Public debt to GDP indicators are in line with the objective of the country’s Strategy of Public Debt and External Debt in the 2011-2020 period.<sup>18</sup> Based on the assessment of the IMF, the WB, and the Asian Development Bank, “Vietnam is at low risk of external debt distress... and total public debt are below vulnerability thresholds,”<sup>19</sup> contributing to the strengthening of the national credit rating and the reduction in the country’s cost of capital mobilization. However, because the management of public debt may be affected by potential risks, such as interest risk and exchange rate risk, and increasing domestic debt may lead to some negative impacts on the economy, the PDM should be watched carefully.

Second, public debt has been mobilized in various forms and in diverse currencies meeting the need of the additional demand for development investment and the balance of state budget. Many infrastructure projects, poverty reduction programs, job creation projects, programs for environmental and social welfare improvement are financed by funds from public debt sources.<sup>20</sup> However, the scale of the government bond market scale is still small, with Vietnam at only 14% of GDP and 63% of the bond market scale; therefore, it is difficult for the government to continue to increase the scale of domestic capital mobilization in the coming years.<sup>21</sup>

Third, the usage of public debts in Vietnam is not reasonable, timely, and efficient. The first reason for this is that “delays in the disbursement of investment capital from

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<sup>17</sup> *supra* note 2

<sup>18</sup> MINISTRY OF FINANCE OF VIETNAM, BAO CAO CONG TAC HUY DONG VON, TINH HINH NO CONG, DINH HUONG VA GIAI PHAP BAO DAM AN TOAN NO CONG [Report on the Raising of Capital, Public Debt Situation, Orientation and Solutions for the Safety of Public Debt] (December 30, 2015) (on file with the author)

<sup>19</sup> Asian Development Bank, *Macroeconomic and Debt Sustainability Assessment*, p.1, available at <http://www.adb.org/sites/default/files/linked-documents/47293-001-sd-04.pdf> (visited January 17, 2016)

<sup>20</sup> *See, supra* note 18

<sup>21</sup> *Id.*

the State budget and government bond funds take place quite often,<sup>22</sup> especially in the progress of construction in infrastructure projects. This constraint, “together with a lack of financial discipline in public investment and in the operation of SoEs results in scattered investment, waste, loss of investment capital”<sup>23</sup>; therefore, it has “exposed Vietnam to numerous risks”<sup>24</sup> in PDM. The second reason is low investment efficiency demonstrated by the Incremental Capital to Output Ratio (ICOR) i.e., the additional capital required to increase one unit of output. The lesser the ICOR, the more efficient is the investment.<sup>25</sup> In Vietnam, for instance, the ICOR index surged to a high level (more than 8) in 2009 while investment as a whole was 42% of GDP and the growth rate just reached 5%.<sup>26</sup> This means that Vietnam needed to invest 8 units of capital to gain 1 unit of output.

Fourth, “Vietnam has just only paid attention to mandatory debt management, but not hidden debt management”<sup>27</sup>. Hidden debts are not the liabilities of the government to repay, but they depend on economic and social functions of the state. In fact, hidden debts are unstable, and because they are relatively difficult to estimate, then can create high potential risks for debt sustainability. One famous example of hidden debt in Vietnam is the case of Vietnam Ship Industry Group, a state economic group (hereinafter VINASHIN). “In 2005, Vietnamese government issued US\$750 bonds in the international financial market to finance VINASHIN. Moreover, VINASHIN still borrowed at least US\$600 millions from foreign banks. This company also got a huge amount of funds, especially credits from state banks, as it required. But, due to the bad management with many crazy investment projects and corruption, in June 2010, its total debt was at least... US\$4.6 billions, which were equal to 83% of its total assets.”<sup>28</sup> When VINASHIN came into bankruptcy, the government had to pump a lot of money into it, leading to a huge burden on the state budget and a negative effect on the public debt sustainability of the country.

Fifth, the information and data on public debt in Vietnam have not been aggregated and publicized sufficiently. In fact, the MoF just publicized information and data on public debt in the Bulletin of Public Debt by the end of 2013. Therefore, it is difficult for the state and the people to supervise and effectively implement the management of public debt.

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<sup>22</sup> Central Institute for Economic Management, *Public investment, Public debt and State budget Sustainability* (2013), p.4, available at <http://www.vnep.org.vn/Upload/PUBLIC%20INVESTMENT.pdf> (visited January 17, 2016)

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See, MAI THU HIEN AND NGUYEN THI NHU NGUYET, TINH HINH NO CONG VA QUAN LY NO CONG O VIET NAM, [The situation of public debt and public debt management in Vietnam] (July, 2011), p.3, available at <http://www.cantholib.org.vn/Database/Content/2520.pdf> (visited January 17, 2016)

<sup>26</sup> *Id.*

<sup>27</sup> See, *supra* note 22 at 5

<sup>28</sup> Nguyen Nhu Binh, *The Recent Economic Situation of Vietnam and Investment Risks*, A-2 CRR DIS. P. S. 12 (2010), available at <http://www.econ.shiga-u.ac.jp/10/2/3/res.9/DPA2Binh201012change1220.pdf> (visited January 17, 2016)

## 2. Shortcomings of current laws on PDM in Vietnam

First, there is “the limited understanding of public debt, as a result, incorrect evaluation of Vietnam’s public debt”<sup>29</sup>. The scope of government debt does not include the debts of SoEs, extra-budgetary units/accounts, and social security funds such as Vietnam Bank for Social Policies and Vietnam Development Bank. This is not compatible with the IMF’s suggestion on public debt<sup>30</sup> and the decisions on the establishment of Vietnam Bank for Social Policies and the Vietnam Development Bank. According to Decision No. 131/2002/QĐ-TTg, dated October 4, 2002, on the establishment of Vietnam Bank for Social Policies and Decision No. 108/2006/QĐ-TTg dated May 19, 2006, on the establishment of Vietnam Development Bank, these social security funds are set up in order to implement credit policies for social security and development investment but not for profit purposes. Accordingly, the payment capacity of the Vietnam Development Bank and the Vietnam Bank for Social Policies is guaranteed by the government and they are exempt from paying taxes and other state budget revenues. In fact, these loans are considered government debts because they are mobilized on behalf of the government in order to perform the tasks assigned by the government. Therefore, when the debts of Vietnam Development Bank and Vietnam Bank for Social Policies are not included in government debts, it will be impossible to get accurate information about Vietnam's public debt, making it difficult to control the public debt of the country. In addition, contingent debts, like the debts of SoEs, debts arising from the privatization of the state, and solving the problem of bankruptcy of credit institutions, the expenses for environmental remediation and recovering from natural disasters, etc. have not been noted, leading to high potential risks for public debt sustainability.

Second, Vietnam still lacks instruments to manage and handle with public debt risks, such as interest rate risk, exchange rate risk, etc., as well as the mechanisms and tools for controlling public debt risk. These shortcomings have negatively impacted on the sustainability of public debt and the effectiveness of the management of public debt.

Third, the publicity of public debt via a MoF bulletin has not been regulated in detail by the law. Therefore, much important information on public debt, such as information on local administration debts, contingent debts, and the use and repayment of all kinds of public debt, has not been mentioned in the public debt bulletin. As a consequence, the reduced transparency of public debt could reduce the effectiveness of the management of public debt and the mechanism for early warnings. In the meantime, it would let international entities and foreign countries continue to calculate the data on the public debt of Vietnam in their own ways, causing inconsistency of Vietnam's public debt information and reduction of the national credit rating and preventing the international economic integration of the country.

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<sup>29</sup> Phan The Cong and Chu Thi Hao, *Vietnam’s public debt management today and some resolution*, 7 SOCIAL SCIENCES INFORMATION REVIEW 3, p.36 (September, 2013), available at <http://vjol.info/index.php/ssirev/article/viewFile/18143/16051> (visited January 7, 2016)

<sup>30</sup> See, Vietnam Institute for Economic and Policy Research (VEPR), *Characteristics of Vietnamese Public Debt* (December 11, 2015), p.1-2, available at <http://vepr.org.vn/upload/533/20160218/PD%2003%20-%20Eng%20-%20Final.pdf> (visited January 7, 2016)

Fourth, the law regulates the audit of programs and projects using loans from public debt but does not specifically stipulate the tasks and responsibilities of auditors in the management of public debt. The pending regulations on these issues can lead to unclear and inaccurate data on public debt, abuse of the debt management agency, and serious affects to national financial security.

Fifth, there is no regulation on sanctions for non-compliance of debt managers, leading to confusion or delay in publicizing data on public debt or the abuse of power of competent authorities, reducing of the effectiveness in the law implementation.

### **3. Suggestions of international organizations**

In order to provide guidance for countries to review and improve their legal frameworks for the management of public debt, the IMF and the WB designed a comprehensive set of the following benchmarks for a PDM legal framework.

First, the legal framework for PDM in a jurisdiction should define explicitly the scope of public debt, which “has implications for the types of public institutions and instruments that are governed by the requirements of the PDM legal framework.”<sup>31</sup> Accordingly, the scope of public debt “reflects the public institutions whose debt liabilities are subject to the requirements of the PDM legal framework.”<sup>32</sup> In addition, the scope of public debt should “cover all debt instruments”<sup>33</sup> representing debt obligations of public institutions according to the law and “encompass the main financial obligations over which the central government exercises control, including both marketable and non-marketable debt.”<sup>34</sup> Moreover, the concept of debt may include guarantees and other hidden obligations to ensure that they are subject to the same safeguards.<sup>35</sup> However, from a statistical perspective, “specific contingent liabilities are not required to be included in the complication of debt, but reported as a memo item in the public sector debt statistics.”<sup>36</sup>

Second, “a key component of the legal framework is the mandate to borrow.”<sup>37</sup> The framework for PDM should clarify the authority and capacity to conduct debt management operations “and to subject such activities to clear governance and transparency safeguards typically applicable to Government borrowing, to the extent applicable.”<sup>38</sup> Meanwhile, the authority to repay debt, related costs, and expenses also need to be provided in the law.<sup>39</sup>

Third, the law should clarify the types of debt instruments that may be considered as the hidden obligations of the government, legal authority to create government’s hidden obligations, and circumstances under which implicit hidden obligations may become actual obligations. In addition, provisions requiring the risk assessment, risk

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<sup>31</sup> *supra* note 2

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> International Monetary Fund and World Bank, *The Guidelines on Public Debt Management* (2014)

<sup>35</sup> *See, supra* note 2 at 13

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at 19

<sup>39</sup> *See, Id.*, at 20

management, and reporting responsibility should be clarified in the law to mitigate potential risks from contingent liabilities.<sup>40</sup>

Fourth, transparency is “a key tool for promoting fiscal accountability and responsibility”<sup>41</sup>; therefore, the transparency framework should include the following requirements: (i) publication of public debt information on the official website of the PDM agency, and local newspapers; (ii) publication of borrowing plan and the expenditure and revenue of the state budget; (iii) the disclosure of the composition of public debts, currencies, maturity profiles and interest rate structure, and loans owned by the government; (iv) periodic publication of debts of local administration and other public sector entities; and (v) annual report to the National Assembly on the effectiveness of the management of public debt.<sup>42</sup>

Fifth, enforcement mechanisms (often including reporting and sanctions) should be stipulated by the legal framework. Sanctions for non-compliance of managers “could be personal or institutional, and civil or criminal.”<sup>43</sup> Civil sanctions for the violation of the law may “include court action to recover payments received under any non-compliant debt transaction”<sup>44</sup> while criminal sanctions may “involve fines and prison terms.”<sup>45</sup>

#### 4. Experience of China

From shortcomings in the legal framework on PDM, it is believed that the situation of public debt in China recently has no longer been sustainable.<sup>46</sup>

First, PDM in China has never been regulated by law other than certain regulations under the Law on State Budget in 1994. This caused the ineffectiveness in PDM in China.

Second, according to the State Budget Law, public debt does not include SoEs’ debts and local government’s debt (direct borrowing or by guarantors). In addition, a local government could not borrow public debt but it could establish a company to obtain nominal debt. These companies operated under different forms; a few companies are due to direct local government management while others are in the form of joint ventures.<sup>47</sup> This could result in an increase of contingent liabilities for the entire country.

Third, regarding competent authority of PDM, China’ PDM system “involves close cooperation between several different government agencies and between departments

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *See, Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *See, Szu Ping Chan, China's debt explosion threatens financial stability, Fitch warns* (April 4, 2016), available at <http://www.telegraph.co.uk/business/2016/04/06/chinas-debt-explosion-threatens-financial-stability-fitch-warns/> (visited May 27, 2016)

<sup>47</sup> *See, National Audit Office of the People’ Republic of China, The Positive Role of Audit in Public Debt Management in China* (June 23, 2015), available at <http://www.audit.gov.cn/en/n746/n753/c66608/content.html> (visited June 27, 2016)

within those agencies.”<sup>48</sup> Within the scope of the management of public debt, National Development and Reform Commission will make plans; the MoF is responsible for controlling fiscal policy and day-to-day financial issues; the People’s Bank is responsible for monetary policy. The division of responsibilities between departments and agencies may lead to difficulties in communication and cooperation in the management of public debt.<sup>49</sup>

Fourth, China especially paid attention to the management of public debt structure through setting up and developing the strategy of the management based on government bonds market in order to minimize borrowing costs and gradually increase debt maturity.<sup>50</sup>

Fifth, public debt information is publicized in many ways: the central government’s debt and provisions relating to PDM are publicized on the MoF website; the National Debt Association of China provides data on the issuance of debt the central government debt and local debt on its website; the National Debt Association also publishes annual reports on China’s debt market and the Government’s debt and financial market. However, the publicity and transparency of public debt information is still limited (the proper information on China’s public debt was first published in June 2011).<sup>51</sup>

## **5. Suggestions for improving the legal framework for PDM in Vietnam**

To meet the requirements of debt management in areas of effectiveness, publicity, transparency in the context of international economic integration, and maintenance of security for national finance, it is imperative for Vietnam to improve the legal framework for PDM.

### ***6.1. Improving regulation on the scope of public debt***

To ensure that the amount of public debt is calculated accurately and adequately and to ensure the consistent data on public debt in seen by Vietnam, international organizations, and foreign countries, the law on PDM should be adjusted to include all kinds of public debt and take contingent debts of the country under the consideration.

First, the debts of extra-budgetary units/accounts and social security funds, like the Vietnam Bank for Social Policies and the Vietnam Development Bank, should be included in the scope of public debt. This suggestion is not only compatible with international standards but also in accordance with the decisions on the establishment of the Vietnam Bank for Social Policies and the Vietnam Development Bank.

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<sup>48</sup> World Bank, *Subnational Debt Management and Restructuring – Lessons from international experience* (October 22, 2015), p.13, available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2016/01/13/090224b08405b94f/2\\_0/Rendered/PDF/Subnational0de0rnational0experience.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2016/01/13/090224b08405b94f/2_0/Rendered/PDF/Subnational0de0rnational0experience.pdf) (visited May 27, 2016)

<sup>49</sup> *Id.*

<sup>50</sup> See, VIETNAM’S MINISTRY OF FINANCE, BAO CAO KINH NGHIEM VE TO CHUC VA QUAN LY NO CONG O MOT SO NUOC CHAU A VA ASEAN [Report on Experience on organization and management of public debt in some Asian and ASEAN countries] (September, 2012), p.9

<sup>51</sup> *See, Id.*

Concerning a SoE's debt, putting all debts of SoEs into public debt is still a controversial opinion because: (i) a state company should be responsible for its debts and the government does not intervene in repayment capacity of state companies, except in government-guaranteed debts; (ii) it is unknown when SoEs will become bankrupt, causing the government to turn corporate debt obligations into the government's liability to rescue the SoEs; (iii) not all SoEs operate inefficiently or create debt burden for the state budget. In fact, there are still many SoEs that operate effectively and make a positive contribution to the annual budget and the economy. Therefore, if the law does not include SoE's debt into the structure of public debt, the SoE's debts still need to be calculated, analyzed, and reported along with other public debts.

Regarding other contingent debts like debts arising from the privatization of the state and solving the problem of bankruptcy of credit institutions, expenses for environmental remediation and recovering from natural disasters also must be considered like public debts because of their high potential risks for national financial security.

### ***6.2. Supplementing regulations on debt instruments and risk control***

To strengthen the capacity of monitoring and management public debt, it is necessary to supplement the system of monitoring indicators of debt safety, such as debt limits on debt mobilization and debt repayment. These indicators and limits can be divided by type of debt and presented in both nominal values and in percentage. In addition, it is important to provide reasonable limits. If they are too low, they can hinder the government in implementing necessary reactions during a crisis because the adjustment or approval of new regulations takes a lot of time. In contrast, if the limit is set at too high a level, they are ineffective.

Concerning controlling risks of public debt, the law should stipulate (i) the provisions on the principle of risk controlling and risk handling and the authority and responsibility of the relevant authorities and (ii) tools for handling financial risks of public debt.

### ***6.3. Improving regulations on publicizing information on public debt***

In recent times, information disclosure and data transparency on public debt have become key reforming priorities in many countries. To ensure the transparency on public debt and to strengthen the effectiveness of PDM, the law should regulate specifically the data on all kinds of public debt (including data on local administration debts, contingent debts, the use and repayment of all kinds of public debt) in the public debt bulletin and other means of publicizing information on public debt.

### ***6.4. Complementing regulations on the audit of public debt***

To create the legal basis for auditors to take part in the management of public debt, the law should regulate clearly the audit tasks and responsibilities of auditors. Auditors are responsible for examining and certifying the data of all kinds of public debt and debt indicators, clarifying the purpose of using debts, evaluating the effectiveness of the using debts, examining the debt payment, and defining the

security and sustainability of public debt. Due to the different demands in the management of each kind of debt and the difference in loan users, the audit of public debt should be conducted regularly and annually.

#### ***6.5. Complementing sanctions for non-compliance***

To secure the effectiveness of the management of public debt, the law should regulate an enforcement mechanism by imposing sanctions for non-compliance of managers. The sanctions would recover payments received under any non-compliant debt transaction or related to fines and other punishment forms that would be imposed for individual or agencies.

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