

Legislative strategy for setting up an independent debt management agency

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Abstract

The Public Debt Management Agency (PDMA) is a body that issues public debt with the objective of keeping long term costs of government borrowing low. In India, the existing legal framework obliges the government to give the task of managing its debt to the RBI. Pursuant to its role as debt manager, RBI set up market infrastructure such as an exchange and a depository. Carve-outs were made in the regulation of securities, to allow the RBI to regulate the bond market. Over the last 20 years, the proposal to establish an independent PDMA has been repeatedly put forward. In this paper, we work out the legal strategy to set up a PDMA. We show the transition path for the roll out and for the movement of the functions, accounts, records and systems to the new agency in a phased manner.

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1 Introduction

Every government requires an institutional arrangement for its borrowing. The borrowing of the government, i.e. the sale of bonds, is enabled by a capable bond market. To the extent that the bond market is liquid and has wide ranging participation, it becomes easier for the government to obtain low cost financing. Just as resource-raising of a private firm has an ‘investment banker’ for advice and then execution, resource-raising for governments has a ‘public debt manager’ for advice and issuance.

In India, RBI has been the agent of the government doing debt management. RBI owns or controls bond market infrastructure (exchange, clearinghouse and depository), and regulates the bond market, as a consequence of this mandate. These arrangements were gradually put into place starting from the RBI Act, 1934, to the RBI Amendment Act, 2006. In this period, RBI did not have a clear objective, as was emphasised by the preamble of the RBI Act which described the agency as a ‘temporary provision’.

This arrangement came under question from two points of view. On one hand, securities markets underwent legal and institutional reform that improved their market infrastructure and regulatory capacity. In parallel, the objective of inflation targeting was gaining currency as the predominant objective of RBI. This repeatedly led to the proposal that the debt management work, which conflicts with monetary policy, be placed in an independent Public Debt Management Agency, and the bond market be merged into securities markets.

This paper describes the legislative aspects of implementation of the PDMA. We work out the intricacies of a PDMA Act which establishes the PDMA as an agency, and merges the bond market with securities markets.

Existing thinking on the subject, such as the Financial Sector Legislative Reforms Commission, assumes a clean slate in which the PDMA is created as an agency and a unified financial market system is enacted at one go. We work out the complexities of amending existing law, without the assumption of a clean slate. We also work out the issues of sequencing through which the existing institutional arrangements are transitioned into the new arrangements.

At some point in the future, it is likely that India will execute the PDMA reform. When that discussion commences, this paper will be useful as laying the groundwork for implementing the PDMA reform.

The remainder of this paper is organised as follows. We start at Section 2 which sketches the concept of the PDMA. Section 3 shows the legal foundations of the existing arrangements on mandate, bond market infrastructure and bond market regulation. This helps give us a sense of what has to be changed. Section 4 summarises the evolution of policy thinking on this question in India from 1997 onwards, and briefly summarises the rationale provided by various elements of this process.

Section 5 shows our proposed solution. We propose the FSLRC law, with small modifications, for the establishment of the PDMA as a financial agency. We show the legislative steps for merging bond market regulation and infrastructure into the mainstream financial markets. We work out the specific actions and their sequencing. Finally, Section 7 concludes.

The main paper is followed by a group of appendices with: an overview of the present state of Indian bond market infrastructure, international experience on bond market infrastructure and bond market regulation; the FSLRC draft law establishing PDMA as an agency; the

amendments to existing law required for setting up PDMA, and the amendments required to merge the bond market into the mainstream financial market system.

2 The concept of the PDMA

At a conceptual level, consider the relationship between a private corporation and an investment banker. Capital raising is done by the corporation, through the following steps:

1. Corporations require the lowest cost of capital as this influences their ability to invest and their competitiveness.
2. The client, the corporation, chooses which investment banker is the best service provider suited to serve her needs.
3. The investment banker advises the corporation on the optimal methods of raising resources, which would yield the lowest cost financing for the corporation in the long run.
4. The corporation evaluates this advice and takes a final decision.
5. This decision goes back as an instruction to the investment banker.
6. The investment banker uses the best available market infrastructure through which securities are auctioned.
7. It is in the interests of the corporation to ensure trading of these securities using the best possible market infrastructure, so as to achieve high liquidity. This would yield a reduced liquidity premium, i.e. a lower cost of capital, and set the stage for future capital raising.

This identical arrangement is found, worldwide, with the problem of financing the deficit of a government:

1. Governments require the lowest cost of capital.
2. Government must choose an investment banker who is the best service provider. This agency is termed “the public debt manager”.
3. The public debt manager must take a comprehensive view of all liabilities of the government. It must form a strategy and based on this, advise government on the optimal methods of raising resources, which would yield the lowest cost financing in the long run.
4. Government must evaluate this advice and take the final decisions about securities issuance, which would go back to the public debt manager as an instruction.
5. The public debt manager must use the best available market infrastructure through which the securities are auctioned.
6. It is in the interests of government to ensure that there is a sound bond market, which would yield a lower cost of capital.

This organisation, in the Indian parlance, is termed the ‘Public Debt Management Agency’ (PDMA). There is an extensive literature on the question of *whether* India requires a PDMA. Almost all the literature has argued in favour of construction of the PDMA. This paper is focused on a narrow question: working out the legislative and executive actions for the construction of the PDMA.

3 The existing arrangement

3.1 The debt management mandate

RBI is the agent of the government, performing debt management, through two elements of the *RBI Act*:

1. Section 17, in sub-section (11), clauses (e) and (f) establish the power of RBI to act as the manager of public debt and to issue and manage bonds and debentures. Of these, clause (e) was in the original 1934 Act, and the front-office function was added in 1949 in (f).
2. Section 21, in sub-section (2) obliges the government to give the public debt management mandate to **Reserve Bank of India (RBI)**. This was in the original 1934 Act.
3. In 1951, Section 21A was introduced into the RBI Act. Subsection(1)(b) of Section 21A gave RBI the power to manage state debt by agreement between RBI and the respective state. This is a softer provision when compared with the treatment of debt of the Government of India, as the Constitution of India, Seventh Schedule, Article 246, gives states the power to choose their own debt management arrangement.

3.2 Bond market infrastructure

Bond market infrastructure is primarily the exchange, the clearinghouse and the depository. These arrangements were constructed in India flowing from the debt management mandate.

In the early decades, there were no computers. The only market infrastructure was paper-based tracking of ownership of government bonds, which would (in the modern parlance) be termed the depository function. This paper-based system was called the 'Securities General Ledger' (SGL), and was run by RBI. At first, SGL was an informal system without legal foundations. RBI built and operated the SGL as an instrument through which it performed its debt management mandate.

In 1992, the Harshad Mehta scandal involved manipulation of entries in the SGL. This was the impetus for major changes to bond market infrastructure. RBI began improving operational controls and introducing computers in order to improve SGL, in response to the failures of 1991–1992. The *Report on Repurchase Agreements (Repo)* recommended that there were legal impediments in the way to electronic transfer of gilt securities which is not possible under the Public Debt Act, 1944. The *Report on Repurchase Agreements (Repo)* recommended the move towards a modern market infrastructure through the enactment of *Government Securities Act*.

The events of 1991–1992 also spurred improvements in bond market infrastructure going beyond the depository. In 1999 the *Report on Repurchase Agreements (Repo)* recommended that immediate steps should be taken to resolve the legal and procedural difficulties in the way to achieve a modern market infrastructure. It recommended the enactment of the Government Securities Act. By 2002, an exchange was informally built within RBI, named the 'Negotiated Dealing System' (NDS). At the same time RBI initiated the creation of an informal clearing corporation, the Clearing Corporation of India Ltd (CCIL), which was owned by banks.¹ This

¹NDS-OM is a screen based electronic anonymous order matching system for secondary market trading in Government securities owned by RBI. Presently the membership of the system is open to entities like Banks, Primary Dealers, Insurance Companies, Mutual Funds etc. i.e entities who maintain SGL accounts with RBI. <https://rbi.org.in/scripts/FAQView.aspx?Id=86>

added up to a parallel exchange - clearinghouse - depository for the purpose of the bond market. The primary objective of developing this parallel market infrastructure was to allow electronic record keeping of government securities. See Appendix A for an overview of the present state of bond market infrastructure and the inherent complexities in the framework. In a parallel development in the securities markets the Depositories Act, 1996 was passed. This led to National Securities Depository Ltd., and Central Securities Depository Ltd. (NSDL and CDSL). In the Government Securities Act, 2006, which gave legal foundations to SGL, there was a carve out for SGL by including a provision that nothing in the Depositories Act, 1996, would apply to government securities.

3.3 Bond market regulation

At first, the bond market was unregulated. The first milestone towards the evolution of a framework of bond market regulation came about in 1944 with the enactment of the *Public Debt Act*. The Preamble of the Act read as follows:

An Act to consolidate and amend the law relating to Government Securities and to the management by the Reserve Bank of India of the public debt of the Government.

Over time, RBI demanded enhanced regulatory powers over the debt market. A large number of legal changes were undertaken in order to achieve this.

Section 16 of *Securities Contract (Regulation) Act* empowers the Central Government to prohibit securities contracts in certain cases. Through a notification dated 27th June 1969 issued by Government of India under section 16 of the *Securities Contract (Regulation) Act* all forward contracts in securities were banned.

In August 1999, the *Report on Repurchase Agreements (Repo)* recommended that to develop the repos in Government securities, it is necessary that the 1969 Notification be rescinded and the full powers over repos be vested with the RBI. Government of India rescinded the 1969 notification in 2000. Consequently, by a *2000 SCRA Notification*, the Central Government has delegated powers to Reserve Bank of India under section 16 of the *Securities Contract (Regulation) Act* for regulating contracts in government securities, money market securities, gold related securities and derivatives based on these securities.²

The *Report on Repurchase Agreements (Repo)* further recommended that RBI should acquire regulatory powers under section 29A³ of the *Securities Contract (Regulation) Act*. The Report

²The operative part of the *2000 SCRA Notification* states –

Provided the powers exercisable by the Central Government under the said section 16 of the said Act, in relation to any contracts in Government securities, money market securities, gold related securities and in securities derived from these securities and in relation to ready forward contracts in bonds, debentures, debenture stock, securitised debt and other debt securities shall also be exercisable by the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).

³The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).]

recommended:

“As expansion of the repo market with wider participation and variety of instruments would require RBI to have enhanced regulatory powers over the debt market there is need to amend Section 29A of SCR Act. to enable the Government to delegate regulatory powers for of trading in Government Securities and other debt instruments.”

These developments marked the beginning of a shift of the regulatory powers over government securities to RBI. Later in 2006, the *RBI Act* was amended and a new chapter III D was added to vest RBI with overarching powers to regulate interest rate products and to give directions to all agencies dealing in ‘securities’, ‘money market instruments’, ‘derivatives’ and certain other instruments.⁴

RBI also derives regulatory powers through certain provisions of the *Government Securities Act*. Section 29 of the *Government Securities Act* gives powers to RBI to call for information, cause inspection and issue directions. Section 30 confers power on RBI to impose penalty on any person who contravenes any provision of the *Government Securities Act*, or contravenes any regulation, notification or direction issued under the GSA. Section 32 empowers the RBI to make regulations to carry out the purposes of the *Government Securities Act*.

As a consequence of the above changes, regulation of the bond market, like its market infrastructure, was separated from India’s securities markets, where corporate bonds, shares and derivatives were transacted. This, as we shall discuss in the next section, had consequences for financial market development in India.

4 Towards an independent debt management agency

In the previous section, we have described India’s journey to the present debt management arrangement. In parallel, there was a process of policy analysis, which analysed these arrangements and evaluated reforms. The areas of concern were (a) The success of reforms of the mainstream financial markets; (b) The failure of bond market development; (c) The conflict of interest between monetary policy and debt management and (d) The need for an agency that would serve the interests of state governments.

The preceding sections have described the steps through which the mandate for RBI of debt management led to RBI’s construction of bond market infrastructure and RBI’s regulation of the bond market. In parallel, the mainstream financial markets of India were experiencing dramatic reforms. With extensive legislative activism including one Constitutional amendment, and the establishment of SEBI, NSE, BSE, NSDL, CDSL, NCDEX, MCX, etc., revolutionary gains were achieved in financial market infrastructure and in financial markets regulation. There was a contrast between the operational capabilities, regulatory sophistication and the

⁴The precise section that vests RBI with regulatory powers reads as follows–

The Bank may, in public interest, or to regulate the financial system of the country to its advantage, determine the policy relating to interest rates or interest rate products and give directions in that behalf to all agencies or any of them, dealing in securities, money market instruments, foreign exchange, derivatives, or other instruments of like nature as the Bank may specify from time to time.

end outcome (a deep and liquid market) of these markets when compared with the difficulties of the bond market. It became increasingly attractive to solve the problem of bond market development by merging bonds into the mainstream financial market system in terms of both market infrastructure and regulation.

From the viewpoint of debt management, there was a conflict of interest between RBI's objective as a central bank (to deliver a target rate of inflation) and RBI's objective as a debt manager (to deliver a low cost of borrowing). There was also a problem of fragmentation of the overall debt management problem between multiple agencies, which resulted in the lack of a single view and the lack of a debt management strategy.

These difficulties led to a large number of calls for the establishment of an independent PDMA.

RBI was the original proponent of debt management reform, having first recommended it almost two decades ago. The *RBI, Working Group on Separation of Debt Management from Monetary Management*, (Chairman: V.Subrahmanyam), December, 1997 recommended that a company be established under the Indian Companies Act to take over the government's debt management function.

The *RBI, Report of The Committee on Capital Account Convertibility*, (Chairman: S.S Tarapore), February, 1997 recommended that: "... steps should be initiated to separate the debt management policy from monetary management and to this effect the Government should set up its own Office of Public Debt; RBI should totally eschew from participating in the primary market of Government borrowing."

Several subsequent reports and publications issued by the RBI have repeated the need for hiving out its public debt management function to a separate agency. For instance, the *RBI, Report of The Advisory Group on Transparency in Monetary and Financial Policies* (Chairman: M.Narasimham, September, 2000 recommended that, "The government should set up its own independent Debt Management Office to take over, ... , the present debt management functions discharged by the RBI". The *RBI, Report of The Advisory Group on Transparency in Monetary and Financial Policies* (Chairman: M.Narasimham, September, 2000, stated that, "There should be well calibrated legislative measures to separate debt management and monetary policy functions. The government should set up its own independent Debt Management Office to take over, in a phased manner, the present debt management functions discharged by the RBI. The Advisory Group recognises that separation of debt management and monetary policy is a necessary but not a sufficient condition for an effective monetary policy which would also require a reasonable degree of fiscal responsibility."

The RBI Annual Report for 2000-01, also recommended the separation of the functions of debt and monetary management in the medium-term, and the explicit removal of the debt management function from the RBI. The *RBI, Report of The Committee on Fuller Capital Account Convertibility*, (Chairman: S.S Tarapore), July, 2006, emphasised the separation of monetary and debt management functions of RBI.

The recommendation for a separate debt management function can similarly be found in several reports commissioned by the government. For instance, the *Ministry of Finance, Report of the Internal Expert Group on the Need for a Middle Office for Public Debt Management*, (Chairman: Arvind Virmani), 2001 discussed the need for a comprehensive strategy for public debt management, with an integrated approach towards domestic and external public debt management. It recommended establishing a centralised middle office in the Department of Eco-

conomic Affairs to develop a comprehensive risk management framework as the first stage of this process, and establishing an autonomous Public Debt Office as the second stage.

Ministry of Finance, Report of the High Powered Expert Committee on Making Mumbai an International Financial Centre, (Chairman: Percy Mistry), February, 2007 and *Ministry of Finance, Internal Working Group on Debt Management, (Chairman: Jahangir Aziz), October, 2008*, similarly recommended setting up an independent debt management office. The *Planning Commission, Report of the Committee on Financial Sector Reforms, (Chairman: Raghuram Rajan), September, 2008* discussed the issue of financial repression and articulated need for a separate debt management agency as under:

This is also a good time to carefully think about changing the structure of public debt management, particularly in a way that minimizes financial repression and generates a vibrant government bond market.

In the present framework, as banking regulator RBI requires banks to hold a share of their deposits under SLR (the Statutory Liquidity Ratio)⁵. Emphasising on the need for minimising financial repression by creating a vibrant government bond market to ensure low cost financing of Government debt, the report stated:

The government will also need a vibrant government bond market to provide it low cost financing, as it relies less on forcing banks through statutory requirements to hold its debt. A deep government debt market across all maturities will provide the benchmarks that the private sector needs for pricing corporate debt, and various kinds of hedging instruments.

More recently, the *Ministry of Finance, Report of the Financial Sector Legislative Reforms Commission, (Chairman: B.N Srikrishna), March, 2013* recommended the creation of a specialised debt management agency and also provided a draft law which would govern its function. *RBI, Report of the Expert Committee to Revise and Strengthen the Monetary Policy Framework, January, 2014* also emphasised the need to separate debt management from monetary management.

The recently released *MoF, Report of the Comptroller and Auditor General of India on Public Debt Management, Report No. 16 of 2016 (Performance Audit), July 2016* raised concerns about the state of the debt management framework in India and emphasised the need for a specialised debt management agency.

In parallel, a stream of expert committee reports (e.g. the Percy Mistry report, the Raghuram Rajan report, the Wajahat Habibullah report, the A. N. Padhi report, etc) argued in favour of ‘convergence’ of financial markets. In all countries, there are economies of scale and scope from unification of the regulation and of the market infrastructure of all financial markets⁶

This framework was adopted by FSLRC, which (a) Envisaged full unification of all financial market infrastructure, with regulation by the ‘Unified Financial Authority’, and (b) Establishment of the Public Debt Management Agency (PDMA). The legal framework proposed is a single law, the Indian Financial Code, proposed by FSLRC to replace all existing financial sector laws. This paper proposes a solution where the outcome of an PDMA is obtained under the present legal framework through a PDMA Law and a roll back of those laws and amendments

⁵Section 24, Banking Regulation Act

⁶See Appendix B and C for international experience in market infrastructure, debt management and regulatory arrangements.

such as the *Government Securities Act* or amendments to the *RBI Act* that were a consequence of its role as debt manager.

5 The solution

In this section, we work out the steps through which responsibility of debt management shifts from RBI to PDMA. This requires the construction of a new agency and a roll back of the amendments made consequential upon RBI's role as debt manager. We also propose a transition path for which some additional amendments may be required before the repeal of some sections of the law.

5.1 Agency construction

1. The first step is drafting a law that establishes the agency.

The **Financial Sector Legislative Reforms Commission (FSLRC)** has provided a blue print of the law governing the establishment and functioning of an independent **Public Debt Management Agency (PDMA)**.⁷ The key features of the law are as under:

Objective of the PDMA : The law provides an explicit objective to the **PDMA**. The objective is to minimise the cost of raising and servicing public debt, over the long-term and to keep public debt within an acceptable level of risk at all times.

Functions of the PDMA : The law envisages the following functions to be performed by the **PDMA**:

- (a) issuance and management of government securities;
- (b) management of public debt, contingent liabilities and cash, of the Central Government.

The law lays down the detailed procedure which the **PDMA** must follow towards managing the debt of the Central Government. The law also lays down procedure for managing cash balances of the Central Government.

Power of Central Government to issue directions to PDMA : The law empowers the Central Government to issue directions to the **PDMA** on policy from time to time.

Payment of fees to PDMA : The Central Government must pay fees to the **PDMA** for the services rendered by the **PDMA**.

To be a stand-alone law governing all aspects of debt management, the FSLRC law on **PDMA** requires certain modifications. The law should require the **PDMA** to put in place a register recording the ownership of all securities, internal and external, issued by the **PDMA**. The register should, ideally also maintain a record of all the guarantees issued by the Government. This register becomes a key document to understand the magnitude of debt by the Government. This register is then linked to the register and an index of beneficial owners maintained under the Depositories Act, 1996:

⁷See Appendix D. Henceforth, we will refer to this as the PDMA law.

“The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this law.”

This harnesses the legal and institutional foundations of the mainstream financial markets.

Another modification required in the law is to place an obligation on part of the **RBI** to provide all information and render all assistance that the **PDMA** may require in the initial stages.

“Notwithstanding anything contained in any other law for the time being in force, the Reserve Bank shall provide all information and render all assistance as the Agency may require it to provide and render, so that the Agency is able to discharge its functions, with minimal interruption.”

2. Consequential amendments to the *RBI Act*

- (a) Deletion of clauses: Currently, section 17(11)(e) and (f) of the *RBI Act* authorize the **RBI** to act as an agent for the central government for public debt management and issuance of bonds and debentures. These clauses can be deleted. However, in the transition the clauses will be used, and hence will need to be initially amended.
- (b) Deletion of section: Further, section 21(2) obligates the central government to entrust the debt management function to **RBI**. This section can be deleted. But again, for the purpose of transition, the clause will need to be amended so that Government can entrust this function to the **RBI** until the **PDMA** is set up.

5.2 Bond market infrastructure

Section 4 of the *Government Securities Act* empowers the **RBI** to open and maintain a **Subsidiary General Ledger (SGL)**, constituents’ subsidiary general ledger account and a bond ledger account. The provisions of the *Government Securities Act* also exclude the applicability of the Depositories Act to government securities. As part of the **PDMA** reform, the *Government Securities Act* will need to be repealed. However, in the transition this Act will be amended to allow the **PDMA** to transition and integrate the systems with securities market infrastructure.

There is no statutory backing for the exchange and clearing house that **RBI** has established (**Negotiated Dealing System-Order Matching System (NDS-OM)** and **The Clearing Corporation of India Limited (CCIL)**). Therefore no legislative changes are required in order to address them.

5.3 Regulation of the bond market

1. Deletion of Chapter IIID of *RBI Act*

Chapter IIID of *RBI Act* comprises of sections 45U, Section 45V, 45W and 45X. These sections are proposed to be deleted, for the following reasons -

- Section 45V provides that notwithstanding the *Securities Contract (Regulation) Act*, transactions in derivatives are valid only if one of the parties to such transactions is the RBI, a scheduled bank or an agency under the regulatory purview of RBI. In the proposed framework, all derivative transactions will be governed under *Securities Contract (Regulation) Act*.
- Section 45W empowers the RBI to issue directions to all agencies dealing in government securities, money market instruments, foreign exchange, derivatives, or other instruments of like nature. To harmonise the regulation of securities trading, the RBI will no longer have the power to issue directions in respect of these instruments, except as set out below:
 - (a) RBI can continue issuing directions in respect of foreign exchange and currency spot, under FEMA.
 - (b) RBI can continue undertaking its monetary policy functions, by regulating repo and reverse repo transactions that it enters into with other entities. Similarly, RBI can continue to regulate the inter-bank call and notice money market.
- Section 45X obligates the agencies, referred to in Section 45W, to comply with the directions issued under Section 45W and to furnish information in this regard. This section will need to be consequentially deleted.
- Section 45U which defines terms used in Chapter IIID will need to be consequentially deleted.

2. Repeal of *Government Securities Act*

Currently, the *Government Securities Act* allows the RBI to regulate all aspects of government securities, including maintaining records of holders of government securities, transfer of title, nomination, etc. The *Government Securities Act* will require to be repealed to enable the PDMA to issue and manage government securities under the legal framework governing PDMA. To harmonise the regulatory framework governing government securities with all other securities, the provisions relating to transfer, nomination, evidence of title, etc. will be the same as are applicable to the securities of any other issuer. Accordingly, the corresponding provisions of the Companies Act, 2013 are replicated in the PDMA law as drafted by FSLRC.

3. Amendments to *Securities Contract (Regulation) Act*

To allow **Securities Exchange Board of India (SEBI)** to regulate derivatives and repo and reverse repo transactions entered into by market participants, which are currently regulated by RBI, the definition of ‘derivatives’ in *Securities Contract (Regulation) Act* will need to be expanded to include the following transactions –

- (a) repo and reverse repo transactions entered into by market participants (RBI will continue to control repo and reverse repo transactions that it enters into with others); and
- (b) foreign exchange currency derivatives.

Section 29A of the *Securities Contract (Regulation) Act* allows the central government to delegate its powers under the *Securities Contract (Regulation) Act* to SEBI and RBI.

This section will need to be appropriately amended to restrict the power of delegation to **SEBI** only.

4. Consequential amendments to subordinate legislations

All notifications including notifications issued by **RBI** under Chapter IIID of *RBI Act*, the *Government Securities Act* and *Securities Contract (Regulation) Act*, in respect of government securities, **OTC Derivatives (OTC Derivatives)** and **Exchange Traded Currency Derivatives (ETCD)**, need to be reviewed and streamlined to give effect to the above-mentioned amendments.

One such notification which will require to be repealed is the *2000 SCRA Notification* issued by the Ministry of Finance delegating the powers of the Central Government under *Securities Contract (Regulation) Act* to **RBI** in relation to (a) government securities, gold related securities and securities derived from these securities and (b) ready forward contracts in bonds, debentures, securitised debt and other debt securities.

The proposed amendments are described in Appendix **E** and **F**.

5.4 Sequencing

The global best practises on transition path show that that transition towards a full-fledged debt management agency is achieved over a period of three years. This includes physical installation of agency to gradual transfer of functions to finally, introduction of integrated and autonomous information systems.

Amendments to the *RBI Act* to facilitate the transition

Currently, section 17(11)(e) and (f) of the *RBI Act* authorizes the **RBI** to act as an agent for the central government for public debt management and issuance of bonds and debentures. This will continue in the interim. Section 17(11)(e) and (f) will need to be amended to allow the **RBI** to act as an agent of the Central Government to manage public debt, only if the Central Government issues a notification under section 21(2) of the *RBI Act* entrusting the debt management function to the **RBI**. The clauses will be deleted only when the **PDMA** fully takes over the function of the debt manager.

Further, section 21(2) obligates the central government to entrust the debt management function to **RBI**. To allow the **PDMA** to carry on its functions as an investment banker for and issuer of, government securities, section 21(2) will need to be amended to allow the Central Government to issue a notification in the official gazette, entrusting the **RBI** or the **PDMA** with the management of public debt and with the issuance of any new loans, for the Central Government. The section will be deleted only when the **PDMA** is fully functional.

Stage 0

1. The **PDMA** Bill would need to be passed by the Parliament. The law needs to have an enabling provision that the law shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this law.

Stage 1

1. In this stage, the provisions of the PDMA law dealing with establishment, governance and funding of the PDMA, would need to be notified. At this stage, the PDMA would not undertake the functions mandated under the PDMA law. The PDMA should be able to enter into contracts, recruit employees, evaluate and replicate the IT systems used by the RBI for public debt management or build new systems and infrastructure, and build capacity for discharging its functions. RBI and the PDMA would need to coordinate with each other for transitioning –

- (a) the existing systems and software used by RBI for public debt management;
- (b) records (such as the securities general ledger) maintained by RBI.

To allow this, the provision of the PDMA law imposing an obligation upon RBI to cooperate with the PDMA for the transition, will need to be notified.

2. In the transition, the Central Government should have the ability to delegate its public debt management function to the RBI or PDMA, through an executive notification. Currently, the RBI Act obligates the Central Government to delegate its public debt management function to the RBI only. To allow the Central Government to delegate the debt management function to PDMA, the provisions of the RBI Act which impose this obligation on the Central Government, will need to be amended.
3. The Central Government will need to issue a notification under the amended provision (referred to in item 2) entrusting the public debt management function to RBI. This will ensure that RBI continues to manage the public debt and issue government securities, until Stage 2.

Between Stage 1 and Stage 2

1. PDMA will acquire office space, recruit employees, do procurement for infrastructure, build capacity (eg. prepare operations manuals and internal process manuals, build record keeping and IT capacity), take over or replicate the software and systems used and records maintained, by the RBI in connection with its debt management function.
2. SEBI will prepare and keep ready substitutes for circulars, notifications and directions issued by RBI in respect of government securities.

Stage 2

1. PDMA will begin the public debt issuance and management functions (a) using existing RBI systems; and (b) under the current regulatory framework. To allow this, the following two steps will require to be taken -
 - (a) The Central Government will issue a notification entrusting the public debt management function to PDMA (under the amended provision of the RBI Act referred to in item 2 of Stage 1).
 - (b) All references to RBI in the *Government Securities Act* will be replaced with references to PDMA. Currently, *Government Securities Act* allows the RBI to issue directions and generally control the government securities markets. To allow PDMA to issue government securities and manage public debt under the current regulatory framework, the PDMA will step into the shoes of RBI in the *Government Securities Act*.

2. Chapter IIID of the *RBI Act* will require to be deleted. Currently, Chapter IIID of the *RBI Act* empowers the **RBI** to (a) regulate **OTC Derivatives**; and (b) issue directions to all agencies dealing in government securities, money market instruments, foreign exchange, derivatives and other instruments as the **RBI** may specify. As a result of the deletion of this chapter, government securities and other instruments, will, like all other securities, be regulated under the *Securities Contract (Regulation) Act*.
3. The Central Government will need to issue a notification delegating its powers under the *Securities Contract (Regulation) Act* to **SEBI**, in respect of (a) government securities; and (b) derivatives, both exchange traded and OTC.

The steps enumerated in items 2 and 3, will ensure that there is a consolidated statutory and regulatory framework for all securities.

4. **SEBI** will need to issue its own set of notifications prepared and kept ready before Stage 2. These notifications will replace the directions issued by **RBI** in respect of government securities and derivatives.

Between Stage 2 and Stage 3

1. **PDMA** will need to replace all circulars, notifications and directions issued by **RBI** under the *Government Securities Act*, and issue its own directions transitioning market participants to the **PDMA** framework and systems. For example (a) government securities held in the constituents' subsidiary general ledger account will need to be transferred to the demat accounts of the holders, maintained with depositories; (b) the issuance and trading of government securities will need to be integrated with existing issuance and trading platforms available for other securities.⁸
2. **PDMA** will develop capacity for undertaking the cash management and contingent liability management and other functions, as envisaged in the **PDMA** law.

Stage 3

1. The *Government Securities Act* will be repealed, and the entire public debt management function will move to the new **PDMA** framework and systems. All securities issued under the *Government Securities Act* will now be covered under the **PDMA** law.
2. All provisions of the law on Public Debt Management, other than the provisions which are notified in Stage 1, will be notified.
3. Section 17(11)(e), Section 17(11)(f) and Section 21(2) of the *RBI Act* will need to be deleted.

6 State debt

RBI Act provides that the states may enter into an agreement with **RBI** to manage public debt of states. Public debt of states is part of the State List. However under Article 252 (1) of the Constitution, if two or more States (say, State A and State B) find it desirable that any of the

⁸The existing market infrastructure for Government securities such as NDS-OM and SGL should follow due process of law and be governed and recognised under *Securities Contract (Regulation) Act* and *Depositories Act* respectively.

matters under the State list should be regulated in State A and State B, by the Parliament, then:

1. State A and State B may authorise the Parliament to pass a law on such subject. Such a resolution must be passed by the legislatures of State A and State B.
2. The Parliament may pass a law regulating such subject in State A and State B.

All the states except the state of Jammu and Kashmir have passed the *Government Securities Act* in pursuance of clause (1) of Article 252.⁹

Once an independent debt management agency is set up, states must be given the option to delegate the issue and management of State Government securities **PDMA**. If a State Government opts to delegate the issue and management of State Government securities to **PDMA**, then the following steps are required:

- It will require to opt itself out of the GSA framework, i.e. the GSA will be repealed to the extent of the securities issued by that State Government.
- For the repeal of *Government Securities Act* with respect to the securities of any State Government, in pursuance to Article 252 (2) of the Constitution of India, atleast two States must pass a resolution authorising the Parliament to repeal the *Government Securities Act*.
- The repealing legislation may, then, be adopted by other States desiring to opt out of the GSA.
- Consequently the provisions of the PDMA law would apply to state government debt.

Sections 17(11)(e) and 17(11)(f) of the *RBI Act* will cease to apply to state debt. Section 21(A)(1)(b) of the *RBI Act* will also have to be deleted.

7 Conclusion

The Indian macroeconomic and financial system has undergone enormous changes from the 1930s. RBI has gone from an agency that was a ‘temporary provision’ to having clarity of purpose in the form of an inflation target. The mainstream financial system has achieved high capabilities with legal foundations for the securities markets, regulation by SEBI, and securities infrastructure in the form of exchanges, clearinghouses and depositories.

From 1997 onwards, there have been calls for the establishment of a independent Public Debt Management Agency (PDMA). This would yield numerous gains: It would free RBI of the conflict of interest of performing debt management work for the central and state governments; it would improve debt management services obtained by the central and state governments;

⁹The Statement of Objects and Reasons to the *Government Securities Act* states as under: And whereas in pursuance of clause (1) of Article 252 of the Constitution, resolutions have been passed by the Houses of the Legislatures of all the Sates, except the State of Jammu and Kashmir, to the effect that the matters aforesaid should be regulated in those States by Parliament by law;

Pursuant to the aforesaid statement, section 1 (4) of the *Government Securities Act* provides that the provisions of GSA will apply to all the States, except the State of Jammu and Kashmir, unless this State also adopts the provisions of the *Government Securities Act* by similarly passing a resolution under Article 252(1) of the Constitution of India.

it would ignite bond market development by harnessing the capabilities of the mainstream financial markets of India; it would yield improvements in government borrowing by selling bonds to voluntary buyers in a deep and liquid government bond market.

FSLRC has a comprehensive solution with a draft law which builds on a clean slate. A new agency, the PDMA, is created, and there is a unified treatment of financial markets. The contribution of this paper lies in working out the legislative strategy for the PDMA reform in isolation. This involves using the FSLRC draft for the PDMA as an agency, with small changes, amendments to existing law that merge the bond market into the mainstream financial market system, and a careful construction of a steps through which the changes are put into place without causing any disruption. This analysis would be useful when, at a future date, the PDMA reform is executed.

A Present state of bond market infrastructure

The key features of the present state of bond market infrastructure are discussed below.

Restricted membership of the SGL account : Each entity eligible for dealing in Government securities is required to open a SGL account and a current account with the back office of RBI. In exercise of powers under Section 4 of the *Government Securities Act*, the RBI specifies the conditions for opening and maintaining the SGL account. The RBI lays down a list of entities who are eligible to open and maintain SGL accounts.¹⁰ The list primarily includes banks, Primary Dealers, Financial Institutions, Insurance companies, Mutual Funds, Provident and Pension Funds, NSDL and CDSL. Entities other than these cannot directly deal in Government securities. This explains the concentrated ownership of Government securities. Further, operational aspects such as transfer of Government securities from one SGL account to another is subject to RBI approval. There are complexities involved in the transfer of securities to SGL account holders' own demat account with depositories.¹¹

Complexities involved in opening and maintaining CSGL account]: The entities who are not eligible to open and maintain SGL account with RBI can open and maintain **Constituents Subsidiary General Ledger (CSGL)** account with RBI on behalf of these entities. These entities open and maintain **Gilt Account Holders (GAH)** accounts with their CSGL account holders. The RBI specifies the eligibility criteria for opening and maintaining CSGL accounts. Further, the RBI lays down operational guidelines to be complied with by the CSGL account holders. As an example, no constituent is entitled to open more than one gilt account without the prior written permission of the RBI.¹²

Non-applicability of the Depositories Act to government securities: The depository framework for government securities is carved out from the legislative framework governing depositories for securities market. The RBI's depository arrangements for government securities are not regulated by the *Depositories Act*. The NSE's and BSE's depository arrangements for government securities are regulated by the *Depositories Act*. However, section 31 of the *Government Securities Act* provides that nothing in the *Depositories Act* shall apply to government securities covered by the *Government Securities Act*, unless an agreement to the contrary is executed between a depository under the *Depositories Act*, and the Government or the RBI.

Exchange for auction and trading of Government securities : In 2002 the RBI set up the **Negotiated Dealing System (NDS)** and the **NDS-OM** as a platform for auction and trading of Government securities.¹³ The *RBI Act* and the *Government Securities Act* do not prescribe how to conduct primary and secondary trading in Government securities. Terms and conditions for issue of Government securities are laid out in *Revised General Notification for issue of Government of India Dated Securities*. The features of issuance

¹⁰Reserve Bank of India, *Subsidiary General Ledger Account: Eligibility Criteria and Operational Guidelines*, Dec. 4, 2009.

¹¹Very recently some steps have been announced by RBI to ensure seamless transfer to securities from SGL to demat form.

¹²See, Reserve Bank of India, Department of Government and Bank Accounts, *Amendment to Constituents' Subsidiary General Ledger Account: Eligibility Criteria and Operational Guidelines (Guidelines) Notification No. 183 dated Sept 05, 2011*, May 22, 2012.

¹³Prior to 2002, trading in Government securities used to place through telephones. For more details on the operational aspects of NDS, See <https://rbi.org.in/scripts/PublicationsView.aspx?id=12288>

procedure are codified in *Revised General Notification for issue of Government of India Dated Securities*. The Notification prescribes who is eligible to invest in government securities, types of securities, types of auctions, mode of payment, and form in which securities may be held.¹⁴ The *Securities Contract (Regulation) Act* confers powers on the government of India to regulate and supervise all stock exchanges. However NDS-OM is not set up under the *Securities Contract (Regulation) Act*.

Restrictive membership of NDS-OM : The RBI prescribes the routes to access the order-matching segment of NDS for trading in government securities. Direct access is provided only to SGL account holders including banks, primary dealers, mutual funds, insurance companies, financial institutions etc.

In summary, the exchange and depository infrastructure is owned and controlled by RBI.¹⁵ The *Planning Commission, Report of the Committee on Financial Sector Reforms, (Chairman: Raghuram Rajan), September, 2008, Ministry of Finance, Report of the High Powered Expert Committee on Making Mumbai an International Financial Centre, (Chairman: Percy Mistry), February, 2007* and *Ministry of Finance, Report of the Financial Sector Legislative Reforms Commission, (Chairman: B.N Srikrishna), March, 2013* focussed on financial sector reform and have all supported PDMA using the securities market infrastructure on the grounds that wider participation in the bond market would enable the development of deep and liquid bond markets in India. From the point of view of the PDMA, it will need a bond market to sell government securities as the present arrangement of RBI as the banking regulator requiring banks to hold government securities under their **Statutory Liquidity Ratio (SLR)**, is also being slowly phased out. Therefore, it should have the choice to use whichever exchange or depository that allows it to best meet its objectives. International best practices support the use of the securities market infrastructure.

B International experience on bond market infrastructure

Table 1 presents an overview of the Government bond market infrastructure in similarly placed economies. The first column presents an overview of the trading infrastructure, the second column provides information on depository arrangements and the third column describes the framework for settlement of bond market transactions. The first column shows that in most of the countries the bonds are traded on the platform provided by the stock exchange. Government bond issuance and trading is part of the unified framework of securities trading. Malaysia is the only country other than India where trading of bonds takes place on a platform owned by the Central Bank.

As far as the infrastructure of depository is concerned, the Central Bank is the responsible authority in Japan, Indonesia and Nepal. In all the other countries, the depository infrastructure for Government bonds is part of the unified infrastructure for other securities.

The settlement of government securities is overseen by the securities market regulator with a few exceptions. As an example, in Malaysia, the settlement of the primary and secondary

¹⁴Ministry of Finance, *Internal Working Group on Debt Management*, tech. rep., 2008.

¹⁵The existing bond market infrastructure should follow due process of law and be governed by *Securities Contract (Regulation) Act* and *Depositories Act*.

Table 1: Bond market infrastructure in similarly placed economies

Country	Trading infrastructure	Depository	Settlement of securities transactions
Japan	PTS (Proprietary trading system), multiple platforms	Bank of Japan	BoJ-NET (Bank of Japan-Financial network)
India	NDS-OM	SGL (Subsidiary General Ledger,)	CCIL (Clearing corporation of India)
South Korea	KRX (Korea-Exchange) trading system	Korea Securities Depository	Korea Securities Depository is under supervision of MoSF, FSC and FSS
Indonesia	FITS (Fixed income trading system) by Stock Exchange	Central bank	SSSS (Scripless Security Settlement System) run by Bank Indonesia
Israel	TACT (Tel-Aviv Continuous Trading) run by stock exchange (Tel Aviv)	TASE clearing house	TASE clearing house
Viet Nam	EBTS run by HNX	Vietnam Securities Depository	Vietnam Securities Depository
Malaysia	Fully Automated System for Issuing (FAST) run by Central Bank	Bursa Malaysia Depository	STSS (Scripless Securities Trading and Settlement) Bank by the Central Bank
Taiwan	EBTS run by TPEX	TDCC (Taiwan Depository and Clearing Corporation)	CGSSS (Central Government Securities Settlement System)
Nepal	NATS (NEPSE automated trading system) run by NEPSE (Nepal Stock Exchange)	NRB (Nepal Rastra Bank)	CDS and Clearing Limited
Thailand	Stock Exchange of Thailand	Thailand Clearing House	Thailand Clearing House Thailand Securities Depository
South Africa	OTC and the Johannesburg Stock Exchange	Central securities depository	Strate

Table 2: Institutional arrangements for debt management and bond market regulation: Advanced economies

Country	Regulator-bond market	Public debt management
Australia	Australian Securities and Investment Commission (ASIC)	Australian Office of Financial Management
France	Autorite Des Marches Financiers (AMF)	Agence France Tresor
Canada	Investment Industry Regulatory Organization of Canada (IIROC)	Canadian Ministry of Finance
Italy	CONSOB	Italian Treasury-Public Debt Directorate
Japan	Financial Services Agency	Ministry of Finance and Bank of Japan
U.S.A	Securities and Exchange Commission (SEC)	The Office of Debt Management, US Treasury
Germany	Federal Financial Supervisory Authority (BaFin)	German Federal Republic Finance Agency (Gmbh)
UK	Financial Conduct Authority (FCA)	UK DMO (Executive agency of HM treasury)

market transactions in government securities and unlisted corporate debt securities take place through the **Scripless Securities Trading System (SSTS)**, which is part of the **Real Time Electronic Transfer of Funds and Securities (RENTAS)** system.

In summary, an overview of bond market infrastructure arrangements in other economies suggest that:

1. Government bond issuance and trading is part of the unified framework of securities trading.
2. The depository infrastructure for Government bonds is part of the depository infrastructure for the financial market with a few exceptions.
3. The settlement of government securities is overseen by the securities market regulator.

India is the only country where all the three elements of bond market infrastructure are owned, controlled and managed by the Central Bank.

C International experience on market regulation

Table 2 and Table 3 present an overview of institutional arrangements governing debt management and regulation of debt market. A key finding emanating from the Tables is that the agency responsible for management of debt, including issuance of Government securities is distinct from the agency regulating bond market. The location of debt management agency varies. In some countries there are specialised agencies responsible for issuance and management of public debt such in Germany. In some others, the responsibility for management of debt is vested in an Executive Agency of the Ministry of Finance such as in U.K and Australia. In some other countries, the responsibility of debt management is vested in a Department within the Ministry of Finance such as in Brazil, France and Argentina. In India and China, the public debt is managed by the Central Bank.

Table 3: Institutional arrangements for debt management and bond market regulation: Emerging economies

Country	Regulator-bond market	Public debt management
Argentina	Comision Nacional de Valores (CNV)	Ministry of Economy and Public Finances
Saudi Arabia	Capital Markets Authority (CMA)	Central Bank
South Africa	Financial Services Board (FSB)	National Treasury
India	Central Bank	Central Bank
China	China Securities Regulatory Commission (CSRC) and Central Bank	Central Bank (Internal debt), Ministry of Finance (External debt)
Mexico	National Banking and Securities Commission (CNBV)	Mexican Ministry of Finance and Public Credit
Russia	Federal Financial Markets Service (FFMS)	Central Bank
Brazil	Brazilian Securities and Exchange Commission	Public debt Undersecretariat
Indonesia	Financial Services Authority (FSA)	Directorate of Government Securities Management, Ministry of Finance
Turkey	Capital Markets Board (CMB)	Undersecretary of Treasury
South Korea	Financial Supervisory Service (FSS) under Financial Services Commission (FSC)	Ministry of Strategy and Finance, Government Bond Policy Division

The unified regulator of financial market serves as the regulator of Government bond market. We do not see examples of countries where the regulator of Government bond market is distinct from the overall securities market regulator. Even in countries where the Central Bank manages public debt, the regulation of Government bond market is not solely vested with the Central Bank. India stands out as the only example where the Central Bank is the issuer and manager of Government debt as well as the regulator of Government debt.

D Law establishing PDMA as a financial agency

PART XV

PUBLIC DEBT MANAGEMENT AGENCY

CHAPTER 83

OBJECTIVE AND FUNCTIONS OF THE DEBT AGENCY

- 5 **352.** (1) The objective of the Debt Agency is to, – Objective.
- (a) minimise the cost of raising and servicing public debt, over the long-term; and
 - (b) keep public debt within an acceptable level of risk at all times.
- 10 (2) The Debt Agency will carry out its objectives under the general superintendence of the Central Government.

- 353.** (1) The Central Government must entrust the Debt Agency with, and the Debt Agency must undertake the, – Functions.
- (a) issuance and management of government securities; and
 - (b) management of public debt, contingent liabilities and cash, of the Central Government.
- 15 (2) The Debt Agency may perform such other functions as may be authorised under this Part.

CHAPTER 84

MANAGEMENT OF PUBLIC DEBT AND CONTINGENT LIABILITIES

- 20 **354.** (1) The Debt Agency must manage the public debt through, – Management of public debt.
- (a) the formulation of a medium term public debt plan and an annual public debt plan; and
 - (b) the implementation of the medium term public debt plan and the annual public debt plan, as approved by the Central Government.
- 25 (2) The Debt Agency must, at the end of every three calendar years, submit a draft of a medium term public debt plan to the Central Government.
- (3) The Central Government must approve the draft medium term public debt plan with or without modifications, and communicate the same to the Debt Agency, as soon as may be practicable, after the date on which it is received from the
- 30 Debt Agency.
- (4) The Central Government may at any time, in consultation with the Debt Agency modify the medium term public debt plan.
- (5) The Debt Agency must implement, to the best of its abilities, the medium term public debt plan as approved and modified by the Central Government from
- 35 time to time.
- (6) The Debt Agency must, at the end of each calendar year, submit a draft of an annual public debt plan to the Central Government.

- (7) The draft annual public debt plan must take into account, –
- (a) the medium term public debt plan;
 - (b) the public debt at the relevant time, including inherent risks of the Central Government;
 - (c) the forecasts of revenue and expenditure of the Central Government; 5
 - (d) the prevailing and evolving market conditions for government securities;
 - (e) aspects of efficiency of public debt, including the cost, risk and phasing of borrowing and repayments; and
 - (f) such other factors as the Debt Agency may consider appropriate.
- (8) The Central Government must approve the draft annual public debt plan, with or without modifications, and communicate the same to the Debt Agency, as soon as may be practicable, after it is received from the Debt Agency. 10
- (9) The Central Government may, in consultation with the Debt Agency, modify the annual public debt plan at any time.
- (10) The Debt Agency must implement, to the best of its abilities, the annual public debt plan as approved and modified by the Central Government from time to time. 15
- (11) The Debt Agency must, in consultation with the Central Government, prepare an issuance schedule, at such times as the Debt Agency may determine to be practicable and necessary. 20
- (12) The Debt Agency must publish, –
- (a) the medium term public debt plan and the annual public debt plan, within ninety days from the date on which it is approved by the Central Government; and
 - (b) such other information as may be prescribed. 25
- (13) The Central Government must, by notification, prescribe, –
- (a) the information which must be published under section (12); and
 - (b) the intervals at which the information under section (12) must be published.
- (14) In this section, – 30
- (a) “medium term public debt plan” means a plan to achieve the desired composition of public debt for the immediately following three financial years.
 - (b) “composition of public debt” includes the amount, structure, maturity, currency, indexing and mode of issuance, of public debt.
 - (c) “annual public debt plan” means the annual plan for, – 35
 - (i) advising on the composition of public debt for the immediately following financial year; and
 - (ii) operationalising, in the immediately following financial year, the strategies mentioned in the medium term debt plan.
 - (d) “issuance schedule” means a calendar of the Central Government for issuance of government securities. 40
355. (1) The Debt Agency must manage the contingent liabilities of the Central Government through, –

- (a) the development, maintenance and management of a database of contingent liabilities;
- (b) the management and monitoring of contingent liabilities;
- (c) undertaking credit risk assessments in relation to contingent liabilities; and
- (d) advising the Central Government on the pricing and issuance of contingent liabilities; and
- (2) The Debt Agency must at the end of every financial year, assess the risks associated with the contingent liabilities of the Central Government, in accordance with international methodologies and practice.
- (3) The Debt Agency must publish information relating to contingent liabilities of the Central Government in the prescribed manner.
- (4) In this section, “contingent liabilities” means the explicit contingent liabilities of the Central Government.
- 15 **356.** The Central Government is liable to meet the obligations arising from the public debt issued by the Debt Agency.

Liability for financial obligations.

CHAPTER 85

GOVERNMENT SECURITIES

- 357.** (1) The Debt Agency must issue government securities in accordance with the provisions of this Part.
- (2) The terms and conditions of government securities will be such as may be prescribed.
- (3) The Debt Agency must maintain and manage the register of holders of government securities.
- (4) The register maintained by a depository under section 213 will be deemed to be the register required to be maintained by the Debt Agency.
- (5) The Central Government must prescribe the terms and conditions of government securities.
- 358.** (1) The Debt Agency will be responsible for making payment to the holders of government securities, in accordance with their terms.
- (2) The Central Government may prescribe the manner of claiming payments due on government securities.
- 359.** (1) Government securities having identical terms and conditions will be fungible.
- (2) All government securities will be freely transferable.
- (3) A transfer or the creation of an interest in a government security is void unless it is recorded by the Debt Agency.
- (4) The Debt Agency must not record the transfer or creation of an interest in a government security unless it is made in the prescribed manner.

Issue of government securities.

Management of government securities.

Fungibility and transferability of government securities.

- (5) Nothing contained in sub-section (3) will affect any transfer or creation of an interest pursuant to the operation of law or the order of a court.
- (6) The Central Government must prescribe the manner in which a government security may be transferred or subjected to an interest.
- 360.** (1) The Debt Agency must take steps to foster a liquid and efficient market for government securities. Fostering the market for government securities.
- (2) The Debt Agency must advise the Regulator and the Central Government on the policy and design of the market for government securities.
- (3) The Debt Agency must seek to ensure, –
- (a) equal access to the market for government securities; 10
 - (b) growth and diversity in the investor base for government securities;
 - (c) fair competition in the market for government securities; and
 - (d) transparency in the issuance and trading of government securities.

CHAPTER 86

CASH MANAGEMENT

15

Cash management.

- 361.** (1) The Debt Agency must manage the cash of the Central Government by, –
- (a) collecting information about the cash of the Central Government, including co-ordination with the Central Government and the Reserve Bank to estimate the cash balances every day;
 - (b) monitoring the cash balances of the Central Government; 20
 - (c) developing systems to calculate and predict cash requirements of the Central Government;
 - (d) issuing and redeeming such short-term securities as may be required to meet the cash requirements of the Central Government;
 - (e) advising the Central Government on management of cash of the Central Government; and 25
 - (f) advising the Central Government on measures to promote efficient cash management practices and to deal with surpluses and deficits.
- (2) The Debt Agency must, in consultation with the Central Government, prepare a cash management plan for the Central Government on a daily, weekly or monthly basis, as the Debt Agency may determine to be practicable and necessary. 30
- (3) The periodic cash management plan must advise on the following matters, –
- (a) the forecasts of cash flows of the Central Government;
 - (b) synchronisation of cash flows with public debt management; and 35
 - (c) aspects of efficiency such as costs and risks associated with cash flows and measures to deal with deficit and surplus including investment of excess cash or buyback of domestic debt.
- (4) The Central Government must approve the periodic cash management plan, with or without modifications, from time to time, and communicate the approved periodic cash management plan to the Debt Agency, as soon as may be practicable. 40

- (5) The Central Government may, in consultation with the Debt Agency, modify the periodic cash management plan at any time as may be necessary.
- (6) The Debt Agency must implement to the best of its abilities, the periodic cash management plan as approved and modified by the Central Government.

5

CHAPTER 87

OTHER FUNCTIONS

- 362.** The Debt Agency must,— Research and information.
- (a) develop, maintain and manage information systems that are necessary to carry out its functions efficiently;
- 10 (b) disseminate information and data relating to its functions to the public in a transparent, accountable and timely manner; and
- (c) conduct and foster research relevant for the efficient discharge of its functions.
- 363.** (1) The Debt Agency may on behalf of any public authority, as may be permitted Services to others.
15 by the Central Government or any State Government, —
- (a) carry out the functions under section 353(1)(a) and 353(1)(b); or
- (b) provide technical assistance to enable the public authority or State Government, as the case may be, to carry out the functions under sections 353(1)(a) and 353(1)(b).
- 20 (2) A State Government or public authority is liable to meet the obligations arising from any funds that are raised on behalf of that State Government or public authority by the Debt Agency.
- (3) The Debt Agency must not carry out any function under this section if there is a conflict of interest with the obligations of the Debt Agency under this Part.
- 25 (4) The functions carried out under this section must be subject to a written agreement to this effect between the Debt Agency and the public authority or as the case may be the State Government.
- (5) Unless excluded by the written agreement, the provisions of this Part will apply, with the necessary modifications, to the functions carried out under this Collection of information or material.
30 section.
- (6) For an agreement under this section to be valid, it must, —
- (a) require the Debt Agency to carry out, or provide technical assistance to enable the carrying out of, at least one of the functions provided under sections 354, 355(1) or 361; and
- 35 (b) be published.
- (7) In this section, “technical assistance” means any advice, assistance or training pertaining to the functions under section 353(1)(a) and 353(1)(b).
- 364.** (1) The Debt Agency may in writing call for such information or material as it Collection of information or material.
40 determines necessary from the Central Government, a State Government or any public authority with which it has entered into an agreement, to carry out its functions under this Part.

- (2) The Debt Agency must give reasonable time to the Central Government, State Government or public authority, as the case may be, to provide the information.
- (3) The information or material may relate to, –
- (a) public debt;
 - (b) contingent liabilities of the Central Government, a State Government or a public authority which the Debt Agency has entered into an agreement; 5
 - (c) cash balances of the Central Government, a State Government or a public authority with which the Debt Agency has entered into an agreement; and
 - (d) forecasts of daily cash flows and net cash requirements of the Central Government, a State Government or a public authority with which the Debt Agency has entered into an agreement. 10
- (4) The recipient of a request under sub-section (1) is bound to provide the information or material, if available with it, to the Debt Agency within the time-period mentioned by the Debt Agency.
- 365.** The Debt Agency must not raise funds or undertake transactions in financial markets on its own behalf. Bar on transactions.
- 366.** (1) The Central Government must pay such fees to the Debt Agency, for its services, as may be stipulated in the bye-laws referred to in sub-section (2). Fees.
- (2) The Debt Agency must, in consultation with the Central Government, make bye-laws to provide for the scale of fees payable in respect of the services rendered to the Central Government under this Act. 20
- (3) The Debt Agency must ensure that the fees are proportionate to the kind or scale of service rendered.
- (4) While levying fees, the bye-laws must take into account –
- (a) the financial requirements of the Debt Agency; and 25
 - (b) the costs associated with the service for which the fee is levied.
- (5) The State Government or public authority that avails of the services of the Debt Agency under section 363 must pay such fees as may be prescribed in the bye-laws or otherwise as may be agreed between the Debt Agency and the relevant State Government or public authority. 30
- (6) The Debt Agency may make bye-laws to provide for the scale of fees payable in respect of its services rendered under section 363.

CHAPTER 88

POWERS OF THE CENTRAL GOVERNMENT

- 367.** (1) The Central Government may issue to the Debt Agency, by an order in writing, directions on policy from time to time. Power of Central Government to issue directions.
- (2) The decision of the Central Government as to whether a direction is one of policy or not is final.
- (3) Before issuing any directions under this section, –

- (a) the Debt Agency must be given a reasonable opportunity to be heard to express its views; and
- (b) the Central Government must publish any views expressed by the Debt Agency in a manner best suited to bring them to the attention of the public, and consider the same.
- (4) The Debt Agency is bound by any directions issued under this section in the exercise of its powers or the performance of its functions.
- 368.** (1) The Central Government may, by notification, temporarily supersede the Debt Agency Board, if the Central Government is of the opinion that, –
- (a) on account of an emergency, the Debt Agency is unable to perform its functions; or
- (b) the Debt Agency has persistently defaulted either in complying with any direction issued by the Central Government under this Part or in the performance of its functions.
- (2) The notification must provide for the period of supersession, which may not exceed a period of one hundred and eighty days.
- (3) Before issuing the notification, the Central Government must, –
- (a) give a reasonable opportunity to the Debt Agency Board to make representations against the proposed supersession; and
- (b) consider the representations, if any, made by the Debt Agency Board.
- (4) Upon the publication of the notification, –
- (a) all the members of the Debt Agency Board will, as from the date of supersession, vacate their offices; and
- (b) all the powers and functions which may be exercised or performed by the Debt Agency, will, until the Debt Agency Board is reconstituted under section 3(1)(f), be exercised and performed by such person or persons as the Central Government may direct.
- (5) Before the period of supersession expires, the Central Government must take action towards reconstituting the Debt Agency Board.
- (6) The Central Government may reconstitute the Board of the Debt Agency by fresh appointments, and no person who vacated office under sub-section (4)(a) will be deemed disqualified for appointment.
- (7) The Central Government must, at the earliest, lay before each House of Parliament, the notification and a report of the action taken under this section and the circumstances leading to such action.

Power of Central Government to temporarily supersede Debt Agency in exigency.

E Legislative amendments towards setting up an independent debt management agency

E.1 Amendments to the *RBI Act*

Amendments to Section 17 of the *RBI Act* The following proviso shall be inserted after clause (f) of sub-section (11) of section 17 of the *RBI Act*–

Provided that the Bank may exercise the functions specified in clauses (e) and (f) of this sub-section for the Central Government, if the Central Government issues a notification under Section 21(2) of this Act, entrusting the Bank with the function of managing public debt and issuing and managing bonds and debentures of the Central Government.

Amendments to Section 21 of the *RBI Act*

Sub-section (2) of Section 21 of the Reserve Bank of India Act shall be substituted as under -

‘(2) The Central Government shall, by notification in the Official Gazette, entrust the Bank or the Public Debt Management Agency, on such conditions as may be agreed upon, with the management of the public debt, issue and management of bonds and debentures of the Central Government and issue of any new loans.’

Once the **PDMA** is fully operational, these sections will be deleted.

‘Sections 17(11)(e), 17(11)(f) and Section 21(2) of the *RBI Act* shall stand deleted.’

E.2 Amendments to the *Government Securities Act*

The following section shall be inserted as Section 34A in the *Government Securities Act* -

‘**34A. Power of the Bank transitioned to the Public Debt Management Agency** - All references to the Bank in this Act shall be construed as references to the Public Debt Management Agency.

Provided that -

(a) all directions issued by the Bank under this Act, before the date on which this amendment is notified, shall stand repealed;

(b) all actions taken by any person under any direction issued by the Bank under this Act, before the date on which this amendment is notified, shall be valid and legal.’

Once the **PDMA** is fully operational, the *Government Securities Act* will be repealed.

E.3 Repeal of the *Government Securities Act*

After section 35 of the *Government Securities Act*, the following section shall be inserted, namely -

“35A. The Government Securities Act, 2006 is hereby repealed.”

F Legislative amendments to achieve unification of market regulation

F.1 Amendments to the *RBI Act*

Sections 45U, 45V, 45W and 45X of Chapter IIID of the Reserve Bank of India Act, shall stand deleted.

Provided that -

1. any direction issued by the Reserve Bank before the date on which this amendment is notified, under Chapter IIID of the Reserve Bank of India Act, shall stand repealed;
2. any action taken by any person, before the date on which this amendment is notified, in pursuance of any direction issued by the Reserve Bank under Chapter IIID of the Reserve Bank of India Act, shall be valid and legal.

F.2 Amendments to the *Securities Contract (Regulation) Act*

The following amendments shall be made in Section 2 of the Securities Contracts Regulation Act–

after sub-clause (C) of clause (ac), the following sub-clauses shall be inserted –

(D) repo and reverse repo;

(E) a contract which derives its value from change in interest rate, foreign exchange rate or credit index or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency-rupee swaps, foreign currency options, foreign currency-rupee options; and

after clause (f), the following clauses shall be inserted–

‘(fa) “repo” means an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed;

(fb) “reverse repo” means an instrument for lending funds by purchasing securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent;’

The following words shall stand deleted in Section 29A of the Securities Contracts Regulation Act

‘or the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934 (2 of 1934)’

Provided that -

1. any notification issued by the Reserve Bank, before the date on which this amendment is notified, in exercise of any power delegated to it by the Central Government under Section 29A of the Securities Contracts Regulation Act, shall stand repealed;
2. any action taken by any person, before the date on which this amendment is notified, in pursuance of any notification issued by the Reserve Bank under the said Section 29A of the Securities Contracts Regulation Act, shall be valid and legal.

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