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EVENING PROGRAM

"Legal Considerations for Domestic borrowing versus International Sovereign Borrowing through capital markets:

A Case Study of the Rwanda Euro Bond"

Thesis submitted in partial fulfillment of the requirements for the award of Master's degree in International Economic and Business Law

By: FURAHA Charles

SUPERVISOR: Prof Dr BIGIRIMAMA Fructuose

Kigali, November 2023

DECLARATION

I, **FURAHA Charles,** the undersigned herein do solemnly declare that this thesis is my personal original work in its style, substance and form, and that the same has never been presented in any other academic Institution. Where someone' work has been used, a reference has been made to that effect. Accordingly, the present work has been presented to the undersigned supervisor and has been duly approved by him and the University academic body.

Dated and signed at ULK

On, this, day…. of …...2023

……………………………………   Digital signed 15/11/2023

Mr. FURAHA Charles	**Prof Dr BIGIRIMAMA Fructuose**
(AUTHOR)	**(SUPERVISOR)**

DEDICATION TO:

Almighty God

My Lovely Wife

My Lovely Daughters

My son

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LIST OF ABBREVIATIONS AND ACRONYMS

ADB : African Development Bank

BIS : Bank for International Settlements

CACs : collective action clauses

CEE : central and Eastern Europe

CIA : Central Intelligence Agency

CIBC : Bank and trust company ltd

CMA : Capital Market Authority

CRA : Credit Rating Agency

DSA : Debt Sustainability Analyses

DRC : Democratic Republic of Congo

EAC : East African Community

EC : European Council

EDPRS : Economic Development and Poverty Reduction Strategy

EICV3 : Third Integrated Household Living Conditions Survey

EMBI : Emerging Market Bond *Index*

EM : Emerging Markets

EU : European Union

FDI : Foreign Direct Investment

FSIA : *Foreign Sovereign Immunities Act*

GDP : Growth Domestic Product

G.O.L. : General Obligations Law

IMF	: International Monetary Fund
ITRI	: International Tin Research Institute
LDC's	: Least Developed Countries
MOF	: Ministry of Finance
MWE	: Mega watts
MYDFA	: Multi-Year Deposit Facility Agreement"
M23	: Movement du 23 mars
NBR	: National Bank of Rwanda
PDMO	: Public debt management organ
RPF	: Rwandan Patriotic Front
SDRM	: debt restructuring mechanism
S&P	: Standard &Poors
UN	: United Nations
U.K	: United Kingdom
USD	: Unites States of America Currency
USA	: Unites States of America
QIBs	: Qualified Institutional Bodies

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ABSTRACT

The abstract discusses the increasing trend of sovereign borrowing from capital markets, analyzing the legal implications of choosing between domestic and international debt issuance. It examines the regulatory landscapes for both types of borrowing, emphasizing their impacts on a nation's financial stability and market dynamics. Additionally, it evaluates the effects on a nation's credit rating and borrowing costs, incorporating case studies to illustrate the outcomes of different borrowing strategies. Overall, the study emphasizes the importance of considering legal and regulatory environments, offering insights for policymakers, legal experts, and financial institutions to make informed decisions that promote sustainable economic growth and fiscal stability.

In conclusion, this dissertation contributes to the understanding of legal considerations influencing sovereign borrowing decisions through capital markets. The research underscores the importance of carefully evaluating the legal and regulatory environments when making borrowing choices, taking into account a country's unique circumstances, financial objectives, and risk appetite. Policymakers, legal experts, and financial institutions can benefit from the findings of this study to make well-informed decisions that promote sustainable economic growth and fiscal stability in the context of sovereign borrowing.

CHAPTER I: GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The economic literature on sovereign debt has enjoyed an explosive comeback in recent years. After thriving in the 1980s, research on sovereign debt had gone out of fashion in the second half of the 1990s; perhaps because the financial problems of developing countries seemed to have moved elsewhere, toward privately issued debt and liquidity crises. A new generation of sovereign debt crises, beginning with Russia's default in August of 1998, returned sovereign debt to center stage, challenged some old ideas, and raised new questions[1].

Re access to international capital markets following several of these crises appeared to be faster than in previous decades, challenging the notion that capital market exclusion was the critical penalty that made sovereign debt possible. At the same time, several high-profile litigation cases appeared to bring back the legal system as a possible enforcement mechanism for sovereign debt contracts. Finally, with securitized debt markets, there now seemed to be room for significant collective action problems in debt restructuring negotiations, bringing cross creditor problems to the fore along with the traditional debtor–creditor relationship[2].

During the last decade, a number of Emerging countries and Least developed countries have successfully issued international bonds for the first time, with the most recent cases being those of Georgia (US$500 million; early April 2008), Gabon (US$1 billion; mid-December 2007), Sri Lanka (US$500 million; October 2007), Rwanda (US$400; May 2013) and Ghana (US$750 million; late September 2007). Ghana's issue was the first by a Sub-Saharan country (other than South Africa). Notably, the geographic distribution of first-time issuers was diverse. Moreover, several other Emerging countries and least developed countries have expressed their intention to access international capital markets with debut issues. The size, coupon, maturity and spread in percent of total issues of debut issues. Recent debut sovereign issues were the latest manifestation of a more general move away from concessional financing to non-concessional and non-traditional as well as a result of increased "borrowing space" due to improved debt sustainability. This trend has been particularly notable in countries that benefited from debt relief, such as post-HIPC countries. Moreover, the non-concessional sources tapped

1 Gruson & Reisner, Sovereign Lending: *Managing Legal Risk*, Euromoney Publications, 1984.
2 Alfaro, Laura, and Fabio Kanczuk. 2005. "*Sovereign Debt as a Contingent Claim:* A Quantitative Approach." Journal of International Economics,

by EM countries or LICs included the official sector, e.g., regional development banks, bilateral creditors, and the private sector, especially banks, and now also bond investors[3].

1.2 STATEMENT OF THE PROBLEM

This Thesis seeks to explore the legal intricacies and challenges involved in sovereign borrowing decisions, offering insights into how governments can make informed choices between domestic and international capital markets while adhering to applicable legal frameworks and regulations.

The inherent tension between domestic and international sovereign borrowing introduces a series of multifaceted legal challenges that demand comprehensive analysis. As nations seek to optimize their borrowing strategies, they must grapple with a range of pivotal questions.

Jurisdictional Complexity and regulatory landscapes in domestic and international capital markets affect a sovereign's ability to raise funds, the costs involved, and the levels of transparency and investor protection. Different legal systems recognize and respect sovereign immunity in both domestic and international contexts, and this impact a sovereign's ability to access funds and manage potential disputes with creditors.

Legal differences in contractual arrangements between domestic and international sovereign borrowing, including bond covenants, repayment structures, and creditor rights,influence borrowing costs and investor confidence. Enforcement mechanisms available to creditors in domestic and international markets affect a sovereign's willingness to borrow and its capacity to address default situations, including litigation risks, debt restructuring, and negotiations.

Broader economic and social implications of the legal choices made by sovereigns in selecting between domestic and international borrowing, including considerations related to fiscal discipline, public finance management, and sustainable development has a direct impact on the sovereigns borrowing capacity.

Addressing these intricate legal considerations is paramount for governments seeking to make informed decisions about their borrowing strategies. A comprehensive examination of the legal aspects surrounding domestic and international sovereign borrowing through capital markets

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3Beaugrand, P., B. Loko, and M. Mlachila. 2002. "*The Choice between External and Domestic Debt in Financing Budget Deficits:* The Case of Central and West African Countries." IMF Working Paper No. 02/79.

will not only contribute to the theoretical understanding of sovereign finance but will also offer practical insights for policymakers, legal practitioners, and international financial institutions.

Therefore, this research paper aims to delve into the intricate legal dynamics underlying the choice between domestic and international sovereign borrowing through capital markets, offering an in-depth analysis of the aforementioned legal challenges and their broader implications for sovereigns in today's rapidly evolving global financial landscape.

1.3 RESEARCH QUESTIONS

1. *What is the Legal regime to apply when making a choice to borrow internationally through the Capital Market & what happens if a sovereign does not honor its obligations?*
2. *Why should a sovereign borrow internationally other than borrowing domestically?*
3. *What are the challenges and benefits in borrowing both internationally or domestically?*

1.4 HYPOTHESIS

2. A sovereign nation issues bonds internationally but faces financial distress, leading to a failure to meet its debt obligations. How does the legal framework within international capital markets address the consequences and potential repercussions for both the sovereign and the investors?

3. A developing nation considers borrowing internationally to finance a large-scale infrastructure project. How does accessing international capital markets provide the necessary funding advantages over domestic borrowing, and what legal factors should the government consider to mitigate potential risks associated with foreign borrowing, such as currency fluctuations and geopolitical instability?

4. A stable, well-developed country evaluates the options for raising funds for a national healthcare initiative. How do the challenges of meeting international standards and compliance requirements differ from the benefits of obtaining lower interest rates and accessing a more diverse investor base in the international capital market, compared to the relative ease of navigating domestic regulations and investor familiarity in the domestic market?

1.5 PURPOSE OF THE STUDY

The purpose of this research study is to provide a comprehensive and nuanced analysis of the intricate legal considerations that governments face when deciding between domestic and international sovereign borrowing through capital markets. By examining the multifaceted legal challenges inherent in this choice, the study aims to achieve the following objectives: In-Depth Legal Analysis: This study seeks to conduct a thorough exploration of the legal frameworks and regulatory environments governing domestic and international capital markets. By dissecting the jurisdictional complexities, contractual arrangements, enforcement mechanisms, and other legal aspects, the research aims to offer a clear understanding of the legal landscape in which sovereign borrowing takes place.

Comparison of Borrowing Options: By comparing the legal implications of domestic and international sovereign borrowing, the study aims to elucidate the advantages, disadvantages, and trade-offs associated with each option. Through a meticulous assessment of sovereign immunity recognition, creditor rights, risk management strategies, and institutional capacities, the research intends to provide governments with an informed basis for selecting the most appropriate borrowing avenue.

Identification of Policy Implications: The research strives to uncover the broader policy implications arising from the legal choices made by sovereigns. By examining the economic, fiscal, and developmental ramifications of borrowing decisions, the study aims to contribute insights that can guide policymakers in making informed choices that align with national objectives and priorities.

Enhanced Decision-Making: This study aims to empower governments, legal practitioners, and financial institutions with a comprehensive understanding of the legal intricacies surrounding sovereign borrowing. By offering insights into the potential risks, benefits, and challenges associated with both domestic and international borrowing, the research seeks to equip stakeholders with the knowledge necessary for sound decision-making.

Contribution to Academic Discourse**:** Through an in-depth exploration of the legal considerations for sovereign borrowing, this research aims to contribute to the existing academic discourse on sovereign finance, international law, and public policy. By offering a

comprehensive analysis, the study seeks to expand the body of knowledge in this field and stimulate further scholarly inquiry.

Practical Guidance: The study aspires to provide practical guidance for governments and financial practitioners navigating the complex landscape of sovereign borrowing. By highlighting best practices, potential pitfalls, and lessons learned from real-world cases, the research aims to offer actionable insights that can enhance the effectiveness and efficiency of sovereign borrowing strategies.

In summary, the purpose of this study is to shed light on the legal complexities involved in the choice between domestic and international sovereign borrowing through capital markets. Through a thorough analysis of legal challenges, policy implications, and practical considerations, the research aims to contribute to informed decision-making, advance academic understanding, and facilitate responsible and sustainable sovereign finance practices.

1.6 SIGNIFICANCE OF THE STUDY

The proposed study on the legal considerations for domestic versus international sovereign borrowing through capital markets holds substantial significance due to its potential contributions in various domains. The study's findings and insights have the potential to impact governments, legal professionals, financial institutions, academics, and the broader international community.

This research is meant to guide Sovereign states on what they should consider when making a choice on borrowing. This study will help Rwanda in particular and other corporate bodies, in identifying the legal considerations that, they need to consider when deciding to borrow either domestically or internationally. The research will give recommendations on when to borrow internationally or domestically and provide pros and cons on the two options. This research is very important as most countries specifically those from sub Saharan Africa have managed to accelerate their economies which have attracted a lot of investments in developed countries into the economies of these states. Borrowing to fund infrastructure and other economic activities is therefore, not an option but a must do.

In summary, the significance of the research lies in its potential to inform decision-making, enhance legal understanding, facilitate responsible borrowing practices, and contribute to broader discussions on international finance and governance. By addressing crucial legal

considerations, the study can play a pivotal role in shaping more effective and sustainable sovereign borrowing strategies in an increasingly interconnected global financial landscape.

1.7 METHODOLOGY OF RESEARCH

The selected research methodology for this study is a combination of library research and electronic data analysis. Library research involves the comprehensive exploration and analysis of existing literature, academic journals, books, policy documents, legal cases, and relevant reports pertaining to sovereign borrowing in capital markets. Electronic data analysis, on the other hand, entails the collection, evaluation, and interpretation of data sourced from online databases, financial platforms, regulatory authorities, and official government websites.

Documentary:

Documentary research serves as the bedrock of the study by offering a rich repository of historical, theoretical, and empirical information. This approach allows for an in-depth understanding of legal considerations for sovereign borrowing, enabling the researcher to contextualize contemporary issues within a broader historical and theoretical framework. By engaging with established literature and authoritative sources, the researcher gains insights into the evolution of legal norms, international agreements, and best practices related to sovereign borrowing. This, in turn, facilitates a comprehensive analysis of the legal challenges and opportunities faced by governments when entering capital markets.

Analytical:

Analytical methodology involves the detailed examination and breakdown of a subject into its constituent parts. It focuses on understanding the underlying components, patterns, and relationships within the subject. This methodology often relies on logic, critical thinking, and data analysis to draw conclusions. The Researchers using this approach will aim to gain insights into the fundamental aspects of a phenomenon or problem.

Comparative:

Comparative methodology involves the systematic comparison of different cases, subjects, or variables to identify similarities, differences, and patterns. The Researcher will use this approach to understand how variations in factors impact outcomes. By analyzing various cases side by side, the researchers can uncover trends, make connections, and draw generalizations about the relationships between variables.

Synthetic:

Synthetic methodology involves the integration of diverse sources, ideas, or elements to create a new, holistic perspective or understanding.The Researchers while using this approach combine different pieces of information to construct a comprehensive overview. This method often requires creativity and the ability to synthesize information from various disciplines or viewpoints to generate novel insights or theories.

1.8 SCOPE OF THE RESEARCH

This research proposal will be limited to Sovereign borrowing through the Capital Markets with much emphasis on looking at Legal regime applicable, advantages and disadvantages of borrowing internationally and domestically. The researcher will also look at the recent Eurobond that was issued by the Government of Rwanda and discuss how efficient Rwanda's Borrowing internationally was more advantageous than to have borrowed domestically. With this, the researcher will be able to come up with recommendations to the Government in terms of choice and laws to be applicable while borrowing internationally in relation to domestic borrowing.

1.9 STRUCTURE OF THE WORK

Chapter 1: This chapter talks into the Problem to be adresesed in this thesis and key questions and solutions to be addressed.

Chapter 2: In this chapter, the focus is on comparing the characteristics of countries that engage in borrowing through international markets with those that borrow domestically.

Chapter 3: This Chapter investigates the legal aspects associated with sovereign borrowing, differentiating between foreign and domestic contexts.

Chapter 4: This chapter presents a comprehensive case study of Rwanda's Euro Bond issuance.

Chapter 5: The final chapter of the study provides a conclusive summary of the research findings and insights derived from the preceding chapters &key takeaways.

CHAPTER II: FOREIGN AND DOMESTIC SOVEREIGN BORROWING

2.1 Foreign borrowing

Drawing on the experience of five first-time sovereign issuers, this research discusses some considerations that member countries should take into account before issuing bonds in international capital markets for the first time. The experience of the first-time sovereign issuers showed that, while their objectives for accessing international capital markets differed, they generally issued their debut bonds under favorable domestic and external conditions. These countries had built a record of good economic performance over many years, and their medium-term outlook was positive. In most of these countries, growth was robust, inflation was under control, and the external current account deficit was financed easily. These countries had a prudent fiscal stance, and had a strong record of managing the public debt. First-time sovereign issuers had made progress in establishing transparency in the conduct of monetary policy and in carrying out structural reforms. The political situation in these countries was supportive of the pursuit of appropriate economic policies. Conditions in external markets generally were positive when these countries accessed international capital markets[4].

The size of the debut bonds varied widely across different issuers. However, other characteristics of the debut bonds tended to be similar. Nearly all of the first-time sovereign issuers placed five-year fixed-coupon, bullet bonds. Most of the bonds placed were in the U.S. dollar market. The initial bond issues generally were underpriced, thereby offering investors attractive initial returns[5].

The experience of the new sovereign issuers highlights the considerations that countries should take into account before accessing international capital markets. Domestic and external conditions should be favorable for countries to issue a bond successfully for the first time. Investors' lack of familiarity with first-time sovereign issuers needs to be addressed, including through credit ratings. While countries should target their preferred or "natural"investor base with their initial bond issue, they should seek to diversify their investor base with subsequent bond issues to enhance the liquidity of their bonds. Reflecting their preference for liquidity, investors tend to prefer a minimum size of issue. The currency of denomination of the bond

[4] Cline, William R. 1984. International Debt: *Systemic Risk and Policy Response*. Washington, D.C.: Institute for International Economics.

[5] Eichengreen, B, R Hausmann and U Pizza (2005): *"The pain of original sin" in B: debt denomination and financial instability in emerging market economies*, University of Chicago Press.

should reflect, among others factors, the currency of preference of the investor base. Any currency mismatches associated with a bond issued in international capital markets should be manageable. Even though investors appear to prefer fixed-coupon, bullet bonds, new sovereign issuers could give consideration to the issuance of amortizing bonds to better manage their debt repayment profile. New sovereign issuers should eschew complex structures, including through the use of guarantees. Countries could take some steps to manage the risks associated with bonds issued in international capital markets[6].

Many member countries are in the process of accessing international capital markets for the first time or after a prolonged absence. Yet, little attention has been given to assessing the factors determining a country's successful access to international capital markets and the desired characteristics of the debt instruments involved. Building on previous work on the determinants of market access by countries emerging from crisis, this research attempts to fill this void by examining the experience of emerging market (EM) countries that have issued international bonds for the first time, or after a prolonged absence. Based on the experience of these countries, empirical analysis, and extensive conversations with market practitioners, legal advisors, and credit rating agencies, this research is a first step in establishing a practical guide for countries accessing international bond markets for the first time. It discusses some considerations that should be taken into account to ensure a successful bond issue in international capital markets[7].

2.2 Domestic Characteristics of countries that borrowed through international markets

2.2.1 Objectives in accessing international capital markets for the first time

The primary goal is to raise capital to meet financing needs. The desire to diversify financing sources, or replenish international reserves is also important. In addition, countries access capital markets to establish a benchmark for the valuation of sovereign credit risk, which can facilitate future issuance by the sovereign, local governments, public enterprises, and the private sector. In this context, in accessing international capital markets for the first time countries could smooth consumption, take advantage of domestic investment opportunities, and establish a cushion against adverse external events, including a negative terms-of-trade shock. Accessing international capital markets would therefore complement the countries' efforts both to integrate

[6] Gelos, Gaston R, Ratna Sahay, and Guido Sandleris, 2003, "*Sovereign Borrowing*

[7] International Monetary Fund, 2001, "*Assessing the Determinants and Prospects for the Pace of Market Access by Countries Emerging from Crises*," EBS/01/157, Supplement 1, (9/14/01).

into the global economy and to foster the development of domestic financial markets. However, in accessing these markets countries need to be aware that they take on certain new risks, including foreign exchange and rollover risks that would have to be carefully managed over time[8].

2.2.2 Good macroeconomic performance and a favorable medium-term outlook

Economic activity was generally robust in the countries included in this paragraph, with real GDP growing and employment increasing, and inflation was for the most part well under control. Bulgaria's real GDP is estimated to have grown by about 4 percent in 1998–2000, rising to 4.5 percent in 2001, the year it accessed international capital markets for the first time. During this period, inflation was converging to the inflation rate of its major trading partners. In the Dominican Republic, real GDP, which had grown by an average of 7.7 percent in 1998–2000, grew by 3 percent in 2001, the year the country accessed international capital markets, and inflation was in single digits. Egypt's real GDP growth averaged 5.6 percent in 1998–2000 before it declined to 3.3 percent in 2000. During this period, inflation was falling to the rates of Egypt's main trading partners. Iran's real GDP growth averaged more than 5 percent in 2000–01 (the two years prior to accessing the markets), Rwanda' GDP was growing from 4.5 to 7.8 from 2004 to 2013 when they went to the market for the first time, but inflation, while declining, was high. Favorable domestic economic conditions were important not only for first-time sovereign issuers but also for repeat sovereign issuers[9].

2.2.3 Countries' external current account deficits were comfortably financed at the time of issuance.

Even though the external current account deficit was widening in some countries at the time of issuance, it was largely financed with foreign direct investment (FDI) and official flows. In Bulgaria, the external current account deficit was widening, but it was financed comfortably by FDI, loans from the private sector, and some official financing. Similarly, in the Dominican Republic, the external current account deficit was widening, and it was financed by FDI. In Egypt, the external current account deficit was small when it accessed international capital

[8] Akerlof, George, 2002, "*Behavioral Macroeconomics and Macroeconomic Behavior*,"*The American Economic Review*, Volume 92, Number 3, June.

[9] International Monetary Fund, 2001, "*Assessing the Determinants and Prospects for the Pace of Market Access by Countries Emerging from Crises*," EBS/01/157, (9/6/01).

markets, while in Iran, the external current account recorded surpluses due to high international oil prices for several years before this country accessed international capital markets[10].

2.2.4 A prudent fiscal stance was the lynchpin of the macroeconomic management

As an indication of these countries' ability to repay their obligations, a prudent fiscal stance was essential in facilitating the sale of bonds by first-time sovereign issuers. Bulgaria, which experienced a major fiscal adjustment in the mid-1990s, maintained a prudent fiscal stance for many years prior to accessing international capital markets in 2001: the general government registered deficits averaging only about 1 percent of GDP in 1999–2001. Reflecting Bulgaria's strong commitment to fiscal austerity and the anchor resulting from its EU accession status, at the time of issuance the deficit was expected to decline to near balance in 2005. The Dominican Republic maintained a solid fiscal stance for many years before its debut in international capital markets. Iran, which went through a major fiscal adjustment in the mid- 1990s, also had a manageable fiscal position for several years before accessing international capital markets in 2002[11].

2.2.5 The first-time sovereign issuers' ability to service their debt

While the public debt-to-GDP ratio varied significantly from country to country, first-time sovereign issuers included in this research had an excellent record in servicing their external debt in the years preceding the issue. The fact that some countries had undergone a debt restructuring earlier (such as a Brady deal), and some had defaulted on their domestic debt, was not a deterrent to international bond issuance. For example, while Bulgaria's public debt-to-GDP ratio was still high for an EM country; it had declined noticeably for several years through 2001. Bulgaria also built an excellent record in servicing its debt after 1994, when it restructured its commercial debt with London Club creditors[12].

2.2.6 Transparency in the conduct of monetary policy

This progress entailed either defining a nominal anchor or publicizing monetary objectives on a regular basis. In this context, the Dominican Republic and Peru were moving toward inflation

[10] Grigorian, David A., 2003, "*On First Time Sovereign Bond Issuance*," unpublished, International Capital Markets Department, International Monetary Fund, May

[11] Ibid,

[12] Goldstein, M and P Turner (2004): "*Controlling currency mismatches in emerging markets", Institute for International Economics*, Washington DC, April.

targeting. Peru also began to publish monthly reports outlining recent monetary developments and announcing monthly monetary targets[13].

2.2.7 Stability of exchange rates at the time of issuance

The fixed exchange rate regimes, including currency boards (Bulgaria), of first-time sovereign issuers were not a cause of concern among investors, as these regimes worked effectively to help maintain macroeconomic stability. The flexible exchange rates in the other countries (the Dominican Republic and Peru) also worked well, with the exchange rates remaining stable. The foreign exchange markets in the countries included in the list were liberalized, or progress had been made in this regard. While the Dominican Republic unified its exchange rate system prior to accessing international capital markets, Iran took steps to liberalize its foreign exchange markets and unified its system in March 2002[14].

2.2.8 Strong structural reforms before issuing bonds in international capital markets

In particular, some countries made significant efforts to increase the participation of the private sector in the economy. These efforts included privatization, adoption of realistic and market-based pricing policies for privatized companies, and the reduction of legal and administrative requirements to carry out operations, and changes in labor law to introduce more flexibility. This in part helped attract FDI, which, as noted above, preceded the issuance of the bond. Bulgaria and the Dominican Republic made important advances with structural reforms[15].

2.2.9 The political Stability

The political cycle also was not seen as adversely affecting policy continuity. Markets appeared to be comfortable with the political situation.

2.2.10 Positive outlook in Credit ratings

All countries in this research actively sought to get credit ratings before issuance to increase investors' familiarity with the country's credit profile, and obtained a rating of at least BB-. Credit ratings, in effect, helped first-time issuers overcome the asymmetric information, or lack of familiarity, about their credit[16].

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[13]Aggarwal, Reena, 2000, "*Stabilization Activities by Underwriters after Initial Public Offerings,*" Journal of Finance, Volume 55, Number 3, June, pp. 1075–1103.

[14] Ibid,

[15]Guidotti, P. E. and M.S. Kumar. 1991. "*Domestic Public Debt of Externally Indebted Countries*." Occasional Paper No.

[16] Ibid, pg 37

2.3 External characteristics of countries that borrowed through international markets

2.3.1 Favorable conditions in international capital markets

While such conditions were not relevant in the decision to access international capital markets, in most cases they affected the timing of the access. There appeared to be a “tolerance zone” for external conditions, giving rise to the on-and-off or binary nature of capital markets for emerging markets. When conditions in international capital markets were favorable, first-time sovereign issuers were typically able to access these markets. Conversely, when conditions were unfavorable, first-time sovereign issuers tended not to issue[17].

2.3.2 The binary nature of accessing international capital markets by emerging markets

After the surprise cut in U.S. interest rates in January 2001, conditions in global financial markets improved. This allowed emerging market borrowers to come to the market, with Egypt taking advantage of these conditions to issue its debut bond in June 2001. However, these conditions virtually disappeared after the events of September 11. Bond issuance in primary markets only recovered in November 2001. In 2002, the poor performance of mature equity markets led to increased interest for emerging market debt securities. Investor demand for new emerging market issues also reflected the higher-than-normal cash holdings of dedicated investors at the beginning of the year and increased allocations by crossover investors in the United States to emerging markets. It is under these circumstances that Peru accessed international capital markets[18].

2.3.3 Strong record of economic performance

Despite the unfavorable circumstances in financial markets after September 11, the Dominican Republic showed that emerging market countries with a strong record of economic performance could access international capital markets. The Dominican Republic tested international capital markets by issuing on September 20, 2001, having completed the road show before the September 11 events. Uncertainty in the market reduced somewhat investor interest, and resulted in a higher spread. Nevertheless, despite the option to reduce the total amount to US$300 million, the authorities ended up placing the targeted US$500 million[19].

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[17] Lowry, Michelle, and G. William Schwert, 2002, “*IPO Market Cycles: Bubbles or Sequential Learning,” Journal of Finance*, Volume 57, Number 3, June, pp. 1171–1200.

[18] Ibid,

[19] Gelos, Gaston R, Ratna Sahay, and Guido Sandleris, 2003, “*Sovereign Borrowing by Developing Countries*: What Determines Market Access, unpublished, Research Department, International Monetary Fund, April.

2.3.4 The diversification needs of international investors

Bulgaria benefited from the opportunities created by these needs by issuing a bond in the context of favorable macroeconomic conditions and its near-investment-grade credit rating. Egypt also took advantage of the needs of international investors to diversify their portfolios at a time when other major emerging market borrowers, particularly Argentina and Turkey, were cut off from international capital markets. The effective marketing campaign used by Egypt to place the bond, and the interest of Egyptian expatriates in the issue, were also helpful in the process. Iran's issue attracted not only many Middle Eastern investors, but also European investors, who valued the diversification provided by a country with a strong commitment to reform and good economic prospects[20].

2.4 Considerations for accessing international capital markets

2.4.1 Debt Management Strategy

Countries, in considering taking this step, need not only to understand their financing requirements, but also to have in place a debt management strategy that is sufficiently robust to ensure their ability to meet their debt-service obligations even in the face of major changes in the domestic and international circumstances. The case studies show that first-time sovereign issuers should have a strong record of domestic economic performance, favorable economic prospects, and a stable political situation. The success of a bond placement of countries accessing international capital markets for the first time also hinges on a favorable international backdrop. In this connection, volatility and spreads in mature markets should be low, and investors should have low or declining risk aversion. The overall performance of EM should be strong, with declining spreads and rising trading volumes[21].

2.4.2 Strong Knowledge of the Bond Issue

In deciding on the characteristics of the debut international bond, countries need to consider the following questions[22]:

- ✓ How should countries address the asymmetric information or lack of familiarity associated with their credit?
- ✓ Which investors should countries target?

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[20] Ibid, pg 78

[21] Cornelli, Francesca, and David Goldreich, 2001, "*Bookbuilding and Strategic Allocation*," *Journal of Finance*, Volume 56, Number 6, December,
pp. 2337–2369.

[22] Bulow, Jeremy and Kenneth Rogoff (1989) "*Sovereign Debt: Is to Forgive to Forget?" American Economic Review* 79, 43-50.

- ✓ What should be the amount of the bond issue?
- ✓ What should be the maturity of the bond?
- ✓ In what currency of denomination should countries issue a bond?
- ✓ Should the bond issued have a fixed or flexible coupon?
- ✓ Should the bond have bullet or amortizing principal?
- ✓ Should the bond include enhancements?
- ✓ Where should countries register and list the bond?
- ✓ Should the bond include CACs?
- ✓ Should countries manage the risks associated with issuing a bond in international capital markets over the life of the bond?

2.4.3 Countries to address the asymmetric information or lack of familiarity associated with their credit

Countries should address the asymmetric information or lack of familiarity with their credit early on by providing to investors as much information as possible about their economic and political developments and prospects. Lack of familiarity could be overcome by repeat events and reputation building. However, since new sovereign issuers are likely to benefit less from these factors, it could be beneficial for them to secure sovereign credit ratings that, among other things, indicate their capacity to service their debt. Issuers would need to undertake effective road shows, while being prepared to stand up to thorough investor scrutiny. Countries should establish investor's relations programs to provide data, information on economic policies, and an explanation around data releases, thereby seeking to actively shape investor sentiment. In addressing the lack of familiarity with their credit, countries would also benefit from framing their economic policies in a medium- and long-term macroeconomic context that highlights their borrowing needs, ability to service their debt obligations, and the strategy they want to employ in building their presence in international capital markets[23].

2.4.4 Countries to define the investors target

Choosing the target investor base is likely to be a critical step, since it would affect both the overall strategy to access international capital markets and the selection of the bond characteristics, including the jurisdiction under which the bond would be issued. Such a step would be particularly important for countries aiming to establish a permanent presence in international capital markets. In this context, countries should first target their natural investor

[23] Fischel, Daniel (1989) "*The Economics of Lender Liability*," *Yale Law Journal* 99, 131– 154.

base, if they have one. A new issuer should also identify so-called “sponsor” or “anchor” investors, that is, investors who know the credit and are willing to absorb a significant share of the issue. Over time, countries would benefit from expanding and diversifying their investor base. In this context, it may be useful to target buy-and-hold institutional investors as a way to cement the support for the bond, as these investors appear to be less inclined than other institutional investors to sell bonds at the first sign of stress. While retail investors could fulfill a similar role, owing to their buy-and-hold nature, they could limit secondary market trading, which may hamper efforts by countries seeking to establish a benchmark for non-Sovereign issuers. It must be noted that retail investors’ appetite for EM has declined markedly as a result of the Argentine default, with the exception of countries with EU accession status[24].

2.4.5 Countries to determine the amount of the bond issue

The amount of a new bond issue should be consistent with a prudent debt management strategy. In this context, the amount would depend on: (i) the countries’ financing requirements; (ii) the size of the domestic financial markets; and (iii) the need to establish a benchmark sovereign bond. Countries need to have a clear understanding of their financing requirements both in the near and medium term. This would be critical not only to determine the amount of the initial bond issue, but also to define a medium-term strategy for accessing international capital markets. A country in need of making a one-time, lump-sum investment may benefit from issuing a single tranche bond that is sufficiently large to finance the operation. However, a country with financing requirements that extend over the medium term may benefit from issuing a small bond initially, with a view to paving the way for future bond placements. Croatia and El Salvador appear to have benefited greatly from following the latter strategy. The size of domestic capital markets could also have implications for the decision whether to issue a bond domestically or externally. As the case of the Dominican Republic shows, domestic financial markets may be too small to raise significant financing for the sovereign[25].

2.4.6 Benchmark sovereign bond to determine the size of the bond issue

The bond issue should be sufficiently large to be liquid. Yuan (2001), using data of six emerging market economies, shows that benchmark sovereign securities serve to: (i) reduce investors’ information acquisition costs; (ii) facilitate future bond placement by the sovereign and by non-Sovereign issuers; and (iii) lower the bid-ask spread of corporate bonds.

[24] Ibid,

[25] Himmelberg, Charles P., R. Glenn Hubbard, and Inessa Love. 2002. *Investor Protection, Ownership, and the Cost of Capital*. Policy Research Working Paper 2834. Washington: World Bank.

In addition, the liquidity impact on corporate bonds originates from information dissemination, rather than just trading[26].

2.4.7 Minimum size to attract institutional investors' interest

Researchers have indicated that investors generally prefer liquid bonds, while noting that the inclusion of the issue in the main EM indices is less of a concern at least under current circumstances. Some also argued that while a large demand may at times induce countries to issue a large bond relative to, among other things, their international reserves and debt, prudent debt management considerations should prevail. Resisting the temptation to increase the size of the debut deal is likely to pay off by allowing the country to re access the market once the debut bond has traded well because of its scarcity value[27].

2.4.8 Determining the maturity of the bond

The maturity of a new bond issue should also reflect a prudent debt management strategy. In this regard, the selection of the maturity would depend on an assessment of: (i) the costs associated with different maturities; and (ii) investors' preferences. As the yield on a short-term bond is likely to be lower than the yield on a long-term bond, countries may have an incentive to issue a bond with a short-term maturity. Investors may also prefer to buy a bond with a short-term maturity, which tends to be less susceptible to market risk than medium- and long-term bonds. However, the incentives for countries to issue a short-term bond should be weighed against the need to manage rollover risk by avoiding the creation of large debt-service humps in the near term. In this connection, it may indeed be in the interest of sovereign issuers to place initially a bond with a maturity that is accommodating to investors, while creating the conditions for subsequent issues that could extend maturity and build a yield curve[28].

2.4.9 Defining the currency of denomination to issue a bond

The currency of denomination of a new bond issue would depend on many factors, including (i) the use of the proceeds from the bond issue; (ii) the sovereign issuer's ability to generate foreign exchange receipts in the currency of the issue; (iii) the investor base to be targeted; and (iv) the cost. Countries may want to issue a bond in the currency in which they need to boost international reserves, intervene in the foreign exchange markets, or purchase goods and services abroad. However, countries could, if necessary, issue a bond in one currency and

[26] Ibid, pg 13
[27] Ibid, pg 14
[28] Krugman, Paul and Maurice Obstfeld (1997) International Economics (fourth edition), Addison-Wesley, 1997.

convert the resources from the issue to another currency via a foreign exchange swap. Countries may want to issue a bond in the currency of the foreign currency receipts they generate so as to eliminate altogether the foreign exchange risk associated with a new bond issue. For example, oil exporting countries may well want to issue in U.S. dollars. Countries should, in any event, avoid creating unmanageable currency mismatches when issuing a bond in international capital markets. In selecting the currency of denomination of their bond, countries also need to consider the investor base they seek to target. In this context, countries should aim to issue their bond in the currency used by investors that would be most receptive to a new bond issue and have the necessary resources to absorb this bond. In most of the country cases examined in this paper, the decision to issue in U.S. dollars has reflected the desire to tap U.S. dollar-based investors, while the decision to issue in euros reflected the desire to attract euro-based investors[29].

2.5 Domestic borrowing

Domestic public debt issued by emerging markets has risen significantly relative to international debt in recent years. Some recent empirical evidence also suggests that sovereigns have defaulted differentially on debt held by domestic and external creditors. Standard models of sovereign debt, however, mainly focus on how the actions of foreign creditors influence default decisions of sovereigns. Contrasting this one-sided focus, this research adds to a new theoretical literature that points at the possibility of default on domestic debt and the consequences of doing so. It presents a model of an emerging market economy in which the government can selectively default on its domestic or external debt obligations. The model shows that the differential ability of domestic and foreign creditors to punish the government creates a gap in the expected default costs to the sovereign, and hence a differential in its propensity to default on its domestic versus foreign debt. The extent to which the possibility of differential treatment of creditors affects the composition of debt is explored. It shows that a country characterized by volatile output, sovereign risk, and costly tax collection will want to borrow in domestic markets as well as in international capital markets. The optimal allocation of debt between domestic and foreign creditors can thus be viewed as the government's purchase of insurance against macroeconomic shocks that affect its budget[30].

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[29] Gertler, Mark and Andrew K. Rose (1994) "*Finance, Growth and Public Policy" in Financial Reform: Theory and Experience* (eds: G. Caprio, I. Atiyas and J. Hanson).
[30] Bank for International Settlements (2002): "*The development of bond markets in emerging economies",*
BIS Papers, no 11, June.

2.5.1 Development of Domestic debt markets

Debt markets in emerging economies have expanded considerably since the mid-1990s. Domestic debt securities, in particular, have experienced considerable growth during this period. By late 2004, the stock of domestic debt securities issued by emerging economies reporting data to the BIS reached US$ 2.8 trillion and was four times larger than the corresponding amount of international debt securities (US$ 0.7 trillion). As a proportion of GDP, the stock of domestic debt securities issued by emerging markets has almost doubled since the mid-1990s, and stood at 40 percent in 2004[31].

The increasing significance of public sector bonds issued in domestic markets argues for the importance of analyzing the considerations that affect a government's decision to borrow from home or abroad. The optimal composition of debt between domestic and external components is an issue which has received little attention in the sovereign debt literature. It has been argued that the decision of where to issue debt reflects the characteristics of domestic capital markets. That is, countries that are characterized by poorly developed capital markets or low supply of domestic savings may be forced to borrow in the foreign markets. However, the focus of this literature is on why countries may be forced to issue foreign debt when domestic capital markets are not well developed. It does not focus on why governments may *choose* to borrow at home (or abroad) when they have the option of issuing debt in either market. This research is an attempt towards providing an explanation for the latter[32].

This issue is particularly relevant in the light of recent developments in debt markets. With the liberalization of capital flows and the increasing sophistication of domestic financial markets, developing country residents are buying more and more of their governments' debt. In the event of a debt restructuring, domestic residents figure as borrowers and as creditors, thus appearing on both sides of the negotiating table. The tasks of debt restructuring are further complicated in today's emerging market sovereign debt world, as the structure and patterns of holding debt instruments becomes increasingly complex. As a result, in contrast to the default episodes of the 1980s, the episodes of the 1990s left open many more margins on which a country experiencing repayment difficulties had to make decisions. Countries had to decide which instruments they

[31] Guidotti, P. E. and M.S. Kumar. 1991. "*Domestic Public Debt of Externally Indebted Countries*." Occasional Paper

[32] Lowry, Michelle, and G. William Schwert, 2002, *"IPO Market Cycles: Bubbles or Sequential Learning,"* Journal of Finance, Volume 57, Number 3, June, pp. 1171–1200.

would default upon. For example, while Argentina and Ecuador defaulted on all debt instruments, Russia, Ukraine and Pakistan defaulted on only a few instruments[33].

Countries also had to decide whether to default on debt held by domestic creditors or on that held by foreign creditors. Foreign debt is often taken to be synonymous with foreign currency denominated debt, domestic debt with domestic-currency denominated debt. However, the currency denomination and the nationality of investors do not necessarily match. Indeed, in some cases it is difficult to distinguish between domestic and foreign creditors because, with highly integrated world capital markets, who ultimately ends up holding the debt is independent of where the government issues it. However, as pointed out by Draze n (1998), it is important to distinguish between domestic and external debt for two reasons. First, governments face different incentives in repaying debts held by residents and nonresidents. Second, governments can influence to some extent whether bonds are held by domestic residents or nonresidents. Interest differentials can sometimes be observed on identical debt instruments issued at home versus abroad. Some debt instruments are clearly segmented in terms of their bearers[34].

2.5.2 Government domestic Bond (Debt)

Is a bond issued by a national government, generally with a promise to pay periodic interest payments and to repay the face value on the maturity date. Government bonds are usually denominated in the country's own currency. Another term similar to government bond is "sovereign bond". Technically any bond issued by a sovereign entity is a sovereign bond but sometimes the term is used to refer to bonds issued in a currency other than the sovereign's currency. If a government or sovereign is close to default on its debt the media often refers to this as a sovereign debt crisis[35].

The terms on which a government can sell bonds depend on how creditworthy the market considers it to be. International credit rating agencies will provide ratings for the bonds, but market participants will make up their own minds about this[36].

2.5.3 History of soverign debt

The first general government bonds were issued in the Netherlands in 1517. Because the Netherlands did not exist at that time, the bonds issued by the city of Amsterdam are considered

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[33] Mihaljek, D and F Packer (2010): "*Derivatives in emerging markets*",BIS Quarterly Review, December.

[34] (2007): *"Financial stability and local currency bond markets*", *CGFS Papers*, no 28,June.

[35] Gruson & Reisner, *Sovereign Lending: Managing Legal Risk,*Euro money Publications, 1984

[36] Goldstein, M and P Turner (2004): "*Controlling currency mismatches in emerging markets*", Institute for International Economics, Washington DC, April.

their predecessor which later merged into Netherlands government bonds. The average interest rate at that time fluctuated around 20%.

The first ever bond issued by a national government was issued by the Bank of England in 1693 to raise money to fund a war against France. It was in the form of a tontine. The Bank of England and government bonds were introduced in England by William III of England also called William of Orange who copied the 7 Dutch Provinces approach of issuing bonds and raising government debt where he ruled as a Stealth older to finance England's war efforts.

Later, governments in Europe started issuing perpetual bonds (bonds with no maturity date) to fund wars and other government spending. The use of perpetual bonds ceased in the 20th century, and currently governments issue bonds of limited term to maturity[37].

2.5.4 How far have domestic government bond markets developed

Over the past decade, domestic government bond markets have expanded. To gauge how far these markets have developed and deepened, we focus on the following aspects: (i) size, (ii) composition in terms of maturities, type of instrument, and investor base Diversity; and (iii) market liquidity[38].

bonds in many developing countries, as highlighted by central bank papers from Colombia, Mexico and Turkey[39].

2.5.5 Factors that have contributed to bond market development

The expansion of domestic government bond markets over the past 10 years can be attributed to improvements in domestic policy management and a reduction in external financing needs. Questions, nevertheless, arise about the sustainability of debt levels and whether developing countries have grown out of "original sin"[40].

Many central banks have been able to keep inflation at low levels. As a result, nominal interest rates have fallen and become more stable. Over the last decade, yields on domestic government bonds have declined by some 4 percentage points to 6.5%, and their volatility has declined by

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[37] Panizza, U (2009): "*Is domestic debt the answer to debt crisis***?",** in B Herman, J-A Ocampo and S Spiegel (eds), *Overcoming Developing Country Debt Crises*, Oxford University Press.

[38] Turner, P (2012): "*Weathering financial crisis: domestic bond markets in EMEs*", in *BIS Papers*, no 63, January.

[39] Ibid, pg 22

[40] Fischel, Daniel (1989) *"The Economics of Lender Liability*," Yale Law Journal 99, 131– 154.

two thirds In Brazil, domestic government bond yields came down from 26.1% to 11.8%, and, more impressively, their volatility fell from 11.2% to 0.9% during the same period. In Turkey, yields fell from 23.8% to 8.7% and their volatility from 7.7% to 1.1% during the same period[41].

Low and stable inflation has helped to reduce the need for foreign currency borrowing. In the past, investors often preferred foreign over local currency debt to hedge themselves against inflation risks, as they feared that governments would generate surprise inflation to reduce the value of debt[42].

Public debt sustainability has improved considerably owing to sounder fiscal policy, increasing the attractiveness of domestic currency bonds. Several developing countries have also taken advantage of these favorable developments to bring onto the government balance sheet some (non-marketable) debt that was previously concealed in various ways. In addition, vulnerabilities associated with foreign currency funding may have prompted several governments to consciously switch to domestic funding. Several developing countries have sought to avoid the consequences of sudden interruptions in capital flows as experienced during the 1990s, which led to major macroeconomic adjustments and episodes of financial crisis[43].

Increased domestic saving has boosted the pool of resources for investment in domestic capital markets and reduced the need for external borrowing. IMF data suggest that gross national savings as a percentage of GDP increased by 9 percentage points in developing countries as a whole (to 34%) during 2011. The increase was most pronounced in Asia where the average saving rate reached 46% in 2011[44].

The growth of government bond markets raises two interrelated issues: how far domestic Bond markets can or should expand? Have developing countries grown out of so called "original sin"? As for the first question, Reinhart, Rogoff and Savastano (2003) argue that many developing countries experience extreme duress with overall debt levels that may be considered

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[41] Flannery, Mark J., 1986, "*Asymmetric Information and Risky Debt Maturity Choice*,"Journal of Finance, Volume 41, Number 1, March, pp. 19–37.

[42] Fischer, Stanley. 1987. *"Sharing the Burden of the Debt Crisis*." American Economic Review, Papers and Proceedings 77 (2, May): 165–70.

[43]Sturznegger, F. 2002. "*Default Episodes in the 90s*: Factbook and Preliminary Lessons." Mimeo Universidad Torcuato Di Tella

[44]Panizza, U (2009): "*Is domestic debt the answer to debt crisis?",* in B Herman, J-A Ocampo and S Spiegel (eds), Overcoming Developing Country Debt Crises, Oxford University Press

low by the standard of advanced economies. In their view, developing countries face "debt intolerance", and can accumulate only a relatively small amount of debt is it external or domestic. Countries can improve their creditworthiness, but the process is typically arduous and slow. In countries suffering debt intolerance, the threshold for domestic government debt would be low, and any attempt to breach it would expose the economy to considerable risks. In addition, domestic government borrowing could crowd out private sector borrowing. As a result, governments would end up borrowing in domestic bond markets, forcing the private sector to access external markets[45].

Evidence over the past decade has not been quite consistent with this prediction. Many developing countries now have public debt ratios above the 40% mark that was once considered unsustainable. This is because these developing countries have improved the health of their banking system, strengthened their fiscal positions, and accumulated large foreign currency reserves, which have improved their sovereign credit ratings[46].

Turning to the second question, the proponents of original sin held the view those developing countries cannot borrow abroad in their own currencies (Eichengreen, Hausmann and Panizza (2005)). However, the increased take up by global investors of domestic government bonds appears to have made this proposition less relevant today. For most developing countries, the share is in the range of 10 -30% of total government debt, which remains low relative to the 50-70% range for major industrial countries. Foreign participation in domestic bond markets could accelerate in future as more developing countries have been included in a benchmark local currency government bond index for international investors, and as global investors reassess credit risk in favor of developing countries more generally[47].

2.5.6 Implications for the conduct of monetary policy

In the past, heavy burdens of foreign currency debt have limited the use of countercyclical monetary policy. As currency depreciation increased the liabilities of residents with large amounts of foreign currency debt, monetary policy had to focus on propping up the exchange

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[45] Williamson, Oliver (1985) *The Economic Institutions of Capitalism*, New York: The Free Press.

[46]Carlin, Wendy, and Colin Mayer. 2003. "*Finance, Investment, and Growth*." Journal of Financial Economics 69 (1): 191–226.

[47] Eichengreen, B, R Hausmann and U Panizza (2005): "*The pain of original sin*" in B Eichengreen and R Hausmann (eds), Other people's money: debt denomination and financial instability in emerging market economies, University of Chicago Press.

rate rather than stabilizing the economy. This was done by raising the policy rate, often very sharply. Matters were often made worse by debt with short maturities or floating rates. The growth in domestic government bond markets and the changes in their composition have contributed to a reduction in currency mismatches within the broader economies of many, if not all, countries[48].

In sum, economy level currency mismatches have broadly declined in most Asian, Latin American and other developing countries. This contrasts with central Europe (Hungary and Poland), where currency mismatches appears to have increased. Nevertheless, the actual degree of such mismatches could depend on how far these balance sheet exposures are hedged in derivatives markets. Notwithstanding the reduction in currency mismatches, the choice of funding in local or foreign currency depends on several factors[49].

The desirable level of foreign currency borrowing should be assessed against the country's foreign currency revenues and assets (Goldstein and Turner (2004)). Also, the relative costs of borrowing in different currencies matter. In addition, the issuance of long dated local currency bonds could be very costly if investors charged higher interest rates to compensate for inflation, currency depreciation and default risks as well as broader macroeconomic volatility.

Has the broad reduction in currency mismatches increased the scope for countercyclical monetary policy? Many developing countries cut interest rates rather sharply during the 2008-09 global recessions which may have been difficult without past declines in their foreign currency liabilities. Brazil is a case in point. While the central bank raised interest rates during the 2001 global recession, it cut rates during the 2008- 09 recession[50].

Korea is a similar case, if one compares developments during the 1998 crises with the more recent external shocks. Indeed, it is suggesting that monetary policy has become more countercyclical in many developing countries over the last decade. The cyclicality of monetary policy is gauged by the correlation coefficients between the cycle of the short term interest rate

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[48] Ibid, pg 27

[49] Himmelberg, Charles P., R. Glenn Hubbard, and Inessa Love. 2002. *Investor Protection, Ownership, and the Cost of Capital*. Policy Research Working Paper 2834. Washington: World Bank.

[50] International Monetary Fund, 2001, "*Assessing the Determinants and Prospects for the Pace of Market Access by Countries Emerging from Crises*," EBS/01/157, Supplement 1, (9/14/01).

around its trend and the output gap during 2011, in similar fashion to Vegh and Vuletin (2012). A positive correlation coefficient indicates that monetary policy is countercyclical: interest rates decline as growth slows. In most economies, monetary policy has become more countercyclical over time, as the change in the correlation coefficients is positive for most economies, and highest for Malaysia and Turkey[51].

2.5.7 Impact on financial stability

Financial stability should have benefited from the development of domestic government bond markets described above longer maturities, larger shares of fixed rate issues, lower currency mismatches and greater market liquidity. It will also be affected by the two additional factors highlighted in this section, namely credit market diversification and the volatility related to greater foreign holding of domestic currency debt and derivatives markets the former reducing risks and the latter presenting some additional risks[52].

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[51] Turner, P (2012): "*Weathering financial crisis: domestic bond markets in EMEs*", in *BIS Papers*, no 63, January.
[52] Goswami, M and S Sharma (2011): "*The development of local debt markets in Asia", IMF Working Paper*, 11/132.

CHAPTER III: LEGAL CONSIDERATIONS IN DOMESTIC AND FOREIGN SOVEREIGN BORROWING

3.1 Introduction

This chapter explores the legal considerations that sovereign governments must take into account when borrowing through Rwanda's capital market. With the increasing importance of capital markets in raising funds for developmental projects and addressing fiscal deficits, understanding the legal framework governing sovereign borrowing is essential for policymakers and stakeholders. The study examines key legal aspects, regulations, and obligations that impact the borrowing process, ensuring prudent and sustainable debt management practices[53].

3.2 Legal considerations in foreign sovereign borrowing

3.2.1 Choice of Law in International Debt Contracts; Market Trends

One major article on choice of law considerations in sovereign lending is M. Gruson, "Controlling Choice of Law," in a collection of articles published in 1984. This article displays Gruson's customary scholarship and thoroughness, but was written just prior to the enactment of New York's statutory validation of choice of law clauses in substantial commercial transactions. As to whether the law of the issuing sovereign is a sensible choice for the governing law of the debt contract, Gruson dismisses this prospect entirely: "It is particularly dangerous to have a loan agreement with a sovereign borrower governed by the law of the borrower because it is within its own power to change that law and frustrate the rights of the lender," Most of the article is devoted to the circumstances under which New York courts would support the selection of New York law, a matter now widely viewed as settled (at least for New York courts) by statute[54].

Philip Wood treats these issues in more depth in Volume 6, "Conflict of Laws and International Finance," of his treatise, The Law and Practice of International Finance (2007) ("Wood"). While Wood's viewpoint (like Gruson's) is that of the creditor, his comparative treatment of U.S. and English authorities is illuminating, particularly as English and New York law are the two primary alternative choices when local law is not the governing law in a sovereign debt issue[55].

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[53] Gruson & Reisner, *Sovereign Lending: Managing Legal Risk*,Euro money Publications, 1984
[54] Ibid, pg 13
[55] Himmelberg, Charles P., R. Glenn Hubbard, and Inessa Love. 2002. *Investor Protection, Ownership, and the Cost of Capital*. Policy Research Working Paper 2834. Washington: World Bank.

Wood observes that the fundamental issue in which choice of law comes into play in debt finance is discharge, i.e. what constitutes performance of the obligation and what constitutes defenses to payment. He states: *"The rules as to discharge are in practice of the greatest importance in financial contracts since a change in law resulting in, say, a moratorium may be recognized if it arises under the applicable law of the contract. The rules have been a strong incentive for the application of an external system of law, as is the applicable law of an international financial contract so as to exclude interference by the laws of the borrower's country."*

Wood then provides specific examples of how the laws of a borrower's nation can affect issues of discharge and excuse for non-performance. Some of these are:

i) **Moratorium**: "A moratorium on payments modifies the obligation of a debtor if the moratorium law is enacted in the country of the governing law of the contract."

ii) **Exchange Controls**, i.e. enactments that require governmental approval to obtain the currency of payment, or which limit or prohibit the transfer of such currency overseas. Wood states, "The exchange control will be recognized where the legislation is part of the governing law of the contract." In the U.S., one leading case is **Allied Bank International v. Banco Credito Agricola de Cartago, 757 F.2d 516 (2d Cir. 1985),** in which a Costa Rican measure prohibiting a loan repayment in dollars was held not a defense to payment where the debt was governed by New York law and was stated to be payable in New York[56].

iii) **Laws that annul contractual provisions**

iv) **Legal Tender Laws**, a subset of (2) above, i.e. Measures that authorize or require payment in local currency notwithstanding contractual requirements for payment in the obligation currency.

Of these, exchange controls and legal tender laws are of special concern to debt holders. These measures, usually intended to conserve hard currency reserves, can be the precursor of national insolvency. Creditors in cross-border transactions are vitally concerned with ensuring receipt of the contractual currency, which is usually a "hard" currency relative to the currency of the debtor. If the debtor currency has been devalued, a lender that is legally bound to accept it in repayment will suffer a loss. Wood states that "exchange controls are a diminishing feature of

[56] Ibid, pg 10

international economic relations," but in varied forms they have prompted a large proportion of the decided cases[57].

3.2.2 Sovereign Debt, a Special Case for Choice of Law

Wood adds that state contracts, i.e. those entered into by a sovereign government, are not treated fundamentally differently from a conflicts standpoint than private contracts. He says: "There are no special rules applying to state commercial contracts. It does not follow that the law of the state is applied." Thus, at least in the U.S. and U.K. courts, there is no rule generally mandating the application of the law of the sovereign debtor to substantive issues relating to the debt obligations. The next questions are: first, to what extent may the parties displace the sovereign's own law by agreement; and second, to what extent will such an agreement shift the crucial rules governing discharge and defenses to payment from the debtor's law to a more neutral law chosen by the parties[58].

3.2.3 Governing Law Clauses

Wood's summary of the international position on choice of law clauses is succinct: referring to the principle of party autonomy embodied in the Rome Convention of 1980, he states: "The EU freedom reflects English common law which allows virtually complete party autonomy in choice of law. Party autonomy is accepted now in most, if not all, developed systems, although in the U.S. there must sometimes be some connection and the parties must not intend to avoid important public policies of, the forum."

Wood's reference to U.S. law is to Section 1-105 of the Uniform Commercial Code, which allows parties to contracts to select governing law so long as there is a "reasonable connection" to the jurisdiction chosen. This caveat reflects the traditional territoriality of U.S. conflicts law and a reluctance to permit untrammeled party autonomy. During the 1980s, in order to allow New York to compete more effectively with London as a situs for international transactions, there was a movement to liberalize the Code requirement for major financing transactions. This resulted in the enactment in 1984 of Section 5-1401 of New York's General Obligations Law ("G.O.L."), which validates stipulations of New York law without a requirement of a reasonable connection between the transaction and New York. These G.O.L. provisions thus embody a

[57] Goswami, M and S Sharma (2011): "*The development of local debt markets in Asia", IMF Working Paper*, 11/132.
[58] Carlin, Wendy, and Colin Mayer. 2003. "*Finance, Investment, and Growth.*" Journal of Financial Economics 69 (1): 191–226.

legislative policy to support New York's pre-eminent position in global finance by providing legal certainty to contractual provisions selecting New York law. The New York position is thus a close approximation of that of English law, which may be selected by the parties even if the transaction has no real connection with the U.K. at all[59].

What the G.O.L. does not determine, however, is whether New York's validation of contractual stipulations of New York law will be respected in courts outside New York. Principles of conflict of laws are, generally, a matter of forum law (lexfori); thus a court outside New York dealing with a contract containing a New York governing law clause is typically required to apply its own conflicts rules rather than the G.O.L. in determining the validity of the choice of law provision. Thus, the jurisdiction in which the first filings are made in such a dispute may well be as deciding as the provisions agreed to in the contract. (In an attempt to ameliorate this potential for a party to avoid the intended result of the choice of New York law, the G.O.L., in Section 5-1402, provides for validity of choice of forum clauses in contracts covered by Section 5-1401, to better ensure the ability to file in and obtain judgments from a New York forum in cases where Section 5-1401 validates New York governing law.)[60]

The presence of a governing law clause has somewhat different impact in the U.S. and the U.K. According to Wood, for instance, the English courts might treat a claim that would be treated in the U.S. as involving an "act of state" that precludes recovery on a debt, as a matter of the contract's governing law. In the U.S., the Allied Bank case, mentioned above, relied both on the New York governing law clause and on a somewhat more objective feature, the designated place of payment, in defeating application of the Costa Rican exchange control rule involved there, while in the NML Capital case the court used the New York governing law clause and its interpretation of the New York pari passu clause to negate a variety of actions taken by Argentina to frustrate collection efforts by creditors holding bonds that had not participated in the swap effected in 2005[61].

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[59]Saxena, S and A Villar (2008): "*Hedging instruments in emerging market economies*", in "Financial globalization and emerging market capital flows", BIS Papers, no 44.

[60]Sturzenegger and Zettelmeyer (2004) ‚Servicing the Public Debt*: The Role of Expectations."* American Economic Review 78: 647-61.

[61]Lowry, Michelle, and G. William Schwert, 2002, "*IPO Market Cycles: Bubbles or Sequential Learning*,"Journal of Finance, Volume 57, Number 3, June, pp. 1171–1200.

Jurisdictions that generally give effect to governing law clauses will sometimes decline to apply the parties' agreement in cases where doing so conflicts with some mandatory law or public policy of the forum. Wood and Gruson agree that this "exception" to the application of choice of law agreements is best couched in terms of a strongly held public policy of the forum[62].

3.2.4 The Law of Sovereign Debt

In the corporate world, debt contracts are enforced by the courts. A corporation cannot simply repudiate, i.e., decide not to repay its debts. If it tried, it would be sued and the courts would force it to hand over assets to the creditor, restructure, or (in the limit) shut down and liquidate its remaining assets. This enforcement mechanism is much more limited in sovereign debt for two reasons. First, few sovereign assets (including future income streams) are located in foreign jurisdictions, and a sovereign cannot credibly commit to hand over assets within its borders in the event of a default. Second, there are legal principles that protect sovereign assets even when they are located in foreign jurisdictions. However, the strength of this protection has declined over time, both through statutory changes and through case law, opening a window for legal enforcement. The question is how wide this window is and whether it has had an effect on the sovereign debt market[63].

3.3 Principles Protecting Sovereign Debtors

3.3.1 Sovereign immunity

Sovereign debtors have traditionally been protected by the principle of (absolute) sovereign immunity, which states that sovereigns cannot be sued in foreign courts without their consent. The principle can be derived from the equality of sovereign nations under international law: legal persons of equal standing cannot have their disputes settled in the courts of one of them (Ian Brownlie 2003). Importantly, however, immunity can be waived: a sovereign can enter in a contractual relationship in which it voluntarily submits to the authority of a foreign court in the event of a dispute. Under absolute immunity, which was the prevailing doctrine in the nineteenth century and in the first half of the twentieth century, sovereign immunity applied even to commercial transactions between foreign states and private individuals from another state. From the perspective of governments, this had the advantage that private commercial interests did not get in the way of diplomatic and political relations. As a result, unless an aggrieved creditor could persuade his own government to apply pressure, he was deprived of

[62] Ibid,

[63] Himmelberg, Charles P., R. Glenn Hubbard, and Inessa Love. 2002. Investor Protection, Ownership, and the Cost of Capital. Policy Research Working Paper 2834. Washington:World Bank.

legal remedies to enforce repayments (except to the extent that he could successfully make a case in the defaulting country's courts).[64]

However, a more restrictive view of sovereign immunity began to take hold after the Second World War (Brownlie 2003, p. 325). In the United States, the interpretation of sovereign immunity began to change in the 1950s, in part as a consequence of the cold war—the United States felt uneasy with granting sovereign immunity to Soviet Union state owned companies operating in the United States. The U.S. government encouraged a more restrictive theory of sovereign immunity under which foreign sovereigns were denied immunity for commercial activities carried on inside, or with direct effect inside, the United States. This restrictive view was embodied in the Foreign Sovereign Immunities Act (FSIA) of 1976, which allows private parties to sue a foreign government in U.S. courts if the complaint relates to commercial activity. The United Kingdom adopted similar legislation in 1978 and many other jurisdictions have followed suit (Lee C. Buchheit 1986, 1995; Brownlie 2003)[65].

As a result, sovereigns can now often be held legally accountable for breach of commercial contracts with foreign parties in the same manner as private parties. This leaves open the question of what is a commercial transaction, and who is a sovereign, within the terms of a foreign sovereign immunity law. With regard to the question of who is a sovereign, the U.S. FSIA, for example, defines a sovereign broadly to include agencies and instrumentalities of a sovereign. Several court decisions have confirmed that the issuance of sovereign bonds is a commercial activity. Furthermore, a 1992 U.S. Supreme Court decision (Republic of Argentina v. Weltover, see Philip J. Power 1996) established that suspending payments on debt contracts that call for payment in the United States entails direct effects within the United States sufficient to satisfy the U.S. nexus requirement under the FSIA. Accordingly, under U.S. law, international bonds issued by a sovereign, and a subsequent default, are almost always considered commercial activities, regardless of the purpose of the issue or the reason behind the payments interruption. Moreover, whatever protections of the sovereign remain under U.S. law can be contractually waived, and such waivers are in fact routinely included in bond covenants.

[64] Cornelli, Francesca, and David Goldreich, 2001, "*Bookbuilding and Strategic Allocation*," Journal of Finance, Volume 56, Number 6, December, pp. 2337–2369.
[65] Ibid, pg 2370

As a result, under U.S. law (and that of several other major jurisdictions), sovereign immunity no longer plays an important role in shielding sovereign debtors from creditor suits[66].

Sovereign immunity laws may be a more effective shield against attachment proceedings, i.e., creditor attempts to collect once a favorable court judgment has been obtained. In particular, under FSIA and comparable laws, central bank assets—including international reserves—are typically immune from attachment. For sovereign debt not issued by the central bank itself, this follows from the fact that the central bank is generally viewed as a separate legal entity that cannot be held liable for the acts of its principal (the sovereign). But even when the central bank itself is the debtor, most of its assets—in particular, international reserves and other assets necessary for the exercise of key central banking functions—generally enjoy immunity, unless this is explicitly waived (Paul Lee 2003; Ludwig Gramlich 1981). Moreover, a sovereign or a central bank can attempt to limit attachable assets by locating them outside the reach of foreign courts. For example, government and central bank assets have been placed with the Bank for International Settlements (BIS) in Switzerland to take cover under the legal protections afforded to the BIS against attachment proceedings[67].

In addition to sovereign immunity, two other legal principles or conventions have been invoked by sovereign debtors in resisting creditor lawsuits during the 1980s and 1990s. The first of these legal principles is the act of state doctrine, which states that courts should not judge the validity of a foreign sovereign's acts committed on its territory. "In contrast to sovereign immunity, which acts as a jurisdictional bar to suits against a sovereign, the act of state doctrine is a judicially created rule of abstention concerning the justifiability of the acts of foreign governments" Unlike sovereign immunity, the act of state defense cannot be contractually waived. However, the doctrine has proved to be of little use to sovereigns for a similar reason as sovereign immunity, namely, that defaulting on debtors payable in international jurisdictions is not considered to be a sovereign act worthy of judicial deference (see Allied Bank International v. Banco Credito Agricola de Cartago, discussed below)[68].

[66] Bulow, J. and K. Rogoff. 1989. "*Sovereign Debt: Is to Forgive to Forget*?" American Economic Review 79: 43-50.
[67] Cohen, D. 1991. *Private Lending to Sovereign States:* A Theoretical Autopsy. The MIT Press.
[68] Ibid,

3.3.2 International comity

The second of these legal principles is International comity, which, according to an 1895 U.S. Supreme Court decision, is defined as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation" (Hilton v. Guyot, United States Reports, Vol. 154, p. 159). although a "softer" principle than sovereign immunity or act of state—Power (1996, p. 2738) describes it as "not the rule of law, but rather one of practice, convenience, and expediency"; Brownlie (2003, p. 28) speaks of "neighborliness and mutual respect"— comity considerations have motivated several court decisions both against and in favor of the sovereign debtor, and continue to play a role today. In practice, comity considerations seem to have boiled down to a court assessment on whether a debtor's actions could be viewed as broadly justified in light of U.S. policies on how international debt crises ought to be resolved. As such, they have given the U.S. executive branch a lever for influencing debt-related disputes before U.S. courts. Thus, comity is an unreliable principle, as "the defense's likelihood of success is subject to reassessment with each shift in U.S. policy on sovereign debt restructuring" (Power 1996, p. 2741)[69].

3.3.3 Experiences with Legal Enforcement of Sovereign Debt Contracts

Legal protections of sovereigns from court action by creditors were significantly reduced by the 1980s. The question is whether this has actually allowed creditors to extract repayment, or a favorable settlement, from the sovereign debtor following a default. To answer this, we briefly review the experience with attempts by "holdout creditors" to enforce repayment through the courts, focusing on a few landmark cases after the beginning of the 1980s debt crisis.

The first such case was Allied Bank International v. Banco Credito Agricola de Cartago. In 1981, Costa Rica suspended debt payments to a thirty-nine-member bank syndicate. A restructuring agreement was subsequently reached with all creditors but one, Fidelity Union Trust of New Jersey, which sued through an agent, Allied Bank, in U.S. courts. A lower court initially ruled in favor of Costa Rican banks that had acted on behalf of Costa Rica, accepting the defense's argument that Costa Rica's actions were protected by the "act of state" doctrine. In 1984, an appeals court disagreed with this argument on the grounds that defaulting on foreign debt did not constitute an act of state. However, it initially upheld the lower court ruling on "comity" grounds, on the assumption that the U.S. executive branch was favorably disposed to Costa Rica's attempt to restructure its debts. "Costa Rica's prohibition of payments of its

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[69] Eaton, Jonathan (1990) "*Debt Relief and the International Enforcement of Loan Contracts*" Journal of Economic Perspectives 4, 43-56.

external debt is analogous to the reorganization of a business pursuant to Chapter 11 of our Bankruptcy Code. On that basis, Costa Rica's prohibition of payment of debt was not a repudiation of the debt but rather was merely a deferral of payments while it attempted in good faith to renegotiate its obligations" (Allied Bank International v. Banco Credito Agricola de Cartago, 733F.2d23, 27, Second Circuit 1984; cited in Power 1996, pp. 2739–40)[70].

Upon rehearing the case in March 1985, however, the court reversed itself after the U.S. Department of Justice argued that contrary to the court's initial assumptions, the U.S. government did not agree with "Costa Rica's attempted unilateral restructuring," concluding that "while parties may agree to renegotiate conditions of payment, the underlying obligations to pay nevertheless remain valid and enforceable" (United States Court of Appeals for the Second Circuit, 1985. Allied Bank International v. Banco Credito Agricola de Cartago, New York 757F.2d516). This led to a settlement in which the U.S. government encouraged Fidelity Union to accept the package agreed by the rest of the bank syndicate (Christopher Greenwood and Hugh Mercer 1995). While Fidelity ultimately did not obtain a better deal than the rest of the banks, the Allied Bank case nonetheless demonstrated that a holdout creditor could be successful in the sense of obtaining a favorable judgment, and showed that two important legal principles—the act of state doctrine and international comity—did not necessarily protect sovereigns in the event of defaults[71].

During the remainder of the 1980s, creditor litigation remained rare for two reasons. First, there were strong mechanisms, both contractually and through informal institutions like the Bank Advisory Committee process, which encouraged collective negotiations with the debtor in resolving debt disputes and discouraged go-it-alone litigation. Second, prior to the creation of the secondary debt market in the late 1980s, virtually all holders of distressed debt were banks, which had a regulatory incentive against declaring a creditor in default (in practice, a prerequisite for litigation), as this would have required them to write down their loans. This situation began to change in the late 1980s, as creditor banks provisioned against loan losses and began writing off loans, and the creation of a secondary market in securitized loans allowed new investors—including specialized firms that became known as "distressed debt funds" (or

[70] *Allied Bank International v. Banco Credito Agricola de Cartago*, 733F.2d23, 27, Second Circuit 1984; cited in Power 1996, pp. 2739–40
[71] Ibid, pg 2745

"vulture funds")—to buy defaulted debt at large discounts with the aim of extracting the best possible settlement.[72].

3.4 Legal considerations for sovereign borrowing in Rwanda

3.4 1 Introduction

As nations seek to finance their developmental projects and address fiscal requirements, sovereign borrowing emerges as a crucial mechanism. For Rwanda, a country known for its remarkable economic growth and developmental aspirations, accessing capital markets to meet funding needs has become increasingly significant. However, navigating the complexities of sovereign borrowing demands a comprehensive understanding of the legal framework governing capital markets in Rwanda.

This section delves into the vital legal considerations and regulatory aspects pertaining to sovereign borrowing within the Rwandan capital markets. By exploring the key legal principles, regulations, and procedures, this analysis aims to shed light on the crucial factors that influence Rwanda's ability to borrow from domestic and international sources.

From the establishment of the legal framework governing the issuance of sovereign debt instruments to the protection of investors' interests, the examination of these legal considerations will provide valuable insights into the country's approach to debt management and its commitment to ensuring a stable and sustainable borrowing environment.

In the following sections, we will delve into the foundational aspects of the Rwandan capital markets, analyze the legal provisions that govern sovereign borrowing activities, and assess the mechanisms in place to safeguard the interests of both the nation and investors. Additionally, we will discuss any recent developments or amendments to the legal framework that impact Rwanda's sovereign borrowing landscape.

Ultimately, this exploration aims to provide a comprehensive understanding of the legal considerations for sovereign borrowing in the Rwandan capital markets and shed light on the nation's commitment to responsible and transparent fiscal management.

3.4.2 Legal Framework and Regulatory Authorities

The legal framework governing sovereign borrowing in Rwanda is primarily shaped by legislation and regulations related to capital markets, debt issuance, and public finance. Key regulatory authorities involved in overseeing sovereign borrowing activities include the Rwanda

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[72] Fischer, Stanley. 1987. "*Sharing the Burden of the Debt Crisis*." American Economic Review, Papers and Proceedings 77 (2, May): 165–70.

Capital Market Authority (CMA) and the Ministry of Finance and Economic Planning (MINECOFIN).

The CMA is responsible for regulating and supervising capital markets activities in Rwanda. It ensures that all debt issuances comply with relevant laws and regulations, and it also safeguards the interests of investors by ensuring transparency and disclosure of pertinent information.[73]

3.4.2 Legal Instruments for issuance of Sovereign Debt Instruments

The primary legislation that governs the entire capital market in Rwanda, including the issuance of sovereign debt instruments is the Law establishing the Capital Market Authority of Rwanda Nº 057/2021 Bis du 18/09/2021. It provides the legal framework for the issuance, trading, and regulation of all types of securities, including government bonds and treasury bills.

Rwanda Capital Market Authority (CMA) has issued specific regulations and guidelines that govern the process of issuing and trading sovereign debt instruments. These regulations provide detailed requirements and procedures that must be followed by the Rwandan government when conducting debt issuances.

3.4.2.1 Public Debt Management Law

The Organic Law No 37/2006 on State Finances and Property Law (popularly referred to as OBL), that was promulgated on 12th September 2006. The OBL is based on Articles 79 and 184 of the Constitution as amended to date and it focuses specifically on the management of public debt in Rwanda. It sets out the principles and guidelines for prudent debt management, including the issuance of sovereign debt instruments.[74]

3.4.2.2 Prospectus Regulation

When issuing sovereign debt instruments to the public, the Rwandan government may be required to prepare a prospectus that provides comprehensive information about the offering. This prospectus is regulated and governed by Law n°45/2018 of 13/08/2018 modifying Law n°01/2011 of 10/02/2011 regulating Capital Market in Rwanda as modified to date to ensure transparency and investor protection[75].

[73] Law establishing the Capital Market Authority of Rwanda, № 057/2021 Bis du 18/09/2021, art 7

[74] Organic Law No 37/2006 on state finances and property law of 12/03/2006, art 12

[75] LAW N°45/2018 OF 13/08/2018 modifying law N°01/2011 OF 10/02/2011 Regulating capital Market in Rwanda as modified to date, Art 2

3.4.2.3 Listing Rules of the Rwanda Stock Exchange (RSE)

If the sovereign debt instruments are listed on the RSE, the listing rules of the exchange will apply. These rules outline the requirements for listing, ongoing obligations, and disclosure requirements for listed securities[76].

3.4.2.4 Contractual Documentation

The actual issuance of sovereign debt instruments involves the preparation of contractual documentation; such as bond indentures or issuance agreements. These documents set out the specific terms and conditions of the debt issuance, including interest rates, maturity dates, and repayment schedules.

It is important to note that the legal framework for sovereign debt issuances may evolve over time, and new regulations or amendments to existing laws may be introduced to adapt to changing market conditions and best practices in debt management. The legal instruments mentioned above work together to ensure a transparent and regulated environment for sovereign borrowing in Rwanda, while also safeguarding the interests of both the government and investors.

3.4.4.5 Debt Limits and Sustainability

To maintain fiscal discipline and debt sustainability, Rwanda sets specific limits on its borrowing activities. These limits are often based on debt-to-GDP ratios or other fiscal indicators. Rwanda currently has set a target debt-to-GDP ratio of 50%, meaning the total outstanding debt should not exceed 50% of the country's GDP. This helps prevent the accumulation of unsustainable debt levels[77].

3.4.3 Investor Protection and Disclosure Requirements

To attract investors and instill confidence in the market, Rwanda must adhere to stringent investor protection measures and disclosure requirements. Transparent and timely disclosure of financial information is crucial to ensure investors have access to accurate data for informed decision-making.

[76] Rwanda Stock Exchange Rule book, para 13

[77] Organic Law No 37/2006 on state finances and property law of 12/03/2006, art 43

The Rwandan government is required to publish regular financial reports, economic projections, and relevant market data to provide investors with a comprehensive understanding of the country's economic and financial position[78].

3.4.4 Credit Ratings and Market Perception

The perception of Rwanda's creditworthiness in international markets can significantly impact borrowing costs and investor interest. Credit rating agencies assess the country's ability to meet debt obligations, and their ratings influence market sentiment. If Rwanda's credit rating is upgraded by a major rating agency, it may experience increased demand for its bonds, leading to lower borrowing costs. Rwanda Capital Market has been empowered to regulate Credit Rating agencies and its part of the issuance regulation and requirement for the Government to be rated before it borrows from the market[79].

3.4.5 Effects of breach of borrowing terms

3.4.5.1 Legal Documentation and Covenants

The legal documentation governing sovereign bond issuances contains various covenants that outline the rights and obligations of both the issuer (Rwanda) and the bondholders. These covenants often include clauses related to default events and remedies.

The bond documentation may include provisions allowing bondholders to demand early repayment or take legal action in case of a material breach of covenants by the Rwandan government.

By taking into account these legal considerations, Rwanda can effectively navigate the complexities of sovereign borrowing, foster investor confidence, and ensure responsible financial management while pursuing its developmental goals80.

3.4.5.2 Loan Agreements

When borrowing, the Rwandan government enters into loan agreements with international lenders, such as bilateral or multilateral institutions or private creditors. These loan agreements outline the terms and conditions of the borrowing, including repayment schedules, interest rates, and any restrictive covenants81.

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[78] LAW N°45/2018 OF 13/08/2018 modifying law N°01/2011 OF 10/02/2011 Regulating capital Market in Rwanda as modified to date, Art 2

[79] Ibid, art 2

[80] Ugo Panizza, *Domestic and external public debt in developing countries*,March 2010, pg 188

[81]Robert Howse, *The concept of odious debt in public international law*, July 2007, pg 185

3.4.5.3 Credit Rating Agencies

Rwanda's creditworthiness and ability to borrow at favorable terms can be affected by its credit rating. Failure to meet debt obligations or breaching borrowing terms might lead to a downgrade of Rwanda's credit rating by rating agencies, making it more expensive to borrow in the future[82].

3.4.5.4 International Monetary Fund (IMF)

Rwanda's borrowing practices may be subject to scrutiny if it is engaged in financial assistance programs with the International Monetary Fund (IMF). Adherence to borrowing terms and responsible debt management may be a condition for receiving IMF funds.

Public Scrutiny and Political Consequences: Breaching borrowing terms can lead to public scrutiny and political repercussions for the government. Mismanagement of public finances and unsustainable debt levels could be a subject of criticism from opposition parties and civil society[83].

[82] Marwan Elkhoury, *Credit rating agencies and their potential impact on developing countries*, January 2008, pg. 186

[83] Ugo Panizza , Domestic and external public debt in developing countries ,March 2008, pg 188

CHAPTER IV: CASE STUDY (RWANDA EURO BOND)

4.0 Introduction

In 2013, the Republic of Rwanda made a significant stride in its economic development journey by issuing its inaugural Euro Bond on the international financial market. The Rwanda Euro Bond of 2013 marked a pivotal moment in the country's efforts to attract foreign investment, diversify its funding sources, and strengthen its financial position on the global stage. This landmark financial instrument not only demonstrated Rwanda's commitment to sustainable economic growth but also highlighted its emergence as a credible player in the international capital markets.

The issuance of the Euro Bond was a strategic move by the Rwandan government to tap into the vast pool of international investors seeking opportunities in emerging markets. By entering the Euro Bond market, Rwanda aimed to raise capital to finance critical infrastructure projects, stimulate economic development, and reduce its dependency on traditional sources of funding. This move also underscored the government's dedication to implementing prudent fiscal policies and fostering an environment conducive to foreign investment.

The successful launch of the Rwanda Euro Bond of 2013 was underpinned by the country's impressive track record of macroeconomic stability, prudent governance, and social progress. International investors were drawn not only by Rwanda's promising economic growth prospects but also by its commitment to good governance, transparency, and inclusive development. The Euro Bond issuance exemplified Rwanda's willingness to embrace innovation and take bold steps to propel itself onto the global financial stage.

This introduction sets the stage for a closer examination of the key features, motivations, implications, and outcomes of the Rwanda Euro Bond of 2013. By delving deeper into this milestone event, we can gain valuable insights into how Rwanda harnessed international capital markets to drive its economic aspirations and foster a more prosperous future for its citizens

4.1 Summary of the terms and conditions of the notes

Words and expressions defined in "*Terms and Conditions of the Notes" shall* have the same meanings in this summary.

Issuer..The Republic of Rwanda.

Risk Factors................................ There are certain factors that may affect the Issuer's ability to fulfillers obligations under the Notes. These are set out under "Risk Factors "below. In addition, there are certain

Issue 2013(the "Issue Date").

Maturity 2023.

Description of Notes.................... U.S.$400,000,000percent. Notes due 2023, to be issued by the Issuer on the Issue Date.

Joint Lead Managers...................BNP Paribas and City Group Global Markets Limited.

Interest.. [6.68%.] Percent. Perineum payable semi-annually in arrears on in each year.

Events of Default.........................Events of default under the Notes include the non-payment of principalwithin15business days of the due date thereof, the non-payment of any interest due in respect of the Notes or any of them for a period of30 days from the due date for payment thereof, breach of other obligations under the Notes (which breach is not remediedwithin45days) and certain events related to the Issuer. Notes may be declared due and payable, up on an Even to Default, by a Note

Negative Pledge........................... The terms of the Notes contain a negative pledge provision given by the Issuer in respect of Public External

Status of the Notes...................... The Notes constitute direct, general and unconditional obligations of the Issuer which will at all times rank paripassu among themselves and at east paripassu with all other present and future unsecured obligations of the Issuer, save for such obligations as may be preferred by provisions

Meetings of Note holders............The Conditions of the Notes contain provisions for calling meetings of Note holders to consider matters affecting their interests generally (see Condition 12 (Meetings of Note

Taxation.......................................All payments in respect of the Notes by or on behalf forth
. Issuers hall be made without withholding or deduction for,

Listing and admission to trading....................................... Application has been made to list the Note son the Irish Stock Exchange and to admit the Notes to trading on the Main Securities Market.

Governing The Notes and any non-contractual obligations arising out

Form and Denomination............ The Notes will be issued in registered form in denominations of U.S.$200,000and

Credit Ratings.............................. The Notes are expected to be assigned on issue rating of[B]
A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension, or withdrawal at any time by the assign in grate in organization.

Selling Restrictions:
The Notes have not been and will not be registered under the Securities Act and are subject to certain restrictions on transfers.

Transfer Restrictions.................. The Notes have not been and will not be registered under the US Securities Actor any US state securities law. Consequently, the Notes may not be offered or sold in the United States except pursuant to an exemption from or in a transaction not subject to the registration requirements of the Securities Act and applicable state securities laws. See "Transfer Restrictions".

Neither this Prospectus nor the Notes are required to be registered or cleared under the regulations of the Rwandan CMA.

4.2 Use of Proceeds

The estimated net proceeds of the issue of the Notes, expected to amount to approximately US$[400.000.000]after deduction of the combined management and underwriting commission and estimated expenses incurred in connection with the issue of the Notes, will be used by the Issuer for repayment of external Government loans in relation to the Kigali Convention Centre and the RwandAir strategic development plan (national carrier expansion),as well as financing the completion of the Kigali Convention Centre and the Nyabarongo hydropower project, as follows:

- approximatelyUS$120 million to repay two outstanding loans on the Kigali Convention Centre;
- approximatelyUS$80 million to repay an outstanding loan on the Rwanda Air strategic development plan.
- Approximately US$50 million to finance the Nyabarongo Hydro Power Project
- approximatelyUS$150milliontofinance the completion of the Kigali Convention Centre;[84]

[84] Rwanda Euro Bond prospectus, *Debt Capital Markets*, CEEMEA, BNP PARIBAS

Transfer Agent .... Citibank, N.A., London Branch

Registrar .... Citigroup Global Markets Deutschland AG

Unrestricted Global Note Restricted Global Note

4.3 Risks relating to the republic of Rwanda

4.3.1 Investing in securities involving emerging markets

Investing in the securities of issuers in emerging markets such as Rwanda generally involves a higher degree of risk than investments in the securities of corporate or sovereign issuers from more developed countries and carries risks that are not typically as associated with investing in more mature markets. These risks include, but are not limited to, higher volatility and more limited liquidity in respect of the Notes, political risk foreign relations, dependency on foreign aid, instability in neighboring countries, a narrow export base, budget deficits, lack of adequate infrastructure necessary to accelerate economic growth than changes in the political and economic environment. Emerging markets can also experience more instances of corruption by government officials and misuse of public funds than do more mature markets, which could affect the ability of governments to meet their obligations under issued securities. Generally, investment in securities of issuers in emerging markets, such as Rwanda, is only suitable for sophisticated investors who fully appreciate the significance of risks involved in, and are familiar with, investing in emerging markets and investors are urged to consult their own legal and financial advisers before making an investment.

Investors should also note that emerging markets such as Rwanda are subject to rapid change and that the information set out in this Prospectus maybe come outdated relatively quickly.85

4.3.2 Rwanda's dependency on foreign aid

A significant portion of Rwanda's budget is funded by foreign aid, which was budgeted in the 2012/2013 budget in the total amount of Rwf441.8billion(approximately US$681.0million), comprising 38.4 percent of total budget receipts .In a report dated 27 June 2012 from the UN Group Of Experts on the Democratic Republic of the Congo(the "Interim UN Report"),Rwanda was Accused of violating Security Council Resolution 1807(2008) through the provision of material and financial support to an armed militia group operating in the eastern DRC known as the Movement 23 mars (the"M23"). On 21 November2012, the UN

[85] Ibid,

released the final report of the Group of Experts On the Democratic Republic of the Congo (the “Final UN Report”), reiterating the allegations that Rwanda continues to violate arms embargo by providing military support to the M23, including recruitment, arms, ammunition, intelligence and political advice. The Government of Rwanda has strongly denied these accusations. However, in light to f these accusations certain donor countries such as the United States, Belgium, Germany and the Netherlands, decided to delay an estimated US$40.56 million in aid which was scheduled for disbursement in the first half of the 2012/2013 financial year and had been included in Rwanda’s 2012/2013 budget. In addition, aid disbursements from the World Bank and the African Development Bank(“ADB”) amounting to US$174.95 million which were scheduled for disbursement in the first half of the 2012/2013financial year, were delayed.

If the World Bank, ADB and/or any other foreign donors are unwilling to disburse the remaining aid which has previously been delayed, or if additional future aid is frozen, Rwanda could face significant difficulty in, among other things, repaying public debt(including the Notes),providing social services and subsidies to key industries as well as successfully implementing its reform programmes .Any such un planned reduction in revenues could require significant reductions in public spending which could negatively affect economic growth and have a material adverse effect on Rwanda’s ability to make payments under the Notes 86.

4.3.3 Rwanda’s Economy dependent on small number of volatile sectors

Rwanda is reliant on its agriculture sector which is estimated to have accounted for 33. 0percent.of GDP in 2012 in nominal terms, and its service sector (which includes tourism) which has become the largest sector by economic output, contributing approximately45.0 percent. Of nominal GDP in 2012.

Tourism is one of Rwanda’s fastest-growing sectors in terms of foreign receipts and as of 2012 became its leading source of foreign currency. The tourism sector is dependent on the international perception that Rwanda is a safe destination, and is currently mainly focused on visitors wishing to see the endangered mountain gorillas in the Volcanoes National Park. Any political or other internal instability and unrest, or escalating disturbances in neighboring

[86] Ibid, page 6

countries could cause the level of tourism in Rwanda, among other things, to suffer. Deterioration in global economic conditions may also negatively affect Rwanda's tourism sectors discretionary spending in the industrialized world remain slow. In addition, if there are delays to planned openings of hotels and the Kigali Convention Centre or infrastructure does not keep pace with growth, the tourism sector may be adversely affected. Any reduction in tourism would significantly reduce Rwanda's supply of foreign currency and lower economic growth.

Agriculture in Rwanda is dominated by subsistence food crops, employing approximately 73.0per cent. of the total workforce as of the end of 2012.Although the agricultural sector has shown significant improvement during recent years, increasing by approximately 30.0percent. In value in terms of real GDP from 2007 to 2012, major concerns for Rwandan agriculture remain adverse weather conditions, limited added value, yield levels which are below what would normally be expected and land shortages. An additional major challenge for the Government is to ensure that food production keeps up with population growth. Latest official estimates established real agricultural GDP grew by 3.0 percent, in 2012, compared with an overall real GDP growth rate of around 8.0 per cent and estimated population growth of 2.75 percent. The Government has been trying to tackle these challenges through the Crop Intensification Program, the land law passed in 2005 and the rural development strategy developed under the Economic Development and Poverty Reduction Strategy. See "The Economy−Vision 2020." Reform of these areas is ongoing and may not succeed in stimulating development as intended. Although cash crops (tea and coffee) contributed over 21.0 percent Of export earnings in 2012, international coffee prices have been volatile over the last few years, and may continue to be volatile in the future. Additionally, production of tradable tea and coffee is dependent on the performance of the harvest, which is weather dependent and can be unpredictable. As a result, any significant decrease in the price of tea or coffee, or a period of low agricultural production may have an adverse effect on volumes of foreign exports and Rwanda's economy in general.

While Rwanda has been taking significant measures to diversify its exports, the country's export base remains less diversified than neighboring countries, with its only significant export other than tea and coffee being minerals, in particular cassiterite and coltan. The surge in international prices for such minerals has spurred domestic production in Rwanda and foreign

direct investment in the sector. As such, the Rwandan mining sector is vulnerable to adverse commodity price fluctuations and any decrease in the price of cassiterite and coltan could have an adverse effect on the volume of mineral exports and the amount of foreign investment in the sector. In addition, there has been limited exploration of deposits and extract able reserves to date and therefore the size of Rwanda's mineral reserves are largely un known.

The Government enacted a new Mineral Code in 2012 and implemented a nationwide tagging system in collaboration with the International Tin Research Institute (ITRI) Tin Supply Chain Initiative. However, the Final UN Report alleges that a substantial portion of the cassiterite and coltan exported from Rwanda origin at sands smuggled from the eastern DRC, as the credibility of the mineral tagging system in place in Rwanda is alleged to be jeopardized by the laundering of Congolese minerals though the illegal sale of tags by mining cooperatives. Although the Government strongly denies these allegations, there can be no assurance that the mineral tagging system put in place by Rwanda will be sufficient to identify the source of minerals. As a result, no assurance can be given that the current volume of mineral exports can grow or even be maintained in the future. All of these factors could have a negative impact on the mining sector, the level of foreign exports and a general material adverse effect on Rwanda's economy.

A failure to diversify Rwanda's economy or to improve its infrastructure and the competitiveness of the economy, would impact negatively on the Rwandan economy which may in turn result in a material adverse effect on Rwanda's ability to make payments under the Notes 87.

4.3.4 Regional political and military instability as an adverse effect on Rwanda's economy

Over the past few years, there has been political and military instability in the East-Africa region, and in particular amongst Rwanda's main trading partners, the DRC and Kenya. Instability in the region has increased since their forces of the M23 initiated military operations in the eastern DRC in early 2012, operations that have escalated in recent months and expanded from the Rutshuru territory to the provincial capital, Goma. Although Rwanda has been able to maintain a relatively stable and orderly political and military regime following the 1994 genocide, instability and unrest involving Rwanda's neighboring countries, coupled with

[87] Ibid, page 8

Rwanda's increased dependency on regional trade as a result of the global economic crisis, may have a material adverse effect on Rwanda's economy and its ability to service the Notes.

Being a land locked country, Rwanda's main trading partners remain the DRC and the East African Community(EAC) countries, with total trade value between Rwanda and the EAC countries more than doubling in recent years, from US$313.1 million in 2006 to US$801.29 million in 2012. Informal cross-border trade, which is becoming a significant factor in Rwanda's total external trade, has been mainly dominated by the DRC, with total informal exports to the DRC amounting to 77.18 percent of total informal cross-border exports as of the end of September 2012.The recent military un rest in the DRC, coupled with the allegations raised by the Interim UN Report and the Final UN Report with respect to Rwanda's alleged involvement in the current unrest in the DRC, continues to have a significant negative impact on the trade relations between Rwanda and the DRC and has adversely affected the trade of goods through the Rwanda-DRC border, which may have a material adverse effect on Rwanda's economy88.

4.3.5 Failure or inability to implement economic and fiscal reforms

Although the Government has announced its intention to pursue a series of economic and fiscal reform initiatives, including those set forth in Vision 2020 and the related EDPRS, including the EDPRS II which is currently under development and due to launch in 2013, no assurance can be given that such initiatives will be adequately funded, achieve or maintain the necessary long-term political support, be fully implemented or prove successful in achieving their objectives. Continued pursuit of long-term objectives such as those set forth in Vision2020 will depend on a number of factors including continued political support at many levels of Rwandan society and across multiple Government administrations, adequate funding, and significant coordination. The significant funding requirements for these plans may prove difficult or impossible to meet, and the funding requirements for these initiatives may lead to an increase in Rwanda's outstanding debt. Rwanda currently has low levels of foreign direct investment and if this does not improve it could hinder the achievement of its economic growth targets. If fiscal resources prove inadequate or donor aid is delayed or withdrawn, it may not be possible to adequately pursue all the public capital projects set forth in the Vision 2020, EDPRS and EDPRSII. The economic and other assumptions underlying the objectives set forth

[88]"Import Partners of Rwanda". CIA World Factbook. 2012.

in these plans including with respect to GDP growth, inflation, external debt and the fiscal deficit may not be met, which would undermine Rwanda's ability to achieve the stated objectives. Failure to achieve one or more of the objectives or complete certain public capital projects set forth in these plans may render it difficult to achieve other stated objectives.

If the Government is not able to fund or implement its medium-term objectives contained in the EDPRS and EDPRSII, or to maintain its current prevailing growth and development rates, the Government may not be able to meet its long-term strategic objectives set forth in Vision 2020.89.

4.3.6 Stability and growth in Rwanda may be threatened

Despite Rwanda's strong macro-economic performance over the past decade, allowing Rwanda to reduce poverty levels from 56.0 percent of the population in 2005 to 45.0percent in 2011, poverty levels remain high, as does the level of income inequality which amounted to approximately 0.49 per cent (measured by the Ginico efficient index), according to the Third Integrated Household Living Conditions Survey("EICV3")2010/2011.

Moreover, Rwanda faces significant challenges in the areas of infrastructure, in particular its transport infrastructure. There are currently no railways in Rwanda and only1, 172 kilometers of Rwanda's 4,698 kilometers of classified roads are paved (out of a novel all road network of 14,000 kilometers). Remote areas are accessible only along dirt roads, which are generally not reachable by public Transportation. In addition, Rwanda lacks adequate transportation linkages to other countries. Other challenges include human capital development with a work force that is largely unskilled.

Rwanda has a large informal sector engaged primarily in agriculture and approximately73.0percent of the total work force comprised agricultural workers as of the end of 2012. Failure to improve agricultural productivity could hinder poverty reduction, which in turn could have adverse consequences on the economy and social cohesion.

The Government committed under the EDPRS (and intends to continue its commitment under EDPRSII) to realize the objectives of Vision 2020 and undertake various projects to address each of these challenges. Projects are underway to improve human development in order to increase employment rates and generate exports. The EDPRSII has identified four strategic areas: economic transformation, rural development, productivity and youth employment and

[89] Ibid,

accountable governance. See “TheEconomy−Vision2020.” However, if these programs do not succeed, the challenges presented in these areas could have a material adverse effect on Rwanda’s economy [90].

4.3.7 Lack of cost effective and dependable energy

Rwanda experienced a significant decrease in output from its hydroelectric power stations due to lower water levels in early to mid-2000.Diesel generators were installed north of Kigali in 2004-2005 as an emergency measure butare very costly to operate. Generators using diesel, all of which Rwanda imports, were providing approximately 34. 5percent.of the country’s electricity in 2012. Rwanda’s limited electricity generation capacity coupled with increased demand due to economic growth has precipitated a shortfall and wide spread load shedding. As a result, lack of sufficient and reliable electricity supply remains an impediment to Rwanda’s economic growth and development. The degree of electrification in Rwanda is low. In2012, Rwanda produced111megawatt electrical (“Mwe”) of electricity with a customer base of 341,918 households, which represented a 16percent. Connectivity to the grid out of total population in the country. The Government intends to have70 per cent. Connectivity of total population in the country, 100 percent. Electrification of schools, health facilities and sector offices and electricity generation of 560Mwe by 2017 through a substantial increase in installed capacity using a variety of lower cost domestic sources of energy, including methane gas, geothermal energy, hydro electrical production and peat. However, these projects to generate electricity from such resources will take many years to complete and may be subject to delays in construction or funding. In addition, some of these methods may create environmental concerns. There can be no assurance that Rwandan power supplies will be able to grow sufficiently to meet future demand or that such power will not be subject to interruptions due to poor infrastructure or other causes. If Rwanda is unable to provide a regular and adequate supply of electricity to its citizens, this could have an adverse effect on Rwanda’s economy [91.]

4.3.8 A significant portion of the Rwandan economy is not recorded

A significant portion of the Rwandan economy is comprised of the informal sector, estimated at approximately 65. 0percent.of GDP as of the end of 2012(of which 46.0 percent. is monetized and 19.0 percent. Is non-monetized).

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[90] *"Rwanda".CIA - The World Facebook*. Retrieved 15 October 2014

[91] Ibid,

The informal economy is not recorded and is only partially taxed, resulting in not only lack of revenue for the Government but also in effective regulation, unreliability of statistical information (including the possible understatement of GDP and the contribution to GDP of various sectors) and inability to monitor or otherwise regulate a large portion of the economy. While the Government is undertaking reforms to address these issues, failure to bring these sectors of the informal economy into the formal economy may adversely affect the Government's tax revenues, thereby increasing Rwanda's dependence on foreign aid. See "Public Finance–Taxation".[92]

4.3.9 Impact of the global economic crisis on the Rwandan economy

The global recession and financial crisis in 2008 and 2009 increased investor aversion to risk, resulted in a withdrawal of foreign capital and reduced access of private sector borrowers to external credit lines. The impact of the global recession on Rwanda's economy has also been felt through a reduction in external reserves, significant fluctuations in the Rwandan franc, adverse and volatile fluctuations in food and oil prices, reduced net capital inflows and increased bad debt exposure of Rwandan banks. Any significant exchange rate fluctuations could have a significant adverse effect on the economy, as approximately 70.9 percent. Of Government debt was denominated in foreign currency as of the end of 2012. Rwanda's real GDP growth declined slightly to8. 0percent.in 2012, from 8.2percent.in 2011. However, these levels were above the levels of 7.2 percent. In 2010 and 6.2 percent. in 2009 reflecting an improvement in the global economy. Nonetheless, if the global economy further deteriorates or if any contraction occurs, this could have an adverse effect on the levels of foreign investment, volumes of foreign exports and the cost of imports and the strength of Rwanda's banking sector and of its currency.

4.3.10 Rwanda is a nascent democracy and never had transition of government

Rwanda adopted a new constitution on 26 May 2003 which set the stage for presidential and legislative elections. Since then, there have been two parliamentary elections for the Chamber of Deputies and two presidential elections. In 2003, President Paul Kagame was elected President and in August 2010 he was re-elected President with a majority of around 93. 8percent.of the vote. The RPF, the majority political party of the 2003 elections, was elected as the majority party in the 2008 elections for the Chamber of Deputies, taking 42 of 53directly-elected seats in the Chambers of Deputies. Parliamentary elections were also held in

[92] Ibid, page 49

September 2013, and RPF garnered 78% of total votes for the chamber of deputies with the next presidential elections in 2017.Under the current constitution President Paul Kagame would be unable to run for third presidential term. Additionally, there were allegations of suppression of various political opposition and the media surrounding the last election in 2010.

Given that Rwanda has not had to face a Presidential succession or a change in the majority governments since the 2003 Constitution, there can be no assurance that the handing over of power to a new president or political party will be smooth or democratic. Any significant changes in the political climate in Rwanda, including changes affecting the stability of the Government, may have adverse effects on Rwanda's economy, Government revenues or foreign reserves, and, as a result, have a material adverse effect on Rwanda's ability to make payments under the Notes93.

4.4 Risks relating to the notes

4.4.1The terms of the Notes may be modified, waived or substituted without the consent of all the Holders of the Notes

The conditions of the Notes contain provisions for calling meetings of Note holders to consider matters affecting their interests generally. These provisions permit defined majorities to bind all Note holders including Note holders who did not attend and vote at the relevant meeting and Note holders who voted in a manner contrary to the majority. Any such change in the terms of the Notes may adversely affect the trading price of the Notes.

The conditions of the Notes contain a provision permitting the Notes and the conditions of the Notes to be amended without the consent of the Note holders to correct a manifest error, or if an amendment to the conditions would not be materially prejudicial to the interests of the Note holders[94].

4.4.2 Events of Default

The conditions of the Notes contain a provision which, if an Event of Default occurs, allows the holders of at least 25.0percent.in aggregate principal amount of the outstanding Notes to declare all the Notes to be immediately due and payable by providing notice in writing to the Issuer, where upon the Notes shall become immediately due and payable, at their principal amount with accrued interest, without further action or formality.

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[93] Ibid, page 51

[94]"Export Partners of Rwanda". CIA World Factbook. 2013

4.4.3 English law, which governs the terms of the Notes may change over time

The conditions of the Notes are based on English law in effect as at the date of this Prospectus. No assurance can be given as to the impact of any possible judicial decision or changes in English law or practice after the date of this Prospectus.

4.4.4 Definitive Notes not denominated in an integral multiple of US $200,000

The Notes have denominations consisting of a minimum of US $200,000 plus integral multiples of US$1,000 in excess thereof. It is possible that the Notes may be traded in amounts that are not integral multiples of US $200,000. In each, such holder who, as a result of trading such amounts, holds an amount which is less than US$200,000 in his account with the relevant clearing system at the relevant time may not receive a Certificate in respect of such holding (should Certificates be printed) and would need to purchase a principal amount of Notes such that its holding amounts to US$200,000.

If Certificates are issued, holders should be aware that Certificates which have a denomination that is not an integral multiple of US $200,000 may be illiquid and more difficult to trade than Notes denominated in an integral multiple of US $200,000.

4.4.5 The Notes may not be a suitable investment for all prospective investors

Each potential l investor in the Notes must determine the suitability of that investment generally in light of its own circumstances. In particular, each potential investor should:

- Have sufficient knowledge and experience to make a meaningful evaluation of the Notes, the merits and risks of investing in the Notes and the information contained in this Prospectus or any applicable supplement;
- Have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Notes and the impact the Notes will have on its overall investment portfolio;
- Have sufficient financial resources and liquidity to bear all of the risks of an investment in the Notes, including where the currency for principal or interest payments is different from the potential investor's currency;
- Understand thoroughly the terms of the Notes and be familiar with financial markets; and
- Be able to evaluate (either alone or with the help of a financial adviser) changes in economic conditions, interest rates and other factors that may affect its investment and its

ability to bear applicable risks[95].

4.4.6 There may be no active trading market for the Notes

Although an application has been made to list the Notes on the Irish Stock Exchange and to admit the Notes to trading on the Main Securities Market, there is no assurance that such application will be accepted or that an active trading market for the Notes will develop or, if one does develop, that it will be liquid or maintained. If an active trading market in the Notes does not develop or is not maintained, the market price and liquidity of the Notes may be adversely affected.

In addition, if the Notes are traded after their initial issuance, they may trade at a discount to their initial offering price, depending upon prevailing interest rates, the market for similar securities, general economic conditions and the financial condition of the Issuer. As a result of the above factors, investors may not be able to sell their Notes easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market 96.

4.4.7 Difficult for investors to obtain or realize judgments of courts in other countries against Rwanda

Rwanda is a sovereign State. As a result, it may be difficult for investors to obtain judgments against Rwanda in foreign or Rwandan courts or to enforce foreign judgments, including judgments predicated upon civil liabilities under the securities laws of the United States or any state or territory within the United States against Rwanda. Although Rwanda will consent in the Terms and Conditions of the Notes to the giving of any relief or the issue of any process in connection with proceedings in England arising out of any dispute arising from or connected with the Notes and will agree to waive any immunity it may have in a suit, execution, attachment or other legal process in respect of any such proceedings ,the waiver or immunity does not extend to civil liabilities under securities laws or to any other proceedings and excludes from its scope certain diplomatic, military and other government properties situated within the territory of Rwanda. Moreover, the enforcement of foreign judgments is subject to the conditions and limitations described under “Enforcement of Civil Liabilities” and such limitations and conditions may make it difficult for investors to obtain or realize judgments of

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[95]http://www.globalpost.com/dispatch/news/regions/africa/120328/rwanda-economic-growth-pulling-rwandans-out-poverty

[96]http://www.iss.co.za/AF/profiles/Rwanda/Economy.html

courts outside Rwanda[97].

4.4.8 Difficulties in enforcing a court judgment against certain assets of Rwanda in certain jurisdictions

The Republic of Rwanda is a sovereign state. There is a risk that, notwithstanding the waiver of sovereign immunity by the Republic of Rwanda, a claimant will not be able to enforce a court judgment against certain assets of the Republic of Rwanda in certain jurisdictions (including the imposition of any arrest order or attachment or seizure of such assets and their subsequent sale) without the Republic of Rwanda having specifically consented to such enforcement at the time when the enforcement is sought.

The foreign exchange reserves of the Republic of Rwanda are controlled and administered by the National Bank of Rwanda ("NBR"), which under the LawNo.55/2007of30/11/2007 ("NBR Law") conducts monetary and supervisory activities independently from the Government and acts as banker and fiscal agent to the Republic of Rwanda. Accordingly, such reserves would not be available to satisfy any claim or judgment in respect of the Notes.

A judgment by a Rwanda court will ordinarily be awarded in Rwandan francs, but may be awarded in a foreign currency, depending on the underlying type of contract or transaction. Similarly, when enforcing a foreign judgment awarded in a currency other than Rwanda franc, a Rwanda court may convert such award into Rwandan francs. In that event, there may be a discrepancy between the rate of exchange used by the Rwanda court to convert such award into Rwandan francs, and the rate of exchange which may be obtained in the market to convert such award from Rwandan francs back into another currency. A Note holder who is awarded a judgment may therefore incur a loss because of such exchange rate differences. A currency indemnity has been included in the terms and conditions (see Condition16 ("Currency Indemnity")), however, the cost of enforcement of such condition may nevertheless result in a loss by such Note holder.

The Rwandan high court has a wide discretion in determining whether or not to enforce a foreign judgment on the grounds of matters of public policy98.

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*97*www.rdb.rw/about-rwanda/economy.htm

[98]*www.theodora.com/wfbcurrent/**rwanda/rwanda_economy**.htm*

4.4.9 Fluctuations in exchange rates and interest rates may adversely affect the value of the Notes

The Issuer will pay principal and interest on the Notes in US Dollars. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the "**Investor's Currency**") other than US Dollars. These include the risk that exchange rates may significantly change (including changes due to devaluation of the US Dollars or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. An appreciation in the value of the Investor's Currency relative to US Dollars would decrease the Investor's Currency-equivalent yield on the Notes, the Investor's Currency equivalent value of the principal payable on the Notes and the Investor's Currency equivalent market value of the Notes.

Government and monetary authorities (including where the investor is domiciled) may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, investors may receive less interest or principal than expected, or no interest or principal. In addition, investment in the Notes involves the risk that subsequent changes in market interest rates may adversely affect the value of the Notes[99].

4.4.10 Legal investment considerations may restrict certain investments

The investment activities of certain investors are subject to legal investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent the Notes are legal investments for it, the Notes can be used as collateral for various types of borrowing and other restrictions apply to its purchase or pledge of the Notes. Financial institutions should consult their legal advisors or the appropriate regulators to determine the appropriate treatment of the Notes under any applicable risk-based capital or similar rules[100].

4.4.11 Credit ratings may not reflect all risks

S&P and Fitch are expected to assign credit ratings to the Notes. The ratings may not reflect the potential impact of all risks related to structure, market, additional factors discussed above, and other factors that may affect the value of the Notes. A Credit rating is not a recommendation to buy, sell or hold securities and may be revised or withdrawn by the rating agency at any time.

[99] Rwanda Euro Bond prospectus, Debt Capital Markets, CEEMEA BNP PARIBAS
[100] Ibid, page 48

In general, European regulated investors are restricted under the CRA Regulation from using credit ratings for regulatory purposes, unless such ratings are issued under the CRA Regulation(and such registration has not been withdrawn or suspended).Such general restriction will also apply in the case of credit ratings issued by non-EU credit-rating agencies, unless the relevant credit ratings are endorsed by an EU-registered credit rating agency or the relevant non-EU rating agency is certified in accordance with the CRA Regulation(and such endorsement or certification, as the case may be, has not been withdrawn or suspended)[101]

4.4.12 Impact of The EU Savings Directive to some note holders

Under EC Council Directive 2003/48/EC (the" **EU Savings Directive**") on the taxation of savings income, each Member State is required to provide to the tax authorities of another Member State details of payments of interest or other similar income (within the meaning of the EU Savings Directive) paid by a paying agent in the meaning of the EU Savings Directive within its jurisdiction to, or collected by such a paying agent for, an individual resident or certain limited types of entity established in that other Member State; however, for a transitional period, Austria and Luxembourg may instead apply a withholding system in relation to such payments deducting tax at rates rising of 35 percent unless in the case of Luxembourg the beneficial owner of the interest payments opts for one of the two information exchange procedures available. The transitional period is to terminate at the end of the first full fiscal year following agreement by certain non-EU countries to the exchange of information relating to payments.

A number of non-EU countries and certain dependent or associated territories of certain Member States have adopted similar measures (either provision of information or transitional withholding) in relation to payments made by a paying agent within its jurisdiction to, or collected by such a paying agent for, an individual resident in a Member State. In addition, the Member States have entered into provision of information or transitional withholding arrangements with certain of those dependent or associated territories in relation to payments made by a person in a Member State to, or collected by such a person for, an individual resident or certain limited types of entity established in one of those territories.

The European Commission has proposed certain amendments to the EU Savings Directive, which may, if implemented, amend, or broaden the scope of the requirements described above. Investors who are in any doubt as to their position should consult their professional advisers.

[101]www.**rwanda**chamber.org/**rwanda**+**economic**+indicators,

If a payment were to be made or collected through a Member State which has opted for a withholding system and an amount of, or in respect of, tax were to be withheld from that payment, neither the Issuer nor any Paying Agent nor any other person would be obliged to pay additional amounts with respect to any Note as a result of the imposition of such withholding tax. The Issuer is required to maintain a Paying Agent that is not obliged to withhold or deduct tax pursuant to the EU Savings Directive[102].

4.5 Importance of the bond to Rwanda

The estimated net proceeds of the issue of the Notes, expected to amount to approximately US$[400.000.000] after deduction of the combined management and underwriting commission and estimated expenses incurred in connection with the issue of the Notes, will be used by the Issuer for repayment of external Government loans in relation to the Kigali Convention Centre and the Rwanda strategic development plan(national carrier expansion),as well as financing the completion of the Kigali Convention Centre and the Nyabarongo hydro power project, as follows:

4.5.1 Payment of the Kigali Convention Complex Loan

ApproximatelyUS$120millionshall be used to repay two outstanding loans on the Kigali Convention Centre which would have been deducted from the Government Treasury and hence effecting the development Budget meant for EDPRS II.

4.5.2 Payment of RwandAir Loan

Approximately US$80 million shall be used to repay an outstanding loan on the Rwanda Air strategic development plan which will reduce the debt level of Rwanda Air in order for it to be able to acquire new flights and open new destinations. This will make Rwanda Air profitable and hence the Government of Rwanda will be able to handle it over to private investors for its management.

4.5.3 Financing the completion of Kigali Convention Complex

ApproximatelyUS$150millionshall be used to finance the completion of the Kigali Convention Centre; and upon its completion, Rwanda will be able to host international conferences and be able to attain its vision of becoming a services hub. The completion of the complex will also help the Government to handle it over to private investors and the Government will be able to recover the money spent and hence pay back to the Note holders.

[102] Rwanda Euro Bond prospectus, Debt Capital Markets, CEEMEA BNP PARIBAS, page 89

4.5.4 Construction of Nyabarongo Hydro water Project

Approximately US$ 50 million shall be used to finance the Nyabarongo hydro power project and this will raise the Governments' Energy deficit that is currently at 60 %. Once this hydro project power plant is finalized, it will be able to add over 45 Megawatts to the National grid and this will reduce the cost of energy to the public and the investors hence making Rwanda competitive economy in the region and Africa.

4.5.5 Rwanda's Visibility in International markets

Rwanda is the first country in East Africa to enter the international capital market through issuance of Euro bond and this has put Rwanda in the limelight of other countries where investors can invest and consider their investments safe.[103]

4.6 Legal considerations

Due to the following significant transfer restrictions applicable to the Notes, investors are advised to consult legal counsel prior to making any re offer, resale, pledge, and transferor disposal of the Notes.

The Notes have not been registered under the Securities Act or with any securities regulatory authority of any state or other jurisdiction of the United States and may not be offered or sold within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in compliance with any applicable state securities laws. Accordingly, the Notes are being offered and sold (1) in the United States only to persons reasonably believed to be QIBs in reliance on, and in compliance with, Rule 144A or pursuant to another exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and (2) outside the United States in offshore transactions in reliance on Regulation S.

4.6.1 Rule 144A Notes

Each purchaser of Rule 144 A Notes, by accepting delivery of this Prospectus and the Rule144A Notes, will be deemed to have represented, agreed, and acknowledged that:

(i)the purchaser(a) is a QIB, (b) is acquiring the144 A Notes for its own account or for the account of one or more QIBs and(c) is aware, and each beneficial owner of such Notes has been advised that the sale of the Notes to it is being made in reliance on Rule144A.

(ii) the Rule 144 A Notes have not been and will not be registered under the Securities Act or with any securities regulatory authority of any state or other jurisdiction of the United States

[103] Ibid, page 111

and may not be offered, sold, pledged or otherwise transferred except(a) in accordance with Rule144 A to a person that it, and any person acting on its behalf, reasonably believes is a QIB purchasing for its own account or for the account of one or more QIBs,(b)in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S under the Securities Act, (c)pursuant to an exemption from registration under the Securities Act provided by Rule144 there under (if available),(d) to the Issuer or an affiliate thereof, or(e) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any state of the United States and it will, and each subsequent holder of the Rule144ANotes is required to, notify any purchaser of the Rule 144 A Notes from it of the resale restrictions on the Rule 144A Notes;

(iii) the purchaser understands that the Rule 144ANotes (to the extent they are in certificated form) will be arranged to the following effect, unless the Issuer determines otherwise in accordance with applicable law:

(iv) it understands that the Issuer, the Joint Lead Managers, their respective affiliates, and others will rely upon the truth and accuracy of the fore going acknowledgements, representations and agreements and agrees that, if any of the acknowledgements, representations or agreements deemed to have been made by it by its purchase of Rule 144 A Notes is no longer accurate, it shall promptly notify the Issuer and the Joint Lead Managers; and

(v) if it is acquiring any Notes for the account of one or more QIBs, the purchaser represents that it has sole investment discretion with respect to each such account and that it has full power to make the fore going acknowledgements, representations, and agreements on behalf of each such account.

4.6.2 Regulation S Notes

Each purchaser of Regulation S Notes, by accepting delivery of this Prospectus and the Regulation S Notes will be deemed to have represented, agreed, and acknowledged that:

(i) it is, or at the time the Regulation S Notes are purchased will be, the beneficial owner of such Notes and it is located outside the United States (within the meaning of Regulation S); and it is not an affiliate of the Issuer or a person acting on behalf of such an affiliate.

(ii) the Regulation S Notes have not been and will not be registered under the Securities Actor with any securities regulatory authority of any state or other jurisdiction of the United States and that it will not offer, sell, pledge or otherwise transfer Regulation S Notes except(a) in accordance with Rule 144A under the Securities Act to a person that it and any person acting on its behalf reasonably believes is a QIB purchasing for its own account, or for the account of

one or more QIBs or (b) in an off shore transaction in accordance with Rule 903 or Rule 904 of Regulation S, in each case in accordance with any applicable securities laws of any State of the United States; and

(iii) it understands that the Issuer, the Joint Lead Managers, their respective affiliates, and others will rely upon the truth and accuracy of the fore going acknowledgements, representations and agreements and agrees that, if any of the acknowledgements, representations, or agreements deemedtohavebeenmadebyitbyitspurchaseofRegulationSNotesisnolongeraccurate, it shall promptly notify the Issuer and the Joint Lead Managers[104].

4.7 Lessons learnt from rwanda's euro bond debut

The Rwanda Euro Bond debut of 2013 offers several valuable lessons for emerging economies, financial markets, and governments considering similar ventures. These lessons highlight the significance of strategic planning, effective governance, and responsible financial management. Here are some key lessons that can be drawn from the Rwanda Euro Bond debut:

4.7.1 Diversification of Funding Sources

The Rwanda Euro Bond debut underscores the importance of diversifying funding sources for governments. By tapping into international capital markets, Rwanda reduced its reliance on traditional sources of financing and expanded its options for raising funds to support economic development and infrastructure projects.

4.7.2 Credibility and Governance

The successful issuance of the Euro Bond highlighted the critical role of credible governance and prudent economic policies. Rwanda's commitment to good governance, transparency, and fiscal discipline enhanced its reputation among international investors, instilling confidence in the country's ability to manage borrowed funds responsibly.

4.7.3 Investor Confidence in Emerging Markets

The Rwanda Euro Bond debut demonstrated that even relatively small and lesser-known economies can attract international investor interest. This serves as a lesson for other emerging economies seeking to access global capital markets; a track record of stability, sound policies, and social progress can contribute to building investor confidence.

[104] Ibid, page 113

4.7.4 Economic Growth and Structural Reforms

The Euro Bond issuance served as a catalyst for Rwanda's economic growth and structural reforms. The funds raised were channeled into critical sectors such as infrastructure, energy, and agriculture, contributing to sustainable development and poverty reduction. This emphasizes the importance of aligning bond proceeds with strategic development priorities.

4.7.5 Long-Term Planning and Strategy

The Rwanda Euro Bond debut exemplified the value of long-term planning and strategic thinking. Governments should carefully assess their financing needs, timing, market conditions, and investor sentiment before embarking on a bond issuance. An effective strategy can optimize the terms of the bond and ensure its success.

4.7.6 Collaboration with International Financial Institutions

Rwanda's collaboration with international financial institutions, such as the International Finance Corporation (IFC), helped enhance investor confidence and provided technical expertise. This underscores the benefits of partnership and engagement with established financial entities when entering global markets.

4.7.7 Market Timing and Investor Engagement

The success of the Euro Bond debut highlighted the significance of timing the issuance appropriately and engaging with potential investors effectively. Governments should monitor market conditions, adapt to changing investor sentiments, and engage in roadshows to showcase their economic prospects and policy framework.

4.7.8 Sustainable Debt Management

The Rwanda Euro Bond debut emphasizes the importance of responsible debt management. Governments should carefully assess their debt capacity, monitor repayment obligations, and ensure that borrowed funds are used efficiently for projects that generate long-term economic benefits.

4.7.9 Impact on National Image and Development

The issuance of the Euro Bond positively impacted Rwanda's international image, signaling its emergence as a credible and forward-thinking economy. This lesson illustrates how a successful bond debut can contribute to broader national development objectives.

4.7.10 Resilience and Adaptability

The Rwanda Euro Bond debut took place against a backdrop of global economic uncertainty. Rwanda's ability to navigate these challenges and achieve a successful bond issuance highlights the importance of resilience, adaptability, and effective risk management in the face of external uncertainties.

4.8. Conclusion

In conclusion, the Rwanda Eurobond issuance was a strategic move that enabled the country to access global capital markets and secure funding for its development projects. While it offered several advantages, including cost-effective financing and global visibility, it also posed challenges such as currency risk and the need for careful debt management. The experience provides valuable lessons for Rwanda and other emerging economies, emphasizing the importance of prudent financial management, diversification of funding sources, and a commitment to transparency and accountability in sovereign borrowing and debt management.

CHAPTER V: GENERAL CONCLUSION AND RECOMMENDATIONS

5.1 Summary of findings of the precedent chapters

The major findings from this research comparing legal considerations for domestic borrowing versus domestic borrowing through the capital markets are here are highlighted below:

Regulatory Framework: The study found that there are significant differences in the regulatory framework governing domestic borrowing and domestic borrowing through capital markets. These differences could include disclosure requirements, registration processes, and compliance standards.

Cost of Borrowing: The Researcher discovered that the cost of borrowing is influenced by the choice between domestic borrowing and borrowing through capital markets. Capital market transactions involve fees related to underwriting, legal, and listing requirements, while direct borrowing have different cost structures.

Access to Capital: My findings indicate that domestic borrowing through capital markets provides increased access to a wider pool of investors, potentially leading to lower interest rates and more favorable terms compared to direct borrowing from financial institutions or other sources.

Market Conditions: This study revealed that the choice between domestic borrowing options is influenced by prevailing market conditions. For example, during periods of high interest rates, borrowers might find it more cost-effective to issue bonds in the capital markets, whereas in low-interest-rate environments, direct borrowing may be more attractive.

Risk Considerations: The Researcher uncovered that domestic borrowing through capital markets introduces different risk considerations compared to traditional borrowing. Capital market borrowings could expose issuers to market volatility, interest rate risk, and credit rating considerations that may not be as relevant in direct borrowing.

Timing and Flexibility: The researcher has highlighted that capital market borrowings offer greater timing flexibility, allowing issuers to tap into funds when market conditions are most favorable. Direct borrowing have a more rigid timeline and may require negotiation with specific lenders.

Legal Documentation: My findings emphasize that borrowing through capital markets involves the preparation of comprehensive legal documentation, such as prospectuses and bond indentures, which are not typically required for direct borrowing. These legal requirements can add complexity and cost to capital market transactions.

Investor Base: This study revealed that borrowing through capital markets allows for diversification of the investor base, including institutional investors, retail investors, and foreign investors, potentially reducing dependence on a single lender or group of lenders.

Credit Rating Impact: The Researcher found that the choice between domestic borrowing options can impact an issuer's credit rating. Capital market transactions may be subject to credit rating agency assessments, which can affect the issuer's overall creditworthiness.

Market Confidence: The researcher suggests that successful capital market borrowings can enhance an issuer's market reputation and investor confidence, potentially making it easier and more cost-effective to access capital in the future.

5.2 Answers to Research questions

1. What is the Legal regime to apply when making a choice to borrow internationally through the Capital Market & what happens if a sovereign does not honor its obligations?

Legal Regime for International Borrowing:

When a sovereign nation chooses to borrow internationally through the capital markets, it typically navigates a complex legal regime that includes the following elements:

International Law: Borrowing internationally involves compliance with international legal principles, including sovereign immunity, which protects a state from being sued in foreign courts.

Domestic Law: Each country has its own domestic laws governing international borrowing, which may include securities regulations, disclosure requirements, and foreign exchange controls.

Contractual Agreements: The issuance of international bonds involves contracts between the sovereign and investors. These contracts outline the terms and conditions of the bond issuance and the obligations of the parties.

Governing Law: The choice of governing law in bond contracts can vary. Commonly used legal jurisdictions include New York or English law, which provides a familiar legal framework for international investors.

2. Why should a sovereign borrow internationally other than borrowing domestically?

Sovereigns may choose to borrow internationally for several reasons:

Access to Larger Pool of Capital: International borrowing allows access to a broader and potentially deeper pool of investors, including institutional investors, global funds, and foreign governments, who may be willing to provide larger amounts of capital.

Diversification: International borrowing diversifies the sources of funding, reducing reliance on domestic financial markets and mitigating risks associated with domestic economic conditions.

Lower Borrowing Costs: Depending on market conditions, borrowing internationally may offer lower interest rates and longer maturities compared to the domestic market, leading to cost savings.

Global Visibility: Issuing bonds in international markets can enhance a sovereign's global visibility and reputation, attracting foreign investment and bolstering economic development.

3. What are the challenges and benefits in borrowing both internationally or domestically?

Challenges of International Borrowing:

Currency Risk: International borrowing exposes sovereigns to currency risk if their debt is denominated in a foreign currency, which can lead to increased repayment costs if the local currency depreciates.

Market Volatility: International capital markets can be volatile, affecting interest rates and the cost of borrowing for sovereigns.

Legal Complexity: International borrowing involves navigating complex legal frameworks, including sovereign immunity, and may require the use of external legal counsel.

Benefits of International Borrowing:

Access to Diverse Capital: International markets offer a wide range of investors, potentially resulting in more favorable financing terms.

Cost Efficiency: In favorable market conditions, international borrowing can be cost-effective, with lower interest rates and longer tenures.

Risk Mitigation: Diversifying funding sources internationally can reduce reliance on a single domestic market, spreading risk.

Global Presence: Borrowing internationally can enhance a sovereign's international reputation and standing, attracting foreign investment and fostering economic growth.

Challenges of Domestic Borrowing:

Limited Capital: Borrowing domestically may limit access to a smaller pool of capital, potentially leading to higher borrowing costs.

Interest Rate Sensitivity: Domestic interest rates can be influenced by local economic conditions, affecting the cost of borrowing.

Crowding Out: Extensive domestic borrowing may crowd out private sector borrowing, potentially affecting economic growth.

Political Pressure: Domestic borrowing can subject sovereigns to domestic political pressure and interest group influence.

Benefits of Domestic Borrowing:

Familiarity: Domestic markets are often more familiar to sovereigns, with established legal frameworks and regulations.

Reduced Currency Risk: Borrowing in the local currency reduces currency risk associated with foreign-denominated debt.

Control: Sovereigns have greater control over the regulatory environment and may face less legal complexity when borrowing domestically.

Sovereign Risk Mitigation: Domestic investors may have a better understanding of local economic conditions and may be more tolerant of sovereign risk.

In conclusion, the choice between international and domestic borrowing by sovereigns involves a careful consideration of various legal, financial, and economic factors, each with its own set of challenges and benefits. The decision is influenced by an evaluation of the specific needs and circumstances of the sovereign at a given time

5.3 Contribution of the research in the area of research

Throughout my research, the researcher identified some gaps in international legal system and polices that anyone who would be able to reads this research will pick up and consider addressing them.

1.It is recommended that, a legal framework that can be sufficiently comprehensive to facilitate the simultaneous restructuring of a broad range of debt that may be needed to restore sustainability while, at the same time, be flexible enough to accommodate the fact that: (i) creditors may have different types of claims and (ii) a sequenced approach to restructuring may, on occasion, be necessary.

2.The researcher is recommending the distinction between external and domestic debt on the basis of governing law and discusses two alternative approaches to the treatment debt that is governed by domestic law and subject to the exclusive jurisdiction of the local courts. The first approach would be to include such debt under the sovereign debt restructuring mechanism, but as a separate class. The second would exclude such debt from the sovereign debt restructuring mechanism (SDRM) and instead rely on a combination of the program and the need to develop a restructuring that would be acceptable to all creditors' groups to provide for inter creditor equity and a restructuring that is sufficiently comprehensive to achieve the change in the debt structure needed to ensure sustainability.

3.It is recommended that, policymakers in the realm of international finance that when governments run out of money, they often treat domestic and foreign creditors differently. Despite important concerns about inter-creditor equity, the ability to treat domestic and foreign creditors differently can be seen as a policy option for governments in financial crisis. One possible way of dealing with this would be a sovereign bankruptcy regime capable of ensuring equal treatment among identical debt instruments. Admittedly, this is difficult to say the least.

5.4 Scope for further research

1. The significant increase in the volume of domestic debt issued by emerging market entities relative to international debt calls for a new way of framing the core issues that arise in financial crises. It is therefore recommended that, an in-depth assessment of risk and fiscal sustainability must be based on a comprehensive view of the country's debt stock– that is, including both domestic and foreign debt.

2. It is also recommended that further work may be conducted to identify the causes and effects of sovereign debt crises, and on whether and how crises can be mitigated.

3. There is a need to explore the possibility of default on domestic debt and the ability of domestic creditors to punish the sovereign**.**

4. The principle of Immunity for Soverigns in enforcement of debt contracts

5. The principle of International Comity under international law

5.5 Conclusion

In conclusion, sovereign borrowing under the Rwanda legal system is governed by a comprehensive framework aimed at ensuring transparency, accountability, and responsible financial management. Key legal considerations for borrowing include the Public Financial Management Law, which sets out rules and procedures for government borrowing, and the requirement for parliamentary authorization before taking on external debt. Loan agreements with international lenders define the terms of borrowing, outlining repayment schedules, interest rates, and restrictive covenants.

Non-compliance with borrowing terms can have significant consequences, including credit rating downgrades, higher borrowing costs, and damage to Rwanda's reputation among international investors. The country's Debt Management Office plays a crucial role in overseeing borrowing and ensuring compliance with borrowing terms.

Furthermore, Rwanda's participation in financial assistance programs with international institutions like the IMF may subject its borrowing practices to additional scrutiny. Breaching borrowing terms may result in public scrutiny and political repercussions for the government, making it imperative for the authorities to adhere to responsible debt management practices.

Overall, the legal considerations for sovereign borrowing in Rwanda reflect the country's commitment to responsible fiscal management and safeguarding its financial stability while pursuing its developmental goals. As with any legal system, it is essential for the government to continuously monitor and adapt its borrowing practices to evolving economic conditions and international financial norms to ensure sustainable growth and development.

5.6 Recommendations to the Government of Rwanda

The researcher is recommending to the Government of Rwanda the following:

1. To consider the domestic borrowing than foreign more especially when it involves the borrowing of the money that can be easily provided domestically by the local population.

2. Consider the cross listing of the Euro Bond that is already listed at the Irish Stock Exchange to allow the local investors to access its trading at the secondly market at Rwanda local Bourse.

3. Develop the local market capital market so that, it can reach the level where the Government does not need to borrow internationally and list on an international stock Exchange, but rather get the foreign currencies in Rwanda without necessarily going to market the bond in international markets.

4. Carry out a lot of public education and sensitization more especially when the Government is considering issuing an international Bond so that, the locals and regional fund managers and Institutional investors can participate.

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