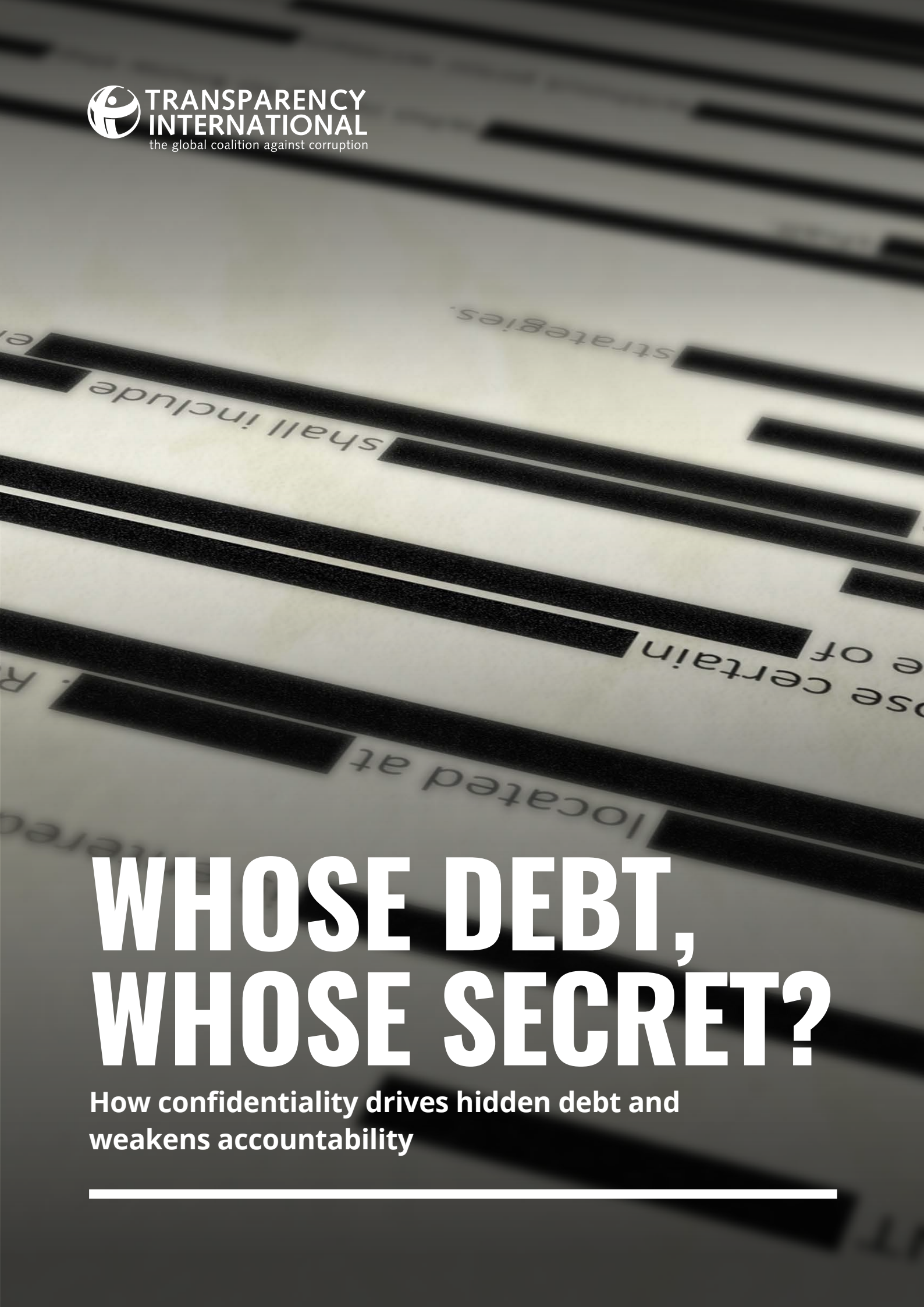


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WHOSE DEBT, WHOSE SECRET?

How confidentiality drives hidden debt and weakens accountability

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Whose debt, whose secret?

How confidentiality drives hidden debt and weakens accountability

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EXECUTIVE SUMMARY

As global sovereign debt level rises, countries face a greater risk of debt distress and default. Resources are diverted from essential services such as public education or healthcare to service these debts. Yet the details of these debts are often shrouded in secrecy. Sometimes even their existence is kept secret from the public and oversight institutions such as national parliaments. This secrecy weakens accountability and creates opportunities for corruption – as seen in Mozambique's 'tuna bond' scandal where state-owned companies secretly borrowed over US$2 billion backed by undisclosed government guarantees. When debt agreements or terms are hidden, parliaments cannot scrutinise them, auditors cannot verify them, and citizens and journalists cannot ask who benefited, whether the terms were fair or how the money was used.

These risks are compounded by the changing landscape of sovereign lending. Governments are increasingly borrowing from a wider range of lenders. Bilateral, commercial, syndicated and resource-backed loans now sit alongside traditional multilateral credit, and each brings its own approach to disclosure. Confidentiality clauses have become increasingly common across this landscape.

Confidentiality clauses are contractual provisions that regulate the disclosure or use of information in sovereign financing arrangements.[1] Depending on their wording, they may restrict disclosure of the agreement, financial or commercial terms, creditor information, related documents or the contractual relationship itself. Their scope and legal effect vary across creditors and lending instruments, and they may contain exceptions for disclosure required by law or authorised by the parties.

Where confidentiality clauses restrict access by parliaments, auditors and the public, they can also weaken the scrutiny that helps detect and deter corruption and mismanagement. That might include inflated contract terms, conflicts of interest or borrowing that does not serve the public interest.

Despite growing attention to debt transparency, much less is known about how these clauses work in practice. Existing research highlights the importance of transparency for fiscal risk assessment, debt sustainability and public accountability, and has begun to examine disclosure provisions in debt contracts.

However, important questions remain, including how these clauses interact with transparency regulations such as domestic right to information laws, public financial management frameworks and parliamentary oversight. It is also unclear what follows when disclosure is challenged and whether the clauses create enforceable obligations or operate mainly as deterrents. Uncovering these gaps requires an understanding not only of the principles supporting disclosure, but also of how contractual provisions operate, how institutions respond to them and what can be done to enable access to information.

This report helps to address these gaps. It examines the use and prevalence of confidentiality clauses across different lenders. It looks at how confidentiality clauses interact with transparency laws and standards, their enforcement, who controls access to loan agreements, and what this means for accountability.

The report draws on a global study and in-depth country studies of Malawi, Sri Lanka and Venezuela, combining analysis of loan agreements, legal and institutional frameworks, and interviews with experts and officials.

Access to contracts was difficult across all three countries. Some agreements could not be obtained even after submitting right to information (RTI) requests, and others could be reviewed only on a confidential basis, with their sources not identified in this report. The sample is therefore illustrative, rather than representative. This difficulty is itself a finding, reflecting the limited access to sovereign debt agreements even where RTI mechanisms are in place.

Key findings

- **Across the world, confidentiality clauses are a recurring feature across bilateral, commercial, syndicated, resource-backed and multilateral sovereign lending markets**. The principal variations lie in whom they bind, what information they protect and how they allocate disclosure rights between creditors, governments and public oversight institutions. When prior lender consent is needed, a confidentiality clause places the disclosure decision partly within the financing relationship. But a clear legal-disclosure exception can protect the borrower's ability to comply with mandatory public-law obligations.
- **Confidentiality clauses can restrict access to information that is essential for assessing public financial obligations**. The evidence shows that confidentiality provisions vary considerably across creditors and instruments, but some extend beyond protection of legitimate sensitive lending information, to include loan terms, repayment arrangements, collateral, guarantees, supporting documents and negotiations. Such restrictions obscure the terms of an agreement that parliament, auditors and the public need to scrutinise in order to understand a state's financial exposure and the risks attached to borrowing.
- **Laws requiring the management of public debt do not guarantee transparency of sovereign debt contracts**. Across Malawi, Sri Lanka and Venezuela, legal frameworks regulate borrowing authorisation, debt recording and aggregate reporting more clearly than they guarantee access to individual financing agreements. This creates a gap between knowing that a government has borrowed and being able to examine the contractual terms that create its obligations.
- **The practical effect of confidentiality can exceed the demands of the actual contract**. The research found no consistent evidence of creditors imposing damages, arbitration, termination, acceleration or suspension of disbursements because governments disclosed confidential information. However, officials may still restrict disclosure because they regard contractual confidentiality as binding, are uncertain about its relationship with domestic law, or anticipate consequences for creditor relationships. Perceived enforceability can therefore constrain transparency even where actual contractual enforcement has not been demonstrated.
- **Control over debt information is unevenly distributed across state institutions**. Across the three countries, officials and institutions directly involved in borrowing generally have greater access to complete financing agreements than key oversight institutions such as parliaments and supreme audit institutions. Whoever possesses the contract can determine who is able to scrutinise state obligations. This means that even where formal oversight powers exist, they may have limited practical value if oversight institutions cannot obtain the contractual evidence necessary to exercise them.
- **Where independent monitoring is weak, confidentiality increases risks of corruption**. Confidentiality can enable corruption, hidden debt and fiscal distress by weakening the scrutiny needed to detect them. Its emphasis on restricting access by the public and oversight institutions to complete loan agreements and debt information can reduce the ability of the public and independent institutions to verify, question and reconstruct the state's financial obligations. This risk is particularly great where confidentiality coincides with weak oversight, weak debt RTI legal frameworks, fragmented debt records, state dependence on financing, or concentrated executive control.

Recommendations

- **Governments should adopt legislation mandating the full, proactive disclosure of complete, transaction-level information related to public debt**. Laws addressing public debt contracting, management and reporting should adopt a clear, comprehensive and consistent definition of public debt. This definition should recognise all the public economic obligations with equivalent functions of debt.
- **Governments should restrict confidentiality in borrowing agreements to narrowly justified exceptions**. Concrete exceptions to the disclosure of information should be clearly defined in RTI frameworks and reinforced through public financial or debt management regulation. This should include clear and narrow definitions of what constitutes confidential information in lending contracts or funding agreements.
- **Governments should expressly grant oversight institutions, including parliaments and supreme audit institutions, access to confidential debt information**. As with classified intelligence or national security information, all relevant

information regarding a lending agreement and related documentation on the negotiation, such as side letters and related escrow or security agreements, should be accessed by relevant oversight institutions – to enable them to effectively hold government to account on financial matters.

- **Implement measures to protect and enable civil society monitoring of debt agreements**. Civil society organisations (CSOs) should have access to sovereign debt agreements, and the capacity to monitor whether they are accessible, what confidentiality provisions they contain and what legal grounds governments invoke for withholding them. CSOs should use RTI requests, parliamentary processes, audit mechanisms and independent review to contest unexplained restrictions.
- **International financial institutions – particularly the IMF and the World Bank, in close coordination with Paris Club Members and the G20 – should develop common standards and model contracts that limit the scope of confidentiality clauses in sovereign debt agreements**. These should ensure that such agreements are consistent with borrower countries' national access to information regulation, particularly provisions on proactive debt disclosure and legal consequences for non-disclosure.
- **Creditors should adopt full transparency provisions, through the disclosure of transaction-level financial and non-financial information to publicly accessible debt databases**. Governments in creditor countries should enact domestic regulations requiring bilateral creditors and private lenders, operating within their jurisdictions, to proactively disclose complete, transaction-level, financial and non-financial information related to public debt.

Caveat

This report draws on sovereign loan agreements obtained from publicly available sources, public databases, responses to access to information requests, and confidential documents made available to the research team. References to contractual provisions are made for research and public interest purposes to examine transparency and accountability in sovereign borrowing. The agreements reviewed are illustrative and are not a representative sample of lending practices, and the report's findings should not be read as conclusions about the conduct of any individual lender or government.

INTRODUCTION

Sovereign debt and the rise of confidentiality clauses

Many countries around the world are facing increased borrowing and consequently a greater risk of debt distress and default. Global sovereign debt reached a record US$111 trillion in 2025, with developing countries accounting for US$35 trillion of this.[2] The cost of servicing such huge debt is rising sharply. In 2025 alone, developing countries spent US$995 billion on net interest payments, while 51 countries spent more on interest than on either health or education.[3]

Across low- and middle-income countries (LMICs), these pressures are particularly significant, as debt servicing absorbs a substantial share of government revenue, while constraining governments' fiscal choices and their capacity to meet public needs. For instance, debt-servicing costs consume approximately 15–18 per cent of government revenue across African countries, with the burden varying considerably, particularly in countries where public debt exceeds 45 per cent of GDP.[4] Critical resources are diverted from essential services, such as public education or healthcare, to pay down debts. As such borrowing decisions commit public resources for years to come, how governments borrow, and on what terms, is a matter of public interest.

Yet the public relevance of sovereign debt is not always matched by transparency in how it is acquired and managed. In many countries, information on borrowing decisions, debt agreements, financial terms and repayment obligations remains inaccessible, and in some cases the very existence of particular loans is not publicly disclosed.[5] When such information is withheld, citizens cannot assess the commitments governments have undertaken on their behalf or their implications for public finances and service delivery.[6] Restricted access also undermines legislative scrutiny, independent audit and public financial management, and limits accountability for decisions with long-term fiscal consequences.

Mozambique's hidden-debt ('tuna bond') scandal aptly illustrates the consequences of opacity in debt scrutiny and transparency. Between 2013 and 2014, three of the country's state-owned companies secretly borrowed over US$2 billion from international banks, including Credit Suisse and VTB, backed by undisclosed government guarantees. Although intended for maritime security and a tuna fishing fleet, some funds were diverted to bribes and kickbacks. Secretive special-purpose vehicles, undisclosed guarantees and circumvention of parliamentary approval concealed the loans and the state's financial exposure. When the debt was exposed in 2016, Mozambique faced a debt crisis, currency depreciation and inflation. International lenders suspended budget support, while the undisclosed liabilities complicated debt restructuring.[7] Although confidentiality clauses did not necessarily cause the concealment, the broader practices of secrecy – including undisclosed government guarantees and the circumvention of parliamentary oversight – restricted public and institutional scrutiny.[8]

The challenges to sovereign debt oversight have become more complex as LMICs diversify their borrowing beyond traditional multilateral institutions, such as the World Bank, the International Monetary Fund and regional development banks, and Paris Club bilateral creditors. Countries are borrowing from a wider range of non-traditional bilateral lenders, commercial banks, export credit agencies and private capital markets. This requires governments to navigate differing, and sometimes conflicting, disclosure requirements across creditors and financing arrangements.

Confidentiality has long been a feature of financial contracting, including sovereign lending, where it can serve legitimate purposes such as protecting commercially sensitive information or national security. The concern is not the existence of confidentiality provisions as such, but changes in their prevalence, scope and effect in sovereign debt agreements. Evidence from AidData's *How China Lends 2.0* illustrates this trend in Chinese policy lending. While only two per cent of the China Exim Bank contracts in the study sample signed before 2014 contained confidentiality

clauses binding borrowers, the proportion rose to 82 per cent among sampled contracts signed between 2015 and 2025.[9] This shift is important, because some clauses extend beyond conventional protections for lender-held information to impose explicit secrecy obligations on sovereign borrowers.

Confidentiality clauses are not confined to Chinese lending. They also appear in other bilateral, commercial, syndicated and multilateral lending, with implications depending on the information protected, the parties bound and the exceptions available.[10] These developments raise a fundamental question for sovereign debt governance about how borrower countries can respond to lender-imposed confidentiality clauses, while safeguarding public debt transparency, meeting their legal obligations and preserving access to financing.

What are confidentiality clauses and why do they matter?

Confidentiality clauses are contractual provisions that regulate the disclosure or use of information in sovereign financing arrangements.[11] Depending on their wording, they may restrict disclosure of the agreement, its financial or commercial terms, creditor information, related documents or the contractual relationship itself. The scope and legal effect of confidentiality clauses vary across creditors and lending instruments, and they may contain exceptions for disclosures required by law or authorised by the parties.

A confidentiality clause therefore does not by itself make an entire loan agreement secret or prohibit disclosure in all circumstances. Contractual confidentiality is also distinct from broader debt opacity, which can result from weak reporting systems, fragmented institutional responsibilities, limited disclosure requirements, weak oversight or administrative non-disclosure, even where no confidentiality clause exists. However, it is important to note that broad confidentiality clauses can also make debt opaque.

Where confidentiality clauses do restrict disclosure, they raise serious concerns, given the scale of public resources at stake. Developing countries' total public debt stock rose from US$31 trillion in 2024 to US$35.1 trillion in 2025, an increase of US$4.1 trillion within a year.[12] Despite the scale and growth of developing country public debt stock, key information on lending decisions, contractual terms, resource allocation and loan conditions is frequently withheld from public scrutiny and oversight.[13] Loan agreements increasingly contain broad confidentiality provisions that prevent borrower governments from sharing key contractual details with legislatures, oversight institutions and the public.[14] Where these provisions are in place, they limit public scrutiny of how debt is contracted, on what terms and for what purpose, weakening transparency, accountability and democratic oversight of sovereign borrowing. This obstructs independent assessments of debt sustainability, creates space for corrupt practices, and in some cases allows creditors to assert claims over strategic assets when borrowers default.

The result is a cycle of unsustainable debt accumulation that undermines domestic stability and complicates international debt restructuring. Heavily indebted countries become more exposed to financial and political pressure.

The scope of the research

Existing studies highlight the importance of debt transparency for fiscal risk assessment, debt sustainability and public accountability, while research on sovereign lending has increasingly examined contractual provisions governing access to information.[15] It identifies general provisions covering the agreements themselves, their financial terms and the information exchanged between contracting parties. Emerging studies show that some Chinese lending contracts contain relatively broad confidentiality provisions, although confidentiality clauses are a common feature of sovereign and commercial lending and are not unique to Chinese creditors.[16]

Less is known about how contractual confidentiality interacts with domestic frameworks and institutions. This includes access-to-information and public financial management frameworks, how debt management and oversight institutions respond to disclosure restrictions, and whether confidentiality clauses are enforced, used as deterrents to disclosure, or mitigated through domestic mechanisms. Constitutional guarantees of access to information and right-to-information legislation provide important transparency frameworks, but their implementation varies, and statutory

exemptions may affect access to government-held information.[17]

Questions over how confidentiality clauses operate when disclosure is challenged also remain unresolved, as do those around what consequences follow from their breach, and whether the clauses create enforceable obligations in practice or operate primarily as deterrents to disclosure.[18] There is also a lack of insights into how bargaining relationships, information asymmetries and institutional incentives shape the adoption and contestation of these clauses. These gaps present a practical challenge to efforts to strengthen debt management and public accountability.

Advocacy for greater transparency requires an understanding of the principles supporting disclosure, and of how contractual provisions operate in practice, how institutions respond to them, and what mechanisms may enable access to sovereign debt information. This study addresses gaps in this understanding by examining the design of confidentiality clauses, alongside the legal, institutional and political-economic conditions shaping their operation across different creditors and lending arrangements. It assesses how these provisions affect access to sovereign borrowing information, and identifies the regulatory, institutional and practical mechanisms that may mitigate their effects. The report identifies ways in which countries can enhance transparency and accountability, even when debt contracts contain secrecy clauses.

The research principally explores how confidentiality clauses in sovereign debt agreements affect transparency, accountability and governance in public debt management – particularly in debt agreements with Chinese and other international lenders. It also examines how these clauses are enforced in practice and mitigated by borrower states. The research also addressed:

- What types of confidentiality clauses are used in sovereign lending agreements across different creditor categories, including bilateral official creditors, multilateral institutions, commercial banks, export credit agencies and bondholders, and how do these clauses vary in scope, restrictiveness, and legal formulation?
- How do confidentiality clauses interact with domestic legal and institutional frameworks, including right-to-information laws, public financial management regimes and parliamentary oversight? To what extent do they align or conflict with these frameworks?
- How are confidentiality clauses interpreted, enforced or circumvented in practice, including by major lenders such as China and other international lenders? Have lenders ever invoked enforcement provisions, such as asset seizure or withholding disbursements?
- What are the perceived or actual legal, financial or political consequences of breaching confidentiality clauses?
- What governance, corruption, fiscal and sovereignty risks arise from opaque debt arrangements, including hidden liabilities, collateralised borrowing and undisclosed sovereign guarantees?
- What legal, institutional and practical mechanisms can borrower countries use to manage, mitigate or counter restrictive confidentiality clauses?
- What roles can international financial institutions (IFIs) and other creditors play in promoting more transparent and accountable lending and borrowing practices?

Methodology

This study approaches confidentiality in sovereign lending as an issue with contractual, legal, governance and political economy dimensions. It examines how contractual rules governing the disclosure of sovereign debt information interact with domestic transparency requirements, oversight institutions, and the interests and incentives of borrowers, creditors and other actors. The research assessed confidentiality clauses by their legal scope and practical effect, including who controls debt information, who can access it, who is excluded and how this affects decision making and accountability. The framework links transparency, accountability and governance:

- *Transparency* requires the proactive disclosure of complete and timely data, as well as public access to information on sovereign debt and the associated obligations and risks.
- *Accountability* concerns the ability of parliament, auditors, civil society and the public to scrutinise borrowing decisions.
- *Governance* addresses the institutional processes through which borrowing is authorised, managed and monitored.

These three dimensions are interrelated. Debt transparency is a precondition for accountability, as parliament, auditors and the public cannot scrutinise borrowing they cannot see, nor assess conditions and liabilities they are not aware of. Governance processes determine who holds debt information and whether it reaches them. Confidentiality clauses become significant where they restrict access to information within these processes, with their practical effect shaped by domestic law, institutional capacity and oversight.

The study also uses a political economy analysis lens to explain how political and economic processes, actors' motivations, institutional relationships and the distribution of power shape transparency outcomes in debt arrangements.[19] In this study, the political economy analysis treats debt information as a governance resource and examines five dimensions: structural factors, institutions, actors and agency, sector governance, and external influences. [20]

At the global level, the analysis considers borrower–creditor bargaining relationships, information asymmetries and creditor incentives in determining contractual terms. At the domestic level, it examines executive decision-making, bureaucratic incentives, institutional capacity, parliamentary and audit oversight and the role of civil society. The analysis also considers why particular confidentiality arrangements emerge, how they are implemented, whose interests they advance or constrain, and how they are challenged or mitigated. It distinguishes formal legal rules from institutional practice, and examines how these interact to shape access to debt information and accountability. This approach connects the legal characteristics of confidentiality clauses with their practical operation and broader implications for public debt governance across different creditor and institutional settings.

To apply this research framework at both national and global levels, this study adopts a qualitative cross-country synthesis approach, combining contractual, legal and documentary analysis with key informant interviews, where available. It examines selected sovereign debt agreements, including publicly available contracts, those formally requested as well as reviewed on a confidential basis, alongside legislation, regulations, public financial management and right to information frameworks, debt reports, institutional records and relevant secondary sources.

The research focuses on Malawi, Sri Lanka and Venezuela, to compare the regional variation in debt composition, international creditors and creditor relationships, institutional arrangements and transparency environments.

The research applied a common analytical framework across the three countries to assess contractual provisions, legal and institutional frameworks, access to debt information, enforcement and compliance, and the factors shaping disclosure and non-disclosure. Evidence was triangulated across contracts, legal and institutional sources, interviews and secondary materials to distinguish formal rules from practice and identify common patterns and country-specific differences. In total:

- At the global level, the research focused on understanding trends on confidentiality clauses, with information obtained through desk research, a review of **12** contracts (six from other countries and six from the three case-study countries) and **five** interviews. The global experts represented sectors including civil society, research and academic institutions.
- At national level, a total of **29** loan-related agreements were sighted or examined, comprising 11 in Venezuela (including agreements, amendment protocols and an amendment), eight in Malawi and 10 in Sri Lanka. In addition, **26** key informant interviews were conducted across the three countries: 10 in Venezuela, eight in Malawi and eight in Sri Lanka. The country experts were drawn from various sectors, and included government officials, debt specialists and civil society representatives.

The study has several limitations. Access to underlying debt contracts and other primary information was uneven across the three countries, particularly where agreements were not publicly available or formal right to information requests did not produce the required documents. This resulted in greater reliance on institutional and secondary evidence in some cases. Some agreements could not be obtained, and others were reviewed on a confidential basis, with their sources not identified in this report. Interview evidence also reflects the availability and perspectives of respondents. These limitations are addressed through triangulation and by distinguishing documented evidence from stakeholder and secondary accounts.

GLOBAL FINDINGS: CONFIDENTALITY ACROSS SOVEREIGN LENDING

Overview of the global creditor landscape

Sovereign borrowing takes place across a diverse creditor and financing landscape. Actors include bilateral governments and their lending agencies, including Chinese policy banks and other official lenders; multilateral institutions; commercial and syndicated lenders; sovereign bondholders; export credit agencies, and other official and private creditors.[21] This diversity has expanded the range of financing relationships through which governments can mobilise public resources, and has also produced different contractual approaches to the treatment and disclosure of debt information. For instance, AidData's database of 100 Chinese loan contracts covering 24 developing countries found that 90 per cent contained some form of confidentiality provision.[22]

These financing relationships are governed through different combinations of standardised documentation and transaction-specific negotiation. Some creditors, such as international multilateral lenders, rely predominantly on established contractual templates.[23] Others, including some bilateral lenders, negotiate terms more extensively. Many agreements combine standard provisions with negotiated modifications, including confidentiality provisions, which vary in wording, scope, exceptions and restrictiveness.[24] However, their repeated use within particular creditor relationships can produce recognisable contractual patterns and expectations about what information is protected, who may access it, when disclosure requires consent and what exceptions are available. These patterns are relevant to transparency because they shape the contractual boundary between information held by the creditor and the borrower, and information available to domestic oversight institutions and the public.

The existence of a confidentiality clause does not establish that a loan agreement is wholly undisclosed, or that its terms are uniformly restrictive.[25] Its practical relevance depends on the particular provision and its interaction with the borrower's legal and institutional framework across financing relationships. Bilateral and Chinese official lending is generally characterised by a direct creditor-borrower negotiation, placing considerable importance on the relative bargaining positions of the parties and on the domestic institutions responsible for recording and disclosing the resulting debt.[26] This often reflects the creditor's interest in protecting contractual and commercial positions and, in some cases, maintaining control over information about the lending relationship. It also operates within a competitive international financing environment in which creditors have incentives to protect information about their transactions.[27]

Borrowers may likewise have incentives to limit disclosure, including preserving flexibility in current or future negotiations, protecting sensitive financing relationships or avoiding political contesting of borrowing decisions.[28] Information may therefore remain concentrated among a relatively small number of actors, even where the underlying liability is a public obligation.

Multilateral lending presents a different institutional design and pattern. Multilateral creditors operate through established governance and disclosure frameworks that provide greater structure around the treatment of information, although the balance between confidentiality and disclosure differs across institutions and instruments.[29] Confidentiality is situated within broader institutional policies governing access to information, rather than relying exclusively on transaction-specific bargaining. Commercial and syndicated lending presents another structure. Lenders have legitimate interests in protecting commercially sensitive information, market positions and

information relating to other participants in a financing syndicate.

Confidentiality provisions are more closely connected to market practice and lender information rights, while obligations between borrowers, arrangers and participating lenders may differ from those found in some official lending contracts. Sovereign bonds are subject to market and securities-disclosure requirements that provide a broader investor-facing channel of information, while Export Credit Agency finance and other official financing may involve several agencies, lenders and project entities, potentially dispersing responsibility for information and oversight.

Table 1

Financial Relationship	How debt information is handled
Bilateral (including Chinese official lending)	Direct negotiation; potentially concentrated information; contractual confidentiality may place significant disclosure restrictions on the borrower.
Multilateral	Institutional disclosure and access-to-information frameworks structure the treatment of confidential information.
Commercial / syndicated	Protection of commercially and market-sensitive information; information distributed among lenders, arrangers and borrowers.
Sovereign bonds	Market and securities-disclosure mechanisms provide information to a broader investor base.
Export Credit Agencies / other official	Multiple public and private actors can create dispersed responsibility for information, reporting and oversight.

Governments do not select financing sources in a linear way, following identical terms or from equal bargaining positions. Financing choices may reflect the availability, cost, speed and scale of funding; development priorities; refinancing pressures, existing creditor relationships and the availability of alternative sources of finance. Where fiscal or financing constraints increase dependence on particular creditors or instruments, borrowers may have less room to negotiate not only financial terms, but also contractual provisions governing the disclosure and use of debt information.[30]

Likewise, creditors have institutional, commercial and risk-management interests that can shape expectations about confidentiality, information sharing and disclosure.

Where alternative sources of finance are available, borrowers may have greater scope to negotiate disclosure provisions or resist restrictive confidentiality terms.[31] If alternatives are limited, financing dependence may narrow that space and strengthen the creditor's bargaining position. However, confidentiality is not driven by creditor preferences alone. Borrower governments may also favour broad confidentiality clauses to preserve executive discretion, limit scrutiny or retain control over debt-related information.[32]

This means that confidentiality can affect more than the visibility of individual loan agreements. It is part of the broader distribution of information and bargaining power between creditors and borrowers, and within domestic institutions responsible for public debt. Transparency is part of the informational infrastructure through which governments, oversight institutions, creditors and markets assess risk, exercise accountability and negotiate the distribution of adjustment. The country analyses under Section 3 illustrate these different motivations in greater detail.

The global transparency landscape

INTERNATIONAL STANDARDS AND INSTRUMENTS

Transparency is important to public debt governance because relevant institutions and public actors need

sufficient, timely and reliable information to understand, scrutinise and assess public borrowing and its consequences.[33] Timely information on loan terms, guarantees and other contingent liabilities enables parliament, audit institutions, debt managers, civil society and the public to assess whether borrowing has been properly authorised, recorded and reported. It also reduces information asymmetries and opportunities for misuse of public resources. Reliable and comparable debt information also enables creditors and markets to assess sovereign risk, providing greater certainty about public obligations and supporting confidence in understanding of sovereign debt. It is especially important during debt distress and restructuring, when creditors require a sufficiently complete picture of sovereign liabilities to assess repayment capacity, negotiate restructuring terms, and consider creditor coordination and equal treatment.

The standards and instruments that promote transparency in international debt do not constitute a single set of rules, but a layered system produced by institutions with different mandates and interests within the international financial architecture. Together, these standards and instruments aim to make sovereign borrowing more measurable, manageable and predictable, but they allocate responsibility for transparency differently (see table 2).

Overall, these international transparency standards and instruments encourage the publication of debt-related information and strengthen reporting and monitoring practices, but are voluntary by nature, and generally leave decisions on the disclosure of specific loan agreements to domestic legal frameworks and contractual arrangements.[34]

Who benefits from the current international transparency architecture?

The current architecture facilitates the production of information that international financial institutions need to assess sovereign risk, make lending decisions and secure repayment, while leaving the contractual terms governing public borrowing insufficiently accessible to legislatures, oversight institutions and citizens. In effect, the standards leave substantial control over loan-level disclosure with borrowers and creditors, rather than directly addressing the contractual confidentiality practices that restrict access to this information.

This creates a distribution of power with far-reaching consequences. Standard-setters establish the normative architecture, but borrowers and creditors retain much of the practical power to determine what information enters the public domain.[35] Borrower governments may have incentives to disclose information to demonstrate fiscal credibility and satisfy oversight requirements, but may also prefer confidentiality, to preserve their negotiating flexibility or executive control. Creditors may benefit from transparency that improves risk assessment and market discipline, while retaining an interest in confidentiality where disclosure could affect commercial interests, bargaining positions or contractual autonomy. International financial institutions benefit from reliable information for surveillance, debt sustainability and crisis management, but their standards generally operate through domestic implementation, rather than directly displacing the contractual rights of creditors and borrowers.

The resulting framework serves different interests. It strengthens public accountability and borrowers' capacity to manage debt, and supports creditors and markets through greater information and predictability. It also protects the functioning of the international financial architecture by improving the information available for surveillance and debt sustainability assessment. But it does not fully resolve the underlying allocation of information – and therefore of power. Voluntary standards, broad confidentiality exceptions and reliance on domestic implementation leave space for actors with greater contractual or institutional bargaining power to influence what is ultimately disclosed.

Table 2

Standard or instrument	Purpose	Effect on debt transparency
IMF Fiscal Transparency Code	Establishes standards for fiscal reporting, forecasting, management of fiscal risks and resource revenues.	Strengthens transparency of public finances and debt-related risks. It does not require public disclosure of underlying sovereign loan agreements.
World Bank Debtor Reporting System	Collects loan-by-loan information on external debt from borrowing countries for inclusion in International Debt Statistics.	Improves the availability and comparability of public debt information through borrower reporting.
World Bank Debt Management Performance Assessment	Assesses and strengthens countries' debt-management institutions and practices.	Enhances governments' capacity to record, manage and report debt. It focuses on institutional capacity rather than public disclosure of individual debt contracts.
World Bank Sustainable Development Finance Policy	Links International Development Association financing with reforms that improve debt sustainability and transparency.	Creates incentives for debt transparency reforms, although implementation remains driven primarily by borrower governments.
2017 G20 Operational Guidelines for Sustainable Financing	Promote sustainable financing practices among official creditors and sovereign borrowers.	Encourage disclosure of lending terms and avoidance of confidentiality clauses, but on a voluntary basis.
Institute of International Finance (IIF) Voluntary Principles for Debt Transparency	Establish transparency expectations for private-sector sovereign lending.	Extend transparency responsibilities to creditors and encourage transaction-level disclosure, but remains voluntary.
OECD Debt Transparency Initiative	Collects and publishes debt data reported by private creditors under the IIF Principles.	Increases the availability of debt information and supports transparency efforts It depends on voluntary creditor participation and disclosure.
UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing	Define shared responsibilities for both sovereign borrowers and creditors and promote responsible financing practices.	Rebalance responsibility for transparency between borrowers and lenders, but without creating enforceable disclosure rights.

LEGAL PRINCIPLES AND RIGHTS FRAMEWORKS AFFECTING CONFIDENTIALITY IN INTERNATIONAL CONTRACTS

International transparency standards operate alongside principles and rules of contract and public law that shape who controls information on sovereign debt and whether confidentiality restrictions can be challenged. Modern transnational contract principles were developed substantially from European mercantile and commercial legal traditions, where private autonomy, property rights, contractual certainty and market predictability were central to commercial exchange.[36] Freedom of contract and party autonomy provide the legal basis for confidentiality clauses, but formal consent does not establish equal bargaining power.[37] Transnational contract principles – including those reflected in the Principles of International Commercial Contracts issued by the International Institute for the Unification of Private Law (UNIDROIT) – emphasise contractual autonomy and predictability.

In sovereign borrowing, these principles operate in a public-finance context where contractual obligations affect public resources, while public-law and human rights frameworks provide potential grounds for challenging restrictions on access to information.[38] Contract law may also permit challenges to restrictive provisions on recognised grounds, such as grossly unfair terms or public policy, depending on the applicable law. In practice, the scope for borrowers and oversight institutions to contest confidentiality depends on bargaining power, legal capacity, governing law, dispute-resolution arrangements and access to effective review.

Governing law, jurisdiction and arbitration help determine how confidentiality provisions are interpreted and enforced. These arrangements are found across different international creditor relationships – including bilateral and commercial syndicated lending, where the use of arbitration and litigation is the norm – although their form and implications vary. The contracts reviewed for this study illustrate this variation. Among the Chinese agreements in the global sample, two provide for arbitration through the China International Economic and Trade Arbitration Commission (CIETAC) in Beijing, one for arbitration at the Singapore International Arbitration Centre and one for arbitration at the London Court of International Arbitration. The choice of forum has a particular political and economic significance, determining the institutional and procedural setting for resolving disputes. The use of a forum familiar to a creditor does not establish bias, but it may reinforce existing differences in bargaining power if borrowers are less familiar with the forum or have fewer resources to challenge contractual terms. Governing law similarly shapes the interpretation of confidentiality obligations, while sovereign immunity and any applicable waivers affect the remedies available to creditors and the enforceability of claims against states.

Public law, anti-corruption and human rights frameworks provide a counterweight to contractual confidentiality by offering grounds on which disclosure restrictions may be challenged. Under Article 13 (b) of the UN Convention against Corruption (UNCAC), states parties commit to taking appropriate measures to ensure that the public has effective access to information. Article 19(2) of the International Covenant on Civil and Political Rights protects the freedom to seek, receive and impart information, while Article 9 of the African Charter on Human and Peoples' Rights protects the right to receive information. This is further developed through the African Commission's Declaration of Principles on Freedom of Expression and Access to Information in Africa. Relevant protections for access to information in appropriate circumstances are also provided under Article 13 of the American Convention on Human Rights and Article 10 of the European Convention on Human Rights.

These frameworks do not guarantee publication of every sovereign loan agreement, but they require applicable legal standards to be considered when access is restricted. The practical effect of these protections depends on domestic law, the scope of statutory exemptions, institutional independence and the availability of effective administrative or judicial review. Contractual confidentiality and claims of commercial confidentiality, national security or international relations do not automatically settle whether information should be disclosed. Where independent oversight bodies can scrutinise restrictions, they can limit executive and creditor control over public debt information. However, where such review is weak, that control is more likely to persist. For borrower countries, this means that the scope of a confidentiality clause, including any exceptions permitting disclosure to specified actors (carve-outs) for parliament, audit institutions and the public, matters most at the negotiation stage. Those carve-outs, in turn, are only effective where domestic law requires disclosure.[39]

Global patterns in confidentiality clauses

Confidentiality clauses are a recurring feature across many loan agreements, making them a cross-market concern for sovereign debt transparency. Studies of the occurrence of confidentiality clauses reveal their presence in 39 per cent of multilateral contracts sampled, and in approximately 33 per cent of contracts involving bilateral creditors and commercial banks.[40] Chinese loans reviewed are more likely to have far-reaching confidentiality provisions.[41]

Key experts interviewed for the global analysis in this study indicated that the issue extends beyond a single lender. While earlier research had found that Chinese lenders imposed broader borrower confidentiality obligations than other lenders examined at the time, later work identified very similar language in French development finance agreements. It also found differences among Chinese lenders themselves, with China Development Bank provisions closer to those of large commercial banks than to those of China Exim Bank.[42] Interviewees identified competition between creditors as a motive for confidentiality across creditor types, including private creditors in debt restructurings and debt swaps,[43] and cautioned against assuming that Chinese creditors are necessarily more or less transparent than other lenders.[44] One interviewee described the Chinese confidentiality clauses they were aware of as particularly restrictive, while stressing that research on commercial and multilateral lending was still developing.[45] Contractual restrictiveness and actual disclosure may also diverge: experts indicated that in some cases, Chinese bilateral loan texts are now more public than some commercial bank agreements.[46] Some interviewees noted that confidentiality obligations may sit inside letters and related escrow or security agreements rather than the main loan agreement, and that contractual restrictiveness does not always match actual disclosure in practice.[47]

To complement these studies and insights from five global experts, the study examined 12 contracts involving lenders including Chinese, European, Indian, Brazilian and multilateral institution. The contracts covered multilateral, bilateral, commercial and syndicated lending, with borrowers from Africa, Latin America, the Caribbean and Asia. Of these contracts, six were from the three studies profiled in this report. The sample is illustrative rather than representative, but it does demonstrate that confidentiality clauses are not confined to Chinese lending or a single financing model.

PREVALENCE AND VARIATION ACROSS CREDIT MARKET SEGMENTS

Confidentiality provisions recur in bilateral, commercial, syndicated, resource-backed and multilateral lending.

Bilateral lending

Within bilateral lending, the research found confidentiality provisions in all the China Exim Bank agreements examined for the Philippines,[48] Uganda[49] and Barbados;[50] in the Guyana–Bank of China agreement,[51] and in the Agence Française de Développement (AFD) agreement with Sri Lanka (see country findings below).[52] The scope and allocation of obligations under these provisions differ. The China Exim Bank agreements examined include broad borrower-facing restrictions, while clause 33 of the Guyana-Bank of China agreement imposes confidentiality obligations on the lenders and agents rather than the borrower. The AFD agreement contains confidentiality clauses pertaining to both borrower and lender, but the restrictions apply largely to the borrower. They cover information on financing, projects and negotiations, as well as supporting documents. The agreement gives greater leeway over disclosure to the lender's government, and allows recognised third parties, such as advisers and state agencies, clear access to the contract, where similar provisions are not made for the borrower. This shows that broad confidentiality is not exclusive to Chinese creditors.[53]

The bilateral sample demonstrates the recurrence of confidentiality across Chinese and European state-backed lending, with differences in the extent to which borrowing governments are restricted from disclosing financing information. These differences affect the balance of control between creditors and borrowers, particularly where voluntary disclosure requires creditor consent.

Commercial lending

Commercial lending shows a prevalence of confidentiality provisions within sovereign debt arrangements. The available contractual evidence

indicates a more lender-focused approach than the broad borrower-facing restrictions found in some bilateral agreements.[54] Such provisions protect information received or held by financial institutions, although the precise obligations differ between agreements. In syndicated lending, the contracts such as Deutsche Bank AG, Mitsubishi UFJ Financial Group (MUFG) Bank Limited & UK Export Finance Limited agreement with Sri Lanka contain confidentiality provisions that permit information sharing among lenders, their affiliates, advisers, auditors and other financing parties.[55] Borrowers may also waive or modify certain banking-secrecy protections to facilitate the circulation of sensitive financial information within the lending syndicate. Confidentiality serves the practical requirements of credit assessment, loan administration and the transfer of exposures. It is not necessarily symmetrical between borrower and lender, as the extensive information sharing among lenders is not always reflected in an equivalent right for the borrowing government to publish the agreement. The prevalence of confidentiality in commercial lending is thus associated with both the protection of lender-held information and the contractual arrangements required to coordinate multiple creditors.

Resource-backed lending

In resource-backed lending, confidentiality provisions often sit alongside repayment arrangements linked to commodity sales, such as oil revenues channelled into accounts that service the debt. Both lenders and borrowers may have interests in limiting disclosure of financial terms, negotiations, repayment mechanisms and supporting documents, given the economic and political sensitivity of financing tied to strategic commodities and public revenues. Such restrictions can make it difficult for legislatures, auditors and the public to establish how commodity revenues are allocated to debt service. For example, in Ecuador, reporting in 2022 indicated that two of seven Chinese bank loan agreements linked to oil sales were publicly available, while five remained confidential, despite the public availability of related oil pre-sale agreements.[56] Confidentiality in resource-backed financing therefore extends beyond individual loan contracts to the wider arrangements connecting public borrowing, commodity sales and repayment.

Multilateral and development finance

Confidentiality is present in multilateral and development-finance arrangements, but does not uniformly place broad restrictions on the borrower. For instance, the agreement between Colombia (Empresas Públicas de Medellín EPM) and the Inter-American Investment Corporation (IDB Invest) contains a confidentiality clause[57] requiring IDB Invest to protect confidential information. The World Bank and IDA agreements in Malawi contain comparatively limited confidentiality restrictions. Institutional disclosure policies and provisions permitting disclosure for oversight or other authorised purposes can preserve access to information. Nevertheless, multilateral lending is not uniformly less restrictive. The scope of confidentiality depends on the institution, the negotiated contractual terms and the borrowing government's preferences. The agreements examined demonstrate variation within this segment, rather than a single multilateral approach.

International sovereign bonds

International sovereign bonds present a different disclosure context. Their treatment depends partly on whether issuance is public or private.[58] Public offerings ordinarily disclose principal borrowing terms through prospectuses and offering documents, whereas private placements may involve more restricted circulation of transaction materials. Confidentiality may also apply to pre-issuance negotiations, draft documents, due diligence and exchanges among issuers, underwriters, advisers and investors. These restrictions, often imposed by underwriters, are not equivalent to confidentiality over final bond terms. No express confidentiality clauses were identified in the public bond prospectus examined. However, this does not establish how common or uncommon such clauses are across the wider market, and their prevalence remained undetermined rather than absent.

CONTRACTUAL DESIGN AND THE ALLOCATION OF CONTROL OVER INFORMATION

The design of confidentiality clauses results from a combination of information coverage, asymmetry between parties, consent requirements, recipient-specific exceptions and duration. For this reason, they vary across sovereign lending markets, but their central significance lies in how they allocate control over

financial information between creditors, borrowing governments and public oversight institutions. Six features shape this allocation: the scope of protected information, the parties bound, the duration of confidentiality, exceptions permitting disclosure, requirements for prior consent and the permitted recipients.

Together, these features determine who can access and share loan information, who must seek permission to disclose it, and whether parliament, auditors and the public can scrutinise the resulting public debt. The global contracts reviewed vary in each of these features.

The contracts examined as part of the study demonstrate substantial variation, so the presence of a confidentiality clause alone does not establish its restrictiveness or purpose. Confidentiality is not a uniform contractual arrangement across various lenders and debt agreements. The most important distinction is between clauses that protect defined commercial information and those that give lenders substantial control over the borrower's ability to disclose the agreement and associated information.

The scope of protected information varies considerably across the various bilateral loan agreements examined. The China Exim Bank agreements with the Philippines, Uganda and Barbados cover loan terms and related information, but differ in their disclosure exceptions. All three require prior written consent from the lender for disclosure to third parties, unless disclosure is required by law.[59] The Philippine agreement expressly identifies Philippine laws, regulations, rules and orders of courts, tribunals, agencies and regulatory bodies as part of an exception for disclosure. This specificity may affect contractual interpretation and demonstrates that Chinese lenders do not use identical formulations for confidentiality clauses across borrowers.

Other arrangements demonstrate less restrictive or differently structured approaches. For example, the Venezuelan agreement with the Brazilian Development Bank (BNDES) of 2004 permits disclosure in legal and court-related circumstances, and no substantive confidentiality clause was identified in the BNDES financing examined for 2010–2013.

The Ghana syndicated facility places obligations on the lenders to protect information received from the borrower and permits extensive sharing within the financing structure.[60] However, the World Bank and IDA agreements examined in Malawi contain comparatively limited restrictions. These differences show that confidentiality cannot be assessed by the presence of a clause alone, and its implications depend on the information covered, the exceptions available and the rights retained by borrowers and public institutions. The precise scope of confidentiality must be established from each contract, rather than being generalised across bilateral, commercial, syndicated, resource-backed and multilateral lending.

The parties bound by confidentiality clauses and their respective disclosure rights also vary. The China Exim Bank clauses examined place the restriction only on the borrower, who generally requires lender consent to disclose protected information, unless a specified legal exception applies.[61] Some Venezuelan China Development Bank (CDB) arrangements (2010, 2012, 2013, 2014 and 2015) impose reciprocal obligations, but these do not necessarily provide equal disclosure rights. The Sri Lankan-AFD agreement is particularly asymmetric. The borrower is the principal party bound, with a more limited lender obligation and provisions extending to government agencies. Contractors and third-party agents are not expressly covered in the coded provisions. Commercial and syndicated agreements also permit information sharing among lenders, affiliates, professional advisers, auditors and prospective financing participants. The Ghana syndicated facility illustrates this model: its confidentiality clause allows for information to be shared among finance parties for the purposes of the financing, while placing no obligation on the borrower. The confidentiality obligations are placed on the lenders and their affiliates such as underwriters, financing partners, among others. The Indian bilateral lending represented by the State Bank of India (SBI) agreement with Sri Lanka only provides disclosure ability by the lender, although the available material does not establish the precise obligations imposed on borrowers, agents, advisers and contractors.[62] By contrast, the World Bank's institutional disclosure framework avoids strongly borrower-facing confidentiality clauses.

Generally, the agreements demonstrate distinct allocations of responsibility and access, from borrower-facing restrictions to reciprocal – but unequal – obligations and lender-focused information sharing. The evidence does not establish that all agreements bind lenders, agents and advisers in the same way.

Table 3

Lender	Borrower	Governing law	Dispute resolution
China Exim Bank[63]	Uganda	Chinese law	China International Economic and Trade Arbitration Commission (CIETAC), Beijing
China Exim Bank[64]	Barbados	Chinese law	China International Economic and Trade Arbitration Commission (CIETAC), Beijing
China Exim Bank[65]	Philippines	Chinese law	Singapore International Arbitration Centre (SIAC)
Bank of China[66]	Guyana	English law	London Court of International Arbitration (LCIA)
Bank of China, with Ghana International Bank plc as Initial Mandated Lead Arranger[67]	Ghana	English law	London Court of International Arbitration (LCIA)
IDB Invest[68]	Colombia (EPM)	New York law	New York courts
Chinese Development Bank (2011)[69]	Venezuela (BANDES, PDVSA)	English law	International arbitration, Singapore International Arbitration Centre (SIAC)
BNDES (2004)[70]	Venezuela	Brazilian law	Courts of Rio de Janeiro, with optional ICC arbitration
Agence Française de Développement[71]	Sri Lanka	French law	(United Nations Commission on International Trade Law) UNCITRAL arbitration
Deutsche Bank/ MUFG Bank Ltd[72]	Sri Lanka	English law	Litigation
UniCredit Bank Austria AG[73]	Sri Lanka	English law	Singapore International Arbitration Centre (SIAC)

GOVERNING LAW AND DISPUTE RESOLUTION

The contractual allocation of disclosure rights differs from the legal framework that governs disputes and breaches. The agreements examined use different governing laws and dispute-resolution mechanisms. These shape how contractual obligations may be interpreted and contested, but do not determine disclosure rights on their own.

The CDB agreements reviewed for Venezuela moved from English law and international arbitration in 2011, then to mixed domestic and Chinese legal elements

with diplomatic resolution and friendly consultation in 2012, 2014 and 2015. [74]

This variation demonstrates that rather than depending on creditor identity alone, the legal consequences of confidentiality clauses and their dispute depend on the leverage, the type of borrower and the interests and bargaining power of the lenders to push for favourable terms, and the borrower to resist them.

Justifications for confidentiality

The main justifications for confidentiality include protecting commercially sensitive information, preserving negotiating positions, managing third-party information and facilitating information sharing among financing parties.[75] These purposes can be legitimate. Commercial lenders and syndicate participants need to exchange information to assess risk and administer facilities, while governments and creditors may have reasons to protect draft terms and negotiating strategies before a transaction is finalised.

However, the legitimacy of these interests does not automatically justify restrictions extending to the entire loan agreement, repayment arrangements, collateral, guarantees or other information necessary for public debt oversight. The central questions are whether the protection is proportionate to the interest being protected, and whether disclosure exceptions preserve access for institutions exercising public accountability functions. The Venezuela-CDB agreements illustrate this in resource-backed financing: where confidentiality extends to repayment channels, oil revenues or related obligations, access to the loan amount alone may be insufficient to establish the full fiscal exposure. [76]

The implications extend beyond the contractual relationship between lender and borrower. Borrower governments may value discretion over disclosure to preserve negotiating flexibility, avoid public controversy or advance financing arrangements without delay. Where executive officials negotiate and administer borrowing, and legislatures, auditors and the public depend on those officials for access, confidentiality can reinforce the concentration of practical information control within the executive and the creditor relationship. Creditors may have established channels for sharing information among themselves, while borrower-facing clauses may make external disclosure dependent on consent or narrowly defined exceptions. This asymmetry can complicate independent scrutiny and coordination among creditors, particularly where several loans, guarantees or repayment arrangements affect the same public finances. Targeted protection of commercially sensitive information becomes more consequential when extended to core loan terms, collateral, repayment mechanisms and other information required for public oversight – particularly where voluntary disclosure depends on creditor consent. The governance concern arises where contractual restrictions, institutional barriers and unequal bargaining power combine to limit independent scrutiny of sovereign borrowing.

Confidentiality in practice: disclosure, enforcement and institutional oversight

The practical effects of confidentiality clauses depend on domestic disclosure obligations, international transparency standards, creditor policies, institutional oversight and the financial relationship between borrower and creditor. Three questions are central to assessing these effects:

- Who can access the complete agreement?
- Who can authorise its public disclosure?
- What consequences follow when disclosure conflicts with contractual restrictions?

Access to sovereign debt information depends on institutional authority and the rights established by domestic law and loan agreements.[77] Parliaments may receive summaries of loan terms without seeing the complete executed agreement.[78] Supreme audit institutions may inspect agreements under their audit mandates without having equivalent authority to publish them. Courts and regulators may obtain documents through statutory powers, while international financial institutions and other creditors may receive information for monitoring, credit assessment or debt restructuring. Access for a particular purpose does not establish an unrestricted right to circulate or publish the information.

The contracts examined illustrate these distinctions. The Ghana syndicated facility permits extensive information sharing among lenders, affiliates, advisers, auditors and prospective participants, supporting credit assessment and loan administration without establishing an equivalent right for the borrower to publish the agreement.[79] The commercial-lending

agreements involving Deutsche Bank, Japanese financier MUFG and UniCredit also contain provisions governing lender disclosure, including sharing with specified advisers, branches and institutional recipients – although the available evidence does not establish the full scope of their confidentiality obligations. By contrast, the bilateral AFD loan contract imposes broader confidentiality restrictions, conditions public disclosure and limits parliamentary access unless disclosure is legally required.[80] These confidentiality obligations also continue after repayment. Such arrangements can create unequal access to the same transaction. Financing parties may exchange information, while parliament lacks the complete agreement, auditors cannot necessarily publish what they inspect, and other creditors may receive information unavailable to citizens. Such differences can weaken legislative scrutiny, independent audit and public accountability, particularly where loan terms concern collateral, repayment arrangements, guarantees or resource revenues.

At the global level, despite the presence of international standards, it is domestic law and institutional practice that determine how far formal access rights translate into actual disclosure. Access-to-information legislation, parliamentary powers and audit mandates may provide legal grounds for obtaining debt agreements, but their effectiveness depends on the authority of the institution concerned, administrative cooperation, the completeness and location of records, and the willingness and capacity to exercise those powers.[81] Where the executive controls negotiation, custody and disclosure of loan agreements, other institutions may be dependent on the cooperation of the same officials whose borrowing decisions they are expected to scrutinise. Confidentiality clauses can reinforce this concentration of control, alongside administrative restrictions and political decisions to withhold information.[82]

International transparency standards and creditor policies also shape the environment in which these decisions are made, but their effect depends on how they apply to a particular transaction. A standard incorporated into a loan agreement may create a contractual disclosure obligation or exception. An institutional policy may govern a creditor's own publication practices, and a broader transparency standard may influence lending practice without creating an enforceable contractual right for the public.

These mechanisms should not be conflated. Where a creditor is itself an international financial institution, its disclosure policy may directly govern publication of its financing documents. Where a private or bilateral lender is involved, the borrower's access and disclosure rights depend on the applicable domestic law, the contract and any relevant institutional commitments. International standards do not automatically override contractual restrictions or guarantee public access. Publication of the commodity arrangements does not reveal the full contractual structure of associated borrowing, including repayment channels and the allocation of resource revenues. Where financing is linked to future commodity proceeds, scrutiny of the pre-sale agreement alone cannot provide a complete account of the public obligations and financial arrangements involved.

At an operational level, confidentiality provisions function through contractual remedies, administrative compliance and the broader relationship between borrower and creditor. Some agreements establish potential consequences for breach, while others rely on consent requirements and exceptions to determine when disclosure is permitted. Even without formal proceedings, officials may seek lender approval, limit circulation or withhold publication, to avoid a contractual dispute or damage to a continuing financing relationship.[83] This anticipatory compliance can affect access to information before a creditor invokes any remedy.

Dispute-resolution mechanisms, as discussed above, must be distinguished from contractual remedies. Arbitration, litigation, consultation and diplomatic engagement are routes for addressing disputes, while an acceleration clause[84] is a potential consequence of a contractual default. The AFD agreement, for example, links a confidentiality breach to an event of default and contains an express acceleration provision. Where these terms create potential consequences subject to the agreement's conditions and applicable law, it does not mean that every disclosure automatically triggers default or acceleration. The availability of a remedy does not establish that a creditor has invoked it or that it has been enforced.[85]

The practical operation of confidentiality extends beyond formal court proceedings. Disputes may be handled privately or through diplomatic channels, while officials may comply with restrictions without creditor intervention. Conversely, borrowers may disclose information through statutory exceptions or other permitted routes without triggering a dispute. Formal enforcement, informal pressure and routine compliance are therefore distinct mechanisms.

Global patterns and implications

Confidentiality provisions vary across creditors, financing structures and individual agreements. The relevant distinctions concern the information protected, the parties bound, the duration of the obligation, the exceptions available and the conditions attached to disclosure. A clause covering the entire agreement may restrict public access; a clause focused on commercially sensitive information may permit disclosure of the agreement's existence or specified terms. Exceptions for legal requirements, regulatory purposes, audit or other authorised disclosures can preserve routes to scrutiny, but their practical value depends on their wording and on whether the relevant institution can exercise its authority. A requirement for prior lender consent places the disclosure decision partly within the financing relationship, whereas a clear legal-disclosure exception can protect the borrower's ability to comply with mandatory public law obligations. A lender's banking-secrecy or confidentiality rules may govern how it handles borrower information, but these do not automatically prohibit the borrower from publishing the agreement, nor do they establish that lender consent is always required. The effect depends on the applicable law, the information concerned and the contract’s disclosure provisions.

Where commercially sensitive information requires protection, narrowly defined exceptions can preserve legitimate confidentiality while allowing parliamentary scrutiny, audits, regulatory compliance and public accountability.

However, government preferences are not uniform. Governments may favour publication to demonstrate accountability, enable legislative scrutiny, respond to public pressure or support debt restructuring. They may seek creditor consent, rely on statutory disclosure obligations, invoke contractual exceptions or negotiate financing with different transparency requirements. Alternative financing can strengthen a borrower's bargaining position, while dependence on a particular lender can narrow its room for manoeuvre. These incentives interact differently across lending relationships, but where executive discretion is high and oversight is weak, creditor dependence can constrain disclosure, while alternative financing and domestic accountability pressures can strengthen governments’ ability and incentives to pursue transparency.

KEY FINDINGS FROM MALAWI, VENEZUELA AND SRI LANKA

Prevalence and nature of confidentiality clauses

Key finding: Confidentiality clauses are common across creditor types, but vary in how restrictive they are.

The contracts reviewed across Sri Lanka and Venezuela show that confidentiality clauses are not confined to one creditor or type of lending. They appear in Chinese policy bank agreements, but also in agreements with the State Bank of India, European commercial lenders, AFD, BNDES and the World Bank. What differs is not whether confidentiality is present, but how far it reaches: the information covered, whether lender consent is required for disclosure, how long the obligation lasts, and which exceptions are available for parliament, auditors and regulators. Variation also occurs within the same creditor and the same borrower. This suggests that confidentiality is shaped by creditor practice, contractual templates, financing needs and bargaining power in each transaction, rather than by the creditor's nationality alone.

The evidence from Malawi, Sri Lanka and Venezuela examines the frequency, types and variation of confidentiality clauses across creditors and financing instruments, while considering how factors including financing relationships and bargaining conditions shape their inclusion and form. It shows that confidentiality clauses are present across different forms of sovereign lending, but their prevalence, scope and practical effect vary considerably by creditor and financing relationship. The evidence does not support a single model of sovereign loan confidentiality.

In **Malawi**, the four World Bank agreements examined contain confidentiality provisions that are broadly consistent but relatively limited in effect. They do not appear to prevent disclosure to Parliament, regulators or other public authorities where disclosure is otherwise permitted, and the World Bank contractual framework provides institutional constraints on the use of confidentiality as a barrier to public accountability.

The position is different for the Chinese agreements requested from Malawi's Ministry of Finance. The agreements themselves were not made available for assessment, and officials referred to confidentiality provisions when explaining why the contracts could not be accessed, while related project documentation was available.

The Malawi evidence therefore shows an important distinction between the presence of a confidentiality clause and its practical transparency effect. The World Bank agreements contain confidentiality, but the contractual and institutional framework places clearer limits around its use. In the Chinese lending relationship, the stated existence of confidentiality appears to have had greater significance for access to the underlying contracts. This difference also reflects the position of the Ministry of Finance as the institution holding and administering sovereign loan documentation. Where the institution controlling access interprets confidentiality restrictively, the clause can have a stronger practical effect than its mere contractual wording might suggest.

Sri Lanka provides the clearest evidence of variation between individual creditors. The China Exim Bank agreements examined contain comparatively extensive confidentiality provisions.[86] The restrictions cover the loan agreement and related information, place significant limits on public disclosure, and impose strong controls over the circumstances in which information can be shared. The State Bank of India agreement is also comparatively restrictive. Its confidentiality obligation is indefinite and provides limited scope for public disclosure by SBI and not the borrower.[87] Although the China Development Bank agreements contain confidentiality provisions, they are less uniform and less restrictive across the assessed dimensions than the China Exim agreements.[88]

The European commercial agreements generally provide greater scope for disclosure required by law, and place greater emphasis on protecting defined categories of commercially sensitive information. The Agence Française de Développement agreement still contains borrower confidentiality, but with a defined period and clearer exceptions.[89] The Sri Lankan French syndicate loan agreement contains confidentiality clauses, but the obligations are placed on the Financing Parties with disclosure exceptions allowed to their affiliates, appointees, French Government Authorities, among others.[90] This pattern is consistent with the different institutional environments in which creditors operate. European lenders remain commercially interested in protecting sensitive information, but their contractual practices operate alongside regulatory, supervisory, audit and disclosure obligations. Those obligations create stronger institutional limits around what can be treated as confidential. The European pattern therefore does not represent an absence of confidentiality, but a more qualified allocation of information rights.

The Sri Lankan evidence also shows that creditor identity alone does not explain the outcome. The difference between China Exim and CDB is significant, as both are Chinese policy banks. China Exim shows a stronger and more consistent use of restrictive confidentiality provisions in the agreements assessed, while CDB shows greater variation. This suggests that institutional practice within individual creditor organisations, the evolution of contractual templates, and the structure of particular financing relationships matter alongside the broader creditor country. The Sri Lankan context also highlights the importance of borrowers' negotiating leverage in shaping confidentiality provisions. Although borrowers may have opportunities to negotiate loan terms, their ability to influence the nature and form of confidentiality clauses may, in practice, be constrained by the relative bargaining power of the parties, potentially leaving creditors with greater discretion over the final contractual terms. This means Sri Lanka's formal opportunity to negotiate loan terms does not necessarily translate into meaningful influence over the nature and form of confidentiality provisions in the resulting loan agreements.

In **Venezuela**, the China Development Bank agreements from 2011 to 2015 contain a broad and recurring confidentiality architecture covering loan terms, project information, communications, negotiations and supporting documentation.[91] The 2011 agreement is somewhat less restrictive in several disclosure dimensions, while the 2012 to 2015 agreements impose stronger restrictions concerning general disclosure, lender consent and information sharing with other creditors. Confidentiality therefore became a recurring feature of the CDB relationship, rather than appearing as an isolated provision in one transaction. Its significance is greater because several CDB facilities were linked to oil revenues, with revenues from the state oil company Petróleos de Venezuela, S.A. (PDVSA) channelled through collection arrangements connected to debt servicing. Information rights therefore existed alongside a financing structure in which the creditor had an important position in repayment flows. Venezuela's dependence on oil revenues and external financing strengthened the importance of that relationship, and reduced the separation between contractual confidentiality and the wider allocation of financial control.

The BNDES agreements present a different arrangement. The 2004 BNDES agreement contains confidentiality provisions, but allows greater disclosure where legally required, and provides broader exceptions for public authorities, auditors and advisers. It does not give the lender the same degree of control over disclosure as the CDB agreements.[92] The later BNDES contract contains no identified confidentiality clause, but some documents were classified as confidential.[93] The Venezuelan evidence therefore demonstrates substantial variation within foreign sovereign lending itself. The stronger confidentiality found in the CDB agreements cannot be attributed simply to Venezuela's domestic approach to disclosure, because the BNDES agreements involving the same borrower produced materially different contractual outcomes.

Across the three countries, these differences are closely connected to the distribution of bargaining power between borrowers and creditors, and to the institutions through which borrowing is administered. The evidence shows that confidentiality is widespread, but its form and bargaining significance vary by creditor and financing relationship. China Exim and CDB do not apply identical approaches, and lender’s ability to disclose also appears in the State Bank of India agreement. European and multilateral creditors retain confidentiality, while generally providing more defined exceptions.

The key factors are creditor interests, established contractual practices, borrower financing needs and bargaining power. These shape whether confidentiality is narrowly defined, broadly drafted, subject to lender

consent or qualified by legal disclosure requirements. Where a creditor has strong financing leverage and contractual control over disclosure, restrictive terms can give it greater influence over information. Where legal and institutional counterweights are stronger, the same commercial interest in confidentiality produces a more qualified form of protection.

Scope and content of confidentiality

Key finding: Confidentiality clauses can restrict access to information that is essential for assessing public financial obligations.

The lending agreements in Malawi, Sri Lanka and Venezuela show differences that extend beyond whether a contract contains a confidentiality clause. They reveal how the clause distributes control over sovereign debt information between creditors, borrower governments and domestic accountability institutions. The strongest restrictions appear in the CDB agreements examined in Venezuela and the China Exim Bank agreement in Sri Lanka.[94] However, the State Bank of India agreement also contains confidentiality provisions that the Sri Lankan case study assessed as restrictive , while the 2004 BNDES agreement in Venezuela contains more qualified protections than the CDB agreements.[95] Conversely, the European commercial agreements, the World Bank and IDA agreements examined in Malawi, and later BNDES agreements provide greater scope for disclosure.

The breadth of protection reflects the interests at stake in the transaction and the parties' relative ability to secure their preferred contractual terms. Creditors have reasons to protect information about pricing, security, repayment priorities and negotiating positions, particularly where disclosure could affect their dealings with other borrowers or creditors. Borrower governments may also favour confidentiality where disclosure could expose negotiated concessions, complicate relations with other lenders or limit their room for manoeuvre in subsequent negotiations. However, these interests do not necessarily carry equal weight. Where a government urgently needs financing or has limited alternative sources, its ability to resist a lender's preferred confidentiality provisions may be reduced. Officials may consequently prioritise securing the loan, negotiating the interest rate and maturity, and agreeing repayment arrangements over provisions governing future public access to the contract. Sri Lankan interview evidence supports this explanation, indicating that confidentiality provisions can originate in lender templates while negotiations concentrate on core financial and legal terms.[96] The resulting contractual arrangements may therefore reflect not only the parties' commercial preferences, of the parties but also differences in their capacity to determine which issues receive priority during negotiations.

The Venezuela agreements illustrate how these interests and bargaining conditions produce different outcomes even within the same borrowing country. The CDB agreements reviewed provide broad protection for financial and contractual information, project details, communications, negotiations and supporting documents. Some provisions also require lender consent before disclosure.[97] These arrangements protect the lender's interests in the treatment of repayment, security and its position relative to other creditors, while preserving influence over the subsequent circulation of information.

A consent requirement is particularly consequential, because the creditor's role does not end when the contract is signed: its approval may remain necessary when information is sought for purposes beyond the original financing transaction. Where the government depends on the lender for continued financing, amendments, waivers or restructuring, this arrangement can reinforce the creditor's influence over disclosure. The BNDES agreements demonstrate that these restrictions are not inherent in every bilateral loan or determined solely by the lender's national identity.

The 2004 agreement contains more qualified confidentiality provisions, including exceptions for disclosure required by law and access for auditors, advisers and public authorities. The later BNDES agreements examined contain no general confidentiality clause.[98] However, the absence of such a clause does not necessarily mean that the agreements or related documents were publicly accessible, as some documents were separately classified or treated as restricted information.[99] The classification or restricted status of documents was also encountered across all three country studies, necessitating the use of RTI requests and, where available, verified loan databases such as AidData to access the relevant agreements. Such restriction was not a feature unique to the BNDES agreements. Nonetheless, these differences indicate that the protections secured depend on the particular agreement, the creditor's contractual practices and the

circumstances under which financing is negotiated. They also affect the balance of control over information. Exceptions permitting disclosure to public authorities or where legally required leave greater scope for independent scrutiny than provisions that make disclosure dependent on the lender's approval.

Sri Lanka's experience reinforces this finding. The China Exim Bank and CDB agreements examined contain extensive borrower confidentiality provisions, although CDB's approach is not uniform across agreements. The State Bank of India agreement also contains confidentiality requirements that the case study assessed as restrictive. By contrast, the European commercial agreements examined generally place greater emphasis on protecting confidential and commercially sensitive information, while preserving exceptions for disclosure required by law, regulatory processes, audits and institutional oversight.[100] The AFD agreement provides another example of borrower confidentiality outside Chinese lending, with a defined duration and clearer exceptions.[101]

These differences are consistent with the institutional environments in which creditors operate. European financial institutions are subject to regulatory and supervisory obligations that shape the confidentiality protections they seek and the exceptions they preserve in international contracts. The EU Trade Secrets Directive, for example, protects commercially sensitive information while recognising circumstances in which disclosure is permitted or required.[102] Such institutional arrangements help explain why commercial confidentiality can coexist with wider disclosure obligations. However, they do not establish that European lending agreements are uniformly transparent or that regulatory requirements necessarily guarantee public access to complete loan contracts. The key distinction is the extent to which each agreement's confidentiality provisions, in protecting the creditor's interest in sensitive information, also restrict the sovereign borrower's ability to disclose its own financial obligations.

The World Bank and IDA agreements examined in Malawi provide a further contrast. These agreements contain relatively limited confidentiality restrictions, reflecting the World Bank's Access to Information framework and the treatment of confidentiality in standard documentation and agreed minutes of negotiations, rather than exclusively in the loan contract.[103] The arrangements generally permit disclosure within the applicable institutional framework, where the borrower agrees to publication of the loan and associated documents. This creates comparatively greater scope for disclosure where the government opts to publish the information, while the extent of public access remains influenced by the borrower's disclosure decisions. The comparison illustrates that the presence of institutional disclosure arrangements does not undermine the importance of borrower preferences; rather, it changes the framework within which those preferences determine access.

The situation in Malawi also demonstrates why contractual provisions must be distinguished from the institutional control of debt information. Requests to the Ministry of Finance and Economic Affairs for four China Exim Bank-linked project agreements did not produce the underlying contracts, and no reasoned disclosure exemption was provided. Officials nevertheless referred to confidentiality when explaining the lack of access.[104] Because the agreements were unavailable, their precise contractual provisions cannot be verified. In addition, the study could not determine whether their confidentiality clauses prohibited disclosure or required lender consent in these cases. This same full contract inaccessibility applies to oversight institutions like Parliament. Interview evidence indicates that Parliament receives summarised versions, rather than the full agreements, limiting its ability to scrutinise their terms independently.[105] This is a clear limitation on transparency, even though the research could not verify a contractual explanation for that limitation.

The comparison across the three countries reveals three connected sources of control over sovereign debt information:

- Creditors may influence the contractual rules governing disclosure, including whether the borrower can release information without prior consent.
- Borrower governments control the negotiation, approval, custody and administrative circulation of agreements, giving executive institutions substantial influence over what information reaches the public.
- Parliament, auditors and other oversight institutions depend on their legal authority and practical access to obtain and examine the underlying documents independently.[106]

The balance between these sources of control differs across the three countries. Sri Lanka demonstrates how confidentiality varies between creditors and individual

contracts; Venezuela illustrates how broad contractual restrictions can operate alongside executive's approach to keep information secret[107] and Malawi shows that limited access to agreements can obstruct scrutiny, even when the precise contractual restrictions cannot be established.

Disclosure exceptions, and legal and institutional access

Key finding: Laws requiring the disclosure of public debt do not guarantee transparency of sovereign debt contracts across the three countries.

Venezuela

Venezuela's framework for contractual debt transparency reflects the concentration of public financial authority within the executive. The 1999 Constitution establishes principles of transparency and accountability under Article 141 and fiscal responsibility under Article 311, while Article 236 assigns to the president significant authority over the public treasury, national loans and contracts connected to the national interest.[108] The Organic Law of Public Financial Administration structures the administration of public credit within this executive-centred framework. The National Public Credit Office coordinates functions relating to the authorisation, negotiation and conclusion of public-credit operations, registers these operations and receives information from public entities.[109] Article 143 of the Constitution also recognises access to administrative records, subject to legally established restrictions, including protections for information classified as confidential or secret. In addition, Venezuela's Law on Transparency and Access to Information of Public Interest 2021[110] establishes a legal framework for the public right to access information of public interest. Its stated aims are to support transparency, accountability, public participation in government, and the democratic rule of law.

These provisions establish rules for borrowing, financial administration and public accountability, but they do not, by themselves, guarantee automatic public access to every underlying loan agreement. The concentration of debt-management functions within the executive gives the authorities responsible for negotiating and administering borrowing a central role in controlling the information generated through those processes.

The Anti-Blockade Law of 2020 further complicates this relationship by creating a special legal regime intended to protect state assets and facilitate economic and financial operations in the context of international sanctions. It permits designated authorities to classify certain documents and information as reserved or confidential where the relevant conditions are met.[111]

Similarly, the Law on Transparency and Access to Information does not protect the right of access to information, but rather limits that right by omitting the scope of the term "information of public interest".[112] This law's definition of information of public interest is narrower than a general right of access to information held by public authorities. Article 3 limits it to information considered necessary for public participation in the design, formulation and monitoring of public administration, leaving room for restrictive interpretations of what qualifies. This could affect access to sovereign loan terms, repayment obligations and fiscal risks relevant to public accountability. Article 7 further permits refusals on broadly framed grounds, including socio-economic development, public order, human rights and national defence, while Article 9 requires applicants to justify their requests. The implication is that the existence of a right-to-information law does not necessarily guarantee effective access to information per se, as open-ended wording may give public officials disproportionate discretion to restrict disclosure, including to protect political interests. While these provisions have a distinct policy rationale, they create an additional legal context in which disclosure of particular transactions may be restricted. Transparency is consequently recognised as a constitutional principle, but access to individual borrowing agreements remains affected by the scope of statutory restrictions and the authority exercised by the executive over debt information.[113]

The contractual evidence illustrates the consequences of this institutional arrangement. The CDB agreements examined from 2012 to 2015 impose extensive confidentiality obligations on the parties, restrict disclosure to third parties and provide limited routes for disclosure to parliament and public authorities. The exceptions identified in the contractual analysis are conditional, rather than establishing a broad, unconditional right of institutional access. Disclosure to parliament is subject to legal requirements, while access by public authorities and other authorised recipients is constrained by the terms of the agreements.

The interaction between these clauses and the domestic institutional arrangements found in Venezuela's laws is particularly important. Where the executive controls the borrowing process and the information it generates, and contractual exceptions restrict the circumstances in which other institutions may receive or circulate the agreements, the authorities responsible for negotiating the loan occupy a stronger position than those responsible for subsequent scrutiny. CDB has a contractual interest in protecting information that could affect its financial position, negotiating leverage or relationships with other creditors. The Venezuelan executive may also have incentives to retain control over the terms of financing arrangements, particularly where disclosure could expose negotiating decisions or invite scrutiny of the government's borrowing practices. The interests of lender and borrower are not necessarily identical, but restrictive contractual provisions can accommodate both. The result is an arrangement in which the institutions responsible for oversight may depend on disclosure permissions negotiated by the parties whose decisions they are expected to examine.

The BNDES agreements demonstrate that restrictive arrangements are an avoidable feature of bilateral development lending. The 2004 agreement contains substantial confidentiality protections for financial terms and supporting documents, but its disclosure provisions are less restrictive than those in the CDB agreements examined. Lender consent is not required for disclosure under the provisions identified, while legal, regulatory, audit and advisory exceptions provide greater scope for information to be shared through recognised institutional channels. These exceptions do not establish unrestricted public access to every document, but they preserve greater space for the state to meet legitimate oversight and compliance responsibilities.

In contrast, the later BNDES agreements, covering 2011–2013, contain no express confidentiality clause of the kind in the 2004 agreement.[114] The 2013 agreement requires BNDES to observe the principle of public access in carrying out its activities and guarantee free access to information of general or collective interest (Clause 26.9).[115] It also provides that the agreement's terms and conditions may be disclosed, except for information protected by statutory confidentiality. The clause does not expressly require Venezuela to keep the agreement confidential, obtain BNDES's consent before disclosure, or prohibit disclosure to Parliament, auditors or the public. It expressly requires BNDES to observe the principle of public access in its activities, and to guarantee free access to information of general or collective interest. It also permits disclosure of the agreement's terms and conditions, subject to statutory confidentiality.

The 2013 agreement also contains provisions relevant to transparency and financial oversight, although these do not concern contractual confidentiality directly.[116] They include BNDES's right, or that of its designated representative, to inspect project sites and implementation documentation for technical, administrative and financial purposes; the requirement that the state include its payment obligations in annual budgets until the debt is fully discharged; and obligations to provide export-monitoring reports, physical and financial progress reports, and evidence of compliance with specified export targets. These provisions establish contractual oversight and reporting mechanisms, but do not necessarily guarantee public access to the information generated. Where broad confidentiality obligations are absent, there is no equivalent general contractual restriction on institutional access, although other applicable legal or contractual provisions may still affect particular information. Where confidentiality clauses are present, the breadth of their exceptions and the conditions attached to them determine how far the lender can influence disclosure after the loan has been concluded.

Malawi

Section 37 of the 1994 Constitution recognises the right of access to information held by the state and its organs.[117] The Access to Information Act 2016, enacted as Act No. 13 of 2017 and operationalised in 2020, subsequently provided the principal statutory framework for exercising that right. Section 6(1) establishes access to information held by public bodies, while the Act also provides for exemptions, procedures for refusing access and mechanisms for review.[118] Public finance and debt legislation was developed alongside this access-to-information framework.

The Public Finance Management Act 2022 regulates borrowing and debt administration through sections 70–74, including provisions relating to debt management and reporting. The Debt and Aid Management Regulations 2023, particularly regulations 8 and 9, provide further rules governing these areas. These arrangements build on the consolidation of debt and aid functions within the Ministry of Finance through the establishment of the Debt and Aid Management Division in 1997. The laws simultaneously

establish formal responsibilities for the administration, recording and oversight of public borrowing. However, the existence of debt-reporting requirements and a constitutional right of access do not automatically establish that every individual loan agreement must be published. Access to a particular contract may depend on the information requested, the applicable statutory provisions and exemptions, the reasons given for refusing disclosure and the availability of effective review.

This separation between debt administration and access to information gives the Ministry of Finance an important institutional position. As the central holder and administrator of sovereign debt information, it is responsible for managing borrowing, while also responding to requests for access to government-held records. Parliament, the National Audit Office and the public have formal accountability and information rights, but their practical ability to examine a particular agreement depends on whether the document is made available and whether a refusal can be successfully challenged. In Malawi, Parliament receives a synopsis, rather than the full loan agreements. When consulted, the National Audit Office did not have the requested full loan agreements, although it is unclear whether this was an isolated instance or whether it reflects a recurring limitation on the audit office's access to loan agreements. The reasons for the agreement's unavailability were not established, although the research indicates that loan agreements are generally held at a very senior level within the Ministry of Finance. The resulting gap is not necessarily an absence of transparency regulation, but rather the absence of a clear and consistent bridge between the debt management framework and the public access to the underlying contracts.

The World Bank and the IDA agreements examined in Malawi illustrate a relatively permissive contractual approach. Their confidentiality arrangements are limited and are linked to the World Bank's access-to-information framework. The provisions examined generally preserve the state's ability to disclose information, and do not appear designed to prevent parliamentary, regulatory or audit scrutiny. This approach provides greater scope for institutional access than the restrictive CDB agreements examined in Venezuela. It also demonstrates that confidentiality can protect information without necessarily preventing a borrower from meeting its domestic accountability responsibilities.

The position of the agreements with China Exim Bank requested from Malawi's Ministry of Finance is less certain. The agreements were not made available, and officials reportedly referred to confidentiality in explaining their non-disclosure. However, because the research could not examine the contracts, it is not possible to determine whether their clauses permit disclosure to Parliament, the National Audit Office, courts, regulators or other public authorities; whether lender consent is required; or whether disclosure mandated by domestic law is expressly permitted.

This distinction is important for assessing the relationship between formal law and contractual practice. The legal question is whether the refusal to give access to the agreements is supported by an applicable statutory exemption, and whether it can withstand the relevant review process. The contractual question is whether the agreements contain restrictions that independently limit disclosure or condition it on lender consent. By treating these as separate questions, the report avoids attributing the lack of access to a contractual clause whose existence has not been confirmed.

Malawi illustrates a different form of vulnerability from Venezuela. The constitutional and statutory framework establishes formal access rights, but in practice those rights do not necessarily result in the release of individual sovereign loan agreements. Where the institution responsible for debt administration also controls the documents needed for scrutiny, the effectiveness of transparency depends on how access requests are handled, whether exemptions are properly justified and whether review mechanisms provide an effective remedy. If restrictive confidentiality clauses are present in the unexamined agreements, they could further complicate disclosure. Their actual effect, however, remains unverified.

Sri Lanka

Sri Lanka has also developed a substantial legal framework for public debt administration and access to information, but the two systems perform different functions. The Public Debt Management Act No. 33 of 2024 established the Public Debt Management Office and provided a dedicated institutional framework for government borrowing, guarantees, on-lending (subsidiary lending to public entities), debt recording and reporting.[119] These reforms sought to establish a clearer responsibility for public debt management in response to the fragmentation of functions historically

distributed across the Central Bank, the External Resources Department and the Treasury.

The reform of debt administration does not, in itself, resolve the question of public access to individual loan contracts. Sri Lanka's right to information under Article 14A of the Constitution and the Right to Information Act No. 12 of 2016 provides a separate legal route for obtaining information held by public authorities.[120] The RTI Act establishes a right of access, while specifying grounds on which disclosure may be refused and procedures for appealing decisions.[121] Meanwhile, the public debt-management framework governs the administration and reporting of government liabilities, and requires the publication or dissemination of specified debt information. Reporting aggregate debt data or other prescribed information is not equivalent to publishing every underlying loan agreement.

The distinction is particularly important because Sri Lanka's institutional arrangements have historically involved different bodies performing complementary but separate functions. Debt-management institutions have focused on borrowing, negotiation, administration and reporting, while access to government-held information has been governed through the RTI framework. The development of separate public administration, fiscal management and contractual rules reflects the country's legal and institutional history.[122] More recently, the 2022 economic crisis and subsequent IMF-supported reform programme have driven changes to Sri Lanka's public financial management and governance frameworks, including the Public Debt Management Act and the Anti-Corruption Act of 2023.[123] The immediate issue is how the current legal framework allocates authority over borrowing, custody of agreements and decisions about disclosure.

The contractual evidence demonstrates substantial variation between Sri Lanka's bilateral lenders. The China Exim Bank agreement examined contains extensive confidentiality restrictions, including strong limits on public disclosure and disclosure to other creditors. It provides exceptions for certain legal, regulatory, audit and advisory purposes, but these do not remove the wider restrictions governing the agreement. The CDB agreement also contains broad confidentiality provisions, although it permits disclosure in a number of respects more readily than some of the other bilateral agreements examined. The case study assessed the State Bank of India agreement as restrictive, with narrow exceptions and limits to public institutions and other creditors.

The Sri Lankan commercial agreements provide a useful comparison. The Deutsche Bank, MUFG, UniCredit and Crédit Agricole agreements generally preserve greater scope for disclosure required by law, and for access by auditors, advisers and other authorised recipients.[124] Their confidentiality provisions can protect commercially sensitive information while permitting disclosure through specified institutional channels. The ING agreement is more restrictive, particularly regarding public and creditor disclosure, and provides stronger contractual consequences associated with breach. The contrast shows that a commercial lender's interest in confidentiality does not necessarily require the same restrictions as those found in more restrictive bilateral agreements. What matters is whether the contractual wording preserves meaningful routes for lawful institutional scrutiny.

WHAT THE COMPARISON SHOWS US

Legal rights and contractual exceptions must be examined together. Where a loan agreement expressly allows disclosure required by law, or access by authorised public institutions, it is clearer for the borrower how to comply with domestic responsibilities. Where disclosure is permitted only under narrow conditions or requires lender consent, the borrower may face additional uncertainty about whether and how the agreement can be shared.

Across the three countries, the relationship between domestic law and contractual confidentiality produces different forms of constraint on institutional access. Venezuela illustrates ways in which extensive executive authority over public credit, combined with restrictive contractual provisions and statutory powers to classify certain information, can concentrate control over borrowing information within the executive. In Malawi, constitutional and legal access rights coexist with practical difficulties in obtaining loan agreements, particularly where the institution administering public debt also holds the relevant documents. Sri Lanka shows how debt-management reform and a separate right-to-information framework can coexist with substantial variation in the disclosure provisions negotiated with different lenders.

The legal frameworks governing sovereign debt transparency are primarily structured around the executive and debt-management institutions responsible for negotiating and administering public borrowing. Sovereign borrowing is generally treated as an executive financial-management function, with

governments exercising discretion over negotiations and contract administration, while parliament and oversight bodies provide authorisation, reporting and accountability.

In the three countries, this reflects public-finance and administrative structures in which borrowing powers are delegated to the executive, while transparency is addressed through separate reporting, audit and access-to-information rules. These arrangements do not mean that confidentiality clauses automatically override domestic law or that confidential loans necessarily prevent institutional oversight. However, they can result in general debt reporting that reveals the scale and composition of public liabilities, without providing access to the contractual terms governing them. Constitutional rights and access-to-information legislation may offer routes to obtaining agreements, but do not guarantee access. Exceptions to confidentiality in debt agreements can either preserve oversight institutions' access, or make it dependent on specific conditions.

Institutional control over sovereign debt information

Key finding: Control over debt information is unevenly distributed across state institutions. Across the three countries, officials and institutions directly involved in borrowing generally have greater access to complete financing agreements than parliament, auditors, civil society and the public. This creates an important institutional dimension to confidentiality: who possesses the contract can determine who is able to scrutinise the state's obligations. Even where formal oversight powers exist, they may have limited practical value if oversight institutions cannot obtain the contractual evidence necessary to exercise them. The distribution of contractual information becomes part of the distribution of institutional power, particularly where external oversight depends on the executive to provide the underlying agreements.

Confidentiality clauses do not simply determine whether information is public or confidential. They allocate institutional access by determining which actors can receive, use or disclose information, whether access is automatic or conditional, and when creditor consent is required. Across Malawi, Sri Lanka and Venezuela, formal oversight is stronger than practical access to contractual information. Ministries of Finance and debt management authorities have a central role as they negotiate or administer borrowing, control official records and manage creditor relationships. Their proximity to borrowing gives them informational advantages over institutions that scrutinise transactions *after* they have been negotiated. Control over the records also gives them greater influence over how debt obligations are interpreted and communicated to other state institutions.

These institutional positions create competing interests in the circulation of debt information. Officials responsible for borrowing have incentives to secure financing, preserve negotiating flexibility and maintain creditor relationships. Creditors have incentives to protect commercially sensitive information and their positions relative to other creditors. Parliament, Supreme Audit Institutions (SAIs), courts and other oversight bodies require sufficient information to assess whether borrowing is lawful, affordable and consistent with the public interest, while right-to-information (RTI) bodies provide mechanisms to challenge withholding decisions. Where the institution negotiating debt also controls the records, it can influence how much information reaches oversight bodies and when. Creditor-consent requirements create an additional point of control, whereas independent institutions with the authority to compel disclosure can limit that control.

The resulting gap between formal authority and actual access weakens accountability. Parliament, auditors and courts may have legal powers to scrutinise borrowing without controlling the records needed to exercise them. A ministry may hold the complete agreement, parliament receive a summary, an auditor obtain documents for a defined audit purpose, an international financial institution (IFI) receive reported debt figures, and the public have access only to aggregate statistics. These unequal levels of access produce different capacities to understand, question and hold the executive accountable for its contractual obligations. The three country cases demonstrate how this relationship operates under different institutional arrangements.

Malawi

Malawi has a relatively concentrated debt-information structure. The Ministry of Finance and Economic Affairs is the principal institutional gatekeeper, while the Debt and Aid Management Division performs technical debt-

management and reporting functions.[125] The consolidation of debt and aid functions within the Ministry was intended to improve the coordination, recording, servicing and management of public debt. It strengthened administrative capacity but also concentrated technical expertise and contractual information within the institution responsible for borrowing. Ministry officials consequently occupy a stronger informational position than parliament and other bodies that scrutinise borrowing after transactions have been negotiated. [126]

The distinction between summary information and complete agreements is critical. Parliament may receive information on the amount, purpose, creditor and repayment obligations without seeing provisions concerning confidentiality, guarantees, security, governing law or disclosure restrictions. [127] In other words, while every sovereign loan requires parliamentary approval, in practice Parliament typically receives a summary of the loan agreement alongside the approval bill. The summaries allow the Parliament to assess important financial and project-related aspects of the borrowing without having the necessary contractual information required to independently scrutinise the complete obligations undertaken by government.[128] Similarly, the National Audit Office's ability to scrutinise borrowing depends on complete access to the underlying documentation. Formal oversight authority therefore does not guarantee access to the information necessary to exercise it.

The four China Exim Bank-linked project agreements illustrate this asymmetry. Requests for the agreements did not guaranteed access to the underlying contracts, despite the use of the RTI framework. The available evidence indicates that the agreements were treated as confidential and that approval for their release was not obtained. The central finding is that the institution controlling the agreements possesses substantially greater information power than the institutions and members of the public seeking to scrutinise them.

Without the contracts, oversight actors cannot determine whether withholding is contractually required, what exceptions apply or whether additional obligations materially affect public exposure. Creditor relationships can reinforce this asymmetry where disclosure requires lender consent. Officials must then consider domestic disclosure requirements alongside the possible consequences for relationships that remain important for amendments, waivers, refinancing and restructuring.

A lender's leverage derives partly from its role as a source of finance, particularly where alternatives are limited, more expensive or with less concessional, favourable terms. The Ministry consequently has an institutional interest in preserving financing relationships, while Parliament and auditors require the information needed to assess the resulting public obligations. Even without evidence of an explicit creditor threat, anticipated difficulties in future negotiations may discourage disclosure.

The differences identified in accessing Malawi's China Exim-Bank and the World Bank and IDA agreements, evidence how the country’s institutions operate in different information environments, even though the Ministry remains responsible for managing public debt. The Ministry's influence derives from its proximity to borrowing and control over records; creditors may exercise additional leverage through contractual rights and financing relationships; and Parliament and audit institutions retain formal oversight powers but have weaker practical leverage when they cannot obtain complete agreements. The principal accountability problem is therefore not simply whether a confidentiality clause exists. It is that the institution responsible for borrowing can also influence whether other institutions obtain the documents needed to scrutinise it. Where access is restricted and the legal basis for withholding information remains unclear, independent assessment of contractual obligations becomes difficult.

Sri Lanka

Sri Lanka has historically had a more distributed debt-management structure. The Ministry of Finance and External Resources Department (ERD) have played central roles in negotiating and coordinating external financing, while the Central Bank has held important debt-management and operational functions. This division supported specialised management of different financing relationships but also created separate centres of debt information.

No single institutional position necessarily guaranteed immediate access to every agreement or a complete picture of public obligations. The Public Debt Management Office (PDMO), established under the Public Debt Management Act 2024, seeks to consolidate debt-management functions and improve coordination. This can strengthen the state's capacity to identify, record and manage contractual obligations, but consolidation does not automatically transfer

information to Parliament, auditors or the public. The ERD and PDMO remain closer to creditors and financing negotiations than external oversight bodies. They have incentives to maintain workable financing arrangements, while Parliament and accountability institutions need sufficient information to determine whether borrowing is lawful, affordable and consistent with the public interest. Where debt management institutions control the underlying agreements, other bodies remain dependent on the information released or on mechanisms to compel disclosure.

External financing adds further variation. Bilateral, commercial and multilateral creditors follow different disclosure practices. Commercial lenders have interests in protecting commercially sensitive information, while multilateral institutions operate within established disclosure frameworks. Financial distress and restructuring also increase the need for detailed debt information to support negotiations with creditors and international institutions. The government must therefore manage competing demands for creditor cooperation, contractual confidentiality and domestic accountability.

Sri Lanka's institutional arrangement is in transition. The PDMO seeks to consolidate historically distributed responsibilities, while the RTI Commission provides a mechanism to challenge executive control over information. Whether consolidation strengthens accountability depends on whether improved internal coordination is accompanied by meaningful access for Parliament, auditors and the public. Better control of debt records can improve debt management, but accountability requires that oversight institutions can obtain the information needed to scrutinise public borrowing.

Venezuela

Venezuela has the strongest concentration of borrowing and information power within the executive, although formal responsibilities are distributed among the President, Ministry of Finance, National Public Credit Office, National Assembly, Comptroller General, BANDES, PDVSA and other state-owned entities.[129] Interview evidence indicates that practical control over debt information remains concentrated within the executive and institutions closely connected to it. The President and executive occupy the strongest position because they influence borrowing decisions and, according to interviewees, whether and how debt information is disclosed. The Ministry of Finance and National Public Credit Office have formal debt responsibilities, but their ability to establish a complete picture of public liabilities is affected when financing is contracted or administered through BANDES, PDVSA and other state-owned entities.

This distribution of responsibilities has operational advantages for the executive and the entities involved, which can arrange financing within their own institutional structures and respond to sector-specific needs. [130] However, borrowing outside the central debt-information chain makes it harder for the National Assembly, Comptroller General and central debt institutions to establish a complete picture of public liabilities[131]. Different entities therefore hold different parts of the debt record, while the executive retains greater influence over whether that information becomes available for independent scrutiny.[132]

The political and institutional consequences are significant. The National Assembly and Comptroller General have formal oversight functions, but their practical influence depends on access to records held by executive institutions and state-owned enterprises. Interview evidence indicates that political divisions and executive control have limited this access. Without the underlying agreements, oversight bodies may be unable to establish the full terms of borrowing, compare liabilities across entities or assess the extent of the government's contractual commitments.

Confidentiality clauses can reinforce this concentration by providing an additional contractual basis for restricting the circulation of agreements. Their effect is strongest where oversight institutions already depend on the executive for access to debt information. However, the evidence does not establish that foreign creditors directly determine Venezuelan disclosure decisions[133]. Creditor influence operates through financing relationships, contractual rights and the importance of continued external finance, while domestic executive incentives can independently favour restricted disclosure. Control over information may therefore serve both the management of financing relationships and the executive's interest in limiting scrutiny of public borrowing.[134]

Venezuela illustrates how fragmentation and centralisation can operate together. Contracting and administration across multiple entities fragment the underlying records, making it more difficult for oversight institutions to assemble a comprehensive account of public liabilities. At the same time, executive control over disclosure can limit access to those

records. Where confidentiality provisions reinforce this structure, they can further restrict scrutiny without being the sole cause of non-disclosure.

Across the board, the relationship between borrowing institutions and oversight bodies determines how far formal accountability translates into practical access to sovereign debt information. The common issue is unequal control over information when borrowing is negotiated, recorded and disclosed. Ministries and debt-management authorities possess information because they are close to the transaction; creditors may exercise additional influence where contractual consent is required; and oversight institutions depend on access to scrutinise the resulting obligations. The actors with the strongest incentives and capacity to control information are therefore not necessarily those responsible for holding the government accountable.

Institutional control over sovereign debt information is consequently not merely an administrative question. It determines whether formal oversight powers can be exercised in practice. Where the institution negotiating borrowing also controls the records, creditors retain a role in authorising disclosure, and independent bodies cannot compel access, scrutiny of public liabilities is weakened. Conversely, coordinated records and independent mechanisms for challenging withholding can limit executive and creditor control.

Implementation and enforcement in practice

Key finding: The practical effect of confidentiality can exceed demonstrated contractual enforcement.

The research found no consistent evidence of creditors imposing damages, arbitration, termination, acceleration or suspension of disbursements if governments disclosed confidential information. However, government officials may still restrict disclosure because they regard contractual confidentiality as binding, they are uncertain about its relationship with domestic law, or they anticipate consequences for creditor relationships. This means perceived enforceability can constrain transparency, even where actual contractual enforcement has not been demonstrated.

HOW ARE CONFIDENTIALITY CLAUSES ENFORCED?

Confidentiality clauses are enforced in practice through a combination of contractual mechanisms, institutional control and borrower self-enforcement.

The contracts reviewed across Malawi, Sri Lanka and Venezuela generally do not create a stand-alone sanction for breaching confidentiality, nor do they ordinarily make disclosure itself an automatic event of default, triggering accelerated repayment, the withholding of disbursements or seizure of assets. This does not mean that confidentiality lacks practical force. A creditor with significant financial leverage may influence borrower behaviour without invoking a formal remedy, particularly where the government anticipates that disclosure could complicate future borrowing, amendments, waivers or restructuring. In contrast, where domestic institutions have the legal authority and practical capacity to challenge withholding, the government's reliance on contractual confidentiality may be contested. The three country cases illustrate different combinations of these mechanisms: compliance by uncertainty in Malawi, contested compliance in Sri Lanka, and confidentiality reinforced by concentrated executive control in Venezuela.

The Venezuelan evidence points to a wide system of information control. Interviewees described police and military surveillance around the Ministry of Finance, Central Bank and National Institute of Statistics to prevent leaks of sensitive information.[135] Bilateral and multilateral debt agreements were generally inaccessible through official sources, with limited exceptions such as framework agreements with China published in the Official Gazette.[136] The effective enforcement environment extends beyond the loan contract. Institutional and coercive control over information can make disclosure difficult on a practical level, even where a contractual remedy has not been exercised.

This arrangement concentrates sensitive financial information in the executive, and state institutions control the officials who hold it. At the same time, this control is not absolute. Public arbitration decisions, financial debt information, multilateral reporting and disclosure by commercial parties demonstrate that information can emerge through legal proceedings or actors outside the government’s direct control. However, these channels tend to produce fragmented disclosure, rather than systematic access to complete sovereign loan agreements.[137] This differs significantly

from the institutional ability to scrutinise borrowing comprehensively.

GOVERNMENTS THEMSELVES CAN BE KEEN TO MAINTAIN CONFIDENTIALITY

The Venezuelan case also shows why non-disclosure cannot be attributed solely to creditor pressure. Interviewees reported that information concerning public finances was kept confidential even where agreements contained no confidentiality clauses, such as the agreements with the Inter-American Development Bank.[138] A formal freedom of information request was submitted to the bank as part of this study, leading to the publication of the contract on the bank's website.[139] This indicates that executive preferences for withholding scrutiny of public borrowing may operate independently of contractual restrictions. Where the executive benefits from restricting access, the interests of the borrower government and creditor may converge, even though their reasons for maintaining confidentiality differ.[140]

Contractual confidentiality provisions may nevertheless reinforce these incentives. The Venezuela-CDB agreement, for example, contains dispute-resolution provisions that place disputes before CIETAC arbitration in Beijing and includes a waiver of sovereign immunity. While the research found no evidence that such mechanisms have been invoked in response to disclosure of debt information, their existence may encourage a cautious approach to transparency, particularly where governments seek to preserve relationships with important creditors. [141]

In Malawi, the evidence shows a different risk of confidentiality compliance without demonstrated contractual enforcement. As the four China Exim Bank-linked agreements were not provided, their confidentiality obligations and contractual remedies could not be verified. With no evidence of a verified breach or sanction, [142] it cannot be concluded that disclosure would have resulted in penalties such as termination, accelerated repayment or withholding of disbursements.

Malawi's experience with the World Bank provides a useful comparative perspective. According to interviews with public officials, no incident had arisen in which the World Bank had imposed a penalty for a confidentiality related breach. Instead, issues were reportedly addressed through formal discussions aimed at resolving the matter and agreeing on corrective action.[143] They further indicated that this approach had long been followed, even in cases involving delays in sovereign loan repayments, where the emphasis had been on formal engagement to discuss the delays, rather than the immediate imposition of penalties.

The inability to obtain the agreements demonstrates that confidentiality can have a practical effect of self-enforcement of the creditors' informational interests, even where its legal enforceability remains untested. Officials may adopt a cautious approach to disclosure where an agreement is understood to contain sensitive or confidential information, particularly when the government wishes to preserve its relationship with an external creditor. Malawi's limited range of alternative financing sources can create leverage for lenders, especially where these alternatives are more expensive, less concessional or subject to other conditions. Under these circumstances, the creditor does not necessarily need to threaten enforcement for its interests to influence government behaviour. The government may anticipate that disclosure could damage the relationship, affect access to future financing or complicate subsequent negotiations, and therefore withhold information itself.[144]

The Malawi case demonstrates how financing dependence and administrative control can combine to restrict access without a documented threat or exercise of contractual remedies. The Ministry of Finance's control over the underlying agreements places it in a position to determine whether other institutions can inspect them. When the documents remain unavailable, Parliament, auditors and the public cannot independently establish the terms or assess whether the asserted confidentiality is contractually required. The resulting accountability problem is not limited to the possible existence of a restrictive clause; it also concerns the concentration of authority over the information needed to verify the clause and challenge its application.

DOMESTIC CHALLENGING OF CONFIDENTIALITY CLAUSES: THE EXAMPLE OF SRI LANKA

Sri Lanka presents a materially different enforcement environment because confidentiality can be subjected to domestic institutional challenge. The China Exim Bank and CDB agreements reviewed contain significant confidentiality restrictions, while the case study assessed the State Bank of India agreement as particularly restrictive. Some agreements also contain

wider default and acceleration provisions.[145] However, none of the contracts analysed makes disclosure an automatic trigger for accelerated repayment or asset enforcement. Confidentiality breaches could still fall within the agreement's general breach and default provisions, but that link needs to be established in the contract itself. The existence of acceleration rights does not, on its own, mean a lender can demand early repayment simply because information was disclosed.

Evidence indicates that confidentiality provisions are often standard and are not heavily negotiated. Several interviewees emphasised that urgent financing requirements can benefit creditors' bargaining power, leaving the government with limited ability to alter terms drafted by the lender.[146]

Yet Sri Lanka also demonstrates that creditor influence is not absolute. The RTI dispute concerning Chinese-funded agreements provides an example of confidentiality being invoked to restrict disclosure and subsequently being challenged through a domestic oversight mechanism. For the purposes of this research, the Sri Lanka's RTI Commission was successfully petitioned to force the government to release a US$54.8 million Chinese loan agreement for the Katana Water Supply Project, which it refused to release, claiming commercial secrecy.[147] The ERD initially relied on confidentiality and creditor interests in withholding agreements. Eight agreements were subsequently disclosed, leaving out one which claimed that the Chinese lender explicitly objected to the release under the contract's confidentiality clauses. The Commission discovered the government was relying on old, unrelated correspondence that predated the actual request as a ground for not disclosing the contract. The Commission ruled that because the funds involved a public project affecting hundreds of thousands of citizens, public interest heavily outweighed the state's desire for commercial secrecy. The Commission ordered the release of the remaining CDB agreement.[148]

The case demonstrates that confidentiality claims may be subjected to independent review under domestic access-to-information frameworks rather than being accepted at face value. An independent institution can require the government to justify withholding and assess it against the applicable access-to-information framework. This counter-leverage matters because institutional incentives can conflict. The government needs creditor cooperation, financing and flexibility in negotiations, while Parliament and the public need information about the resulting obligations.

The wider research for the Sri Lankan case study also found that responsiveness to RTI requests varies across public authorities, and that the decision-making process for providing information is not uniform.[149] While the Department of External Resources was amenable to providing copies of many bilateral loan agreements, this level of responsiveness was not matched when the team sought legal opinions on these agreements from the Attorney General's Department, or memoranda on the agreements from the Cabinet of Ministers.

Interviewees also reported differences between creditors, with some Chinese agreements having been disclosed while certain Japanese and Korean agreements were perceived as more difficult to obtain.[150] These findings suggest that the practical effect of confidentiality depends not only on contractual language, but also on the conduct of public authorities, the availability of review mechanisms and the willingness of institutions to scrutinise claims of confidentiality.

Sri Lanka therefore illustrates a model of contested compliance. Confidentiality provisions may shape government behaviour, but their practical effect depends on whether domestic institutions can require governments to justify restrictions on access and balance them against competing public interests.

DISCLOSURE MAY NOT TRIGGER DEFAULT, BUT IS PERCEIVED AS RISKY

Across all three countries, the reviewed agreements establish binding obligations to maintain confidentiality, but they do not provide a specific penalty for breaching them. Nor do they consistently make a breach, by itself, an automatic event of default that leads to accelerated repayment or seizure of assets. Where consequences arise, they come from the broader contractual framework: default provisions and dispute resolution.

Yet disclosure is still perceived as risky. A financially constrained government may fear that challenging a creditor over disclosure could jeopardise the wider financing relationship. This risk is greatest where restrictive clauses coincide with concentrated executive control, limited alternative financing, weak parliamentary or audit capacity and strong creditor leverage. In practice, confidentiality is therefore

enforced less through contractual sanctions than through withholding and self-restraint by the borrower.

Governance and accountability Implications

Key finding: Where independent monitoring is weak, confidentiality increases risks of corruption
The combined evidence shows that the principal risk is that confidentiality serves as the primary enabling tool that drives corruption, hidden debt and fiscal distress. Its emphasis on restricted access of the public and oversight institutions to complete loan agreements and debt information can reduce the ability of the public and independent institutions to verify, question and reconstruct the state's financial obligations. This risk is greatest where confidentiality coincides with weak oversight, weak debt and RTI legal frameworks, fragmented debt records, financing dependence, or concentrated executive control.

Across Venezuela, Malawi and Sri Lanka, the principal governance risk associated with confidential or insufficiently transparent borrowing is reduced visibility over the state's full contractual and fiscal obligations. Confidentiality can restrict parliament, audit institutions, civil society and the public from independently verifying the terms of borrowing, weakening fiscal-risk assessment and accountability. Inadequate disclosure requirements, narrow debt coverage, weak oversight and confidentiality arrangements are considered as interacting weaknesses in debt-transparency frameworks.[151] However, opacity does not necessarily result from contractual confidentiality alone; it may also reflect fragmented reporting, inadequate disclosure rules or weak administrative practices.

Venezuela demonstrates particularly significant governance risks because contractual confidentiality restrictions interact with limited independent access to public-finance information, constraining parliamentary oversight, audit scrutiny and public accountability. Interviews indicate that disclosure decisions were concentrated within the presidency and key economic institutions, while Parliament and the Comptroller lacked effective access to debt agreements and project-implementation information. This restricted institutional capacity to verify liabilities, scrutinise the use of borrowed resources and hold decision-makers accountable. The consequences extend to debt restructuring, where substantial uncertainty remains over the composition and legitimacy of debt claims.[152]

In **Malawi**, the principal concern is contractual visibility and verifiability. The four China Exim Bank-linked agreements sought through the research were unavailable, preventing independent examination of their terms and making it difficult to establish whether non-disclosure resulted from a contractual obligation, statutory exemption, lender expectations or administrative practice. This is particularly significant because the China Exim Bank agreement available for examination contained no confidentiality clause. Creditor-imposed secrecy cannot therefore explain every information gap. Rather, the problem is that oversight actors cannot independently verify whether agreements contain additional obligations, including guarantees, security arrangements, repayment conditions or disclosure restrictions.[153]

In **Sri Lanka**, governance risks arise from the interaction between contractual opacity and fragmented debt information. Respondents highlighted difficulties obtaining individual agreements and establishing the full extent of public-sector exposure, including liabilities associated with state-owned enterprises.[154] IMF analysis similarly identifies weaknesses in the timeliness, coverage and consolidation of debt information, including limited public information on outstanding on-lent loans (contracted by the government from an external lender, and sub-lent to another public entity) and weaknesses in oversight of government guarantees.[155]

Knowing the amount owed and the identity of a creditor does not necessarily reveal the conditions attached to the debt. Provisions concerning collateral, guarantees, repayment accounts, events of default, cross-default and dispute resolution can materially affect fiscal exposure and the options available to future governments. Restricted access also weakens anti-corruption safeguards by making it harder to trace borrowing from authorisation and disbursement through expenditure to repayment, assess procurement and contractual decisions, or identify possible improper benefits.

This does not establish that confidential borrowing is corrupt; it means that confidentiality can weaken the mechanisms through which misconduct would be detected. In Venezuela, interviews described particularly restricted oversight access, while disclosures through arbitration proceedings and commercial counterparties illustrate how information

may emerge through disputes rather than routine accountability processes.

Confidentiality can also prevent scrutiny of adverse contractual conditions. Venezuelan interviewees reported financing arrangements involving foreign personnel and, in some cases, interest rates substantially above concessional or market-based financing.[156] Nevertheless, where agreements cannot be examined, oversight institutions cannot adequately assess whether borrowing terms were reasonable or identify unfavourable obligations before they become fiscal liabilities. The governance implications differ across the three cases:

- Venezuela illustrates how opacity can compound executive control and complicate debt restructuring.
- Malawi highlights the difficulty of verifying contractual risks before they materialise.
- Sri Lanka demonstrates the importance of consolidating contractual and public-sector debt information to establish the state's overall exposure.

POLICY RECOMMENDATIONS

The global evidence and studies of Venezuela, Malawi and Sri Lanka all show an unavoidable fact: sovereign debt systems are better at recording borrowing and reporting aggregate debt than at ensuring access to individual loan agreements. This raises questions about who controls financial information, who can access it and who can challenge its withholding. Aggregate debt figures alone cannot reveal the full contractual terms governing collateral, guarantees, repayment mechanisms, default provisions and creditor priorities.

These gaps have implications beyond public disclosure. Incomplete access to contractual information can limit parliaments' and auditors' ability to scrutinise borrowing, constrain international institutions' assessment of debt exposure, and leave other creditors unable to establish how obligations interact. As more and more sovereign borrowing involves multiple bilateral, commercial and development creditors, transparency requires not only reliable aggregate reporting but also access to loan-level information and a clearer understanding of the contractual obligations underlying public debt.

International initiatives are placing greater emphasis on creditor data-sharing and transparency in debt restructuring. The remaining challenge is to translate these developments into consistent domestic and contractual arrangements that support disclosure, institutional oversight and accountability. In the end, sovereign debt transparency depends on whether the institutions responsible for accountability and, where legally appropriate, the public can obtain and verify the information needed to understand the state's actual contractual obligations and risks.

To close the gaps enabled by confidentiality that lead to opaque data and the corrupt contraction and management of sovereign debt, we call on governments in borrowing countries, lending countries and international financial institutions to adopt the following recommendations:

BORROWING COUNTRIES

1. **Governments should adopt legislation mandating for the full proactive disclosure of complete, transaction-level information related to public debt.** Laws addressing public debt contracting, management and reporting should adopt a clear, comprehensive and consistent definition of public debt. This definition should recognise that not all public economic obligations take the form of financial debt, and should value on other forms of repayment. The legal framework should address:[157]
    a. The institutions covered, including all public entities that borrow, guarantee or take on payment obligations, at every level of government (central, subnational and local). This includes state-owned and partly state-owned enterprises, other public corporations, social security funds, extrabudgetary funds, and special-purpose vehicles,[158] whether or not they have formal borrowing authority.
    b. The obligations covered, including all forms of public debt and debt-like commitments, regardless of their legal form. This includes contingent liabilities (such as guarantees and public-private partnerships (PPP) payment commitments), collateralised debt and debt with collateral-like features, domestic non-marketable debt, and swaps.
    c. The scope of disclosure requirements, such as transaction-level debt data[159] information about both financial and non-financial terms.
    d. Roles and responsibilities assigned for the preparation and approval of the disclosure publications.

e. How often the disclosure report should be issued, updated and published, to guarantee the timeliness and proactive public dissemination of debt information.
f. The disclosure reports must include the following information:
i. Timeframe for the disclosure of debt information; and
ii. The location where the report will be published.
g. All previously disclosed debt information must remain accessible at least until the limitation period for any related legal claim has expired.

The legal framework should also adopt principles of proactive disclosure. These include:

a. the information should be available to the public free of charge,
b. it should be findable where published, and
c. it should be relevant, understandable and up to date.[160]

2. **Governments should restrict confidentiality in borrowing agreements to narrowly justified exceptions.** Concrete exceptions to the disclosure of information should be clearly defined in Right-to-Information (RTI) frameworks and reinforced through public financial or public debt management regulation, with clear and narrow definitions of what constitutes confidential information in lending contracts or funding agreements, and a clear coverage of information of public interest.

Confidentiality should be limited to specific provisions and only to cases when disclosing particular information would directly harm or endanger:

a. The country's public finance interest, by undermining an ongoing debt negotiation or market operation;
b. The lender's legitimate business secrets, such as proprietary pricing models or commercially sensitive information; or
c. The country's national security.

Public authorities should bear the burden of showing the harm, and ensure no contract clause should override the legal framework. As a minimum, regulation on confidentiality provisions should include:[161]

a. which information may be subject to non-disclosure, including a clear justification (that proves a risk of actual harm to a protected interest) of the reasons for it;
b. which entity controls this information, and any appeal procedures available;
c. what are the permissible instances for non-disclosure;
d. how long the duty of non-disclosure is required; and
e. appropriate carve-outs that grant the right to disclose information.

3. **Access to confidential debt information should be expressly granted to borrower country oversight institutions, including the legislative body (parliament) and supreme audit institutions.** As in the review of classified intelligence or national security information, oversight institutions should have the right to access all relevant information regarding the lending agreement and related documentation on its negotiation, such as side letters and related escrow or security agreements. Specific debt information classified as confidential should be accessed through specific provisions (e.g. closed or special hearings).[162]

4. **Implement measures to protect and enable civil society monitoring of contractual agreements.** Civil society organisations should have access and the capacity to monitor whether sovereign financing agreements are accessible, what confidentiality provisions they contain and what legal grounds governments invoke for withholding them. Access-to-

information requests, parliamentary processes, audit mechanisms and independent review should be used to test unexplained restrictions. These actions should distinguish carefully between the existence of a confidentiality clause, government non-disclosure, lawful exemptions and actual creditor enforcement, thereby strengthening evidence-based accountability without assuming that every instance of non-publication results from contractual secrecy.

CREDITORS

5. **International financial institutions – particularly the IMF and the World Bank, in close coordination with Paris Club members and the G20 – should develop common standards and model contractual language that limit the scope of confidentiality clauses in sovereign lending agreements.**
   These standards should consider:
   a. Limiting prior consent as a requirement for disclosure;
   b. Ensuring confidentiality constraints remain consistent with borrower countries' national access to information regulation, particularly provisions on proactive debt disclosure and legal consequences for non-disclosure.
   c. Confidentiality or non-disclosure clauses that conflict with a borrower country's national legislation should not be enforceable, regardless of the law governing the agreement. National access-to-information requirements should be recognised as overriding mandatory provisions, taking precedence over inconsistent contractual terms irrespective of the jurisdiction.
6. **Creditors should disclose transaction-level financial and non-financial information to publicly accessible debt databases.**
   Governments in creditor countries should strengthen requirements for comprehensive debt transparency, through the enactment of domestic regulations requiring bilateral creditors and private lenders, operating within their jurisdictions, to proactively disclose complete, transaction-level, financial and non-financial information related to public debt.

   Creditor disclosure should ideally include:

   a. the identity of the lender;
   b. amount of loans (currency and drawdown schedule);
   c. the beneficiary;
   d. use of proceeds;
   e. guarantee and guarantor;
   f. interest payable (including any formula);
   g. method of repayment (including currency);
   h. fees payable and to whom (management, commitment, arrangement, etc.);
   i. maturity;
   j. structure;
   k. amount and details of any collateral;
   l. events of default (particularly government);
   m. termination clauses, including any formulas for calculating termination payments;
   n. confidentiality clauses;
   o. governing law of the agreement;
   p. the extent of the waiver of sovereign immunity;
   q. dispute resolution mechanisms;
   r. all conditions precedent to the loan, including confirmation of a legal opinion/ parliamentary approval (if any), related to the procedural requirements for borrower country debt acquisition; and
   s. other relevant data.[163]

ANNEX: LIST OF CONTRACTS

The agreements listed here are publicly available or were released under right to information laws. This is not an exhaustive list of all agreements reviewed for this research.

GLOBAL ANALYSIS

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2. Export-Import Bank of China and the Government of Barbados, Preferential Buyer's Credit Loan Agreement (No. PBC (2015) 22), 25 November 2015, Article 8.7. Available via AidData (project ID 55326).
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4. Ghana Cocoa Board and a syndicate of lenders including Ghana International Bank plc as Initial Mandated Lead Arranger, Facility Agreement (US$1.13 billion), signed October 2022, Clause 27. Draft of 18 July 2022 submitted to Parliament; available via AidData (project IDs 95485 and 95486).
5. Bank of China and the Co-operative Republic of Guyana, Facility Agreement (EUR 160.85 million), 30 December 2022, Clause 33. Available via AidData (project ID 97812).
6. Export-Import Bank of China and the Republic of the Philippines, Preferential Buyer's Credit Loan Agreement (No. PBC20220200569), 4 January 2023, Article 8.6. Available via AidData (project ID 96040).

COUNTRY ANALYSIS

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2. Export-Import Bank of China and the Government of the Democratic Socialist Republic of Sri Lanka, Government Concessional Loan Agreement on Construction of Extension of Southern Expressway Section 4 from Mattala to Hambantota via Andarawewa Project (No. GCL (2014) 18), 16 September 2014, Article 8.7.
3. Crédit Agricole Corporate and Investment Bank and the Democratic Socialist Republic of Sri Lanka, French Export Credit Facility Agreement, 17 May 2016, Clause 30.
4. Agence Française de Développement and the Democratic Socialist Republic of Sri Lanka, Credit Facility Agreement (No. CLK 1013 01 K), 1 June 2016, Clause 15.9.
5. China Development Bank and the National Water Supply and Drainage Board of Sri Lanka, Facility Agreement, 21 August 2017, Clause 20.
6. Export-Import Bank of China and the Government of the Democratic Socialist Republic of Sri Lanka, Government Concessional Loan Agreement, December 2017 (day not legible), Article 8.7.
7. Deutsche Bank AG and MUFG Bank, Ltd. and the Government of the Democratic Socialist Republic of Sri Lanka, Loan Agreement, 23 January 2019, Clauses 12.9–12.11.
8. UniCredit Bank Austria AG and the Government of the Democratic Socialist Republic of Sri Lanka, Export Credit Facility Agreement (up to EUR 10,317,000), 11 February 2019, Clause 30.
9. ING Bank N.V. and the Democratic Socialist Republic of Sri Lanka, ECA-Backed Term Facility Agreement, 10 July 2019, Clause 32.
10. State Bank of India (IFSC Banking Unit, GIFT City Branch) and the Government of the Democratic Socialist Republic of Sri Lanka,

Credit Facility Agreement (US$1 billion), 17 March 2022, General Conditions, Section O.
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14. Government of the People's Republic of China and the Government of the Bolivarian Republic of Venezuela, Third Amendment Protocol, Gaceta Oficial No. 40.299, 21 November 2013, Article 9. http://www.gacetaoficial.gob.ve/gacetas/filtro-avanzado?numero_exact=40299
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[63] See articles 8.4 and 8.5 of Uganda–China Exim Bank GCL Agreement (2015)
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[65] Articles 8.3 and 8.4 of Philippines–China Exim Bank PBC Agreement (2023).
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[67] Clause 29 of Ghana Cocoa Board Syndicated Facility (draft, 2022).
[68] S. 6.10 of EPM–IDB Invest Loan Agreement (2017).
[69] See clauses 18.1–18.2 of Economic and Social Development Bank of Venezuela (BANDES), Petróleos de Venezuela SA (PDVSA), China National United Oil Corporation and China Development Bank Corporation, Four-Party Agreement 2011. Available on AidData: https://docs.aiddata.org/ad4/pdfs/how-china-lends-2/VEN_2011_479.pdf
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[72] Clause 24.2 of the Sri Lanka and Deutsche Bank and MUFG Agreement.
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[77] Interviewees 1 and 4, global research (2026).
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[158] A Special Purpose Vehicle is a separate legal entity established to borrow funds or hold assets for a specific purpose, such as financing a project. Its lending obligations may not appear in government accounts even where the state owns or backs it.
[159] For a list of transaction-level data that is recommended for disclosure, see Recommendation 6 below.
[160] Proactive transparency: The future of the right to information? (2009). World Bank: 31, Chapter 5.7, https://www.access-info.org/wp-content/uploads/Darbishire_Proactive_Transparency.pdf
[161] When a borrowing country does not have right to information legislation, it is recommended to clearly define what constitutes confidentiality and exceptions to the full disclosure of transaction-level financial and non-financial debt information in their PFM or PDM legislation. These exceptions should be in line with the principles to the right to information.
[162] For example, the Public Financial Management Acts of Uganda and Zimbabwe include specific provisions for the scrutiny of classified, confidential information by the parliament following specific processes.
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