

Introduction

- ◆ Nicaragua enforced its General Law on Public Debt as a means of ensuring debt management and therefore reaching and consolidating public debt sustainability.
- ◆ The General Law on Public Debt was passed on December 2003 and regulated on January 2004 (before Nicaragua reached its completion point under the HIPC Initiative).
- ◆ This Law has strengthened the legal framework for debt management.

Structure of the General Law on Public Debt

Chapter I:	Purpose, Scope of Application, Legal Framework, and Definitions
Chapter II:	National Debt Strategy and Public Debt Policy
Chapter III:	Debt Technical Committee (DTC)
Chapter IV:	Short-term Public Debt
Chapter V:	Security Issuance
Chapter VI:	Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting
Chapter VII:	Debt Utilization, Implementation, Renegotiation, and Assumption
Chapter VIII:	Transparency and Accountability in the Implementation of the Law
Chapter IX:	Public Debt Reporting and Recording System
Chapter X:	Guarantees, Collaterals, Performance Bonds, and other State Contingent Liabilities
Chapter XI:	Prohibitions
Chapter XII:	General and Final Provisions

Purpose, Scope of Application, Legal Framework and Definitions

❖ **Purpose of the Law:** To regulate the public indebtedness process in order to ensure that Government financial needs and payment obligations are met at the lowest possible cost and consistently with a reasonable risk level, as well as to ensure national payment capacity in accordance with the performance of the relevant macroeconomic variables (Article 1).

❖ **Scope of Application:** All government institutions performing internally and externally funded operations or requiring the State's guarantee or collateral for such operations (Article 2).

Public Sector	{	• Executive Power	{	State Ministries, state financial institutions, and state-owned enterprises, amongst others
		• Other State Powers		
		• Municipalities and Regional Governments		

❖ The Ministry of Finance and Public Credit (MHCP) is the governing body of the public credit system (Article 4).

Exception: Public credit operations performed by the Nicaraguan Central Bank for the only and exclusive purpose of ensuring national monetary and foreign exchange stability.

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National Debt Strategy and Public Debt Policy

National Debt Strategy

- The MHCP is responsible for monitoring the design of a National Public Debt Strategy that will be submitted for the consideration of the President of the Republic for its further adoption and dissemination (Article 10).

- **The strategy should provide for the following elements:**
 - National repayment capability and debt sustainability
 - Consistency of the objectives of projects and programs with the country's indebtedness capacity
 - Availability of budgetary resources to fund the counterpart of programs and projects
 - Technical and financial assistance focused on investment and economic and social development programs
 - A renegotiation and conversion plan of the domestic and external Public Debt (intended to reduce indebtedness levels, funding costs, or both)
 - An overall debt ceiling should take carefully into account the risks involved and the vulnerability of domestic and external projected inflow, as well as the profile of debt service

National Debt Strategy and Public Debt Policy

Debt Policy

- ✓ A Public Debt Policy will be annually designed as part of the Annual General Budget of the Republic (Article 11).

The Debt Policy will determine:

- The lowest concessionality level acceptable for contracting external loans
- The highest net indebtedness level of each public institution consistently with its payment capacity
- The prioritization of Public Credit operations on the basis of investment targets and monetary and financial restrictions
- The greatest amount of Contingent Liabilities that institutions authorized by this Law may underwrite
- The highest net indebtedness level of institutions provided for in the budget, which will be part of the Annual General Budget of the Republic

- ✓ All public institutions will be subject to the Public Debt Policy in the preparation of their annual budgets (Article 12).

The Public Debt Policy and the General Budget of the Republic should be consistent with each other and aligned to the National Debt Strategy .

- ✓ The Debt Policy will be submitted for the consideration and approval of the President of the Republic by July 30 every year (Article 13).

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Debt Technical Committee (DTC)

- It is a consultative and advisory body to the MHCP on issues related to public indebtedness and its major role consists of designing and periodically reviewing the proposed National Debt Strategy (Article 14).
- **DTC Membership** (Article 15):
 - Chair: Vice Minister of Finance and Public Credit
 - Alternate Chair: General Manager of the Nicaraguan Central Bank
 - The Vice Minister of Development, Industry and Trade
 - The Director of the *National Assembly*'s Office for the Analysis and Monitoring of Public Expenditure
 - The Secretary for Economic Relations and Cooperation from the Ministry of Foreign Affairs
 - The Director of the National Public Investment System
- **The DTC Role** (Article 16):
 - To design and update the proposed National Debt Strategy and to monitor its enforcement
 - To provide for support in designing the Public Debt Policy
 - To monitor the evolution of the Public Debt and to examine its macroeconomic impact
 - To propose recommendations aimed to achieving a better Public Debt management and reducing national vulnerability to international financial disruptions
 - To suggest actions intended to reduce costs and risk exposure associated to public indebtedness
 - To analyze the renegotiation of external and domestic debt and table relevant proposals
 - To provide technical advice in the renegotiation of external debt
 - To perform a periodical assessment of the Public Debt legal and regulatory framework and to propose their upgrading as required
 - To evaluate the staff and resources available at the various institutions involved in Public Debt and to recommend the adoption of policies related to staff training and retention
 - Any other responsibility to be assigned by the Ministry of Finance and Public Credit

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Short-term Public Debt

- Centralized government entities may contract short-term debt for the sole purpose of funding expenses provided for in the General Budget of the Republic. The amount of short-term operations should not exceed the limits provided for in the Debt Public Policy.
 - Such operations will include the securities issued by the General Treasury of the Republic to account for temporary cash flow deficit (Article 19).

- The short-term debt of decentralized government entities will be the responsibility of their higher authorities and the contracting of such debt should be monthly notified in writing to the MHCP in order to allow for monitoring the Indebtedness Limit approved as part of the Debt Strategy and Debt Policy (Article 20).

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Security Issuance

Government Securities

- ❖ Government securities can be solely issued by the MHCP through the General Treasury of the Republic (TGR) (Article 22).
- ❖ The MHCP will be responsible for preparing and updating the regulations, standards, and procedure manuals for issuing government securities. These regulations (Article 23)
- ❖ Securities issued by the TGR (MHCP) are intended for primary placement in the local or international market (Article 22).
- ❖ The MHCP may appoint the Nicaraguan Central Bank (BCN) as its fiscal agent for security placement and payment (Article 24)

Security Issuance

Government Securities (continued)

- ❖ The General Budget of the Republic will include the amount required for paying the capital and interests of government securities expiring during that budget period (Article 29).
- ❖ The generation of domestic public debt through the issuance of government securities should be authorized by the *National Assembly*.
 - Securities intended to strengthening the cash flow of the Central Government in conformity with the budget in force will be an exception to this provision (Article 32)
- ❖ The MHCP will submit to the *National Assembly* a quarterly report on securities issued (Article 33)

Security Issuance

Securities issued by other government institutions

- ❖ Municipal governments may only issue debt instruments under the supervision and with the authorization of the MHCP and the BCN (as provided for in Articles 20 and 21 in the Law on the Municipal Budgetary System) and its debt limit will be as established in the Debt Policy approved together with the General Budget of the Republic and supported by an underwriting mechanism (Article 21)
- ❖ Security issuance by other public institutions will be the responsibility of their higher authorities. The MHCP should be previously notified in writing on each issuance so as to allow for monitoring the debt limits approved in the National Public Debt Strategy and the Public Debt Policy (Article 26)

Other general provisions

- ❖ The overall annual amount, the currency, and maturity of securities to be issued by authorized institutions should be published during the first fifteen days of each year. Before authorizing any issuance, institutions should coordinate with each other and with the BCN on the amount, maturity, and issuance periodicity, taking into consideration monetary and exchange policies, the funding needed by the public sector, and the situation of the money and capital markets (Article 27)
- ❖ Every security issuance should be recorded and surveyed by the Office of the Comptroller General of the Republic (Article 31)

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Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting

Authorization for Proceedings

- ❖ All institutions intending to start the proceedings required for a medium or long-term Public Credit operation should request the authorization of the MHCP (Article 34) and provide the following information:
 - ◆ Project rationale within the context of economic and social development
 - ◆ A study of the project's economic and financial feasibility
 - ◆ Investment amount and funding required
 - ◆ Proposed terms and conditions of the new debt
 - ◆ National counterpart requirements
 - ◆ All pre-investment or investment projects to be financed with reimbursable funds through the General Budget of the Republic must be technically endorsed by the Coordination and Strategy Secretariat of the President's Office (SECEP)

- ❖ The requests from decentralized government entities should contain their current and projected financial statements, including the service of current and new debt incorporated as part of the project's cash flow, as well as projected revenue and risks assessed for its calculation. They should also include indicators reflecting the institutional level of indebtedness of the institution (Article 35).

Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting

Authorization for Proceedings

- ❖ The authorization required to start the proceedings will also apply in cases of reimbursable technical assistance and non reimbursable technical and financial cooperation with budgetary implications arising from recurrent or counterpart expenditure (Article 36)
- ❖ The MHCP will verify that the terms and conditions of new debt are consistent with the National Debt Strategy and the Public Debt Policy (Article 37)
- ❖ Subject to a positive result of such evaluation the MHCP will authorize in writing to start the proceedings, specifying the authorized amount and the financial parameters of the operation that are deemed as reasonable (Article 37)

Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting

Negotiation

- ❖ Public institutions may only start negotiating medium and long-term external or domestic loans subject to the authorization of the MHCP (Article 38)
- ❖ Public institutions may enter into negotiations with potential creditors on the terms and conditions of the funding required (Article 39)
- ❖ The authorized institution should obtain from potential creditors a written offer containing all the terms and conditions of the offered funding as well as guarantees required (Article 40)
- ❖ Institutions will not engage in writing to make the credit operation official unless they receive a written notice from the MHCP (Article 41)

Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting

Authorization for contracting

- ❖ Interested institutions should request a written authorization from the MHCP in order to sign loan contracts and should attach the following documents (Article 43):
 - The draft loan contract
 - The offer of the creditor in writing
- ❖ The MHCP will evaluate the offer taking into account (Article 44):
 - Terms and conditions
 - Guarantees required
 - Funding consistency with the Public Debt Policy and the National Debt Strategy
 - Impact on the General Budget of the Republic
 - The project's inclusion in or exclusion from the National Public Investment System (SNIP)
 - MHCP technical and legal findings
 - Technical reports by the SECEP and the BCN
- ⇒ The MHCP may contract Public Debt for those institutions governed by the Law on the Budgetary System as far as such funds are used to finance expenditure provided for in the General Budget of the Republic (Article 42)

Medium and Long-term Indebtedness: Authorization for Proceedings, Negotiation, and Contracting

Authorization for contracting

- ❖ Based on a positive result of its evaluation the MHCP will authorize the loan contract. If such result is negative the institution involved should negotiate again the terms and conditions of the loan contract (Article 46)
- ❖ Whenever the debt is contracted by the MHCP, this institution will participate in the negotiation of the loan contract and will be responsible for obtaining the authorization of the President of the Republic through a Presidential Agreement (Article 47)
- ❖ The MHCP will be entitled to issue debt instruments, not provided for in the General Budget of the Republic, in order to meet final judicial sentences (Article 48)
- ❖ Institutions may contract credit operations with a guarantee or collateral on the national and municipal property and income in conformity with rules and regulations in force (Article 49)

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Debt Utilization, Implementation, Renegotiation, and Assumption

- ❖ Once the loan contract has been signed the contracting institution should meet as soon as possible the conditions prior to loan implementation (Article 50)
- ❖ Whenever necessary in external loans granted to the Republic of Nicaragua for funding projects or programs at municipalities or decentralized government entities in the Public Sector, the MHCP will sign with such entities a Resource Transfer Agreement (Article 51)
- ❖ Funds received through the disbursement of external loans granted to the Republic of Nicaragua or to any public institution, either for budget, balance of payment, or program/project support, should be deposited in bank accounts at the BCN in conformity with foreign exchange regulations in force (Article 52)
- ❖ The MHCP may ask the public executing agencies of projects/programs funded with Public Credit resources to submit timely, accurate, and comprehensive information on indebtedness operations and to adopt the adequate procedures, methodology, IT systems, and manuals for the management of such resources (Article 55)
- ❖ The MHCP will physically monitor and control the public investment programs and projects included in the SNIP and funded with external or domestic loans (Article 56)

Debt Utilization, Implementation, Renegotiation, and Assumption

- ❑ The MHCP will be responsible for paying the service of the Public Domestic and External Public Debt contracted by the Republic of Nicaragua (Article 59)
- ❑ Decentralized government entities, state-owned enterprises, state banks and financial institutions, and local municipalities will be directly responsible for the timely payment of the contracted public debt service on which they should monthly report to the MHCP (Article 60)
- ❑ Whenever public institutions fail to pay the service of their external debt as guaranteed by the Republic of Nicaragua or when default puts other credit disbursement at risk, the MHCP may pay —through the BCN— such service as well as any other charges arising from default (Article 61)
- ❑ Default of public debt service by public institutions will cause the MHCP to suspend all proceedings underway at the infringing institution for obtaining new funding involving public credit operations (Article 62)

Debt Utilization, Implementation, Renegotiation, and Assumption

Renegotiation

- The consolidation, conversion, renegotiation, and refinancing of the public debt contracted on behalf of the Republic of Nicaragua will be implemented by the MHCP in coordination with the BCN. Other institutions in the public sector will be required the authorization of the MHCP. The requirements for these operations will be (Article 63):
 - ⇒ Operations should not be incremental of the outstanding debt, except in those cases where interest and related charges must be capitalized
 - ⇒ Operations should contribute to improve or restructure the accrued outstanding debt
 - ⇒ Operations should be consistent with the guidelines and objectives provided for in the National Debt Strategy and the Public Debt Policy
- External Public Debt renegotiation will be subject to the treatment determined by creditors and according to the guidelines and objectives provided for in the National Debt Strategy and the Public Debt Policy (Article 64)
- The MHCP will issue the standards and procedures governing these operations (Article 65)

Debt Assumption

- Public Debt subrogation or debt assumption by the MHCP can only be authorized by means of a Presidential Agreement (Article 66)
- Modifications of loans or agreements on the public debt contracted by institutions performing such operations will be subject to the approval of the *National Assembly* (Article 67)

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Transparency and Accountability in the Implementation of the Law

- The MHCP will annually publish a report on the implementation of the Public Debt Policy (Article 68)
- The MHCP may assess the Public Debt operations performed by decentralized government entities and will inform its findings and recommendations to those institutions for their adoption of preventive and remedial measures (Article 69)
- All institutions in the public sector performing Public Credit operations should maintain accounting systems preferably governed by the International Accounting Standards (IAS); manage comprehensive, accurate and updated records of operations related to each contracted loan, and maintain permanent files containing documentation on the background of each credit (Article 70)

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Public Debt Reporting and Recording System

- * For a greater efficiency and effectiveness of recording, control, and monitoring of Public Credit Operations such computerized systems will be used as (Article 72):
 - DMFAS – Debt Management and Financial Analysis System
 - SIGFA – Integrated System for Administrative and Financial Management and Auditing
 - SNIP – National Public Investment System
 - SIGFAPRO – Project Management Integrated System
 - Others

- * The External Public Debt database will be managed by the computerized system of the BCN and will be updated with the support of the MHCP. This database will be shared by the BCN and the MHCP, although the latter will have access privileges consistent with its competence and responsibilities (Article 73)

- * The Domestic Public Debt database will be managed by the MHCP and its information will be updated on a permanent basis and shared with the BCN, which will have access privileges consistent with its competence and responsibilities (Article 74)

- * Those public institutions that have been authorized to directly sign loan contracts —either guaranteed by the Republic of Nicaragua or not— must forward a copy of such contract and any other legal documentation supporting the new domestic or external debt to the MHCP and the BCN. This action should take place within ten working days after signing the respective contracts (Article 75)

- * Public institutions directly paying the service of their external and domestic liabilities should necessarily inform the MHCP and the BCN accordingly within seven working days after such payment (Article 76)

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Guarantees, Collaterals, Performance Bonds, and other State Contingent Liabilities

- Guarantees, collaterals, performance bonds or other contingent liabilities issued by public institutions as per the provisions in this Law will require as a basic condition a Presidential Agreement authorizing such issuance, regardless of its further ratification by the *National Assembly* (Article 78)
- Every Public Sector funding requiring a State guarantee, collateral, or performance bond should be previously requested to the Ministry of Finance and Public Credit together with the documentation needed to prove the availability of adequate financial resources for the timely payment of the debt service (Article 79)
- The State may issue guarantees, collaterals, performance bonds or other contingent liabilities in favour of public institutions. The MHCP may issue guarantees, collaterals or performance bonds in favour of individuals or legal persons in the private sector corresponding to credits or liabilities intended to strengthen the national economic and social development (Article 80)
- The MHCP is not entitled to guarantee the issuance of securities by local Municipalities (Article 80)
- The MHCP will only recognize those guarantees, collaterals and performance bonds that have been made duly official and authorized by means of a Presidential Agreement and ratified by the *National Assembly* (Article 81)

Guarantees, Collaterals, Performance Bonds, and other State Contingent Liabilities

- + The MHCP will assess the risk exposure of the guaranteed Public Debt for the purpose of provisioning Contingent Liabilities in the draft General Budget of the Republic (Article 82)
- + The MHCP will establish a permanent recording system of guarantees issued. The MHCP will quarterly reconcile the situation of guaranteed credits based on the information directly requested to creditors and will send a monthly report on guarantees issued to the Minister of Finance and Public Credit and to the Debt Technical Committee (Article 84)
- + The amount corresponding to guarantees provided for in the Public Debt Policy cannot exceed the limits established for each budgetary period of the public institutions involved (Article 85)
- + Public institutions acting as executing agencies of investments funded with State-guaranteed credits should keep the MHCP and the SNIP informed on the execution status of such investments and will submit the information needed to evidence their financial solvency (Article 86)

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Prohibitions

- ☒ All administrative acts performed by public institutions without the authorization in writing of the MHCP and which may directly or indirectly compromise Public Credit are specifically prohibited (Article 87)
- ☒ The MHCP cannot implement the payment of any Public Credit liabilities unless the procedures or requirements provided for in this Law or other applicable laws, as the case may be, have been complied with (Article 88)

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General and Final Provisions

- ☒ The MHCP is entitled to adopt all technical and administrative provisions needed for the enforcement of this Law. The technical and operational rules approved by the MHCP will be binding for all those public institutions performing Public Credit operations (Article 89)
- ☒ Every legal and regulatory provision opposing the contents of this Law is hereby revoked (Article 91)

Progress and Implementation of the General Law on Public Debt

- ◆ Creation of the Debt Technical Committee as a consultative and advisory body
- ◆ Design of the Debt Policy for the 2005-2006 period
 - Establishment of net indebtedness limits
 - Establishment of minimal concessionality levels. The DTC specially emphasized the inclusion of the concessionality element in new external loans so as to provide for the most advantageous terms
- ◆ Average concessionality in 2005 was 63 percent
- ◆ Debt indicators show no evidence of deterioration as a result of the new debt
- ◆ Renegotiation of the external debt
- ◆ Renegotiation of the domestic debt with banks and standardization of securities issued