

DEBT MANAGEMENT AGENCY BAUCHI



BORROWING GUIDELINES EFFECTIVE FROM 2013

1. BACKGROUND

These guidelines have been produced in compliance with the provisions of the Debt Management Agency Law (DMA 2009). It provides broad guidelines for borrowing and issuance of government guarantees. Compliance with the Guidelines by the State Government, its Agencies is imperative; otherwise all loans obtained in contravention of it shall be void.

2. ROLE OF THE STATE HOUSE OF ASSEMBLY

The following approvals must be obtained from the State House of Assembly prior to borrowing;

S/No	REQUIREMENT	LEGAL BASIS
a.	Prior authorization by Law for the purpose for which the borrowing is to be utilized.	S.42(2)(a) Bauchi State Fiscal Responsibility Amendment Bill 2012
b.	Approval of the Borrowing Program for every succeeding year.	S. 18(2) DMA Law
c.	Approval (by resolution) of the terms and conditions and acceptance of loans to be contracted from time to time.	S.25(1))DMA Law
d.	Approval of overall limits, for the amount of consolidated debt of the State, to be set by the Executive Governor	S.40(1)(a) Bauchi State Fiscal Responsibility Amendment Bill 2012

3. GENERAL PROVISIONS FOR BORROWING

i. LEGAL PROVISIONS

S/NO	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
A	The State Government or any of its Agencies desirous of borrowing shall obtain a prior approval of the Executive Governor.	MDA's	S.37(1)(b) Bauchi State Fiscal Responsibility Amendment Bill 2012
B	There must be an adequate budgetary provision for the borrowing		
C	Any borrowing by the State shall be its obligation solely unless explicitly guaranteed by the Federal Government of Nigeria and it shall only be applied solely for the purpose for which it is obtained.	MOF, MDA's and DMA	S.24(1)(c) DMA Law 2009
D	The total amount of loans outstanding at any particular time including the proposed loan shall not exceed 40% of the actual revenue for the preceding 12 months;		DMO Act,
E	All banks and other financial institutions shall request and obtain proof of compliance to all relevant laws and regulations from the Ministry of Finance and DMA before lending to any MDA.	Banks and other Financial Institutions	S.38(1) Bauchi State Fiscal Responsibility Law as Amended 2012

F	The State Government and its Agencies desirous of borrowing shall specify the purpose for which the borrowing is intended and present to the DMA a cost benefit analysis detailing the economic and social benefits of the project to which the loan will fund.	MDAs	S.42(1)(a) Bauchi State Fiscal Responsibility Amendment Bill 2012
G	The State Government may borrow from the capital market (non-concessional) subject to the approval of the House of Assembly. Borrowing shall only be for Capital Expenditure and Human Development.	MOF/ House of Assembly	Bauchi State Fiscal Responsibility Bill 2012
H	DMA and Ministry of Finance shall be responsible for leading negotiation and acquisition of all approved loans.	DMA & MOF	S.18(3) DMA Law
I	The DMA will determine and charge a fee.	DMA	- S.7(g)DMA Law 2009 - S.12 (c) DMA Law 2009

4. EXTERNAL BORROWING

i. LEGAL PROVISIONS

S/No	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
A	The State Government or its agencies can only obtain external loan through the Federal Government and such loan must be supported by Federal Government's Guarantee.	State & MDAs	
B	The State Government and its agencies wishing to obtain external loan shall obtain Federal Government approval-in-principle from the Federal Ministry of Finance.		
C	The Executive Council of the state must approve the loan proposal which must be followed by a Resolution of the State House of Assembly.		
D	All external borrowing proposals of the State and its agencies for the next fiscal		

	<p>year must be submitted not later than 90days preceding that year to the Minister of Finance for incorporating into the public sector external borrowing program for the coming year.</p>		
E	<p>A borrowing proposal must be submitted to the Federal Ministry of Finance and the DMO for consideration. The proposal should include the following:</p> <ul style="list-style-type: none"> ▪ The purpose for which the borrowing is intended and its link to the developmental Agenda of the Government; ▪ Cost-benefit analysis showing the economic and social benefits to which the intended borrowing is to be applied; ▪ Cash flow statement of the Project/MDA's, to ascertain its viability and sustainability; and, ▪ Copies of the State's Executive Council approval and the Resolution of the State House of Assembly. 		
F	<p>To receive approval-in-principle, the State Debt Sustainability is ascertained to ensure that the borrowing is within sustainable limit.</p>		
	<p>The Borrowing Proposal is incorporated into the Annual Budget for the Federal Executive Council's approval</p>		
G	<p>Negotiation and signing of external loans and on-lending to state Governments.</p> <ul style="list-style-type: none"> ▪ Upon NASS approval of the Annual Budget, a Negotiation Team to be led by FMF, is formally constituted. ▪ Submission of Negotiation Report to HMF ▪ Submission of Negotiated documents to Federal Ministry of Justice for clearance. ▪ Presentation of Memo for FEC's 		

	<p>consideration and approval.</p> <ul style="list-style-type: none"> ▪ Processing of Loan Agreements and Legal Opinion. ▪ Signing of Loan Agreement. 		
H	The State shall therefore execute a Subsidiary Loan Agreement (SLA) with the Federal Government		
I	Preparation of a debt management strategy for the approval of the HC, Finance	DMA/MOF/Budget	
J	<p>Appraisal of Project documents</p> <ul style="list-style-type: none"> • Conduct project appraisal to ascertain conformity with Debt Management Strategy, borrowing guidelines and states priorities • Prepare and forward Project appraisal report to HC, Finance 	<p>DMA</p> <p>DMA</p>	
K	<p>Preparation of proposed borrowing plan</p> <ul style="list-style-type: none"> • Identify projects and submit project documents to be funded with the loan, in line with the States development priorities and creditors country partnership strategy. • Prepare annual borrowing plan 	<p>MDA's and borrowing entities</p> <p>DMA/MOF/Budget</p>	
L	<p>State Executive Council's Approval and presentations to House of Assembly</p> <ul style="list-style-type: none"> • Approve project appraisal reports and approve borrowing plan to be incorporated into the draft budget proposal and presented to State Executive Council. • Annual borrowing plan submitted as an integral part of the proposed annual budget to NASS for approval 	<p>HC MOF</p> <p>MOF and Budget</p>	

ii. PROCEDURE FOR EXTERNAL BORROWING

- a) The State Government or its agencies can only obtain external loan through the Federal Government and such loan must be supported by Federal Government's Guarantee.
- b) All external borrowing proposals of the State and its agencies for the next fiscal year must be submitted not later than 90days preceding that year to the Minister of Finance for incorporating into the public sector external borrowing program for the coming year.
- c) The State must obtain Federal Government approval- in-principle from the Federal Ministry of Finance.
- d) To receive approval-in-principle, the Debt Sustainability of the State must be ascertained to ensure that the borrowing is within sustainable limit.
- e) The Executive Council of the state must approve the loan proposal which must be followed by a Resolution of the State House of Assembly.

iii. DOCUMENTATION REQUIREMENTS

In processing external loan requests, the State Government, its MDA's are required to provide the following to the DMA for appraisal:

- i. The purpose for which the borrowing is intended and its link to the Developmental Agenda of the Government;
- ii. Cost-benefit analysis showing the Economic and Social benefits to which the intended borrowing is to be applied;
- iii. Cash flow statement of the Project/MDA's, to ascertain its viability and sustainability; and,
- iv. Copies of the State's Executive Council approval and the Resolution of the State House of Assembly.

1. BORROWING FROM COMMERCIAL BANKS AND OTHER FINANCIAL INSTITUTIONS

i. LEGAL PROVISIONS

S/no	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
------	-------------	----------------	-------------

a.	The State Government or any of its Agencies desirous of borrowing from any Domestic Commercial Bank or Financial Institutions shall obtain a prior approval of the Executive Governor.		DMA LAW
b.	All banks and other financial institutions shall request and obtain proof of compliance to all relevant laws and regulations from the Ministry of Finance and DMA before lending to any MDA.	Banks and Other Financial Institutions.	S.38(1) Bauchi State Fiscal Responsibility Law as Amended 2012
c.	Compliance with these guidelines is imperative otherwise such lending shall be unlawful	Banks and Financial Institutions.	S.38(2) Bauchi State Fiscal Responsibility law as Amended 2012

ii. PROCEDURE FOR BORROWING

- a) All borrowing proposals of the State Government and its agencies from Domestic Commercial Banks or Financial Institutions shall be submitted to DMA not later than 30th September of the preceding year, for incorporation in to the borrowing program for the coming year.
- b) All MDA's requiring to borrow from Domestic Commercial Banks shall obtain an approval in-principle of the Honorable Commissioner of Finance and shall State clearly, the purpose of the borrowing, its terms and conditions.
- c) The Honorable Commissioner of Finance shall forward the Borrowing Proposal to the DMA to conduct a **debt sustainability analysis** to ascertain that the monthly debt service ratio including the servicing of the proposed loan being contemplated, does not exceed **40% of actual monthly revenue of the preceding 12 months**, and recommends to DMC for approval.
- d) DMA would undertake a project assessment prior to processing loan request and at regular intervals, thereafter. The main purpose of such assessment is to evaluate the prospect of the borrower's ability to repay. The borrower must have the capacity to generate sufficient income to repay the loan. However, if the project and program is considered critical for social developmental project, then it needs not to be revenue generation.
- e) The DMA will conduct the following risk evaluation before considering the request for borrowing.

-Credit risk – whether there is sufficient funds to meet the repayment obligation

-Legal risk- whether it may not be possible to enforce the right of recourse against the borrower

-Market Risk- Changes in interest rate that will result in losses if loan have to be refinanced at higher rate in the future.

-Operational risk- due to inadequate internal control system, human error, management failure or fraud.

- f) The proposal is then submitted to the Executive Governor, Executive Council and House of Assembly for final approval.
- g) Upon all approvals, the proposal is then forwarded to the DMA for processing ISPO (as the case may be) and thereafter, the DMA forwards a draft ISPO/Guarantee to the Accountant General for execution.
- h) The lending Bank will furnish the DMA with periodic reports on the drawdown and utilization of the loan by the Borrower in addition to periodic reports on the performance of the loan.

iii. DOCUMENTATION REQUIREMENTS

The following documentation must be fulfilled and submitted to the DMA for appraisal prior to borrowing from commercial Banks.

- a) Approval to borrow by His Excellency, the Executive Governor and the State Executive Council.
- b) The Resolution of the State House of Assembly approving the proposed borrowing.
- c) Evidence of the proposed borrowing as financing item in the State's appropriation act indicating the purpose for which it is intended.
- d) The Terms and Conditions of the Loan, including the tenor and any other issue of significance material.
- e) Cost-benefit analysis showing the economic and social benefits to which the intended borrowing is to be applied;
- f) Cash flow statements from the projects to be funded, to ascertain viability and sustainability of the projects.
- g) Audited annual financial statements for the past five (5) years, (where applicable), financial forecast of the loan being sought and a feasibility study on the project to be funded by the loan.

2. BORROWING FROM THE CAPITAL MARKET

i. LEGAL PROVISIONS

S/no	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
-------------	--------------------	-----------------------	--------------------

a.	Any internal loan to be raised from the Domestic Capital Market must conform to the requirements of the Investment and Securities Act (ISA) 2007	SEC	ISA 2007, Section 222 – 273
b.	Approval of the State’s Executive Council and Resolution of the House of Assembly	State	ISA, 2007, Sections 222-273
c.	The total amount of loans outstanding at any particular time including the proposed loan shall not exceed 50% of the actual revenue of the state concerned for the preceding 12 months.	SEC	ISA, 2007, Sections 222-273
d.	All applications to raise funds from the Capital Market shall among other document be accompanied by an original copy of an Irrevocable Standing Payment Order (ISPO) .	State	ISA, 2007, Sections 222-273
e.	Request for issuance of ISPO to be forwarded to the Honourable Minister of Finance for approval. This will include the following: <ul style="list-style-type: none"> • The purpose for which the borrowing is intended and its link to the developmental Agenda of the Government; • Cost-benefit analysis showing the economic and social benefits to which the intended borrowing is to be applied; • Cash flow statements of the MDAs, to ascertain their viability and sustainability; and • Copies of the State’s Executive Council’s approval and the Resolution of the House of Assembly. 	HC MOF	ISA, 2007, Sections 222-273 Borrowing Guidelines Paragraph 3.1(i)
f.	Following from (e) above, the DMA shall conduct a debt sustainability analysis to ascertain that the monthly debt service ratio of a sub-national, including the servicing of the proposed	DMA	DMO External Borrowing Guidelines 2008 - 2012, Paragraph 2.2(iii).

	debt issuance being contemplated, does not exceed 40% of its actual monthly revenue of the preceding 12 months , and recommends to DMC through Commissioner of Finance as appropriate.		DMO Domestic borrowing guidelines, 2008 – 2012 paragraph 2.2.4
g.	The State is to satisfy other requirements of ISA. 2007 and issuance requirements of the Securities and Exchange Commission (SEC).	State and SEC	ISA, 2007, Sections 222-273

ii. PROCEDURE FOR BORROWING

Any Loan to be raised from the domestic capital market must conform to the requirements of the ISA, 2007, which include;

- a. Approval of the State's Executive Council and resolution of the House of Assembly.
- b. The total amount of loans outstanding at any particular time including the proposed loan shall not exceed 50% of the actual revenue of the body concerned for the preceding 12 months;
- c. Applications to Securities & Exchange Commission (SEC) shall, amongst other documents, be accompanied by an **original copy of an Irrevocable Letter of Authority** giving the Accountant General of the Federation.
- d. Confirmation of the receipt of Irrevocable Letter of Anthony from the State by the Accountant General of the federation to deducts both the Principal and Interest from the statutory allocation.
- e. The loan to be raised shall be published in the State's Gazette and shall include all the terms of the Security.

iii. DOCUMENTATION REQUIREMENTS

DOCUMENTATION REQUIREMENT FOR BORROWING IN THE CAPITAL MARKET

- a. Duly completed Form SEC 6;
- b. Copies of resolution of the state legislative assembly authorizing the issue;
- c. A resolution on and gazette by the State Executive Council containing particulars of the proposed Issue;
- d. Audited accounts of the State for the preceding five (5) years;
- e. Draft prospectus, abridged particulars of the prospectus and the Trust Deed;

- f. Vending Agreement, i.e. mandate/engagement letter, appointing the Issue House/ Underwriter to the Issue;
- g. Reporting Accountant's report on the audited financial statements and the financial forecast;
- h. Schedule of claims and litigation involving the State;
- i. Bridging loan agreement (if any);
- j. Material contracts of the State;
- k. Letters of consents of all the professional parties to the Issue;
- l. Letter of confirmation from the Accountant General of the federation of receipt of the Irrevocable Letter of Authority of the deducts the principal and interest from the statutory allocation of the state;
- m. Feasibility report on the proposed project to be financed with the loan;
- n. Brief profile of key personnel of the issuer including members of the Executive arm of the issuer, Accountant-General, Auditor-General, Permanent Secretaries etc;
- o. Any other documentation/information as may be required; and,
- p. The particulars of each loan to be raised pursuant to this Act shall be published in the gazette or any other official document by the body raising the loan and shall include all the terms of the security.

3. BORROWINGS FROM THE FEDERAL GOVERNMENT OF NIGERIA (FGN)

i. LEGAL PROVISIONS

S/no	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
a.	The FGN, either from its internal sources or by borrowing from the market (either domestic or external) can on-lend funds to the State Government.	FMF	par. 2.2.1 DMO Borrowing Guidelines 2008-2012
b.	On-lending is a direct responsibility of the Federal Government and all the projects and programs financed under the modality will be properly monitored by the Federal Government, through the DMO, in collaboration with MOF, to avoid fiscal and other imbalances.	FMF	Par. 2.2.1 DMO Borrowing Guidelines 2008-2012
c.	Projects/Programs for which funds are to be borrowed from the FGN shall be	FMF	Par. 2.2.1 DMO Borrowing Guidelines

	subjected to thorough assessment of the DMO to ensure the rejection of projects that are judged non-viable.		2008-2012
d.	DMA would undertake a project assessment prior to processing loan request and at regular intervals, thereafter. The main purpose of such assessment is to evaluate the prospect of the borrower's ability to repay. The borrower must have the capacity to generate sufficient income to repay the loan. However, if the project and program is considered critical for social developmental project, then it needs not to be revenue generation.		Par. 2.2.1 DMO Borrowing Guidelines 2008-2012
e.	<p>The DMO will conduct the following risk evaluation before considering the request from the State Government.</p> <p>I. Credit risk – whether the state borrowing may not have sufficient funds to meet its obligation</p> <p>II. Legal risk- whether it may not be possible to enforce the right of recourse against the borrower</p> <p>III. Market Risk- Changes in interest rate that will result in loses if loan have to be refinanced at higher rate in the future.</p> <p>IV. Operational risk- due to inadequate internal control system, human error, management failure or fraud.</p>		Par. 2.2.1 DMO Borrowing Guidelines 2008-2012

1. ISSUANCE OF GUARANTEES

i. LEGAL PROVISIONS

S/no	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
a.	Any request for guarantee by MDA's shall be backed up with approval of the Executive Governor and Resolutions by the State Executive Council and House of Assembly	State & MDA's	

b.	The Commissioner of Finance shall be responsible for issuance of guarantee on behalf of the State and its Agencies.	MOF	S.22 (2) DMA Law 2009. - S.39(1) Bauchi State Fiscal Responsibility Amendment Bill 2012
c.	For any guarantee granted by the Commissioner to become effective, there shall be counter guarantee of equal or higher amount than the guarantee obligation from MDA's or its controlled Corporations.	MOF	S.39 (2) Bauchi State Fiscal Responsibility Bill 2012
d.	The DMA shall establish limits/benchmark for the external indebtedness and guaranteed domestic loan.	DMA	S.21(1)&(2), S.35(2) Bauchi State Fiscal Responsibility Amendment Bill 2012
e.	The DMA will compare cost and risk of issuing a guarantee vis-à-vis on-lending and advise on the preferred option;	DMA	
f.	Beneficiaries will provide audited annual financial statements for the past five (5) years, financial forecast for the tenor of the loan for which the guarantee is being sought and a feasibility study on the project to be funded by the loan for which the guarantee is being sought	MDAs	
g.	Beneficiaries would provide relevant financial information on use funds, disbursements, accounting, and degree of implementation of the project financed, and conduct regular consultations with DMA;	MDAs	
h.	The DMA will determine and charge a fee for issuance of guarantee.	DMA	- S.7(g)DMA Law 2009 - S.12 (c) DMA Law 2009
i.	The DMA would monitor the use of the loan to ensure that it serves the intended purpose and is repaid in accordance with the loan agreement;	DMA	- S.24 (1)(c) DMA Law 2009
j.	The DMA would ensure that the loan and guarantee documentation are clear and unambiguous	DMA	

ii. PROCEDURE FOR ISSUANCE OF GUARANTEES

- a. Any request for the issuance of government guarantee shall be submitted to the Honorable Commissioner of Finance for approval.
- b. The HCF shall forward the request to DMA for appraisal.
- c. DMA will appraise the request comparing costs and risk of issuing a guarantee vis-à-vis on-lending and advise on the preferred options
- d. DMA will forward recommendation to Honourable Commissioner of Finance for approval.
- e. Guarantee would be treated as borrowing as they become instant credit upon crystallization ;
- f. DMA would manage each guarantee from the time it is issued until it is extinguished and would advise and ensure that the beneficiary applies proper management, accounting practices in managing the guarantee;
- g. Beneficiaries would provide relevant financial information on use of funds, disbursements, accounting, and degree of implementation of the project financed, and conduct regular consultations with DMA;

iii. DOCUMENTATION REQUIREMENT

- a. The agreement between the state and the borrower, which sets out the conditions under which the guarantee is issued;
- b. Approved resolution from the State House of Assembly and the State Executive Council;
- c. Audited annual financial statement for the past five (5) years; if applicable
- d. Financial forecast for the tenor of the loan for which the guarantee is being sought for
- e. Feasibility study on the project to be Guarantee.

2. GUARANTEES BY THE FEDERAL GOVERNMENT OF NIGERIA (FGN)

i. LEGAL PROVISIONS

S/no	REQUIREMENT	RESPONSIBILITY	LEGAL BASIS
------	-------------	----------------	-------------

a.	By Virtue of DMO Act, All External Loans will either be Contracted Directly By The Federal Government Or By State Through The Federal Government Which Must Guarantee Such Loans. Therefore, The Limit Of The Guarantees Is The Total Amount Of Foreign Debts To Be Contracted, Which Is Included In The Budget Approved By The National Assembly; Consequently The Legislation And Guide Lines For Borrowing Are Particularly Relevant,	DMO	- S.21 (2) DMO Act 2003
b.	All FGN guaranteed loan to public corporations (Parastatals, Agencies and Departments) would require them to issue irrevocable standing payment orders (ISPOs) tied to the allocations. The ISPO will be for servicing both the principal amount and interest on the loans.	MOF and AG's office	P. 2.2.2(ii) DMO Borrowing Guidelines 2008-2012
c.	DMO would manage each guarantee from the time it is issued until it is extinguished and would advise and ensure that the beneficiary applies proper management, accounting practices in managing the guarantee;	DMO	p. 2.2.2(ii) DMO Borrowing Guidelines 2008-2012

APPENDIX

PROCESSES & CONTROL MEASURES FOR BORROWING BY THE STATE GOVERNMENT AND ITS AGENCIES

The Processes and Controls for the State's borrowing are enshrined in the following;

- Bauchi State Debt Management Agency Law 2009
- Bauchi State Fiscal Responsibility Amendment Bill, 2012

ESTABLISHMENT OF FINANCING GAP

The DMA will:

- a. In collaboration with the Ministry of Finance, Ministry of Budget and Budget Committee, use historical data to forecast future government financing needs.
- b. Weigh the above against projected revenue to establish the financing gap to which should be consistent with the developmental objectives of State Economic Empowerment and Developmental Programs.

- c. Prepare a Project Schedule showing the details of the gap to be financed, and forward same to the Debt Management Committee (DMC).

The DMC will:

Approve and forward to the State Executive Council (SEC) for inclusion in to the Appropriation Bill.

DEFENCE OF FINANCING GAP IN THE APPROPRIATION BILL

The DMA will:

Prepare a brief for the Commissioner of Finance in readiness for the defense of financing gap in the Appropriation Bill before the Appropriation Committee of the House of Assembly.

SOURCING OF INTERNAL LOAN

Upon approval of the financing gap through the passage of the Appropriation Bill by the House of Assembly,

The DMA will:

- a. Commence the process of identifying the possible sources of financing to fill the gap including internal and external borrowing options.
- b. Prepare a brief on possible sources of loan, their terms and conditions and make recommendations to the DMC.
- c. Upon approval by the DMC, DMA commences loan negotiation in conjunction with the Ministry of Justice(where applicable)
- d. On completion of negotiations, prepare a Brief to the DMC recommending the contracting or rejection of the loan.
- e. Upon approval by the DMC, DMA will forward its recommendations to HC,MOF for resolution of the Executive Council and House of Assembly

The DMC will:

- a. Upon receipt of approval from the House of Assembly/State Executive Council, make arrangement and organize a public loan contract signing ceremony where the Commissioner for Finance will sign for the State(where necessary).