



**DEBT MANAGEMENT OFFICE
NIGERIA**

Revised

**EXTERNAL AND DOMESTIC BORROWING
GUIDELINES FOR FEDERAL AND STATE
GOVERNMENTS AND THEIR AGENCIES**

(With an Appendix on Processes & Control Measures)

2012

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Introduction

Following Nigeria's exit from the Paris and London Club debt obligations, the Debt Management Office (DMO) developed the External Borrowing Guidelines (2008 – 2012), as well as the Subnational Borrowing Guidelines to guide the Federal and State Governments, as well as their Agencies towards external and domestic borrowings with a view to avoiding a relapse into debt unsustainability. The Guidelines were contained in the National Debt Management Framework, which was approved by the Federal Executive Council in 2008. The 2008 – 2012 External and Domestic Borrowing Guidelines have been in operation for 5 years.

The decision to improve on the Borrowing Guidelines was arrived at following the review of the Guidelines by the Stakeholders, including the National Assembly (NASS). Consequently, the Honourable Minister of Finance in May, 2010 set up a committee comprising the Federal Ministry of Finance (FMF), the National Planning Commission (NPC) and the DMO to undertake a review of the 2008 – 2012 Borrowing Guidelines. The outcome of the review Committee was to have a single document, comprising guidelines for both external and domestic borrowing for the Federal and State Governments, as well as their Agencies.

The revised Guidelines have benefitted from the outcome of the public hearing organized by the House of Representatives Adhoc-Committee on the Investigation into Foreign Loans obtained by both the Federal and State Governments, held in February, 2010. The public hearing addressed issues of efficiently streamlining and ensuring adequate enforcement of the Guidelines for the procurement of foreign loans and grants by the Federal and State Governments.

The major improvements under the Revised Borrowing Guidelines include the provision of responsibilities of the stakeholders in the borrowing process. The Revised Borrowing Guidelines also show the relevant laws supporting the responsibilities of each stakeholder. In addition, it contains an Appendix on Processes and Control Measures for borrowing by the Federal and State Governments and their Agencies.

The Guidelines contained herein are not meant to replace, but are derived from the existing provisions as contained in the Constitution of the Federal Republic of Nigeria, the Debt Management Office (Establishment) Act, 2003, the Fiscal Responsibility Act, 2007, and the Investments and Securities Act 2007. The Guidelines are subject to review after 5 years, or earlier if the need arises.

A. Relevant Legislations

The relevant legislations guiding external and domestic borrowing by governments are:

- i. The Constitution of the Federal Republic of Nigeria, 1999;
- ii. The Debt Management Office (Establishment, ETC) Act, 2003;
- iii. Investments and Securities Act, 2007;
- iv. The Fiscal Responsibility Act, 2007; and,
- v. The National Debt Management Framework (2008 – 2012), which contains the Guidelines for External and Domestic Borrowing by all Tiers of Government.

B. Role of the National Assembly (NASS)

S/No	Requirement	Legal Basis
a	Approval of the Borrowing Program for every succeeding year.	DMO Act, 2003, Sections 19 (1) & 19 (2)
b	Approval (by resolution) of the terms and conditions of external loans as contained in the Borrowing Program.	DMO Act, 2003, Section 21 (1) DMO Act, 2003, Section 27 (1)
c	Approval of overall limits, for the amounts of consolidated debt of the Federal, State and Local Governments, to be set by the President on the advice of the Minister, as specified in the Borrowing Program.	FRA, 2007, Section 42 (1)
d	Prior authorization in the Appropriation or other Act or Law for the purpose for which the borrowing is to be utilized.	FRA, 2007, Section 44 (2) (a)

C. Requirements for External Borrowing by FGN, States and their Agencies

S/No	Requirement	Responsibility	Legal Basis
a	Preparation of a National Debt Management Strategy for the approval of the Honourable Minister of Finance.	FMF/NPC/DMO	FRA, 2007, Section 11 (3) (b)
b	<p>Appraisal of Project Documents</p> <ul style="list-style-type: none"> ▪ Conduct project appraisal to ascertain conformity with National Debt Management Strategy, Borrowing Guidelines and national priorities ▪ Prepare and Forward Project Appraisal Report (PAR) to HMF 	<p>DMO</p> <p>DMO</p>	<p>FRA, 2007, Section 44;</p> <p>External Borrowing Guidelines, 2008 – 2012, paragraph 2.1 (i)</p>
c	<p>Preparation of Proposed Borrowing Plan</p> <ul style="list-style-type: none"> ▪ Identify project(s) and submit project documents to be funded with the loan, in line with national development priorities and Creditors' Country Partnership Strategies. ▪ Prepare annual borrowing plan 	<p>Borrowing Entity – MDAs & States</p> <p>DMO (in collaboration with FMF, NPC and BOF)</p>	<p>FRA, 2007, Section 44; External Borrowing Guidelines, 2008 – 2012, paragraph 2.1 (i)</p> <p>DMO Act, 2003, Sections 19 (1) & (2) FRA, 2007, Section 44;</p>

S/No	Requirement	Responsibility	Legal Basis
d	Federal Executive Council's (FEC's) Approval and Presentation to NASS <ul style="list-style-type: none"> ▪ Approved Project Appraisal Reports and approved Borrowing Plan to be incorporated into the draft budget proposal and presented to FEC ▪ Annual Borrowing Plan submitted as an integral part of the proposed annual budget to NASS for approval. 	HMF FMF & BOF	FRA, 2007, Section 42 (1)
e	Governments at all tiers shall only borrow for capital expenditure and human development on Concessional terms.	HMF & DMO	FRA, 2007, Section 41 (i) (a)
f	The Federal Government may borrow from the capital market (non - concessional) subject to the approval of the National Assembly.	FMF/ NASS	FRA, 2007, Section 41 (2)

D. Other Documentation Requirements for Borrowing by State Governments and MDAs

S/No	Requirement	Responsibility	Legal Basis
a	Any Government or its agencies can only obtain external loans through the Federal Government and such loans must be supported by Federal Government's Guarantee. NO State, Local Government or Federal Agency shall, on its own borrow externally.	States & MDAs	FRA, 2007, Section 44; DMO Act, 2003, Section 21; External Borrowing Guidelines, 2008 – 2012, paragraph 2.1 (i)
b	State Governments and their agencies wishing to obtain external loans shall obtain Federal Government's approval-in-principle , from the Federal Ministry of Finance.	States	FRA, 2007, Section 44; External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (ii)
c	The Executive Council of the State wishing to contract external loan must approve the loan proposal which must be followed by a Resolution of the State House of Assembly.	States & MDAs	External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (vii)
d	All external borrowing proposals of the Governments and their agencies for the next fiscal year must be submitted not later than 90 days preceding that year to the Minister of Finance for incorporation into the public sector external borrowing program for the coming year.	States & MDAs	External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (v)
e	The borrowing proposal must be submitted to the Federal Ministry of Finance and the DMO for consideration. The proposal should include the following:	States & MDAs	External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (vii)

S/No	Requirement	Responsibility	Legal Basis
	<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; ▪ Cashflow 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 State House of Assembly. 		
f	To receive approval-in-principle, State Governments Debt Sustainability is ascertained to ensure that they have not over - borrowed externally.	DMO	External Borrowing Guidelines, 2008 – 2012, paragraph 2.2(iii)
g	The Borrowing Proposal is incorporated into the Annual Budget for Federal Executive Council's approval.	FMF/BOF/NPC	FRA, 2007, Section 44 (2) (a)
h	Governments at all tiers shall only borrow for capital expenditure and human development on Concessional terms	FMF & DMO	FRA, 2007, Section 41 (i) (a)

S/No	Requirement	Responsibility	Legal Basis
i	<p>Negotiation and signing of external loans and on-lending to the Sub-National 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 consideration and approval. ▪ Processing of Loan Agreements and Legal Opinion. ▪ Signing of Loan Agreement. 	<p>FMF, to lead the Negotiation Team, comprising of NASS, DMO, Fed. Min. of Justice, and the States or MDAs</p> <p>FMF</p> <p>FMF/FMOJ</p> <p>FMF</p> <p>FMF</p> <p>FMOJ/FMF</p>	<p>DMO Act, 2003, Section 19 – 21; External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (i)</p>
j	<p>Every Participating State shall execute a Subsidiary Loan Agreement (SLA) with the Federal Government.</p>	<p>FMF & States</p>	<p>External Borrowing Guidelines, 2008 – 2012, paragraph 2.2 (iv)</p>

E. Domestic Borrowing by the Federal Government

S/No	Requirement	Responsibility	Legal Basis
a	Details of the domestic borrowing by the Federal Government shall be specified in the Annual Borrowing Plan and presented to the National Assembly as part of the proposed annual budget approval.	FMF, DMO & NASS	DMO Act, 2003, Section 19 (1) & (2); FRA, 2007, Section 44 (2) (a)

F. Domestic Borrowing by States and their Agencies

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 Investments and Securities Act (ISA), 2007.	SEC	ISA, 2007, Sections 222 - 273
b	Approval of the State's Executive Council and Resolution of the State House of Assembly.	States	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 body concerned for the preceding 12 months ¹ .	SEC	ISA, 2007, Sections 222 - 273
d	All applications to raise funds from the Capital Market shall among other documents be accompanied by an original copy of an Irrevocable Standing Payment Order (ISPO) .	States	ISA, 2007, Sections 222 – 273
e	Request for issuance of ISPO to be forwarded to the Honourable Minister of Finance for approval, which 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 benefit to which the intended borrowing 	States & HMF	ISA, 2007, Sections 222 – 273; Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.3

¹A recommendation to amend the relevant section in the Investments and Securities Act, 2007 which stipulates 50% has been proposed to the SEC

S/No	Requirement	Responsibility	Legal Basis
	<p>is to be applied;</p> <ul style="list-style-type: none"> ▪ Cashflow Statements of the State and their Agencies, to ascertain their viability and sustainability; and, ▪ Copies of the State's Executive Council approval and the Resolution of the State House of Assembly. 		
f	<p>Following from (e) above, the DMO shall conduct a debt sustainability analysis to ascertain that the monthly debt service ratio of a sub-national, including the servicing of the proposed debt issuance being contemplated, does not exceed 40% of its actual monthly Revenue of the preceding 12 months , and recommends to HMF as appropriate.</p>	DMO	<p>External Borrowing Guideline, 2008 – 2012, paragraph 2.2(iii);</p> <p>Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.4</p>
g	<p>States are to satisfy other requirements of ISA, 2007 and the issuance requirements of the Securities and Exchange Commission (SEC).</p>	States & SEC	ISA, 2007, Sections 222 - 273

G. Borrowing from the Commercial Banks by States and their Agencies

S/No	Requirement	Responsibility	Legal Basis
a.	All banks and financial institutions requiring lending money to the Federal, State and Local Governments or any of their agencies, shall obtain the prior approval of the Minister of Finance and shall state the purpose of borrowing and the tenor.	Lending Bank	DMO Act, 2003, Section 24; Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.4
b.	Request for issuance of clearance on Debt Sustainability forwarded to the HMF for approval, which 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; ▪ Copies of the State's Executive Council's approval and the Resolution of the State House of Assembly; and, ▪ Copy of State's Appropriation Act, highlighting the proposed borrowing, as a financing item. 	States & HMF	Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.4

S/No	Requirement	Responsibility	Legal Basis
c	Following from (b) above, the DMO shall conduct a debt sustainability analysis to ascertain that the monthly debt service ratio of a sub-national, including the servicing of the proposed bank loan being contemplated, does not exceed 40% of its actual monthly Revenue of the preceding 12 months , and recommends to HMF as appropriate.	DMO	Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.4
d	Upon contracting a commercial bank loan, States are to furnish the DMO with the details of such loan. The Lending bank is also required to furnish the DMO and State's Debt Management Departments (DMDs) with periodic reports on the drawdown and utilization of same by the Borrower.	States & Lending Bank	Domestic Borrowing Guidelines, 2008 – 2012, paragraph 2.2.4

APPENDIX

PROCESSES & CONTROL MEASURES FOR BORROWING BY THE FEDERAL AND STATE GOVERNMENTS AND THEIR AGENCIES

External Borrowing

Processes and Controls for external borrowing by the Federal and State Governments and their agencies are enshrined in the following:

Statutes and Guidelines:

- The 1999 Nigerian Constitution
- The DMO Act, 2003
- Investments and Securities Act, 2007
- The Fiscal Responsibility Act (FRA), 2007
- The National Debt Management Framework, External Borrowing Guidelines and Sub-National Borrowing Guidelines.

□ National Assembly (NASS) Approval

The following approvals must be obtained from NASS, prior to consideration of requests for external borrowing by the Federal Government of Nigeria (FGN) and its agencies:

- Approval of the Annual Borrowing Program.
- Approval of the terms and conditions of external loans as contained in the Annual Borrowing Program.
- Approval of overall limits, for the amounts of consolidated debt of the Federal, State and Local Governments, to be set by the President on the advice of the Honourable Minister of Finance (HMF).
- Prior authorization in the Appropriation or other Act or Law for the purpose for which the borrowing is to be utilized.

❑ Documentation/Procedural Requirements by the FGN

Having obtained the approvals above, the FGN is expected to further comply with the following documentation and procedural requirements:

- Preparation of Annual Borrowing Plan, which contains: Terms and conditions of the external loans; Overall limits for the amounts of consolidated debt of the Federal, State and Local Governments; 3-yr Medium-term Borrowing Plan, loan repayment schedules and overall Government borrowing limit as part of MTEF; Project documents to be funded with the loan, in line with national development priorities.
- MDAs' Borrowing Proposal and Project Documents are appraised by the DMO, to ascertain conformity with Borrowing Guidelines and national developmental priorities and submit appropriate recommendation to the HMF.
- Annual Borrowing Proposal presented by the HMF to the Federal Executive Council (FEC) for approval.
- The Annual Borrowing Plan as an integral part of the proposed Annual Budget is then submitted by Mr. President to NASS for approval.

❑ Documentation Requirements for States' Borrowing

In processing their loan requests, States are further required to provide the following:

- Evidence of approval of the Loan Proposal by the Executive Council of the State.
- A Resolution of the State's House of Assembly approving the proposed borrowing.
- States are to submit to the HMF their external borrowing proposals for the

next fiscal year not later than 90 days preceding that year, for incorporation into the public sector external borrowing program for the coming year.

- The borrowing proposal should include the following information:
 - ❖ The purpose for which the borrowing is intended and its link to the developmental priorities of Government; the proceeds of such borrowing shall solely be applied towards long-term capital expenditure and human capital development.
 - ❖ Cost-benefit analysis showing the economic and social benefits to which the intended borrowing is to be applied.
 - ❖ Copies of the State's Executive Council's approval and the Resolution of the State House of Assembly.

❑ **Procedural Requirements for States' Borrowing**

- The HMF forwards such Borrowing Proposals to the DMO to ascertain the State Governments'/MDAs' debt sustainability, so as to ensure that they have not over-borrowed externally.
- Based on the recommendation of the DMO, and subject to HMF's final approval, such proposal is then incorporated into the Annual Budget for FEC's approval.
- Following FEC's approval, the Annual Budget containing the details of the Borrowing Plan is subsequently forwarded to the NASS for approval.

❑ **External Loan Negotiation & Signing of Agreement**

The HMF or his appointee leads the negotiation:

- Upon NASS approval of the Annual Budget, a Negotiation Team led by FMF is

formally constituted, comprising FMF, DMO, Federal Ministry of Justice and the Beneficiary State/MDA, to mutually agree with the prospective creditor(s) on the financing terms of the Loans.

- Upon approval of the terms and conditions of the loan by the NASS, the HMF signs all Loan Agreements on behalf of the Federal Government of Nigeria.
 - Beneficiary States are expected to execute a Subsidiary Loan Agreement (SLA) with the Federal Government.
- ❑ ***Following from the above, ALL Governments (Federal or States) and their Agencies can only obtain external loans with the approval of the Honourable Minister of Finance and such loans must be supported by Federal Government's Guarantee.***

Domestic Borrowing

❑ **Domestic Borrowing by the Federal Government**

- Details of the domestic borrowing by the Federal Government shall be specified in the Annual Borrowing Plan and presented to the NASS, as part of the proposed Annual Budget for approval.

❑ **Domestic Borrowing by the States and their Agencies**

- In addition to the stated Statutes/Borrowing Guidelines above, borrowing from the domestic capital market is also guided by the provisions of the Investments and Securities Act (ISA), 2007.

❑ **Borrowing from the Capital Market**

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

- Approval of the State's Executive Council and Resolution of the House of Assembly.
- 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.
- 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 the authority to deduct at source from the statutory allocation due to the body, in the event of default by the body in meeting its payment obligations under the terms of the loan and the relevant Trust Deed.
- Request for approval for issuance of such Irrevocable Standing Payment Order (ISPO) is forwarded to HMF and would contain the following:
 - ❖ The purpose for which the borrowing is intended and its link to the developmental priorities of the Government;
 - ❖ Cost-benefit analysis showing the economic and social benefits to which the intended borrowing is to be applied;
 - ❖ Cashflow Statements of the State and their Agencies, to ascertain their viability and sustainability; and,
 - ❖ Copies of the State's Executive Council's approval and the Resolution of the State House of Assembly.
- The HMF forwards the requests for issuance of ISPO to the DMO to conduct a debt sustainability analysis to ascertain that the monthly debt service ratio of the sub-national, including the servicing of the proposed borrowing, does not exceed 40% of its actual monthly Revenue of the preceding 12 months, and recommends to the HMF as appropriate.
- States are to further satisfy other requirements of ISA, 2007, and the

issuance requirements of SEC.

□ **Borrowing from the Commercial Banks**

- All banks and financial institutions requiring lending money to the Federal, State and Local Governments or any of their agencies, shall obtain the prior approval of the HMF and shall state the purpose of the borrowing and the tenor.
- Upon contracting a commercial bank loan, States are to furnish the DMO with the details of such loans. The lending bank is also required to furnish the DMO and State's Debt Management Departments (DMDs) with periodic reports on the drawdown and utilization of loan by the Borrower.

