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Law No.5 of 2011 entitled Ondo State Debt Management Office (Establishment) Law, 2011. A 31-41

By the State Governor's Command,

Akure, 15th September, 2011.

DR ROTIMI ADELOLA,
Secretary *to the State Government*

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ONDO STATE OF NIGERIA
A LAW TO PROVIDE FOR THE ESTABLISHMENT OF THE STATE
DEBT
MANAGEMENT OFFICE AND FOR CONNECTED PURPOSES.

COMMENCEMENT

THE ONDO STATE HOUSE OF ASSEMBLY enacts as follows:

1. (1) There is established a body to be known as the Ondo State Debt Management Office (in this Law referred to as "the Office") *Establishment of the State Debt Management Office*
2. The office;
 - (i) shall be a body Corporate with perpetual succession and a common seal;
 - (ii) may sue and be sued in its Corporate name; and
 - (iii) may acquire, hold and dispose of property whether moveable or immovable for the purpose of exercising its functions under this Law.
2. (1) There is established for the Office a Board to be known as the Ondo State Debt Management Office Board (in this Law referred to as "the Board") which shall consist of: *Establishment & Composition of the Board*
 - (a) the Commissioner for Finance who shall be the Chairman;
 - (b) the Commissioner for Budget and Economic Planning who shall be the Vice-Chairman;
 - (c) the Secretary to the State Government;
 - (d) the Accountant-General of the State;
 - (e) the Director of the Office;
 - (f) a Representative of the private sector appointed by the Governor who shall be a person competent in financial matters; and
 - (g) a legal practitioner of not less than ten years post call experience who shall be a representative of the Attorney-General and Commissioner for Justice of the State.
- (2) The Director shall serve as the Secretary to the Board.
- (3) The supplementary provisions set out in the First Schedule to this Law have effect with respect to the proceedings of the Board and other matters. *First Schedule*
3. (1) Subject to the confirmation of the House of Assembly, the members of the Board other than Ex-officio Member shall hold office for a period of (four) 4 years and may be eligible for re-appointment for a further term of (four) 4 years as may be determined by the Governor. *Tenure of Office and Allowances of Members of the Board*

(2) Members of the Board shall be paid such allowances as may be approved by the Governor.

4. Notwithstanding the provision of Section 3 (1) of this law, a member of the Board shall cease to hold office if he has:

*Removal of
Members of
the Board*

(a) resigned his appointment as a Member of the Board by a notice under his hand, addressed to the Governor;

(b) by reason of mental or bodily infirmity become incapable of discharging his duties;

(c) been convicted of an offence which involves dishonesty or moral turpitude;

(d) been involved in any act that may be considered inimical to the interest of the Office or the State;

(e) become bankrupt or made a compromise with his creditors; and

(f) the Governor may remove any member of the Board if he is satisfied that it is in the public interest to do so.

5. The Office shall:

*Functions of the
Office*

(a) issue, on behalf of the State, such Instruments as the State may desire from time to time;

(b) borrow on behalf of the Government, from any individual or institutional bodies;

(c) maintain a reliable database of all instruments issued, loans taken or guaranteed by the Government or any of its agency, and all contingent liabilities related to it;

(d) prepare and submit to the Government, a forecast of loan service obligations for each financial year;

(e) prepare and implement a plan for the efficient management of the State's debt obligations at sustainable levels compatible with desired economic activities for growth and development; and participate in negotiations aimed at realizing those objectives;

(f) verify and service debts guaranteed or taken directly by the Government;

(g) reconcile and where applicable service debts taken by local governments where such debts are authorized and guaranteed by the Government;

- (h) set guidelines for managing Government financial risks and financial exposure with respect to all loans and Instruments;
- (i) advise the government on the restructuring and refinancing of all debt obligations;
- (j) advise the Government on the terms and conditions on which monies are to be borrowed;
- (k) submit to the Government, for consideration in the annual budget, a forecast of the State's borrowing capacity;
- (l) prepare a schedule of any other Government obligation such as trade debts and other contingent liabilities and provide advice on policies and procedures for their management;
- (m) establish and maintain relationships with international and local financial institutions, creditors and institutional investors in Government debts;
- (n) collect and collate data on debt management and disseminate information with the approval of the Board;
- (o) advise and propose funding mechanisms for infrastructural projects that may be referred to it;
- (p) carry out such other functions which are required for the effective implementation of its functions under this Law or any other law, or which may be delegated to it by the Commissioner.

6. The Office shall have powers to:

Powers of the Office

- (a) issue and manage the State loans as prescribed under any law and or upon such terms and conditions as may be approved by the Executive Council;
- (b) issue, from time to time, guidelines for the smooth operation of any debt, bond and or securities issuance programme of the State;
- (c) manage the Debt Fund of the State established by the law;
- (d) do such other things which, in the opinion of the Board, relate to the management of the debts of the State.

7. The Board shall:

Functions of the Board

- (a) approve policies, strategies and procedures to be adopted by the Office for the achievement of its objectives;
- (b) review, from time to time, the economic and political impact on the State of debt management strategies;

- (c) appoint, as and when necessary, technical committees comprising of persons with requisite technical competence from the private or public sector to advise the Office on such matters as may be determined from time to time;
- (d) recommend, for the approval of the Governor, members of any debt issuance programme or restructuring Committee: and
- (e) perform such other functions as may, from time to time, be necessary to achieve the objectives of the Office.

8. (1) There shall be appointed for the Office as its Chief Executive Officer, a Director who shall be appointed by the Governor on the recommendation of the Commissioner.

*Appointment of
Director*

(2) The Director shall:

- (a) if appointed from the Civil Service of the State, not below the rank of a Director and shall have knowledge of financial, budgetary and or planning matters;
- (b) be responsible to the Board for policy direction and day to day administration of the Office; and
- (c) hold Office on terms and conditions as may be determined by the Board or as may be contained in his letter of appointment.

9. (1) The Board may appoint for the Office, such other number of employees as may be expedient and necessary for the proper and efficient performance of the functions of the Office in accordance with Civil Service Rules

*Appointment of
other Staff of the
Office*

- (2) The terms and conditions of service (including remunerations, allowances, benefits and pensions) of the employees of the Office shall be as in force in the Civil Service of the State.
- (3) Notwithstanding the provision of section 9 (2) of this Law, the Governor upon the recommendation of the Board, may approve such remuneration, allowances and benefits for the Director or any other employee of the Office.
- (4) The staff of the Board may be drawn from the mainstream of the Civil Service of the state either on posting, transfer or on secondment.

10. (1) There is established for the Office, a management team which shall comprise the Director and the Heads of units of the Office.

*Establishment of
the Management
Team*

(2) The management team shall, under the direction of the Director be responsible for the implementation of the policies of the Board and the day to day administration of the Office.

11. (1) There is established for the Office, a fund from which all expenses incurred by the Office shall be defrayed.

Establishment of a fund for the Office

(2) There shall be paid to the Fund

- (a) any allocation to the Office from the Consolidated Revenue Fund of the State;
- (b) such monies as may, from time to time, be granted or lent to the Office by the Federal Government, a State Government or a Local Government;
- (c) all monies raised for the purpose of the Office by way of gifts, loans, grants-in-aid, testamentary disposition or otherwise; and
- (d) all monies and assets that may, from time to time, accrue to the Office.

(3) The Fund shall be managed in accordance with the rules made by the Board which rules shall be in conformity with existing rules in Public Service, and without prejudice to the generality of the power to make rules under this sub-section, the rules shall in particular contain provisions-

- (a) specifying the manner in which the assets or the Fund of the Office are to be held, and regulating the making of payments into and out of the Fund; and
- (b) requiring the keeping of proper accounts and records for the purpose of the Fund in such form as may be specified in the rules.

12. The Office shall apply the proceeds of the Fund to:

Expenditure of the Office

- (a) the cost of administration of the Office;
- (b) the payment of salaries, fees, remuneration and allowances, payable to the members of the Board and the employees of the Office;
- (c) the payment for all consultancies, legal fees, financial advisers, contract for the construction of property for the Office or for the effective running of the Office and cost on contract administration;
- (d) the payment for all purchases; and
- (e) undertaking such other activities as are connected with all or any of the functions of the Office under this Law or any other Law.

13. (1) The Office may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift.

Gifts to the Office

- (2) The Office shall not accept any gift if the conditions attached by the person or organization making the gift are inconsistent with the function of the Office under this Law, and are such that would influence the decisions and or functions of the Office.

14. (1) The Board shall, not later than 30th September in each year, submit to the Commissioner an estimate of the expenditure and income of the Office during the next succeeding year.

*Annual Estimates
and Expenditures*

- (2) The Board shall cause to be kept, proper accounts of the affairs of the Office in respect of each year, and shall cause the accounts to be audited not later than six months after the end of each year by the auditors appointed from the list of accredited auditors approved by the Board and in accordance with the guidelines supplied by the Auditor-General of the State.

15. The Board shall prepare and submit to the Commissioner not later than 30th June In each year, a report in such form as the Commissioner may direct on the activities of the Office during the immediately preceding year, and shall include in the report a copy of the audited accounts of the Office for that year. Within fifteen (15) days of the receipt of such report, the Commissioner shall forward a copy each to the Governor and the State House of Assembly.

Annual Report

16. (l) The Office shall advise the Government annually, on any shortfall in financing obligations of the State for the succeeding financial year and the amounts as shall be necessary for the Government to borrow for bridging such gap either locally or abroad and or in naira or whatever other currencies may be financially prudent for the State.

Borrowing

- (2) Any advice issued by the Office under sub-section (1) of this section shall, among other things, form the basis of the State borrowing and debt issuance programme for the succeeding financial year as may be approved by the State House of Assembly.

17. (1) The Government may, subject to the provision of this Section, authorized and guarantee any loans to be taken by any Local Government or other Agency of Government.

*Government
Guarantee, etc*

- (2) A guarantee agreement for external loans shall be executed on behalf of the Government, by the Commissioner or any other person designated by him in writing.

- (3) Where any money is due to be paid by the Government in satisfaction of any obligation arising from a borrowing or a guarantee under this section, that money shall be deemed to be a charge on the Consolidated Revenue Fund of the State.

- (1) The House of Assembly may by a resolution approve from time to time, standard terms and conditions for the negotiation and acceptance of external Loans and issuance of guarantees in respect of same.
- (2) Where the House of Assembly has approved the terms and conditions under Subsection (1) of this Section, any agreement entered into by the Government shall come into operation without further reference to the House of Assembly; where the terms and conditions are in conformity with the approval.
- (3) Notwithstanding the provision of Subsection (2) of this Section, the Assembly may by a resolution request that a particular agreement shall be brought before it for further approval.
- (4) No agreement in respect of which the approval of the House of Assembly is required shall come into operation without such approval.

*Terms and conditions
for Loans and
Guarantees*

19. Subject to the provision of Section 6 of this Law, the Office shall-

*Internal
Borrowing*

- (a) determine:
 - (i) the amounts and time schedules for the issuance of Government short-term and medium-term securities in the Nigerian money market;
 - (ii) the repayment or roll-over of existing or maturing issues;
 - (iii) the floatation of Government long-term securities to raise appropriate funds in the capital market;
 - (iv) the payment of interest and redemption of securities at maturity from the Sinking Fund, or Debt Service Account or the Consolidated Revenue Fund of the State.
- (b) maintain the Register of holders of all Insurance and other debt securities issued by the State and record the particulars of all holders and all transactions entered into with regard to such Instruments and securities therein. For the purpose of carrying out the responsibility under this sub-section, the Office with the approval of the Executive Council shall appoint a Registrar, registered with the Securities and Exchange Commission subject to any terms and condition which it deems fit;
- (c) with the approval of the Executive Council, determine any other form of securities that may be created, issued or floated to achieve the debt management objectives of the Government;
- (d) maintain a record of all guarantees by the Government, of any authorized loans, taken by any local government or other agency of Government;

- (e) review and advise on the maintenance of statutory limits for all categories of loans or debt instruments at levels, compatible with economic activities required for sustainable growth and development in collaboration with the Accountant-General of the State;
- (f) liaise or cooperate with other State Governments or other relevant institutions within or outside Nigeria for the realization of the objectives of the Office.

20. (1) Approval for grants or loans to other State or any of its agencies may be granted in accordance with the procedure specified in this Section.

*Approval for
Grants or Loans*

(2) Applications for grants or loans to other States shall be submitted by the Governor to the House of Assembly and may be approved subject to such terms and conditions as may be prescribed by the resolution of the House of Assembly.

(3) An application specified in subsection (2) of this Section shall indicate the:

- (a) objectives, as the case may be, underlying the request or proposal;
- (b) terms and conditions of the grant or loan;
- (c) benefits which the State stands to derive from the grant or loan; and
- (d) state of the relations existing between the other State and the State; at the time of request or proposal.

21. An Agreement entered into for the purpose of Section 20 of this Law shall be in writing and be executed for and on behalf of the State by the Commissioner or by such other person as the Commissioner may, from time to time assigned.

*Execution of
Loan
Agreements*

22 (1) Subject to the provisions of this Law, the provisions of the Public Officer Protection Law or any other relevant or applicable law shall apply in relation to any suit instituted against any Officer or employee of the Office or the Office itself.

*Limitation of Suit
against the Office
etc*

(2) Notwithstanding anything contained in any other law or enactment, no suit shall lie or be instituted in any Court against any member of the Board, the Director or any other officer or employee of the Office for any act done in pursuance or execution of this Law or any other Law or enactment, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Law or such other Law or enactment, duty or authority unless:

- (a) it is commenced within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after cessation thereof.

(3) No suit shall be commenced against the Office, a member of the Board, the Director, officer or employee of the office before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Office by the intending claimant or his agent.

(4) The notice referred to in subsection (3) of this Section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending claimant and the relief claimed.

23. Any notice, summons, or other documents required or authorized to be served upon the Office under this Law or any other law or enactment may be served by delivering it to the Director or sending it by registered post grid addressed to the Director at the principal office or the Office.

Service of Documents

24. Any sum of money which may, by judgment of any Court, be awarded against the Office shall, subject to any direction given by the Court where notice of appeal of the said judgment has been given, be paid from the Fund of the Office.

Monetary Judgment Against the Office to be paid from Fund of the Office.

25. (1) As from the commencement of this Law, the powers of any Ministry or Extra-Ministerial Department over any debt involving the Government shall, by virtue of this Law and without further assurance, be vested in the Office established by this Law and in accordance with the provisions of this Law.

Transitional Provision, etc.

(2) Accordingly, any proceeding or cause of action pending or existing immediately before the commencement of this Law by or against any such Ministry or Extra-Ministerial Department over the management of any debt in respect of any right, interest, obligation or liability in relation to the management of a debt referred to in subsection (1) of this section, may be continued or commenced, as the case may be, by or against the Office, as if the Office had been a party thereto.

(3) The determination of a Court of Law, tribunal or other authority or person made in any proceeding or cause of action referred to in subsection (2), may be enforced by or against the Office to the same extent that the proceeding, cause of action or determination could have been continued, commenced or enforced by or against that Ministry or Extra-Ministerial Department as if this Law had not been made.

26. The Commissioner shall, subject to the approval of the Executive Council, make regulations for the operation of this Law including the issuance of:

Regulations

- (a) guidelines for obtaining loans, issuing bonds, securities or debt instruments, derivatives, swaps or hedge instruments by the Government or any of its agencies;
- (b) guidelines in respect of lending to public bodies, and
- (c) guidelines on any other matter as the Board may deem fit in each circumstance.

27. In this Law:

Interpretation

"Board" means the Supervisory Board of the Office established under Section 2 of this Law;

"**Commissioner**" means the Commissioner for the time being charged with the responsibility for matters relating to finance in Ondo State;

"**Consolidated Revenue Fund of the State**" means the total revenue and assets of the Government maintained in an account by that name including all statutory allocations from the Consolidated Revenue Fund of the Federation and all internally generated revenue;

"**Debt**" includes domestic and external debts;

"**Debt Securities**" means any registered bond, bearer bonds, promissory notes, syndicated notes or such other securities or debt instruments as may be issued by the Ondo State Debt Management Office on behalf of the Government, pursuant to this Law;

"**Debt Service Fund**" means a dedicated internally segregated saving fund into which Revenues appropriated by the State for the repayment of public debts and such other Debt Securities as are issued pursuant to the provisions of this Law or other debt issuance Law of the State shall be paid;

"**Director**" means the Director of the Office, appointed pursuant to Section 8 of this Law;

"**Executive Council**" means the Executive Council of the Ondo State Government, comprising the Governor, the Deputy Governor, the Commissioners appointed by the Governor and such other Officials as are invited into the Council by the Governor;

"**The Office**" means the Ondo State Debt Management Office established by the Ondo State Government for the management of the State's internal and external debts and the management, conduct and implementation of and debt issuance programme of the Ondo State Government for the purpose of the financing of its capital budget or public investment projects and commitments or the restructuring of any existing debt;

"Government" means the Government of Ondo State;

"Governor" means the Governor of Ondo State;

"Loan" includes both internal and external borrowings of the Government;

"Public bodies" includes State agencies and parastatals;

"Register" means a register or such registers as shall be maintained by the Ondo State Debt Management Office in which details of any Instruments including particulars of the holders thereof, transactions in any debt securities entered into by the Government and details of subsequent, transactions in such Instruments and securities shall be recorded;

"Registrar" means any person appointed by the Office for the purpose of maintaining any Register; issuing and delivering certificate and other instruments of title to subscribers to any debt issuance programme of the State or Instrument holders, verifying instruments of title, and recording in the Register, details of any transactions in such Instruments;

"State" means Ondo State of Nigeria.

"Sinking Fund" means a specific fund established whenever it is necessary to do so in connection with a particular issue of instruments, into which contributions shall be made from the Debt Service Account in accordance with the terms and conditions of issue of the particular instrument.

28. This Law may be cited as the Ondo State Debt Management Office (Establishment) Law 2011 and shall come into force on the 30th day of June, 2011.

*Citation and
Commencement*

SCHEDULE

SECTION 2 (3)

SUPPLEMENTARY PROVISION RELATING TO THE BOARD, ETC.

1. (1) Subject to this law and the interpretation Law, the Board may make standing Orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Board shall be Chairman, the Vice-Chairman or the person presiding at the meeting and three (3) other members of the Board, and the quorum of any committee of the Board shall be determined by the Board.

Quorum

2. (1) The Board shall meet not less than four times in a year and subject thereto, the Board shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by the notice given to him by not less than four (4) other members, he shall summon a meeting of the Board to be held within twenty-eight (28) days from the date on which the notice is given.

Notice of Meeting

(2) At any meeting of the Board, the Chairman shall preside, but if he is absent, the vice-chairman shall preside over the meeting. If the Vice Chairman is absent, the members present at the meeting shall appoint one of them to preside over the meeting.

(3) Where the Board desires to obtain the advice of any person on a particular matter, it may co-opt such person to the Board for such period as it deems fit; provided that a person who is in attendance by virtue of this subparagraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

3. (1) The Board may appoint one or more Committees to carry out, on its behalf such functions as it may determine.

Appointment of Committee

(2) A Committee appointed under this paragraph shall consist of such member of person as may be determined by the Board, and such person shall be a member of the Committee in accordance with the terms of his appointment.

(3) A decision of a Committee shall be of no effect until it is confirmed by the Board.

4. (1) The fixing of the seal of the Office shall be authenticated by the signatures of the Chairman or any person generally or specifically authorized by the Board to act for that purpose, and that of the Director.

Official Seal

(2) Any contract or instrument which, if not made or executed by a person not being a body Corporate, would not be required to be under seal, may be made or executed on behalf of the Office by the Director or any other person generally or specifically authorized by the Board to act for the purpose.

(3) Any document purporting to be a document duly executed under the seal of the Office shall be received in evidence, and shall, unless and until the contrary is proved, be presumed to be so executed.

(4) The validity of any proceeding of the Board or of a Committee shall not be adversely affected by:

(a) a vacancy in the membership of the Board or Committee; or

(b) a defect in the appointment of a member of the Board or Committee; or

(c) reason that a person not entitled to do so took part in the proceedings of the Board or Committee.

16.

This Printed impression has been carefully compared by me with the Bill which has been passed by the Ondo State House of Assembly and found by me to be true copy of the said Bill.



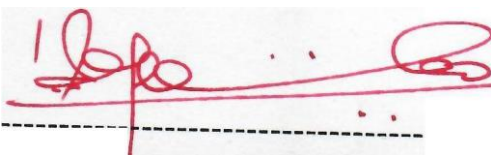
.....
Rt. Hon. Adesina Samuel Ajayi
Speaker, Ondo State House of Assembly



.....
Alh. (Barr.) Y.I.A. Dada
Permanent Secretary/Clerk

GOVERNOR'S ASSENT

I hereby signify my assent to this Bill.



.....
Dr. Olusegun Mimiko
Governor of Ondo State of Nigeria

Dated this 30th Day of June 2011.