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Law No. 6 of 2011 entitled Ondo State Issuance of Debt and Other Securities Law, 2011.

A 43-52

By the State Governor's Command,

Akure, 22nd September, 2011.

DR ROTIMI ADELOLA,
Secretary to the State Government.

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**A LAW TO PROVIDE FOR RAISING OF LOANS THROUGH ISSUANCE OF
DEBT SECURITIES AND FOR CONNECTED PURPOSES**

[]

Commencement

BE IT ENACTED BY THE ONDO STATE HOUSE OF ASSEMBLY AS FOLLOWS:

1. The Government is hereby authorized through the Office to raise and borrow any sums of money through the issuance of debt securities required to finance the capital budget of the Government or to refinance the obligations of the Government in respect of the Projects as are determined by the Executive Council to be necessary and appropriate to provide for the social and economic development the State.

*Authority to
raise Loans*

(1) Subject to the provisions of this Law, any monies received in respect of any issuance of Debt Securities, any loan contracted by, or guaranteed on behalf of the State shall be;

*Application of Loan
Receipts*

(a) pay into and form part of the consolidated revenue fund of the State,

(b) applied solely for the purpose for which it was obtained in accordance with the terms and conditions of the agreement under which it was obtained.

(c) paid into any public fund of the State either existing at the time or Created for the purpose of the loan; or

(2) Where any amount has become payable out of the monies credited to any public fund of the State or the Consolidated Revenue Fund of the State, or other public funds under sub- section (1) of this Section, the amount shall be deemed to be a charge on such public fund or the Consolidated Revenue Fund of the State as the case may be.

3. (1) The Office, pursuant to section 1 above, may issued Debt Securities with the approval of the Executive Council, and subject to the provisions of this Law:

*Issuance of Debt
Securities*

(a) Issue any form of Debt Security with fixed, variable, linked, floating or zero coupon rates, on such dates, in such currency, sequence and upon such other terms including the tenor as it thinks fit; and

(b) raise and borrow any sums of money required to finance the capital budget of the government or to refinance the obligations of the government in respect of the Projects.

Provided always no Debt Securities shall be issued by the State unless the issuance of such Debt Securities is approved by the House of Assembly through a resolution.

- (2) For the purpose of giving full effect to sub-section (1) of this Section the Commissioner upon approval by the Executive Council may direct the Accountant-General, to issue on behalf of the Government, the appropriate irrevocable undertakings or such other undertakings and or documents or authorizations as may be required for the purpose of raising any loan or borrowing any sum of money.
- (3) The undertakings that may be issued pursuant to sub- section (2) of this Section shall cease to be valid where
 - (a) the liabilities upon the debt with respect to which the undertakings was made have been fully settled; or
 - (b) the period of validity of the undertaking, as stated therein, has expired.
- (4) The Office shall maintain a record of undertakings issued under this Section and shall also keep records of undertakings which have ceased to be valid pursuant to sub-section (3) of this Section.
- (5) The specific or aggregate amount that the Office may raise or borrow through any Debt Security referred to in sub-section (1) of this Section, shall be determined by taking into consideration the following:
 - (a) the total revenue of the Government for the preceding year in which the Debt Securities are to be issued;
 - (b) the current revenue of the Government and the projected revenue for the succeeding years;
 - (c) the average economic growth rate for the three years preceding the year of any issue;
 - (d) existing public debt portfolio;
 - (e) the gross domestic product of the State for the year preceding the issue; and
 - (f) such other requirements as may be specified by the Office or in legislative enactments in the Federal Republic of Nigeria from time to time.

- (6) The issuance of any Debt Securities made pursuant to sub-section (2) of this Section shall be published by Legal Notice in the Official Gazette by the Commissioner after such instrument has been issued in Nigeria and or abroad.
- (7) Any Legal Notice published pursuant to sub-section (6) of this Section shall contain detailed and specific information and terms of the issue, including
- (a) the sum of money to be raised by the issue;
 - (b) the mode or modes of effecting the issue;
 - (c) the rate of interest payable on the loan raised from the issued instruments;
 - (d) the dates in each year on which the interest on the loan shall be payable;
 - (e) the date of redemption of the registered instrument issued;
 - (f) the purpose of raising the loan;
 - (g) the market and the currency of issue; and
 - (h) any other information relating to the issue which is deemed necessary to effectively raise the required sums, and or provide preliminary information to subscribers, or as required by any other relevant law.
- (8) Any Debt Securities issued under this Law may or may not be listed on any Stock Exchange or any equivalent trading floor in any jurisdiction.

4. The date for the redemption of any Debt Securities issued pursuant to this Section shall not be later than twenty-five (25) years from the date of the issuance of the Debt Security.

*Redemption
date of Debt
Securities*

5. (1) The Debt Securities to be issued pursuant to Section (3) of this Law may be issued by the *Office* by means of:

*Method of
Issuance*

- (a) public offers;
- (b) auctions;
- (c) syndications;
- (d) private placements;
- (e) reverse enquiries; and
- (f) book-building process; and

(g) such other transaction or issuance mode
as may be determined by the Commissioner.

(2) The Office may with the approval of the State Executive Council determine and specify in a Legal Notice that the Debt Securities will issued in tranches or in certain sequences or in such other or form over a specified period of time.

6. (1) Upon the publication of the Gazette pursuant to Section 3 (7) of this Law, the Office shall, subject to further directions of the Commissioner make all such arrangements as may be necessary and appropriate to issue the Debt Securities and raise loans.

*Arrangements for
Issuance of Debt
Securities*

(2) The Commissioner may, subject to the approval of the Executive Council, appoint such reputable issuing houses, financial advisers, brokers, accountants, legal advisers and any other professional adviser or party required to act in connection with any issuance under provisions of this Law registered with the Securities and Exchange Commission for the benefit of the holders of any Debt Security issue.: under this law.

(3) All such advisers referred to in sub-section (2) of this section shall be duly registered with the Securities and Exchange Commission.

7. (1) The State shall establish a Debt Service Fund for the purpose of accumulation of monies to make the required payments and meet obligations on principal and/or interest for all liabilities and debt obligations of the State.

*Establishment
Debt Service
Fund*

(2) Monies in the Debt Service Fund shall also be used as security for the State's debt obligations and refinancing the existing obligations of the State in respect of any public investment projects.

(3) Without prejudice to the generality of the provisions of this Law, monies credited to the Debt Service Fund pursuant to this section shall be used exclusively to discharge the State's debt obligations in respect of any Debt Security issued under this Law for as long as such obligations remain outstanding.

8. (1) A Debt Service Fund Account shall be maintained by the State in any bank duly licensed by the Central Bank of Nigeria and approved for that purpose by the Executive Council.

*Authority to open a
Debt Service
Fund Account*

(2) The management of the amounts appropriated and credited to the Debt Service Fund Account is hereby granted to the Office.

(3) The Office shall keep proper records and/or statements of account of all inflows and transfers out of the Debt Service Account and shall submit same to the Commissioner for audit purposes at the end of the State Fiscal Year.

9. (1) The House of Assembly is authorized to appropriate any portion of the State monthly IGR not below 15% to the Debt Service Fund. The said portion shall be proposed by the Commissioner and approved by the House of Assembly, and may be up to 50% (Fifty percent) of the State's monthly Internally Generated Revenue.

*Authority to
Effect
Appropriation
for Debt Service*

(2) The House of Assembly shall have the powers to make such supplemental appropriations to the Debt Service Fund to meet State's debt obligations in the event the appropriation under this section are not sufficient to effect principal and interest payments as required under the terms of issue of the Debt Securities.

10. (1) Monies in the Debt Service Fund not immediately required for debt servicing shall be invested in Permitted Investments as approved by Governor; provided that:

*Investment of monies
in the Debt Service
Fund*

- (a) the maturity date or the date on which such Permitted Investments may be redeemed as nearly as practicable with (but shall in no event be later than) the date(s) on which such debt obligations will become due and payable and
- (b) at no time shall monies in the Debt Service Fund be below an amount to be determined by the Executive Council as advised by the Office. The Executive Council shall review this minimum from time to time at least once every fiscal year.

(2) Investment of amounts comprised in Debt Service Fund shall be made in the name of the Debt Service Fund.

(3) The return on any Permitted Investment made pursuant to this section shall form a part of the Debt Service Fund.

(4) Where the balances in the Debt Service Fund exceed the total public debt obligations of the State by a sum three (3) times the value of the said outstanding public debt obligations, the Governor may, upon the approval of the House of Assembly, invest half of such excess sums in infrastructural projects in the State as may be determined by the Executive Council.

(5) Save as provided herein, the Debt Service Fund shall only be utilized as specified in Sections 7 (1) & (2) and 10 (4) of this Law.

(6) The Office shall prepare and deliver to the Commissioner quarterly reports and financial statements in respect of the management of the Debt Service Reserve Fund in a format determined by the Commissioner.

11. (1) The State shall establish a Sinking Fund in connection with a particular tranche, series or issue of Debt Securities.

*Establishment of
Sinking Funds*

(2) Any sums credited to the Sinking Fund established pursuant to sub-section (1) of this section shall be utilized solely for the purpose of making principal and interest payments on the particular tranche, series or issue of Debt Securities.

(3) The State shall, as appropriate and on the specified dates pay out of the Debt Service Fund into the Sinking Fund, the sums required to meet necessary payment obligations which have been specified in the terms and conditions of issue of that tranche of Debt Securities.

(4) The dividends, interest, bonus and other profits of any investment any part of a Sinking Fund shall be included by the Trustees so as to form part of that Sinking Fund.

(5) Each Sinking Fund shall, at all times, be completely segregated and set apart from all other funds of the State and shall be a trust fund for the security and payment of the principal and any interest on the Debt Securities in respect of which it was established, as the same shall become due.

12. All expenses specifically incurred or incidental to the investment and management of any Sinking Fund and the redemption of the Debt Securities repayable out of such Sinking Fund shall be paid out of the Sinking Fund.

*Expenses to be
paid out of
Sinking Fund*

13. (1) Notwithstanding anything to the contrary in this Law, if at any time the Trustee is satisfied that the monies in the sinking Fund established in respect of any Debt Security will be sufficient with further accumulations interest, but without further payments of contributions, to enable the State to redeem any Debt Securities at the time fixed for their redemption, it shall inform the State accordingly.

*Suspension of the
contributions to
the of Sinking
Fund*

(2) Upon receiving a notification from the Trustee in accordance with sub-section (1) of this section, the Commissioner shall duly inform the

Accountant-General and the Accountant-General shall suspend further payments of contributions to the Sinking Fund.

(3) A detailed account of the monies standing to the credit of the State after suspension of contributions shall be made by the Trustee and the Office and presented to the Executive Council and the House of Assembly.

(4) The contributions to the Sinking Fund shall recommence if the Trustee at anytime thereafter informs the State and the Accountant-General that it is no longer satisfied that the Sinking Fund with further accumulations of interest will be sufficient for the redemption of such Debt Securities repayable out of the Sinking Fund.

14. All monies appropriated as contributions to the Sinking Fund established under this Law, and the Trustees may invest such monies in such securities as may be in the relevant Trust Deed. *Investment of Sinking Fund*
15. In circumstances where at any time the Sinking Fund is deemed to be insufficient to meet the principal and interest payments due on any Debt Securities, the deficiency shall be paid first out of the Debt Service Fund, and if the Debt Service Fund is also deemed insufficient then from the Consolidated Revenue Fund of the State. *Deficiencies in Sinking Fund Chargeable on Revenue*
16. (1) The Commissioner shall, subject to the approval of the Executive Council appoint registered corporate trustee company for the purpose of acting on behalf of the holders of the Debt Securities with regard to the Debt Securities issued under this Law. *Appointment of Trustees*
- (2) The regulation and operation of the Trustees appointed pursuant to subsection(1) of this section shall be in accordance with the Investment & Securities Act 2007 and the relevant Trust Deed.
- (3) Trustees appointed pursuant to this section shall be registered with the Securities and Exchange Commission.
17. (1) Trustees appointed under this Law shall be entitled to: *Powers and Obligations of Trustees*
- (a) receive all or any part of the income and revenue pledged and assigned to, or for the benefit of the holder or holders of the Debt Securities issued hereunder, to hold, apply and dispose of the same; and
- (b) enforce any covenant made to secure or pay or in relation to the Debt Securities.
- (2) There shall be a trust deed or trust deeds which may set forth the

powers and duties and the remedies available to the trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustees or trustees or the holder or holders of any specified amount or percentage of such Debt Securities may exercise such rights; and to enforce any and all such covenants and resort to such remedies as may be appropriate.

18

The Office shall, subject to the approval of the Executive Council appoint a Registrar registered with the Securities and Exchange Commission subject to any terms and conditions which it deems fit for the purposes of maintaining and administering a register of all transactions in Debt Securities entered pursuant to this law.

Registrar

19.

(1) The Registrar shall be responsible for maintaining registers in which all transactions in Debt Securities entered into pursuant to the provisions of this Law shall be recorded.

*Register of
Instruments*

(2) A register kept in accordance with this section shall be kept in such place as may be approved by the Office, and shall among other things, include the following -

- (a) the type of Debt Securities to which it relates;
- (b) the maturity date of such Debt Securities and its interest or coupon payment dates;
- (c) the name and addresses of the holders, for the time being, of the Debt Securities concerned;
- (d) the date on which the name of every holder is entered in respect of the instruments held in his name; and
- (e) the number and value of the Debt Securities held by each holder.

(3) The Registrar shall, upon request, provide to the Office and or the Trustees Holders the registers, reports and or accounts which it maintains in respect of its functions under the provisions of this Law or any information therein.

20.

The Register shall be closed for a period not exceeding g twenty-one (21) working days immediately preceding each date upon which interest on the Debt Securities fall due and no transfer of interests in the Debt Securities shall be registered during that period

*Closing of
the register*

- 21.** (1) The entries in the register kept under the provisions of this Law shall be conclusive of the facts, matter, particulars and transactions to which those entries relate. *Register a conclusive Evidence of Facts entered in it*
- (2) Notwithstanding the provisions of any other enactments, a copy of any entry in the register certified under the hand of the registrar or any authorized officer of the State to be a true copy of the original entry shall be receivable in evidence in any judicial proceeding unless a judge shall otherwise direct.
- 22.** (1) The Debt Securities issued under this law shall be transferable in the manner specified in the Legal Notice published in respect of their issuance. *Transfer of Registered Debt Securities*
- (2) The title of the holder of any Debt Security shall not be deemed to be transferred to any other person save upon the execution of an approved instrument of transfer or in accordance with the transfer process of any stock exchange and upon the registration of the transferee as the holder, in the Register.
- (3) Interest or coupon payments which has fallen due in respect of any instrument but which has not been paid to the holder for the time being, shall not be payable to a transferee of the payment of such interest to that transferee and the transferee's name has been registered in the Register.
- 23.** No person shall be registered as the transferee of any Debt Security except upon surrender, in accordance with the offer documents, to the Registrar of any certificate issued in respect of such Debt Security and the instrument of transfer relating to the said Debt Securities, and upon payment of the prescribed fee. *Registration of Transfers and Liens on*
- 24.** No notice of any trust in respect of any registered instruments shall be receivable by the Office or the Commissioner. *Notice of Trust.*
- 25.** No person shall be entitled to inspect or to receive information derived from any Register, book or other document kept or maintained by on behalf of the Government in relation to registered instruments, save on the payment of such fee and under such circumstances, terms and conditions as may be prescribed by the Office. *Inspection*
- 26.** (1) The Commissioner may subject to the approval of the Executive Council make regulations for the purpose of giving effect to the provisions of this Law. *Power to make Regulations*

- (2) Regulation made under sub-section (1) of this Section may provide for all or any of the following matters:
- (i) the issue, transfer, forfeiture and redemption of Debt Securities;
 - (ii) the payment by way of interest or otherwise of such amount as may be determined by or under the regulations;
 - (iii) the fees to be paid in respect of anything to be issued or done under the provisions of this Law;

27. In this Law, unless the context otherwise requires:

"Accountant-General" means the Accountant-General of Ondo State or any other person appointed by the Government and charged with the responsibility of administering the State's Consolidated Revenue Account and preparing financial statements for Ondo State.

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

"Debt Securities" means any registered bond, bearer bonds, promissory notes syndicated notes or such other securities or debt instruments or other obligations authorized to be issued and secured by the State pursuant to this Law and payable as provided in this Law.

"Debt Service Fund" means a dedicated internally segregated savings 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.

"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.

"Gazette" means the Official Gazette of the Ondo State Government in which Laws, subsidiary legislations and other statutory instruments are regularly published by the Ondo State Government.

"Government" means the Government of Ondo State.

"Governor" means the Governor of Ondo State.

"House of Assembly" means the House of Assembly of Ondo State.

"Investment and Securities Act" means investment and Securities Act 2007.

"Permitted Investments" means the following:

- (i) Direct obligations of the Federal Government of Nigeria and securities fully and unconditionally guaranteed as to the timely payment of principal and coupon by the Federal Government of Nigeria ("FGN Securities");
- (ii) Direct obligations of any State of the Federal Republic of Nigeria which has a minimum investment grade rating of "A" from a rating agency registered by the Commission at the time of purchase;
- (iii) Deposit account, commercial papers or bankers' acceptances, or instruments (in each case having maturities of not more than 365 days following the date of purchase) of any bank duly licenced by the CBN to operate in Nigeria, provided that such bank is assigned a minimum corporate rating of A or its equivalent by a rating agency registered with the Commission and a minimum of a BB- or a comparable rating by an internationally recognized rating agency.

"Project" means any of the capital projects, facilities, places, buildings or undertakings within the State which are, or will be, developed, maintained or operated for socio-economic, industrial, commercial or business purposes, and approved by the Executive Council and financed with part or all of the proceeds of Debt Securities and includes, without limitation, capital projects, real property, land, buildings, structures, fixtures, machinery and/or equipment and all such property related to or required or useful for the operation of a Project upon completion provided that a Project does not include any facility, place or building used or to be used primarily for devotional activities or religious worship.

"Register" means a register or such registers as shall be maintained by the Registrar appointed by the Office in which details of any Debt Security and transactions in Debt Securities issued pursuant to this Law.

"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 holders of Debt Securities verifying instruments of title, and recording in the Register details of any transactions in such Debt Securities.

"Securities and Exchange Commission" means the Securities and Exchange Commission established by the Investments and Securities Act 2007.

"the 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 contribution shall be made from the Debt Service Fund in accordance with the reruns and conditions of issue of the particular instrument.

"Office" means the Ondo State Debt Management Office established by the Ondo State Debt Office (Establishment, etc.) Law, 2011 for the management, conduct and implementation of any debt issuance programme of the Ondo State Government for the purpose of financing its capital budget, or public investment projects and commitments, or the restructuring of any existing debts.

"Trustee" means any Trustee appointed under this Law to represent and oversee the interests of the holders of Debt Securities.

- 28.** This Law may be cited as the Ondo State Issuance of Debt and Other Securities Law and shall come into force on the 30th day of June, 2011.


*Citation and
Commencement*

3.

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 .



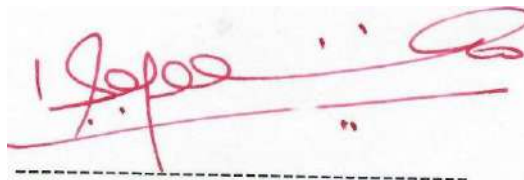
.....
Rt. Hon. Adesina Samuel Ajayi
Speaker, Ondo State House of Assembly



.....
Alh. (Barr.) Y.J.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