

LAWS OF  
LAGOS STATE  
OF NIGERIA



THOMSON REUTERS



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LAW REFORM COMMISSION

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# LAWS OF LAGOS STATE OF NIGERIA

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# LAGOS STATE DEBT MANAGEMENT OFFICE LAW

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### SCHEDULE

## **LAGOS STATE DEBT MANAGEMENT OFFICE LAW**

### **A LAW TO PROVIDE FOR THE ESTABLISHMENT OF THE LAGOS STATE DEBT MANAGEMENT OFFICE AND FOR CONNECTED PURPOSES**

[Commencement]

[2nd February 2009]

**THE LAGOS STATE HOUSE OF ASSEMBLY** enacts as follows:

#### **1. Establishment of the Lagos State Debt Management Office**

(1) There is established a body to be known as the Lagos State Debt Management Office (in this Law referred to as “the Office”).

(2) The Office—

- (i) is 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. Establishment and Composition of the Board**

(1) There is established for the Office a Board to be known as the Lagos State Debt Management Office Board (in this Law referred to as “the Board”) which consists of—

- (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-General of the Office; and
- (f) a Representative of the private sector appointed by the Governor who shall be a person competent in financial matters.

(2) The Board will have a Secretary appointed by the Governor, who will be a legal practitioner of at least ten (10) years post call experience in corporate and Financial Law.

(3) The supplementary provision set out in the First Schedule to this Law has effect with respect to the proceedings of the Board and other matters.

[First Schedule]

#### **3. Tenure of Office and Allowances of members of the Board**

(1) Subject to the confirmation of the House of Assembly, the members of the Board (other than the Commissioners, Secretary to the State Government and the Accountant-General) will hold office for a period of five (5) years and may be eligible for re-appointment for a further term of four (4) years as may be determined by the Governor.

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

#### **4. Removal of Members of the Board**

(1) Notwithstanding the provision of Section 3 (1) of this Law, a member of the Board ceases to hold office if the member has—

- (a) resigned the appointment as a member of the Board by a notice addressed to the Governor;
- (b) by reason of mental or bodily infirmity become incapable of discharging the duties of the Office;
- (c) been convicted of an offence which involves dishonesty and fraud;
- (d) been involved in any act that may be considered inimical to the interest of the Office or the State; and
- (e) become bankrupt or made a compromise with creditors.

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

#### **5. Functions of the Office**

The Office will-

- (a) issue, on behalf of the State, such Instruments as the State may desire to issue;
- (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 realising 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 authorised 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 Governor 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; and
- (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. Power of the Office**

The Office has power to-

- (a) issue and manage the State loans as prescribed under any Law on such terms and conditions as may be approved by the Executive Council;
- (b) issue guidelines for the smooth operation of any debt, bond or securities issuance programme of the State;
- (c) manage the Consolidated Debt Service Account established by the Lagos State Bonds, Notes and other Securities Issuance Law 2008;
- (d) invest with the approval of the House of Assembly any sum in the Consolidated Debt Service Account not immediately required for debit service; and
- (e) do such other things which, in the opinion of the Board, relate to the management of the debts of the State.

## **7. Functions of the Board**

The Board will-

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

## **8. Appointment of Director-General**

(1) There will be appointed for the Office as its Chief Executive Officer, a Director-General who will be appointed by the Governor subject to the confirmation of the House of Assembly.

(2) The Director-General will-



- (a) if appointed from the Civil Service of the State, not below the rank of a Permanent Secretary and must have knowledge of financial, budgetary and or planning matters;
- (b) hold office for a period of five (5) years in the first instance and may be reappointed by the Governor for another term of four (4) years.
- (c) be responsible to the Board for policy direction and day to day administration of the Office; and
- (d) hold office on such terms and conditions as may be determined by the Board or as may be contained in the letter of appointment.

### **9. Appointment of other Staff of the Office**

(1) The Board will 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.

(2) The terms and conditions of service (including remunerations, allowances, benefits and pensions) of the employees of the Office will be determined by the Board after consultation with any committee, agency or other body responsible for determining salaries of Civil Servants in the State.

(3) In accordance with the provisions of Section 8 (2) (d) of this Law the Governor may, on the recommendation of the Board, approve such remunerations, allowances and benefits for the Director-General or any other employee of the Office.

(4) The Board has the power to appoint either on transfer or on secondment from the public service of the State or from the private sector, such number of employees as required to assist the Office in the discharge of its functions under this Law or any other Law.

### **10. Staff Regulations**

(1) The Board may make staff regulations relating generally to the conditions of service of the employees of the Office and without prejudice to existing regulations may provide for-

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Office; and
- (b) appeals by such employees against dismissal or such other disciplinary measures and until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the State will be applicable, with such modifications as may be necessary, to the employees of the Office.

(2) Staff regulations made under subsection (1) of this Section need not be published in a State *Gazette* but the Board will cause them to be brought to the notice of all affected persons in such manner as it may determine.

### **11. Service in Office to be Pensionable**

(1) Service in the Office will be pensionable for the purposes of the Pension Reform Law.

(2) The Officers and other persons employed in the Office will be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons on equivalent grades in the civil service of the State.

(3) Nothing in subsections (1) and (2) of this Section will prevent the appointment of any person to any office on the terms which preclude the grant of pension and gratuity in respect of that Office.

## **12. Establishment of the Management Team**

(1) There is established for the Office a management team which will comprise of the Director-General and the Heads of Departments of the Office.

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

## **13. Establishment of a Fund for the Office**

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

(2) There will be paid to the Fund-

- (a) any allocation to the Office from the Consolidated Revenue Fund of the State;
- (b) such monies as may 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 accrue to the Office.

(3) The Fund will be managed in accordance with the rules made by the Board and without prejudice to the generality of the power to make rules under this subsection, the rules will 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.

## **14. Expenditure of the Office**

The Office will apply the proceeds of the Fund to-

- (a) the cost of administration of the Office;
- (b) the payment of salaries, fees, remuneration, allowances, pensions and gratuities payable to the members of the Board and the employees of the Office;
- (c) the payment for all consultancies, legal fees, financial advisers, contracts 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 that are connected with all or any of the functions of the Office under this Law or any other Law.

## **15. Gifts to the Office**

(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 organisation making the gift.

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

## **16. Annual Estimates and Expenditures**

(1) The Board will, 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.

(2) The Board will cause to be kept, proper accounts of the affairs of the Office in respect of each year, and cause the accounts to be audited not later than six (6) 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.

## **17. Annual Report**

The Board must 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 include in the report a copy of the audited accounts of the Office for that year. Within fifteen (15) days of the receipt of the report, the Commissioner will forward a copy each to the Governor and the State House of Assembly.

## **18. Borrowing**

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

(2) Any advice issued by the Office under subsection (1) of this Section will, among other things, form the basis of the State borrowing and debt issuance programme for the succeeding financial year.

## **19. Government Guarantee, etc.**

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

(2) A Guarantee Agreement for external loans will be executed on behalf of the Government, by the Commissioner or any other person designated 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 will be deemed to be a charge on the Consolidated Revenue Fund of the State.

## **20. Internal Borrowing**

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

- (a) determine the-

- (i) amounts and time schedules for the issuance of Government short-term and medium-term securities in the Nigerian money market;
  - (ii) repayment or roll-over of existing or maturing issues;
  - (iii) floatation of Government long-term securities to raise appropriate funds in the capital market;
  - (iv) payment of interest and redemption of securities at maturity from the Sinking Fund, or Consolidated Debt Service Account or the Consolidated Revenue Fund of the State;
  - (v) creation with the approval of the Executive Council of specific Sinking Funds to provide for the redemption of specific securities at maturity;
- (b) maintain the Register of holders of all Instruments 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. For the purpose of carrying out the responsibility under this subsection the Office with the approval of the Executive Council will appoint a Registrar registered with the Security and Exchange Commission subject to any terms and conditions 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 authorised 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 co-operate with other State Governments or other relevant institutions within or outside Nigeria for the realisation of the objectives of the Office.

## **21. Approval for Grants or Loans**

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

(2) Applications for grants or loans to other States will 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 indicates 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.

## **22. Execution of Loan Agreements**

An Agreement entered into for the purpose of Section 21 of this Law will 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 designate.

## **23. Limitation of Suit against the Office etc.**

(1) Subject to the provisions of this Law, the provisions of any other relevant or applicable Law will apply in relation to any suit instituted against any officer or employee of the Office.

(2) Notwithstanding anything contained in any other Law or enactment, a suit will not lie or be instituted in any court against any member of the Board, the Director-General 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 (3) months next after the act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury, within six (6) months next after the cessation of it.

(3) A suit will not be commenced against a member of the Board, the Director-General, officer or employee of the Office before the expiration of a period of one (1) month after written notice of intention to commence the suit must have been served on the Office by the intending claimant or authorised agent.

(4) The notice referred to in subsection (3) of this Section must 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 which is being claimed.

## **24. Service of Documents**

Any notice, summons, or other documents required or authorised to be served on the Office under this Law or any other Law or enactment may be served by delivering it to the Director-General or sending it by registered post and addressed to the Director-General at the principal office of the Office.

## **25. Monetary Judgment against the Office to be paid from Fund of the Office**

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

## **26. Transitional Provision, etc.**

(1) As from the commencement of this Law, the powers of any Ministry or Extra-Ministerial Department over any debt involving the Government will, 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.

(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 to it.

(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.

## **27. Regulations**

With the approval of the House of Assembly, the Office will make regulations for the operation of this Law, including the issuance of guidelines—

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

## **28. Interpretation**

In this Law-

**“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 Lagos State;

**“Consolidated Debt Service Account”** means a dedicated saving account from which public debt repayment obligations of the State will be fulfilled;

**“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;

**“Executive Council”** means the Executive Council of the Lagos 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 Lagos State Debt Management Office established by the Lagos State Government for the management of the State’s internal and external debts and the management, conduct and implementation of any debt issuance programme of the Lagos 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;

**“Director-General”** means the Director-General of the Office, appointed in accordance with section 8 of this Law;

**“Government”** means the Government of Lagos State;

**“Governor”** means the Governor of Lagos State;

**“Instrument”** means any registered bond, bearer bonds, promissory notes, syndicated notes or such other securities or debt instruments as may be issued by the Lagos State Debt Management Office on behalf of the Government, in accordance with this Law;

**“Loans”** includes both internal and external borrowings of the Government;

**“Public bodies”** includes State agencies and parastatals;

**“Register”** means a register or such registers as will be maintained by the Lagos State Debt Management Office in which details of Instruments including particulars of the holders, transactions in debt securities entered into by the Government and details of subsequent transactions in such Instruments and securities will be recorded;

**“Registrar”** means any person appointed by the Office for the purpose of maintaining any Register, issuing and delivering certificates 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 transactions in such Instruments;

**“State”** means Lagos 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 will be made from the Consolidated Debt Service Account in accordance with the terms and conditions of issue of the particular instrument.

## **29. Citation and Commencement**

This Law may be cited as the Lagos State Debt Management Office (Establishment) Law 2008 and will come into force on the 2<sup>nd</sup> day of February, 2009.

## **SCHEDULE**

(SECTION 2(3))

### **Supplementary Provisions Relating to the Board, etc.**

#### **1. Proceedings of the Board**

(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 will be the 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 will be determined by the Board.

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

(2) At any meeting of the Board, the Chairman presides, but if absent, the Vice-Chairman will preside over the meeting, and if the Vice-Chairman is absent, the members present at the meeting will 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 will not be entitled to vote at any meeting of the Board and will not count towards a quorum.

#### **3. Committees**

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

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

A decision of a committee will be of no effect until it is confirmed by the Board.

#### **4. Miscellaneous**

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

(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-General or any other person generally or specifically authorised by the Board to act for that purpose.

(3) Any document purporting to be a document duly executed under the seal of the Office will be received in evidence, and will, 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 will not be adversely affected by-

- (a) a vacancy in the membership of the Board or committee;



- (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.