



ADAMAWA STATE OF NIGERIA

DEBT MANAGEMENT AGENCY

LAW 2011



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ADAMAWA STATE DEBT MANAGEMENT AGENCY LAW, 2011



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Adamawa State of Nigeria

Law No. 2 of 2011

*A Law to establish Adamawa State Debt Management Agency
and to Provide for matters incidental thereto.*

(27th June, 2011)

BE IT ENACTED by the Adamawa State House of Assembly and
by the authority of same as follows:-

Date of
Commencement

PART I – PRELIMINARY

1. This Law may be cited as the Adamawa State Debt Management
Agency Law, 2011 and shall come into operation on the 27th day of
June, 2011.

Short Title and
Commencement

2. In this Law unless the context otherwise requires:-

Interpretation

“Agency” means the Adamawa State Debt Management Agency
established under section 3 of this Law;

“Chairman” means the Chairman of the Debt Management
Committee appointed under section 4 of this Law;

“Committee” means the Debt Management Committee of the Agency
established under Section 4 of this Law;

“Commissioner” means the Commissioner charged with
responsibility of finance in the State;

“Debt” includes internal and external debts;

“Deputy Governor” means the Deputy Governor of the State;

“DMO” means the Federal Debt Management Office in Abuja;

“Governor” means the Governor of the State;

“Loans” includes internal and external borrowing;

“Power” means function and function includes powers;

“Public Bodies” includes Federal, State and Local Governments, their
agencies, departments or parastatals; and

“State” means Adamawa State of Nigeria

PART II - ESTABLISHMENT OF THE DEBT MANAGEMENT AGENCY

Establishment of the Agency

3.(1) There shall be established for the State an Agency to be known as the Debt Management Agency (herein after referred to as the "Agency").

(2) The Agency shall be:-

- (a) a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and
- (c) under the Office of the Governor of the State.

Establishment of a Debt Management Committee

4.(1) There shall be established for the agency a Debt Management Committee comprising:-

- (a) the Deputy Governor as Chairman;
- (b) the Commissioner of Finance and Budget as Vice Chairman;
- (c) the Commissioner for Local Government and Chieftaincy Affairs;
- (d) the Attorney-General of the State;
- (e) the Chairman State Planning Commission;
- (f) the Accountant-General of the State;
- (g) the Special Adviser to the Governor on Budget and Economic Planning;
- (h) the Head of the Agency who shall be the Secretary to the Committee.

(2) The supplementary provisions set out in the schedule to this Law shall have effect with respect to the proceedings of the Committee and the other matters therein.

PART III - FUNCTIONS OF THE AGENCY

Functions of the Debt Management Agency:

5. The Functions of the Agency shall be to:-

- (a) maintain a reliable database of all loans taken or guaranteed by the State, its agencies and Local Government;

- (b) prepare and submit to the Governor a forecast of loan service obligations for each financial year;
- (c) prepare a schedule of any other State Government obligations such as contractor and supplier debts, pensions liabilities, loan from the Federal Government and other contingent liabilities, both explicit and implicit; and provide advice on policies and procedures for their management;
- (d) prepare and implement a strategy for the efficient management of the State's external and domestic debt obligations at sustainable levels compatible with desired economic activities for growth and development and participate in negotiations aimed at realising those objectives;
- (e) verify and reconcile external debts serviced guaranteed or taken by the State Government with the DMO;
- (f) verify and reconcile domestic debt service guaranteed or directly taken by the State Government with the Accountant-General of the State;
- (g) on the basis of agreement, service domestic debts taken by Local Governments and any of their agencies; where such debts are guaranteed by the State Government;
- (h) set guidelines for managing State Government financial risks and currency exposure with respect to all loans;
- (i) advise the State Government on the re-structuring and re-financing of all debt obligations;
- (j) advise the State Government on the terms and conditions on which monies; whether in the currency of Nigeria or in any other currency; are to be borrowed;
- (k) in collaboration with the Ministry of Finance and Budget use historical data to forecast government financing needs and establish a financing gap for each year;

- (l) submit to the State Government, for consideration in the annual budget the State's financing gap and forecast of borrowing capacity in local and foreign currencies for approval by the Executive Council and State House of Assembly in the Appropriation Bill;
- (m) establish and maintain relationship with international and local financial institutions and institutional investors, donor agencies and the DMO;
- (n) collect, collate, disseminate information data and forecasts on debt management with the approval of the Committee;
- (o) assess and verify compliance to existing laws and borrowing guidelines of each proposal for consent to obtain a loan submitted by State Agency or Local Governments and recommend same for approval of the Committee;
- (p) monitor all projects funded by loans and report to the Executive Council on the performance of all loans contracted by the State;
- (q) perform such other functions which in the opinion of the Committee are required for the effective implementation of its functions under this Law; and
- (r) carry out such other functions as may be assigned to it by the Governor or by the State Law.

**Powers of the
Agency****6. The Agency shall have powers:-**

- (a) in collaboration with the State Ministry of Finance and Budget, to issue to the public from time to time as the need arises and within existing guidelines that will ensure sustainability, registered bonds by the Government of the State in such aggregate sum as may be approved by the State Executive Council on the advise of the Committee;
- (b) to issue from time to time, guidelines for obtaining credit facilities by the State, its agencies and Local Governments that will ensure the prudent management and smooth operation of the public debt or securities issuance programme of the State Government;

- (c) in collaboration with the State Ministry of Finance and Budget to obtain on-lending financial facilities and approvals from the DMO on behalf of the State;
- (d) to participate in the DMO's programmes that are aimed at ensuring debt sustainability for the State and the Nation
- (e) to issue a consent to borrow subject to the full compliance with existing Laws and borrowing guidelines and approval of the Committee, to its Agencies or Local Governments desirous of borrowing;
- (f) to require all persons and institutions having access thereto at the State or at the Local Government levels at all reasonable times, to supply in such forms as the Agency may from time to time request information relating to or touching on or concerning matters affecting borrowing or public debts in the State or Local Governments;
- (g) charge for its service subject to and within limits specified by the Committee; and
- (h) undertake such other activities which in the opinion of the Committee relate to the management of the external and domestic debts of the State and its Local Governments.

7. The Debt Management Committee shall:-

- (a) approve policies, strategies, guidelines and procedures to be implemented by the Agency for the achievement of its objectives;
- (b) review from time to time, the economic and political impact of borrowing and debt management strategies;
- (c) appoint, as and when necessary, technical competence from the private to public sector to advise the Agency on such matters as may be determined from time to time
- (d) consider and approve loan/credit facility proposals recommended by the Agency; and
- (e) perform such other functions as may from time to time, be necessary to achieve the objectives of the Agency.

**Functions of the
Debt Management
Committee.**

PART IV - STAFF OF THE AGENCY

Appointment of the
Director-General of
the Agency

8. (1) There shall be for the Agency, a Director-General, who shall be appointed by the Governor

(2) The Director-General shall:-

- (a) be a person possessing sound knowledge and cognate experience of at least ten (10) years in financial management, debt management and related disciplines;
- (b) hold office for a period of 4 years in the first instance and may be re-appointed for another term of 4 years and no more;
- (c) be responsible to the Committee for policy direction and day-to-day administration of the Agency; and
- (d) subject to the provision of paragraph (b) above, hold office on such terms and conditions as may be contained in his letter of appointment.

(3) Without prejudice to the provisions of this Law, the Director-General of the Agency may be removed from office at the instance of the Governor on the basis of gross misconduct of financial impropriety, fraud, and manifested incompetence proven by the Committee

Appointment of
other Staff of the
Agency

9. (1) The Committee shall appoint the Principal Officers for the Agency after competitive selection process.

(2) The Committee shall appoint for the Agency such other number of qualified employees as may in the opinion of the Committee be expedient and necessary for the proper and efficient performance of the functions of the Agency.

(3) The Principal Officers appointed shall each have the requisite, qualification and experience required for the effective performance of the functions of their respective departments

(4) The Committee shall have power to modify the operational structure of the Agency as may be necessary to enhance the Agency's duties and functions under this Law.

(5) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the employees of the Agency shall be determined by the Committee after consultation with state Planning Commission.

- (6) The Committee shall have power to:-
- (a) appoint either on transfer or on secondment from any public service in the State such number of employees as may, in the opinion of the Committee, be required to assist its functions under this Law; and
 - (b) pay to persons so employed with remunerations as the Committee may, after consultation with the State Planning Commission determine.

10. (1) The Agency may make staff regulations relating generally to the conditions of service of the employees of the Agency and without prejudice to the generality of the foregoing such regulations may provide for:- Staff Regulations.

- (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Agency; and
- (b) appeals by such employees against dismissal or other disciplinary measures; provided that before and until such regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the State shall be applicable with such modification as may be necessary, to the employees of the Agency.

PART V - FINANCIAL PROVISIONS

11. (1) There is hereby established for a State Debt Management Agency Fund from which shall be defrayed all expenditure incurred by the Agency. Fund of the Agency

(2) There shall be paid and credited to the fund:-

- (a) all budgetary allocations from the State Government
- (b) such monies as may from time to time be granted to the Agency by the Federal Government Agencies or Departments;
- (c) all monies raised by the Agency by the way of gifts, fees for the services rendered, loans grants-in-aid, testamentary disposition or otherwise; and
- (d) all other assets that may, from time to time, accrue to the Agency.

**Management of the
Agency's fund.**

12. The Fund shall be managed in accordance with the Rules made by the Committee which must contain provisions:-

- (a) specifying the manner in which the assets or the fund of the Agency are to 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

**Expenditure of the
Agency.**

13. The Agency shall apply the proceeds of the fund to:-

- (a) the cost of administration of the Agency;
- (b) the payment of salaries, fees, remunerations, allowance pensions and gratuities payable to the members of the Committee and the employees of the Agency;
- (c) payment for all consultation, contracts including mobilization, fluctuations, variations, legal fees and cost on contract administration;
- (d) payment for all purchases; and
- (e) undertaking such other activities as are connected with all or any of the functions of the Agency.

Gifts to the Agency.

14. (1) The Agency 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.

(2) The Agency shall not accept any gift if the conditions attached by the person or organization making the gift are inconsistent with the functions of the Agency under this Law or may result in a conflict of interest.

**Annual estimate
and expenditure**

15. (1) The Agency shall, not later than 30th September, in each year, submit to the Committee an estimate of the proposed expenditure and income of the Agency during the following year.

(2) The Committee shall cause to be kept proper accounts of the Agency in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than 6 months after the end of each year by Auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General of the State.

16. The Agency shall prepare and submit to the Committee not later than 30th June in each year, a report in such form as the Committee may direct on the activities of the Agency during the immediately preceding year, and shall include in the report a copy of the audited accounts for that year and the Auditors report thereon. Annual Report

PART VI - BORROWING

17. (1) The Agency shall annually advise the State Government on the financing gap for the succeeding financial year and the amounts to be borrowed for bridging the gap both internally and externally. External Borrowing

(2) Any advise issued by the Agency under Sub-Section (1) of this Section shall, among other things, form the basis of the State borrowing programme for the succeeding financial year as may be approved by the State Assembly.

(3) The State Ministry of Finance and Budget, and the Agency shall be responsible for leading negotiation and acquisition of such loans, grants and credit referred to in Sub-Section (1) of this Section.

(4) All borrowing proposals of the State Government, its Agencies and Local Governments in a fiscal year may subject to guidelines issued from time to time by the Agency be submitted not later than 30th September of the previous year to the Debt Management Agency for incorporation into the borrowing programme for the coming year.

(5) Any loan or credit facility obtained in contravention of this Law and guidelines issued therefrom shall be void.

18. An Agreement entered into for the purpose of Sub-Section (1) of Section 17 shall, subjected to provisions of this Section, be executed for and on behalf of the State Government by the Commissioner or by such other person as the Commissioner may, from time to time and in writing designate for that purpose. Execution of External Loan Agreement

19. No loan shall be approved or obtained by the State, its Agencies and Local Governments unless its terms and conditions are in accordance with the existing borrowing guidelines issued by the Agency pursuant to this Law. Conditions for Approval of Loan.

**Determination of
Total Debt Stock.**

20. (1) The total debt stock of the State shall not exceed a percentage of the State's income for the preceding year determined by the Committee or;

(2) A percentage of the State's total budget determined by the Committee, whichever is lower;

(3) The State and Local Governments or any of their Agencies shall not obtain any external loan except with a guarantee issued by the Commissioner.

**Government
Guarantee.**

21. (1) The State Government may, subject to the provisions of this Section and the guidelines issued pursuant to this Law guarantee internal loans taken by its Agencies or Local Governments.

(2) A guarantee agreement for internal loans shall be executed on behalf of the State Government by the Commissioner or any other person designated by him in writing with the approval of the Committee.

(3) The Commissioner shall not guarantee an external loan unless the terms and conditions of the loan are in line with this Law and existing borrowing guidelines and have been laid before the State Assembly and approved by its resolution.

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

**Power to Issue
State Government
Securities**

22. (1) Subject to the provisions of Section 6 of this Law, and in collaboration with the State Ministry of Finance and Budget, the Agency shall determine:-

- (a) the floatation of State Government long-term securities to raise appropriate funds in the capital market;
- (b) the appointment of underwriters, registrars and other relevant parties to the issue specified in sub-paragraph;
- (c) the payment of interest, maintenance of a register of holders and redemption of securities at maturity;
- (d) the creation and management of sinking funds to provide for the redemption of securities and maturity.

- (e) in collaboration with the DMO and the Accountant-General of the State, determined any other form of securities that may be created, issued or floated to achieve the domestic debt management objectives of the State Government;
- (f) 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 DMO and the Accountant-General of the State; and
- (g) liaise or co-operate with other State Governments or other relevant institution within or outside Nigeria for the realization of the objectives of the Agency.

23. (1) Any monies received in respect of any loan contracted by the State Government shall be:- Loan Receipts to form part of the consolidated Revenue.

- (a) paid into and form part of the consolidated Revenue Fund of the State; or
- (b) paid into any other public fund of the State either existing at the time or created for the purpose of the loan; and
- (c) applied solely for the purpose for which it was obtained and in accordance with the terms and conditions of the agreement under which it was obtained.

(2) Any monies received in respect of any guaranteed loan on behalf of a Local Government shall be:-

- (a) paid into and form part of the consolidated Revenue Fund of the Local Government; or
- (b) paid into any other public fund of the State either existing at the time or created for the purpose of the loan; and
- (c) applied solely for the purpose for which it was obtained and in accordance with the terms and conditions of the agreement under which it was obtained.

(3) Where any amount has been paid out of the monies credited to the Consolidated Revenue Fund of the State, Local Government or other Public Fund under Sub-Section (1) or (2) of this Section, the amount shall be deemed to be charge on the Consolidated Revenue Fund of the State or of Local Government, or such other public funds into which the monies have been paid.

**Terms and conditions
for loans and
Guarantees.**

24. (1) The State Assembly may by a resolution approve from time to time, standard, terms and conditions for the negotiation and acceptance of loans to be contracted by the State.

(2) Where the State Assembly has approved the terms and conditions under Sub-Section (1) of this Section, any agreement entered into by the State Government shall come into operation without further reference to the State Assembly but subject to Section 19 of this Law.

(3) Notwithstanding the provisions of Sub-Section (2) of this Section the State Assembly may be brought before it for further consideration.

(4) An approval shall be deemed granted if after 30 days of receipt of request by the Assembly a refusal has not been formally communicated to the Commissioner.

PART VII - MISCELLANEOUS

**Limitation of suits
Against the
Agency etc.**

25. (1) Subject to the provisions of this Law, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any Officer or employee of the Agency.

(2) Notwithstanding anything contained in any other Law or enacted no suit shall lie or be instituted in any Court against any member of the Committee, the Head or any act done in lawful 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 3 months after the neglect or default complained of; or
- (b) in case of a continuation of damage injury, within 6 months after the cessation thereof.

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

(4) The notice referred to in Sub-Section (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 plaintiff, the relief which he claims and be regarded as commencement of action for purpose of time of limitation for action in this Section.

26. A notice, summons or other document required or authorized to be served upon the Agency may be served by delivering it to the Head or any responsible officer of the Agency, or by sending it by registered post to the principal office of the Agency.

Service of Documents.

27. (1) In any action or suit against the Agency, no execution or attachment of process in the nature thereof shall be issued against the Agency.

Restriction on Execution Against Property of the Agency

(2) Any sum of money which may by the judgement of any Court be awarded against the Agency shall, subject to any direction given by Court, where notice of the said judgement has been given to the Agency, be paid from the fund of the Agency.

28. (1) As from commencement of this Law, powers of any Ministry or Agency over the management of any Debt referred to in Section 5 shall by virtue of this Law and without further assurance, be vested in the Agency.

Transitional Provisions etc.

(2) Accordingly, any proceeding or cause of action pending at or immediately before the commencement of this Law or later commenced by or against any such Ministry or Agency over the or liability pertaining to it, may be continued by or against the Agency as if the Agency has been a party.

(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 Sub-Section (2) may be enforced by or against the Agency to the same extent that the proceeding, cause of action or

determination could have been continued commenced or by or against that Ministry, if this Law had not been made, provided that nothing in this Law shall prejudice the right of a citizen to directly commence or enforce such a right against any Ministry, Government Department or Government other than the Agency;

**Validation of
Appointment and
Previous Actions.**

29. The appointment of officers and employees and other steps, actions or decisions made by the Debt Management Department or Committee prior to the commencement of this Law shall be deemed to have been validly made under this Law, and accordingly exercise all powers of the Debt Management Department given by any other Law from the date of commencement of this Law.

SCHEDULE
Section 4(2)

SUPPLEMENTARY PROVISIONS RELATED TO THE COMMITTEE

A. PROCEEDINGS OF THE COMMITTEE

1. Subject to this Law, the Committee may take standing orders regulating its proceedings or those of any of its Sub-Committees.
2. The quorum of the Committee Shall be the Chairman (and in his absence the Commissioner of Finance and Budget who shall be his vice) or any other person presiding at the meeting and 3 other members of the Committee, and quorum of any Sub-Committee shall be determine by the Committee.
3. The Committee shall meet not less than four times in each year and subject thereto, the Committee shall meet whenever it is summoned by the Chairman and if the Chairman is urged to do so by the Agency in writing stating reason for the request, he shall summon a meeting of the Committee to be held within two weeks of the Agency's request.
4. At any meeting of the Committee the Chairman shall preside but if he is absent the Vice-Chairman (Commissioner) shall preside at the meeting and if he is absent, the members present at the meeting shall appoint one of them to preside at the meeting.
5. Where the Committee desires to obtain the advice of any person on a particular matter, the Committee may co-opt him for such period as it deem fit, but a person who is in attendance by virtue of this Sub-Paragraph shall not be entitle to vote at any meeting of the Committee and shall not count towards a quorum.

B. SUB-COMMITTEE

1. The Committee may appoint one or more Sub-Committee to carry out, such of its functions as the Committee may determine.
2. A Sub-Committee appointed under this paragraph shall consist of such number of persons as may be determined by the Committee, except otherwise agreed and stated in the minutes at the time of appointment shall be of no effect, until it is confirmed by the Committee.

C. MISCELLANEOUS

1. Any contract of instrument which, if made or executed by a person not being a body corporate, would not require to be under seal, may be made or executed on behalf of the Agency by the Director-General or any person generally or specifically authorised by the committee to act for the purpose.

2. Any document purporting to be a document duly executed under the seal of the Agency shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be executed.

3. The validity of any proceeding of the Committee or of a Sub-Committee shall not be adversely affected by:-
 - (a) a vacancy in the membership of the Committee or Sub-Committee, or
 - (b) a defect in the appointment of a member of the Committee or Sub-Committee; or
 - (c) reason that a person not entitled to do so took part in the proceeding of the Committee or Sub-Committee.

This printed impression has been carefully compared by me with the Bill which has passed the House and found by me to be true and correctly printed copy of the said Bill.

ASMA'U G. SALIMU, (DR)
Clerk to Adamawa State House of Assembly

I assent this 27th day of June, 2011

MURTALA H. NYAKO
*Governor,
Adamawa State of Nigeria*

SCHEDULE OF BILL

SHORT TITLE	LONG TITLE	SUMMARY OF CONTENTS	DATE PASSED BY HOUSE
Adamawa State Management Agency Law, 2011	A Law to Established Adamawa State Debt Management Agency and to provide for matters incidental thereto.	The Bill seek to provide for the establishment of a debt management office for the State, together with its functions and a debt Management Committee	7 th March, 2011

ASMA'U G. SALIMU, (DR)
Clerk to Adamawa State House of Assembly

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