



DEBT MANAGEMENT OFFICE (ESTABLISHMENT, ETC.) ACT

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DEBT MANAGEMENT OFFICE (ESTABLISHMENT, ETC.) ACT

An Act to provide for the establishment of the Debt Management Office; and for related matters.

[2003 No. 18.]

[1st August, 2000]

[Commencement.]

PART I

Preliminary

1. Short title

This Act may be cited as the Debt Management Office (Establishment, etc.) Act, 2003.

2. Commencement

This Act is deemed to have come into force on 1st August, 2000.

3. Interpretation

In this Act-

"Board" means the Supervisory Board of the Office established under section 2 of this Act;

"Debt" includes domestic and external debts;

"Loans" includes both internal and external borrowing;

"Minister" means the Minister charged with responsibility for Finance;

"Office" means the Debt Management Office established under section 1 of this Act;

"Public bodies" includes the Federal, State and Local Governments or their agencies and parastatals.

PART II

Establishment of the Debt Management Office, etc.

4. Establishment of the Debt Management Office

(1) There is established a body to be known as the Debt Management Office (in this Act referred to as "the Office") which-

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and
- (c) may acquire, hold and dispose of property whether moveable or immovable.

5. Establishment and composition of the Supervisory Board

- (1) There is established for the Office a supervisory board (in this Act referred to as the "Board") which shall consist of-
- (a) the Vice-President of the Federal Republic of Nigeria who shall be the Chairman;
 - (b) the Minister of Finance who shall be the Vice-Chairman;
 - (c) the Attorney-General of the Federation;
 - (d) the Chief Economic Adviser to the President;
 - (e) the Governor of the Central Bank of Nigeria;
 - (f) the Accountant-General of the Federation; and
 - (g) the Director-General of the Office who shall be the Secretary to the Board.
- (2) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters therein.

[Schedule.]

PART III

Functions of the Office, etc.

6. Functions of the Office

- (1) The Office shall-
- (a) maintain a reliable database of all loans taken or guaranteed by the Federal or State Governments or any of their agencies;

- (b) prepare and submit to Federal Government a forecast of loan service obligations for each financial year;
- (c) prepare and implement a plan for the efficient management of Nigerian'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;
- (d) verify and service external debts guaranteed or directly taken by the Federal Government;
- (e) on agency basis, service external debts taken by State Governments and any of their agencies, where such debts are guaranteed by the Federal Government;
- (f) set guidelines for managing Federal Government financial risks and currency exposure with respect to all loans;
- (g) advise the Federal Government on the re-structuring and re-financing of all debt obligations;
- (h) advise the Minister on the terms and conditions on which monies, whether in the currency of Nigeria or in any other currency, are to be borrowed;
- (i) submit to the Federal Government, for consideration in the annual budget, a forecast of borrowing capacity in local and foreign currencies;
- (j) prepare a schedule of any other Federal Government obligations such as trade debts and other contingent liabilities, both explicit and implicit, and provide advice on policies and procedures for their management;

(k) establish and maintain relationships with international and local financial institutions, creditors and institutional investors in Government debts;

(l) collect, collate, disseminate information, data and forecasts on debt management with the approval of the Board;

(m) carry out such other function which may be delegated to it by the Minister or by an Act of the National Assembly; and

(n) perform such other functions which in the opinion of the Office are required for the effective implementation of its functions under this Act.

(2) Notwithstanding the provisions of subsection (1) of this section, the Office shall-

(a) administer the debt conversion programme of the Federal Government;

(b) perform the functions of the Minister with regard to the development fund rules; and

(c) supervise the operation of the development fund under the Finance (Control and Management) Act, as amended.

[L.F.N. 2004 Cap. F26.]

7. Powers of the Office

The Office shall have power to-

(a) issue and manage Federal Government loans publicly issued in Nigeria upon such terms and conditions as may be agreed between the Federal Government and the Office;

- (b) issue, from time to time, guidelines for the smooth operation of the debt conversion programme of the Federal Government; and
- (c) do such other things which in the opinion of the Board relate to the management of the external debts of the Federal Government.

8. Functions of the Board

The Board shall-

- (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 of domestic and external debt management strategies;
- (c) appoint, as and when necessary, technical committees comprised 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 President, members of the Debt Conversion Committee; and
- (e) perform such other functions as may, from time to time, be necessary to achieve the objectives of the Office.

PART IV

Staff

9. Appointment of the Director-General

- (1) There shall be for the Office, a Director-General, who shall be appointed by the President on the recommendation of the Board.

- (2) The Director-General shall-
 - (a) not be below the rank of a Permanent Secretary in the Civil Service of the Federation;
 - (b) hold office for a period of five years in the first instance and may be re-appointed for another term of five years and no more;
 - (c) be responsible to the Board for policy direction and day to day administration of the Office; and
 - (d) hold office on terms and conditions as may be determined by the Board or as may be contained in his letter of appointment.

10. Appointment of other staff of the Office

- (1) The Board shall appoint for the Office such other number of employees as may in the opinion of the Board be expedient and necessary for the proper and efficient performance of the functions of the Office.
- (2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the employees of the Office shall be as determined by the Board after consultation with the National Salaries and Wages Commission.
- (3) The Board shall have power to-
 - (a) appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, in the opinion of the Board, be required to assist the Office in the discharge of any of its functions under this Act; and
 - (b) pay to persons so employed such remuneration (including allowances) as the Board may, after consultation with the National Salaries and Wages Commission, determine.

11. 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 the generality of the foregoing, such 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 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 Federation shall 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 shall not have effect until approved by the Minister and when so approved they need not be published in the Federal Gazette but the Board shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

12. Service in the Office to be pensionable

- (1) Service in the Office shall be approved service for the purposes of the Pensions Act.
- (2) The officers and other persons employed in the Office shall be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the civil service of the Federation.
- (3) Nothing in subsections (1) and (2) of this section shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.
- (4) For the purposes of the application of the provisions of the Pensions Act, any power exercisable by the Minister or other authority of the

Government of the Federation, other than the power to make regulations under section 23 is hereby vested in and shall be exercisable by the Board and not by any other person or authority.

13. Establishment of the Management Team

There shall be for the Office a management team which shall comprise the Director-General and the heads of departments of the Office and it shall be responsible for the implementation of the policies of the Board and the day to day administration of the Office.

PART V

Financial Provisions

14. Establishment of a fund for the Office

- (1) There is established for the Office a fund from which shall be defrayed all expenditure incurred by the Office.
- (2) There shall be paid and credited to the Fund-
 - (a) any allocation to the Office from the Consolidated Revenue Fund of the Federation;
 - (b) such moneys 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 moneys raised for the purposes of the Office by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise; and
 - (d) all other 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 and without prejudice to the generality of the power to make rules under this subsection; 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.

15. Expenditure of the Office

The Office shall apply the proceeds of the Fund to-

- (a) the cost of administration of the Office;
- (b) the payment of salaries, fees, remunerations, allowances, pensions and gratuities payable to the members of the Board and the employees of the Office;
- (c) the payment for all consultancies, contracts, including mobilisation, fluctuations, variations, legal fees 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 Act.

16. 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 shall 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 Act.

17. Annual estimates and expenditures

- (1) The Board shall, not later than 30th September in each year, submit to the Minister an estimate of the expenditure and income of the Office during the next succeeding year.
- (2) The Board shall cause to be kept proper accounts of the Office in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than six 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 Federation.

18. Annual report

The Board shall prepare and submit to the Minister not later than 30th June in each year, a report in such form as the Minister 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 and the auditor's report thereon. PART VI

External Borrowing, etc.

19. External borrowing

- (1) The Office shall annually advise the Federal Government on the financing gap for the succeeding financial year and the amounts to be borrowed for bridging the gap both internally and externally.
- (2) Any advice issued by the Office under subsection (1) of this section shall, among other things, form the basis of the national borrowing programme for the succeeding financial year as may be approved by the National Assembly.
- (3) The Office shall participate in the negotiation and acquisition of such loans and credit referred to in subsection (1) of this section.

20. Execution of external loan agreements

An Agreement entered into for the purpose of subsection (1) of section 19 of this Act shall, subject to the provisions of this section, be executed for and on behalf of the Federal Government by the Minister or by such other person as the Minister may, from time to time, and in writing, designate for that purpose.

21. Approval of National Assembly

- (1) No external loan shall be approved or obtained by the Minister unless its terms and conditions shall have been laid before the National Assembly and approved by its resolution.
- (2) The Federal Government, State Government or any of their agencies shall not obtain any external loan except with a guarantee issued by the Minister.

PART VII

Federal Government Guarantee, etc.

22. Government guarantee, etc.

- (1) The Federal Government may, subject to the provisions of this section, guarantee external loans.
- (2) A guarantee agreement for external loans shall be executed on behalf of the Federal Government by the Minister or any other person designated by him in writing.
- (3) The Minister shall not guarantee an external loan unless the terms and conditions of the loan shall have been laid before the National Assembly and approved by its resolution.
- (4) Where any money is due to be paid by the Federal or a State Government in satisfaction of any obligation arising from a borrowing or a guarantee by the Minister, that money shall be deemed to be a charge on the

Consolidated Revenue Fund of the Federation or the Consolidated Revenue Fund of the State, as the case may be.

23. Internal borrowing

(1) Subject to the provisions of section 7 of this Act in collaboration with the Central Bank of Nigeria, the Office shall-

(a) determine-

(i) the amounts and timings for the issuance of Federal 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 appointment of underwriters to the issues specified in subparagraph (i) of paragraph (a) of this subsection to ensure their success;

(iv) the floatation of Federal Government long-term securities to raise appropriate funds in the capital market;

(v) the payment of interest, maintenance of a register of holders and redemption of securities at maturity;

(vi) the creation and management of sinking funds to provide for the redemption of securities at maturity;

(b) in collaboration with the Central Bank of Nigeria and the Accountant-General of the Federation, determine any other form of securities that may be created, issued or floated to achieve the domestic debt management objectives of the Federal Government;

(c) 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 Central Bank of Nigeria and the Accountant-General of the Federation; and

- (d) 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.
- (2) The Office, for the purpose of achieving the objectives specified in this section, may maintain accounts with the Central Bank of Nigeria as may be deemed necessary.

24. Lending to the Federal Government, etc.

All banks and financial institutions requiring to lend money to the Federal, State and Local Governments or any of their agencies shall obtain the prior approval of the Minister.

25. Approval for grants or loans to a foreign State, etc.

- (1) Approvals for grants or loans to a foreign State or any international body or any of its agencies may be granted in accordance with the procedure specified in this section.
- (2) Applications for grants or loans to a foreign State may be submitted by the President to the National Assembly and may be approved subject to such terms and conditions as may be prescribed by a resolution of the National Assembly.
- (3) An application specified in subsection (2) of this section shall indicate the-
 - (a) foreign policy objectives underlining the request or proposal;
 - (b) terms and conditions of the grant or loan;
 - (c) benefits which Nigeria stands to derive from the grant or loan; and

(d) state of the relations existing between the foreign State or international body and Nigeria at the time of the request or proposal.

(4) The National Assembly shall, by resolution, decide whether or not the grant or loan should be made.

26. Loan receipts to form part of the Consolidated Revenue Fund of the Federation

(1) Any monies received in respect of any loan contracted by the Federal Government shall be-

(a) paid into and form part of the Consolidated Revenue Fund of the States;

(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 condition of the agreement under which it was obtained.

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

(a) paid into and form part of the Consolidated Revenue Fund of the State;

(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 condition of the agreement under which it was obtained.

(3) Where any amount has become paid out of the monies credited to the Consolidated Revenue Fund of the

Federation or of a State or other public funds under subsection (1) or (2) of this section, the amount shall be deemed to be a charge on the Consolidated Revenue Fund of the Federation or of a State, as the case may be, or such other public funds into which the monies have been paid.

27. Terms and conditions for loans and guarantees

- (1) The National 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.
- (2) Where the National Assembly has approved the terms and conditions under subsection (1) of this section, any agreement entered into by the Federal Government shall come into operation without further reference to the National Assembly: where the terms and conditions are in conformity with the approval.
- (3) Notwithstanding the provisions of subsection (2) of this section, the National 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 National Assembly is required shall come into operation without such approval.
- (5) An approval shall be deemed granted if after 30 days the approval has not been formally communicated to the Minister.

PART VIII

Miscellaneous

28. Limitations of suit against the Office, etc.

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall 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 no suit shall 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 Act 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 Act 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 the ceasing thereof.
- (3) No suit shall 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 month after written notice of intention to commence the suit shall have been served upon the Office by the intending plaintiff 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 plaintiff and the relief which he claims.

29. Service of documents

A notice, summons or other documents required or authorised to be served upon the Office under this Act or any other law or enactment may be served by

delivering it to the Director-General or by sending it by registered post and addressed to the Director-General at the principal office of the Office.

30. Restriction on execution against property of the Office

- (1) In any action or suit against the Office, no execution or attachment of process in the nature thereof shall be issued against the Office.
- (2) Any sum of money which may by the judgment of any court be awarded against the Office shall, subject to any direction given by court where notice of appeal of the said judgment has been given, be paid from the fund of the Office.

31. Transitional provisions, etc.

- (1) As from commencement of this Act, the powers of any Ministry or Extra-Ministerial Department over the management of any debt, referred to in section 6 of this Act shall by virtue of this Act and without further assurance, be vested in the Office established by this Act and in accordance with the provisions of this Act.
- (2) Accordingly, any proceeding or cause of action pending or existing immediately before the commencement of this Act 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 section 6 of this Act, 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 Act had not been made.

32. Validation of appointments

The appointment of officers and employees made by the Office prior to the commencement of this Act shall be deemed to have been validly made under this Act and the existing rights of such officers shall, by virtue of this section, be preserved.

33. Regulations

The Board may, with the approval of the Minister, make regulations for the operation of this Act, including the issuance of-

- (a) guidelines for obtaining external loans by the Federal Government or any of its agencies;
- (b) guidelines for guarantees with regard to external loans by a State Government or any of its agencies;
- (c) guidelines for the approval by the Minister in respect of lending to public bodies; and
- (d) guidelines on any other matter as the Board may deem fit in each circumstance.

34. Consequential repeals

The provisions of-

- (a) section 34, of the Central Bank Act, as amended; and [L.F.N. 2004 Cap. C4.]
- (b) the Borrowing by Public Bodies Act, [L.F.N. 2004 Cap. B10.] are hereby consequentially repealed. SCHEDULE

[Section 5 (2).]

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD, ETC.

Proceedings of the Board

1. (1) Subject to this Act and section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Board shall be the Chairman, the Vice-Chairman or the person presiding at the meeting and three other members of the Board, and the quorum of any committee of the Board shall be determined by the Board.
2. (1) The Board shall meet not less than four times in each 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 notice given to him by not less than four other members, he shall summon a meeting of the Board to be held within 28 days from the date on which the notice is given.
- (2) At any meeting of the Board the Chairman shall preside but if he is absent, the Vice-Chairman shall preside at the meeting and if he is absent, the members present at the meeting shall appoint one of them to preside at that meeting.
- (3) Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it deems fit but 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.

Committees

3. (1) The Board may appoint one or more committees to carry out, on behalf of the Board, such functions as the Board may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons as may be determined by the Board and a person shall hold office on 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.

Miscellaneous

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 authorised by the Board to act for that purpose and that of the DirectorGeneral.
- (2) Any contract or instrument which, if 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 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 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.

DEBT MANAGEMENT OFFICE (ESTABLISHMENT, ETC.) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation



LAWYARD®