

**EKITI STATE PUBLIC PRIVATE PARTNERSHIPS
LAW**

NO. 12 OF 2011

EKITI STATE OF NIGERIA

**A LAW TO PROVIDE PUBLIC PRIVATE
PARTNERSHIPS, ESTABLISH THE OFFICE OF PUBLIC
PRIVATE PARTNERSHIPS AND FOR OTHER
CONNECTED PURPOSES**

NO.12 OF 2011

EKITI STATE OF NIGERIA

ENACTED BY EKITI STATE HOUE OF ASSEMBLY AS FOLLOWS:

1. ESTABLISHMENT OF THE OFFICE

- (i) There is established an office to be known as the office of Public Private Partnership (referred to in this law as “the Office”)
- (ii) The office shall be a body corporate with perpetual succession and a common seal.
- (iii) The office may sue or may be sued in its corporate name and may hold and dispose of any movable or immovable property.

2. ESTABLISHMNT OF ADVISORY BOARD OF THE OFFICE

- (i) There is established an Advisory Board (in this Law referred to as the “Board”) for the Office.
- (ii) The Advisory Bard shall consist of:
 - (a) The Chairman
 - (b) Four other members appointed by the Governor.
 - (c) The tenure, allowances and other conditions of the members of the Advisory Board shall be as determined by the Governor.

3. FUNCTION OF ADVISORY BOARD

The Board shall render advice on the objectives, functions and power of the office pursuant to the provisions of this Law.

4. **PROCEEDINGS OF THE ADVISORY BOARD**

The provision contained in the first Schedule to this Law shall have effect with respect to the proceedings of the board and other matters mentioned in it.

5. **OBJECTIVES OF THE OFFICE.**

1. (i) In performing its functions and exercising its powers, the primary objective of the Office shall be to develop and maintain public infrastructure of public assets and provide social amenities and other facilities through Public Private Partnerships in the State.
 - (ii) To provide appropriate regulatory framework for the involvement Public Private Partnership in the management of public infrastructure or public assets in the state.
 - (iii) Initiate the process and process and suggest appropriate public infrastructures and public assets for Public Private Partnership.
2. (i) In seeking to achieve its objectives, the Office shall;
 - (a) Initiate and develop public infrastructure and public assets development strategies for the state by means of Public Private Partnerships;
 - (b) Advise on policies that will promote and sustain Public Private Partnerships for the provision and development of public infrastructure or public assets in the State;

- (c) Co-ordinate policies and programmes of the State with respect to Public Private Partnerships for the provision and development of public infrastructure or public assets in the state; and
- (d) Ensure that Public Private Partnerships for the provision and development of public infrastructure of public assets in the State are in accordance with prevailing Government Policy and Public interest.

6. **THE FUNCTION OF THE OFFICE**

The functions of the Office shall be to:

- (i) collaborate with appropriate Government Institution organs or bodies in conducting pre-qualification process for private investors willing to enter into Public Private Partnership in expression of interest in management or Public infrastructure and Public Assets.
- (ii) Initiate procurement of Public Private Partnerships for the development of public infrastructure and public assets by conducting pre-qualification process for private investors willing to enter into Public Private Partnerships with the state based on request for expression of interest.
- (iii) Evaluate expression of interest by private investors interested in Public Private Partnerships with the state and issue a preferred mandate to the Ekiti State Public Procurement Board for award;
- (iv) Act on behalf of the Government or any of its agencies in Public Private Partnerships under this Law and develop optimal means of financing the cost of public investment project on order to achieve value for money;

- (v) Ensure on behalf of the Government of any of its agencies that all aspects of financing, refinancing and insurance of Public Private Partnerships within the public sector;
- (vi) Prepare and develop on behalf of the State, strategic master plans for Public Private Partnerships;
- (vii) Initiate the development of public asset through Public Private Partnerships in the State;
- (viii) Form, or cause to be formed, Limited Liability Companies or Limited Liability Partnerships, subject to the provisions of the Law for the purpose of securing finance for public investments projects or to facilitate Public Private Partnerships;
- (ix) Verify and monitor performance of the terms and conditions of concession agreements by concessionaries;
- (x) Advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of Public Private Partnerships in the State; and in particular, to identify and make recommendation to the Government with respect to the acquisition of land required for such purposes;
- (xi) Undertake or conduct any research investigations or inquiries and collect information relating to public infrastructure or public assets in general;
- (xii) Liaise with bodies of professional persons; and private agencies performing work with regard to public infrastructure of public assets in general; and
- (xiii) In relation to Public Private Partnerships initiated by the Office, it shall:

- (a) ensure the provision by the concessionaire of such facilities and amenities that are necessary for the users of public infrastructure of public assets;
- (b) oversee the development, operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnerships and such other facilities necessary or adjacent to such public infrastructure or public assets; and
- (c) satisfy, discharge and perform the obligation of the Office and the State, to uphold and observe the terms of any concession agreement subject to the provision of this Law.

7. POWER OF THE OFFICE

The Office shall have power to:

- (i) advise the Ekiti State Public Procurement Board for the award or concession to private investor interested in Public Private Partnerships of design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets;
- (ii) negotiate with prospective private partners;
- (iii) obtain from the government agency or private institutions, statistical or other information relevant to the functions of the Office;
- (iv) inspect and monitor concessionaries to ensure compliance with the terms of any concession agreement;
- (v) designate a public infrastructure or public assets as a service charge, user fee or toll paying public infrastructure or public asset and specify the condition for the use of such infrastructure or

public asset and specify the condition for the use of infrastructure or assets;

- (vi) specify the classes of vehicles that may use a toll road under Public Private Partnership made pursuant to this law;
- (vii) liaise and co-operate with all government agencies and parastatals with respect to private investor's participation in the provision and development of public infrastructure or public assets;
- (viii) pursuant to and in accordance with the provision of this Law, approve the amount of money that may be charged by private operators with respect to any public infrastructure, public assets or amenities as toll or user fees;
- (ix) establish and operate an information management system concerning public infrastructure or public assets and projects;
- (x) perform any other function as may be assigned to it by the Governor under this Law or any other enactment; and
- (xi) do all things that are necessary or expedient for the performance of its functions, including the engagement from time to time of consultants and advisers and other service providers.

8. APPROVING AUTHORITY

The award of a Concession by the Ekiti State Public Procurement Board is subject to the approval of the Governor as the approving authority.

9. PROCUREMENT OF PUBLIC PRIVATE PARTNERSHIPS

- (i) The Office may give guarantees, letters of comfort or undertakings in respect of any Public Private Partnerships or concession agreement with the approval of the approving authority.

- (ii) The Office shall be a producing entity for the purpose of the Ekiti State Public Procurement Law and shall comply with the intendment of that Law.
- (iii) The Office may undertake restricted or emergency procurements in accordance with the provision of the Ekiti State Public Procurement Law.

10. APPOINTMENT OF DIRECTOR-GENERAL

- (i) The Governor shall appoint for the Office a Director-general who shall be the Chief Executive Officer.
- (ii) The Director-General shall be a qualified and registered professional who must not be below GL 16 and with cognate/related experience in Business Administration and Management.
- (iii) The Director-General shall:
 - (a) be responsible to the Board for policy direction and the day-to-day administration of the Office
 - (b) hold Office upon such terms and conditions as may be contained in his letter of appointment; and
 - (c) hold Office for a period of four (4) years in the first instance, and may be reappointed by the Governor for another term of 4 years.

(2) REMOVAL OF DIRECTOR – GENERAL

The Director- General shall be removed by the Governor, if he is satisfied that it is not in the interest of he Board that such Director-General should continue in the office, provided that the Governor

shall also have power to suspend the Director-General, if deemed appropriate.

11. OTHER STAFF OF THE OFFICE

- (1) The Office may, from time to time engage such other number of employees as may be necessary for the proper and efficient conduct of the business of the Office.
- (2) The term 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 any committee, agency or other body responsible for determining salaries in the State.
- (3) Notwithstanding the provisions of subsection (2) of this section the Governor may, upon the recommendation of the Board approve such remuneration allowances and benefits for the Director-General or any other employee of the Office.

12. ESTABLISHMENT OF SPECIAL PURPOSE COMPANIES OR LIMITED LIABILITY PARTNERSHIPS

The Office with the approval of the Governor may cause to be formed, Limited Liability Partnerships Limited Liability Companies for the purpose of financing Public Private Partnership projects or facilitating such projects where, in the opinion of the Office, it is necessary or expedient to do so in order to discharge its functions under this Law.

13. INSPECTORATE DEPARTMENT

- (i) There shall be an inspectorate Department of the Office staffed with persons with requisite training and experience designated as

public infrastructure inspectors who shall report to the Director-General.

- (ii) Public infrastructure inspectors shall undertake inspection of public infrastructure projects or public assets from time to time and shall monitor the application of appropriate service charges, user fees or tolls by concessionaries, in accordance with the terms of relevant concession agreement in the absence of any regulation to that effect.

14. APPEAL FROM DECISIONS OF THE OFFICE

Without prejudice to any terms as to dispute resolution as agreed in any relevant concession agreement, and to any other rights of recourse available at law, where any concessionaire is dissatisfied with any omission or decision or exercise of power by the Office, may appeal to the Governor through the Ekiti State Public Procurement Board.

15. FINANCIAL PROVISION

1.
 - (i) The Office shall prepare and submit to the Governor an annual estimate of its income and expenditure not later than 30th June of each year for approval by the Governor.
 - (ii) The Office shall keep proper account in respect of each year from 1st January to 31st December in accordance with the prevailing audit policy of the State.
2. Other sources of fund of the office shall consist of:
 - (i) Gifts, loans, grants or aid from any agency, institution, bilateral and multinational organizations or any Government;
 - (ii) A percentage of service charge or user fees as may be prescribed in the Office's regulation or agreed in the relevant

concession agreement in the absence of such regulation;
subject to the approval of the Governor; and

- (iii) All other sums which may become payable to or vested in the Office in respect of any matter incidental to its functions.

16. POWER TO BORROW

The Office shall have power to borrow money for the purpose of discharging its function under this Law subject to the approval of the Board.

17. BANK ACCOUNT

The Office shall keep and operate bank accounts for its fund with a reputable bank or banks as may be duly authorized by the Governor in that behalf.

18. APPLICATION OF THE FUNDS

The fund of the Office shall be utilized for the following purposes:

- (i) Salaries, remuneration, fees allowances of staff agent or consultants to the Office;
- (ii) For the development and maintenance of any property vested in or owned by the Office;
- (iii) For maintaining general financial reserves subject to general or special directives that may be given in that behalf by the Governor in accordance with the provisions of this Law; and
- (iv) To defray other expenses authorized by the Office in carrying out its functions under this Law.

19. ANNUAL REPORT

The Office shall prepare and submit an annual report in accordance with the prevailing audit policy of the State not later than 30th day of June each year, a report to the activities of the Office during the immediate preceding year and shall include in such report a copy of the audited accounts of the Office and the Auditor's report.

20. DESIGNATION OF PUBLIC INFRASTRUCTURE ASSETS

Notwithstanding the provision of any Law, the office may designate any public infrastructure asset, any road, bridge or highway within the state and subject to the constitutional authority of the Government a public infrastructure or public assets with respect to which user fees or toll shall be payable for the purpose of this Law.

21. AUTHORIZATION TO COLLECT USER FEES OF TOLLS

Notwithstanding the provision of any Law, the Office may in the relevant concession or other agreement, authorize any person, in return for undertaking such obligations as may be specified in a concession or project agreement with respect to the design, construction, maintenance, operation, improvement of financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the rights to levy, collect and retain service charges, user fees or tolls in respect of the use of the public infrastructure or public assets.

22. USER FEES OR TOLL REGULATION

(1) The Office may, by regulation, specify the:

- (a) Service charge, user fees or tolls payable in respect of designated public infrastructure or public infrastructure or public assets; and
 - (b) Conditions under which a member of the public will access the use of public infrastructure or public assets;
- (2) A concessionaire shall propose for the approval of the Office service charge, user fees or may review same in relation of the use of the public infrastructure or public assts by reference to such circumstances or combination of circumstances or classification as the office may, after consult.
- (3) The Office may provide for service charge, user fees or tolls to be charged for a period specified in or determined in accordance with the regulations, which may provide for a period when payment of service charge, user fees or toll shall end:
- (a) On date, or at the end of the period specified in the regulations;
 - or
 - (b) On a date determined by reference to:
 - (i) The achievement of a specified financial objective; or
 - (ii) Such other factors or combination of factors as may be specified in the regulations.
- (4) Where a concession agreement has been executed in accordance with this Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee or tolls regulations for the purpose of this section.

23. PAYMENT OF SERVICE CHARGE, USER FEES OR TOLLS

- (1) Service charge, user fees or tolls shall be paid to the concessionaire and adjusted in accordance with regulation made by the office or in

the absence of such regulations as may be agreed with the concessionaire and incorporated into the relevant concession agreement.

- (2) A service charge, user fee or toll levied in respect of public infrastructure or public assets is valid only if it is charged by the concessionaire in accordance with the provision of this Law.

24. OFFENCES AND PENALTIES

- (1) It shall be an offence for any person to fail or refuse to pay service charge, user fees or tolls in accordance with this law or any regulations made under this law or within the terms of concession agreement, and the offender shall be liable, on conviction to a fine of Ten thousand Naira (₦10, 000.00) or one month imprisonment or any non-custodial sentence provided by the Law.
- (2) If it appears to a person employed to collect service charge, user fees or tolls that a person has refused or failed to pay, the person so employed may:
 - (i) Refuse to permit the defaulter to use, or prevent him from using the public infrastructure or public assets with respect to which service charge, user fees or tolls are payable; and
 - (ii) Require him to vacate the public infrastructure or public asset, or call, where necessary, the assistance of law enforcement agents.
- (3) where a person refuses to pay a service charge, user fees or tolls with respect to the use of any public infrastructure that is a road or bridge, the vehicle driven by a person shall be impounded by the authority person and removed to a vehicle part provided for that purpose and

such vehicle shall remain so impounded until the payments to the concessionaire of the unpaid toll and the payment of the fine prescribed by subsection (1) of this section to the appropriate authority designated by the office or shall remain so impounded pending the trial of the offence committed under the said subsection.

25. REGULATION OF SERVICE CHARGE, USER FEES OR TOLLS

- (1) The service charge, user fees or toll, that may be levied and collected by the concessionaire pursuant to any concession agreement, shall in every case be the service charge, user fee or toll specified or calculated in accordance with any index or formula or other provision stated in the concession agreement is entered into prior to the regulations made by the office.
- (2) Each concession agreement shall set out the procedure, circumstances and formulae by which service charge, user fee or tolls to be charged by the concessionaire shall be calculated, varied or adjusted and such provisions shall be observed and agreement fully implemented.
- (3) Where the concession agreement does not set out the provisions for calculation and adjustment or variation of service charge, user fees or tolls or such provisions are declared invalid, void, unenforceable or of no effect, by any competent court who is authority, the concessionaire shall have the right to make an application to the Office from time to time for calculation and adjustment or variation of service charge, user fees or tolls and the Office shall promptly approve or reject any such application having taken into account all relevant circumstances.
- (4) The Office shall have power to vary or adjust or to require the adjustment of any service charge, user fees or tolls charged by a

concessionaire in respect of a public infrastructure or asset only in accordance with the provisions of this or as may have been agreed and incorporated into any relevant concession agreement.

26. POWER TO MAKE REGULATION

- (1) The Office shall have power to make regulation to;
 - (a) designate a public infrastructure or public asset as a service charge, user fee or toll paying infrastructure or asset; and
 - (b) establish fair and general conditions designating who, when and how the public infrastructure or public asset may be used and from whom service charge, user fee or toll may be collected.
- (2) Regulations made under this section shall provide that breach of such regulation shall constitute an offence punishable by fine or by imprisonment as provided in the relevant regulation.
- (3) The Office may make such regulations necessary for giving effect to any provision and purposes of this law.

27. PRE-EXISTING CONCESSIONS

- (1) The provisions of this law shall apply to Public Private Partnerships or concessions entered into before the commencement of this law and shall preserve and protect all rights, properties, interests and obligations existing under that contract and any law applicable when the Public Partnerships were entered into or the concession was awarded.
- (2) The provision of subsection (1) of this section shall only apply to Public Private Partnerships or concession listed in the second schedule to this law.

28. INTERPRETATION

“Approving Authority” means the Governor of Ekiti State.

“Authority Person” includes a Police Officer, Public Infrastructure Inspectors, designated officials of the Office and such other person as the Office may from time to time appoint.

“Concession” means the person organization with whom a concession agreement concerning a Public Private Partnership arrangement has been entered into pursuant to this law.

“Concession Agreement” means any agreement between the Office and any person, firm, or limited liability company for the construction maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time including, but not limited to the following:

Types of Agreement:-

- (i) Design, Build, Operate and Transfer (DBOT);
- (ii) Build, Own, Operate and Transfer (BOOT);
- (iii) Rehabilitate, Operate and Transfer (ROT);
- (iv) Joint Development Agreement (JDA);
- (v) Operation and Maintenance (OM)

“Commissioner” means the Commissioner for Finance Ekiti State or any person charged with responsibility to oversee the Ministry of Finance.

“Governor” means the Governor of Ekiti State of Nigeria.

“Government” means the Government of Ekiti State.

“Person” means an individual and shall include a limited liability company, a limited liability partnership or any organization duly registered under the Companies and Allied Matters Act 1990.

“Plan” means a technical working drawing, which shows the design of a project.

“Preferred Mandate” is a document issued in favour of a successful pre-qualified bidder.

“Project Agreement” means an agreement between the office and Private Participant selected by the office (and the State) to carry out Public Private Partnership, including without limiting the generality of the foregoing, concession, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises and regulatory agreement;

“Public Asset” includes the rights of use of any property or economic opportunity of a public nature or arising from use of public property.

“Public Infrastructure” means major repairs or maintenance requiring some changes in design or a form of re-construction of infrastructure of asset to add strength, thus renewing or extending the life span.

“Roads” includes:

- (1) Roads, the subject of the project agreement;
- (2) The roadways, water table, bridges and fording on the line of the roads;
- (3) The land on each side of the roadway and water table up to the boundary of the road;
- (4) All traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance;
- (5) Any other areas on or adjacent to any public main road or parochial road waterway, railway or other routes used for the public passengers transport; and
- (6) Any private road designated as a toll under this law or otherwise be developed or conceded pursuant to a concession agreement.

“Service Charge, User fee or Toll” means any fee, charge, levy, due or compensation payable in relation to the use of a public infrastructure or asset by any person;

“State” means Ekiti State

“The Office” means the Office of Public Private Partnerships.