

ARRANGEMENT OF SECTIONS

SECTIONS

PART I - PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART II - ESTABLISHMENT OF THE AGENCY AND GOVERNING BOARD

3. Establishment of the Agency.
4. Purpose of the Agency.
5. Establishment and Composition of the Governing Board.
6. Functions of the Board.
7. Meetings of the Board.
8. Tenure/Remuneration of Board Members.
9. Cessation of Membership.
10. Removal from Office.
11. Functions of the Agency.

PART III - MANAGEMENT AND STAFF OF THE AGENCY

12. Powers of the Agency.
13. Appointment of Executive Secretary.
14. Functions of the Executive Secretary.
15. Secretary/Legal Adviser.
16. Staff of the Agency.
17. Pensions.
18. Appointment of Consultant.

PART IV - FINANCIAL PROVISIONS

19. Funds of the Agency.
20. Application of Funds.
21. Annual Estimates, Accounts and Audit of the Agency.

PART V - PUBLIC PRIVATE PARTNERSHIP AGREEMENT

22. PPPs to be in conformity with the PPP Policy.
23. Responsibility for conducting the bidding process.
24. Power to enter into agreement.
25. Diagnostic study and assessment.
26. Procurement.
27. Contracting authorities.
28. Authorization to enjoy specific rights.
29. Requirement to register under the Companies and Allied. Matters Act,2020 CAMA
30. Service charge/user fees/tolls.
31. Service charge/user fees or tolls to be charged in accordance with the agreement or provision of the law.

PART VI - OFFENCES AND PENALTIES

32. Setting of application.

PART VII - MISCELLANEOUS

33. Penalty for non-payment of service charge, user fees or tolls.
34. Governor's general directives and guidelines.
35. Common Seal.
36. Legal Proceedings.
37. Power to make regulations.
38. Savings.

ADAMAWA STATE HOUSE OF ASSEMBLY

A BILL

FOR

A LAW TO ESTABLISH THE ADAMAWA INVESTMENT PROMOTION AGENCY AND FOR OTHER MATTERS INCIDENTAL THERETO.

Date of Commencement ()

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

PART-I PRELIMINARY

Short title and Commencement

1.This Law may be cited as the Adamawa State Investment Promotion Agency Law, 2024 and shall come into operation on the4th..... day of...December..... 2024.

Interpretation

2. In this Law unless the context otherwise requires: -
"Agency" means the Adamawa Investment Promotion Agency established under Section 3 of this Law;
"Board" means the Governing Board of the Agency established under section 6 of this Law;
"Build Operate and Transfer or BOT" means a project delivery model, usually for large scale infrastructure projects, wherein a private entity receives a concession from the public sector to finance, design, construct, own and operate a facility stated in the concession contract;
"Chairman" means the Chairman of the Board;
"Commercialization" means the adoption of commercial and competitive profit objectives in the management of government enterprises and involves the reorganization of a public enterprise in such a manner that will improve its efficiency, and effectiveness and maximize profit;
"Concessionaire" means the person or organization with whom a concession agreement concerning a Public-

Private Partnership has been entered into pursuant to this law;

“Concession” means a contractual license formalized by a project agreement, which may be linked to a separate interest or right over real property, entitling a person who is granted the license to make use of the specified infrastructure or undertake a project and to charge user fees, receive availability payments or both such fees and payments during the term of the concession;

“Concession Agreement” means any agreement between the government and any person, firm, company, or limited liability partnership for financing, constructing, maintaining, operating or managing of public infrastructure, asset and facilities over an agreed period of time;

“Contracting Authority” means the Ministry, Department or Agency, which intends to have a function undertaken by it performed by a private party;

“Executive Secretary” means the Chief Executive and Accounting Officer of the Agency;

“Government” means the Government of Adamawa State;

“Governor” means the Governor of Adamawa State;

“Greenfield” means a type of investment that involves building a new business, project, or facility from scratch, often in a previously undeveloped or unused area;

“Brownfield” means a type of Investment that involves purchasing or leasing an existing production facility to launch a new production activity;

“Member” means the members of the Board and includes the Chairman;

“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, 2020;

“Private Party” means a party that enters into a project agreement with a contracting authority and is responsible for undertaking an infrastructure or development facility as a Public Private Partnership;

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

“Privatisation” means the transfer of ownership and control of a public asset, service, or enterprise from the government to the private sector;

“Project Agreement” means an agreement concluded between a contracting authority and a private party, including without limiting the generality of the foregoing, concessions, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises in relation to an agreement;

“Public Private Partnership or PPP” means an arrangement between a contracting authority and a private party under which a private party: -

- (a) undertakes to perform a public function or provide a service on behalf of the contracting authority;
- (b) receives a benefit for performing a public function by way of: -
 - (i) compensation from public fund;
 - (ii) charges or fees collected by the private party from users or consumers of a service provided to them; or
 - (iii) a combination of such compensation and such charges or fees; and
- (c) is generally liable for risk arising from the performance of the function in accordance with the terms of the project agreement; and

“State” means Adamawa State of Nigeria.

PART-II ESTABLISHMENT OF THE AGENCY AND GOVERNING BOARD

Establishment
of the Agency

3. (1) There is hereby established a body to be known as the Adamawa Investment Promotion Agency (in this Law referred to as “the Agency”).

(2) The Agency: -

- (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 or hold any property movable or immovable for the purpose of carrying out any of its functions under this Law.

Purpose of the Agency

4. The purpose of the Agency is to initiate, promote, facilitate, and coordinate investment in the State through Greenfield and Brownfield, Public Private Partnerships, Privatisation, Commercialization of State-owned assets and Build, Operate and Transfer.

Establishment and Composition of the Governing Board

5. There is hereby established for the Agency a Governing Board which shall consist of:

- (a) Chairman who shall be appointed by the Executive Governor of the State, he shall be a person with integrity and managerial skills;
- (b) a representative of each of the following: -
 - (i) Ministry of Commerce, Trade and Industry
 - (ii) Ministry of Land and Survey,
 - (iii) Ministry of works and Energy Development,
 - (iv) Ministry of Justice,
 - (v) Ministry of Finance and
 - (vi) Ministry for Local Government not below the rank of a Director as ex-officio members;
- (c) Two representatives of the Organised Private Sector in the State (preferably members of the Manufacturers Association of Nigeria, Adamawa Association of Chambers of Commerce, Industry, Mines and Agriculture(ADCCIMA) and Chairman of the Association of Local Governments of Nigeria (ALGON), Adamawa State Chapter.
- (d) The Executive Secretary of the Agency;
- (e) The Secretary/Legal Adviser to the Board who shall be a Legal Practitioner with at least 10 years post call experience and may be appointed from within or outside the public service.

Functions of the Board

6. The Board shall: -

- (a) be the policy-making body on investment promotion and public-private partnerships for the State Government;

- (b) promote policies and transparent procedures that enable the State Government to work with potential investors and business partners to develop the natural resource base and assets of the State;
- (c) develop appropriate legal, institutional and regulatory framework for Public Private Partnership, investment, investment promotion, and facilitation in the State;
- (d) articulate clear growth strategies for providing needed support and appropriate incentives to grow the local private sector and enlarge the economic base of the State in line with the priorities of the State;
- (e) engage international Agencies and development partners to facilitate the establishment of special funds to support projects in the State;
- (f) develop and implement a comprehensive strategy and action plan to attract and facilitate new investments in the State; and
- (g) foster sustainable economic growth and create job opportunities for the residents of the State.

Meetings of
the Board

7. (1) The Board shall meet at least once every quarter to review the progress of the various programmes and projects on the roadmap and to consider any special issues as may be directed by the Governor.

(2) Where the Chairman is unable to attend any Board Meeting, the members present shall select a Chairman for the meeting from the members present.

(3) At every Board Meeting, a quorum shall be formed when a simple majority of the members are in attendance.

(4) In the event of a stalemate on any vote relating to any matter, the Chairman of the meeting shall have a casting vote.

(5) Where any Board member has any direct or indirect interest on any matter before the Board, the member shall declare his interest to the Board following which the member shall be excused from participating in discussions or voting on the particular matter under consideration.

- Tenure/Remuneration of Board Members
8. (1) A member of the Board shall hold office for a term of four years and may be reappointed for another term of four years only.
(2) Members of the Board shall be paid such remuneration and allowances as may be approved by the Governor.
- Cessation of Membership
9. The office of a Member of the Board shall become vacant where: -
(a) the term of appointment has expired;
(b) a month's notice of resignation in writing has been given to the Governor.
- Removal from Office
10. The Governor may revoke the appointment of a Member where he is satisfied that such a Member: -
(a) is incapacitated or unable to discharge his duties diligently by reason of mental or bodily infirmity;
(b) has been adjudged bankrupt; or
(c) has been convicted of an offence involving fraud or dishonesty.
- Functions of the Agency
11. The Agency shall: -
(a) advise and conduct risk or benefit assessments that will assist the Government in the implementation of all projects and programmes in the State Investment Promotion Strategy;
(b) advise and assist the government in creating an attractive and competitive climate for business that will lead to robust economic activities in the State;
(c) source on behalf of the Government, finance for investment from multilateral and bilateral development partners as well as private investors – both domestic and foreign – through public private partnerships and other financial arrangements as well as, where appropriate acting as lead negotiator in deals with private investors that ensure the needs of the State and those of its citizens are well represented;

- (d) monitor the implementation, execution and delivery of projects as contained in agreements between the State Government and respective investors;
- (e) assist the State in building capacity for investment project identification, evaluation, planning, execution and management;
- (f) advise and assist in the establishment of a framework for monitoring and evaluating the progress of the State's strategic economic investment programmes and projects for effective implementation;
- (g) establish a framework for identifying and pro-actively engaging the Federal Government and its Agencies in the investment promotion drive of the State;
- (h) articulate clear growth and development strategies for providing needed support and appropriate incentives to grow the local private sector and enlarge the economic base of the State in line with the priorities of the State;
- (i) advise and assist the Government in developing and maintaining a comprehensive and reliable database on investment opportunities for effective planning especially in areas where the State has demonstrable comparative and competitive advantages;
- (j) publish and periodically revise data and information on the investment status of the State in order to assist prospective investors – both domestic and foreign – to evaluate the State's potential as an investment destination;
- (k) develop a database of reputable prospective and potential investors both in Nigeria and abroad with a view to reaching out to them when opportunities arise;
- (l) plan and organise targeted and well-researched investment promotion activities including tours and road shows aimed at promoting specific investment projects in

- areas where the State has demonstrable comparative and competitive advantages;
- (m) based on the State's resources the focus of the approved Agency strategy, identify and document available land for agricultural, housing, mining, industrial and other uses so that it can be speedily made available to qualified investors in a manner that protects the rights of all stakeholders (land owners, occupiers, communities) and provides opportunities for optimal land use for investment and job creation;
 - (n) act as the State's lead negotiator for all PPP, Build, Operate and Transfer and privatisation transactions even where they are identified or project managed by other Ministries, Departments and Agencies;
 - (o) be a one-stop resource and coordination centre for all investment and Public-Private Partnership related activities; and
 - (p) perform such other functions as the Governor may from time to time direct or as may be deemed necessary to achieve its primary purpose under this Law.

Powers of the Agency

12. The Agency shall have powers to: -

- (a) conclude arrangements with any person for the effective implementation of any programme or project and to enter into such other contracts as it may deem necessary to facilitate its functions under this Law;
- (b) request the Head of any Ministry, Department or Agency of the Government to furnish it with any document, explanation or other information it may require for the due execution of its functions under this Law;
- (c) regulate its own proceedings; and
- (d) do such other things as are reasonably incidental, supplemental or conducive to its functions under this Law.

PART-III
MANAGEMENT AND STAFF OF THE
AGENCY

Appointment of
Executive
Secretary

13. (1) There shall be an Executive Secretary to be appointed by the Governor who shall be the Chief Executive and Accounting Officer of the Agency.
- (2) The Executive Secretary shall be a graduate of Economics, Law or any other relevant field and person with cognate experience in investment promotion, finance and economic planning or other related field.
- (3) The Executive Secretary shall hold office for a term of four (4) years and may be re-appointed for one further term of four (4) years.
- (4) The Executive Secretary shall be paid such remuneration and allowances as may be determined from time to time by the Governor.

Functions of
the Executive
Secretary

14. The Executive Secretary shall: -
- (a) prepare a three-year rolling strategy and a 12-month action plan and budget based on the functions of the Agency for review and approval by the Board;
 - (b) monitor the progress of the strategy and prepare quarterly reports for the Board's review;
 - (c) liaise with Ministries, Departments and Agencies of Government for the purpose of continually collecting, compiling and collating information with a view to developing an economic database and investment information repository for the State;
 - (d) provide information and technical input to the Board for the purpose of defining appropriate policy directions and high-level reform priorities;
 - (e) develop a prioritised comprehensive reform strategy, which identifies roles and responsibilities for reform, time bound targeted action plans, outputs and supporting budgets for effective management and investment promotion;

- (f) prepare policy and strategy papers on key investment issues as may be directed by the Board;
- (g) carry out activities aimed at building the institutional capacities of Ministries, Departments and Agencies of Government and other relevant stakeholders in the area of investment promotion;
- (h) work with relevant government Agencies to periodically review broad sector policies to ensure consistency with economic management and investment promotion initiatives in the State;
- (i) coordinate the implementation of the various recommendations of the State Executive Council on investment issues;
- (j) provide support in the development of feasibility studies on investment projects in small and medium enterprise supported sectors;
- (k) coordinate all activities of the Agency including the execution of its Work Plan and Annual Budget and ensure the maintenance of accurate accounting records; and
- (l) undertake any other tasks relating to investment promotion as may be directed by the Board or the Governor.

Secretary/Legal
Adviser

15. The Governor shall appoint a Legal Adviser who shall be a Legal practitioner from within or outside the public service with at least ten (10) years post-call and cognate experience.

Staff of the
Agency

16.(1) The Agency may with the approval of the Governor employ such number of employees as it may deem necessary for the efficient discharge of the functions of the Agency under this Law or may request for the posting of employees from the Public Service.

(2) The Agency shall have power to make, with the approval of the Board, Staff Regulations governing the conditions of service of the Agency employees, until such regulations are made, the regulations and conditions of

service applicable to employees in the State Public Service shall apply subject to such modifications as the Board may, in its discretion, make.

Pensions

17. Service in the Agency shall be approved service for the purpose of the State Pension Law and accordingly, the Staff of the Agency shall be entitled to pension and other retirement benefits as prescribed under the State Pension Law.

Appointment of Consultant

18. The Agency may with approval of the Governor appoint a consultant where the Agency lacks the technical competence.

PART-IV FINANCIAL PROVISIONS

Funds of the Agency

19. (1) The Agency shall establish and maintain a fund from which there shall be defrayed all expenditure incurred by it.

(2) There shall be paid and credited into the fund established pursuant to Sub-Section (1) of this Section: -

- (a) all subventions and budgetary allocations from the State Government;
- (b) gifts, loans, endowments, grants or aid from any Agency, institution, bilateral and multilateral organisations or any government and entitlements from privatisation proceeds;
- (c) such monies as may be payable to the Agency for services rendered in the course of any matter incidental to the discharge of its functions under this Law; and
- (d) monies raised in any other manner as permitted under this Law.

(3) The Management shall propose to the Board for approval a performance bonus from its revenue at the end of each financial year.

Application of Funds

20. The funds of the Agency shall be utilized for the following purposes: -

- (a) allowances, salaries, and other emoluments of members and staff of the Agency;

- (b) all other expenses incurred by the Agency in the discharge of its functions under this Law or any other enactment.

Annual Estimates, Accounts and Audit of the Agency

21. (1) The Agency shall keep accounts of its income and expenditure for each financial year and shall cause the accounts to be properly audited annually.
- (2) The Agency shall also appoint reputable External Auditors from a list of approved Auditors provided by the Auditor-General of the State who shall audit the accounts of the Agency at the end of each financial year.
- (3) The Agency shall forward a report of the external audit to the office of the Auditor-General of the State not later than two weeks after the submission of report by the External Auditor.

PART-V
PUBLIC PRIVATE PARTNERSHIP AGREEMENT

PPPs to be in conformity with the PPP policy

22. The Agency shall ensure that all PPP agreements and other models such as joint ventures, privatization shall be in conformity with the PPP Policy and Manual, Fiscal Commitments and Contingent Liabilities (FCCL), or other regulations as may be issued by the Agency from time to time.

Responsibility for conducting the bidding process

23. The Agency shall be responsible for conducting the bidding process with respect to any PPP project in an equitable, transparent, cost effective and competitive manner subject to Public Procurement Law of the State.

Power to enter into agreements

24. The Agency may without prejudice to the functions of the State under any other enactment the State either by itself or in conjunction with any other person (including another State): -

- (a) enter into an agreement with any person for the performance of functions of the State specified in the agreement;
- (b) enter, where appropriate, into direct agreement as an affirming party with any persons who have been selected to enter into a PPP arrangement with any MDA.

Diagnostic study and assessment	25. The Agency shall ensure that a contracting Authority prior to entering into a Public Private Partnership arrangement pursuant to this Law shall undertake a sector diagnostic study and assessment in accordance with the PPP Manual.
Procurement	26. All privatizations, joint venture, management contracts or leases with the private sector must be procured through the Agency. These include the delivery of public assets, service provision or procurement of supplies on behalf of the State for profitable gain.
Contracting authorities	27. All contracting Authorities that are seeking partnerships with the private sector, whether solicited or unsolicited, must submit all such partnership projects to the Agency to be developed and be executed in conjunction with the originating contracting Authority.
Authorization to enjoy specific rights	28. The Agency may in a concession or other agreements, 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 or financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the right to levy, collect and retain service charges, user fees or tolls in respect of the use of the public infrastructure or public assets.
Requirement to register under the Companies and Allied Matters Act, 2020 CAMA	29. Any Company that the Agency enters into a Public Private Partnership agreement with must be a Company registered by the Corporate Affairs Commission.
Service charge/user fees/tolls	30.(1) The Agency may specify the: - (a) service charge, user fees or tolls payable in respect of designated 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 Agency, service charge, user fees or tolls or any review of same in relation to the use of public infrastructure or assets by reference to such circumstances or combination of circumstances or classification as the Agency may, after consultation with the concessionaire.

(3) The Agency 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 that payment of service charge, user fee or tolls shall end on a date, or at the end of a period specified in this regulation or on a date determined by reference to: -

- (a) the achievement of a specific financial objective, or
- (b) such other factors or combination of factors as may be Specified.

(4) Where a concession agreement has been executed in accordance with the Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee or tolls regulation for the purpose of this section.

Service charge/user fees or tolls to be charged in accordance with the agreement or provision of the Law

31. The service charge, user fees or tolls: -

- (a) shall be paid to the concessionaire as may be agreed with the concessionaire and incorporated into the relevant concession agreement.
- (b) levied in respect of public infrastructure or public assets are valid only if it is charged by the concessionaire in accordance with the provisions of the Law.

Setting of application

32. (1) The setting of application and compliance on service charge, user fees and tolls shall be in accordance with the provisions of this section.

(2) The service charge, user fee or toll which 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 formula or other provision stated in the concession agreement with the Agency, where the

concession agreement is entered into prior to regulations made by the Agency.

(3) Each concession agreement shall set out the procedures, circumstances and formulae by which service charge, user fee or toll to be charged by the concessionaire shall be calculated, varied or adjusted and such provisions shall be observed and agreement fully implemented.

(4) Where the concession agreement does not set out the provisions for calculation and adjustment or variation of the service charge, user fee or toll or such provisions are declared invalid, void, unenforceable or of no effect by any competent Court or authority, the concessionaire shall have the right to make the application to the Agency from time to time for adjustment or variation to the service charge, user fee or toll and the Agency shall promptly approve or reject any such application, having taken into account all relevant circumstances.

(5) The Agency shall have the power to vary or adjust or to require the adjustment of any service charge, user fee or toll charged by the concessionaire in respect of a public infrastructure or asset in accordance with the provisions of this Law, or as may have been agreed and incorporated into any relevant concession agreement.

(6) It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this regulation or within the terms of the concession agreement and the offender shall be liable on conviction to a fine of not less than twenty thousand naira (N20,000.00) or a term of imprisonment of not less than six months or to both.

(7) If it appears to a person employed to collect service charge, user fee or toll 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 asset with respect to which service charge, user fee, or toll are payable; and
- (ii) require him to vacate the public infrastructure or public assets, or call where necessary, the assistance of law enforcement agents.

PART-VI
OFFENCES AND PENALTIES

Penalty for non-payment of service charge, user fees or tolls

33.(1) Any person who fails or refuses to pay service charge, user fees or tolls in accordance with any regulations made under this Law or within the terms of concession agreement shall be liable on conviction to a fine of not less than ten thousand Naira (N10, 000.00) or one-month imprisonment or to both

(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 fee 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 fee or toll with respect to the use of any public infrastructure or public asset, the person may be prosecuted. Where the infrastructure is a road or a bridge, the vehicle driven by the person shall be impounded by an authorised person and removed to a vehicle park provided for that purpose, and such vehicle shall remain so impounded until the payment to the concessionaire of the unpaid toll and the demurrage to the appropriate authority designated by the Agency, or shall remain so impounded pending the trial of the offence committed.

PART-VII
MISCELLANEOUS

Governor's general directives and guidelines

34. The Governor may give to the Agency directives of a general nature as are necessary to make the Agency comply with the general policies of the Government.

Common Seal

35.(1) The Agency shall, as soon as possible after its establishment, provide itself with a Common Seal.

(2) The fixing of the Common Seal of the Agency shall be authenticated by the signature of the Executive Secretary or some other member authorised generally or specifically by the Board.

(3) Any document purporting to be a contract, instrument or other document signed or sealed on behalf of the Agency shall be received in evidence and unless the contrary is provided, be presumed, without further proof to have been so signed or sealed.

Legal Proceedings

36.(1) Subject to the provisions of this Law, no suit shall be commenced against the Agency before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Agency by the intending claimant or his agent, and the notice shall clearly state: -

- (a) the cause of action;
- (b) the particulars of claim; and
- (c) the relief sought.

(2) No member or staff of the Agency shall be sued in his personal capacity for any act done or omitted to be done in the lawful performance of his duties under this Law.

Power to make regulations

37. The Agency may with the approval of the State Executive Council make Regulations as may be considered necessary for the effective discharge of its functions under this Law.

Savings

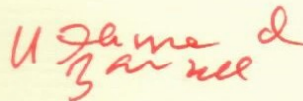
38. The rights, interests, obligations, assets and liabilities which relate to the functions and powers of the Adamawa Investment Promotion Agency before the commencement of this Law under any contract or instrument are hereby vested in this Agency.

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



UMAR USMAN HAMIDU LALEH
Clerk to Adamawa State House of Assembly

I assent this *4th* day of *DECEMBER* 2024



RT. HON. AHMADU UMARU FINTIRI, CON, GSSRS
Governor,
Adamawa State of Nigeria

SCHEDULE OF BILL

SHORT TITLE	LONG TITLE	SUMMARY OF CONTENTS	DATE PASSED BY THE HOUSE
Adamawa State Investment Promotion Agency Law, 2024	A Bill for a Law to establish the Adamawa Investment Promotion Agency and for other matters incidental thereto.	The Bill seeks to establish the Adamawa Investment Promotion Agency with a Governing Board to initiate, promote, facilitate and coordinate investment in the State through Public Private partnership (PPP).	26 th Nov, 2024



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UMAR USMAN HAMIDU LALEH
 Clerk to Adamawa State House of Assembly

