

Nigeria

Nigerian Investment Promotion Commission Act (1995)

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Nigerian Investment Promotion Commission Act

Chapter N117

(Decree No 16 of 1995)

Laws of the Federation of Nigeria

An Act to establish the Nigerian Investment Promotion Commission, to encourage and promote investment in the Nigerian economy; and for matters connected therewith.

16th January, 1995

Part I

Establishment of the Nigerian Investment Promotion Commission

1. Establishment of the Nigerian Investment Promotion Commission

(1) There is hereby established a body to be known as the Nigerian Investment Promotion Commission (in this Act referred to as the "Commission").

(2) The Commission shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name.

2. Governing Council of the Commission

(1) There shall be for the Commission, a Governing Council (in this Act referred to as "the Council"), which shall be responsible for the discharge of the functions of the Commission.

(2) The Council shall consist of

(a) a chairman;

(b) a representative each of the following Federal Ministries, who shall not be below the rank of a Permanent Secretary

(i) Industry;

(ii) Commerce;

(iii) Internal Affairs;

(iv) Finance;

(v) Foreign Affairs;

(vi) Culture and Tourism;

(vii) Petroleum Resources;

(c) a representative of the National Planning Commission, who shall not be below the rank of a Permanent Secretary;

(d) the Governor, Central Bank of Nigeria;

(e) six other persons from the private sector organisations to be appointed by the President, on the recommendation of the Minister;

(f) the secretary of the Commission, who shall also be the secretary to the Council;

(3) The chairman shall be appointed by the President.

(4) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters contained therein.

3. Tenure of office, etc.

(1) A member of the Council, other than the secretary, shall hold office for a term of four years and may be re-appointed for one further term of four years and no more.

(2) A member of the Council may at any time resign his office in writing addressed to the President and may be removed from office by the President.

(3) Members of the Council shall be paid such allowances as may be determined by the Federal Government.

Part II

Functions and powers

4. Functions of the Commission

The Commission shall encourage, promote and co-ordinate investment in the Nigerian economy and accordingly, shall

(a) be the agency of the Federal Government to co-ordinate and monitor all investment promotion activities to which this Act applies;

(b) initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors;

(c) promote investments in and outside Nigeria through effective promotional means;

(d) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, and advise on request, the availability, choice or suitability of partners in joint-venture projects;

(e) register and keep records of all enterprises to which this Act applies;

(f) identify specific projects and invite interested investors for participation in those projects;

(g) initiate, organize and participate in promotional activities, such as, exhibitions, conferences and seminars for the stimulation of investments;

(h) maintain liaison between investors and Ministries, Government departments and agencies, institutional lenders and other authorities concerned with investments;

(i) provide and disseminate up-to-date information on incentives available to investors;

(j) assist incoming and existing investors by providing support services;

(k) evaluate the impact of the Commission in investments in Nigeria and make appropriate recommendations;

(l) advise the Federal Government on policy matters, including fiscal measures designed to promote the industrialisation of Nigeria or the general development of the economy;

(m) perform such other functions as are supplementary or incidental to the attainment of the objectives of this Act.

5. Powers of the Commission

The Commission shall have power to

(a) do all things which by this Act or any other enactment are required or permitted to be done by the Commission; and

(b) do such other things as are necessary or expedient for the performance of its functions under this Act.

Part III Staff

6. Secretary of the Commission

(1) There shall be for the Commission a secretary, of a rank equivalent to a Permanent Secretary in the civil service of the Federation, who shall be the chief executive of the Commission and be appointed by the President, on the recommendation of the Minister.

(2) The secretary shall hold office for a term of five years in the first instance on such terms and conditions as the President, may, on the recommendation of the Minister, determine and may be re-appointed for one further term of five years and no more.

(3) Subject to such general directions as the Council may give, the secretary shall be responsible for the day-to-day administration of the Council and the implementation of the decisions of the Council.

(4) The secretary shall perform the functions of keeping the record of proceedings and decisions of the Council and such other functions as the Council may, from time to time, direct.

7. Other staff of the Commission, etc.

(1) The Council shall have power to 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 Council, be required to assist the Commission in the discharge of any of its functions under this Act; and shall have power to pay to persons so employed, such remuneration (including allowances) as the Council may determine.

(2) The terms and conditions of service (including terms and conditions as to remuneration, allowances,

pensions, gratuities and other benefits) of the persons employed by the Commission shall be as determined by the Council, from time to time.

(3) The Council may engage such consultants and advisers as it may require for the proper and efficient discharge of the functions of the Commission.

8. Staff regulations

The Commission may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the Commission 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 Commission; and
- (b) appeals by such employees against dismissal or other disciplinary measures.

9. Conditions of service

The Commission shall determine its conditions of service, including pensions and gratuities, as appropriate for its employees.

10. Pensions

(1) It is hereby declared that service in the Commission is a scheduled service and shall be deemed to be pensionable under the Pensions Act and, accordingly, employees of the Commission shall in respect of their service in the Commission, be entitled to pensions, gratuities and other retirement benefits as are prescribed thereunder.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension or gratuity in respect of that office.

11. Departments of the Commission

The Council may, on the recommendations of the secretary, create such departments in the Commission as it may deem fit for the efficient discharge of the functions of the Commission.

Part IV

Financial provisions

12. Fund of the Commission

(1) The Commission shall establish and maintain a fund which shall be applied towards the discharge of its functions under this Act.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section

- (a) such sums as may be provided by the Government of the Federation for the Commission;
- (b) any fees charged for services rendered by the Commission; and
- (c) all other sums accruing to the Commission by way of gifts, testamentary depositions, endowments and contributions from philanthropic persons and organisations or otherwise howsoever.

13. Power to accept gifts

(1) The Commission 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 Commission shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Commission.

14. Borrowing power, etc.

(1) The Council may, with the consent or in accordance with any specific authority given by the Minister, borrow by way of loan or overdraft from any source approved by the Minister, such specified amount of money as may be required by the Commission for meeting its obligations and discharging its functions under this Act.

(2) The Council may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds with the like consent or general authority of the Minister.

(3) The Council may invest any surplus funds of the Commission in securities prescribed by the Trustee Investments Act or such other securities as may, from time to time, be approved by the Minister.

(4) Subject to the provisions of the Land Use Act, and any special or general direction which the Minister may give in that behalf, the Council may acquire or lease any land required for its purpose under this Act.

15. Annual estimates, accounts and audit

(1) The Council shall cause to be prepared, not later than 30 September in each year, an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall be submitted through the Minister for approval by the President.

(2) The Council shall cause to be kept proper accounts and proper records in relation thereto and when certified by the Council, such accounts shall be audited as provided in subsection (3) of this section.

(3) The accounts of the Commission shall be audited by auditors appointed from the list of auditors and in accordance with the guidelines issued by the Auditor General for the Federation and the form of the

in accordance with the guidelines issued by the Auditor-General for the Federation and the fees of the auditors and the expenses for the audit generally shall be paid from the funds of the Commission.

16. Annual reports

The Council shall, not later than six months after the end of each year, submit through the Minister to the President, a report on the activities of the Commission and its administration during the immediately preceding year and shall include in the report the audited accounts of the Commission and the auditors comments thereon.

Part V

Provisions relating to investment

17. Enterprises eligible for participation

Except as provided in section 18 of this Act and subject to this Act, a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria.

18. Application of this Act

The provisions of this Act shall not apply to "negative list" as defined in section 31 of this Act.

19. Establishment of an enterprise

(1) An enterprise in which foreign participation is permitted under section 17 of this Act, shall not commence business, except it is incorporated or registered under the Companies and Allied Matters Act.

(2) Subject to this Act, nothing in this Act shall be construed as precluding an enterprise to which this Act applies, from obtaining such licence, lease, permit or any other approval as may be required for the establishment or operation of the enterprise.

20. Registration of enterprise with the Commission

(1) An enterprise in which foreign participation is permitted under section 17 of this Act shall, before commencing business, apply to the Commission for registration.

(2) The Commission shall, within fourteen working days from the date of receipt of completed registration forms, register the enterprise if it is satisfied that all relevant documents for registration have been duly completed and submitted or otherwise advise the applicant, accordingly.

21. Purchase of the shares of a domestic company by a foreign company

A foreign enterprise may buy the shares of any Nigerian enterprise in any convertible foreign currency.

22. Incentives for special investment

For the purpose of promoting identified strategic or major investment, the Commission shall, in consultation with appropriate Government agencies, negotiate specific incentive packages for the promotion of investment as the Commission may specify.

23. Priority areas

(1) The Commission may issue guidelines and procedures, which specify priority areas of investment and prescribe applicable incentives and benefits, which are in conformity with Government policy.

(2) Guidelines and procedures issued under subsection (1) of this section shall be signified under the hand of the chairman of the Council.

24. Investment guarantees, transfer of capital, profits and dividends

Subject to this section, a foreign investor in an enterprise to which this Act applies, shall be guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, of—

- (a) dividends or profits (net of taxes) attributable to the investment;
- (b) payments in respect of loan servicing where a foreign loan has been obtained; and
- (c) the remittance of proceeds (net of all taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

25. Guarantees against expropriation

(1) Subject to subsections (2) and (3) of this section

- (a) no enterprise shall be nationalized or expropriated by any Government of the Federation; and
- (b) no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person

(2) There shall be no acquisition of an enterprise to which this Act applies by the Federal Government, unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for

- (a) payment of fair and adequate compensation; and
- (b) a right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

(3) Any compensation payable under this section shall be paid without undue delay, and authorization for its repatriation in convertible currency shall where applicable, be issued.

26. Dispute settlement procedures

(1) Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.

(2) Any dispute between an investor and any Government of the Federation in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions, may be submitted at the option of the aggrieved party to arbitration as follows—

(a) in the case of a Nigerian investor, in accordance with the rules of procedure for arbitration as specified in the Arbitration and Conciliation Act; or

(b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties; or

(c) in accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties.

(3) Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rules shall apply.

27. Assistance to enterprise

The Commission shall provide an enterprise with such assistance and guidance as the enterprise may require and shall act as liaison between the enterprise and the relevant Government Departments, agencies and such other public authorities.

28. Transitional provisions

The Minister may by order make such transitional provisions as appear to him necessary or expedient to give full effect to the provisions of this Act.

29. Repeal of Cap. 178 L.F.N. 1990, etc.

(1) The Industrial Development Co-ordination Committee Act is hereby repealed.

(2) Any approval granted under the enactment repealed under subsection (1) of this section, shall continue to be in force notwithstanding the repeal of the enactment.

30. Regulations

(1) The Commission may make regulations

(a) providing for anything requiring to be prescribed under this Act; and

(b) generally for carrying out the principles and objectives of this Act.

(2) Any instrument issued under subsection (1) of this section shall be under the signature of the chairman of the Council or any other officer of the Commission as may be designated by him.

31. Interpretation

In this Act, unless the context otherwise requires

“authorised dealer” has the meaning assigned to it under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act;

“capital” means all cash contributions, plant, machinery, equipment, building, spare parts, raw materials and other business assets, other than goodwill;

“Commission” means the Nigerian Investment Promotion Commission established under section 1 of this Act;

“Council” means the Governing Council established for the Commission under section 2 (1) of this Act;

“enterprise” means an industry, project, undertaking or business to which this Act applies or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking, project or business and, where there is foreign participation, means such an enterprise duly registered with the Commission;

“foreign capital” means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets, other than goodwill, that are brought into Nigeria with no initial disbursement of Nigerian foreign exchange and are intended for the production of goods and services related to an enterprise to which this Act applies;

“foreign loan” means a loan obtained from outside Nigeria and denominated in any convertible currency;

“investment” means investment made to acquire an interest in an enterprise operating within and outside the economy of Nigeria;

“Minister” means the Minister charged with responsibility for matters relating to industry;

“negative list” means the list of those sectors of investment prohibited to both foreign and Nigerian investors, that is

(a) production of arms, ammunition, etc.;

(b) production of and dealing in narcotic drugs and psychotropic substances;

(c) production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services; and

(d) such other items as the Federal Executive Council may, from time to time, determine;

“own” in relation to an enterprise, includes the holding of any proprietary interest in the enterprise;

“portfolio investment” means an investment in shares or other securities traded on the Nigerian Stock Exchange

32. Short title

This Act may be cited as the Nigerian Investment Promotion Commission Act.

Schedule

Supplementary Provisions relating to the Council, e.t.c

Proceedings of the Council

1. (1) Subject to this Act and section 27 of the Interpretation Act, the Council may make standing orders regulating its proceedings or those of any of its committees.

(2) The quorum of the Council shall be five members, including the chairman or, in his absence, the person elected to preside, and three other members from the public sector, and the quorum of any committee of the Council shall be determined by the Council.

2. (1) The Council shall meet at least once a month in each calendar year and subject thereto, the Council 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 Council to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Council the chairman shall preside, but if he is absent, the members present at the meeting shall elect one of their number to preside at that meeting.

(3) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him to the Council for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Council and shall not count towards a quorum.

(4) The decision of the Council shall be by simple majority.

Committees

3. (1) The Council may appoint one or more committees to carry out, on behalf of the Council, such of its functions as the Council may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members the Council), as may be determined by the Council; and a person other than a member of the Council shall hold office on the committee, in accordance with the terms of his appointment.

(3) A decision of a committee of the Council shall be of no effect until it is confirmed by the Council.

Miscellaneous

4. (1) The fixing of the seal of the Commission shall be authenticated by the signature of the chairman or of any person specifically authorised to act for that purpose by the Council.

(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 Commission by the chairman or any person specially authorised to act for that purpose by the Council.

(3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5. The validity of any proceeding of the Council or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Council or committee, or by any defect in the appointment of a member of the Council or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Council or committee.