

A BILL

FOR

AN ACT TO REPEAL THE NIGERIAN INVESTMENT PROMOTION COMMISSION ACT CAP N117 LAWS OF THE FEDERATION OF NIGERIA AND RE-ENACT THE NIGERIAN INVESTMENT PROMOTION COMMISSION TO PROVIDE FOR THE CREATION OF AN ATTRACTIVE INCENTIVE FRAMEWORK AND A TRANSPARENT, PREDICTABLE AND FACILITATING ENVIRONMENT FOR INVESTMENTS IN NIGERIA AND FOR RELATED MATTERS

Sponsored by Senator T. A. Orji

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 1. -(1) This Act applies to enterprises in Nigeria. Application of the Act
- 2 (2) Despite subsection (1), this Act shall not be interpreted to
- 3 restrict compliance with the requirements of any other legislation.
- 4 2.-(1) There is hereby established a body to be known as the Establishment of the Commission
- 5 Nigerian Investment Promotion Commission (in this Act referred to as the
- 6 "Commission".)
- 7 (3) The Agency shall be a body corporate with perpetual
- 8 succession and a common seal.
- 9 (4) May sue and be sued in its corporate name.
- 10 (5) For the performance of its functions, the Commission may
- 11 acquire and hold movable and immovable property, dispose of property and
- 12 enter into a contract or any other transaction.
- 13 (6) Where there is a hindrance to the acquisition of property, the
- 14 property may be acquired for the Commission under the Lands Use Act,
- 15 3.-(1) There is hereby established for the management of the affairs Establishment of the Governing Board of the Agency
- 16 of the Commission, a governing Board (in this Act referred to as "the
- 17 Board") which shall, subject to this Act, have general control of the

1 Commission.

2 (2) The Council shall consist of:

3 (a) a chairman who shall be appointed by the President;

4 (b) A Representative each of the following Federal Ministries who
5 shall not be below the rank a permanent secretary:

6 (i) Trade and Investment;

7 (ii) Interior;

8 (iii) Finance;

9 (iv) Foreign Affairs;

10 (v) Ministry of Culture and Tourism;

11 (vi) Petroleum Resources;

12 (vii) National Planning Commission.

13 (c) representative of the Central Bank of Nigeria;

14 (d) Six other persons from the private sector organisation to be
15 appointed by the President on the recommendation of the Minister;

16 (e) the Secretary of the Commission who shall be the Secretary of the
17 Commission.

18 (3) The Chairman and other members of the Board shall:

19 (a) be appointed by the President subject to the confirmation of the
20 Senate; and

21 (b) be persons with proven integrity.

22 (4) The supplementary provisions contained in the Schedule to this
23 Act shall have effect with respect to the proceedings of the Board and other
24 matters contained therein.

Tenure of office

25 4.-(1) The members of the Board appointed under section 2 (2) (a)
26 and (b) of this Act shall hold office for a period of 4 years in the first instance
27 and may be eligible for re appointment for a further period of 4 years and no
28 more.

29 (2) The members of the Board shall be paid such remuneration and
30 allowances as the Revenue Mobilization Allocation and Fiscal Commission

1 may, from time to time, determine.

2 (3) A member of the Board other than an *ex officio* member may
3 resign his appointment by a notice in writing under his hand, addressed to
4 the Minister and which resignation shall take effect only upon
5 acknowledgment by the Minister.

6 5.-(1) A member of the Board shall cease to hold office if:

Cessation of
membership

7 (a) he becomes of unsound mind;

8 (b) he becomes bankrupt or makes a compromise with his
9 creditors; or

10 (c) he is convicted of a felony or of any offence involving
11 dishonesty; or

12 (d) he is guilty of serious misconduct in relation to his duties.

13 (2) A member of the Board may be removed from office by the
14 President, if, he is satisfied that it is not in the interest of the Fund or the
15 interest of the public that the member should continue in office.

16 (3) Where a vacancy occurs in the membership of the Board, it
17 shall be filled by the appointment of a successor to hold office for the
18 remainder of the term of office of his predecessor, so however that the
19 successor shall represent the same interest and shall be appointed by the
20 President

21 6. The object of the Commission is to:

Object of the
Commission

22 (a) create an enhanced environment for investment and the
23 development of the Nigerian economy through investment; and

24 (b) encourage, promote and facilitate investment in the country.

25 7. The Commission shall for the purposes of attaining its object,
26 actively promote investments into and within Nigeria, and shall:

Functions of the
Commission

27 (a) formulate investment promotion policies and plans,
28 promotional incentives and marketing strategies to attract foreign and local
29 investments in advanced technology industries and skill-intensive services
30 which enjoy good export market prospects;

1 (b) initiate and support measures that will enhance the investment
2 climate in Nigeria for both Nigerian and non-Nigerian enterprises;

3 (c) initiate, organise and participate in promotional activities such as
4 exhibitions, conferences and seminars for the stimulation of investments, to
5 present Nigeria as an ideal investment destination;

6 (d) collect, collate, analyse and disseminate information about
7 investment opportunities and sources of investment capital, incentives
8 available to investors, the investment climate and advise upon request on the
9 availability, choice or suitability of partners in joint venture projects;

10 (e) register, monitor and keep records of all enterprises in Nigeria;

11 (f) register and keep records of all technology transfer agreements;

12 (g) identify specific projects and prepare project profiles on
13 investments and joint venture opportunities in Nigeria and attract interested
14 investors for participation in those projects;

15 (h) bring about harmonisation in investment policy formulation
16 through coordination of the activities of all other institutions and agencies; and

17 (i) perform any other functions that are necessary for the attainment of
18 the objects of this Act.

Establishment
of the Committees

19 8.-(1) The Board may establish committees consisting of members of
20 the Board or non-members or both to perform a function determined by the
21 Board.

22 (2) Without limiting subsection (1), the Board shall have a committee
23 to be known as the Technical Committee.

Technical
Committee

24 9.-(1) The Technical Committee comprises:

25 (a) two representatives of the Commission;

26 (b) one representative, not below the rank of Director, of:

27 (i) the Ministry of Finance;

28 (ii) the Federal Inland Revenue Service;

29 (iii) the Central Bank of Nigeria;

30 (iv) National Environmental Standard Regulatory Commission

1 (v) Nigeria Ports Authority;

2 (vi) National Communications Commission;

3 (vii) Registrar-General's Department;

4 (ix) the Nigeria Immigration Service;

5 (c) two representatives of the private sector nominated by private
6 sector institutions and associations; and

7 (d) one representative each of utility service providers, institutions
8 and agencies concerned with investment that the Board may determine.

9 (2) The Technical Committee shall:

10 (a) advise on the process and procedures to facilitate the
11 acquisition of permits and licences and obtaining exemptions and access to
12 utility services;

13 (b) advise on the appropriate tax regimes for the enhancement of an
14 enabling investment environment;

15 (c) provide feedback on practical experiences and assist in there
16 solution of the operational challenges of investors;

17 (d) provide technical information on the investment opportunities,
18 regulations, and policies for the purpose of attracting and retaining foreign
19 direct investment in Nigeria; and

20 (e) Perform any other function or activity that the Board may
21 determine.

22 (3) A member of the Technical Committee shall hold office for a
23 period of four years and is eligible for re-appointment but shall not be
24 appointed for more than two terms.

25 (4) The Technical Committee shall hold its meetings on the dates
26 and at the times and places that the Board may determine but shall meet at
27 least once every three months.

28 (5) The Chairman shall preside at meetings of the Technical
29 Committee and in the absence of the Chairman, the designated
30 representative of the Chairman.

Allowances	1	10. Members of the Board and members of a committee of the Boards
	2	hall be paid the allowances approved by the Minister in consultation with the
	3	Minister responsible for Finance.
Branch offices of the Commission	4	11.-(1) The Board may establish branch offices of the Commission in
	5	places determined by the Board.
	6	(2) A branch office of the Commission shall perform the functions of
	7	the Commission that the Board may direct.
Executive oversight	8	12.-(1) The President has oversight responsibility for the
	9	Commission but may in writing direct a Minister to perform a function in
	10	connection with that responsibility.
	11	(2) The Minister may give directives to the Board on matters of policy
	12	and the Board shall comply.
Appointment of the Secretary, etc.	13	13.-(1) There shall be appointed for the Agency a Director General
	14	who shall be appointed by the President.
	15	(2) The Secretary shall subject to the general control of the Board:
	16	(a) be responsible for the implementation of the decisions of the
	17	Board and the day to day administration of the affairs of the Agency
	18	(b) be responsible for keeping proper records of the proceedings of
	19	the Board; and
	20	(c) be the head of the Board's secretariat and be responsible for the
	21	administration thereof and the direction and control of all other employees of
	22	the Agency with the approval of the Board.
Staff of the Agency, etc.	23	14.-(1) The Board shall have power to appoint either on transfer or on
	24	secondment from any public service in the Federation, such number of
	25	employees as may, in the opinion of the Board, be required to assist the Agency
	26	in the discharge of any of its functions under this Act; and shall have power to
	27	pay to persons so employed such remuneration (including allowances) as the
	28	Board may, from time to time, determine.
	29	(2) The terms and conditions of service (including terms and
	30	conditions as to remuneration, allowance, pensions, gratuities and other

1 benefits) of the person employed by the Agency shall be as determined by
2 the Board from time to time.

3 15.-(1) The Board may, subject to the provisions of this Act, make Staff regulations
4 staff regulations relating generally to the conditions of service of the
5 employees of the Agency and without prejudice to the generality of the
6 foregoing, such regulations may provide for:

7 (a) the appointment, promotion and disciplinary control (including
8 dismissal) of employees of the Agency; and

9 (b) appeals by such employees against dismissal or other
10 disciplinary measures and until such regulations are made, any instrument
11 relating to the conditions of service of officers in the Civil Service of the
12 Federation shall be applicable, with such modifications as may be
13 necessary, to the employees of the Fund.

14 (2) Staff regulations made under subsection (1) of this section shall
15 not have effect until approved by the President.

16 16. It is hereby declared that service in the Agency shall be public Pensions
17 service for the purposes of the Pensions Reform Act 2004 and, accordingly,
18 officers and other persons employed in the Agency shall, in respect of their
19 service in the Fund, be entitled to pension, gratuities and other retirement
20 benefits as are prescribed there under, so however that nothing in this Act
21 shall prevent the appointment of a person to any office on terms which
22 preclude the grant of a pension or gratuity in respect of that office.

23 17. The Board may create Divisions of the Commission that the Divisions of the
24 Board considers necessary for the efficient discharge of the functions of the Commission
25 Commission.

26 18. Government departments, agencies and other public Relationship of
27 authorities shall co-operate with the Commission in the performance of its the Commission
28 functions under this Act. with other public
authorities

29 19. -(1) The funds of the Commission include:

30 (a) moneys approved by the National Assembly; Expenses and
funds of the
Commission

1 (b) fees and charges that accrue to the Commission in the performance
2 of its functions;

3 (c) donations, grants and gifts; and

4 (d) any other moneys that are approved by the Minister responsible
5 for Finance.

6 (2) Moneys received by the Commission shall be paid into a bank
7 account determined by the Board with the approval of the Accountant-General.

8 (3) The Board may invest as it considers fit any moneys of the
9 Commission that are not required for immediate use in accordance with the
10 applicable legislation.

Accounts and
audit of the
Commission

11 20.-(1) The Commission shall keep books of account and proper
12 records in relation to them in the form approved by the Auditor-General.

13 (2) The Board shall submit the accounts of the Commission to the
14 Auditor-General for audit within six months after the end of the financial year.

15 (3) The Auditor-General shall not later than three months after the
16 receipt of the accounts, audit the accounts and forward a copy of the audit
17 report to the Minister.

18 (4) The financial year of the Commission is the same as the financial
19 year of the Government.

Annual report

20 21.-(1) The Board shall submit to the President through the Minister,
21 within two months after the receipt of the auditor's report, a report on the
22 accounts, activities and operations of the Commission during the preceding
23 year.

24 (2) The annual report of the Commission shall include:

25 (a) a copy of the audited accounts of the Commission together with
26 the Auditor-General's report on the audited accounts and any further
27 information that the Board considers appropriate; and

28 (b) any other information that the President may request.

29 (3) The President shall, through a Minister designated for the purpose,
30 present to the National Assembly the report on the activities and operations of

1 the Commission.

2 **22. A person who intends to establish an enterprise for the purposes**
3 **of this Act shall incorporate or register the enterprise in accordance with the**
4 **Companies and Allied Act, and other laws that are relevant to the**
5 **establishment of the enterprise.**

Establishment
of enterprises

6 **23.-(1) An enterprise in which foreign participation is permitted**
7 **under this Act shall after its incorporation or registration and before**
8 **commencement of operations be registered with the Commission.**

Registration of
enterprises with
the Commission

9 (2) The Commission shall within five working days from the date
10 of receipt of a completed registration form register the enterprise if the
11 Commission is satisfied that:

12 (a) all the relevant documents for registration are in order;

13 (b) the minimum foreign equity capital requirement has been
14 complied with; and

15 (c) the fees required for registration has been paid.

16 (3) An enterprise in which foreign participation is permitted under
17 this Act shall renew its registration with the Commission every two years.

18 **24.-(1) An enterprise which is wholly owned by a Nigerian:**

19 (a) may after being incorporated or registered be registered with
20 the Commission; and

21 (b) shall after being registered with the Commission be entitled to
22 the benefits and incentives set out in this Act.

Registration of
wholly owned
Nigerian
enterprises with
the Commission

23 **25.-(1) An enterprise registered by the Commission is entitled to**
24 **the benefits and incentives that are applicable to an enterprise of a similar**
25 **nature under the Federal Internal Revenue Service Act and the Value Added**
26 **Tax Act.**

Benefits and
incentives

27 (2) An enterprise whose plant, machinery, equipment or parts of the
28 plant, machinery or equipment are not zero-rated may submit an application
29 for exemption from import duties and related charges on the plant,
30 machinery or equipment or the parts of the plant, machinery or equipment to

1 the Commission for onward submission to the Minister responsible for
2 Finance.

3 (3) The Commission shall before submitting a request for exemption
4 to the Minister responsible for Finance determine whether the request will
5 facilitate changes in technology and promote the specialised use of machinery,
6 equipment or other items necessary for the establishment and operation of the
7 enterprise.

8 (4) For the purpose of promoting identified strategic or major
9 investments, the Board may with the approval of the President and in
10 consultation with appropriate government agencies that the Board may
11 determine:

12 (a) specify priority areas of investment and their applicable benefits
13 and incentives; and

14 (b) negotiate specific incentive packages for strategic investments in
15 addition to the incentives available to any enterprise under the tax, customs and
16 other laws referred to in subsection (1).

17 (5) The Board shall publish:

18 (a) in the Gazette and on its website the criteria for determining what
19 constitutes strategic investments and shall designate an investment that
20 satisfies the criteria, as strategic investment; and

21 (b) the details of special incentives awarded through negotiation
22 under this section.

Entry, admission,
and protection
of investment

23 **Activities reserved for Nigerians and Nigerian owned enterprises.**

24 **26.-(1) A person who is not a citizen or an enterprise which is not wholly owned
25 by citizens shall not invest or participate in:**

26 (a) the sale of goods or provision of services in a market, petty trading
27 or hawking or selling of goods in a stall at any place;

28 (b) the operation of taxi or car hire service in an enterprise that has a
29 fleet of not more than twenty-five vehicles;

30 (c) the operation of a beauty salon or a barber shop; and

1 (d) the printing of recharge scratch cards for the use of subscribers
2 of mobile telecommunication services.

3 (2) The Minister in consultation with the Board may by legislative
4 instrument amend the list of enterprises reserved for citizens and enterprises
5 wholly owned by citizens.

6 27.-(1) A person who is not a citizen may participate in an
7 enterprise other than an enterprise specified in section 26 if that person:

Enterprises
eligible for foreign
participation and
minimum foreign
capital requirement

8 (a) in the case of a joint enterprise with a partner who is a citizen,
9 invests a foreign capital of not less than fifty thousand United States Dollars
10 in cash or capital goods relevant to the investment or a combination of both
11 by way of equity participation and the partner who is a citizen does not have
12 less than thirty percent equity participation in the joint enterprise; or

13 (b) where the enterprise is wholly owned by that person, invests a
14 foreign capital of not less than two hundred thousand United States Dollars
15 in cash or capital goods relevant to the investment or a combination of both
16 by way of equity capital in the enterprise

17 (2) Despite subsection (1), a trading enterprise that is principally
18 engaged in the purchase and sale of goods shall not be wholly owned by a
19 person who is not a citizen but shall operate by way of a joint venture with a
20 partner who is a citizen.

21 (3) A partner who is a citizen in an enterprise referred to in
22 subsection (2) shall:

23 (a) have not less than thirty percent equity participation in the joint
24 enterprise; and

25 (b) not transfer the equity participation to a person who is not a
26 citizen.

27 (4) A person who is not a citizen but who engages in an enterprise
28 referred to in subsection (2) shall invest in that enterprise, not less than one
29 million United States Dollars in cash or goods relevant to the investment or a
30 combination of both by way of equity capital.

1 (5) An enterprise referred to in subsection (2) shall employ at least ten
2 skilled Nigerians.

3 (6) For the purposes of this section “trading” includes the purchasing
4 and selling of imported goods and services.

Export trading
and other
enterprises
exempted

5 28.-(1) The minimum capital requirement specified in section 27 does
6 not apply to:

7 (a) portfolio investments; or

8 (b) an enterprise set up solely for export trading and manufacturing.

9 (2) For the purpose of this section, “export trading” includes export of
10 goods or produce that originate from Nigeria.

Prohibition against
discrimination

11 29. Unless specifically provided for under an applicable legislation:

12 (a) a foreign investor, employer or worker, shall enjoy the same rights
13 and be subject to the same duties and obligations applicable to citizens;

14 (b) the Commission, an official agency, or any other legal
15 representative of the Commission shall not discriminate against an investor
16 from a particular country or give special treatment to a prospective foreign
17 investor based on that investor’s country of origin or nationality;

18 (c) a foreign investor is subject to the same laws that apply to domestic
19 enterprises, particularly in relation to:

20 (i) licences or other permits that are required of enterprises for
21 conducting specific business activities;

22 (ii) maintenance of business books and records in accordance with the
23 recognised accounting standards;

24 (iii) insurance requirements that apply to similar enterprises; and

25 (iv) taxes required to be paid by enterprises which engage in similar
26 activity.

Guarantee against
expropriation

27 30.-(1) Subject to the Constitution, any other relevant law and
28 subsections (2) and (3):

29 (a) an enterprise shall not be nationalised or expropriated by
30 Government; and

1 (b) a person who owns, whether wholly or in part, the capital of an
2 enterprise shall not be compelled by law to cede that person's capital to
3 another person.

4 (2) The Government shall not acquire an enterprise to which this
5 Act applies unless the acquisition is in the national interest or for a public
6 purpose and the acquisition is done under a law which makes provision for:

7 (a) payment of fair and adequate compensation; and

8 (b) a right of access to the High Court for the determination of the
9 investor's interest or right and the amount of compensation to which the
10 investor is entitled.

11 (3) Compensation payable under this section shall be paid without
12 undue delay and authorisation shall be granted for the repatriation of the
13 compensation in convertible currency, where applicable.

14 31.-(1) Subject to this section an enterprise shall, through an
15 authorised dealer bank be guaranteed unconditional transferability in freely
16 convertible currency of:

Investment
guarantees,
transfer of capital,
profits and
dividends and
personal
remittances

17 (a) dividends or net profits attributable to the investment made in
18 the enterprise;

19 (b) payments in respect of loan servicing where a foreign loan has
20 been obtained;

21 (c) fees and charges in respect of a technology transfer agreement
22 registered under this Act; and

23 (d) the remittance of proceeds, net of all taxes and other
24 obligations, in the event of sale or liquidation of the enterprise or any interest
25 attributable to the investment in the enterprise.

26 (2) An expatriate person employed or engaged in an enterprise
27 may, subject to the fulfilment of all tax obligations make remittances which
28 do not exceed the basic net salary of that person.

29 32.-(1) Where a dispute arises between a foreign investor and the
30 Government in respect of an enterprise, effort shall be made through mutual

Dispute resolution
procedures

1 discussion to reach an amicable settlement.

2 (2) A dispute between a foreign investor and the Government in
3 respect of an enterprise to which this Act applies which is not amicably settled
4 through mutual discussions within six months may be submitted at the option
5 of the aggrieved party to arbitration as follows:

6 (a) in accordance with the rules of procedure for arbitration of the
7 United Nations Commission of International Trade Law; or

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

11 (c) in accordance with any other national or international machinery
12 for the settlement of investment dispute agreed to by the parties.

13 (3) Where in respect of a dispute, there is disagreement between the
14 investor and the Government as to the method of dispute settlement to be
15 adopted, unless there is any arbitration agreement to the contrary,

Expatriate labour
and employment

16 33.-(1) An enterprise registered under this Act shall abide by the
17 applicable labour legislation.

18 (2) Labour relations between an enterprise owned by an investor and
19 the employees of the enterprise may be regulated by agreements made between
20 the enterprise and the employees, but the agreements shall not establish
21 standards lower than the mandatory requirements under the laws of Nigeria.

22 (3) Subject to this Act and any other applicable legislation, an investor
23 may employ:

24 (a) persons of any nationality to positions of management for the
25 purpose of the conduct of investments and business activities; and

26 (b) non-managerial staff of any nationality, but a citizen of similar
27 qualification and experience shall have the first option.

Automatic
expatriate quotas

28 34.-(1) An enterprise which has a paid up capital of:

29 (a) not less than:

30 (i) fifty thousand United States dollars and not more than two hundred

1 and fifty thousand United States Dollars is entitled to an automatic
2 expatriate quota of one person;

3 (ii) two hundred and fifty thousand United States dollars and not
4 more than five hundred thousand United States Dollars is entitled to an
5 automatic expatriate quota of two persons;

6 (iii) five hundred thousand United States Dollars and not more than
7 seven hundred thousand United States Dollars is entitled to an automatic
8 expatriate quota of three persons; and

9 (b) more than seven hundred thousand United States Dollars is
10 entitled to an automatic expatriate quota of four persons.

11 (2) An enterprise that intends to employ an expatriate shall apply to
12 the Commission for facilitation of the employment and the application shall
13 specify the number of expatriates to be employed, in accordance with the
14 quotas specified in subsection (1).

15 (3) The application shall be decided on by the Commission on the
16 advice of the Nigeria Immigration Service in consultation with the regulator
17 of the relevant sector.

18 (4) Despite subsection (1), the Immigration Service may refuse to
19 grant a visa to an expatriate to whom a quota relates, if the Immigration
20 Service has sufficient reason to believe that expatriate is not a desirable
21 person who should be permitted to enter the country.

22 35. The Commission shall provide to an enterprise any assistance
23 and guidance that the enterprise requires and act as a facilitator between the
24 enterprise and relevant government departments, agencies and other public
25 authorities.

Assistance to
enterprises

26 36.-(1) An enterprise may enter into a technology transfer
27 agreement that the enterprise considers appropriate for the enterprise.

Technology
Transfer
Agreements

28 (2) A technology transfer agreement entered into under subsection
29 (1) shall be registered with the Commission.

1 (3) The Commission shall maintain a record of technology transfer
2 agreements.

3 (4) The Commission on the receipt of a technology transfer
4 agreement:

5 (a) intended for registration shall review the agreement; and

6 (b) shall on registration of the agreement, monitor and ensure
7 compliance with the terms and conditions of the agreement.

8 (5) A technology transfer agreement registered under this Act comes
9 into force on the date of the registration.

10 (6) A technology transfer agreement may be renewed without the
11 approval of the Commission and the regulator of the relevant sector but a
12 renewed agreement is subject to registration by the Commission.

13 (7) A technology transfer agreement shall, in addition to this Act be
14 governed by Regulations in force relating to that agreement.

Compliance
monitoring and
appeals

15 37.-(1) The Commission shall monitor enterprises to which this Act
16 applies to ensure compliance with this Act and Regulations made under this
17 Act.

18 (2) The Commission in the performance of its monitoring functions
19 may request for relevant information from an enterprise and the enterprise shall
20 comply with the request.

21 (3) An enterprise shall permit an officer or designated agent of the
22 Commission to enter its premises at a reasonable time in pursuance of the
23 monitoring function of the Commission.

Appeal against
decisions of the
Commission

24 38.-(1) A person dissatisfied with a decision of the Commission may
25 appeal to the Board of the Commission against the decision.

26 (2) The appeal shall be made within sixty days after the appellant has
27 been informed of the decision.

28 (3) The Board shall within seven days after the receipt of the appeal
29 set up a three member committee chaired by a member of the Board to
30 determine the appeal.

1 (4) The committee shall, subject to the rules of natural justice and
2 any procedures that may be prescribed by Regulations determine its own
3 procedure.

4 (5) The committee shall determine an appeal within twenty-one
5 days after the submission of the appeal and may:

- 6 (a) affirm the decision of the Commission;
- 7 (b) vary the decision of the Commission; or
- 8 (c) revoke the decision of the Commission.

9 **39.** An enterprise commits an offence if that enterprise:

10 (a) which is required to register with the Commission by this Act,
11 fails to register or renew its registration with the Commission in accordance
12 with this Act;

13 (b) engages in an activity other than that for which that enterprise
14 has been registered under this Act;

15 (c) applies any benefit conferred by or under this Act for purposes
16 other than that for which the benefit was conferred;

17 (d) deliberately or negligently submits false or misleading
18 information to the Commission;

19 (e) refuses without lawful excuse to admit an officer or a
20 designated person into the business premises of that enterprise or otherwise
21 obstructs an officer or a designated agent of the Commission in the
22 performance of that officer's or agent's functions;

23 (f) refuses or neglects to give any information which the
24 Commission reasonably requests for the purposes of this Act; or

25 (g) otherwise contravenes any provision of this Act.

26 **40.-(1)** An enterprise which commits an offence under section 39 is
27 liable on summary conviction to a fine of not less than two hundred penalty
28 units and not more than five hundred penalty units and in the case of a
29 continuing offence to an additional fine of not less than twenty five penalty

Offences and
penalties

Penalties

1 units and more than fifty penalty units in respect of each day that the offence
2 continues.

3 (2) The Commission may in addition to the conviction under
4 subsection (1), in consultation with the appropriate agency:

5 (a) suspend the registration of an enterprise;

6 (b) cancel the registration of an enterprise;

7 (c) order the payment or part-payment to the appropriate
8 agency of fees, taxes, duties and other charges in respect of
9 which benefits were granted to the enterprise;

10 (d) revoke some or all of the incentives granted to the enterprise;

11 (e) advise the Bank of Nigeria to suspend any remittance including
12 transfer of capital, profits and dividends from or by that enterprise; and

13 (f) take any other action that the Board considers appropriate.

Regulations

14 **41.**-(1) The Minister in consultation with the Board may by legislative
15 instrument make Regulations to:

16 (a) prescribe for matters relating to technology transfer;

17 (b) amend the list of enterprises reserved for citizens and enterprises
18 wholly owned by Nigerians;

19 (c) prescribe procedures for the grant of licences and privileges or
20 exemptions;

21 (d) prescribe the fees available in respect of registration, licensee
22 privilege and exemptions; and

23 (e) prescribe generally for the effective implementation of this Act.

24 (2) The Board may make rules necessary for the efficient and
25 effective implementation of this Act and the rules may provide for:

26 (a) the procedure by which applications may be submitted for
27 registration; and

28 (b) the supervision, control and reporting of progress of an enterprise
29 to which this Act applies.

30 (3) The Board shall:

1 (a) give public notice of the Regulations, rules and of amendments
2 of the Regulations and rules; and

3 (b) maintain at the offices of the Commission, a complete and
4 updated set of the Regulations and rules for inspection by an interested party.

5 42. In this Act, unless the context otherwise requires:

Interpretation

6 “benefits” include facilities, entitlements and exemptions conferred on an
7 enterprise to which this Act applies;

8 “Board” means the governing board of the Commission;

9 “capital” means cash contributions, plant, machinery, equipment;

10 buildings, spare parts, raw materials and other business assets other than
11 goodwill;

12 “capital goods” means goods:

13 (a) intended for use in the production of other goods and services
14 and not intended for final consumption; or

15 (b) which do not have multiple uses and can only be considered as
16 inputs in the production of goods and services;

17 “Commission” means the Nigeria Investment Promotion Commission
18 established in section 2 (1) of this Act;

19 “Constitution” means the 1999 Constitution of the Federal Republic of
20 Nigeria;

21 “direct investment” means investment made to acquire a lasting interest in
22 an enterprise operating in the economy of Nigeria and intended to give the
23 investor an effective control in the management of the enterprise;

24 “enterprise” means an industry, project, undertaking or business or an
25 expansion of that industry, undertaking, project or business or any part of
26 that industry, undertaking project or business other than the exploration and
27 extraction of petroleum and other minerals;

28 “expropriation” means the compulsory acquisition of private property by
29 Government for public use upon the payment of the appropriate
30 compensation;

1 “foreign capital” means convertible currency, plant, machinery, equipment,
2 spare parts, raw materials and other business assets other than goodwill that
3 enters the country without an initial disbursement of the foreign exchange of
4 this country and that are intended for the production of goods and services
5 related to an enterprise to which this Act applies;

6 “foreign investor” means a non-citizen, natural or juridical, who makes an
7 investment in the country pursuant to this Act;

8 “Nigerian” means a citizen of Nigeria or a company, partnership or association
9 or body (whether corporate or unincorporated) the majority capital or financial
10 interest of which is owned by citizens of Nigeria and includes the State and a
11 statutory corporation;

12 “indirect investment” means an act or contract by which an investor makes a
13 contribution, whether tangible or intangible, to an enterprise in Nigeria without
14 obtaining an equity interest in the enterprise but under which the investor is
15 entitled to returns based on profits generated by the enterprise;

16 “investment” includes direct and indirect investments and portfolio
17 investments;

18 “investment priority plan” means the investment priority plan prepared and
19 published by the Commission;

20 “investor” means any person, natural or juridical, who makes an investment in
21 the country including a foreign investor;

22 “joint venture” means an investment in an enterprise between a Nigerian
23 company or individual and a foreign company or individual;

24 “market” means a public place whether open or enclosed, established and
25 managed by local custom, or specifically designated by the appropriate local
26 government authority or its agents and which has selling sites in the nature of
27 stores and stalls among others for the purpose of selling and buying;

28 “Minister” means the Minister responsible for Trade and investment;

29 “portfolio investment” means an investment in shares or bonds which are
30 mandatorily convertible into shares or other securities traded on the Nigeria

1 Stock Exchange;

2 “priority area” means an area of investment determined to be of national
3 priority pursuant to section 4;

4 “public service” means public service as defined in the Constitution of the
5 Federal Republic of Nigeria;

6 “strategic investment” means an investment in a priority area determined by
7 the Board;

8 “technology transfer agreement” means an agreement which has a duration
9 of not less than eighteen months and which relates to an enterprise to which
10 this Act applies and involves:

11 (a) the assignment, sale or use of foreign patents, trademarks or
12 other intellectual property rights;

13 (b) the supply of foreign technical know-how or technological
14 knowledge;

15 (c) foreign technical assistance, design and engineering,
16 consultancy or other technical services in whatever form they may be
17 supplied; and

18 (d) foreign managerial, marketing or other similar service;

19 “trading enterprise” means an enterprise which has its principal activity
20 being the purchase and sale of goods, whether imported or not, and
21 provision of services, whether the purchase and sale of goods and services
22 are carried out in a market or any other place; and

23 “United States Dollars” or “US\$” means the lawful currency of the United
24 States of America.

25 43. -(1) The Nigeria Investment Promotion Commission Act Cap
26 N117 LFN 2011 is hereby repealed.

Repeals and
savings

27 (2) Despite the repeal under subsection (1), an enterprise registered
28 under that Act shall subject to subsection (5) and section 40 (2) continue in
29 force as if registered under this Act.

30 (3) An application pending before the Nigeria Investment

1 Promotion Commission established under the Nigeria Investment Promotion
2 Commission Act CAP N117 LFN 2011 is deemed to be pending before the
3 Commission established in section 2.

4 (4) Where registration is continued in force by virtue of subsection(2),
5 the registration shall in addition to other benefits that are applicable to the
6 enterprise under this Act continue to enjoy the benefits applicable to that
7 registration before the commencement of this Act.

8 (5) A joint venture or an enterprise which on the date of coming into
9 force of this Act has been registered under the Nigeria Investment Promotion
10 Commission Act, CAP N117 LFN 2011 and which intends to continue to
11 operate shall within three years after the Commencement of this Act comply
12 with the participation by citizens and minimum capital requirements under this
13 Act or cease operations after the expiry of the three years.

14 (6) An immigrant quota in existence immediately before the
15 commencement of this Act in respect of an enterprise to which this Act applies
16 shall continue in force until the immigrant quota expires or is renewed under
17 this Act.

18 (7) A technology transfer agreement registered with the Nigeria
19 Investment Promotion Commission before the commencement of this Act is
20 deemed to be registered with the Commission established by this Act.

Transitional
provisions

21 44.-(1) The assets, rights, obligations and liabilities of the Nigeria
22 Investment Promotion Commission established under the Nigeria Investment
23 Promotion Commission Act CAP N117 LFN 2011 and in force immediately
24 before the commencement of this Act, are transferred to the Commission.

25 (2) A person in the employment of the Nigeria Investment Promotion
26 Commission immediately before the commencement of this Act shall, on the
27 coming into force of this Act be deemed to have been duly employed by the
28 Commission established by this Act on terms and conditions which are not less
29 in aggregate to terms and conditions attached to the post held by that person
30 before the commencement of this Act.

1 This Bill may be cited as the Nigerian Investment Promotion Short Title
2 Commission Bill, 2015.

EXPLANATORY MEMORANDUM

This Bill seeks to Repeal the Nigerian Investment Promotion Commission Act CAPN117 Laws of the Federation of Nigeria and Re-enact the Nigerian Investment Promotion Commission as an agency of Government responsible for the encouragement and promotion of investments in Nigeria and to provide for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Nigeria.

