

# BORDER COMMUNITIES DEVELOPMENT AGENCY (ESTABLISHMENT, ETC.) ACT

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#### BORDER COMMUNITIES DEVELOPMENT AGENCY (ESTABLISHMENT, ETC.) ACT

### **An Act to establish the Border Communities Development Agency; and for related matters.**

[2003 No. 23, 2006 No. 38.]

[10th July, 2003]

[Commencement.]

#### PART I

Establishment of the Border Communities Development Agency, etc.

##### **1. Establishment of the Border Communities Development Agency**

(1) There is established an agency to be known as the Border Communities Development Agency (in this Act referred to as "the Agency").

(2) The Agency—

(a) shall be a body corporate with perpetual succession, and a common seal; and

(b) may sue and be sued in its corporate name.

(3) The headquarters of the Agency shall be in the Federal Capital Territory, Abuja and may have offices in the border States specified in the First Schedule to this Act.

[First Schedule.]

##### **2. Establishment of the Governing Board of the Agency**

(1) There is established for the Agency a governing board which shall provide the general policy guidelines for the day-to-day administration of the Agency and shall comprise—

(a) the Vice-President of the Federation, who shall be the Chairman;

(b) the Attorney-General of the Federation;

(c) the Ministers responsible for each of the following –

(i) the Ministry of Foreign Affairs;

(ii) the Federal Ministry of Works and Housing;

(iii) the Federal Ministry of Internal Affairs;

(iv) the Federal Ministry of Finance;

(v) the Federal Ministry of Defence;

(vi) the Federal Ministry of Water Resources;

(vii) the Federal Ministry of Health and Human Resources; and

(viii) the Federal Ministry of Education;

(ix) the Federal Ministry of Power and Steel;

[2006 No. 38, s.2 (a).]

(xi) the Federal Ministry of Science and Technology;

[2006 No.38,s.2 (a).]

(xi) the Federal Ministry of Environment;

[2006 No.38, s. 2 (a).]

(xii) the Federal Ministry of Agriculture and Rural Development; and

[2006 No.38, s. 2 (a).]

(xiii) the Ministry of Police Affairs;

[2006 No. 38, s. 2 (a).]

(d) the Inspector-General of Police;

(e) the Chief Economic Adviser, National Planning Commission;

(f) the Director-General, National Boundary Commission;

(g) the Director-General, National Intelligence Agency;

(h) the Permanent Secretary, State and Local Government Affairs Office;

(i) the Surveyor-General of the Federation; and

(j) six other persons to represent each of the six geo-political zones;

(k) the Executive Secretary of the Agency who shall serve as Secretary to the Board.

[2006 No. 38, s. 2 (b).]

(2) The Chairman and other members of the Board shall be appointed by the President.

(3) Members of the Board other than ex officio members –

(a) shall hold office on such terms and conditions as may be specified in their letters of appointment;

(b) shall hold office for a term of four years in the first instance and may be re-appointed thereafter for a further term of four years and no more.

[2006 No. 38, s. 2(c).]

(4) With the exception of the Executive Secretary, all members of the Board including *ex officio* members shall serve on a part-time basis.

[2006 No. 38, s. 2 (c)]

(5) Notwithstanding the provisions of subsection (3) of this section, a member of the Board may at any time be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

[2006 No. 38, s.2 (c)]

(6) A member of the Board may resign his appointment by a notice in writing under his hand and that member shall, on the date of the receipt of the notice by the President cease to be a member.

[2006 No. 38, s. 2(c).]

(7) An *ex officio* member of the Board shall cease to be a member upon vacation of his office on grounds of resignation, retirement from service, redeployment or for any other reason.

[2006 No. 38, s. 2 (c).]

(8) Notwithstanding the foregoing provisions of section 2 of this Act, a person shall cease to hold office as a member of the Board if–

(a) he becomes bankrupt, suspends payment or compounds with his creditors; or

(b) he is convicted of a felony or any offence involving dishonesty or fraud; or

(c) he becomes of unsound mind, or incapable of carrying out his duties; or

(d) he is guilty of a serious misconduct in relation to his duties; or

(e) in the case of a person in possession of professional qualifications, having been disqualified or suspended (other than at his own request from practicing his profession in any part of the world) by an order of a competent authority made in respect of that member; or

(f) he resigns his appointment by a letter addressed to the President in accordance with section 5 of this Act.

[2006 No. 38, s. 2 (c).]

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

[2006 No. 38, s. 2 (c) Second Schedule.]

## PART II

### *Functions and Powers of the Agency*

#### 3. **Functions and powers of the Agency**

1. The Agency shall–

(a) prepare a comprehensive programme of action for the development of the border communities;

(b) prepare and submit proposals on project for the Border Communities to the President;

(c) advise the Federal Government on border areas development and other related issues;

(d) consult with the relevant border communities and liaise with the Federal Government on areas required for the overall development in order to maintain, sustain and develop border communities;

(e) identify and determine in each year, such deliberate or conscious infrastructural project required for the overall development of the border communities;

(f) execute such border development policies, projects and programmes in the border communities;

(g) co-ordinate the activities of all relevant Ministries in the implementation of Federal Government policies and programmes for the development of border communities; and

(h) set guidelines for the implementation and monitoring of Federal Government projects in the border communities;

(i) plan and develop strategies towards ensuring efficient and effective implementation of Federal projects within the border States and ensure their implementation;

(j) receive and administer such funds as may be allocated to it from the Federation Account;

[2006 No. 38, s. 3.]

(k) maintain an account with a reputable Bank; and

(l) do such other things which it deems expedient in the performance of its functions under this Act.

#### **4. Offices and premises of the Agency**

For the purposes of providing offices and premises necessary for the performance of its functions under this Act, the Agency may subject to the Land Use Act, take lease of any interest in land or other property and may sell or dispose of such interest held by it.

[Cap. L5.]

### **PART III**

#### *Staff of the Agency*

#### **5. Appointment of the Executive Secretary of the Agency**

(1) There shall be for the Agency, an Executive Secretary who shall be a member of, and Secretary to the Board and shall be appointed by the President of the Federal Republic of Nigeria.

[2006 No. 38, s. 4 (a).]

(2) The Executive Secretary shall be the Chief Executive and Accounting Officer of the Agency and be responsible for the execution of the policy and the day-to-day administration of the affairs of the Agency.

(3) The Executive Secretary shall hold office-

(a) for a term of four years in the first instance and may be re-appointed for a further term of four years and no more; and

(b) on such terms and conditions as may be specified in his letter of appointment.

(4) *Removal of Executive Secretary from office by the President*

Notwithstanding the provisions of subsection (3) of this section, the Executive Secretary of the Agency, may at any time be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

[2006 No. 38, s. 4 (b).]

(5) The Executive Secretary of the Agency may resign his appointment by a notice in writing under his hand, addressed to the President and shall on the date of the receipt of the notice by the president cease to hold the office of the Executive Secretary.

[2006 No. 38, s. 4 (b).]

#### 6. **Other staff of the Agency**

(1) The Board shall appoint, for the Agency, such officers and other employees as it may, from time to time deem necessary for the purpose of the Agency.

(2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Agency shall be determined by the Board.

(3) The Board shall appoint for the Agency a Secretary who shall possess such qualification and experience as are appropriate for a person required to perform the functions of that office under this Act.

(4) Subject to the provisions of this section, the Secretary shall hold office on such terms as to emoluments and otherwise as may be specified in his letter of appointment.

#### 7. **Appointment of Heads of Departments of the Agency**

(1) The Commission may appoint Heads of Departments for the Agency who shall be professionals in border issues and such other persons to be officers and employees of the Agency to assist the Secretary in the exercise of the functions of the Agency under this Act.

(2) The remuneration and tenure of office of the Heads of Departments and the other officers and employees of the Agency shall be determined by the Board after consultation with the Federal Civil Service Commission.

(3) Notwithstanding the provisions of subsection (1) of this section, the Heads of Departments or any of the officers and employees of the Agency may be appointed by the Agency by way of transfer or secondment from any of the Public Service in the Federation.

#### 8. **Pensions**

(1) Service in the Agency shall be approved service for the purpose of the Pension Act and accordingly, employees of the Agency shall be entitled to pensions, gratuities and other retirement benefits as are prescribed under the Pensions Act.

(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, gratuity or other retirement benefit in respect of that office.

(3) For the purpose of the application of the provisions of the Pensions Act, any power exercisable by a Minister or other authority of the Federal Government other than the power to make regulations under section 23 of the Pensions Act is vested in and shall be exercisable by the Board and not by any other person or authority.

#### PART IV

##### *Financial Provisions*

#### 9. Funds of the Agency

(1) The Agency shall establish and maintain a fund into which shall be paid and credited—

(a) a take-off grant from the Federal Government;

(b) annual subvention from the Federal Government;

(c) such counter-part funding as may be provided, from time to time, by a State or Local Government;

(d) loans and grants-in-aid from national, bilateral and multilateral agencies;

(e) rents, fees and other internally generated revenues from services provided by the Agency;

(f) all other sums accruing to the Agency, from time to time.

[2006 No. 38, s. 5.]

#### 10. Expenditure of the Agency

The Agency may, from time to time, apply the proceeds of the Agency—

(a) to the cost of administration of the Agency;

(b) to the paying of the emoluments, allowances and benefits of members of the Board and reimbursing members of the Board or of any Committee set up by the Board for such expenses as may be expressly authorised by the Board;

(c) to the payment of the salaries, fees or other remunerations or allowances, gratuities and pensions and other benefits payable to the officers and other employees of the Agency but no payment of any kind under this paragraph (except such as may be expressly authorised by the Board) shall be made to any person who is in receipt of emoluments from the Federal or a State Government;

(d) for the development and maintenance of any property vested in or owned by the Agency; and

(e) for and in connection with all or any of its functions under this Act.

#### 11. Power to borrow

(1) The Agency may, from time to time, borrow by overdraft or otherwise such sums as it may require for the performance of its functions under this Act.

(2) The Agency shall not without the approval of the President, borrow money which exceeds at any time the amount set by the President.

(3) Notwithstanding subsection (1) of this section, where the sum to be borrowed is in foreign currency, the Agency shall not borrow the sum without the prior approval of the President.

## **12. Annual estimates and expenditure**

(1) The Agency shall not later than 30th September in each year, submit to the President an estimate of its expenditure and income including payments to the Agency for the next succeeding year.

(2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause the accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

## **13. Annual reports**

(1) The Agency shall prepare and submit to the Federal Executive Council, through the President, not later than six months after the end of each year, a report in such form as he may direct on the activities of the Agency during the immediate preceding year and shall include in the report a copy of the audited accounts of the Agency for that year and the Auditor's report on the accounts.

(2) The President shall upon receipt of the report referred to in subsection (1) of this section cause a copy of the report and audited accounts of the Agency to be submitted to each House of the National Assembly.

## **PART V**

### *Legal Proceedings*

## **14. Limitation of suits against officers of the Agency**

The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Agency.

[Cap. P41.]

## **15. Services of documents**

A notice, summons or other documents required or authorised to be served upon the Agency under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post addressed to the Executive Secretary at the principal office of the Agency.

## **16. Restriction on execution against property of the Agency**

(1) In any action or suit against the Agency, no execution or attachment of process shall be issued against the Agency unless not less than three months notice of the intention to execute or attach has been given to the Agency.

(2) Any sum of money which by the judgment of any court has been awarded against the Agency shall subject to any direction given by the court where notice of appeal against the judgment has been given, be paid from the Fund of the Agency.



## **17. Indemnity of officers**

A member of the Board or the Executive Secretary, any officer or employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or employee of the Agency.

## **18. Provision for take-off**

Notwithstanding the provisions of section 4, the National Boundary Commission may provide take-off office accommodation, staff and all the necessary facilities needed for the carrying out the functions of the Agency under this Act.

## **19. Regulations**

The Agency may with the approval of the President, make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act.

## **20. Power to accept gifts**

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

## **21. Investment**

The Agency 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 in any security prescribed by the Trustee Investment Act or in such other securities as may, from time to time, be approved by the President.

[Cap. T22.]

## **22. Secrecy**

(1) A member of the Board or the Executive Secretary or any other officer or employee of the Agency shall-

(a) not for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as the Executive Secretary, officer or employee of the Agency;

(b) treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; and

(c) (deleted by 2006 No. 38, s. 7).

(2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not less than ₦20,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

[2006 No. 38, s. 6 (2).]

## **23. Interpretation**

In this Act-

**"Agency"** means Border Communities Development Agency established under section 1 of this Act;

**"Board"** means the Governing Board of the Agency established under section 2 of this Act;

**"Chairman"** means the Chairman of the Board of the Agency;

**"Executive Secretary"** means the Executive Secretary of the Agency;

**"Fund"** means the Fund established under section 9 (1) of this Act;

**"member"** means a member of the Board of the Agency and includes the Chairman;

**"President"** means the President Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

## **24. Short title**

This Act may be cited as the Border Communities Development Agency (Establishment, etc.) Act, 2003.

[2006 No. 38, s. 6 (2).]

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## SCHEDULES

### FIRST SCHEDULE

[Section 1 (3).]

#### *Offices of the Agency*

1. Adamawa.

2. Akwa-Ibom.

3. Bayelsa.

4. Benue.

5. Borno.

(4) A decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

## **7. Miscellaneous**

The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman, the Executive Secretary or any other person generally or specifically authorised by the Board to act for that purpose.

**8.** Any contract or instrument which if made 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 Agency by the

Executive Secretary or by any other person generally or specially authorised by the Board to act for that purpose.

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

**10.** The validity of any proceedings of the Board or any of its committees shall not be affected by-

(a) any vacancy in the membership of the Board, or committee; or

(b) any defect in the appointment of a member of the Board or committee; or

(c) reason that any person not entitled to do so took part in the proceedings of the Board or Committee.

**11.** A member of a Committee who has a personal interest in any contract or any agreement entered into or proposed to be considered by the Committee shall forthwith disclose his interest to the committee and shall not vote on any question relating to the contract or arrangement.

**12.** No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Agency.

**BORDER COMMUNITIES DEVELOPMENT AGENCY (ESTABLISHMENT, ETC.) ACT**

### **SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*