

SMALL AND MEDIUM SCALE ENTERPRISES DEVELOPMENT
AGENCY OF NIGERIA ACT

ARRANGEMENT OF SECTIONS

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Enterprises Development Agency of Nigeria*

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SCHEDULE

Supplementary Provisions relating to the Board, etc.

An Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the Development Programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes.

[2003 No. 16.2004 No. 12.]

[19th June, 2003]

[Commencement.]

PART I

Establishment and Governing Board of Small and Medium Scale Enterprises Development Agency of Nigeria

1. Establishment of Small and Medium Scale Enterprises Development Agency of Nigeria

(1) There is established an agency to be known as the Small and Medium Scale Enterprises Development Agency of Nigeria (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.

2. Establishment and membership of the Governing Board

(1) There is established for the Agency a Governing Board consisting of a Chairman and six other part-time members to be appointed by the President.

(2) The appointment of the seven part-time members shall be made from the six geographical zones.

(3) The following are *ex officio* members of the Board-

- (a)
 - (i) the Federal Ministry of Industry;
 - (ii) the Federal Ministry of Science and Technology;
 - (iii) the National Planning Commission;
 - (iv) the Agricultural or Industrial Research Institutes;
 - (v) the Indigenous Fabricators and Manufacturers of Machinery;
 - (vi) the Federal Ministry of Finance;
 - (vii) the Development Banks for Small and Medium Scale Industries;
 - (viii) the Bank of Industry;
 - (ix) the Manufacturers' Association of Nigeria;
 - (x) the National Association of Small Scale Industries (NASSI); and
- (b) the Director-General of the Agency.

(4) There shall be a Secretary to the Board who shall be appointed by the Board.

3. Schedule

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

[Schedule.]

4. Tenure of office, etc.

The Chairman and members of the Board, other than *ex officio* members-

- (a) shall hold office for a period of four years on such terms and conditions as may be specified in their letter of appointment; and
- (b) may be reappointed for another period of four years and no more.

5. Removal of members from office

(1) Notwithstanding the provisions of section 4 of this Act, a member 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.

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

6. Emoluments, etc.

A member of the Board shall be paid such emoluments, allowances and benefits as the Minister may, with the approval of the President, from time to time, approve.

7. Disclosure of interest

(1) A member of the Board who is directly or indirectly interested in any matter being deliberated on by the Board or is interested in any contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subsection (1) of this section shall be recorded in the Minutes of Meetings of the Board and members concerned shall-

- (a) not, after the disclosure, take part in any deliberation or decision of the Board; and
- (b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decision with regard to the subject matter in respect of which his interest is so disclosed.

PART II

Functions and Powers of the Agency

8. Functions of the Agency

The Agency shall be responsible for-

- (a) initiating and articulating ideas for small and medium scale industries policy thrusts;
- (b) serving as a vanguard agency and focal point for rural industrialisation, poverty alleviation and eradication, technology acquisition and adaptation, job creation and sustainable livelihood;
- (c) promoting and facilitating development programmes, instruments and support services to accelerate development, modernisation, networking and linkage of small and medium scale industries;
- (d) mobilising internal and external resources, including technical assistance for small and medium scale industries, their support institutions, trade associations, and non-governmental organisation;
- (e) overseeing, co-ordinating and monitoring development in the small and medium industries sub-sector;
- (f) designing, packaging and promoting cottage and micro small and medium

scale industrial projects;

(g) providing industrial extension services to small and medium scale industries, fabricators of machinery and beneficiaries of micro-credit loans;

(h) establishing liaison between research institutes, local fabricators and small and medium scale industries;

(i) linking small scale industrialists to sources of finance, technology, technical skill development and management;

(j) facilitating and promoting the development of standard designs and quality assurance for machinery and equipment, and commercialising them to end-users;

(k) promoting and providing access to industrial infrastructure, including estates and layouts, and incubators;

(l) providing necessary assistance

to small and medium scale industries in the marketing of their products;

(m) promoting ancilarisation, sub-contracting, clustering and networking relationship;

(n) providing and promoting strategic linkages within small and medium scale industries;

(o) encouraging and promoting strategic linkages within small and medium scale industries, and between small and medium scale industries and large scale industries;

(p) establishing and co-ordinating the institutional development and activities of Industrial Development Centres in Nigeria;

(q) collaborating with the Agricultural Research and Mechanisation Centres and Agro-industrial Schemes in Nigeria;

(r) liaising with external agencies for support and development of small and medium scale industries in Nigeria;

(s) listing products that small and medium scale industries have substantial internal capacities to manufacture to meet domestic market for Federal Government's patronage and deletion or restriction on the schedule of importable goods;

(t) recommending to the Federal Government, from time to time, in consultation with other relevant agencies and organisations, on applicable tax and tariff regimes and other financial incentives for promoting the development of small and medium scale industries;

(u) monitoring the implementation of and compliance with Federal Government directives, incentives and facilities for development of small function of the Agency in order to promote government policies in or outside Nigeria;

(v) carrying out such other activities connected with or incidental to the other functions of the Agency in order to promote government policies in or outside Nigeria;

(w) provision of and facilitating technical and managerial training to small and medium scale industries.

Powers of the Agency

(1) In pursuance of section 8 of this Act, the Agency shall have power to-

(a) demand and obtain relevant information, data and reports on activities relating to the promotion and development of small and medium scale industries from banks, research and development institutions and other support organisation;

- (b) enter into a joint-venture arrangement and draw up a memorandum of understanding and agreement with relevant institutions and organisations for the promotion and development of small and medium scale industries; and
- (c) do such other things as are necessary for the successful performance of its function under this Act.

PART III

Staff of the Agency

10. Director-General

- (1) There shall be for the Agency, a Director-General who shall be appointed by the President on the recommendation of the Minister.
- (2) The Director-General shall be the Chief Executive of the Agency and be responsible for the execution of the policy and the day to day administration of the Agency.
- (3) The Director-General shall hold office-
 - (a) for a term of five years in the first instance and may be reappointed for a further term of five years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.

11. Other employees 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 as determined by the Board with the approval of the Minister.

12. Pensions and gratuities

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

[L.F.N. 2004 Cap. P4.]

- (2) Notwithstanding the provisions of this Act, 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 Pension Act, is hereby vested in and shall be exercisable by the Agency and not by any other person or authority.

PART IV

Financial Provisions

13. Funds of the Agency

The Agency shall establish and maintain a fund into which shall be paid and credited-

- (a) the take-off grant from the Federal Government;
- (b) annual subvention from the Federal Government;
- (c) loans and grant-in-aid from national, bilateral and multilateral agencies;
- (d) rents, fees and other internally generated revenues from services provided by the Agency; and
- (e) all other sums accruing to the Agency, from time to time.

14. Expenditure of the Agency

The Agency may, from time to time, with the approval of the Board, apply the proceeds of the fund established in pursuance of section 13 of this Act-

- (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 for 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 remuneration and benefits or allowances, gratuities and pensions, and other benefits payable to the officers and other employees of the Agency;
- (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 or in such other securities as may, from time to time, be approved by the Minister.

15. Annual estimates and accounts

(1) The Agency shall, not later than 31 st August in each year, submit to the Minister an estimate of its expenditure and income (including payments to the Agency fund) for the next succeeding years.

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

16. Annual reports

The Agency shall prepare and submit to the Federal Executive Council, through the Minister, 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 proceeding year, and shall include in such report a copy of the audited accounts of the Agency for that year and the auditor's report on the accounts.

17. Power to accept gift

(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 and the provisions of the Independent Corrupt Practices and Allied Offences Commission Act, 2000.

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 Minister, borrow money which exceeds, at any time, the amount set by the Minister.

(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 Minister and in consultation with the Central bank of Nigeria.

19. 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 Investments Act or in such other securities as may, from time to time, be approved by the Minister.

[L.F.N. 2004 Cap. T22.]

20. Exemption from tax

(1) The Agency shall be exempt from the payment of Income Tax on any income accruing from investment made by the Board for the Agency or otherwise.

(2) The provisions of any enactment relating to the taxation of companies on trust fund shall not apply to the Agency or the Board.

PART V

Legal Proceeding

21. Limitations of suits against the Agency, etc.

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protec-

tion Act shall apply in relation to any suit instituted against any officer or employee of the Agency.

[L.F.N. 2004 Cap. P41.]

(2) Notwithstanding anything contained in any other enactment, the suit against a member of the Board or the Director-General or any other officer or employee of the Agency for any act done in pursuance or execution of this Act or any other enactment or law, or of any public duty or authority in respect of any alleged neglect or default in the execution of this Act, shall lie or be instituted in any court unless it is commenced-

- (a) within three months next after the act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

(3) No suit shall be commenced against a member of the Board or the Director-General or any other officer or employee of the Agency before the expiration of a period of one month after written notice of the intention to commencement the suit shall have been served on the Agency by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

22. Service of documents

A notice, summons or other document required or authorised to be served on the Agency under the provisions of this Act or any other enactment or law may be served by delivering it to the Director-General or at the principal office of the Agency.

23. Restriction on execution against property of the Agency

(1) In any action or suit against the Agency, no execution or attachment of process in the nature thereof shall be issued against the Agency unless not less than thirty days 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.

24. Indemnity of officers

A member of the Board or the Director-General or 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, Director-General, officer or other employee of the Agency.

25. Secrecy

(1) A member of the Board or the Director-General or any 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 or is obtained by him in the ordinary course of his duty as a member of the Board or as the Director-General, officer or employee of the Agency;
- (b) treat as confidential any information which has come to his knowledge in the exercise of his power or is obtained by him in the performance of his duties under this Act;
- (c) not disclose any information referred to under paragraph (b) of this subsection, except when required to do so by a court or in such other circumstances as may be prescribed by the Board, from time to time.

(2) Any person who contravenes the provision of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than, ₦50,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

26. Directive by the Minister, etc.

The Minister may give to the Agency or the Director-General such directives of general nature or relating generally to matters of policy with regard to the exercise of its or

his functions as he may consider necessary and it shall be the duty of the Agency or the Director-General to comply with the directive or cause them to be complied with.

27. Regulations

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

28. Interpretation

In this Act-

"**Agency**" means the Small and Medium Scale Enterprises Development Agency of Nigeria established under section 1 of this Act;

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

"**Minister**" means the Minister charged with the responsibility for Industries as are defined by the National Council on Industry as Small and Medium Scale Industries;

"**President**" means the President of the Federal Republic of Nigeria.

29. Citation

This Act may be cited as the Small and Medium Scale Enterprises Development Agency Act, 2003.

[2004 No. 12.]

SCHEDULE

[Section 3.]

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARIJ, ETC.

Proceedings of the Board

1. Subject to section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the person presiding at any meeting when a vote is ordered to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its committees.

[L.F.N. 2004 Cap. 123.]

2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of them to preside at the meeting.

3. The quorum at a meeting of the Board shall consist of the Chairman or, in appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule and other members provided that at least one third of the total membership of the Board are present.

4. The Board shall for the purpose of this Act, meet not less than three times in each year and the Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to him by not less than five other members, he shall summon a meeting of the Board to be held within 14 days from the date on which the notice is given.

5. Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it thinks fit, but a person who is a member by virtue of this subparagraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

6. (1) Subject to its standing orders, the Board may appoint such number of standing and *ad hoc* committees as it thinks fit to consider and report on any matter with which the Agency is concerned.

(2) A committee appointed under this paragraph shall-

- (a) consist of such number of persons (not necessarily members of the Board, as may be determined by the Board), and a person, other than a member of the Board, shall hold office on the Committee in accordance with the terms of his appointment; and
- (b) be presided over by a member of the Board.

(3) The quorum of any committee set up by the Board shall be as may be determined by the Board.

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

Miscellaneous

7. The fixing of the seal of the Agency shall be authorised by the signature of the Chairman or any other person generally or specifically authorised by the Board to act for that purpose and that of the Director-General.

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 Director-General or by any other person generally 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 the membership of the Board or of 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 arrangement 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.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

