

NIGERIAN ENTERPRISES PROMOTION (ISSUE OF NON-VOTING EQUITY SHARES) ACT 1989

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An Act to permit public companies quoted on the Nigerian Stock Exchange to issue, through the Exchange, non-voting paid-up shares for the subscription of persons whether citizens of Nigeria or not or whether resident in Nigeria or not, which shares are to be paid for in foreign currency.

[14th November, 1987] Commencement

<p>1. (1) Notwithstanding anything to the contrary in any law, as from the commencement of this Act, public companies whose shares are quoted on the Nigerian Stock Exchange may issue through the Exchange for the purposes of section 2 of this Act, non-voting paid-up shares of their companies for the subscription of persons whether such persons are citizens of Nigeria or not or whether they are resident in Nigeria or not.(2) Any shares issued pursuant to subsection (1) of this section shall not have any voting rights and shall not be taken into account in determining the proportions of shares held by Nigerians and non-Nigerians under the provisions of the Nigerian Enterprises Promotion Act or under any other enactment. Cap. 303. (3) Any shares issued pursuant to subsection (1) of this section shall not exceed 20 per cent of the existing nominal share capital of the company seeking to take advantage of the provisions of this Act.</p>	<p><i>Issue of non-voting equity shares.</i></p>
<p>2. The purpose of the shares issued pursuant to section 1 of this Act shall be to provide investment opportunities to-(a) existing foreign partners in companies quoted on the Exchange;(b) international institutional investors;(c) individuals (whether such individuals are citizens of Nigeria or not and whether resident in Nigeria or not).</p>	<p><i>Purpose.</i></p>
<p>3. (1) There is hereby established a committee to be known as the Nigerian Enterprises Promotion (Issue of Non-Voting Equity Shares) Implementation Committee (hereinafter in this Act referred to as "the Committee").(2) The Committee shall consist of a Chairman who shall be the Director-General of the Exchange and the following other members, that is-(a) one person to represent the Securities and Exchange Commission;(b) one person to</p>	<p><i>Establishment and composition of the Implementation Committee</i></p>

<p>represent the Federal Ministry of Finance and Economic Development;(c) one person to represent the Federal Ministry of Trade and Tourism;(d) one person to represent the Manufacturers Association of Nigeria;(e) one person to represent the Presidency;(f) one person to represent the Central Bank of Nigeria;(g) the General Manager of the Nigerian Stock Exchange;(h) one person to represent the Ministry of Industries.(3) A senior manager in the Central Bank of Nigeria shall be the Secretary to the Committee.</p>	
<p>4. The functions of the Committee shall be to-(a) find ways and means of attracting capital investment in the form of non-voting equity shares to companies quoted on the Exchange;(b) determine and draw up the procedures and modalities for implementing the provisions of this Act;(c) ensure the successful implementation of the provisions of this Act;(d) conduct research and advise the Federal Government on ways and means of expanding the Nigerian Stock Market and on the internationalization of the Nigerian Stock Market;(e) to liaise and co-operate with the Securities and Exchange Commission in the discharge of its functions under this Act;(f) to carry out all other functions and duties that may from time to time be assigned to it by the Federal Government.</p>	<p><i>Functions of the Committee.</i></p>
<p>5. (1) The shares issued and sold under this Act shall be sold by the Exchange at a price to be determined by the Securities and Exchange Commission.(2) The Exchange shall be responsible for the listing of the shares issued under this Act.</p>	<p><i>Price of shares.</i></p>
<p>6. All subscriptions or payments in respect of the shares issued under this Act shall be in convertible foreign currency.</p>	<p><i>Payment in convertible foreign currency.</i></p>
<p>7. (1) For the avoidance of doubt, eighty per cent of the proceeds of all shares issued under this Act shall be allocated to the selling companies, and this shall be applied-(a) for the importation of spare parts, raw materials and machinery; and(b) for such other purposes as may be approved by the Minister.(2) The Central Bank of Nigeria shall hold in an interest-earning Escrow Account twenty per cent of the proceeds of the issue, for the purpose of the holders of such shares wherever resident.</p>	<p><i>Application of proceeds of shares issued.</i></p>
<p>8. (1) The withholding tax on dividend shall be reduced by fifty per cent of the prevailing rate of withholding tax for dividend declared by the selling company.(2) Without prejudice to the foregoing provisions of this Act, where any selling company wishes to reduce the percentage of withholding tax on</p>	<p><i>Withholding tax.</i></p>

<p>any dividend offered pursuant to this Act, the company shall apply to the Minister and shall accompany its application with documentary evidence to support the additional reduction requested for; and the Minister may after considering such application approve an additional reduction of not more than two and a half per cent withholding tax from such dividend.(3) The Nigerian Export Promotion Council shall examine all applications under subsection (2) of this section, that is, the withholding tax relief and shall submit recommendations thereon to the Minister for consideration.</p>	
<p>9. Shares issued under the provisions of this Act shall be accorded approved status and shall qualify for both capital and dividend repatriation.</p>	<p><i>Approved status of shares.</i></p>
<p>10. (1) Where the Board of Directors of any company decides by a resolution passed not later than twenty-four months from the commencement of this Act, to issue non-voting paid-up shares in accordance with the provisions of this Act, the Board of Directors may, without seeking the approval of the shareholders at a general meeting, amend the memorandum and articles of association of the company to give effect to the resolution.(2) A notice of any resolution passed pursuant to the provisions of subsection (1) of this section shall forthwith be sent to the Exchange and to the shareholders of the company with an explanatory note stating the implication of such resolution and that the shareholders may subscribe to the shares issued under subsection (1) of this section.(3) Any resolution passed after the period specified in subsection (1) of this section shall not have effect unless approved by the shareholders in a general meeting.</p>	<p><i>Time limits for board resolutions.</i></p>
<p>11. The Committee shall be responsible for the general marketing and co-ordination of all transactions relating to the issue of shares under this Act and shall make a report on the transaction to the Minister every quarter.</p>	<p><i>Market and co-ordination.</i></p>
<p>12. (1) The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act and may in particular, without prejudice to the generality of the foregoing provisions, make regulations for- (a) prescribing the forms for returns and other information required under this Act;(b) prescribing the detailed powers of the agencies, and persons determined by the Committee;(c) prescribing the procedure for obtaining any information required under this Act;(d) requiring returns to be made within the period specified therein, by any person to which this Act applies; (e) prescribing any fees payable under this Act; and(f) prescribing such other matters as may give full effect to the provisions of this Act.(2) Any regulations made pursuant to subsection (1) of this section shall be presented to the President, Commander-in-Chief of the Armed Forces for</p>	<p><i>Regulations.</i></p>

<p>approval together with any report and recommendations of the Committee including any measures which the Minister proposes to take in relation thereto.</p>	
<p>13. Any person aggrieved by any decision taken or act or thing done under this Act shall have the right to forward a petition on such grievance to the Minister who may, notwithstanding anything to the contrary in this Act and subject to the approval of the President, Commander-in-Chief of the Armed Forces, confirm or reverse the decision, act or thing or take further measures in relation to the petition as he may think just and reasonable.</p>	<p><i>Right to petition the Minister.</i></p>
<p>14. (1) The relevant provisions of-(a) the Bills of Exchange Act; Cap. 35.(b) the Central Bank of Nigeria Act; Cap. 47.(c) the Exchange Control Act; Cap. 113. (d) the Companies and Allied Matters Act; Cap. 59.(e)the Exchange Control (Anti-Sabotage) Act,shall be read with such modifications as to bring them into conformity with the provisions of this Act. (2) (2) If any other law including the laws specified in subsection (1) of this section are inconsistent with this Act, the provisions of this Act shall prevail and that other law shall to the extent of the inconsistency be void. Cap. 114.</p>	<p><i>Modification of existing legislation.</i></p>
<p>15. In this Act, unless the context otherwise requires- "Committee" means the Nigerian Enterprises Promotion (Issue of Non-Voting Equity Shares) Implementation Committee established under section 3 of this Act; "company" means any company registered under the Companies and Allied Matters Act and whose equity shares are quoted on the Nigerian Stock Exchange; "equity shares or stocks" includes such shares or stocks that bear interest or are entitled to fixed dividends; "Exchange" means the Nigerian Stock Exchange; "Minister" means the Minister charged with responsibility for matters relating to finance. Cap. 59.</p>	<p><i>Interpretation.</i></p>
<p>16. This Act may be cited as the Nigerian Enterprises Promotion (Issue of Non-Voting Equity Shares) Act.</p>	<p><i>Short title.</i></p>