

# NIGERIAN ENTERPRISES PROMOTION ACT

## 1989

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An Act to re-enact the Nigerian Enterprises Promotion Act of 1977, dissolve the Board established thereby and to vest its powers in the Minister for Industries and to re-schedule all enterprises under one schedule. [29th December, 1989] Commencement.

<p><b>1.</b> (1) Subject to subsection (2) of this section, all enterprises specified in the Schedule to this Act are hereby exclusively reserved for Nigerian citizens or associations and accordingly no such enterprise shall be established in Nigeria by an alien on or after the commencement of this Act.(2) Notwithstanding the provisions of subsection (1) of this section, an alien may be the owner of any enterprise specified in the Schedule to this Act if the capitalisation involved is not less than #20,000,000.(3) Nothing in this section shall, as from the commencement of this Act, preclude the sale or transfer, in accordance with the provisions of this Act, by any person of any of the enterprises affected by this section.</p>	<p><i>Enterprises exclusively reserved for Nigerians.</i></p>
<p><b>2.</b> For the purposes of section 1 of this Act, an enterprise shall be deemed to be an alien enterprise if the entire capital or proprietary interest, whether financial or otherwise in so far as it concerns any of the enterprises in the Schedule to this Act, is owned and controlled by aliens.</p>	<p><i>Definition of expressions used in section 1</i></p>
<p><b>3.</b> (1) As from the commencement of this Act, no enterprise to which section 1(1) of this Act applies (whether or not operated by or as a company) which is being operated otherwise than by or as a public company shall be sold or in any other manner transferred to Nigerian citizens or associations unless the terms and other conditions of and pertaining to the sale or transfer have been approved by the Minister.(2) As from the commencement of this Act, no shares in or in respect of any enterprise to which section 1(2) of this Act applies which is an enterprise operated by or as a public company shall with a view to securing compliance (to any extent whatsoever) with the provisions of section 1(2) of this Act be sold or in any manner transferred to Nigerian citizens or associations unless the approval of the Securities and Exchange Commission</p>	<p><i>Minister and Securities and Exchange Commission to approve allotment, transfer, etc.</i></p>

(hereinafter referred to as "the Commission") has been obtained with respect to-(a) the price at which the shares are to be sold or transferred and the timing of the sale;(b) the terms and other conditions pertaining to the sale or transfer, including the manner of the selection of the buyers or transferees or, where applicable, the manner of the allotment of the shares among the buyers or transferees;(c) any increase in the shares and the share capitals of private companies; and(d) any transfer of shares in private companies.(3) Cap. 59. The provisions of this section shall have effect notwithstanding any requirement in any law (including, where applicable, the Companies and Allied Matters Act) and such law shall be construed subject to this Act.(4) Cap. 406. Without prejudice to subsection (3) of this section, the powers conferred on the Commission under the Securities and Exchange Commission Act shall be construed as including power to grant approvals for the purposes of this Act and any rules made by the Commission may be adapted or otherwise modified by the Commission for the purposes of this Act.(5) Notwithstanding anything to the contrary in this section, the Commission shall be charged with the function of determining the prices of shares in enterprises to which this Act relates and in the case of public companies, there shall be an Allotment Committee of the Commission which shall consist of the following persons, that is-(a) a representative of the Minister;(b) a representative of the Nigerian Stock Exchange; and(c) a representative of the appropriate issuing house.

**4.** (1) Where approval of the Minister or, as the case may be, of the Allotment Committee of the Commission has not been obtained as required under section 3 of this Act or if any application in relation thereto has been refused-(a) any allotment, transfer, sale of shares and increase in share capital of any enterprise to which this Act applies shall be void and shall be of no effect whatsoever;(b) any moneys accepted in relation to or connected with any of the transactions referred to in section 3 of this Act shall forthwith be repaid without interest by the vendor or transferor.(2) If any money referred to in subsection (1) of this section is not repaid within fourteen days after the notification of the refusal to give the approval, the directors of the company concerned shall be personally jointly and severally liable to repay the money with interest at the rate of five per cent per annum from the expiration of the fourteenth day: Provided that-(a) a director shall not be liable if he proves that the default in the repayment of the money is not due to misconduct or negligence on his part; and(b) all the moneys involved had been kept in a separate bank account to facilitate repayment.(3) The reference in subsection (2) of this section to "directors of a company" shall-(a) in the case of a partnership, be construed as a reference to the partners of the body concerned; and(b) in the case of any other unincorporated body, be construed

*Provisions relating to section 3*

as a reference to the person in which is vested the beneficial ownership of the enterprise concerned.

**5.** (1) In considering applications for approval pursuant to section 3 of this Act, the Minister, or, as the case may be, the Allotment Committee of the Commission shall have regard to the following provisions, that is-(a) beneficial ownership of the enterprises affected should be as widespread as the circumstances of each case would justify and deliberate efforts shall be made to prevent the concentration of ownership in a few hands;(b) except in the case of owner-managers, no enterprises shall be sold or transferred to a single individual and in no case is a single individual to be allowed to have control of more than one enterprise;(c) where appropriate, allotment rules made or approved by the Minister or the Allotment Committee of the Commission shall be such that would ensure that- (i) no individual holding more than five per cent of the equity of an enterprise or holding a portion of the equity valued at more than N50,000, whichever is the higher, is allotted any further portion of the equity in that enterprise; (ii) no individual shall be allotted more than five per cent of the equity of any enterprise or of any portion of the enterprise valued at more than N50,000, whichever is higher; (iii) no individual shall be allotted any portion of the equity of an enterprise that would make any holding of that individual of the equity of the enterprise concerned to exceed five per cent of the total equity of that enterprise or attain a value exceeding N50,000, whichever is higher;(d) consideration passing from the transferee to the seller or transferor and, where appropriate, all rights, including agency rights, sole representation and all other ancillary rights passing to the buyer or transferee shall be in a form acceptable to the minister or the Commission.(2) For the purposes of subsection (1) of this section, the Allotment Committee shall have regard to information as to the existing shareholding of individuals seeking to acquire further interests in enterprises to which this Act relates.

*General provisions regarding approval of sale or transfer by the Minister or the Commission.*

**6.** Notwithstanding the provisions of section 5 of this Act, the Minister or the Allotment Committee of the Commission shall not approve the sale or transfer of any share in any enterprise except there is created for the employees of the enterprise through a trust deal to be known as workers' equity participation based on the following, that is-(a) in the case of an enterprise specified in the Schedule to this Act not less than ten per cent shall be set aside as workers' equity participation;(b) in the case of all companies registered in Nigeria after the commencement of this Act or where only a fraction of the share of the companies is sold not less than ten per cent of the amount of sale shall be reserved for non managerial staff of such companies as workers' equity participation.

*Workers' equity participation.*

**7.** (1) Without prejudice to the operation of any enactment, there shall be appointed by the Minister from among members of the public service of the Federation inspectors of enterprise to exercise the functions conferred upon them by virtue of this Act and shall be responsible to the Minister and to no other person or authority.(2) The inspectors shall, subject to this Act, have such powers and carry out such functions as the Minister may confer on them.(3) Notwithstanding subsection (2) of this section, for the purpose of carrying out any of their functions under this Act, the inspectors-(a) shall have a right of access at all times as may be necessary to any building or premises where any enterprise is being carried on or which they reasonably suspect is being used for any purpose to which this Act relates;(b) may inspect such building or premises, or business in order to determine whether or not the building or premises is being used, or as the case may be, the business is being carried on, for the purposes authorised by this Act, and may require the production of all books of account or other documents and inspect them for ensuring that the provisions of this Act are being complied with; and(c) shall be entitled to require from the directors or other officers of the enterprise such information and explanation as may be deemed necessary.(4) Any person, who-(a) without lawful excuse the proof of which shall lie on him- (i) refuses to admit into his building or premises any inspector appointed under this section, or (ii) denies the inspector the right to inspect the building or premises or the business for the determination of the matter specified in subsection (3)(b) of this section, or (iii) refuses or neglects to give any information which any inspector may require from him; or(b) in respect of any request for information from any inspector, makes any statement which he knows to be false or which he has no reason to believe to be true; or(c) in any way obstructs any inspector in the discharge of such functions as may be conferred on him by this section, shall be guilty of an offence under this Act.

*Inspectors of enterprises*

**8.** (1) If the Minister is satisfied that-(a) an alien has been engaged in any of the enterprises specified in the Schedule to this Act contrary to the provisions of this Act; or(b) that an alien enterprise is being carried on in contravention of section 2 of this Act or any other provision of this Act, the Minister may direct an inspector to seal up any premises in which the offending enterprise is being carried on.(2) Every police officer shall, if called upon by an inspector, give all reasonable assistance necessary to effect the sealing up of any affected premises and to prevent unauthorised persons from having access to or interfering with the premises or any goods contained therein.

*Power to seal up premises.*

**9.** (1) Where, on or after the commencement of this Act, any alien continues to be the owner or part owner of any enterprise in contravention of section 1 of

*Additional penalty for*

this Act, it shall be lawful for the Minister to-(a) take over or co-manage the enterprise;(b) sell or otherwise dispose of the enterprise;(c) appropriate the proceeds of such sale or disposal (if any) as he deems fit;(d) charge and defray the expenses incurred; and(e) distribute the proceeds of such sale or disposal (if any)- (i) in the case of partnerships to the proprietors of the enterprise duly registered under the Companies and Allied Matters Act or any other applicable law, (ii) in the case of companies, to the share-holders of the company, and (iii) in any other case, in such manner as may be directed by the Minister, and any expenses incurred by the Minister in relation to the exercise of any of the powers conferred by this subsection shall be a charge upon and be defrayed by the Minister from the proceeds of such sale or disposal.(2) It shall be sufficient for the purposes of taking over any enterprise under subsection (1) (a) of this section-(a) in the case of partnerships, if the certificate of registration or business permit of the enterprise is cancelled;(b) in the case of a company, if the certificate of registration or business permit of the company is cancelled; and(c) in any other case, if the assets of the association are registered by the Registrar-General, or as the case may be, the Corporate Affairs Commission or any person duly authorised to do so, in the name of the Federal Government.(3) Cap. 171. Cap. 178. In this section "business permits" means any business permit issued pursuant to section 8 of the Immigration Act or section 3 of the Industrial Development Co-ordination Act.

*contravention of the Act.*

**10.** (1) The Minister may by instrument in writing request any person carrying on any enterprise to which this Act relates to furnish such estimates, returns or other information as may be specified and he may by that instrument specify the time, manner and form in which such estimates, returns or information are to be furnished, and it shall be the duty of any such person to comply with the request.(2) Any person who-(a) refuses or neglects to give any information which the Minister may require pursuant to subsection (1) of the section; or(b) in respect of the information so required makes any statement which he knows to be false or which he has no reason to believe to be true, shall be guilty of an offence and shall on conviction be liable to a fine of N1,000 or to imprisonment for three years.

*Supply of information.*

**11.** (1) The Minister may with the prior approval of the National Council of Ministers as from the commencement of this Act or such other day as may be specified for the purposes of any particular order (or in respect of any enterprise) by an order published in the Federal Gazette-(a) alter the list of enterprises specified, respectively in the Schedule to this Act by way of addition, substitution or deletion;(b) as respects section 5(1) of this Act vary the extent of the equity participation of Nigerian citizens or associations in the

*Alteration of list of enterprises.*

<p>enterprise;(c) make such different provisions in relation to different enterprises or as respects different areas of the Federation, and impose such terms as he may deem necessary.</p>	
<p><b>12.</b> (1) Any person who-(a) acts as a front or purports for the purpose of defeating or in a manner likely to defeat the object of this Act, to be the owner or part owner of any enterprise; or(b) operates any enterprise for or on behalf of any alien who is under this Act- (i) not permitted to operate the enterprise, or (ii) disqualified from operating the enterprise, or (iii) not permitted to own or be part owner of such enterprise, shall be guilty of an offence under this section, and shall be liable on conviction to a fine of N15,000 or to imprisonment for a term not less than three years and not exceeding five years or to both such fine and imprisonment.(2) It shall not be lawful for any Nigerian citizen or association to employ, whether on full time or part time basis, any alien for the operation of any enterprise previously owned wholly or partly by that alien which the alien has disposed of pursuant to the provisions of this Act, except with the prior written approval of the Minister of Internal Affairs after consultation with the Minister.</p>	<p><i>Penalty for acting as a front.</i></p>
<p><b>13.</b> (1) Any person found guilty of an offence under this Act for which no penalty is provided shall upon conviction be liable to a fine of N15,000 or to imprisonment for a term not less than three years and not exceeding five years or to both such fine and imprisonment.(2) Where an offence under this Act is committed by a body of persons-(a) in the case of a body corporate, every director or officer of that body shall be deemed to be guilty of the offence;(b) in the case of a partnership or other association, every partner or officer of that body shall be deemed to be guilty of the offence.(3) No person shall, however, be deemed to be guilty of an offence under subsection (2) of this section, if he proves to the satisfaction of the court that the offence was committed without his consent and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.</p>	<p><i>Offences and penalties.</i></p>
<p><b>14.</b> Subject to section 160 of the Constitution of the Federal Republic of Nigeria, as amended, any inspector or any officer of the Ministry may in a court of competent jurisdiction prosecute an offender for an offence under this Act. Cap. 62.</p>	<p><i>Power of inspector to conduct prosecutions, etc.</i></p>
<p><b>15.</b> (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 provision, make regulations-(a) prescribing the forms for returns and other information required, under this Act;(b) prescribing</p>	<p><i>Regulations and reports.</i></p>

the detailed powers and functions of inspectors;(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 enterprise to which this Act applies;(e) prescribing any fees payable under this Act; and(f) prescribing such other matters as may be referred to him by the National Council of Ministers.(2) Any regulations made pursuant to subsection (1) of this section shall be presented to the National Council of Ministers for the approval of that Council together with any report and recommendations of the Minister including any measures which the Minister proposes to take in relation thereto.

**16.** Any person aggrieved by any decision of the Minister or by the exercise of any power under this Act shall have the right to forward a petition on such grievance to the President, Commander-in-Chief of the Armed Forces who may, notwithstanding anything to the contrary in this Act, confirm or reverse the decision or take such further measures in relation to the petition as he may think just and reasonable.

*Right to  
Petition.*

**17.** (1) In this Act, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them- "Alien" means a person or association whether corporate or unincorporate other than a Nigerian citizen or association; Cap. 406. "Commission" means the Securities and Exchange Commission established by section 1 of the Securities and Exchange Commission Act; Cap. 59. "Company" means any company registered under the Companies and Allied Matters Act or under any enactment replaced by that Act; "Court of competent jurisdiction" means the Federal High Court; "Enterprise" includes any industrial or commercial undertaking; "Minister" means the Minister charged with responsibility for industries; and "Ministry" shall be construed accordingly; "Nigerian citizen or association" includes-(a) Cap. 62. a person who is a citizen of Nigeria by virtue of the Constitution of the Federal Republic of Nigeria, as amended;(b) any person of African patrilineal descent, not being a citizen of Nigeria, who is a national of any country in Africa which is a member country of the Organisation of African Unity, and who continues to reside and carry on business in Nigeria, if the country of which he is a national also permits citizens of Nigeria to establish and operate business or enterprise in that country on the basis of reciprocity; and(c) Cap 59. any company registered under the Companies and allied Matters Act, partnership, association or body (whether corporate or unincorporate), and except as otherwise prescribed under this Act, the entire capital or other financial interest of which is owned wholly and exclusively by citizens of Nigeria; "ownership" in relation to any

*Interpretation.*

enterprise includes any proprietary interest in the enterprise beneficially, and any derivative of that word shall be construed accordingly; "prescribed" means prescribed by this Act or by regulations; "share" includes stocks.(2) The reference in this Act to "equity participation of Nigerian citizens or associations" is a reference to stocks and shares which Nigerian citizens or associations have in such company which do not bear fixed interest or dividend.

**18.** (1) The Nigerian Enterprises Promotion Act 1977, is hereby repealed and the Nigerian Enterprises Promotion Board established under that Act is consequentially dissolved.(2) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in subsection (1) of this section shall not affect anything done under or pursuant to that enactment.(3) The rights, interests, obligations and liabilities of the Board existing before the commencement of this Act under any contract or instrument, or in law or in equity apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Minister.(4) Any such contract or instrument as is mentioned in subsection (3) of this section shall be of the same force and effect against or in favour of the Minister and shall be enforceable as fully and effectively as if instead of that Board the Minister has been named therein or had been a party thereto.(5) The Minister shall be subject to all the obligations and liabilities to which the dissolved Board was subject immediately before this Act and all other persons shall have the same rights, powers and remedies against the Minister as they had against the Board immediately before the commencement of this Act.(6) Any proceedings or cause of action pending or existing immediately before the commencement of this Act by or against the Board in respect of any right, interest, obligation or liability of the Board may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Minister to the same extent that such proceedings, cause of action or determination might have been continued, commenced or enforced by or against the Board established under the Nigerian Enterprises Promotion Act 1977 if this Act had not been made.(7) All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act were vested in the Board established by the Nigerian Enterprises Promotion Act 1977 shall by virtue of this Act and without further assurance, be vested in the Minister.(8) Nothing in this Act shall affect the share held by Nigerian citizens or associations in any enterprise operated under the Act repealed by this section.(9) Notwithstanding the repeal of the enactment referred to in this section, if the Minister thinks it expedient that any vacancy in the Board should be filled by a person holding

*Repeal,  
savings and  
transfer of  
liabilities,  
staff, etc.  
1977 No. 3.  
Cap. 192*



office at the commencement of this Act in the Board dissolved by this section it may employ such person by way of transfer to the Ministry and the previous service in that Board by such person shall count as service for the purposes of any pensions subsequently payable by the Ministry.

**19.** This Act may be cited as the Nigerian Enterprises Promotion Act.

*Short title.*

## SCHEDULESection 1

1. Advertising and public relations business.
2. All aspects of pool betting business and lotteries.
3. Assembly of radios, radiograms, record changers, television sets, tape recorders and other electric domestic appliances not combined with manufacture of components.
4. Blending and bottling of alcoholic drinks.
5. Blocks and ordinary tile manufacture for building and construction works.
6. Bread and cake making.
7. Candle manufacture.
8. Casinos and gaming centres.
9. Cinemas and other places of entertainment.
10. Commercial transportation (wet and dry cargo and fuel).
11. Commission agents.
12. Departmental stores and supermarkets.
13. Distribution agencies, excluding motor vehicles, machines and equipment and spare parts.
14. Electrical repair shops other than repair shops associated with distribution of electrical goods.
15. Estate agency.
16. Film distribution (including cinema films).
17. Hairdressing.
18. Ice-cream making when not associated with the manufacture of other dairy products.
19. Indenting and confirming.
20. Laundry and dry-cleaning.
21. Manufacturers' representatives.
22. Manufacture of suitcases, brief cases, handbags, purses, wallets, portfolios and shopping bags.
23. Municipal bus services and taxis.
24. Newspaper publishing and printing.
25. Office cleaning.
26. Passenger bus services of any kind.
27. Poultry farming.
28. Printing of stationery (when not associated with printing of books).
29. Protective agencies.
30. Radio and television broadcasting.

31. Retail trade (except by or within departmental stores and supermarkets).
32. Singlet manufacture.
33. Stevedoring and shorehandling,
34. Tyre retreading.
35. Travel agencies.
36. Wholesale distribution of local manufactures and other locally produced goods.
37. Establishments specialised in the repair of watches, clocks and jewellery including imitation jewellery for the general public.
38. Garment manufacture.
39. Grain Mill products including rice milling.
40. Manufacture of jewellery and related articles including imitation jewellery.