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CHAPTER 41A

DEVELOPMENT FUND BOARD OF TRUSTEES

AN EDICT TO ESTABLISH TRUSTEES OF THE STATE DEVELOPMENT FUND

[4 October 1989]

PART I—PRELIMINARY

1. This Edict may be cited as the State Development Fund Board of Trustees Edict.
2. In this Edict, unless the context otherwise requires:—
 - "Board" means the State Development Fund Board of Trustees established by section 3;
 - "Commissioner" means the Commissioner for the State Ministry responsible for Finance and Economic Planning;
 - "Council" means the State Executive Council;
 - "financial year" means a period of twelve months commencing on 1st January;
 - "former Board" means the State Board of Trustees established by the repealed Gongola State Board of Trustees Edict, 1987;
 - "Fund" means moneys realised from the launching of the State Appeal Fund;
 - "Government" means the Government of the State; "State" means the Gongola State of Nigeria.

PART II—ESTABLISHMENT OF THE STATE DEVELOPMENT FUND BOARD OF TRUSTEES

3. —(1) For the purposes of the administration of moneys realised from the launching of the Development Appeal Fund at the State level there is hereby established at the State level a body to be known as the State Development Fund Board of Trustees.
- (2) The Board shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Board shall have power for the discharge of any of its functions under this Edict, to acquire and hold any movable or immovable property and to dispose of such property and to

enter into any contract or other transaction.

(4) Where there is any hindrance to the acquisition of any property under subsection (3), the property may be acquired for the Board under the Land Use Act.

4.—(1) The Board shall consist of:—

(a) the Chairman;

(b) one representative from each of the following:—

(i) the State Ministry responsible for Finance and Economic Planning;

(ii) the State Ministry responsible for Commerce and Industry; and

(c) seven other persons from the private sector.

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

5.—(1) No person shall be qualified to be a member of the Board who:—

(a) is not an indigene of the State;

(b) has been adjudged or otherwise declared:—

(i) bankrupt under any law in force in Nigeria and has not been discharged;

(ii) to be of unsound mind; or

(c) has been convicted:—

(i) for an offence involving the security of the State, fraud, dishonesty or moral turpitude; or

(ii) for any other offence, and has not been granted a free pardon; or

(d) has been found by the report of a commission or a committee of inquiry to be incompetent to hold public office or in respect of whom a commission or a committee of inquiry has found that while being a public officer he:—

(i) acquired assets unlawfully; or

(ii) defrauded the State; or

(iii) misused or abused his office; or

(iv) wilfully acted in a manner prejudicial to the interests of the State,

and such findings have not been set aside on appeal or judicial review; or

(e) has had his property confiscated as a result of the findings of a commission or a committee of inquiry and the findings have not been set aside on appeal or judicial review; or

(f) is under sentence of death or sentence of imprisonment imposed upon him by any court; or

(g) has not had wide experience of and shown capacity in, financial and administrative matters; and

(h) is not acceptable to the generality of the citizens of the State.

(2) Without prejudice to subsection (1), any member of the Board shall cease to be a member if:—

(a) he is guilty of any unethical behaviour or guilty of any serious misconduct in respect of his duties as a member of the Board and such behaviour or misconduct is certified in writing by not less than six members of the Board; or

(b) he is absent from three or more consecutive meetings of the Board without sufficient reason; or

(c) in the case of a person possessed of professional qualifications, he is disqualified, otherwise than at his own request, from practicing his profession in Nigeria or in any other country by order of any competent authority made in respect of him personally.

6.—(1) A member, other than an ex-officio member, of the Board shall, subject to subsections (2) and (3), hold office for a period of three years.

(2) A member may at any time resign his office in writing addressed to the Governor and may be removed from office by the Governor acting in accordance with the advice of the Board for:—

(a) disability; or

(b) neglect of duty; or

(c) misconduct.

(3) A member nominated by any authority as its representative on the Board shall cease to be a member if the Governor, on the recommendation of the authority by writing addressed to him and copied to the Chairman of the Board, revokes his appointment.

(4) The Chairman of the Board shall notify the Governor of all vacancies occurring in the membership of the Board.

(5) A member of the Board ceasing to hold office shall, subject to subsections (2) and (3), be eligible for re-appointment.

(6) Where a member of the Board is incapacitated by illness or any other cause from performing the functions of his office, the Governor may, acting in accordance with the advice of the Board, appoint another person to act in his place until the member is able to resume the performance of his functions.

7. There shall be paid to members of the Board in respect of their membership such subsistence, travelling and other allowances as the Governor may approve in relation to them.

PART III—FUNCTIONS OF THE BOARD

8.—(1) The functions of the Board shall be:—

(a) to take over the accounts of the Development Appeal Fund at the State level; and

(b) to administer the Fund.

(2) The Board may also do all such acts as may appear to it expedient for the purposes of implementing the functions specified in subsection (1).

(3) In the exercise of its functions under this Edict, the Board shall give effect to the policy of the Government in relation to these functions as communicated to it, from time to time in writing by the Commissioner.

9. Without prejudice to the generality of section 15, the Board may, with the prior approval of the Governor and subject to such conditions as it may think fit, by writing under its common seal delegate any of its functions under this Part to any person and may at any time in like manner revoke such delegation.

10.—(1) The Board shall conduct its affairs on sound commercial lines and in such a manner as to ensure a reasonable return on its capital.

(2) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, including but not limited to the need to provide a reasonable proportion of the Fund needed for expanding the Board's activities and improving its work.

11.—(1) The Board shall ordinarily meet for the despatch of business at such times and places as the Chairman of the Board may, from time to time, appoint, but shall meet at least once in every three months.

(2) The Chairman shall, upon a request in writing signed by not less than three members of the Board, summon a special meeting of the Board within fourteen days of the receipt of the request.

(3) At every meeting of the Board, the Chairman shall preside and, in his absence, the members present shall elect a person from among their number to preside at the meeting.

(4) The quorum at any meeting of the Board shall be five.

(5) Every question coming before the Board at any meeting shall be decided by a majority of the votes of members present.

(6) The Chairman or other person presiding at any meeting shall have an original as well as a

casting vote.

(7) The Board may at any time co-opt any person as an adviser to attend any meeting of the Board, but a person so co-opted shall not have the right to vote on any matter coming before the Board for decision at that meeting.

(8) A member who is in any way directly or indirectly interested in any transaction or project of the Board 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, and the disclosure shall be recorded in the minutes of the Board and the member:—

(a) shall not take part after the disclosure in any deliberation or decision of the Board with respect to that transaction or project; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

(9) For the purposes of subsection (8), a general notice given at a meeting of the Board by a member of the Board to the effect that he is a member of a specified company or firm and is to be regarded as interested in any transaction or project of the Board concerning the company or firm, shall be regarded as sufficient disclosure of his interest in relation to that transaction or project.

(10) A member of the Board need not attend in person at a meeting of the Board in order to make any disclosure which he is required to make under subsection (8) if he takes reasonable steps to secure that the disclosure is made by notice which is brought up and read at the meeting.

(11) A member who infringes subsection (8) shall be liable to be removed from the Board.

(12) The validity of any proceedings of the Board shall not be affected by:—

(a) any vacancy among its members; or

(b) any defect in the appointment of any of them.

(13) Except as otherwise expressly provided by this section, the Board shall prescribe the procedure for its meetings.

PART IV—MANAGEMENT AND STAFF OF THE BOARD

12.—(1) The Board may, from time to time, engage such employees as may be necessary for the proper and efficient conduct of its business and functions under this Edict.

(2) The Board may also engage the services of such consultants and advisers as it may think necessary.

(3) The employees, consultants and advisers of the Board shall be appointed upon such terms

and conditions as the Board may determine.

(4) Public officers may be transferred or seconded to the Board or may otherwise give assistance thereto.

13.—(1) The Board shall have an officer to be designated "the Secretary. Secretary" who shall be the chief executive officer of the Board.

(2) The Secretary shall be a person who has had experience of, and shown capacity in, administration or the organisation of workers

(3) The Secretary shall be appointed by the Governor and shall hold office upon such terms and conditions as may be specified in his instrument of appointment.

(4) Subject to this Edict, the Secretary shall, subject to the general control of the Board on matters of policy, be charged with the direction of, and day-to-day business of the Board and of its administration and the organisation and control of all the employees of the Board.

(5) The Secretary shall:—

(a) act as Secretary to the Board at its meetings; and

(b) in consultation with the Chairman of the Board arrange the business for and cause to be recorded and kept minutes of all meetings of the Board.

(6) The Secretary shall also perform such other functions in relation to the work of the Board as the Board may direct.

(7) The Secretary may, in the performance of his functions under subsection (4), be assisted by such officers as the Board may determine.

14.—(1) The Chairman of the Board shall, in his capacity as Chairman, have no other functions in relation to the Board except as otherwise expressly conferred on him by this Edict or by any other enactment.

(2) The Chairman shall be charged with the general oversight, on behalf of the Board, of the implementation of the Board's policy decision by the Board between the Board's meetings.

15.—(1) The use of the seal of the Board shall be authenticated by two signatures, namely:—

(a) the signature of the Chairman or some other member of the Board authorised by the Board to authenticate the application of the seal; and

(b) the signature of the Secretary or some other officer of the Board authorised by the Board to act in the Secretary's place for the purpose.

(2) The Board may, by instrument in writing under its common seal, empower any person

either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in any place not situated in the State; and every deed signed by such attorney, on behalf of the Board and under his seal, shall be binding on the Board and have the same effect as if it were under the common seal of the Board.

(3) Any instrument or contract which, if executed or entered into by a person, other than a body corporate, would not require to be under seal, may be executed or entered into on behalf of the Board by the Secretary or any member of the Board if such person has previously been authorised by a resolution of the Board to execute or enter into that particular instrument or contract.

(4) The Board, if it thinks fit, may by writing under its common seal appoint any person outside the State as agent to execute an instrument or enter into a contract and the instrument or contract if executed or entered into on behalf of the Board shall have effect as if it had been duly executed or entered into as prescribed for the purpose of this subsection.

(5) Every document purporting to be an instrument executed or issued by or on behalf of the Board and purporting to be:—

(a) sealed with the common seal of the Board authenticated in the manner provided by subsection (1); or

(b) signed by and under the seal of a person appointed as attorney under subsection (2); or

(c) signed by the Secretary or by a member of the Board or other person authorised in accordance with subsection (3) to act for that purpose, shall be deemed to be so executed or issued until the contrary is shown.

16.—(1) The Board shall have an internal auditor.

(2) Subject to this Edict, the internal auditor shall be responsible to the Secretary for the performance of his functions.

(3) As part of his functions under this Edict, the internal auditor shall, at intervals of three months, prepare a report on the internal audit work carried out by him during the period of three months immediately preceding the preparation of the report and submit the report to the Secretary who shall convene a meeting of the Board as soon as possible to discuss the internal auditor's report.

(4) The internal auditor's report shall cover the financial transactions of the Board.

(5) Without prejudice to the general effect of subsection (3), the internal auditor shall make in each report such observations as appear to him necessary as to the conduct of the financial affairs of the Board during the period to which the report relates.

(6) The internal auditor shall send a copy of each report prepared by him under this section to

the Governor and also to each of the following:—

- (a) the Commissioner; and
- (b) the Chairman of the Board.

17. No member of the Board shall personally sponsor or recommend any application for employment of any person under this Edict and any member of the Board who infringes this section shall be liable to be removed from the Board.

PART V—FINANCIAL PROVISIONS

18.—(1) The funds of the Board shall include:—

- (a) monies realised from the launching of the State Appeal Fund;
- (b) funds as may from time to time be contributed or granted by the Government or Federal Government;
- (c) gifts; and
- (d) funds from any other resource.

(2) All sums of money received on account of the Board may be paid into such banks as may be approved by the Board for the credit of the Board's general account or deposit account so however, that the Board may invest, as it thinks fit, any moneys not required for current use.

19.—(1) The Board shall submit to the Governor at such time and in such form as the Governor may in consultation with the Commissioner direct, detailed estimates of the Board's income and expenditure for the next following financial year.

(2) The expenditure of the Board shall be in accordance with the estimates as approved by the Governor acting in consultation with the Commissioner.

20.—(1) The Board may obtain loans and other credit facilities on the guarantee of the Government from such banks as the Commissioner may approve.

(2) Apart from the powers of the Board under subsection (1), the Board may, with the approval of the Commissioner, borrow from any other source.

(3) The Board may borrow temporarily by way of overdraft or otherwise such sums as it may require for meeting its current obligations or discharging its functions under this Edict.

(4) The Commissioner may, on behalf of the Government, guarantee the performance of any obligation or undertaking of the Board under this Edict.

(5) The Commissioner may, from time to time in consultation with the Governor, prescribe the

maximum sums which the board may borrow under subsection (1) and (2).

21. The Board shall keep proper books of account and proper records in relation thereto.

22. —(1) The books and accounts of the Board shall, within three months after the end of each financial year, be audited in accordance with the Constitution of the Federal Republic of Nigeria 1979 as amended.

(2) The Board shall pay fees in respect of the audit to its external auditor appointed by the Board.

(3) For the purposes of subsection (2), the State Director of Audit may provide a guideline on the level of fees to be paid to the external auditor so appointed.

(4) The Board shall, as soon as possible upon receiving the external auditor's report under this section, forward a copy of the report to the Governor.

(5) The Governor, shall as soon as practicable upon receipt thereof, cause to be laid before Council a copy of the external auditor's report forwarded to him under this section.

(6) The Director of Audit may comment on the Board's annual accounts and the external auditor's reports thereon.

(7) Where the Director of Audit comments on the Board's annual accounts and the external auditor's report thereon, he shall submit his comments to Council.

PART VI—GENERAL

23. The Governor may, subject to section 10, after consultation with the Board, give to the Board in writing directions of a general character not being inconsistent with:—

(a) the provisions of this Edict; or

(b) the contractual or other legal obligations of the Board, relating to the exercise by the Board of its functions under this Edict and the Board shall give effect to such directions.

24.—(1) The Board shall, as soon as possible after the expiration of each financial year but within six months after the termination of that year, cause to be submitted to the Governor an annual report of the Board dealing generally with the activities and operations of the Board within that year which shall without prejudice to the generality of the foregoing include:—

(a) a copy of the audited accounts of the Board together with the State Director of Audit's report thereon (if any);

(b) a statement of all directions given to the Board under section 23;

- (c) each report submitted by the internal auditor under section 16 in relation to that financial year; and
- (d) such other information as the Governor may request.
- (2) A copy of the annual report shall be forwarded by the Board to the Commissioner.
- (3) The Governor shall, not later than three months after receiving the annual report cause it to be laid before council.
- (4) The Board shall also submit to the Governor such other reports on the Board's financial affairs as the Governor may by writing reasonably request from time to time.

25.—(1) The Board may make regulations as it may think fit, for the purpose of giving effect to this Edict.

- (2) Without prejudice to the generality of subsection (1), the Board may make regulations for:—
 - (a) the internal operations; and
 - (b) the conditions of service of the employees of the Board.

26.—(1) The former Board existing at the commencement of this Edict as established by the Gongola State Board of Trustees Edict, is hereby dissolved.

- (2) All assets, rights, obligations and liabilities of the former Board are hereby transferred to the Board established under this Edict without further assurance.

27.—(1) The appointment of any office or other employee of the former Board existing immediately before the coming into force of this Edict shall, if such officer or employee agree, be deemed to be made by the Board under this Edict on the same terms and conditions of service as those on which he was employed by the former Board.

- (2) For the purposes of determining the rights of pension or gratuity on retirement of the officer or employee referred to in subsection (1), the service of such officer or employee shall be regarded as continuous from the time he was employed by the former Board.

28.—(1) The Gongola State Board of Trustees Edict is hereby repealed.

- (2) Notwithstanding the repeal of the Gongola State Board of Trustees Edict, any agreement executed thereunder and in force immediately before the commencement of this Edict shall continue in force as if made under this Edict except that agreements continued in force by this subsection shall unless modified by any new agreement entered into with the Board, confer only the benefits previously enjoyed under the agreements before the commencement of this Edict.

(3) Notwithstanding the repeal of the Gongola State Board of Trustees Edict, any regulations made thereunder and in force immediately before the commencement of this Edict shall continue in existence as if made under section 25 of this Edict and may, accordingly, be amended or revoked under that section.

(4) Notwithstanding the repeal of the Gongola State Board of Trustees Edict, any proceedings ending on the coming into force of this Edict to which the former Board was a party shall be continued as if the Board was a party thereto in lieu of the former Board.

29. Any reference to the former Board in any enactment in existence at the commencement of this Edict shall be construed as a reference to the Gongola State Development Fund Board of Trustees established under this Edict.