



IMO STATE OF NIGERIA

2010, LAW NO. 5

*Long Title*A Law to establish the Imo State Investment Promotion Agency.

Enactment BE IT ENACTED by the Imo State House of Assembly of Nigeria as follows:

1. This law may be cited as the Imo state Investment promotion Agency law, 2010

Interpretation 2. In this law unless the context otherwise requires:

“Agency” means the Imo State Investment Promotion Agency established under section 3 of this Law;

“Authorized Dealer” means any bank licensed under the Banks and Other Financial Institutions Act and such other specialized banks issued with licenses to deal in foreign exchange;

“Chairman” means the member of the council who conducts, controls and presides over the debate meetings of the Governing Council and serves as a Counselor to the Director General and also provides a channel of communication between the business community and the management of the Agency;

“Director General” means the Chief Executive Officer of the Agency who is responsible for the agency’s overall strategy and management on a day to day basis;

“Capital means all cash contributions, plant, machinery, equipment, building, spare parts, raw materials and other business assets other than goodwill;

“Commercialization” means the re-organization of enterprises in such form that the commercialized enterprises shall operate as such as profit making commercial ventures and without subventions from the Imo State Government and “Commercialize” shall be construed accordingly;

“Commissioner” means the commissioner charged with the responsibility for matters relating to industry and commerce;

“Council” means the Governing Council established for the Agency under section3(1) of this Law;

“Enterprises” means any Corporation, Board, Company or Parastatal established by or under any enactment in which the Imo State Government or any of the Departments, Ministries or Agencies has ownership or equity venture or any other form of business organization;

“Foreign Capital” means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets, other than goodwill, that are brought into Nigeria with no initial disbursement of Nigeria foreign exchange and are intended for the production of goods and services related to an enterprises to which this Law applies;

“Member” means the Chairman and the members of the Governing Council of the Agency

“Foreign Loan” means a loan obtained from outside Nigeria and denominated in any convertible currency;

“Functions” include powers and duties;

“Governor” means the Governor of Imo State;

“House” means Imo State House of Assembly;

“Investment” means capital assets committed to acquire an interest in an enterprise operating within and outside the economy of Nigeria;

;

“Negative lists” means the list of those sectors of investment prohibited to both foreign and Nigerian investors, that is:-

- (a) Production of arms, ammunition, etc;
- (b) Production of any dealing in narcotic drugs and psychotropic substances;
- (c) Production of military and para-military wears and accoutrement, including those of the police and the Customs, Immigration and Prison Services; and
- (d) Such other items as the State Executive Council may, from time to time, determine.

“Own” in relation to an enterprise, includes the holding of any proprietary interest in the enterprise;

“Portfolio Investment” means an investment in shares or other securities traded on the Nigerian Stock Exchange;

“Verifiable Rights” means Rights accrued following due process of the law establishing Imo State Privatization and Investment Bureau;

“Privatization” means the relinquishment of part of or all of the equity or other interest held by the Government or its Agency in enterprise; whether wholly or partly owned by the Government;

Establishment of the Agency

3. (a) There is hereby established a body to be known as the Imo State Investment Agency (in this Law referred to as the “Agency”)
 - (b) The Agency shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name.
 - (c) The Agency shall have power to enter into contacts.
 - (d) The Agency shall have power to acquire, purchase, hold and dispose of both moveable and immovable property.

Governing council of the Agency

4. Governing Council of the Agency:

(1) There shall be for the Agency, a Governing Council (in this Law referred to as “The Council”), which shall be responsible for providing oversight and advice to the Agency’s executive officers in their discharge of the functions of the Agency.

(2) The council shall consist of the following members:-

- (a) A Chairman
 - (b) The following Commissioners –
 - (i) The Honourable Attorney-General and Commissioner for Justice
 - (ii) Honourable Commissioner for Finance
 - (iii) Honourable Commissioner for Lands, Survey & Urban Planning
 - (iv) Honourable Commissioner for Commerce and Industries
 - (v) Honourable Commissioner for Culture and Tourism
 - (vi) Honourable Commissioner for State Planning Commission or Special Adviser in-charge of the Commission
 - (vii) Special Adviser to the Governor in charge of International Trade
 - (c) Six other persons from the private sector organizations to be appointed by the Governor
 - (d) The Director-General
- 5 (i) The Director-General shall be the Agency's Secretary, of a rank equivalent to a Permanent Secretary, and shall hold office for a term of five years in the first instance on such terms and conditions as the Governor, may, on the recommendation of the Governing Council through its Chairman, determine and may be re-appointed for one further term of five years only.
- (ii) Subject to such general directions as the Council through its Chairman may give, the Director-General shall be responsible for the day-to-day administration of the Agency and the implementation of the decisions of the Council.
- (iii) The Director-General shall perform the functions of keeping the record of proceedings and decisions of the Council and perform such duties as the Governing Council may, from time to time, direct.

Other staff of the Agency

- 6 (1) The Agency shall have power to appoint either on transfer or on secondment from any public service in the state or from the private sector, such number of employees as may, in the opinion of the Agency, be required to assist the agency in the discharge of any of its functions under this law; and shall have power to pay to persons so employed, such remuneration (including allowances) as the agency may determine subject to the approval by the Governor.

- (2) The terms and conditions of service (including terms and conditions as to remuneration, allowances, pensions, gratuities and other benefits) of the persons employed by the Agency shall be as determined by the Council, from time to time which shall be in the line with existing standard in the State Public Service.

Staff Regulations

7. The Agency may, subject to the provisions of this Law make staff regulations relating generally to the conditions of service of the employees of the Agency and without prejudice to the generality of employees of the foregoing, such regulations may provide for

- (a) The appointment, promotion and disciplinary control (including dismissal) of employees of the Agency, and
- (b) Appeals by such employees against dismissal or other disciplinary measures.

Conditions of service

8. The Agency shall determine its condition of service, including pensions and gratuities, as appropriate for its employees and shall take cognizance of existing standard in the Imo State Public Service.

Functions of the Agency.

9. The Agency shall encourage, promote and co-ordinate investment in the state economy and accordingly, shall

- (a) Be the agency of the State Government to co-ordinate and monitor all investment activities to which this Law applies;
- (b) Initiate and support measures which shall enhance the investment climate in the State for both Nigerian and non-Nigerian investors;
- (c) Promote investments in and outside the State through effective promotional means;
- (d) Collect, collate, analyze and disseminate information about investment opportunities and sources of investment and advice on request concerning the availability, choice or suitability of partners in joint venture projects
- (e) Register and keep records of all enterprises to which this Law applies;
- (f) Identify specific projects and invite interested investors, for participation in those projects;
- (g) Initiate, organize and participate in promotional activities, such as, exhibitions, conferences and seminars for the stimulation of investments;
- (h) Maintain liaison between investors and Ministries, Government departments and Agencies, Institutional Lenders and other authorities concerned with investments;
- (i) Provide and disseminate up-to-date information on incentives available to investors;
- (j) Assist incoming and existing investors by providing support services;

- (k) Evaluate the impact of the Agency in investment in the State and make appropriate recommendations;
- (l) Advise the State Government on policy matters, including fiscal measures designed to promote the industrialization of the State or the general development of the economy
- (m) Perform such other functions as are supplementary or incidental to the attainment of the objectives of this Law;

Powers of the Agency

10. Without prejudice to the general functions specified in section 9 above, the Agency shall have and exercise the following powers;
- (a) to do all things by this Law or any other enactment are required or permitted to be done by the agency;
 - (b) do such other thing as are necessary or expedient for the performance of its functions under this Law;
 - (c) mobilize and attract multilateral agency funds, multilateral foreign and local investments. Accordingly, the agency shall function as a one-stop office for all investment into the State.
 - (d) plan, monitor, co-ordinate, oversee and evaluate all investments, privatization and commercialization exercise;
 - (e) consider variety of options to be adopted in the Agency's investment, privatization and commercialization process;
 - (f) arrange for effective dissemination of government policies and objects on investments, privatization and commercialization of enterprises;
 - (g) develop criteria for the selection of enterprises to be invested on privatized or commercialized.;
 - (h) assume responsibility for the establishment of enterprises to be invested and go ahead to privatize and commercialize such enterprises.
 - (i) Make appropriate consultations and procure necessary skills for successful privatization or commercialization exercise;
 - (j) oversee the actual privatization of enterprises and ensure post privatization monitoring;

Pensions

11. It is hereby declared that service in the Agency is a scheduled service and Shall be deemed to be Pensionable under the Pensions Law and accordingly, employees of the Agency in respect of their service in the Agency, be entitled to pensions.

*Companies for
commercialization
Or privatization*

- 12 (1). All companies slated for commercialization or privatization shall be confirmed by the State House of Assembly.
- (2) Notwithstanding the provisions of subsection (1) of this section, nothing in this law shall prevent the appointment of a person to any office on terms which preclude the grant of pension or gratuity in respect of that office.

13. The council may, on the recommendation of the Director-General, create such departments in the agency as it may deem fit for the different discharge of the functions of the agency.
14. (1) The agency shall establish and maintain a fund which shall be maintained by the executive officers of the Agency and applied towards the discharge of Agency's functions under this Law.
 - (2) There shall be and credited to the fund established pursuant to subsection (1) of this section
 - (a) such sums as may be provided by the government of the State for the agency;
 - (b) any fees charged for services rendered by the agency; and
 - (c) all other sums accruing to the agency by way of gifts, testamentary depositions endowments and contributions from philanthropic persons and organizations or otherwise howsoever.

15. (1) The agency may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift, provided that such terms and conditions are not inimical to the interests of Imo State
 - (2) The agency shall not accept any gift if the conditions attached by the person or organizations making the gift are in consistent with the functions of the Agency.

Borrowing power

- 16.(1) The Agency may, with the consent or in accordance with any specific authority given by the governor and ratified by the House borrow by way of loan or overdraft from any source approved by the Governor, such specified amount of money as may be required by the agency for meeting it's obligations and discharging it's functions under this law.
 - (2) The Agency may, subject to the provisions of this law and the conditions of any Trust created in respect of any property, invest all or any of it's funds with like consent or general authority of the Governor.
 - (3) The Agency may invest any surplus funds of the agency in securities prescribed by the Trustee Investments Law or such other securities as may, from time to time, be approved by the Governor.
 - (4) Subject to the provisions of the Land Use Act, and any special or general direction which the Governor may give in that behalf, the Agency may acquire or lease any land required for its purpose under this law.

Annual estimates and Audit.

17. (1) The Agency shall cause to be prepared, not later than 30th September each year, an estimate of the expenditure and income of the Agency during the next succeeding year and when prepared, they shall be submitted to the Imo state House of Assembly for approval by the Governor.

(2) The Agency shall cause to be kept proper books of accounts and proper records in relation thereto and when certified by the Council, such accounts shall be audited as provided in subsection (3) of this section.

(3) The accounts of the Agency shall be audited by auditors appointed from the list of auditors and in accordance with the guidelines issued by the Auditor-General for the State and the fees of the auditors and the expenses for the audit generally shall be paid from the funds of the Agency.

Annual Reports

18. The Agency shall, not later than three months after the end of each year, submit through the Council to the Governor and House of Assembly a report on the activities of the agency and its administration during the immediate preceding year and shall include in the report the audited accounts of the agency and the auditors reports thereon.

Enterprises eligible for participation

19. Except as provided in section 16 of this law and subject to this Law, an Imo indigene or Non-indigene or a Nigerian or non-Nigerian may invest and participate in the operation of any enterprise in the state.

Application for this Law

20. The provisions of this law shall not to “negative list” as defined in section 2 of this law.

Foreign participation

21. (1) An enterprise in which foreign participation is permitted under section 19 of this law, shall not commence business, except it is incorporated or registered under the Companies and Allied Matters Act.

- (2) Subject to this law, nothing in this law shall be construed as precluding an enterprise to which this law applies, from obtaining such license, lease permit or any other approval as may be acquired for the establishment or operation of the enterprise.

Registration of enterprise with Agency

22. (1) An enterprise in which foreign or local participation permitted under section 19 of this law shall, before commencing business, apply to the Agency for registration.

- (2) The Agency shall, within fourteen working days from the date of receipt of completed registration forms, register the enterprise if it is satisfied that all relevant documents for registration have been duly completed and submitted or otherwise advise the applicant, accordingly.
- (3) Enterprises in operation prior to the establishment of the Agency may apply to the Agency for registration within such period as the Agency may specify.

Purchase of a foreign company

23. A foreign enterprise may buy the shares of any Nigerian enterprise in a in any convertible foreign currency.

Incentives for special investment

24. For the purpose of promoting identified strategic or major investment, the Agency shall, in consultation with appropriate Government Agencies negotiate specific incentive packages for the promotion of investment as the Agency may specify.

Priority areas

25. (1) The Agency may issue guidelines and procedures, which specify priority areas of investment and prescribe applicable incentives and benefits, which are in conformity with Government policy.

(2) Guidelines and procedures issued under subsection (1) of this section shall be signified under the hand of the Chairman of the Council..

Investment Guarantees, transfer of Capital,etc

26. Subject to this section, a foreign investor in an enterprise to which this Law applies, shall be guaranteed unconditional transferability of funds through an authorized dealer, in freely convertible currency, of-

- (a) dividends or profits (net of taxes) attributable to the investment.
- (b) payments in respect of loan servicing where as foreign loan has been obtained, and
- (c) the remittance of proceeds (net of all taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

27. (1) Subject to subsection (2) of this section

- (a) no enterprise shall be nationalized or expropriated by the Government of the State.

- (b) no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.
- (2) There shall be no acquisition of an enterprise to which this Law applies by the State Government , unless the acquisition is in the State interest or for a public purpose and under a law which makes provision for:
- (a) Payment of fair and adequate compensation; and
 - (b) A right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

Dispute Settlement Procedure

28. (1) where a dispute arises between an investor and the State Government in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.
- (2) Any dispute between an investor and the State Government in respect of an enterprise to which this law applies which is not amicably settled through mutual discussions, may be submitted at the option of the aggrieved party to arbitration as follows:
- (a) In the case of a Nigerian investor, in accordance with the rules of accordance with the rules of procedure for arbitration as specified in the arbitration and conciliation act; or
 - (b) In the case of a foreign investor, within the framework of any bilateral or multi-lateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties; or
 - (c) In accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties.
- (3) Where in respect of any dispute, there is disagreement between the investor and the State Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes rules shall apply.

Assistance to enterprise

29. The Agency shall provide an enterprise with such assistance and guidance as the enterprise may require and shall act as liaison between the enterprise and the relevant Government Department and such other public authorities.
30. The Governor may by order make such transitional provisions as appear to him necessary or expedient to give full effect to the provisions of this Law.

Repeal of law No. 22 of 2000 31. (1) The Imo State Privatization and Investment Bureau Law No. 22 of 2000 is hereby repealed.

- (2) Any approval granted or accrued interest under the enactment repealed under subsection 1 of this section shall continue to be force notwithstanding the repeal of the enactment.
- (3) All verifiable rights, duties, obligations, functions, interests, assets and liabilities of the erstwhile Imo State Privatization and Investment Promotion Bureau are hereby vested in the Imo State Investment Promotion Agency created under this law.

Regulation 32. (1) The agency may make regulation.

(a) providing for anything requiring to be prescribed under this law, and

(b) generally for carrying out the principles and objectives of this law.

- (2) Any instrument issued under this subsection (1) of this section shall be under the signature of the Chairman of the Council or any other member of the council as may be designated by him.
33. The provisions of the schedule to this Law shall have effect with respect to the proceedings of the Council and other matters therein mentioned.

SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE AGENCY, ETC.

PROCEEDINGS OF THE AGENCY

- 1. (i) Subject to this Law and section 27 of the Interpretation Act, the Council may make standing orders regulating its proceedings or those of any of its committees.

(ii) The quorum of the Council shall be five members, including the Chairman or, in his absence, the person elected to preside, and two other members from the public sector, and the quorum of any committee of the Council shall be determined by the Council.
- 2. (i) The Council shall meet at least once a quarter in each calendar year.

(ii) At any meeting of the Council the Chairman shall preside, but if he is absent, the members except the Director General present at the meeting shall elect one of the members to preside at the meeting.

(iii) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him to the Council for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Council and shall not count towards a quorum.

(iv) The decision of the Council shall be by a simple majority.

3.
 - (1) The Council may appoint one or more committees to carry out, on behalf of the Council, such of its functions as the Council may determine.
 - (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Council), as may be determined by the Council; and a person other than member of the Council shall hold office on the committee, in accordance with terms of his appointment.
 - (3) A decision of a committee of the council shall be of no effect until it is confirmed by the Council.
 - (4) Any member of the Council and any person holding office on any committee of the Council, who has a personal interest in any contract, scheme or arrangement entered into or proposed to be considered by the Council or any committee thereof, shall forthwith disclose his interest to the Council and shall not vote on any questions relating to the contract, scheme or arrangement.

MISCELLANEOUS

4.
 - (1) The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman or of any person specifically authorized to act for that purpose by the Council.
 - (2) Any contract or instrument which, if made or executed 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 Chairman or any person specially authorized to act for that purpose by the Council
 - (3) Any document purporting to be a document duly executed under the seal of the Agency shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5. The validity of any proceeding of the Council or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Council or committee, or by any defect in the appointment of a member of the council or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Council or committee.