

NIGERIAN ENTERPRISES PROMOTION DECREE 1972



ARRANGEMENT OF SECTIONS

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SCHEDULES

Schedule 1—Enterprises exclusively reserved.

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Decree No. 4

[23rd February 1972]

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:—

Commencement.

General

1.—(1) There is hereby established a body to be known as the Nigerian Enterprises Promotion Board (in this Decree hereafter referred to as "the Board") which shall have and may exercise such functions as may be conferred on it by or under this Decree.

(2) The Board shall have general power to advance and develop the promotion of enterprises in which citizens of Nigeria shall participate fully and play a dominant role and in particular, without prejudice to the generality of the foregoing, the Board shall have power—

(a) to advise the Commissioner on clearly defined policy guide-lines for the promotion of Nigerian enterprises;

(b) to determine any matter relating to business enterprises in Nigeria generally in respect of commerce and industry that may be referred

Establishment of Enterprises Promotion Board, etc.

to it in accordance with any directive of the Commissioner, and to make such recommendations as may be necessary on those matters in such manner as may be directed by the Commissioner ; and

(c) to perform such other functions as the Commissioner may determine, or as may be conferred on it by this Decree or any other enactment,

so however, that in the exercise of any power or the performance of any function by or under this Decree the Board shall not act, in relation to any of the enterprises specified in Schedule 1 or 2 to this Decree which is purely a commercial undertaking, except on the advice of the Permanent Secretary, Federal Ministry of Trade.

(3) The members of the Board shall be appointed by the Commissioner and shall comprise—

(a) the Permanent Secretary, Federal Ministry of Industries, who shall be the Chairman;

(b) one representative each of the following Federal Ministries, that is—

(i) Trade ;

(ii) Finance ;

(iii) Economic Development and Reconstruction ; and

(iv) Internal Affairs ; and

(c) three representatives of development or investment agencies incorporated in Nigeria.

(4) There shall be a Secretary to the Board who shall be an officer in the Federal Ministry of Industries.

(5) The Board shall have power to co-opt any person to attend its meetings.

(6) A member of the Board shall hold office for such period as may be specified in the instrument of appointment.

2.—(1) There is hereby established for each State a Nigerian Enterprises Promotion Committee (hereafter in this Decree referred to as "the committee").

(2) The committee in each State shall consist of—

(a) the Permanent Secretary responsible for industries in the State who shall be the chairman of the committee ;

(b) an officer in the Ministry of Trade ;

(c) the Registrar of Co-operative Societies ;

(d) three other persons to be appointed by the State Commissioner or State Commissioners, as the case may be, for trade and industries, and members of such committee shall hold office for such period as may be directed by the Military Governor of the State.

(3) The committee shall have power to co-opt any person to attend its meetings.

(4) The secretary of the committee shall be an officer in the Ministry of Trade or Industry of the State or any other fit and competent person in the public service of the State appointed by the Military Governor of that State.

(5) The principal function of the committee shall be—

(a) to assist and advise the Board on the implementation of this Decree ;

(b) to ensure that the provisions of this Decree shall be complied with by any alien resident or carrying on business in the State ;

(c) to recommend to the Board such other measures as may be necessary in the opinion of the committee to enable full effect to be given to the provisions of this Decree ; and

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(d) to perform such other functions as may be assigned to it by the Board.

(6) If in any State any office mentioned in this section does not exist or is combined with another office the reference in any paragraph to the office mentioned therein shall be construed as a reference to that office or the offices so combined in the State which in the opinion of the Military Governor most nearly corresponds to the office so mentioned and the decision of the Military Governor in this regard and as to the number of members of the committee shall be final.

(7) In this section, the reference to the Military Governor of the State includes a reference to the Administrator of East-Central State.

3.—(1) Subject to such directions as may be given by the Commissioner, the Board or any committee established by this Decree may determine its own quorum, and may, subject as aforesaid, otherwise regulate its own proceedings.

(2) There may be paid to the members of the Board remuneration and allowances payable in accordance with the current regulations of the Government of the Federation.

(3) The validity of any proceedings of the Board or of any committee shall not be affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of any member, and

(c) the fact that a person not entitled to do so takes part in the proceedings of the Board or, as the case may be, of the committee.

(4) The expenses of the Board in the exercise of its functions shall be paid out of funds provided by the Government of the Federation.

Promotion of Nigerian Enterprises

4.—(1) All enterprises specified in Schedule 1 of this Decree are hereby, subject to the provisions of this Decree, exclusively reserved for Nigerian citizens or associations, and accordingly—

(a) as from the appointed day, no person, other than a Nigerian citizen or association, shall be the owner or part owner of any such enterprise in Nigeria; and

(b) no alien enterprise on or after the date of commencement of this Decree shall be established in Nigeria.

(2) For the purposes of subsection 1 (b) above, an enterprise shall be deemed to be an "alien enterprise", unless the entire capital or proprietary interest, whether financial or otherwise, in the enterprise in so far as it concerns any of the enterprises in Schedule 1 below, is also owned and controlled by Nigerian citizens or associations.

(3) Nothing in this section shall, as from the date of commencement of this Decree and before the appointed day, preclude the sale or transfer by any person of any of the enterprises affected by this section.

5.—(1) All enterprises specified in Schedule 2 of this Decree are hereby, subject to the provisions of this Decree, barred to aliens, and accordingly, no alien shall, as from the appointed day, be the owner or part owner of any such enterprise—

(a) where—

(i) the paid-up share capital of the enterprise does not exceed £200,000, or

Supplementary provisions as to proceedings, etc. of the Board and of a State committee.

Enterprises exclusively reserved for Nigerians. Schedule 1.

Enterprises partially barred to aliens. Schedule 2.

(ii) the turnover of the enterprise does not exceed £500,000, whichever the Board considers to be appropriate and applicable in relation to such enterprise; and

(b) if the paid-up share capital exceeds £200,000 or the said turnover exceeds £500,000 (whichever is appropriate and applicable), where the equity participation of Nigerian citizens or associations in the enterprise is less than 40 per cent, and

no alien enterprise shall be established, on and after the date of commencement of this Decree, as respects any of the said enterprises, or continue to be operated otherwise than as permitted under this Decree.

(2) For the purposes of subsection (1) above—

(a) the references to the "paid-up share capital" and the "turnover" of any enterprise relate to the paid-up share capital or the turnover of the enterprise, as reflected in the accounts submitted to the Federal Board of Inland Revenue for the purpose of income tax returns during the year of assessment 1968/69, 1969/70 and 1970/71 (whichever is the highest) or in the case of an enterprise established after 1st April 1971, subject as in subsection (1) above, from the year of assessment next following the year when such enterprise was established;

(b) "equity participation" means equity shares or other capital contributions; and

(c) an enterprise shall be deemed to be an alien enterprise—

(i) as respects the operation of subsection (1) (a) of this section, unless the paid-up share capital or proprietary interest, whether financial or otherwise, in the enterprise is also owned and controlled by Nigerian citizens or associations, and

(ii) as respects the operation of subsection (1) (b) of this section, unless the conditions therein stated regarding the equity participation of Nigerian citizens or associations in the enterprise are, as from the commencement of this Decree, complied with.

(3) Notwithstanding the foregoing provisions, an exemption may with the approval of the Federal Executive Council be granted in respect of any enterprise to which this section relates by the Commissioner—

(a) with a view to enabling any alien to comply with any of the conditions set out in subsection (1) (a) and (b) of this section; and

(b) on any application made to him within such period not being earlier than 4 months before the appointed day,

and the exemption may with such approval be granted, subject to such conditions as the Commissioner may on the recommendation of the Board specify, for an initial period of 6 months after the appointed day.

(4) Any exemption granted pursuant to the foregoing provisions may be renewed by the Commissioner on the recommendation of the Board and with the approval of the Federal Executive Council for a further period of not more than 6 months at a time on any subsequent application therefor.

Inspectors of enterprises.

6.—(1) Without prejudice to the operation of any other enactment, there shall be for the purposes of this Decree a number of inspectors of enterprises (in this Decree hereafter referred to as "inspectors") who shall be members of the public service of the Federation.

(2) The inspectors shall, subject to this section, have such powers and carry out such functions as the Commissioner may confer on them.

(3) Notwithstanding the foregoing subsection (2), for the purpose of carrying out any of their functions, such 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 Decree 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 Decree, and may require the production of all books of account or other documents and inspect them for ensuring that the provisions of this Decree 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 such inspector the right to inspect the building or premises or the business for the determination of the matter specified in subsection 3 (b) above ; 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 Decree.

7. The Board may by instrument in writing, notwithstanding section 6 (3) above, request any person 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.

Supply of
information.

8. The Commissioner may as from the commencement of this Decree and before the appointed day 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 with the prior approval of the Federal Executive Council—

Alteration of
the lists of
enterprises.

(a) alter the list of enterprises specified, respectively, in Schedules 1 and 2 of this Decree by way of addition, substitution or deletion ;

(b) as specified in section 5 above, vary the amount of the paid-up share capital of the enterprise, the turnover of the enterprise, the extent of the equity participation of Nigerian citizens or associations in the enterprise, and the years of assessment which shall be applicable or any of those matters ; and

(c) make such different provisions in relation to different enterprises or as respects different areas of the Federation, and impose such terms and conditions as he may deem necessary.

Exemptions.

9. The Commissioner may, without prejudice to the powers exercisable under section 5 above and subject thereto, with the prior approval of the Federal Executive Council, by an order published in the Federal Gazette exempt any existing enterprise from all or any of the provisions of this Decree and may (subject as aforesaid and with such approval) impose in relation to any exemption such conditions as he may think fit.

Offences and Penalties

Penalty for
being as a
director

10.—(1) Any person, who—

(a) acts as a front or purports, for the purposes of defeating or in a manner likely to defeat the object of this Decree, 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 Decree—

(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 £7,500 or to imprisonment for a term of 5 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 Decree, except with the written prior approval of the Federal Commissioner for Internal Affairs.

Offences and
penalties

11.—(1) Any person found guilty of any offence under this Decree for which no penalty is provided shall upon conviction be liable to a fine of £5,000 or be sentenced to imprisonment for 5 years or to both such fine and imprisonment.

(2) Any person who contravenes any of the provisions of this Decree shall, except as otherwise prescribed, be guilty of an offence and shall be sentenced upon conviction to a fine of £500 or to imprisonment for 3 years or to both such fine and imprisonment.

(3) Where any offence under this Decree is committed by a body of persons then—

(a) in the case of a body corporate, other than a partnership or other association, 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.

(4) No person shall, however, be deemed to be guilty of an offence under subsection (3) above, 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.

Additional
penalty for
contraven-
tion of
sections
4 and 5
above.

12.—(1) Where, on or after the appointed day, any alien continues to be the owner or part owner of any enterprise in contravention of section 4 or 5 above, unless exempted under the provisions of this Decree, it shall be lawful for the Board—

(a) to take over, sell or otherwise dispose of the enterprise, and

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(b) to distribute the proceeds of such sale or disposal (if any)—

(i) in the case of partnerships, to the proprietors of the enterprise duly registered as such under the Registration of Business Names Act 1961 ;

1961 No. 17.

(ii) in the case of companies registered under the Companies Decree 1968, to the shareholders of the company ; and

1968 No. 51.

(iii) in any other case, in such manner as may be directed by the Board, and

any expenses incurred by the Board in relation to the exercise of any of the powers conferred by this subsection shall be a charge upon and be defrayed by the Board 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 either case, if the assets of the association are registered by the Registrar of Business Names, or as the case may be, the Registrar of Companies or any person duly authorised to do so, in the name of the Federal Military Government.

(3) In this section, "business permit" means any business permit issued pursuant to section 8 of the Immigration Act 1963.

1963 No. 6.

Supplementary Provisions

13.—(1) The Commissioner may make regulations generally for the purpose of giving effect to the provisions of this Decree, and may in particular, without prejudice to the generality of the foregoing provision, make regulations—

Regulations and reports.

(a) prescribing the forms for returns and other information required under this Decree ;

(b) prescribing the detailed powers and functions of inspectors appointed for the purposes of this Decree ;

(c) for the procedure for the obtaining of any information required under this Decree ;

(d) requiring returns to be made, within the period specified therein, by any enterprise to which this Decree applies ;

(e) prescribing any fees payable under this Decree ; and

(f) prescribing such other matters as may be referred to him by the Federal Executive Council.

(2) Any regulations made pursuant to subsection (1) above shall be presented to the Federal Executive Council for the approval of that Council together with any report and recommendations of the Board including any measures which the Commissioner proposes in relation thereto.

14. Any person aggrieved by any decision of the Board or by the exercise by the Board of any power under this Decree shall have the right to forward a petition on such grievance to the Commissioner who may, notwithstanding anything to the contrary in this Decree, and subject to the approval of the Federal Executive Council, confirm or reverse the decision of the Board or take such further measures in relation to the petition as he may think just and reasonable.

Right to petition.

Exclusion
of rights.

15. Except as otherwise prescribed by this Decree, there shall be no right of appeal against any act, matter or thing done or purported to be done by or under this Decree; and, without prejudice to the operation of any other enactment excluding the jurisdiction of a court of law in respect of certain proceedings, and for the avoidance of doubt, no proceedings by way of originating summons, certiorari, mandamus, prohibition, injunction or any other prerogative writ shall lie or be instituted on account of or in respect of any such act, matter or thing done or purported to be done.

Item

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Interpreta-
tion.

16.—(1) In this Decree, 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;

“appointed day” means 31st March 1974;

“Commissioner” means the Federal Commissioner for Industries;

“enterprise” includes any industrial or commercial undertaking;

“Nigerian citizen or association” means—

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1963 No. 20.
1960 No. 43.

1968 No. 51.

1961 No. 22.

(2) The reference in this Decree to “the equity participation of Nigerian citizens or associations” is a reference to the stocks and shares which Nigerian citizens or associations have in such industry which do not bear fixed interest or dividend.

(3) The references in Schedule 1 and Schedule 2 to “Retail trade” and “Wholesale distribution” shall be construed, respectively, as including references to such retail trade and wholesale distribution as may be specified for the purposes of this Decree, with the approval of the Federal Executive Council, by an order made by the Commissioner.

(4) Section 15 above shall not be so construed as to exclude the right to appeal against any decision of a court in connection with any criminal offence created under this Decree.

Citation and
extent.

17. This Decree may be cited as the Nigerian Enterprises Promotion Decree 1972 and shall apply throughout the Federation.

Item

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SCHEDULES

Sections 4 and 16

SCHEDULE 1

ENTERPRISES EXCLUSIVELY RESERVED

Item

1. Advertising agencies 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, bricks and ordinary tiles 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. Clearing and forwarding agencies.
11. Hairdressing.
12. Haulage of goods by road.
13. Laundry and dry-cleaning.
14. Manufacture of jewellery and related articles.
15. Newspaper publishing and printing.
16. Ordinary garment manufacture not combined with production of textile materials.
17. Municipal bus services and taxis.
18. Radio and television broadcasting.
19. Retail Trade (except by or within the departmental stores and supermarkets).
20. Rice milling.
21. Singlet manufacture.
22. Tyre retreading.

SCHEDULE 2

Sections 5 and 16

ENTERPRISES BARRED TO ALIENS UNDER CERTAIN CONDITIONS

Item

List of Enterprises

1. Beer brewing.
2. Boat building.
3. Bicycle and motorcycle tyre manufacture.
4. Bottling soft drinks.
5. Coastal and inland waterways shipping.
6. Construction industries.

SCHEDULE 2—continued

Sections 5 and 16

7. Cosmetics and perfumery manufacture.
8. Departmental stores and supermarkets.
9. Distribution agencies for machines and technical equipment.
10. Distribution and servicing of motor vehicles, tractors and spare parts thereof or other similar objects.
11. Estate agency.
12. Fish and shrimp trawling and processing.
13. Furniture making.
14. Insecticides, pesticides and fungicides.
15. Internal air transport (scheduled and charter services).
16. Manufacture of bicycles.
17. Manufacture of cement.
18. Manufacture of matches.
19. Manufacture of metal containers.
20. Manufacture of paints, varnishes or other similar articles.
21. Manufacture of soaps and detergents.
22. Manufacture of suitcases, briefcases, handbags, purses, wallets, portfolios and shopping bags.
23. Manufacture of wire, nails, washers, bolts, nuts, rivets and other similar articles.
24. Paper conversion industries.
25. Passenger bus services (inter state).
26. Poultry farming.
27. Printing of books.
28. Production of sawn timber, plywood, veneers and other wood conversion industries.
29. Screen printing on cloth, dyeing.
30. Slaughtering, storage, distribution and processing of meat.
31. Shipping.
32. Travel agencies.
33. Wholesale distribution.

MADE this 23rd day of February 1972.

GENERAL Y. GOWON,
*Head of the Federal Military Government,
 Commander-in-Chief of the Armed Forces,
 Federal Republic of Nigeria*

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EXPLANATORY NOTE

(This note does not form part of the above Decree, but is intended to explain its purpose)

This Decree establishes the Nigerian Enterprises Promotion Board, which has the power to advance the promotion of Nigerian enterprises. The Decree also establishes the Enterprises Promotion Committee in each State of the Federation with certain powers to assist and advise the Board on the implementation of the Decree, and to ensure that the provisions of the Decree are complied with by aliens resident in every State.

2. Under section 4 of the Decree, the establishment and operation of certain enterprises (listed in Schedule 1 of the Decree) are now exclusively reserved for Nigerian citizens, companies and associations, and certain other enterprises (listed in Schedule 2 of the Decree) cannot be operated or carried on by aliens in Nigeria unless they fulfil certain conditions specified in section 5 of the Decree. The Decree also provides that exemptions may be granted in certain circumstances, and subject to such conditions as may be deemed necessary in respect of enterprises affected by the Decree.

3. Any person who acts as a front for the purpose of defeating the object of the Decree is liable to be prosecuted, and any contravention of any of the provisions of the Decree is an offence punishable with a fine or imprisonment or both. The Board also has power, under the Decree, to take over, sell or otherwise dispose of any enterprises where there has been a contravention, and may distribute the proceeds in the manner provided under the Decree. An aggrieved person may, however, petition the Commissioner for a review of his case.



Decree No. 5

[17th January 1966]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:—

1. For the avoidance of doubt, the provisions of the Constitution of the Federation relating to the appointment and removal of the Justices of the Supreme Court of Nigeria are hereby amended as follows:—

Amendment
of the
Constitution
of the
Federation.
1963 No. 20.

(a) for subsection (1) of section 112 there shall be substituted the following new subsections—

“(1) The Chief Justice of Nigeria shall be appointed by the Head of the Federal Military Government.

(1A) The Justices of the Supreme Court shall be appointed by the Supreme Military Council, acting after consultation with the Advisory Judicial Committee.”

(b) in subsection (3) of section 112 for the words from “Supreme Military Council” to the end of that subsection, there shall be substituted the words “the Head of the Federal Military Government.”; and

(c) in section 113 for the existing subsection (2) there shall be substituted the following new subsections—

“(2) The person holding or appointed to act in the office of Chief Justice of Nigeria may be removed from his office or appointment by the Head of the Federal Military Government.

(3) A person holding or appointed to act in the office of a Justice of the Supreme Court may be removed from his office or appointment by the Supreme Military Council, acting after consultation with the Advisory Judicial Committee.”

2.—(1) This Decree may be cited as the Constitution (Amendment) Decree 1972 and shall apply throughout the Federation.

Citation,
extent and
commence-
ment.

(2) This Decree shall be deemed to have come into effect on 17th January 1966.

MADE at Lagos this 23rd day of February 1972.

GENERAL Y. GOWON,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

PUBLISHED BY AUTHORITY OF THE FEDERAL MILITARY GOVERNMENT OF NIGERIA
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