

NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT

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National Office for Technology Acquisition and Promotion

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Supplementary provisions relating to the Council

NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT

An Act to establish the National Office for Technology Acquisition and Promotion to monitor, on a continuing basis, the transfer of foreign technology to Nigeria and to provide for other related matters.

[1979 No. 70.]

[24th September, 1979]

[Commencement.]

National Office for Technology Acquisition and Promotion

1. Establishment of the National Office for Technology Acquisition and Promotion
 - (1) There is hereby established a body to be known as the National Office for Technology Acquisition and Promotion (in this Act referred to as "the National Office") which shall have the functions conferred on it under or pursuant to this Act.

[1992 No. 82.]

(2) The National Office shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

2. Governing Council

(1) There shall be as the governing body of the National Office a council to be known as the Governing Council of the National Office for Technology Acquisition and Promotion (in this Act referred to as "the Council") which shall be responsible for the formulation of policy for the National Office and for the discharge of the other functions conferred on it by this Act.

(2) The Council shall consist of a chairman and the following other members, that is-

- (a) one representative each of the following Federal Ministries-
 - (i) Finance;
 - (ii) Internal Affairs;
 - (iii) Justice;
 - (iv) Commerce; and
 - (v) Works and Housing;
- (b) one representative of the National Science and Technology Development Agency;
- (c) one representative of the universities in Nigeria to be appointed by the Minister after due consultation;
- (d) one representative of polytechnics and colleges of technology in Nigeria to be appointed by the Minister after consultation with the rectors and principals thereof; and
- (e) the director.

(3) The chairman shall be the Permanent Secretary of the Federal Ministry of Industry or such other officer of that Ministry not below the rank of Assistant Director as the Permanent Secretary may designate in that behalf.

(4) The supplementary provisions in the Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

[Schedule.]

3. Power of the Minister to give directions

The Minister may give to the Council directions of a general character or relating generally to particular matters but not to any individual or case with regard to the exercise by the Council or the National Office of its functions under this Act and it shall be the duty of the Council and the National Office to comply with the directions or cause them to be complied with.

4. Functions of the National Office

Subject to section 2 (1) of this Act, the National Office shall carry out the following functions-

- (a) the encouragement of a more efficient process for the identification and selection of foreign technology;
- (b) the development of the negotiation skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology;
- (c) the provision of a more efficient process for the adaptation of imported technology;

(d) the registration of all contracts or agreements having effect in Nigeria on the date of the coming into force of this Act, and of all contracts and agreements hereafter entered into, for the transfer of foreign technology to Nigerian parties; and without prejudice to the generality of the foregoing, every such contract or agreement shall be so registrable if its purpose or intent is, in the opinion of the National Office, wholly or partially for or in connection with any of the following purposes, that is to say-

- (i) the use of trademarks;
- (ii) the right to use patented inventions;
- (iii) the supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever;
- (iv) the supply of basic or detailed engineering;
- (v) the supply of machinery and plant; and
- (vi) the provision of operating staff or managerial assistance and the training of personnel; and

(e) the monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to this Act.

Registration of contracts, etc.

5. Application for registration of contracts and agreements

(1) Every contract or agreement which on the date of the coming into force of this Act had been entered into by any person in Nigeria and which still has effect on the commencement of this Act in relation to any matter referred to in section 4 (d) of this Act shall be registered with the National Office in the prescribed manner not later than six months after the commencement of this Act.

(2) As from the commencement of this Act, every contract or agreement entered into by any person in Nigeria with another person outside Nigeria in relation to any matter referred to in section 4 (d) of this Act shall be registered with the National Office in the prescribed manner not later than sixty days from the execution or conclusion thereof.

(3) Every application for the registration of a contract or agreement under this section shall be addressed to the director and shall be accompanied by such number of certified true copies of such contract and agreement and by all other related documents including annexures thereto and such other documents and information as may be specified in any particular case by the director.

6. Registration

(1) Where the director is satisfied that none of the specifications mentioned in subsection (2) of this section has been contravened he shall issue the applicant therefor a certificate in such form as may be prescribed.

(2) The director shall not register any contract or agreement where he is satisfied that it falls within any of the following specification, that is to say-

- (a) where its purpose is the transfer of technology freely available in Nigeria;
- (b) where the price or other valuable consideration therefor is not commensurate with the technology acquired or to be acquired;

(c) where provisions are included therein which permit the supplier to regulate or intervene directly or indirectly in the administration of any undertaking belonging to the transferee of the technology and are, in his opinion, unnecessary for the due implementation or execution of such contract or agreement;

(d) where there is an onerous or gratuitous obligation on the transferee of the technology to assign to the transferor or any other person designated by the transferor, patents, trademarks, technical information, innovations or improvements obtained by such transferee with no assistance from the transferor or such person;

(e) where limitations are imposed on technological research or development by the transferee;

(f) where there is an obligation therein to acquire equipment, tools, parts or raw materials exclusively from the transferor or any other person or given source;

(g) where it is provided that the exportation of the transferee's products or services is prohibited or unreasonably restricted or where there is an obligation on such transferee to sell the products manufactured by it exclusively to the supplier of the technology concerned or any other person or source designated by the transferor;

(h) where the use by the transferee of complementary technologies is prohibited;

(i) where the transferee is required to use permanently or for any unconscionable period personnel designated by the supplier of the technology;

(j) where the volume of production is limited for sale and where resale prices are, in contravention of the Price Control Act or any other enactment relating to prices, imposed for domestic consumption or for exportation;

(k) where the transferee is required to appoint the supplier of technology as the exclusive sales agent or representative in Nigeria or elsewhere;

(l) where the contract or agreement is expressed to exceed a period of ten years or other unreasonable term where this is less than ten years;

(m) where the consent of the transferor is required before any modification to products, processes or plant can be effected by the transferee;

(n) where an obligation is imposed on the transferee to introduce unnecessary design changes;

(o) where the transferor, by means of quality controls or prescription of standards, seeks to impose unnecessary and onerous obligations on the transferee;

(P) where there is provision for payment in full by the transferee for transferred technology which remains unexploited by him;

(q) where there is a requirement for the acceptance by the transferee of additional technology or other matter, such as consultancy services, international subcontracting, turn-key projects and similar package arrangements, not required by the transferee for or in connection with the principal purpose for which technology is to be or has been acquired by him;

(r) where the transferee is obliged to submit to foreign jurisdiction in any controversy arising for decision concerning the interpretation or enforcement in Nigeria of any such contract or agreement or any provisions thereof.

(3) Notwithstanding the foregoing provisions of this section, in any case where the Council is satisfied that it would be in the national interest so to do, it may direct the director to issue a certificate to an applicant notwithstanding any convergence between the terms and conditions of a contract or agreement and the specifications laid down in subsection (2) of this section.

(4) Where the parties, on the direction or advice of the director, subsequent to a refusal by the director to issue a certificate of registration, make required adjustments in respect of any contract or agreement or terms and conditions thereof, the director may issue the requisite certificate of registration.

7. Effect of registration

(1) Subject to section 8 of this Act, no payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Federal Ministry of Finance, the Central Bank of Nigeria or any licensed bank in Nigeria in respect of any payments due under a contract or agreement mentioned in section 4 (d) of this Act, unless a certificate of registration issued under this Act is presented by the party or parties concerned together with a copy of the contract or agreement certified by the National Office in that behalf.

8. Cancellation of registration

(1) Where the director is satisfied that any contract or agreement has, subsequent to the registration thereof, been amended or modified in contravention of the provisions of this Act, he shall give notice in writing to the parties concerned of his intention to cancel the certificate of registration and the provisions of section 9 of this Act relating to appeals shall apply to any such notice as if it were a notice to reject an application for registration.

(2) Where no appeal is lodged as provided under subsection (1) of this section, the Director shall, with the approval of the Council, cancel the certificate of the party concerned.

9. Appeals, etc.

(1) Any person aggrieved by the proposal of the director to reject an application for registration may, within sixty days after the date of notice of intention to reject the application is given to him, lodge with the secretary a notice of appeal to the Council.

(2) The notice of appeal shall be in writing setting out the grounds on which it is made and the secretary shall lay it before the meeting of the Council next holding after the notice of appeal was lodged with him.

(3) Where an appeal is allowed, the Council shall cause the director to issue a certificate of registration in that behalf and where an appeal is disallowed, the aggrieved party shall, subject to the applicable rules of court, have a right of further appeal to the Federal High Court.

(4) Appeals shall lie from decisions of the Federal High Court under this section in the same manner and to the same extent as appeals from the decisions of the court in civil proceedings given by that Court sitting at first instance.

Provisions as to staff and finances

10. Director and other staff of the National Office

(1) There shall be an officer of the National Office to be known as the director who shall be appointed by the President on the recommendation of the Minister.

(2) The director shall be the chief executive officer of the National Office and shall hold office on such terms and conditions as may be specified in his letter of appointment or on such other terms and conditions as may be determined, from time to time, by the President and, generally, by the Council in relation to the other staff of the National Office.

(3) There shall be appointed by the Council, a secretary who shall carry out such duties as the Council or the director may specify or as may be imposed on him by this Act.

(4) There may be appointed, from time to time, by the Council such other staff as may be required for the purposes of the efficient performance of the functions conferred on the National Office under or pursuant to this Act.

11. Service in the National Office to be pensionable

(1) Notwithstanding the provisions of the Pensions Act, it is hereby declared that service in the National Office shall be approved service for the purposes of that Act and, accordingly, officers and other staff of the National Office shall in respect of their service in the National Office be entitled to such pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the public service of the Federation, so however that nothing in this Act shall prevent the appointment of a person to any office in the National Office on terms which preclude the grant of a pension or gratuity in respect of that office.

[Cap. P4.]

(2) For the purposes of the application of the provisions of the Pensions Act in accordance with this Act, any power exercisable thereunder by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Council and not by any other person or authority.

12. Financial provisions

(1) The National Office shall establish and maintain a fund the proceeds of which shall be applied-

- (a) to the cost of administration of the National Office and the Council;
- (b) for reimbursing members of the Council or of any committees set up by the Council for such expenses as may be authorised by the Council and in accordance with the rates approved in that behalf by the President;
- (c) to the payment of salaries, allowances or other emoluments and pensions, gratuities and other terminal benefits of the employees of the National Office;
- (d) for the maintenance of any property vested in or acquired by the National Office; and
- (e) for or in connection with all or any of the functions of the National Office or the Council under or pursuant to this Act.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section-

- (a) such sums as may be provided in each financial year by the Government of the Federation for payment into the fund;
- (b) fees charged for registration of contracts and agreements and for other services rendered by the National Office;
- (c) all other sums accruing to the National Office under or pursuant to this Act.

13. Annual estimates, accounts and audit

(1) The Council shall cause to be prepared not later than 31 December in each year, an estimate of the expenditure and income of the National Office during the next succeeding financial year, and when prepared they shall be submitted through the Minister for approval by the Federal Government.

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

(3) The accounts of the National Office shall be audited as soon as may be after the end of each financial year by auditors appointed from the list of auditors and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Miscellaneous and supplementary

14. Power to obtain information

(1) The director or any other staff of the National Office may by notice in writing served on any person carrying on an industrial or commercial undertaking require that person to furnish in such form as he may direct, information on such matters as may be specified by him.

(2) A person required to furnish returns pursuant to subsection (1) of this section, shall within 45 days of the notice comply with such notice.

15. Penalties for false returns, obstruction, etc.

(1) If any person required to furnish returns pursuant to section 14 of this Act fails to furnish those returns as required thereunder he is guilty of an offence and liable on conviction to a fine of \$2,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

(2) If a person in purported compliance with a requirement to furnish returns as aforesaid, knowingly or recklessly makes any statement in the returns which is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of \$1,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

(3) Any person who-

(a) wilfully obstructs any employee of the National Office acting in the execution of his duties under this Act; or

(b) without reasonable cause fails to give any such employee acting as aforesaid any information or other assistance which such employee may reasonably require of him for the purposes of the performance by such employee of his functions under this Act, or of any subsidiary legislation made hereunder, is guilty of an offence and liable on conviction to a fine of \$1,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

16. Restriction on disclosure of information by staff and penalty therefor

(1) Any person appointed or employed for the due administration of this Act who communicates to any other person (not being a member of the Council or another employee of the National Office authorised to receive such communication) any document, drawing, photograph, plan, model or other information whatsoever which to his knowledge describes, represents or illustrates-

(a) any existing or proposed machinery, plant, installation or other structure whatsoever; or

(b) any patent, process or any design, submitted by any person to the National Office for or in connection with any application for registration under this Act is guilty of an offence.

(2) Any person found guilty of an offence under this section shall on conviction be liable to a fine of #2,000 or to imprisonment for a term of two years or to both such fine and imprisonment.

17. Offences by bodies corporate and unincorporated

Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in such capacity as aforesaid, shall severally be guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

18. Annual reports

The Council shall, not later than 30 June in each year, submit to the Minister a report on the activities of the National Office during the immediately preceding year and shall include in such report the audited accounts of the National Office.

19. Staff regulations

(1) Subject to the provisions of this Act, the Council may make staff regulations relating generally to the conditions of service of the employees of the National Office and, without prejudice to the generality of the foregoing, such regulations may provide for-

- (a) the appointment, promotion and disciplinary control (including dismissal) of the employees of the National Office; and
- (b) appeals by such employees against dismissal or other disciplinary measures, and until such regulations are made, any instrument relating to the conditions of service of public officers shall, with such modifications as may be necessary, be applicable to the employees of the National Office.

(2) Staff regulations made under subsection (1) of this section, shall not have effect until approved by the Minister; when so approved they may not be published in the *Federal Gazette* but the Council shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

20. Fees

The fees payable for registration of a contract or agreement or for other services rendered by the National Office (and any variations to such fees) shall be such as may be fixed by the Council with the prior approval of the Minister.

21. Savings and transfer of liabilities, staff, etc.

(1) The statutory functions, rights, interests, obligations and liabilities of the National Office 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

deemed to have been assigned to and vested in the National Office established under this Act.

[1992 No. 82.]

(2) Any such contract or instrument as is mentioned in subsection (l) of this section, shall be of the same force and effect against or in favour of the National Office and shall be enforceable as fully and effectively as if instead of that National Office, the National Office established under this Act had been named therein or had been a party thereto.

[1992 No. 82.]

(3) The National Office for Technology Acquisition and Promotion shall be subject to all the obligations and liabilities to which the National Office was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the National Office for Technology Acquisition and Promotion as they had against the National Office immediately before the commencement of this Act.

[1992 No. 82.]

(4) Any proceedings or cause of action pending or existing immediately before the commencement of this Act, by or against the National Office, in respect of any right, interest, obligation or liability of the National Office 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 National Office for Technology Acquisition and Promotion to the same extent that such proceedings, cause of action or determination might have been continued, commenced or enforced by or against the National Office established under the redesignated Act.

[1992 No. 82.]

(5) All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act, were vested in the National Office under the redesignated Act shall by virtue of this Act and without further assurance, be vested in the renamed National Office.

[1992 No. 82.]

22. Interpretation

In this Act, unless the context otherwise requires-

"chairman" means the chairman of the Council;

"contract or agreement" includes any arrangement whatsoever which is capable of enforcement between the parties concerned or by an interested or affected third party;

"Council" means the Governing Council of the National Office established by section 2 of this Act;

"director" means the director of the National Office appointed under section 10 of this Act;

"member" means any member of the Council including the chairman;

"Minister" means the Minister charged with responsibility for matters relating to industry;

"National Office" means the National Office for Technology Acquisition and Promotion established by section 1 of this Act;

"prescribed" means prescribed by regulations made by the Minister;

"secretary" means the secretary to the Council appointed under section 10 of this Act.

23. Short title

This Act may be cited as the National Office for Technology Acquisition and Promotion Act.

SCHEDULE

[Section 2 (4).]

Supplementary provision relating to the Council

Proceedings of the Council

1. (l) Subject to this Act and to section 27 of the Interpretation Act (which provides for the decisions of a statutory body to be taken by a majority of the members of the body and for the person presiding to have a second or casting vote), the Council may make standing orders regulating the proceedings of the Council or of any committee thereof.

[Cap. 123.]

(2) The quorum of the Council shall be the Chairman and four other members, and the quorum of any committee of the Council shall be determined by the Council.

2. (l) The Council shall meet not less than four times in each year and, subject thereto, the Council shall meet whenever it is summoned by the chairman; and if the chairman is required to do so by notice given to him by not less than three other members he shall summon a meeting of the Council to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Council, the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

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

(4) Notwithstanding anything in the foregoing provisions of this paragraph, the first meeting of the Council shall be summoned by the Minister.

Committees

3. (l) 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 the number of persons determined by the Council, who need not necessarily all be members of the Council; and a person other than a member of the Council shall hold office on the committee in accordance with the 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.

Miscellaneous

4. (l) The fixing of the seal of the National Office shall be authenticated by the signature of the chairman or of some other member authorised generally or specially 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

National Office by any person generally or specially authorised to act for that purpose by the Council.

(3) Any document purporting to be a document duly executed under the seal of the National Office shall be received in evidence and shall, unless the contrary is proved, be presumed to be so executed.

5. Members of the Council who are not public officers, shall be paid out of monies at the disposal of the Council such remuneration, fees or allowances in accordance with such scales as may be approved, from time to time, by the President.

6. The validity of any proceedings of the Council, or of a committee thereof, shall not be 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.

7. Any member of the Council, and any person holding office on a committee of the Council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Council or a committee thereof shall forthwith disclose his interest to the Council and shall not vote on any question relating to the contract or arrangement.