

FEDERAL REPUBLIC OF NIGERIA



SENATE COMMITTEE ON TRADE AND INVESTMENT

REPORT OF THE INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT AMENDMENT BILL 2018 (SB 638)

1.0 INTRODUCTIONS:

The Senate President and Distinguished Senators, you may recall that the Bill was introduced and the first reading was taken in this hallow Chamber on the 13th March, 2018. The Bill was read the second time on the 22nd March 2018 and referred to the Committee on Trade and Investment for further legislative action. This important Bill was sponsored by Distinguished Senator Sabo N. Mohammed, (Jigawa South). The Bill when passed will help in the "cause of doing business" in Nigeria which will enhance economic growth.

2.0 SECRETARIAT:

Emmanuel Odo (JP) - Clerk

3.0 METHODOLOGY:

The Committee adopted the following methodology in the course of its assignment.

- i) Received a total of seven (7) memoranda from members of the public;
- ii) Considered the Bill clause by clause during its meeting;
- iii) Conducted public hearing on the 28th March, 2018 and it was attended by Nigerian Investment Promotion Commission (NIPC) and other relevant stakeholders;
- iv) Considered contributions by Distinguished Senators at the 2nd reading of the bill.

The Bill seeks to amend the Industrial Development (Income Tax Relief) Act Cap. 17, Laws of the Federation of Nigeria, 2004.

The Bill has six (6) clauses. The amendment of the Bill seeks to address some of the deficiencies in the principal Act by creating a more robust legislative framework to assist the Nigerian Investment Promotion Commission (NIPC) to perform its duties effectively and efficiently.

It is as a result of this my respected colleagues, that this amendment is being proposed for our country to benefit maximally from the huge investment in the country.

The objective of the Industrial Development (Income Tax Relief) Act Cap. 17, Laws of the Federation of Nigeria, 2004 (SB638) is Tax relief that attracts investors to the nation's economy

4.0 RECOMMENDATION:

The Committee strongly recommends six (6) clauses as contained in the details.

5.0 Attached is the details for your consideration and approval.

6.0 CONCLUSION:

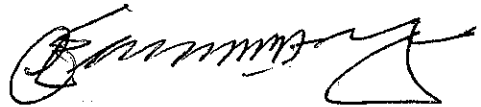
The Committee lead by Distinguished Senator Sabo N. Mohammed would like to use this medium to thank the Senate for giving the members the opportunity to serve.

Thank you

I so submit.



**Senator Sabo N. Mohammed
Chairman**



**Mr. Emmanuel Odo (JP)
Committee Clerk**

SIGNATURE PAGE



SENATE COMMITTEE ON TRADE AND INVESTMENT COMMITTEE MEMBERS

| S/NO | NAME | POSITION | SIGNATURE |
|------|------------------------------|---------------|-----------|
| 1. | Sen. Sabo N. Mohammed | Chairman | |
| 2. | Sen. Mustapha M. Sani | Vice Chairman | |
| 3. | Sen. Fatimat Raji- Rasaki | Member | |
| 4. | Sen. Boroffice Robert Ajayi | Member | |
| 5. | Sen. Usman Bayaro Nafada | Member | |
| 6. | Sen. Hope Uzodinma | Member | |
| 7. | Sen. Efiong Nelson | Member | |
| 8. | Sen. Baba Kaka Garbai | Member | |
| 9. | Sen. Yusuf A. Yusuf | Member | |
| 10. | Sen. Suleiman Hunkuyi Othman | Member | |
| 11. | Sen. Shuaibu Isa Lau | Members | |
| 12. | Sen. Victor C. Umeh | Member | |

**A
BILL
FOR**

AN ACT TO AMEND THE INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT CAP.17, LAWS OF THE FEDERATION OF NIGERIA, 2004 AND FOR RELATED MATTERS

| CLAUSE | PROVISION OF THE PRINCIPAL ACT | PROVISIONS OF THE BILL | COMMITTEE RECOMMENDATIONS | REMARKS |
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| | | BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria As follows - | Retained as in the Bill | |
| | | <u>AMENDMENT OF CAP.17 LFN, 2004</u> The Industrial Development (Income Tax Relief) Act CAP.17, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as "the Principal Act") is amended as set out in this Bill - | Retained as in the Bill | |
| 1 | 1. Publication of the list of pioneer industries and products and issuing of Pioneer certificates (1) Where the President is satisfied that- (a) any industry is not being carried on in | <u>AMENDMENT OF SECTION 1</u> Section 1 of the Principal Act is amended - (a) by inserting a new "subsection (4)" immediately after the existing "subsection (3)", and renumbering accordingly " (4) Notwithstanding the provisions of sections 1 (2) and (3), any company expanding its | Retained as in the Bill Retained as in the Bill | See section 1 new(4), (4)(a)&(b), (5) and (6)(b) on pgs 1, 5, 6 and 7 respectively |

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| | <p>Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria of any industry; or</p> <p>(b) it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria by declaring the industry to be a pioneer industry and</p> | <p>operations in a pioneer industry or pioneer product may apply under this Act for the issue of a new pioneer certificate, and nothing precludes any company whose application was rejected on the grounds of expansion from re-applying for reconsideration under this subsection”</p> | | |
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| | <p>any product of the industry to be a pioneer product.</p> <p>the President may direct publication in the Gazette of a list of such industries and products (in this Act referred to as "the list of pioneer industries and pioneer products") and upon publication as aforesaid, but subject to subsections (5) and (6) of this section, application may at any time thereafter be made under this Act, for the issue of a pioneer certificate to any company in relation to any such pioneer industry or pioneer product, and the President may, in accordance with the</p> | | | |
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| | <p>provisions of this Act, issue the certificate to the company in any proper case.</p> <p>(2) An application may also be made under this section for any industry to be included in the list of pioneer industries and pioneer products.</p> <p>(3) Any application under this section may be made by a company incorporated in Nigeria, or by a group of persons on behalf of a company</p> | | | |
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| | <p>which is to be so incorporated.</p> <p>(4) No application for the issue of a pioneer certificate to any company shall be made under this section unless the estimated cost of qualifying capital expenditure to be incurred by the company on or before production day (if the application is approved) is an amount which-</p> <p>(a) in the case of an indigenous-</p> | <p>(b) In subsection (4) paragraph (a) and (b) by substituting for the figure " N50,000", the figure " N100,000,000", and the figure "N150,000, the figure " N120,000,000" respectively.</p> | <p>(a) in the case of an indigenous-</p> | |
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| | <p>controlled company, is not less than N50,000; or</p> <p>(b) in the case of any other company, is not less than N150,000</p> <p>(5) The President may from time to time, on any ground which appears to it sufficient, amend the list of pioneer industries and pioneer products.</p> <p>(6) Where, in exercise of the powers conferred under subsection (5) of this section,</p> | <p>(d) by inserting a proviso to read –</p> <p>“Provided that a three (3) year notice period is given for the commencement of the amendment” immediately after subsection (5).</p> | <p>controlled company, is not less than N100,000,000; or</p> <p>(b) in the case of any other company, is not less than N120,000,000</p> <p>(5) The President may from time to time, on any ground which appears to it sufficient, amend the list of pioneer industries and pioneer products provided that a three (3) years notice period is given for the commencement of the amendment.</p> | |
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| | <p>any industry or product is deleted from the list of pioneer industries and pioneer products, then-</p> <p>(a) no application under this section shall thereafter be made by any company in relation to that industry or product; and</p> <p>(b) as respects any pending application made under subsection (1) of this section, no pioneer certificate shall be issued</p> | <p>(c) In subsection (6) paragraph (b) by substituting for "paragraph (b)", a new "paragraph (b)"</p> <p>" (b) Notwithstanding the provisions of the subsection (5) and (6)(a) of this section, any pending application made before the deletion or removal of the industry or product from the list of pioneer industries and pioneer products shall be</p> | <p>Retained as in the Bill</p> | |
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| | <p>under this Act, to any company in relation to that industry or product.</p> | <p>processed by the Minister and forwarded to the President for approval or disapproval”.</p> | | |
| 2. | <p>2. Mode of application for pioneer certificate, etc., and fee payable</p> <p>(1) Subject to the provision of this Act, every application under section 1 of this Act shall be addressed to the Minister and shall be in such form as he may, from time to time, specify.</p> <p>(2) Every such application shall state the grounds upon which the applicant relies and, if the application is for the issue of a pioneer</p> | <p><u>AMENDMENT OF SECTION 2</u></p> <p>Section 2 of the principal Act is amended-</p> | | <p>See section 2 (4) and new subsection 7 on pg 12 and 13 respectively</p> |

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| <p>certificate to any company, the applicant shall-</p> <p>(a) state whether the company is, or the proposed company when incorporated shall be, an indigenous-controlled company;</p> <p>(b) give particulars of the assets on which qualifying capital expenditure will be incurred by the company, including their source and estimated cost-</p> <p>(i) on or before production day; and</p> <p>(ii) during a period of three years following production day;</p> <p>(a) specify the place in which the assets, in respect of which qualifying expenditure will be incurred by the company or proposed company, are to be stipulated;</p> <p>(b) estimate and state the probable date of production day of the company or proposed company;</p> | | | |
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| | <p>(c) specify any product and by-product (not being a pioneer product) proposed to be produced by the company or proposed company, and give a reasonable estimate of the quantities and value of such product and by-product during a period of one year from production day;</p> <p>(d) give particulars of the loan and share capital, or the proposed loan and share capital of the company, or proposed company, including the amount and date of each issue or proposed issue, and the source from which the capital is to be or has been raised;</p> <p>(e) in the case of a company already incorporated, give the name, address and nationality of</p> | | | |
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| | <p>each director of the company and the number of shares held by him; and</p> <p>(f) in the case of a propose company give the names, address and nationality of each promoter of the company.</p> <p>(g) in the case of a company already incorporated, give the name, address and nationality of each director of the company and the number of shares held by him; and</p> <p>(h) in the case of a proposed company give the name, address and nationality of each promoter of the company.</p> <p>(3) Every such application shall contain a declaration signed by the applicant that all the particulars contained in the application are true and an undertaking to</p> | | | |
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| <p>produce proof, if required, to the satisfaction of the Minister, of the truth of any such particulars which, under subsection (5) of this section, the Minister may require the applicant to furnish.</p> <p>(4) The application shall be accompanied by a fee of N100 (which sum shall not be refundable to the applicant, whether the application is approved or not) and the fee shall be credited to the Consolidated Revenue Fund of the Federation.</p> <p>(5) Where an application is submitted to the Minister under this section, he may require the applicant to furnish such further particulars as the Minister may consider necessary, to enable the president to consider the application.</p> <p>(6) As soon as may be after the application is submitted to the Minister or, as the case maybe, after any further particular required by the Minister under</p> | <p>(a) in subsection (4) line 1, by substituting for the figure "N100", the figure "N200,000"</p> | <p>(4) The application shall be accompanied by a fee of N200,000 (which sum shall not be refundable to the applicant, whether the application is approved or not) and the fee shall be credited to the Consolidated Revenue Fund of the Federation.</p> | |
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| | <p>subsection 5 of this section has been furnished to him by the applicant, the Minister shall submit the application and, subject to the provisions of this Act, the President may approve or disapprove the application.</p> | <p>(b) by inserting the following new subsections “ (7) “ immediately after the existing “ subsection (6)”, that is –</p> <p>(7) All application for pioneer status certificate made pursuant to the provisions of this Bill shall be processed by the Minister and forwarded to the President and a Notice of disapproval or approval shall be issued within one (1) year from the date of submission of application”.</p> | <p>Retained as in the Bill</p> | <p>New subsection 7</p> |
| <p>3.</p> | <p>3. Terms of pioneer certificate (1) Without prejudice to subsection (3) of this section, every pioneer certificate shall be in the terms of the application to which it relates:</p> | <p><u>AMENDMENT OF SECTION 3</u></p> <p>Section 3 of the Principal Act is amended by inserting a new “subsection (7) “immediately after the existing “subsections (6)” to read as follows –</p> | <p>Retained as in the Bill</p> | <p>See section 3 (6)(c)&(d) and new subsection 7 on pg 16 and 17 respectively</p> |

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| <p>Provided that the President may make any variation in any such application.</p> <p>(2) A pioneer certificate may specify any permissible by-product which may be produced by the pioneer company in addition to the pioneer product and, if the President thinks fit, the pioneer certificate may limit the proportion of the permissible by-product in relation to the pioneer product, either in quantity or in value or both.</p> <p>(3) Where an application for the issue of a pioneer certificate made on behalf of a proposed company is approved by the President, it shall-</p> <p>(a) specify the period within which the company must be incorporated, not being later than four months after the date of notification of the approval to the applicants;</p> <p>(b) specify any other conditions to be endorsed on the pioneer certificate when it is issued.</p> | | | |
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| <p>(4) Any pioneer certificate to be issued to any company to which subsection (3) of this section relates shall be issued only after the company has been incorporated and the certificate shall be effective from a date, not earlier than the date on which the application for the pioneer certificate was submitted to the Minister or the date on which the company is so incorporated, whichever is the later, and the President may require that an undertaking shall be given by the company for the purpose of ensuring the due compliance by the company with any conditions endorsed on its pioneer certificate.</p> <p>(5) Notice of any condition specified by the President under subsection (3) of this section, or of any undertaking required under subsection (4) of this section, shall be given by the Minister to the applicants concerned.</p> | | | |
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| <p>(6) Notwithstanding anything contained in section 10 of this Act, in any case where a pioneer company-</p> <p>(a) has acquired or proposes to acquire assets from any company to which a pioneer certificate has been granted under the Aid to pioneer Industries Act, the Industrial Development (income Tax Relief) Act or this Act; or</p> <p>(b) has taken over or proposes to take over the whole assets of any other company which is not a pioneer company, the pioneer certificate may specify the maximum tax relief period, not exceeding five years, to be enjoyed by the pioneer company.</p> | | <p>(c) for any company whose investment is in the rural area where infrastructures like road, electricity, housing, water etc are provided by the company, the pioneer certificate may specify the maximum tax relief period, not</p> | <p>New subsection 3(6)(c)and(d)</p> |
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| | | <p>(7) where an application for the issue of a pioneer certificate is made pursuant to section 1 (4) of this Bill , the company shall be required to prepare and maintain separate audited accounts in respect of income and expenditure from the expansion of the pioneer industry or pioneer product.</p> | <p>exceeding seven years; and (d) for any company whose investment is in Agriculture and Agro-processing, where over 90% of inputs are local materials, the pioneer certificate may specify the maximum tax relief period, not exceeding fifteen years.</p> <p>Retained as in the Bill</p> | |
| 6. | <p>6. Certifying the date of production day and the amount of qualifying capital expenditure, etc. (1) Not later than one month after the material date, a pioneer company shall make an application in writing to the Director to certify the date of its production day and shall propose a date to</p> | <p><u>AMENDMENT OF SECTION 6</u></p> | | <p>See section 6 (11)(a)&(b) on pg 21</p> |

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| | <p>be so certified and give reason for proposing that date.</p> <p>(2) Not later than one month after the production day of a pioneer company has been finally determined and certified under this section, or within such extended time as the Board may allow, a pioneer company shall make an application in writing to the Board or certify the amount of the qualifying capital expenditure incurred by the pioneer company prior to production day and the company shall supply full particulars of the capital expenditure so incurred.</p> <p>(3) In determining the amount of qualifying capital expenditure incurred by a pioneer company prior to its production day, any sum derived directly or indirectly by that company from any disposal (made before that day) of any asset on which qualifying capital expenditure has been incurred shall be taken into account for the purpose of</p> | | | |
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| <p>reducing the amount of the qualifying capital expenditure; but where the disposal of such asset is by way of bargain not made at arm's length or is to any person who is controlled by the pioneer company or who has control over the pioneer company, the asset shall be deemed to have been disposed of for an amount, which in the opinion of the Board, the asset would have fetched if sold in the open market at the date of the disposal, less the amount of any expenses which the company might reasonably be expected to incur if the asset were so sold.</p> <p>(4) After considering any application made under subsection (1) of this section, together with such further information as he may call for, the Director shall issue a certificate to the pioneer company certifying the date of its production day.</p> <p>(5) After considering any application made under</p> | | | |
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| | <p>subsection (2) of this section, together with such further information as it may call for, the Board shall issue a certificate to the pioneer company certifying the amount of qualifying capital expenditure incurred by the company prior to production day.</p> <p>(6) The provision of parts IX and X of the principal Act (which relate to objections and appeals) and of any rules made thereunder, shall apply, mutatis mutandis, to any certificate issued by the Director or the Board under this section, as if such certificate were a notice of assessment given under the said provisions of the principal Act.</p> <p>(7) The Director shall notify the Minister and the Board of the date of the production day of the pioneer company when the same has been finally determined and certified by the Director.</p> <p>(8) When the amount of the qualifying capital expenditure incurred by the</p> | | | |
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| <p>pioneer company prior to production day has been finally determined and certified by the Board, the Board shall notify the Minister of that amount.</p> <p>(9) On the receipt of the notifications mentioned in subsections (7) and (8) of this section, the Minister shall require the pioneer company to declare within a period not exceeding thirty days in what respects the proposals and estimates made in its application for a pioneer certificate, or any conditions contained in its pioneer certificate, have not been fulfilled.</p> <p>(10) Where a certificate issued by the Director under subsection (4) of this section certifies that the date of the production day of a pioneer company is more than one year later than the estimate thereof given in the company's application for a pioneer certificate, the Minister shall report that fact to the President and the President shall cancel the</p> | | | |
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| | <p>pioneer certificate of that company unless he is satisfied that the delay is due to causes outside the control of the company or to other good and sufficient causes.</p> <p>(11) Where a certificate issued by the Board Under subsection (5) of this section certifies that the pioneer company has on or before production day incurred qualifying capital expenditure of an amount which-</p> <p>(a) in the case of an indigenous-controlled company, is less than N50,000; or</p> <p>(b) in the case of any other company, is less than N150,000</p> <p>the Commissioner shall report that fact to the President and the President shall cancel the pioneer certificate of the company.</p> | <p>Section 6 of the Principal Act is amended in subsection (11) paragraphs(a) and (b), by substituting for the sum "N50,000", the figure " N100,000,000", and for the figure "N150,000", the figure "N120,000,000 respectively</p> | <p>(11) Where a certificate issued by the Board Under subsection (5) of this section certifies that the pioneer company has on or before production day incurred qualifying capital expenditure of an amount which-</p> <p>(a) in the case of an indigenous-controlled company, is less than N100,000,000; or</p> <p>(b) in the case of any other company, is less than N120,000,000</p> <p>the Commissioner shall report that fact to the President and the President shall cancel the pioneer certificate of the company.</p> | |
| 25. | 25. Interpretation | <u>AMENDMENT OF SECTION 25</u> | | |

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| | <p>“Board” means the Federal Board of Inland Revenue established under section 1 of the principal Act</p> | <p>Section 25 of the Principal Act is amended by inserting the definition of the words “Council” means Nigerian Investment Promotion Council (NIPC) immediately after the definition of the words “company”</p> | <p>Section 25 of the Principal Act is amended by inserting the definition of the words “Commission” means Nigeria Investment Promotion Commission (NIPC) immediately after the definition of the words “company”</p> <p>“Board” means Federal Inland Revenue Service established under section 1 of the principal Act.</p> | Amendment |
| 26. | <p>26. SHORT TITLE This Act may be cited as Industrial Development (Income Tax Relief) Act and shall be read as one with the principal Act.</p> | <p><u>CITATION</u> This Bill may be cited as the INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT CAP.17, LAWS OF THE FEDERATION OF NIGERIA, 2004 (AMENDMENT) BILL, 2018.</p> | Retained as in the Bill | |
| | | <p><u>EXPLANATORY MEMORANDUM</u> This Bill seeks to increase the capital expenditure for companies applying for pioneer status under the provisions of this Bill from N50,000 to N100,000,000 for indigenous controlled companies and from N150,000 as stipulated in the Principal Act for other</p> | Retained as in the Bill | |

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| | | <p>companies to N120,000,000. The application fee of "N100 is also increased to N200, 000 to reflect value of the Naira and recent administrative changes introduced by the Council. The Bill further recognizes the need to provide the necessary incentives for additional investments by companies. Fundamentally, all proposed amendment is meant to ensure smooth implementation of the pioneer status incentive scheme by NIPC.</p> | | |
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