A BILL

FOR

AN ACT TO REPEAL THE NIGERIAN INVESTMENT PROMOTION COMMISSION ACT CAP N117 LAWS OF THE FEDERATION OF NIGERIA AND RE-ENACT THE NIGERIAN INVESTMENT PROMOTION COMMISSION TO PROVIDE FOR THE CREATION OF AN ATTRACTIVE INCENTIVE FRAMEWORK AND A TRANSPARENT, PREDICTABLE AND FACILITATING ENVIRONMENT FOR INVESTMENTS IN NIGERIA AND FOR RELATED MATTERS

Sponsored by Senator T. A. Orji

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

Application of the Act

1. -(1) This Act applies to enterprises in Nigeria.

(2) Despite subsection (1), this Act shall not be interpreted to restrict compliance with the requirements of any other legislation.

Establishment of the Commission

2.-(1) There is hereby established a body to be known as the Nigerian Investment Promotion Commission (in this Act referred to as the "Commission".)

(3) The Agency shall be a body corporate with perpetual succession and a common seal.

(4) May sue and be sued in its corporate name.

(5) For the performance of its functions, the Commission may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(6) Where there is a hindrance to the acquisition of property, the property may be acquired for the Commission under the Lands Use Act,

Establishment of the Governing Board of the Agency

3.-(1) There is hereby established for the management of the affairs of the Commission, a governing Board (in this Act referred to as "the Board") which shall, subject to this Act, have general control of the

Commission.

(2) The Council shall consist of:

(a) a chairman who shall be appointed by the President;

(b) A Representative each of the following Federal Ministries who shall not be below the rank a permanent secretary:

(i) Trade and Investment;

(ii) Interior;

(iii) Finance;

(iv) Foreign Affairs;

(v) Ministry of Culture and Tourism;

(vi) Petroleum Resources;

(vii) National Planning Commission.

(c) representative of the Central Bank of Nigeria;

(d) Six other persons from the private sector organisation to be appointed by the President on the recommendation of the Minister;

(e) the Secretary of the Commission who shall be the Secretary of the Commission.

(3) The Chairman and other members of the Board shall:

(a) be appointed by the President subject to the confirmation of the Senate; and

(b) be persons with proven integrity.

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

Tenure of office

4.-(1) The members of the Board appointed under section 2 (2) (a) and (b) of this Act shall hold office for a period of 4 years in the first instance and may be eligible for re appointment for a further period of 4 years and no more.

(2) The members of the Board shall be paid such remuneration and allowances as the Revenue Mobilization Allocation and Fiscal Commission

may, from time to time, determine.

(3) A member of the Board other than an *ex officio* member may resign his appointment by a notice in writing under his hand, addressed to the Minister and which resignation shall take effect only upon acknowledgment by the Minister.

Cessation of membership

5.-(1) A member of the Board shall cease to hold office if:

(a) he becomes of unsound mind;

(b) he becomes bankrupt or makes a compromise with his creditors; r

(c) he is convicted of a felony or of any offence involving dishonesty; or

(d) he is guilty of serious misconduct in relation to his duties.

(2) A member of the Board may be removed from office by the President, if, he is satisfied that it is not in the interest of the Fund or the interest of the public that the member should continue in office.

(3) Where a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest and shall be appointed by the President

Object of the Commission

6. The object of the Commission is to:

(a) create an enhanced environment for investment and the development of the Nigerian economy through investment; and

(b) encourage, promote and facilitate investment in the country.

Functions of the Commission

7. The Commission shall for the purposes of attaining its object, actively promote investments into and within Nigeria, and shall:

(a) formulate investment promotion policies and plans, promotional incentives and marketing strategies to attract foreign and local investments in advanced technology industries and skill-intensive services which enjoy good export market prospects;

(b) initiate and support measures that will enhance the investment climate in Nigeria for both Nigerian and non-Nigerian enterprises;

(c) initiate, organise and participate in promotional activities such as exhibitions, conferences and seminars for the stimulation of investments, to present Nigeria as an ideal investment destination;

(d) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, incentives available to investors, the investment climate and advise upon request on the availability, choice or suitability of partners in joint venture projects;

(e) register, monitor and keep records of all enterprises in Nigeria;

(f) register and keep records of all technology transfer agreements;

(g) identify specific projects and prepare project profiles on investments and joint venture opportunities in Nigeria and attract interested investors for participation in those projects;

(h) bring about harmonisation in investment policy formulation through coordination of the activities of all other institutions and agencies; and

(i) perform any other functions that are necessary for the attainment of the objects of this Act.

Establishment of the Committees

8.-(1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function determined by the Board.

(2) Without limiting subsection (1), the Board shall have a committee to be known as the Technical Committee.

Technical Committee

9. -(1) The Technical Committee comprises:

(a) two representatives of the Commission;

(b) one representative, not below the rank of Director, of:

(i) the Ministry of Finance;

(ii) the Federal Inland Revenue Service;

(iii) the Central Bank of Nigeria;

(iv) National Environmental Standard Regulatory Commission

(v) Nigeria Ports Authority;

(vi) National Communications Commission;

(vii) Registrar-General's Department;

(ix) the Nigeria Immigration Service;

(c) two representatives of the private sector nominated by private sector institutions and associations; and

(d) one representative each of utility service providers, institutions and agencies concerned with investment that the Board may determine.

(2) The Technical Committee shall:

(a) advise on the process and procedures to facilitate the acquisition of permits and licences and obtaining exemptions and access to utility services;

(b) advise on the appropriate tax regimes for the enhancement of an enabling investment environment;

(c) provide feedback on practical experiences and assist in there solution of the operational challenges of investors;

(d) provide technical information on the investment opportunities, regulations, and policies for the purpose of attracting and retaining foreign direct investment in Nigeria; and

(e) Perform any other function or activity that the Board may determine.

(3) A member of the Technical Committee shall hold office for a period of four years and is eligible for re-appointment but shall not be appointed for more than two terms.

(4) The Technical Committee shall hold its meetings on the dates and at the times and places that the Board may determine but shall meet at least once every three months.

(5) Then Chairman shall preside at meetings of the Technical Committee and in the absence of the Chairman, the designated representative of the Chairman.

Allowances

10. Members of the Board and members of a committee of the Boards hall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Branch offices of the Commission

11.-(1) The Board may establish branch offices of the Commission in places determined by the Board.

(2) A branch office of the Commission shall perform the functions of the Commission that the Board may direct.

Executive oversight

12.-(1) The President has oversight responsibility for the Commission but may in writing direct a Minister to perform a function in connection with that responsibility.

(2) The Minister may give directives to the Board on matters of policy and the Board shall comply.

Appointment of the Secretary, etc.

13.-(1) There shall be appointed for the Agency a Director General who shall be appointed by the President.

(2) The Secretary shall subject to the general control of the Board:

(a) be responsible for the implementation of the decisions of the Board and the day to day administration of the affairs of the Agency

(b) be responsible for keeping proper records of the proceedings of the Board; and

(c) be the head of the Board's secretariat and be responsible for the administration thereof and the direction and control of all other employees of the Agency with the approval of the Board.

Staff of the Agenct, etc.

14.-(1) The Board shall have power to appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, in the opinion of the Board, be required to assist the Agency in the discharge of any of its functions under this Act; and shall have power to pay to persons so employed such remuneration (including allowances) as the Board may, from time to time, determine.

(2) The terms and conditions of service (including terms and conditions as to remuneration, allowance, pensions, gratuities and other

benefits) of the person employed by the Agency shall be as determined by the Board from time to time.

Staff regulations

15.-(1) The Board may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the Agency and without prejudice to the generality 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 and until such regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Fund.

(2) Staff regulations made under subsection (1) of this section shall not have effect until approved by the President.

Pensions

16. It is hereby declared that service in the Agency shall be public service for the purposes of the Pensions Reform Act 2004 and, accordingly, officers and other persons employed in the Agency shall, in respect of their service in the Fund, be entitled to pension, gratuities and other retirement benefits as are prescribed there under, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension or gratuity in respect of that office.

Divisions of the Commission

17. The Board may create Divisions of the Commission that the Board considers necessary for the efficient discharge of the functions of the Commission.

Relationship of the Commission with other public authorities

18. Government departments, agencies and other public authorities shall co-operate with the Commission in the performance of its functions under this Act.

Expenses and funds of the Commission

19. -(1) The funds of the Commission include:

(a) moneys approved by the National Assembly;

(b) fees and charges that accrue to the Commission in the performance of its functions;

(c) donations, grants and gifts; and

(d) any other moneys that are approved by the Minister responsible for Finance.

(2) Moneys received by the Commission shall be paid into a bank account determined by the Board with the approval of the Accountant-General.

(3) The Board may invest as it considers fit any moneys of the Commission that are not required for immediate use in accordance with the applicable legislation.

Accounts and audit of the Commission

20.-(1) The Commission shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Commission to the Auditor-General for audit within six months after the end of the financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Commission is the same as the financial year of the Government.

Annual report

21.-(1) The Board shall submit to the President through the Minister, within two months after the receipt of the auditor's report, a report on the accounts, activities and operations of the Commission during the preceding year.

(2) The annual report of the Commission shall include:

(a) a copy of the audited accounts of the Commission together with the Auditor-General's report on the audited accounts and any further information that the Board considers appropriate; and

(b) any other information that the President may request.

(3) The President shall, through a Minister designated for the purpose, present to the National Assembly the report on the activities and operations of

the Commission.

Establishment of enterprises

22. A person who intends to establish an enterprise for the purposes of this **Act shall incorporate or register the enterprise in accordance with** the Companies **and Allied Act, and other laws that are relevant to the** establishment **of the enterprise.**

Registration of enterprises with the Commission

23.-(1) An enterprise in which foreign participation is permitted under this **Act shall after its incorporation or registration and before** commencement **of operations be registered with the Commission.**

(2) The **Commission shall within five working days from the date** of receipt of a **completed registration form register the enterprise if the** Commission is sat**isfied that:**

(a) all the relevant documents for registration are in order;

(b) the minimum foreign equity capital requirement has been complied **with; and**

(c) the fees required for registration has been paid.

(3) An enterprise in which foreign participation is permitted under this Act shall renew its registration with the Commission every two years.

Registration of wholly owned Nigerian enterprises with the Commission

24.-(1) An enterprise which is wholly owned by a Nigerian:

(a) may after being incorporated or registered be registered with the Commission; and

(b) shall after being registered with the Commission be entitled to the benefits and incentives set out in this Act.

Benefits and incentives

25.-(1) An enterprise registered by the Commission is entitled to the benefits and incentives that are applicable to an enterprise of a similar nature under the Federal Internal Revenue Service Act and the Value Added Tax Act.

(2) An enterprise whose plant, machinery, equipment or parts of the plant, machinery or equipment are not zero-rated may submit an application for exemption from import duties and related charges on the plant, machinery or equipment or the parts of the plant, machinery or equipment to

the Commission for onward submission to the Minister responsible for Finance.

(3) The Commission shall before submitting a request for exemption to the Minister responsible for Finance determine whether the request will facilitate changes in technology and promote the specialised use of machinery, equipment or other items necessary for the establishment and operation of the enterprise.

(4) For the purpose of promoting identified strategic or major investments, the Board may with the approval of the President and in consultation with appropriate government agencies that the Board may determine:

(a) specify priority areas of investment and their applicable benefits and incentives; and

(b) negotiate specific incentive packages for strategic investments in addition to the incentives available to any enterprise under the tax, customs and other laws referred to in subsection (1).

(5) The Board shall publish:

(a) in the Gazette and on its website the criteria for determining what constitutes strategic investments and shall designate an investment that satisfies the criteria, as strategic investment; and

(b) the details of special incentives awarded through negotiation under this section.

Entry, admission, and protection of investment

Activities reserved for Nigerians and Nigerian owned enterprises.

26.-(1) A person who is not a citizen or an enterprise which is not wholly owned by citizens shall not invest or participate in:

(a) the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;

(b) the operation of taxi or car hire service in an enterprise that has a fleet of not more than twenty-five vehicles;

(c) the operation of a beauty salon or a barber shop; and

(d) the printing of recharge scratch cards for the use of subscribers of mobile telecommunication services.

(2) The Minister in consultation with the Board may by legislative instrument amend the list of enterprises reserved for citizens and enterprises wholly owned by citizens.

Enterprises eligible for foreign participation and minimum foreign capital requirement

27.-(1) A person who is not a citizen may participate in an enterprise other than an enterprise specified in section 26 if that person:

(a) in the case of a joint enterprise with a partner who is a citizen, invests a foreign capital of not less than fifty thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity participation and the partner who is a citizen does not have less than thirty percent equity participation in the joint enterprise; or

(b) where the enterprise is wholly owned by that person, invests a foreign capital of not less than two hundred thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise

(2) Despite subsection (1), a trading enterprise that is principally engaged in the purchase and sale of goods shall not be wholly owned by a person who is not a citizen but shall operate by way of a joint venture with a partner who is a citizen.

(3) A partner who is a citizen in an enterprise referred to in subsection (2) shall:

(a) have not less than thirty percent equity participation in the joint enterprise; and

(b) not transfer the equity participation to a person who is nota citizen.

(4) A person who is not a citizen but who engages in an enterprise referred to in subsection (2) shall invest in that enterprise, not less than one million United States Dollars in cash or goods relevant to the investment or a combination of both by way of equity capital.

(5) An enterprise referred to in subsection (2) shall employ at least ten skilled Nigerians.

(6) For the purposes of this section "trading" includes the purchasing and selling of imported goods and services.

Export trading and other enterprises exempted

28.-(1) The minimum capital requirement specified in section 27 does not apply to:

(a) portfolio investments; or

(b) an enterprise set up solely for export trading and manufacturing.

(2) For the purpose of this section, "export trading" includes export of goods or produce that originate from Nigeria.

Prohibition against discrimination

29. Unless specifically provided for under an applicable legislation:

(a) a foreign investor, employer or worker, shall enjoy the same rights and be subject to the same duties and obligations applicable to citizens;

(b) the Commission, an official agency, or any other legal representative of the Commission shall not discriminate against an investor from a particular country or give special treatment to a prospective foreign investor based on that investor's country of origin or nationality;

(c) a foreign investor is subject to the same laws that apply to domestic enterprises, particularly in relation to:

(i) licences or other permits that are required of enterprises for conducting specific business activities;

(ii) maintenance of business books and records in accordance with the recognised accounting standards;

(iii) insurance requirements that apply to similar enterprises; and

(iv) taxes required to be paid by enterprises which engage in similar activity.

Guarantee against expropriation

30.-(1) Subject to the Constitution, any other relevant law and subsections (2) and (3):

(a) an enterprise shall not be nationalised or expropriated by Government; and

(b) a person who owns, whether wholly or in part, the capital of an enterprise shall not be compelled by law to cede that person's capital to another person.

(2) The Government shall not acquire an enterprise to which this Act applies unless the acquisition is in the national interest or for a public purpose and the acquisition is done under a law which makes provision for:

(a) payment of fair and adequate compensation; and

(b) a right of access to the High Court for the determination of the investor's interest or right and the amount of compensation to which the investor is entitled.

(3) Compensation payable under this section shall be paid without undue delay and authorisation shall be granted for the repatriation of the compensation in convertible currency, where applicable.

Investment guarantees, transfer of capital, profits and dividends and personal remittances

31.-(1) Subject to this section an enterprise shall, through an authorised dealer bank be guaranteed unconditional transferability in freely convertible currency of:

(a) dividends or net profits attributable to the investment made in the enterprise;

(b) payments in respect of loan servicing where a foreign loan has been obtained;

(c) fees and charges in respect of a technology transfer agreement registered under this Act; and

(d) the remittance of proceeds, net of all taxes and other obligations, in the event of sale or liquidation of the enterprise or any interest attributable to the investment in the enterprise.

(2) An expatriate person employed or engaged in an enterprise may, subject to the fulfilment of all tax obligations make remittances which do not exceed the basic net salary of that person.

Dispute resolution procedures

32.-(1) Where a dispute arises between a foreign investor and the Government in respect of an enterprise, effort shall be made through mutual

discussion to reach an amicable settlement.

(2) A dispute between a foreign investor and the Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions within six months may be submitted at the option of the aggrieved party to arbitration as follows:

(a) in accordance with the rules of procedure for arbitration f the United Nations Commission of International Trade Law; or

(b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the 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 dispute agreed to by the parties.

(3) Where in respect of a dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, unless there is any arbitration agreement to the contrary,

Expatriate labour and employment

33.-(1) An enterprise registered under this Act shall abide by the applicable labour legislation.

(2) Labour relations between an enterprise owned by an investor and the employees of the enterprise may be regulated by agreements made between the enterprise and the employees, but the agreements shall not establish standards lower than the mandatory requirements under the laws of Nigeria.

(3) Subject to this Act and any other applicable legislation, an investor may employ:

(a) persons of any nationality to positions of management for the purpose of the conduct of investments and business activities; and

(b) non-managerial staff of any nationality, but a citizen of similar qualification and experience shall have the first option.

Automatic expatriate quotas

34.-(1) An enterprise which has a paid up capital of:

(a) not less than:

(i) fifty thousand United States dollars and not more than two hundred

and fifty thousand United States Dollars is entitled to an automatic expatriate quota of one person;

(ii) two hundred and fifty thousand United States dollars and not more than five hundred thousand United States Dollars is entitled to an automatic expatriate quota of two persons;

(iii) five hundred thousand United States Dollars and not more than seven hundred thousand United States Dollars is entitled to an automatic expatriate quota of three persons; and

(b) more than seven hundred thousand United States Dollars is entitled to an automatic expatriate quota of four persons.

(2) An enterprise that intends to employ an expatriate shall apply to the Commission for facilitation of the employment and the application shall specify the number of expatriates to be employed, in accordance with the quotas specified in subsection (1).

(3) The application shall be decided on by the Commission on the advice of the Nigeria Immigration Service in consultation with the regulator of the relevant sector.

(4) Despite subsection (1), the Immigration Service may refuse to grant a visa to an expatriate to whom a quota relates, if the Immigration Service has sufficient reason to believe that expatriate is not a desirable person who should be permitted to enter the country.

Assistance to enterprises

35. The Commission shall provide to an enterprise any assistance and guidance that the enterprise requires and act as a facilitator between the enterprise and relevant government departments, agencies and other public authorities.

Technology Transfer Agreements

36.-(1) An enterprise may enter into a technology transfer agreement that the enterprise considers appropriate for the enterprise.

(2) A technology transfer agreement entered into under subsection (1) shall be registered with the Commission.

(3) The Commission shall maintain a record of technology transfer agreements.

(4) The Commission on the receipt of a technology transfer agreement:

(a) intended for registration shall review the agreement; and

(b) shall on registration of the agreement, monitor and ensure compliance with the terms and conditions of the agreement.

(5) A technology transfer agreement registered under this Act comes into force on the date of the registration.

(6) A technology transfer agreement may be renewed without the approval of the Commission and the regulator of the relevant sector but a renewed agreement is subject to registration by the Commission.

(7) A technology transfer agreement shall, in addition to this Act be governed by Regulations in force relating to that agreement.

Compliance monitoring and appeals

37.-(1) The Commission shall monitor enterprises to which this Act applies to ensure compliance with this Act and Regulations made under this Act.

(2) The Commission in the performance of its monitoring functions may request for relevant information from an enterprise and the enterprise shall comply with the request.

(3) An enterprise shall permit an officer or designated agent of the Commission to enter its premises at a reasonable time in pursuance of the monitoring function of the Commission.

Appeal against decisions of the Commission

38.-(1) A person dissatisfied with a decision of the Commission may appeal to the Board of the Commission against the decision.

(2) The appeal shall be made within sixty days after the appellant has been informed of the decision.

(3) The Board shall within seven days after the receipt of the appeal set up a three member committee chaired by a member of the Board to determine the appeal.

(4) The committee shall, subject to the rules of natural justice and any procedures that may be prescribed by Regulations determine its own procedure.

(5) The committee shall determine an appeal within twenty-one days after the submission of the appeal and may:

(a) affirm the decision of the Commission;

(b) vary the decision of the Commission; or

(c) revoke the decision of the Commission.

Offences and penalties

39. An enterprise commits an offence if that enterprise:

(a) which is required to register with the Commission by this Act, fails to register or renew its registration with the Commission in accordance with this Act;

(b) engages in an activity other than that for which that enterprise has been registered under this Act;

(c) applies any benefit conferred by or under this Act for purposes other than that for which the benefit was conferred;

(d) deliberately or negligently submits false or misleading information to the Commission;

(e) refuses without lawful excuse to admit an officer or a designated person into the business premises of that enterprise or otherwise obstructs an officer or a designated agent of the Commission in the performance of that officer's or agent's functions;

(f) refuses or neglects to give any information which the Commission reasonably requests for the purposes of this Act; or

(g) otherwise contravenes any provision of this Act.

Penalties

40.-(1) An enterprise which commits an offence under section 39 is liable on summary conviction to a fine of not less than two hundred penalty units and not more than five hundred penalty units and in the case of a continuing offence to an additional fine of not less than twenty five penalty

units and more than fifty penalty units in respect of each day that the offence continues.

(2) The Commission may in addition to the conviction under subsection (1), in consultation with the appropriate agency:

(a) suspend the registration of an enterprise;

(b) cancel the registration of an enterprise;

(c) order the payment or part-payment to the appropriate agency of fees, taxes, duties and other charges in respect of which benefits were granted to the enterprise;

(d) revoke some or all of the incentives granted to the enterprise;

(e) advise the Bank of Nigeria to suspend any remittance including transfer of capital, profits and dividends from or by that enterprise; and

(f) take any other action that the Board considers appropriate.

Regulations

41.-(1) The Minister in consultation with the Board may by legislative instrument make Regulations to:

(a) prescribe for matters relating to technology transfer;

(b) amend the list of enterprises reserved for citizens and enterprises wholly owned by Nigerians;

(c) prescribe procedures for the grant of licences and privileges or exemptions;

(d) prescribe the fees available in respect of registration, licensee privilege and exemptions; and

(e) prescribe generally for the effective implementation of this Act.

(2) The Board may make rules necessary for the efficient and effective implementation of this Act and the rules may provide for:

(a) the procedure by which applications may be submitted for registration; and

(b) the supervision, control and reporting of progress of an enterprise to which this Act applies.

(3) The Board shall:

(a) give public notice of the Regulations, rules and of amendments of the Regulations and rules; and

(b) maintain at the offices of the Commission, a complete and updated set of the Regulations and rules for inspection by an interested party.

Interpretation

42. In this Act, unless the context otherwise requires:

"benefits" include facilities, entitlements and exemptions conferred on an enterprise to which this Act applies;

"Board" means the governing board of the Commission;

"capital" means cash contributions, plant, machinery, equipment; buildings, spare parts, raw materials and other business assets other than goodwill;

"capital goods" means goods:

(a) intended for use in the production of other goods and services and not intended for final consumption; or

(b) which do not have multiple uses and can only be considered as inputs in the production of goods and services;

"Commission" means the Nigeria Investment Promotion Commission established in section 2 (1) of this Act;

"Constitution" means the 1999 Constitution of the Federal Republic of Nigeria;

"direct investment" means investment made to acquire a lasting interest in an enterprise operating in the economy of Nigeria and intended to give the investor an effective control in the management of the enterprise;

"enterprise" means an industry, project, undertaking or business or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking project or business other than the exploration and extraction of petroleum and other minerals;

"expropriation" means the compulsory acquisition of private property by Government for public use upon the payment of the appropriate compensation;

"foreign capital" means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets other than goodwill that enters the country without an initial disbursement of the foreign exchange of this country and that are intended for the production of goods and services related to an enterprise to which this Act applies;

"foreign investor" means a non-citizen, natural or juridical, who makes an investment in the country pursuant to this Act;

"Nigerian" means a citizen of Nigeria or a company, partnership or association or body (whether corporate or unincorporated) the majority capital or financial interest of which is owned by citizens of Nigeria and includes the State and a statutory corporation;

"indirect investment" means an act or contract by which an investor makes a contribution, whether tangible or intangible, to an enterprise in Nigeria without obtaining an equity interest in the enterprise but under which the investor is entitled to returns based on profits generated by the enterprise;

"investment' includes direct and indirect investments and portfolio investments;

"investment priority plan" means the investment priority plan prepared and published by the Commission;

"investor" means any person, natural or juridical, who makes an investment in the country including a foreign investor;

"joint venture" means an investment in an enterprise between a Nigerian company or individual and a foreign company or individual;

"market" means a public place whether open or enclosed, established and managed by local custom, or specifically designated by the appropriate local government authority or its agents and which has selling sites in the nature of stores and stalls among others for the purpose of selling and buying;

"Minister" means the Minister responsible for Trade and investment;

"portfolio investment" means an investment in shares or bonds which are mandatorily convertible into shares or other securities traded on the Nigeria

Stock Exchange;

"priority area" means an area of investment determined to be of national priority pursuant to section 4;

"public service" means public service as defined in the Constitution of the Federal Republic of Nigeria;

"strategic investment" means an investment in a priority area determined by the Board;

"technology transfer agreement" means an agreement which has a duration of not less than eighteen months and which relates to an enterprise to which this Act applies and involves:

(a) the assignment, sale or use of foreign patents, trademarks or other intellectual property rights;

(b) the supply of foreign technical know-how or technological knowledge;

(c) foreign technical assistance, design and engineering, consultancy or other technical services in whatever form they may be supplied; and

(d) foreign managerial, marketing or other similar service;

"trading enterprise" means an enterprise which has its principal activity being the purchase and sale of goods, whether imported or not, and provision of services, whether the purchase and sale of goods and services are carried out in a market or any other place; and

"United States Dollars" or "US$" means the lawful currency of the United States of America.

Repeals and savings

43. -(1) The Nigeria Investment Promotion Commission Act Cap N117 LFN 2011 is hereby repealed.

(2) Despite the repeal under subsection (1), an enterprise registered under that Act shall subject to subsection (5) and section 40 (2) continue in force as if registered under this Act.

(3) An application pending before the Nigeria Investment

Promotion Commission established under the Nigeria Investment Promotion Commission Act CAP N117 LFN 2011 is deemed to be pending before the Commission established in section 2.

(4) Where registration is continued in force by virtue of subsection(2), the registration shall in addition to other benefits that are applicable to the enterprise under this Act continue to enjoy the benefits applicable to that registration before the commencement of this Act.

(5) A joint venture or an enterprise which on the date of coming into force of this Act has been registered under the Nigeria Investment Promotion Commission Act, CAP N117 LFN 2011 and which intends to continue to operate shall within three years after the Commencement of this Act comply with the participation by citizens and minimum capital requirements under this Act or cease operations after the expiry of the three years.

(6) An immigrant quota in existence immediately before the commencement of this Act in respect of an enterprise to which this Act applies shall continue in force until the immigrant quota expires or is renewed under this Act.

(7) A technology transfer agreement registered with the Nigeria Investment Promotion Commission before the commencement of this Act is deemed to be registered with the Commission established by this Act.

Transitional provisions

44.-(1) The assets, rights, obligations and liabilities of the Nigeria Investment Promotion Commission established under the Nigeria Investment Promotion Commission Act CAP N117 LFN 2011 and in force immediately before the commencement of this Act, are transferred to the Commission.

(2) A person in the employment of the Nigeria Investment Promotion Commission immediately before the commencement of this Act shall, on the coming into force of this Act be deemed to have been duly employed by the Commission established by this Act on terms and conditions which are not less in aggregate to terms and conditions attached to the post held by that person before the commencement of this Act.

1 This Bill may be cited as the Nigerian Investment Promotion Short Title
2 Commission Bill, 2015.

EXPLANATORY MEMORANDUM

This Bill seeks to Repeal the Nigerian Investment Promotion Commission Act CAP N117 Laws of the Federation of Nigeria and Re–enact the Nigerian Investment Promotion Commission as an agency of Government responsible for the encouragement and promotion of investments in Nigeria and to provide for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Nigeria.