

PUBLIC ENTERPRISES REGULATORY COMMISSION ACT

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SCHEDULES

An Act to establish the Public Enterprises Regulatory Commission to regulate the activities of public enterprises and for matters connected therewith.

[1996 No. 35.]

[17th November, 1996]

[Commencement.]

PART I

Establishment, etc., of the Public Enterprises Regulatory Commission and its governing board

1. Establishment of the Public Enterprises Regulatory Commission

(1) There is hereby established a body to be known as the Public Enterprises Regulatory Commission (in this Act referred to as "the Commission").

(2) The Commission-

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) may sue and be sued in its corporate name.

2. Membership of the Commission

(1) There is hereby established for the Commission a governing Board which shall consist of--

- (a) a chairman who shall also be the chief executive of the Commission;
- (b) eight other members, at least one of whom shall be a woman; and
- (c) the secretary to the Commission.

(2) The chairman and members of the Board shall-

- (a) be appointed by the President; and
- (b) be persons with proven integrity and with relevant cognitive experience.

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

[Schedule.]

3. Tenure of office, etc.

(1) The chairman shall hold office-

- (a) for a period of five years and may be re-appointed for one further period of five years; and
- (b) on such other terms and conditions as may be specified in his letter of appointment.

(2) The other members of the Board shall hold office-

- (a) for a period of four years and may be re-appointed for one further period of four years; and
- (b) on such other terms and conditions as may be specified in their letters of appoint-

ment.

4. Removal from office

(1) Notwithstanding the provisions of section 3 of this Act, a member may at any time be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct, but shall not be removed from office except in accordance with the provisions of this subsection.

(2) A member of the Board may resign his appointment by a notice in writing under his hand, addressed to the President and that member shall, on the date of the receipt of the notice by the President, cease to be a member of the Board.

5. Emoluments, etc.

There shall be paid to every member of the Board such emoluments, allowances and benefits as the President may, from time to time, approve.

6. Disclosure of interest

(1) A member of the Board who directly or indirectly has an interest in any public enterprise, the affairs of which are being deliberated upon by the Board, or is interested in any contract made or proposed to be made by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subsection (1) of this section shall be recorded in the minutes of meetings of the Board and the member shall-

- (a) not take part after such disclosure in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is thus disclosed; and
- (b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any such deliberation or decision.

PART II

Functions and powers

7. Functions of the Commission

The Commission shall-

- (a) analyse the approved annual budget of a public enterprise and advise the appropriate authority as to its adequacy or suitability in the light of the objects and functions of the public enterprise;
- (b) monitor the implementation of all the measures enumerated in approved annual budgets of public enterprises;
- (c) monitor and identify factors inhibiting the realisation of set revenue targets of any public enterprise;
- (d) promote efficiency, monetary stability and a sound financial system in the management of public enterprises;
- (e) assist appropriate authorities in the formulation and implementation of policy so as to ensure sound and efficient management of public enterprises;
- (f) arrange and conduct investigation or inspection into the affairs of a public enterprise where the interest of the public so demand;
- (g) assess the report on any project being carried out by a public enterprise and confirm that funds released for such projects are judiciously utilised;
- (h) give a situation report of all its activities on a quarterly basis to the President;
- (i) ensure that a person who defaults in any matter referred to in this section or any other matter related to it is brought before the court under this Act;
- (j) receive the annual reports and accounts of all public enterprises and make recommendations on them to the President;
- (k) advise the President on the appointment of directors of public enterprises; and
- (l) carry out such other activities connected with its other functions as may be directed, from time to time, by the President.

8. Powers of the Commission

- (1) The Commission shall have power to-
 - (a) invite any director or officer of a public enterprise to appear before it;
 - (b) call for memoranda from any public enterprise or any director or officer of the public enterprise;
 - (c) ask for and receive from a public enterprise, reports, audited accounts or such other information relating to the public enterprise as may be required for the purposes of the Commission and in whatever manner it deems fit;
 - (d) monitor any matter to the extent that it affects the functions of the Commission;
 - (e) enter and inspect premises, projects and such other places as may be necessary for the purposes of carrying out its functions under this Act; and
 - (f) do such other things as are necessary and expedient for the full discharge of any of its functions under this Act.

(2) Nothing in this section shall affect the powers, duties or jurisdiction conferred on any body established under any other Act or law for the time being in force for the smooth and effective performance of that body.

9. Directives by the President

The President may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply with those directives.

10. Committees of the Commission

(1) The Commission may appoint one or more committees to carry out on behalf of the Commission any of its functions under this Act.

(2) A committee appointed by the Commission under this section shall consist of such number of persons as may be determined by the Commission.

PART III

Staff

11. Secretary to the Commission

- (1) There shall be, for the Commission, a secretary-
 - (a) who shall be appointed by the President; and
 - (b) whose status shall not be below that of a Permanent Secretary.
- (2) The secretary shall, subject to the general control of the Board, be-
 - (a) responsible for keeping proper records of the proceedings of the Commission; and
 - (b) the head of the secretariat and responsible for-
 - (i) day-to-day administration; and
 - (ii) the direction and control of all other employees,

of the Commission.

12. Other staff of the Commission, etc.

(1) The Board shall have power to appoint for the Commission such other employees as it may deem necessary for the efficient performance of its functions under or pursuant to this

Act and shall have power to pay persons so employed such remuneration (including allowances) as the Commission may determine.

(2) The terms and conditions of service of employees of the Commission shall be as may be determined by the Commission.

(3) For the purposes of the application of the Pensions Act, any power exercisable under the Act by the Minister or authority of the Federal Government (not being the power to make regulations under section 23 thereof) is hereby vested in the Board and not in any other person or authority.

[Cap. P4.]

(4) Subject to subsection (2) of this section, the Pensions Act shall in its application by virtue of subsection (3) of this section to any office, have effect as if the office were in the

civil service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria, 1999.

[Cap. C23.]

13. Service in the Commission to be pensionable

(1) Service in the Commission shall be approved service for the purpose of the Pensions Act, and accordingly, an officer and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions, gratuities and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation.

[Cap. P4.]

(2) Nothing in this section shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

PART IV

Financial provisions

14. Fund of the Commission

(1) There shall be established and maintained by the Commission a fund into which shall be paid and credited-

- (a) the annual subvention received from the Federal Government;
- (b) such money as may, from time to time, be lent, deposited with or granted to the Commission by the Federal Government;
- (c) all fees and charges for services rendered by the Commission; and
- (d) all other sums which may, from time to time, accrue to the Commission.

(2) The Commission may, from time to time, as the Board may direct, apply the funds at its disposal-

- (a) to the cost of the administration of the Commission and for the purposes of any activity being undertaken by the Commission;
- (b) to the payment of remunerations, allowances, benefits and expenses of members of the Board or of any committee set up by the Board;
- (c) to the payment of the salaries, allowances and benefits of officers and servants of the Commission;
- (d) for the maintenance of any property vested in the Commission or under its administration; and
- (e) for and in connection with all or any of the functions of the Commission under this Act or any other enactment.

15. Power to accept gifts

(1) The Commission may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Commission shall not accept any gift if the term or condition attached by the person or organisation making the gift is inconsistent with the functions of the Commission under this Act.

16. Annual estimates, account and audit

(1) The Board shall cause to be prepared not later than 30 September in each year an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall be submitted to the President.

(2) The Board shall cause to be kept proper accounts of the Commission and proper records in relation thereto and when certified by the Board, the accounts shall be audited by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

17. Quarterly report

The Board shall, notwithstanding the provisions of sections 16 and 18 of this ACI and at the end of every three months, submit to the President a report on the activities and administration of the Commission.

18. Annual report

The Board shall not later than three months before the end of each year, submit to the President a report on the activities and the administration of the Commission during the immediately preceding year and shall include in such report audited accounts of the Commission and the auditor's report thereon.

PART V

Accounting records, financial statements and audit of financial statements

Accounting records

19. Public enterprises to keep accounting records

(1) Notwithstanding anything to the contrary contained in any law or enactment, every public enterprise shall cause accounting records to be kept in accordance with the provisions of this Part of this Act.

(2) The accounting records shall be sufficient to show and explain the transactions of the public enterprise and shall be such as to-

- (a) disclose with reasonable accuracy, the financial position of the public enterprise; and
- (b) enable the directors of the public enterprise to ensure that any financial statement prepared under this Part of this Act complies with the requirements of this Act as to the form and content of the financial statement of the public enterprise.

(3) The accounting records shall be in accordance with standards set by the Nigerian Accounting Standard Board and in addition shall contain-

- (a) entries from day to day of all sums of money received and expended by the public enterprise and the matters in respect of which the money was received and expended; and
- (b) a record of the assets and liabilities of the public enterprise.

(4) Where the activities of the public enterprise involves dealing in goods, the accounting records shall contain-

- (a) statements of stocks held by the public enterprise at the end of each year;
- (b) all statements of stocktaking from which any statement of stock as is mentioned in paragraph (c) of this subsection has been or is to be prepared; and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods, the buyers and sellers in sufficient detail to provide easy identification.

20. Place and duration of records

(1) The accounting records of a public enterprise shall be kept at its head office or such other place in Nigeria as the Commission may direct and shall at all times be open to inspection by such officers of the Commission as may be authorised from time to time.

(2) Subject to any direction relating to the disposal of records which may be given by the Commission, accounting records which a public enterprise is required to keep by section 19 of this Act shall be preserved by it for a period of not less than thirty years from the date on which they were made.

21. Penalties for non-compliance with sections 19 and 20

(1) If a public enterprise fails to comply with any provision of section 19 or 20 of this Act, every officer of the public enterprise who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the public enterprise was carried on the default was excusable.

(2) An officer of a public enterprise is guilty of an offence if he fails to take all reasonable steps for securing compliance by the public enterprise with the provisions of sections 19 and 20 of this Act, or has intentionally caused any default by the public enterprise.

(3) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding two years or to a fine of N500,000 or to both such imprisonment and fine.

Financial statements

22. Directors' duty to cause financial statement to be prepared

(1) The directors of a public enterprise shall cause to be prepared every year, in respect of the public enterprise, financial statements in accordance with the provisions of this Part of this Act.

(2) The financial statements required to be prepared under subsection (1) of this section shall include-

- (a) a statement of the accounting policies of the public enterprise;
- (b) the balance sheet as at the last day of the year;
- (c) a profit and loss account or, in the case of a public enterprise not established for profit, the income and expenditure account for the year;
- (d) notes on the account;
- (e) the auditor's report;
- (f) the directors' report;
- (g) a statement of the source and application of funds;
- (h) a value-added statement for the year; and
- (i) a five-year financial summary.

23. Form and content of financial statement

(1) The financial statements of a public enterprise prepared under section 22 of this Act shall, subject to the provisions of this Act, comply with the requirements of section 335 of the Companies and Allied Matters Act (so far as applicable).

[Cap. C20]

(2) The balance sheet shall give a true and fair view of the state of affairs of the public enterprise as at the end of the year and the profit and loss account shall give a true and fair view of the profit or loss of the public enterprise for the year.

(3) The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the public enterprise during the year.

(4) The value-added statement shall report the wealth created by the public enterprise during the year and its distribution among various interest groups, including the employees, the Federal, State or local government, creditors and the public enterprise.

(5) The five-year financial summary shall provide a report of vital financial information for a comparison over a period of five years.

(6) If the balance sheet or profit and loss account drawn up in accordance with this section does not provide sufficient information to comply with subsection (2) of this section, necessary additional information shall be provided in the balance sheet or profit and loss account, or in a note to the accounts.

(7) Where, after additional information has been provided under subsection (6) of this section, special circumstances in the public enterprise prevent compliance with a requirement relating to its balance sheet or profit and loss account from being drawn up in accordance with subsection (2) of this section, the directors may depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2) of this section.

(8) If the directors disregard a requirement pursuant to subsection (7) of this section, particulars of the requirement, the reason for disregarding it and its effects shall be given in a note to the accounts.

(9) Where there is a failure to comply with the requirement of this section as to the preparation, matters to be stated or particulars to be given in a financial statement, every person who was a director of the public enterprise immediately before the end of the period prescribed for preparing the financial statement is guilty of an offence and liable on conviction to a fine not exceeding ₦100,000.

(10) In the trial of an offence under subsection (9) of this section, it shall be a defence for the director to prove that he took all reasonable steps for securing compliance with the requirements.

Loans and other credit facilities

24. Restriction on the granting of loans, etc., to directors

(1) No public enterprise shall by itself or through its officers grant a loan, an advance or any other credit facility to any of its directors unless the director is in full-time employment of the public enterprise.

(2) No director of a public enterprise shall receive a loan, an advance or any other credit facility from the public enterprise unless he is in the full-time employment of the public enterprise.

(3) A public enterprise, officer or director who contravenes the provisions of subsection (1) or (2) of this section is guilty of an offence and liable on conviction-

- (a) in the case of a public enterprise, to a fine of ₦200,000; and
- (b) in the case of an officer or director of a public enterprise, to a fine of not less than two times the loan, advance or credit facility, as the case may be, or imprisonment for a term of not less than two years or to both such fine and imprisonment.

25. Directors' report

(1) The directors shall cause to be prepared, in each year, a report containing a fair view of the development of the activities of the public enterprise during the year, and of its position at the end of that year.

(2) The directors' report shall state the names of the persons who, at any time during the year, were directors of the public enterprise and the principal activities of the public enterprise in the course of the year and any significant changes in those activities in the year.

(3) The report shall also state the matters and give the particulars required by paragraphs I, 3 and 4 of Part I of Schedule 5 to the Companies and Allied Matters Act.

[Cap. C20.]

(4) Part III of Schedule 5 to the Companies and Allied Matters Act, shall apply as regards the matters to be stated in the directors' report as they relate to the employment, training and advancement of disabled persons, the health, safety of work and welfare of the employees of the public enterprise and the involvement of employees in the affairs, policy and performance of the public enterprise.

(5) Where there is failure to comply with the requirements of this section as to the matters to be stated or the particulars to be given in the directors' report, every person who was a director of the public enterprise immediately before the end of the period prescribed for submitting the report is guilty of an offence and liable on conviction to a fine of N500,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(6) In the trial of an offence under subsection (5) of this section, it shall be a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

Delivering of financial statements to Commission

26. Signing of balance sheet and documents to be annexed thereto

(1) The balance sheet of a public enterprise and every copy thereof delivered to the Commission shall be approved by the board of directors and signed on behalf of the public enterprise by the chairman and the chief executive of the public enterprise.

(2) If the balance sheet of a public enterprise or copy thereof----

- (a) is delivered to the Commission; or
- (b) is issued, circulated or published,

without the approval and signatures specified under subsection (1) of this section, the public enterprise and every officer of the public enterprise who is in default is guilty of an offence and liable on conviction to a fine not exceeding ₦1 00,000.

(3) The balance sheet shall be accompanied with the following documents, that is-

- (a) the profit and loss account, except where it has already been incorporated in the balance sheet;
- (b) the auditor's report; and
- (c) the directors' report.

(4) The profit and loss account shall be approved by the board of directors and authenticated on behalf of the public enterprise by any two directors appointed by the Board.

27. Penalty for delivering defective financial statements

If a financial statement of a public enterprise delivered to the Commission does not comply with the requirements of this Act as to the matters to be included in, or in a note to the financial statement, every person who at the time when the statement is so delivered is-

- (a) a director, manager, secretary or other similar officer of the public enterprise; or
- (b) any other person purporting to act in the capacity of a director, manager, secretary or other similar officer,

is guilty of an offence and liable on conviction to a fine of not less than ₦100,000.

Publication of financial statements

28. Publication by a public enterprise of full individual financial statements

(1) The provisions of this Part of this Act shall apply to the publication by a public enterprise of the financial statements required by section 22 of this Act to be delivered to the Commission, including the directors' report.

(2) No public enterprise shall publish an individual financial statement for a year unless it is accompanied with the relevant auditor's report.

(3) References in this section to the relevant auditor's report are to the auditor's report specified under section 32 of this Act.

(4) A public enterprise which contravenes any provision of this section and any officer of the public enterprise who is in default, is guilty of an offence and liable to a penalty of ₦5,000 for every day in which the default continues.

Alteration of accounting requirements

29. Power to alter accounting requirements

(1) The Commission may, after consultation with the Nigeria Accounting Standard Board, by notice to the public enterprise or class of public enterprises, as the case may be-

- (a) add to the classes of documents to be comprised in the financial statement of the public enterprise or class of public enterprises to be delivered to the Commission for a year and make provisions as to the matters to be included in any document so added;
- (b) modify the requirements of this Act as to the matters to be stated in a document to be delivered;
- (c) reduce the number or types of documents to be delivered to the Commission in any year.

PART VI

Audit of accounts

30. Appointment of external auditors

(1) Notwithstanding the provisions of the law establishing a public enterprise, the public enterprise shall every year appoint an external auditor or auditors from the list and in accordance with guidelines supplied by the Auditor-General for the Federation, for a State or for a local government, as the case may be, to audit its financial statements.

(2) An auditor may be re-appointed for other successive year or years if--

- (a) he is not incapacitated or otherwise disqualified; or
- (b) the Commission has not directed that he shall not be re-appointed; or
- (c) he has not given the public enterprise notice in writing that he does not wish to be re-appointed.

31. Qualification of auditors

(1) A person shall not be qualified for appointment as an auditor of a public enterprise for the purpose of this Act, unless he is a member of a body of accountants established, from time to time, by statute in Nigeria.

(2) A person shall not be appointed as an auditor of a public enterprise if-

- (a) he is a director, officer or servant of the public enterprise; or
- (b) he is a partner of or is in the employment of a director, officer or servant of the public enterprise; or
- (c) he is a person or firm who or which offers to the public enterprise professional advice in a consultancy capacity in respect of secretarial, taxation or financial management of the public enterprise; or
- (d) it is a body corporate,

and for this purpose an auditor of a public enterprise shall not be regarded as a director, officer or a servant of the public enterprise.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a firm is qualified for appointment as an auditor of a public enterprise, if all the partners are qualified for appointment as auditors of the public enterprise.

(4) No person shall act as an auditor of a public enterprise at a time when he knows that he is disqualified for appointment to that office and if an auditor of a public enterprise to his knowledge becomes so disqualified during his term of office, he shall vacate his office and give notice in writing to the public enterprise that he has vacated it by reason of that disqualification.

(5) A person who acts as an auditor in contravention of subsection (4) of this section or fails without reasonable excuse to give notice of vacating his office as required by that subsection is guilty of an offence and liable to a penalty of ₦500,000 and where the offence continues, to a penalty of ₦5,000 for every day during which the offence continues.

32. Auditor's report

(1) The auditor of a public enterprise shall make a report to the directors on the accounts examined by him and on every balance sheet and profit and loss account, copies of which shall be delivered to the Commission during the auditor's tenure of office.

(2) In addition to other functions and powers conferred on the Commission by this Act, the Commission shall, on receiving the auditor's report-

- (a) ascertain whether the accounting and reporting policies of the public enterprise are in accordance with legal requirements and agreed ethical practice;
- (b) review the scope and planning of audit requirements;
- (c) review the findings on management matters in conjunction with the auditor and departmental responses thereon;
- (d) keep under review the effectiveness of the accounting system and internal control of the public enterprise;
- (e) make recommendations to the board of directors with regard to the appointment, removal and remuneration of the auditors of the public enterprise; and
- (f) authorise the auditors to carry out investigations into any activity of the public enterprise which may be of interest or concern to the Commission.

33. Auditors' duties and powers

(1) It shall be the duty of the auditor of a public enterprise, in preparing his report, to carry out such investigations as may enable him to form an opinion as to whether-

- (a) proper accounting records have been kept by the public enterprise and proper returns adequate for their audit have been received from branches of the public enterprise not visited by him; and
- (b) the balance sheet of the public enterprise and its profit and loss account, if not incorporated in the balance sheet, are in agreement with the accounting records and returns.

(2) If the auditor is of the opinion that proper accounting records have not been received from branches of the public enterprise not visited by him, or if the balance sheet and the profit and loss account, where not incorporated in the balance sheet, are not in agreement with the accounting records and returns, the auditor shall state that fact in his report.

(3) Every auditor of a public enterprise shall-

- (a) have right of access at all times to its books, accounts and vouchers; and
- (b) be entitled to require from the public enterprise such information and explanation as he thinks necessary for the performance of his duties.

(4) If the requirements of section 25 of this Act are not complied with in the accounts, it shall be the auditor's duty to include in his report, so far as he is reasonably able to do, a statement giving the required particulars.

(5) It shall be the duty of the auditor to consider whether the information given in the directors' report for the year for which the accounts are prepared is consistent with those accounts and if he is of the opinion that it is not, he shall state that fact in his report.

34. Remuneration of auditors

- (1) The remuneration of the auditor of a public enterprise shall be fixed by the directors.
- (2) For the purposes of subsection (1) of this section-

"remuneration" includes sums paid by the public enterprise in respect of the auditor's expenses.

35. Removal of auditors

(1) An auditor may be removed by the directors of the public enterprise before the expiration of his term of office, notwithstanding anything in any agreement between the parties.

(2) A public enterprise which removes an auditor under subsection (1) of this section, shall within thirty days of the removal give notice of that fact in the prescribed form to the Commission.

(3) A public enterprise which fails to give the notice required by subsection (2) of this section, and every officer of the public enterprise who is in default is guilty of an offence and liable to a penalty of ₦ 500 for every day during which the default continues.

(4) Nothing in this section shall be construed as depriving an auditor removed by a public enterprise of compensation or damages payable to him in respect of his removal as auditor or of any appointment as auditor.

36. Resignation of auditors

(1) An auditor of a public enterprise may resign his appointment by depositing a notice in writing to that effect at the head office of the public enterprise and the notice shall operate to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in the notice.

(2) An auditor's notice of resignation shall not be effective unless it contains-

- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the Commission;
or
- (b) a statement of any such circumstances as are mentioned in paragraph (a) of this subsection.

(3) Where a notice under this section is deposited at the head office of a public enterprise, the public enterprise shall within thirty days send a copy of the notice to the Commission.

(4) The public enterprise or any person claiming to be aggrieved by the resignation may, within thirty days of the receipt by the public enterprise of a notice containing a statement under subsection (2) (b) of this section, apply to the Commission for direction under subsection (5) of this section.

(5) If on an application under subsection (4) of this section, the Commission is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may direct the public enterprise to act on the notice of resignation notwithstanding that it contains a statement made under subsection (2) (b) of this section.

(6) If default is made in complying with the provision of subsection (3) of this section, the public enterprise and every officer of the public enterprise who is in default is guilty of an offence and liable to a penalty of N500 for every day during which the default continues.

37. Liability of auditors for negligence

(1) The auditor of a public enterprise shall in the performance of his duties exercise all such care, diligence and skill as are reasonably necessary in each particular circumstance.

(2) Where a public enterprise suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him by subsection (1) of this section, the auditor shall be liable for negligence and the directors may institute an action for negligence against him.

(3) If the directors fail to institute an action against the auditor under subsection (2) of this section, the Commission may direct the directors to institute the action within such period as the Commission may direct and the public enterprise shall comply accordingly.

38. False statement to auditors

(1) An officer of a public enterprise is guilty of an offence if he knowingly or recklessly makes to the auditor of the public enterprise a statement (whether written or oral) which is misleading, false or deceptive in a material particular and conveys or purports to convey any information or explanation which the auditor requires or is entitled to require, as the auditor of the public enterprise.

(2) A person guilty of an offence under this section is liable on conviction to imprisonment for a term of one year or to a fine of ₦50,000 or to both such imprisonment and fine.

PART VII

Supervision

39. Special examination

(1) Notwithstanding anything in any law establishing the public enterprise, the Commission may at any time appoint two or more qualified officers of the Commission (including consultants) (in this Act referred to as "examiners") to make a special examination of the books and affairs of a public enterprise under conditions of secrecy where the Commission is of the opinion that the public enterprise-

- (a) may be carrying on its activities in a manner detrimental to public interest; or
- (b) may have insufficient assets to cover its liabilities; or
- (c) may be contravening the provisions of this Act; or
- (d) is unable, persistently, to pay the salaries of its employees; or
- (e) where applicable, fails to post a profit for a period deemed unreasonable by the Commission; or
- (f) fails persistently to provide the goods and services for which it was established.

(2) The examiners appointed under subsection (1) of this section shall-

- (a) have power to examine periodically, and under conditions of secrecy, the books and affairs of every public enterprise;
- (b) have a right of access at all times to the books, accounts and vouchers of the public enterprise;
- (c) be entitled to require and obtain information and explanations from the officers and directors of a public enterprise as may be deemed necessary in the performance of their duties;
- (d) have access to any accounts, returns and information with respect to any public enterprise which are in the possession of any bank or financial institution in Nigeria in which the public enterprise keeps or operates any account;
- (e) have the right to inspect all public works and other projects for which contracts have been awarded by the public enterprise.

(3) Any director or officer of a public enterprise who fails to assist or, in any way whatsoever, obstructs an examiner in the performance of his duties or exercise of his power under subsection (2) of this section, is guilty of an offence and liable on conviction to imprisonment for a term of eighteen months or a fine of ₦500,000 or to both such imprisonment and fine.

40. Conduct of examination

(1) An examiner shall, in performing his duties under this Act, exercise reasonable care to prevent unreasonable hindrance to the day-to-day activities of a public enterprise and confine the investigation to matters of fact and data deemed necessary for the examination.

(2) A public enterprise shall produce as and when required, all books, accounts, documents and all information as the examiner may deem fit in the performance of his duties.

(3) A public enterprise or an officer of the public enterprise is guilty of an offence under this Act if it-

- (a) wilfully refuses to produce any books, account, document or information; or
- (b) negligently, wilfully or with intent to defraud gives an information which is false in a material particular.

(4) A person guilty of an offence under this section is liable on conviction-

- (a) in the case of an offence against paragraph (a) of subsection (3) of this section, to a fine of ₦500 for each day in which the offence continues; or
- (b) in the case of an offence against paragraph (b) of subsection (3) or this section, to a fine of ₦500,000

41. Report of examination, etc.

(1) Not later than thirty days after the conclusion of an examination under section 40 of this Act, the examiners shall forward a report of their findings to the chairman of the Commission who shall within fourteen days forward a copy to the board of the public enterprise and inform the board of any circumstances in which the board may exercise any of its powers under subsection (2) of this section.

(2) The board of the public enterprise shall within thirty days of receiving the report of the examiners and information under subsection (1) of this section, examine the report of the examiners at a meeting specifically convened for that purpose and submit its comments, if any, on the report to the chairman of the Commission.

(3) The Commission shall not later than thirty days of receiving the comments of the board of the public enterprise, submit the report, the comments of the board (if any) together with the findings (if any) of the Commission to the President for his consideration.

(4) Where the report of the examination of a public enterprise reveals that the public enterprise has failed, that is~

- (a) has persistently failed to provide the core services for which it was established; or
- (b) has liabilities which exceed its assets to an extent considered unhealthy or inimical to the public interest by the Commission; or
- (c) is unable persistently to meet its operating costs or the payment of salaries to its employees, its creditors or contractors; or
- (d) has persistently failed to produce audit reports as and when due; or
- (e) has persistently failed to post a profit (if applicable) for a period of time specified by the Commission; or
- (f) has failed to manage its finances prudently arising from financial malpractice; or
- (g) is likely to become unable to meet its obligations; or
- (h) is for any reason whatsoever in a grave situation; or
- (i) is being mismanaged,

the President may exercise anyone or more of the powers specified in subsection (5) of this section.

(5) The President may by order in writing pursuant to subsection (4) of this section~

- (a) dissolve the board of directors of the public enterprise and appoint~
 - (i) a new board of directors; or
 - (ii) a sole administrator,to manage the affairs of the public enterprise;
- (b) direct the Commission to->
 - (i) recover any debt being owed to the public enterprise;
 - (ii) remove from office any officer or director who contributed to any of the matters revealed under subsection (4) of this section;
 - (iii) wind up the activities of the public enterprise and transfer its assets and liabilities to such other body or bodies as he may determine;
 - (iv) take such other action as he may specify in the order.

PART VIII

Duties of directors. etc.

42. Duties of directors

(1) Notwithstanding the law establishing the public enterprise, a director of a public enterprise stands in a fiduciary relationship towards the public enterprise and shall observe the utmost good faith towards the public enterprise in any transaction with it or on its behalf.

(2) A director shall-

- (a) act at all times in what he believes to be the best interest of the public enterprise as a whole so as to preserve its assets, further its activities, and promote the purposes for which it is established and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances; and
- (b) in the performance of his duties, consider the interest of the employees of the public enterprise.

(3) A director shall exercise his powers for the purpose for which it is specified and shall not do so for a collateral purpose, and the power, if exercised for that purpose shall not constitute a breach of duty, if it incidentally affects the public enterprise adversely.

(4) A director shall not feller his discretion to act in a particular way.

(5) Where a director is allowed to delegate his powers under any provision of this Act, the director shall not delegate the power in such a way and manner as may amount to an abdication of duty.

(6) No provision, whether contained in any contract or otherwise, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred on him under this section.

(7) A director shall not misuse any information, relating to a public enterprise, that comes to his knowledge in the discharge of his duties as a director of the public enterprise to his own or any other person's advantage.

(8) A director shall be relieved of his duty under subsection (7) of this section by the fact that the director has for any reason whatsoever ceased to be a director of the public enterprise.

(9) A duty imposed on a director under this section shall be enforceable against the director by the public enterprise.

43. Conflicts of duties and interests

1) The personal interest of a director shall not conflict with any of his duties as a director under this Act.

(2) A director shall not-

- (a) in the course of management of affairs of the public enterprise; or
- (b) in the utilisation of the property of the public enterprise,

make any secret profit or obtain other improper benefits.

(3) A director shall be accountable to the public enterprise for any secret profit made by him or any improper benefit obtained by him contrary to the provisions of subsection (2) of this section.

(4) A director shall not be liable under this section if he discloses his interests before the transaction or before the secret profit is made.

44. Multiple directorship

The duties and restrictions imposed on a director under this Part of this Act shall apply with respect to every public enterprise of which he is a director and, in addition, he shall not misuse the property, opportunity or information obtained in the course of the management of one public enterprise to his own or any other person's advantage or to the advantage of the other public enterprise.

45. Duty of care and skill

(1) A director shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the public enterprise and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.

(2) Failure to take reasonable care in accordance with the provisions of subsection (2) of this section shall be a ground of action for negligence and breach of duty.

(3) A director shall be individually responsible for the actions of the board in which he participated, and the absence from the board's deliberation, unless justified, shall not relieve a director of that responsibility.

(4) Executive and non-executive directors of a public enterprise shall be subject to the same duty of care with respect to their duties to the public enterprise but an executive director may be subject to additional duties and liabilities where there is an express or implied contract indicating a master and servant relationship between the executive director and the public enterprise.

46. Legal position of directors

(1) A director is the trustee of the moneys, properties and powers of a public enterprise and he shall-

- (a) account for all the moneys over which he exercises control;
- (b) refund any moneys improperly paid; and
- (c) exercise his powers honestly in the interest of the public enterprise and all the shareholders, and not in his own or sectional interest.

(2) A director shall, when acting within his authority and powers of the public enterprise, be regarded as an agent of the public enterprise in respect of the acts of the public enterprise.

47. Substantial property transactions involving directors, etc.

(1) Subject to the exceptions specified under section 48 of this Act, a public enterprise shall not enter into an arrangement by which-

- (a) a director of the public enterprise or a person connected with the director, acquires or is to acquire one or more non-cash assets of the requisite value from the public enterprise; or
- (b) the public enterprise acquires or is to acquire one or more non-cash assets of the requisite value from a director or a person connected with the director,

unless the arrangement is first approved by the Commission.

(2) For the purpose of subsection (1) of this section-

- (a) a non-cash asset is of the requisite value if, at the time the arrangement in question is entered into, its value is not less than N20,000 or more than NI 00,000 or twenty per cent of the value of the net assets of the public enterprise, whichever is higher; and
- (b) the value of the net assets of the public enterprise shall be determined by reference to the accounts prepared and delivered under this Act for the immediately preceding year in respect of which those accounts were so delivered to the Commission.

48. Exceptions from application of section 47

Section 47 of this Act shall not apply to an arrangement for the acquisition of a non-cash asset if-

- (a) the asset is to be transferred to or acquired by another public enterprise; or
- (b) the arrangement is entered into under a re-organisation scheme of the public enterprise directed by the Commission.

49. Liabilities arising from contravention of section 47

(1) An arrangement entered into by a public enterprise in contravention of section 47 of this Act and any transaction entered into in pursuance of the arrangement, whether by the public enterprise, or any other person, shall be avoidable at the instance of the public enterprise or the Commission, unless one or more of the conditions specified in subsection (2) of this section is satisfied.

(2) The conditions referred to in subsection (1) of this section are that-

- (a) restitution of any money or other asset which is the subject matter of the arrangement or transaction is no longer possible or the public enterprise has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or
- (b) any right acquired *bona fide* for value and without actual notice of the contravention by a person who is a party to the arrangement or transaction would be affected by its avoidance; or
- (c) the arrangement is, within a reasonable period, affirmed by the Commission.

(3) Subject to subsections (5) and (6) of this section, if a director of a public enterprise or a person connected with him enters into an arrangement with a public enterprise in contravention of section 47 of this Act, the director and the person so connected, and any other director of the public enterprise who authorised the arrangement or any other transaction entered into in pursuance of the arrangement, is guilty of an offence and liable on conviction-

transaction entered into in pursuance of the arrangement, is guilty of an offence and liable on conviction-

- (a) to account to the public enterprise for any gain which he has made directly by the arrangement or transaction; and
- (b) jointly and severally, with any other person liable under this subsection, to indemnify the public enterprise for any loss or damage resulting from the arrangement or transaction.

(4) Subject to subsections (5) and (6) of this section, subsection (3) of this section is without prejudice to any liability imposed otherwise than by that subsection and liability under that subsection arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1) of this section.

(5) A director who enters into an arrangement in contravention of section 47 of this Act is not liable under subsection (3) of this section if he proves that he took all reasonable steps to secure that the public enterprise complied with that section.

(6) A person so connected with a director and any such other director as is mentioned in subsection (3) of this Act, is not liable under that subsection if he shows that at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(7) In this section and in section 47 of this Act, a person is connected with a director of a public enterprise if, not being himself a director of the public enterprise, he is-

- (a) the spouse, child, step-child, father, step-father, mother, step-mother, sister, brother or agent of the director;
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or
- (c) a person acting in his capacity as trustee of any trust-
 - (i) the beneficiaries of which include the director, his spouse, child or step-child, or a body corporate with which he is associated; or
 - (ii) whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, child or step-child, or a body corporate with which he is associated; or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c) of this subsection, is connected with that director.

50. Directors prohibited from receiving bribes, gifts, etc.

A director of a public enterprise shall not accept-

- (a) a bribe, gift, commission or any other benefit in cash or kind; or
- (b) a share in the bribe, gift, commission or any other benefit in cash or kind,

from any person or a share in the profit of that person in respect of any transaction involving the public enterprise.

51. Destruction, etc.

(1) A director or an officer of a public enterprise who-

- (a) destroys, mutilates, alters or falsifies any book, paper or security; or
- (b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the public enterprise,

with intent to defraud or deceive any person, is guilty of an offence and liable on conviction to imprisonment for a term of not less than three years or a fine of ₦500,000 or to both imprisonment and fine.

(2) A person who commits an offence under subsection (1) of this section, and, immediately before, at, or immediately after the time of committing the offence, wilfully and unlawfully sets fire to any building, property or structure whatever, of the public enterprise, is liable, in addition to any punishment imposed under that subsection, to imprisonment for life.

PART IX

Trial of offences, etc.

52. Jurisdiction

The Federal High Court (in this Act referred to as "the Court") shall have exclusive jurisdiction to try any offence under this Act.

53. Pending proceedings

Any part-heard proceeding, relating to a matter for which the Public Enterprises Tribunal previously had jurisdiction under this Act shall in all criminal and civil cases, be discontinued and transferred to the Court for fresh hearing under this Act.

54. Power of the Court

The Court shall have power to recover, in accordance with the provisions of this Act, the debts owed to a public enterprise arising under the provisions of this Act or any other law or in any other manner whatsoever.

55. Power to control property of debtors or accused

(1) Where at any stage of a hearing or trial, the Court is satisfied that a *prima facie* case has been made out against a person, the Court may by order and for such time as it may direct or require-

- (a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order;
- (b) addressed to the manager of a bank or to the head office of the bank where the person has an account, direct the manager or the bank to-
 - (i) stop all outward payments, operations or transactions (including any bill of exchange) for the time specified in the order;
 - (ii) supply any information and produce books and documents,

in respect of the account of that person; and

- (c) where necessary or expedient, vest in the Court or otherwise, acquire the custody of any property, movable or immovable, of the person for the preservation of the property, pending the determination of the proceedings.

(2) An order under subsection (1) of this section shall have effect as prescribed therein, but any such order may at any time thereafter be varied or annulled by the Court.

(3) A person who fails to comply with the requirement of an order under this section is guilty of an offence and liable on conviction-

- (a) in the case of an individual, to imprisonment for a term of not less than two years or more than five years without the option of a fine;
- (b) in the case of any group of persons not being a body corporate, to the punishment of each of those persons as is prescribed in paragraph (a) of this subsection;
- (c) in the case of a body corporate, to a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or NI 00,000, whichever is higher.

56. Jurisdiction unaffected by separation from office, etc.

The jurisdiction or authority of the Court shall not be affected by the fact that a person charged or brought before the Court for trial or hearing-

- (a) has resigned or retired from the public enterprise;
- (b) has had his appointment terminated in the public enterprise; or
- (c) has otherwise left the employment of the public enterprise.

PART X

Recovery of debts owed to public enterprises

57. Recovery of debts owed to public enterprises

Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Court shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a public enterprise which remains outstanding as at the date of institution of the action.

58. Proof of debt

In addition to any other primary source of evidence, the examination reports and recommendations of the Commission, or the report of a person appointed by the Commission on the financial condition of the public enterprise disclosing the debt shall be sufficient proof that the debt is owed to the public enterprise and is due for recovery under this Act.

59. Application for recovery of debts owed to public enterprise

(1) An application for the recovery of debt owed to a public enterprise shall be brought before the Court by the Commission.

(2) An application may be brought against a debtor or defendant under this section and the Court shall proceed to hear the application in accordance with the provisions of this Act, notwithstanding that a criminal proceeding is pending against the debtor or defendant in respect of the same matter.

60. Debtor to appear before Court to show cause

(1) The Court shall on the return date and on receipt of a reply to the notice of an application made under section 59 (1) of this Act, if the debtor or defendant admits the debt, enter judgment and ask the debtor or defendant to appear before it to show cause why the Court should not invoke its powers under this Act to recover the debt.

(2) The Court shall, if satisfied with the explanation of the debtor or defendant, give the debtor or defendant not less than thirty days to pay to the Commission the outstanding debt and any interest thereon.

(3) If a debtor or defendant pays the outstanding debt within the period specified under subsection (2) of this section, the Court shall-

- (a) issue to the debtor or defendant a certificate of clearance; and
- (b) order that all the documents and properties, if any, pledged as security, collateral or bond, be released to the debtor or defendant.

61. Hearing, judgment and execution

(1) If the debtor or defendant-

- (a) at the expiration of the period specified under section 60 (2) of this Act, fails to repay all the outstanding debt and interest; or
- (b) disputes the amount of debt or interest,

the Court shall proceed to hear the case and enter judgment and make such order as it deems appropriate for the purposes of this Part of this Act.

(2) Where the Court makes an order for the payment of the outstanding debt and interest and the debtor or defendant fails to comply within the time specified in the order, the Court shall make an order to levy execution on all the properties of the debtor or defendant, if any, pledged as security, collateral or bond for the debt.

62. Withdrawal of application

The Commission may with leave of the Court at any time, before judgment is entered, withdraw an application made under section 59 (1) of this Act.

63. Sale of property

(1) A property against which an order is made under section 61 (2) of this Act shall, with the concurrence of the Commission, be sold by auction or by private contract and the money obtained from the sale shall be applied in accordance with the provisions of this section.

(2) Where a property is sold under subsection (1) of this section, the Court shall execute an instrument to transfer, conveyor assign the property to the purchaser or in any other way vest the property in the purchaser.

(3) An instrument executed under subsection (2) of this section shall be conclusive proof of the title of the purchaser and shall, where necessary, be a registrable instrument under the various registration laws, without the consent required under sections 21, 22 and 26 of the Land Use Act.

[Cap. L5.]

(4) Any money obtained from the sale of properties under subsection (1) of this section shall, within two weeks from the date of sale, be paid to the Commission, after all the recovery expenses have been deducted, to offset the judgment debts and interest thereon, if any.

(5) If the money obtained from the sale under subsection (1) of this section is not sufficient to offset the judgment debt and interest thereon, the Court may, where the debtor or defendant-

- (a) is an individual. levy execution on the other properties of the debtor or defendant;
- (b) is a body corporate, partnership or other association of individuals, notwithstanding anything to the contrary in the Companies and Allied Matters Act or any other enactment or law for the time being in force, levy execution on the other properties of the body corporate, partnership or association of individuals.

[Cap. C20.]

(6) Where the Court levies execution under subsection (5) of this section, the properties shall be sold as specified in subsection (1) of this section and the provisions of subsections (2), (3) and (4) of this section shall apply to the sale and money obtained from the sale.

(7) If the money obtained from the sale of properties under subsection (6) of this section is still not sufficient to off-set the outstanding judgment debt and interest thereon, the Court may, subject to section 290 of the Companies and Allied Matters Act, levy execution on the personal properties of the directors of the body corporate, partners of the partnership or individuals of the association, as the case may be, which shall be sold and applied in satisfaction of the outstanding judgment debt, in accordance with the provisions of this section.

[Cap. C20.]

64. Inadequate information on debtor, etc.

(1) Where-

- (a) the information and details on the properties of the debtor or defendant are impossible to locate; or
- (b) security, collateral or bond, where required, was not provided; or
- (c) the identity, of the debtor or defendant is difficult to locate; or
- (d) the debtor or defendant is found to be non-existent, fake or fictions or in any way unidentifiable,

the Court shall hold liable, for the outstanding debt and any interest thereon, the directors, officers and other employees of the public enterprise who in the performance of their duties were found to have been connected in any way with the transaction.

(2) The Court shall proceed to recover from the persons referred to in subsection (1) of this section, jointly and severally the outstanding debt and interest thereon in accordance with the provisions of this Act, unless the Court is satisfied that the debt was incurred or arose

without the consent of the director, officer or employee and that he exercised all such diligence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.

65. Exclusion of statutes of limitation

The provisions of any statute of limitation shall not apply to matters brought before the Court under this Act.

PART XI

Offences and penalties

66. Offences by supervising officer, director, etc.

Any supervising officer, director, manager, officer or employee or a public enterprise who-

- (a) knowingly, recklessly, negligently, wilfully or otherwise awards, enters into, approves or negotiates the award or is otherwise connected with the negotiation, award or approval of a contract, project or any other transaction or arrangement to any person-
 - (i) contrary to the accepted practice, regulation or guideline; or
 - (ii) with no security, collateral or bond, where such security or collateral is normally required in accordance with accepted practice, regulation or guideline; or
 - (iii) without the approval or consent of any person or authority whose consent or approval is prescribed under any law, practice, regulation or guideline; or
 - (iv) recklessly, without any reasonable belief that the public enterprise has sufficient funds to finance or pay for the contract, project, or any other transaction or arrangement; or
- (b) awards, approves the award of or is otherwise connected with the award or approval of a contract, project, or any other transaction or arrangement which is above his limit as laid down under any law, practice, regulation or guideline; or
- (c) awards, approves the award of or is otherwise connected with the award or approval of a contract, project, or any other transaction or arrangement, to any person in contravention of any law for the time being in force, or any regulation, circular, or procedure, as laid down or approved, from time to time, by the public enterprise; or
- (d) receives or participates in sharing, for personal gratification, any money, profit, property or pecuniary benefit towards or after the award, approval or procurement of a contract, project or any other transaction or arrangement to any person; or
- (e) recklessly awards or approves the award of any contract where the contractor is not known to have the ability to perform or complete the contract; or
- (f) recklessly negotiates, awards, or approves-
 - (i) the award of a contract at inflated; or

- (ii) the sale or exchange of any properly or non-cash assets of the public enterprise at deflated or undervalued,

monetary consideration, as the case may be, or recklessly without any attempt to determine its fair value,

is guilty of an offence.

67. Penalties for offences under section 70

A person who commits an offence under section 66 of this Act is liable on conviction, subject to subsection (S) of section 71 of this Act, in the case of an offence-

- (a) under paragraph (a), (b), or (c) of that section-
 - (i) where the public enterprise concerned is a failed public enterprise, to imprisonment for a term not exceeding five years without an option of a fine, in the case of a failed public enterprise;
 - (ii) to a fine of N 1 million or imprisonment for a term of not less than two years or to both such fine and imprisonment, in any other case;
- (b) under paragraphs (d), (e) and (f) of that section-
 - (i) where the public enterprise concerned is a failed public enterprise, to imprisonment for a term not exceeding three years without an option of a fine, in the case of a failed public enterprise; and
 - (ii) to a fine of N500,000 or an imprisonment for a term of not less than eighteen months or to both such fine and imprisonment, in any other case.

68. Contributing to economic adversity of public enterprise

(1) A person who has contributed to the economic adversity or failure of a public enterprise in a material particular is guilty of an offence, and liable on conviction to imprisonment for a term of five years without any option of a fine.

(2) A person convicted under this section shall be liable to refund to the public enterprise or the Commission the amount determined by the Court as the equivalent in monetary terms of the loss suffered by the public enterprise as a result of the offence or of such other sum as the Court may deem fair and just in the public interest.

69. Failure to execute contract, etc.

(1) A person who, having entered into a contract to execute any public work, including buildings, roads, or to supply goods, materials or services to a public enterprise, without just cause-

- (a) fails to execute the public work or to supply the goods, materials or services; or
- (b) otherwise abandons or fails to complete the performance of the contract,

is guilty of an offence and liable on conviction to a fine of ₦ 500,000 or to imprisonment for a term of three years, or to both such fine and imprisonment.

(2) In the trial of an offence under this section, it shall be sufficient for the prosecution to prove that the contract was duly entered into or awarded to the defendant and, thereafter, the burden of establishing or proving the existence of just cause for abandoning or failing to

complete the performance of the contract or to execute the public works shifts to the defendant.

(3) Where a person convicted under this section is proved to have received or otherwise been paid any money by the public enterprise under the contract, the Court-

- (a) shall order the person to refund the moneys or part thereof as the Court shall find due to the public enterprise together with interest at such rate and for such period as the Court may determine or in lieu thereof;
- (b) may order the person, within a period prescribed by the Court, to complete the performance of the contract, or the execution of the public works, or the supply of the goods, materials or services; and
- (c) may delay the execution of his sentence of imprisonment to enable him to carry out the order of the Court.

(4) A sum ordered to be refunded shall be deemed to be a debt owed to the public enterprise and shall be recovered accordingly.

70. Failure to supervise performance of contract

(1) Any supervising officer, director, officer or employee of a public enterprise who-

- (a) being a person having the duty or responsibility to supervise the performance of a contract referred to in section 69 of this Act, without just cause, fails to perform that duty or responsibility or does so negligently or recklessly; or
- (b) without just cause, paid, authorised or approved or caused to be paid any money from the funds of the public enterprise to the contractor for a contract knowing that the contractor is in default of his performance,

is guilty of an offence and liable on conviction to a fine of ₦ 500,000 or imprisonment to a term of three years or both to such fine and imprisonment.

(2) The onus of proving the circumstances which constitute just cause for authorising or making the payment, or that he did not know or ought reasonably to have known that the contractor was in default, shall lie on the supervising officer, director, officer or employee of the public enterprise, as the case may be.

71. Determination of appropriate punishment, etc.

(1) In determining the appropriate punishment to impose on conviction of a person under this Act, the Court shall take into consideration-

- (a) the economic or financial condition or position of the public enterprise, whether it has failed or not;
- (b) whether the future financial viability of the public enterprise is in jeopardy or peril; and
- (c) the extent to which the act or omission of the offender has contributed to the economic adversity or failure of the public enterprise.

(2) The Court may order the confiscation of the property, movable or immovable, of a person convicted of an offence under this Act, of the value equal to the amount involved in the offence or of such other value as the Court may deem fair and just in the circumstance.

(3) A person convicted of an offence under this Act may voluntarily surrender property, movable or immovable, of the value equal to the amount involved in the offence or such other value as he may decide.

(4) A property confiscated or surrendered under this section shall be forfeited-

- (a) to the public enterprise that suffered the loss; or
- (b) in the case of a failed public enterprise, to the Commission for the benefit of that public enterprise; or
- (c) to such other person who, in the opinion of the Court, deserves to be compensated for the loss suffered.

(5) Where, by reason of the confiscation or voluntary surrender of property under this section, there is full or substantial recovery of the amount involved in the offence, the Court may, if it deems it equitable, reduce or decline to impose the penalty specified in this Act for the offence.

72. Liability of persons who are parties to carrying on fraudulent activities

If, in the course of investigation of a failed public enterprise it appears that any activity of the public enterprise has been carried on in a reckless manner or with intent to defraud the public enterprise, the Court, on the application of the Commission, may, if it thinks proper so to do, declare that persons who were knowingly parties to the carrying on of the activity in the manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the public enterprise as the Court may direct.

73. Attempt to commit offence, etc.

(1) A person who attempts to commit any of the offences specified in this Act is guilty of an offence and liable on conviction to the same punishment as is prescribed for the full offence.

(2) Where a person is charged with any of the offences specified in this Act, but the evidence establishes an attempt to commit that offence he may be convicted of having attempted to commit that offence although the attempt is not separately charged and shall be liable to the same punishment as is prescribed for the offence under this Act.

(3) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the person shall not be acquitted but shall be convicted of the offence and be liable to the same punishment as is prescribed for the offence under this Act.

(4) Where, in respect of an act which is an offence under this Act, the Court is satisfied that a person, not being a person charged with an offence under this Act-

- (a) acted in concert or conspired with any person; or
- (b) knowingly took part to any extent whatsoever in the commission of an act constituting an offence specified in this Act,

the Court shall have power to treat the person in like manner as a person charged with an offence under this Act and shall proceed against him accordingly, notwithstanding anything to the contrary in any other enactment.

74. Offence by bodies corporate

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the connivance of or to be attributed to any negligence on the part of a director, manager, or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate, other than a bank, is convicted of an offence under this Act, the Court may order that the body corporate be wound up and the body corporate shall thereupon and without any further assurance but for that order, be wound up and all its assets, after satisfying all the claims of the Commission, shall be forfeited to the Federal Government.

PART XII

Miscellaneous

75. Withholding of information

(1) It shall be an offence for any person, association of individuals or body corporate whether public or private to-

- (a) refuse or neglect to give any information which the Commission may require in exercise of its functions; or
- (b) make any statement in respect of any information required by the Commission which he knows to be false in any particular material or which he has no reason to believe to be true.

(2) A person who commits an offence under subsection (1) of this section is guilty of an offence and liable on conviction-

- (a) in the case of an individual, to a fine of ₦100,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment; and
- (b) in the case of a group of individuals or a body corporate, to a fine of ₦ 500,000.

76. Liability where proper accounts not kept

(1) If, where a public enterprise has failed, it is shown that proper books of accounts were not kept by the public enterprise throughout the period of two years immediately preceding the date it is declared a failed enterprise, every officer of the public enterprise who is in default is, unless he shows that he acted honestly and that in the circumstances in which the activity of the public enterprise was carried on the default was excusable, guilty of an offence and liable on conviction to a fine of N250,000 or imprisonment for a term of two years or to both such fine and imprisonment.

(2) For the purposes of this section, proper books of accounts shall be deemed not to have been kept in the case of any public enterprise if there have not been-

- (a) books of accounts as are necessary to exhibit and explain the transactions and financial position of the public enterprise, including books containing entries from day to day, in sufficient detail of all cash received and cash paid; and

- (b) where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient details to enable those goods and those buyers and sellers to be identified.

77. Regulations

The Commission may, with the approval of the President, make regulations generally for the purpose of giving effect to the provisions of this Act.

78. Interpretation.

In this Act, unless the context otherwise requires-

"application" means an application made by the Commission or by a person (including a receiver or liquidator) appointed by the Commission on its behalf for the recovery of a debt, owed to a public enterprise;

"auditor" means an external auditor appointed under section 30 of this Act;

"board" means the governing board, by whatever name called, of a public enterprise;

"Board" means the governing Board of the Commission;

"Commission" means the Public Enterprises Regulatory Commission established under section 1 of this Act;

"Court" means the Federal High Court;

"debt" includes any land, claims, damages, penalties, forfeitures, credit facility, money received for work not done, mobilisation fee, refunds together with the interest thereon, if any, which remain unsettled, outstanding and unpaid against any person in favour of a public enterprise;

"debtor" includes a defendant or any person against whom the public enterprise claims any debt;

"director" includes-

- (a) a member of the governing board, by whatever name called, of a public enterprise;
and
(b) a wife, husband, father, mother, son, daughter, agent or trustee of a director;

"employee" means a person who is or has been employed, or connected in any capacity with the affairs of a public enterprise or any person brought before the Court under this Act, and includes an officer of the public enterprise;

"failed public enterprise" means a public enterprise to which any of the provisions of section 41 (4) of this Act relates;

"liquidator or receiver" includes a person appointed by the Commission to manage, liquidate the public enterprise or to bring an application under section 62 (1) of this Act;

"loan" includes an advance, mobilisation payment, a guarantee and any other credit facility;

"officer" includes a director of the public enterprise;

"public enterprise" includes-

- (a) any commission, board, agency, committee, organisation or authority established for the Federation, under the Constitution or by any other enactment;
- (b) any commission, board, agency, committee, organisation or authority established for any State or States under the Constitution or by any Act, law or any other enactment;
- (c) any statutory corporation or authority established by the Federal, State or local government;
- (d) any educational institution established or financed principally by the Federal, State or local government;
- (e) any company or enterprise in which the Government of the Federation, State or local government or its agency owns controlling interest, excluding a bank or other financial institutions under the Failed Banks (Recovery of Debts) and Financial Malpractice in Banks Act, the Banks and other Financial Institutions Act and the Nigerian Deposit Insurance Corporation Act;

[Cap. F2. Cap. B3. Cap. NI 04.]

"supervising officer" includes a Minister, Permanent Secretary and their representatives;

"unsecured" means without security or collateral.

79. Short title

This Act may be cited as the Public Enterprises Regulatory Commission Act.

SCHEDULES

SCHEDULE 1

[Section 2 (3).]

Supplementary provisions relating to the Board, etc.

Proceedings of the Board

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

[Cap. 123.]

(2) The quorum of the Board shall be the chairman and four other members and the quorum of any committee of the Board shall be determined by the Board.

2. (1) The Board shall meet not less than four times in each year and subject thereto, the Board 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 four other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.

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

Committees

3. (1) The Board may appoint one or more committees to carry out, on behalf of the Board, such of its functions as the Board may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board) as may be determined by the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

4. (1) The fixing of the seal of the Commission shall be authenticated by the signature of the chairman or of any other person authorised generally or specially to act for that purpose by the Board.

(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 Commission by the chairman or any person generally or specially authorised to act for that purpose by the Board.

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

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

SCHEDULE 2

[Section 69.]

Rules of procedure. etc. .for the recovery of debts at the High Court

1. Interpretation

In this Schedule, unless the context otherwise requires-

"**Civil Procedure Rules**" means the Federal High Court (Civil Procedure) Rules, or rules of court amending or replacing those Rules;

"**Registry**" means the Registry of the Court;

"**Secretary**" means the Secretary in charge of the Registry, or if he is absent, the senior clerk present at the Registry;

"**Court notice board**" means a notice board at the Registry and, where notice of hearing is being or has been given, a notice board at the place of the hearing.

2. Presentation of application

(1) Application for the recovery of debts owed to a public enterprise shall be made by the Commission, receiver or liquidator in Form A as set out in Schedule 3 to this Act leaving it in person, or by the hand of the solicitor (if any) named at the foot of the application, with the Secretary, and the Secretary shall (if so required) give a receipt which may be in Form B in Schedule 3 to this Act.

[Schedule 3. Form A. Form B.]

(2) There shall also be left with the Secretary a copy of the application for each respondent and seven other copies thereof.

(3) The Secretary shall compare each copy of the application left in accordance with subparagraph (2) of this paragraph with the original application and shall, upon being satisfied by such comparison that it is a true copy thereof, certify it to be so.

(4) The Commission, receiver or liquidator shall, at the time of presenting the application, pay the fees for its service and publication, and for certifying the copies; and in default of such a payment the application shall not be received, unless the Court otherwise orders.

3. Contents of application

(1) The application shall contain the particulars set out therein as specified in section 62 (2) of this Act.

(2) There shall be stated at the foot of the application an address for service within five kilometres of a post office in the Judicial Division, and the name of its occupier, at which address documents intended for the Commissioner, receiver or liquidator may be left.

(3) If an address for service and its occupier are not stated, application shall not be filed unless the Court otherwise orders.

(4) There shall be added at the foot of the application a note signed by the Commission, receiver or liquidator giving the name of his solicitor, if any, or stating that he acts for himself, as the case may be.

(5) Evidence need not be stated in the application, but the Court may order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual hearing in the same way as in a civil action in the court, and upon such terms as to costs and otherwise as may be ordered.

4. Address of respondent

For the purpose of service of the application on the respondent, Commission, the receiver or liquidator shall furnish the Secretary with the address of the respondent's abode or the address of a place where personal service can be effected on the respondent.

5. Action by secretary

(1) On the presentation of an application and payment of the requisite fees, the Secretary shall forthwith-

- (a) cause notice in Form C in the Appendix to this Schedule, of the presentation of the application and a certified copy of the application, to be served on the debtor;

[Form c:

- (b) post up on the Court notice board a certified copy of the application;
- (c) send a certified copy of the application by registered post or messenger to the person or authority to whom it is required by law that the determination of the application shall be certified.

(2) In the notice of presentation of the application, the Secretary shall state a time, not being less than five days or more than fifteen days after the date of service of the notice, within which the debtor is to enter an appearance.

(3) In fixing such time the Secretary shall have regard to the necessary, for securing a speedy hearing of the application, and to the distance from the Secretary of the address furnished under paragraph 2 of this Schedule.

6. Service

(1) Subject to sub-paragraphs (2) and (3) of this paragraph, service on the respondent of the documents mentioned in sub-paragraph (1) (a) of paragraph 5 of this Schedule and of any other documents required to be served on him before entering an appearance, shall be personal.

(2) Where the Commission, receiver or liquidator has furnished, under paragraph 4 of this Schedule, the address of a place where personal service can be effected on the respondent and the respondent cannot be found at that place, the Court on being satisfied, upon an application supported by an affidavit showing what has been done, that all reasonable efforts have been made to effect personal service, may order that service of any document in sub-paragraph (1) of this paragraph be effected in any of the ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in a civil case and such service shall be deemed to be equivalent to personal service.

(3) The proceedings under the application shall not be vitiated by the fact that the respondent may not have been served personally or that any document of which substituted service has been effected pursuant to an order made under sub-paragraph (2) of this paragraph did not reach the respondent's hands; and in such circumstances as aforesaid the proceedings may be heard and continued as if the respondent had been served personally with the document and shall be valid and effective for all purposes.

7. Entry of appearance

(1) The debtor shall-

- (a) within such time after being served or deemed to be served with the notice of the application as may be stated in the notice; or
- (b) where an order has been made under sub-paragraph (2) of paragraph 6 of this Schedule, with in such other time (if any) as may be stated in that order,

enter an appearance by filing in the Registry a memorandum of appearance in Form D in the Schedule 3 to this Act stating that he admits the debt or that he intends to oppose the application and giving the name and address of his solicitor, if any, or stating that he acts for himself, as the case may be, and in either case giving an address for service within five kilometres of a post office in the Judicial Division and the name of its occupier, at which documents intended for the debtor may be left.

(2) If an address for service and its occupier are not stated, the memorandum shall not be filed, unless the Court otherwise orders.

(3) The memorandum of appearance shall be signed by the debtor but may be filed by his solicitor, if any.

(4) At the time of filing the memorandum of appearance the debtor or his solicitor shall leave a duplicate thereof for each other party to the application and three other duplicates thereof and pay the fees for service, and in default of such duplicate being left and such fees being paid at that time, the memorandum shall not be filed, unless the Court otherwise orders.

8. Default of appearance

If the debtor does not enter an appearance as aforesaid, any document intended for the debtor may be posted on the Court notice board and such posting shall be sufficient notice thereof.

9. Notice of appearance

The Secretary shall cause a duplicate of the memorandum of appearance to be served upon, or notice thereof to be given to, the other parties to the application.

10. Filing of reply

(1) The debtor shall, within six days of entering appearance, file in the Registry his reply specifying therein which of the facts and grounds alleged in the application he admits or denies and setting out any facts and grounds on which he relies in opposition.

(2) The reply may be signed and filed by the debtor's solicitor, if any.

(3) At the time of filing the reply, the debtor or his solicitor shall leave a duplicate thereof for each party to the complaint and three other duplicates thereof and pay the fees for service; and in default of such duplicates being left and such fees being paid at that time, the reply shall not be filed, unless the Court otherwise orders.

(4) The Secretary shall cause a duplicate of the reply to be served on each other party to the complaint.

11. Admission of debt

Where the debtor admits the debt, the Court shall on receipt of his reply, summon him to appear before the Court as specified in section 63 of this Act.

12. Amendment of application

The relevant provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply to the amendment of all applications as if for the words "any proceeding" in those provisions there were substituted the words "the application or the reply if any".

13. Further particulars or direction

(1) If any party to the application wishes to have further particulars or other directions of the Court, he may, at any time after the entry of appearance but not later than seven days after the filing of the reply, apply to the Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Court otherwise orders, be set down for hearing on the first available day.

(2) The party so applying shall give notice of his motion to the other parties, and where he relies on any facts which are not apparent on the face of the documents already filed, he shall support his motion by affidavit.

(3) If a party does not so apply, he shall be taken to require no further particulars or other directions and such party shall be debarred from so applying after the lapse of the period laid

down in sub-paragraph (1) of this paragraph except with the leave of the Court which may be given in a proper case on such terms as to cost and otherwise as the Court may be deemed fit.

14. Open court

Every application shall be heard in open court.

15. Time and place of hearing

(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the time and place of the hearing of an application shall be fixed by the Court and notice of the time and notice of the hearing (which may be in Form E in Schedule 3 to this Act) shall be given by the Secretary at least three days before the day fixed for the hearing-

[Form E.]

(a) by posting or causing to be posted, the notice on the Court notice board;

(b) by sending a copy of the notice by registered post or messenger to the Commissioner's, receiver's or liquidator's address for service;

(c) by sending likewise a similar copy to the debtor's address for service, if any.

(2) The Court shall sit in such place or places as the Judge may, from time to time, determine.

16. Publication, good notice

The posting of the notice of hearing on the Court notice board shall be deemed and taken to be good notice and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies of the notice sent pursuant to paragraph 15 of this Schedule.

17. Continuance day to day

No formal adjournment of the Court for the hearing of an application shall be necessary, but the hearing is to be deemed adjourned and may be continued from day to day until the case is concluded; and in the event of the judge of the Court who begins the hearing being disabled by illness or otherwise, it may be recommenced and concluded by another judge to be appointed by the President.

18. Adjournment

After the hearing has begun, if the case cannot be continued on the ensuing day or if that day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned *sine die* but to a definite day to be announced before the rising of the Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the Court notice board.

19. Powers of Court over proceedings

All interlocutory questions and matters shall be heard and disposed of before the Court which shall have control over the proceedings as judge in the ordinary proceedings of the court.

20. Judgment

At the conclusion of the hearing, the Court shall deliver its judgment and make such order as it deems appropriate for the purposes of Part XI of this Act.

21. Appeal

A judgment of the Court is subject to appeal as specified in section 56 of this Act.

22. Enlargement and abridgement of time

(1) The Court shall have power to enlarge or abridge the times appointed by this Act or the Rules of Court mentioned in paragraph 27 of this Schedule or fixed by any order enlarging time,

for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require.

(2) Enlargement may be ordered although the application for the enlargement is not made until after the expiration of the time appointed or allowed.

(3) When the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of the paragraphs or rules referred to in paragraph 1 of this rule or by direction or order of the Court, the costs of any application to extend such time and of any order made thereon, shall be borne by the party making the application unless the Court shall otherwise order.

(4) An application for enlargement or abridgement of time shall be supported by affidavit.

(5) An application for abridgement of time may be made *ex parte*, but the Court may require notice thereof to be given to the other party.

(6) An application for enlargement of time shall be made by motion after notice to the other party but the Court may, for good cause shown by affidavit or otherwise, dispose with such notice.

(7) A copy of an order made for enlargement or abridgement of time shall be tiled or delivered together with any document filed or delivered by virtue of the order.

23. Service of notice

(1) Where any summons, notice or document, other than a notice or document mentioned in paragraph 5 (1) of this Schedule is required to be served on any person for a purpose connected with an application, the same may be served either by delivering it to such person or by leaving it at his last known place of abode with any person there found who is a resident thereof and appears to be eighteen years of age or more.

(2) After a party has given an address for service, it shall be sufficient if, in lieu of serving him personally with any document intended for him, such document is served--

(a) on the person appearing on the paper last filed on his behalf as his solicitor wherever such person may be found or, if such person is not found at his office, on the clerk there apparently in charge; or

(b) on the person named as occupier in his address for service wherever such person may be found or, if such person is not found at such address on--

(i) the person there found apparently in charge, if such address is a place of business; or

(ii) any person other than a domestic servant there found who is a resident thereof and appears to be eighteen years of age or more.

(3) A party may change his address for service by giving notice of his new address for service and its occupier to the Secretary and to each other party; but until such notice is received by the Secretary, his old address for service shall continue to be his address for service.

(4) Where service in one of the foregoing modes has proved impracticable, the Court, on being satisfied upon an application supported by an affidavit showing what has been done, that all reasonable effort has been made to effect service, may order that service be effected in any of the ways mentioned in the provisions of the Civil Procedure Rules relating to substituted service shall be sufficient, or may dispense with service or notice, as the Court may think fit.

24. Duplicate of documents

In the absence of express provision for the furnishing of copies of duplicates of documents filed or used in connection with any step taken in the proceedings, the party taking such steps shall, unless the Secretary otherwise directs, leave with the Secretary a duplicate of every such document for each other party and three other duplicates.

25. Non-compliance with rules, etc.

(1) Non-compliance with any of the provisions of this Schedule, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court shall so direct but such proceeding may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think fit to ensure substantial justice.

(2) No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.

(3) Where application is made to set aside proceedings for irregularity the several objections intended to be insisted upon shall be stated in the notice of motion.

(4) No objection shall be made that a certified copy has been used instead of a duplicate or a duplicate instead of a certified copy.

(5) An application shall be defeated by any objection merely as to form.

26. Forms

(1) The forms contained in Schedule 3 to this Act may, in accordance with any instructions contained in the said forms and with such variation as the circumstances of the particular case may require be used for the matter to which they apply; and when so used, shall be good and sufficient in law.

(2) Where no form has been prescribed in this Schedule for a particular matter, the forms as contained in the Civil Procedure Rules of the Court may, with such modifications as the circumstances may require, be used for the matter.

27. Institution of proceedings

Where these Rules contain no provision in respect of any matter relating to or connected with the hearing of a case under this Act, the provisions of the Civil Procedure Rules of the Federal High Court shall, with such modifications as may be necessary to render them conveniently applicable, as if the applicant and the respondent were respectively the plaintiff and the defendant in a civil action.

SCHEDULE 3
[Section (69).]

Forms for recovery of debt

FORM A

[Sections 62, and paragraphs 2 and 26 of Schedule.]

IN THE FEDERAL HIGH COURT

Application for the recovery of debt

Between

A.B.

(Commission.....)

FORM A—continued

C.D.

(Receiver/Liquidator of))

and

E.F. Respondent(s)

(Debtor/Defendant)

G.H.

(Debtor/Defendant)

The application of A.B. of or A.B. of

and C.D. of (as the case may be) whose names are subscribed.

State here contents of your application as set out in section 62 (1) of the Public Enterprises Regulatory Commission Act 1996.

- (a) the name of and address of the debtor/defendant;
- (b) if the debtor/defendant is a body corporate, partnership or sole trader—
 - (i) the address of its principal place of business;
 - (ii) the names and addresses of its shareholders, directors, proprietors or partners as the case may be;
- (c) the amount of debt or claim outstanding;
- (d) details of securities pledged, if any; and
- (e) such other information as may be useful to the Court.

Address for service

Occupier

The name of my (or our) Solicitor is

or I (or we) am (or are) acting for myself (or ourselves).

.....

Signed A.B.

.....

Signed C.D.

SIGNED before me this day of 20

.....

Secretary

FORM B
[Paragraphs 2 and 26 of Schedule 2.]
IN THE FEDERAL HIGH COURT

Receipts of application for the recovery of debt

Received on the day of 20
at the Registry of the High Court an application for the recovery of debts owed to
.....
DATED this day of 20

FORM C
[Paragraphs 5 and 26 of Schedule 2.]
IN THE FEDERAL HIGH COURT

Notice of presentation of application for the recovery of debt

Between

A.B. Applicant

(Commission))

C.D.

(Receiver/Liquidator of)

and

E.F. Respondent(s)

(Debtor/Defendant)

G.H.

(Debtor/Defendant)

The application of A.B. of or A.B. of
and C.D. of (as the case may be) whose names are subscribed.

TAKE NOTICE that an application, a duplicate whereof is attached hereto has this day been presented in the Registry of the Court named above and that you are to enter an appearance to the application in the said Registry within days of the date when this notice was presented thereof, or within days of the date when this notice was left at your address set out below, or as the Court may direct by order under paragraph 6 of Schedule 2 to this Act to the otherwise proceedings upon the application may be continued and determined in default of your appearance, and any document relating to such proceedings and intended for you may be posted up on the Court notice board, which shall be sufficient notice thereof.

DATED this day of 20

.....
Secretary

FORM G—continued

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

DATED this day of 20

Judge of the Court

FORM H
[Section 79 and Paragraph 26 of Schedule 2.]

Notice of motion to withdraw application

Between

A.B. Applicant
(Commission

C.D.
(Receiver/Liquidator of)
and

E.F. Respondent(s)
(Debtor/Defendant)

G.H.
(Debtor/Defendant)

The application of A.B. of or A.B. of
and C.D. of (or as the case may be) whose names are subscribed.

Write out the Notice of Motion named in civil proceeding and conclude as follows—

The applicant proposes to apply to withdraw his application on the following grounds—

(here, state the ground)

Signed E.F.

or

Solicitor

SIGNED before me this day of 20

Solicitor

SCHEDULE 4

[Section 79 (4).]

RULES OF PROCEDURE FOR CRIMINAL PROSECUTION AT THE COURT

Commencement and conduct of trial of offences

1. The trial of offences under this Act shall be by way of summary trial.

2. Commencement of trial

(1) When the Court is ready to commence the trial the accused shall be brought before it and the Court shall read or cause to be read to him the substance of the complaint against him and he shall be asked whether he is guilty of the offence or offences charged.

(2) If the accused pleads guilty, the plea shall be recorded and he may in the discretion of the Court be convicted of the offence.

3. Plea of not guilty or no plea

If the accused pleads not guilty or makes no plea or refuses to plead or if the Court enters a plea of not guilty on behalf of the accused, the Court shall proceed to try the case.

4. Presentation of case for prosecution

(1) After a plea of not guilty has been taken or no plea has been made, the prosecutor may open the case against the accused, stating shortly by what evidence he intends to prove the guilt of the accused.

(2) The prosecutor shall then examine the witnesses for the prosecution who may be cross-examined by the accused or his counsel and may thereafter be re-examined by the prosecutor.

5. Procedure after presentation of evidence by the prosecutor

(1) After the conclusion of the presentation of evidence by the prosecutor, the Court shall ask the accused-

(a) whether he wishes to give evidence on his own behalf; and

(b) whether he intends to call witnesses other than witnesses to character.

(2) If the accused says that he does not intend to call any witnesses other than witnesses to character, the prosecutor may sum up his case against the accused and the Court shall call upon the accused to enter upon the defence.

(3) Notwithstanding the provisions of paragraphs (2) of this rule, the Court may, after hearing the evidence for the prosecution, if it considers that the evidence against the accused or any of several accused is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of such accused without calling upon him or them to enter the defence and such accused shall thereupon be discharged and acquitted and the Court shall then call upon the remaining accused, if any, to enter upon the defence.

(4) If the accused or anyone of several accused says that he intends to call any witness, other than a witness to character, the Court shall call upon the accused to enter upon the defence.

(5) Notwithstanding the provisions of paragraph (4) of this rule, the Court may, before calling upon the accused to enter upon the defence, call upon the prosecutor to sum up his case against anyone or more of the accused against whom it considers that the evidence is not sufficient to justify the continuation of the trial and, after hearing the summing up, if any, may in its discretion record a finding of not guilty in respect of any such accused or call upon any of them to enter upon his or their defence.

6. Defence

When the Court calls upon the accused to enter upon the defence, the accused or his counsel may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution, and the accused may then give evidence on his own behalf, examine his witnesses, if any, and, after their cross-examination, and re-examination, if any, the accused or his counsel may sum up his case.

7. Right of prosecutor to reply

(1) If the accused or any of the accused calls any witness, other than a witness to character, or any document, other than a document relating to character, is put in evidence for the defence, the prosecutor shall be entitled to reply.

(2) If the accused has called only evidence as to character, the prosecutor may, at the close of the case for the defence, adduce evidence of previous convictions of the accused.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this rule, the prosecution may, with the leave of the Court, be heard in reply on a point of law or on any new matter or evidence, other than evidence as to character introduced by the accused.

8. Consideration of findings

When the case for the defence and the reply of the prosecution, if any, are concluded and the Court does not desire to put any further question to the accused, the Court shall retire or adjourn to consider its findings.

9. Announcement of findings

After the Court has made its findings, the Court shall announce such findings, and, where the accused is found guilty, it shall impose the appropriate penalty prescribed in this Act and issue an appropriate order accordingly.

10. Recommendation as to mercy

The Court may, in addition to its sentence, make appropriate recommendation as to mercy but in any such case shall give reasons for such recommendation.

11. Notes of evidence to be taken

(1) The Judge shall in every case take notes in writing of the oral evidence, or so much thereof as he considers material, in a book to be kept for that purpose and such book shall be signed by the Judge at the conclusion of each day's proceeding.

(2) The record so kept as aforesaid or copy thereof purporting to be signed and certified as a true copy by the Judge shall, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses.

12. Issue of summons for witness

If the court is satisfied that any person is likely to give material evidence for the prosecution or for the defence, the Court may issue a summons to such person requiring him to attend, at a time and place to be mentioned therein, before the Court to give evidence in respect of the case and to bring with him any specified documents or things and any other documents or things relating thereto which may be in his possession or power or under his control.

13. Warrant of witness after summons

If the person to whom any such summons is directed does not attend before the Court at the time and place mentioned therein and there does not appear to the Court on inquiry to be any reasonable excuse for such non-attendance then after proof to the satisfaction of the Court that

the summons was duly served or that the person to whom the summons is directed wilfully avoided service, the Court, on being satisfied that such person is likely to give material evidence, may issue a warrant to apprehend him and to bring him, at the time and place to be mentioned in the warrant before the Court in order to testify as aforesaid.

14. Local inspections

It shall be the duty of the Court to make or cause to be made such local inspection as the circumstances of the case may require.

15. Forms

Subject to the express provisions, if any, of these Rules, the forms contained in Schedule 5 to this Act may, in accordance with any instructions contained in the said forms, and with such variation as the circumstances of the particular case may require, be used in the case to which they apply, and when so used, shall be good and sufficient in law.

[Schedule 5.]

16. Witness compellable in certain cases

(1) Whenever two or more persons are summoned to appear before the Judge or charged with an offence under this Act, the Court may require one or more of them to give evidence as a witness.

(2) A person who refuses to be sworn or to answer a lawful question after having been required to give evidence as a witness under paragraph (1) of this rule, may be dealt with in the same manner as a witness refusing to do so in a High Court in Nigeria.

17. Evidence of accomplices

Notwithstanding anything to the contrary in any law (including any rule of law) no witness shall, in a proceeding under this Act be presumed to be unworthy of credit by reason only that he took part in the granting of any loan and advance or the commission of any offence under this Act.

18. Application of Criminal Procedure Code or Act

Where these rules contain no provision in respect of any matter relating to or connected with the trial of offences under this Act, the provisions of the Criminal Procedure Code or, depending on the venue, the Criminal Procedure Act shall, with such modifications as the circumstances may require, apply in respect of such matter to the same extent as they apply to the trial of offences generally.

19. Meaning of prosecutor

In these Rules, "the prosecutor" means the Attorney-General of the Federation or any other person authorised by him pursuant to section 79 (1) of this Act to conduct the prosecution of an offence before the Court or to assist therein.

SCHEDULE 5
[Section 78 and paragraph 15 of Schedule 4.]

Forms for criminal prosecution

FORM 1

Application to commence trial

To: The Judge,
The Court

.....
.....
.....

Pursuant to section 79 (1) of the Public Enterprises Regulatory Commission Act 1996, I hereby apply for the commencement of a trial for the offence of
under section or of a trial for the of offence of
under section of Public Enterprises Regulatory Commission Act 1996 against the under-mentioned persons—

- (i)
- (ii)

If this application is granted, I shall be relying on the facts disclosed in the summary of evidence and any further evidence the Court may consider necessary at the trial. I attach hereto four copies of the charge against the accused. A list of the deponents and their addresses is also attached for the purpose of issuing witness summons on them.

.....

Prosecutor

FORM 2

Summons to accused

To: A.B. of

Complaint has been made this day by for that on
..... in the aforesaid did*

.....
.....

You are therefore summoned to appear before the Court mentioned above sitting at
..... on to answer the said complaint

.....

FORM 2—*continued*

DATED the day of 20

.....
Judge of the High Court

*State concisely the substance of the offence

FORM 3

Warrant for apprehension of accused

Between

The Federal Republic of Nigeria

and

..... Accused

To: Police Officer.

Complaint has been made on day of

by that

hereinafter called the accused, on the day of

did*.....

You are hereby commanded to bring the accused before the Court mentioned above sitting at

..... on

to answer the said complaint and be dealt with according to law.

DATED the day of 20.....

.....
Judge of the High Court

*State concisely the substance of the offence.

FORM 4

Summons to witness

Between

The Federal Republic of Nigeria

and

..... Accused

FORM 4—*continued*

To: (i)
(ii) has been charged by
(iii) at in that he did
(iv)

and it appearing to me on the application of (iii)
that you are likely to give material evidence therein on behalf of the prosecutor (*or solicitor*).

You are therefor summoned to appear before the Court named above sitting at
on the day of 20
at the hour of in the noon, to testify what you know concerning
the said matter.

DATED the day of 20

.....
Judge of the High Court

- (i) Insert name of witness.
- (ii) Insert name of accused.
- (iii) Insert name of prosecutor or, if applicable, the accused.
- (iv) State concisely the substance of the offence.

FORM 5

Warrant for apprehension of witness in the first instance

To
A.B. has been charged by for
that he on the day of at
..... in the State aforesaid did*

And it appearing to me by the oath of that
..... is likely to give material evidence
concerning the said matter, and that it is probable he will not attend to give evidence unless compelled
to do so.

You are therefore hereby commanded to bring him before the Court named above sitting at
..... forthwith to testify what he knows concerning the said matter.

DATED the day of 20

.....
Judge of the High Court

*State concisely the substance of the offence

FORM 7—*continued*

- (i) having appeared or been brought before the Court named above sitting at on the day of 20 to testify what he knows concerning a certain matter against
- (ii) refused to take an oath (or having taken an oath) refused to answer any (or a certain) questions put to him concerning the matter and did not offer any excuse for his refusal.

You the said Police Officer are hereby commanded to convey the said safely to the prison and deliver him to the Superintendent thereof, together with this Warrant and you, the Superintendent of the said prison, to receive him into your custody and keep him for a period of unless, he in the meantime consents to be examined and to answer concerning the matter.

DATED the day of 20

.....
Judge of the High Court

- (i) Insert name of witness.
- (ii) Insert name of accused.

FORM 8

Commitment on remand

Between

The Federal Republic of Nigeria

and

..... Accused
To: and Officer in Charge of
Police Station and to the Superintendent of Prison

- (i) hereinafter called the accused being brought before the Court named above, sitting at charged with having.
- (ii)
The hearing of the case being adjourned—

You the said Police Officer are hereby commanded to convey the accused to police custody at or to the said prison and thereto deliver him to the Officer in Charge*/Superintendent thereof, together with this Warrant, and you the Officer in Charge*/Superintendent of the said prison, to receive him into your custody, and keep him until the day of 20 and on that day to convey him before the said Court at the hour of in the noon to be further dealt with according to the law.

FORM 8—*continued*

DATED the day of 20

.....
Judge of the High Court

(i) Insert name of witness.

(ii) Insert name of accused.

*Delete whichever does not apply.

FORM 9

Warrant of conviction

Between

The Federal Republic of Nigeria

and

..... Accused

(i) having appeared before the Court named
above sitting at

is this day convicted for that he, on the day of

20 at within the did

(ii) and it is adjudged that the accused, for his
said offence, be sentenced to

(iii) and the accused shall be kept in custody at

DATED the day of 20

.....
Judge of the High Court

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

