



NATIONAL AGENCY FOR THE CONTROL OF HIV AND AIDS (ESTABLISHMENT) ACT, 2007

EXPLANATORY MEMORANDUM

This Act establishes the National Agency for the Control of HIV and AIDS, (NACA) and to set up other high powered intervention bodies to co-ordinate the implementation of programmes for the control of the pandemic in Nigeria.

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SCHEDULE

NATIONAL AGENCY FOR THE CONTROL OF HIV AND AIDS (ESTABLISHMENT) ACT, 2007, ACT No. 2

An Act to establish the National Agency for the Control of HIV and AIDS and other related matters

[22nd Day of February, 2007] [Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows-

- 1.**-(1) There is hereby established an agency to be known as the National Agency for the Control of HIV and AIDS (in this Act referred to as the "the Agency") which shall under that name be a body corporate with perpetual succession and common seal, and may sue or be sued in its corporate name.
- (2) The Agency shall have its principal office located at the Federal Capital Territory, Abuja and such other liaison, operations and co-ordinating branch offices, units and research or observation centres as the Agency may require or determine for the proper discharge or performance of its functions under this Act, within and outside Nigeria.
- (3) Subject to this Act, the Agency may be structured into any number of departments and divisions as the Board may deem appropriate for the effective administration of the Agency and proper discharge of its functions.
- (4) Without prejudice or derogation to the provisions of any existing law, the Agency established under this Act shall be supervised and controlled by the Presidency.
- 2.**-(1) There is established for the Agency a Governing Board (in this Act referred to as "the Board") consisting of:
 - (a) a chairman who shall be suitably qualified for the purpose of the Agency;

- (b) six persons (reflecting the Federal Character), two of whom shall be women, to include:
- (i) a legal practitioner with experience in matters relating to the rights of children, women and persons living with HIV and AIDS,
 - (ii) a person who is qualified and experienced in matters relating to public health,
 - (iii) a medical scientist involved in the formulation and development of vaccines, and its testing and application on the human kind,
 - (iv) a Journalist with experience in mass communication techniques,
 - (v) a social scientist with experience in the mobilization and counselling of communities on responses to afflictions, scourges and other catastrophes of epidemic proportion,
 - (vi) an accountant with appreciable experience in financial management skills;
- (c) one person each, not below the rank of Director, to represent:
- (i) the Federal Ministry of Health,
 - (ii) the Secretary to the Government of the Federation,
 - (iii) the Federal Ministry of Women Affairs;
 - (d) two persons to represent the Non-Governmental Organizations involved in HIV and AIDS activities;
 - (e) one person representing people living with HIV and AIDS;
 - (f) one person representing women ;
 - (g) one person representing Youth; and
 - (h) the Director-General of the Agency.
- (2) The Chairman and members of the Board of the Agency shall be appointed by the President.
- (3) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

(4) The office of the DIRECTOR-GENERAL shall provide the Secretariat for the Board.

3.-(1) The Board shall:

- (a) provide leadership and advocacy for the prevention and control of the HIV and AIDS scourge in the Federation ; and provide intergovernmental and multisectoral co-ordination;
 - (b) facilitate the formation and development of national and international partnerships and collaboration for the purpose of enhancing Nigeria's control initiatives on the HIV and AIDS pandemic;
 - (c) facilitate funding for effective dissemination of information and counseling against HIV and AIDS infections and care and support for people living with HIV and AIDS throughout the Federation;
 - (d) review, from time to time, the extent of the implementation of the national strategic framework on the prevention and control of the HIV and AIDS by the Agency;
 - (e) determine the overall policies and guideline of the Agency, including its financial and operating procedures and ensure their effective implementation; and
 - (f) make rules for the appointment, promotion and discipline of employees of the Agency.
- (2) Subject to such conditions as it may impose, the Board may delegate any of its functions under this Act to any of its committees or to the Director-General.
- (3) Nothing in this section shall prevent the Board from performing or exercising any of the functions and powers so delegated.
- (4) The Board shall be responsible for the appointment, promotion and discipline of the senior staff.

4.-(1) Subject to the provisions of section 5 of this Act, a member of the Board, other than an exofficio member:

- (a) shall hold office for a period of four years in the first instance and shall be eligible for reappointment for a further period of four years, and no more;

- (b) may resign his appointment by writing under his hand a letter addressed to the President, and his membership shall terminate on the date of receipt of the letter of resignation; and
 - (c) shall be paid such remuneration and allowances as the Revenue Mobilisation, Allocation and Fiscal Commission may, from time to time determine.
- (2) Subject to this Act, a member of the Board, other than an ex-officio member shall not while holding office on the Board hold any other office of emolument in any of the public service of the Government of the Federation or of a State.
- 5.**-(1) The Chairman or any member of the Board of the Agency may 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.
- (2) Without prejudice to sub-section (1) of this section:
- (a) no member shall absent himself from meetings for three consecutive times without good reason; and
 - (b) where the members of the Board are satisfied that the continued presence on the Board of the Agency, of the member is not in the interest of the overall object and functions of the Agency, the Chairman of the Board of the Agency may recommend accordingly to the President that the member be removed and declare the office of that member vacant.
- (3) Any vacancy in the Board occurring as a result of any of the circumstances described under this section of this Act shall be filled by appointing a person who shall represent the same interest which the predecessor represented, and shall hold office for the unexpired term of office of the last holder of the office.

PART II-FUNCTIONS AND POWERS OF THE AGENCY

- 6.**-(1) Subject to this Act, the Agency shall perform the following functions:
- (a) plan and co-ordinate activities of the various sectors in the National Response Strategic Framework;
 - (b) facilitate the engagement of all tiers of government and all sectors on issues of HIV and AIDS prevention, care and support ;

- (c) advocate for the mainstreaming of HIV and AIDS interventions into all sectors of the society ;
 - (d) formulate policies and guidelines on HIV and AIDS ;
 - (e) support HIV and AIDS research in the country ;
 - (f) mobilize resources (local and foreign) and co-ordinate equitable application for HIV and AIDS activities;
 - (g) provide and co-ordinate linkages with the global community on HIV and AIDS;
 - (h) monitor and evaluate all HIV and AIDS activities in the country;
 - (i) facilitate the development and management of the policies and strategies of all sectors to ensure the human, financial and organizational resources to support the successful execution of the national HIV and AIDS response programme;
 - (j) establish, encourage and promote training programme for the employees of the Agency and other appropriate persons from public or private organizations;
 - (k) perform such functions as may, from time to time be assigned to it by the Government; and
 - (l) facilitate collaboration for the management of HIV and opportunistic infections.
- (2) In addition to the functions of the Agency as provided in sub-section (1) of this section, the Agency shall have power to :
- (a) co-operate with persons and institutions undertaking research in Nigeria and in other countries;
 - (b) enter into contract within or outside Nigeria, with any persons, government, or institutions, and execute any contract, deed or any other document within or outside the Federal Republic or any foreign country for the purpose of combating HIV and AIDS;
 - (c) open and operate ordinary and domiciliary accounts for the Agency in recognized banking institutions;

- (d) appoint officers and employees at such remuneration and on such conditions and subject to the relevant provisions of this Act;
- (e) pay gratuities and pensions to its officers and employees;
- (f) develop and maintain an appropriate organizational structure;
- (g) generally, enter into any contract or perform any act, whether within the Federal Republic of Nigeria or outside, as will in the opinion of the Board contribute towards the attainment of the Agency's objectives; and
- (h) establish State and Zonal Offices to co-ordinate the Agency's functions.

PART III-STRUCTURE OF THE AGENCY

7.-(1) There shall be created for the Agency a Management Committee, which shall consist of :

- (a) the Director-General who shall be the Chief Executive Officer (CEO),
 - (b) the heads of the departments of the Agency; and
 - (c) any other person that may be co-opted by the Director-General.
- (2) The Management Committee shall be responsible for the management of the Agency in accordance with the policies of the Agency.
- (3) The Management Committee shall be responsible for the appointment, promotion and discipline of the Junior staff of the Agency.

PART IV-STAFF OF THE AGENCY

8.-(1) The Director-General shall be :

- (a) appointed by the President;
 - (b) answerable to the Board;
 - (c) a person qualified as a medical scientist for not less than fifteen years; and
 - (d) experienced in matters concerning HIV and AIDS.
- (2) The Director-General shall be the Chief Executive Officer of the Agency who shall be responsible for the day-to-day running of the Agency.

- (3) The Director-General shall be the Chairman of the National Council on AIDS.
 - (4) The Director-General shall hold office for a period of 4 years in the first instance and may be reappointed for a further period of 4 years and no more, on such terms and conditions as may be determined, from time to time, by the President.
- 9.**-(1) The terms and conditions of service including remuneration, allowances, benefits and pensions of officers and employees of the Agency shall be determined by the Board.
- (2) Service in the Agency shall be approved service for the purpose of the Pensions Act, and accordingly officers and other persons employed in the Agency shall, in respect of their services in the Agency, be entitled to pension, gratuities and other retirement benefits as are prescribed thereunder:
 - (3) Notwithstanding subsection (1) of this section, the Agency may appoint a person to any office on the terms, which preclude the grant of a pension, gratuity or retirement benefits.
 - (4) For the purpose of the application of the Pension Reform Act, any powers exercisable thereunder by the Minister of Finance or other regulations thereof, is hereby vested and shall be exercisable by the Board and not any other person or authority.

PART V-FINANCIAL PROVISIONS

- 10.**-(1) The Agency shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Agency.
- (2) There shall be credited to the fund established in pursuance of subsection (1) of this section such payments as may be made to it by the Federal Government for the running expenses of the Agency and all other assets accruing from time to time to the Agency.
 - (3) The Agency may establish and maintain one or more funds into which shall be credited such payments as may be made to it by donors and other agencies from time to time for the purpose of supporting HIV and AIDS activities and programmes in the Federal Republic.
 - (4) The Agency shall disburse these funds to ministries, States and other organizations that qualify and have been granted funding by the Agency for executing HIV and AIDS activities and programmes.

- (5) The Agency shall also, from time to time, apply the funds at its disposal to :
- (a) the cost administration of the Agency;
 - (b) paying members of the Board and any Committee set up by the Board for such expenses as may be expressly authorized by the Board or the President in accordance with this Act and at the approved rates;
 - (c) the payments of salaries, fees or other remunerations, allowances, pensions and gratuities payable, to officers and servant of the Agency;
 - (d) publicise and promote the activities of the Agency;
 - (e) train the members of staff of the Agency; and
 - (f) undertake all activities connected with its functions under this Act.
- 11.** The Agency may accept gifts, including land, money or other property, on such terms and conditions, if any, as may be specified by the person or organization making the gift provided that the conditions attached by the person or organization making the gift are not inconsistent with the functions of the Agency under this Act.
- 12.**-(1) The Board may, with the consent or in accordance with any specific authority given by the President, borrow by way of loan or overdraft from any source, such specified amount of money as may be required by the Agency for meeting its obligations and discharging its functions under this Act.
- (2) The Board may subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds with the consent or general authority of the President.
- (3) The Board may invest any surplus funds of the Agency in securities as prescribed by the Trustee Investment Act or such other securities as may, from time to time, be approved by the President.
- (4) Subject to the provisions of the land use Act, and any special or general direction which the President may give in that behalf, the Agency may acquire or lease any land required for its purpose under this Act.
- 13.** The Director-General shall cause to be prepared and submitted to the Board, not later than 30th September of each year, an estimate of the expenditure and income of the Agency for the following year.

- 14.** The Board shall cause to be kept proper accounts of the Agency in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than 6 months after the end of the year by auditors appointed by the Board and in accordance with the guidelines supplied by the Auditor-General of the Federation.
- 15.** The Director-General shall, not later than 30th March in each year, prepare and submit to the Board a report on the activities and administration of the Agency during the immediately preceding year and shall include in the report a copy of the audited accounts of the Agency for the year and the auditor's report thereon.
- 16.**-(1) The Agency shall be exempted from the payment of income tax on any income derived by it under this Act or accruing to it from any investments.
(2) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency.

PART VI-ESTABLISHMENT OF THE NATIONAL COUNCIL

ON HIV AND AIDS AFFILIATIONS

- 17.**-(1) There is established for the purpose of this Act the National Council on HIV and AIDS (in this Act, referred to as "the National Council").
(2) The National Council on AIDS shall comprise delegates from all States, the Federal Capital Territory (FCT) and representatives of other stakeholders on HIV and AIDS as may be directed by the Board and the membership of the council shall include but not limited to the following:
 - (a) the Director-General of the National Agency for the Control of HIV and AIDS as the Chairman;
 - (b) all Chairpersons for State Action Committee on AIDS;
 - (c) all Secretaries of State Action Committee on AIDS;
 - (d) two representatives of recognized umbrella organizations of civil societies and Non-Governmental Organizations on HIV and AIDS;
 - (e) two representatives of umbrella organizations of persons living with HIV and AIDS;
 - (f) one representative of media organization involved in HIV and AIDS ;

- (g) one representative of Youth organization involved in HIV and AIDS;
- (h) one representative of women organization involved in HIV and AIDS ;
- (i) two representatives of faith-based organizations involved in HIV and AIDS; and
- (j) one representative of Nigerian National Labour Organization.

18.-(1) The National Council shall have responsibility for:

- (c) co-ordinating all intervention programmes for the prevention, control and management of HIV and AIDS in the Federation or any part thereof;
 - (b) establishing minimum standards for the control and management of HIV and AIDS infections by providing technical direction;
 - (c) maintaining unity and co-operation among all stakeholders involved in the fight against HIV and AIDS; and
 - (d) assessing the extent of progress made at Federal, State and Local Council levels.
- (2) The Director-General of the Agency shall be the co-ordinator of the affairs of the National Council, and in that regard shall provide the secretariat to facilitate the activities and programmes of the National Council.

PART VII-MISCELLANEOUS PROVISIONS

19.-(1) On the commencement of this Act:

- (a) all property held immediately before that day by or on behalf of the former National Action Committee on AIDS (in this Act referred to as "the former Committee") shall, by virtue of this subsection and without further assurance, vest in the Agency and be held by it for the purposes of the Agency;
 - (b) the former Committee shall cease to exist; and
 - (c) subject to the next succeeding subsection, any act, matter or thing made or done by the former Committee shall continue to have effect.
- (2) Every agreement to which the former Committee was a party immediately before the appointed day whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned by the former Committee shall, unless its terms or subject matter make it impossible that it should have effect as modified in the manner

provided by the sub-paragraph, have effect from the appointed day, so far as it relates to property transferred by this Act to the Agency, as if the Agency had been a party to the agreement.

- (3) Without prejudice to the generality of the foregoing provisions of this Schedule, where, by the operations of this Act, any right, liability or obligation vests in the Agency, the Agency and all other persons shall, as from the appointed day, have the same rights, powers and remedies (and, in particular, the same rights as to the making or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Agency.
- (4) If the law in force at the place where any property transferred by this Act is situated (whether by reference to an instrument of transfer or otherwise), the law shall, so far as it provides for alterations of a Register (but not for avoidance of transfer, the payment of fees or any other matter) apply with the necessary modifications to the transfer of the property aforesaid, and the Agency shall furnish the necessary particulars of the transfer to the proper officer of the registration authority, and of that officer to register the transfer accordingly.
- (5) Without prejudice to the generality of the provisions of this Act relating to the transfer of property, any persons who, immediately before the appointed day, was a member of the staff of the former Committee shall on that day become the holder of an appointment with the Agency with the status, designation and functions which correspond as nearly as may be to those which appertained to him in his capacity as a member of that staff.
- (6) All regulations, rules and similar instruments made for the purpose of the former Committee and in force immediately before the appointed day shall, except in so far as they are subsequently revoked or amended by any authority having power in that regard, have effect with any necessary modifications, as if duly made for the corresponding purposes of the Agency.

20.-(1) In this Act:

"Agency" means the National Agency for the Control of HI V and AIDS established pursuant to section 1 (1) of this Act;

"Board" means the Governing Board of the Agency established pursuant to section 2 (1) of this Act;

"Chairman" means the Chairman of Governing Board of the Agency;

"Director-General" means the Director-General of the Agency;

"functions" includes power and duty ;

"HIV and AIDS" means Human Immuno-deficiency Virus, and Acquired Immune

Deficiency Syndrome, respectively;

"Junior Staff" means officers of the Agency on Salary Grade Levels 01 to 06 in accordance with the Federal Government Public Service Salary Structure;

"member" means a member of the National Agency for the Control of HIV and AIDS and includes the Chairman;

"National Council" means the National Council on HIV and AIDS established pursuant to section 17 (1) of this Act;

"National Strategic Framework" refers to the National Response strategies and measures formulated and put to effect for combating the wide spread nature of the HIV and AIDS in the Federation and any part thereof, and as specified under this Act;

"President" means the President of the Federal Republic of Nigeria, and the

"Presidency" shall be construed accordingly; and

"Senior Staff" means officers of the Agency on Salary Grade Level 07 and above in accordance with the Federal Government Public Service Salary Structure.

(2) The Interpretation Act shall be applied for interpreting the provisions of this Act.

21. If any provision of this Act or the application thereof to any person, body corporate, statutory body or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without that invalid provisions or application, and this end, the provisions of this Act are severable.

22. This Act may be cited as the National Agency for the Control of HIV and AIDS (Establishment, etc.) Act, 2007.

SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE PROCEEDINGS OF THE BOARD OF THE AGENCY *Meeting of the Board*

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its committees.
2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of their members to preside.
3. The quorum at a meeting of the Board shall consist of the Chairman (or, in an appropriate case, the person presiding at the meeting) and one-third of other members.
4. The Board shall for the purpose of this Act, meet not less than three times in each year and subject, thereto, the Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to him by not less than 5 other members, he shall summon a meeting of the Board to be held within 14 days from the date on which the notice is given.
5. 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 a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.
6. A member of the Board who is directly or indirectly interested in any matter being deliberated on by the Board, or is interested in any contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at the meeting of the Board.
7. A disclosure under this paragraph shall be recorded in the Minutes of Meetings of the Board and the member concerned shall:

- (a) not, after the disclosure, take part in any deliberation or decision of the Board; and
 - (b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decisions, with regard to the subject matter in respect of which his interest is so disclosed.
8. A decision of the majority of the members of the Board present at any meeting constitutes a decision of the Board and, in the event of an equality of votes, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.
 9. A decision taken by the Board or an act performed under the authority of the Board shall not be invalidated by reason only of a vacancy on the Board, or that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the Board who were present at the time and entitled to sit as members.
 10. Minutes of the proceedings of each meeting shall be submitted at the next meeting of the Board and, if passed as correct, shall be confirmed by the signature of the chairperson or other member presiding thereat and may, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting.

Committees of the Board

- 11.- (1) Subject to its standing orders, the Board may appoint such number of standing and ad-hoc committees as it thinks fit to consider and report on any matter with which the Agency is concerned.
- (2) A Committee appointed under this paragraph shall consist of such number of persons (not necessary members of this 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 and the committee shall be presided over by a member of the Board.
- (3) The quorum of any committee set up of the Board shall be as may be determined by the Board.
- (4) A decision of a committee of the Board shall be of no effect until it is ratified by the Board.

Miscellaneous

12. The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman or any other person generally or specifically authorized by the Board, to act for that purpose, and that of the Director-General.
13. Any contract or instrument which, if made 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 Agency by the DIRECTORGENERAL or by any other person generally or specifically authorized by the Board to act for that purpose.
14. Any document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.
15. The validity of any proceedings of the Board or of any of its committees shall not be affected by :
 - (a) any vacancy in the membership of the Board or committee; or
 - (b) any defect in the appointment of a member of the Board or committee; or
 - (c) reasons that a person not entitled to do so took part in the proceedings of the Board or committee.
16. A member of a committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the committee shall forthwith disclose his interest to the committee and shall not vote on any question relating to the contract or arrangement.
17. No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Agency.
18. The Supplementary provisions set in the Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.