

Supplement to Official Gazette Extraordinary No. 39, Vol. 52, [30th April, 1965—Part C

The following Bills, which will in due course be presented to Parliament for enactment, are published for general information.

INSTITUTE OF CHARTERED ACCOUNTANTS BILL

EXPLANATORY MEMORANDUM

The object of the Bill is to regulate the professional activities of qualified accountants throughout the Federation. It provides for the obligatory registration of all accountants with the proposed Institute of Chartered Accountants. It provides for the establishment of a Governing Council to direct the affairs of the Institute and determine its policy. In addition, it provides for a Disciplinary Tribunal to adjudicate on cases of professional misconduct against members.

R. O. A. AKINJIDE,
Minister of Education

ARRANGEMENT OF CLAUSES

Clause

The Institute of Chartered Accountants of Nigeria

1. Establishment of Institute of Chartered Accountants of Nigeria.
2. Election of president and vice-president of the institute.
3. Council of institute and membership etc.
4. Financial provisions.
5. Transfer to institute of certain property etc.

The register

6. Appointment of registrar etc. and preparation of the register.
7. Publication of registers and lists of corrections.

Registration

8. Registration of accountants.
9. Approval of qualifications etc.
10. Supervision of instruction and examinations leading to approved qualifications.

Professional discipline

11. Establishment of disciplinary tribunal and investigating panel.

12. Penalties for unprofessional conduct, etc.

Miscellaneous and general

13. Application of Act to unenrolled persons.
14. When persons are deemed to practise as accountants.
15. Rules as to articles, practising fees, etc.
16. Provision of library facilities, etc.
17. Regulations and rules.
18. Offences.
19. Interpretation.
20. Short title, extent, commencement, and amendment of the Companies Act.

SCHEDULES

First Schedule—Supplementary provisions relating to the council.

Second Schedule—Transitional provisions as to property, etc.

Third Schedule—Supplementary provisions relating to the disciplinary tribunal and investigating panel

A BILL

FOR

AN ACT TO REGULATE THE PROFESSION OF ACCOUNTANCY AND FOR RELATED MATTERS.

[See clause 20 (2)]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA

1.—(1) There shall be established a body to be known as the Institute of Chartered Accountants of Nigeria (in this Act hereafter referred to as “the institute”) which shall be a body corporate under that name and be charged with the general duty of—

Establish-
ment of
Institute of
Chartered
accountants
of Nigeria.

(a) determining what standards of knowledge and skill are to be attained by persons seeking to become members of the accountancy profession and raising those standards from time to time as circumstances may permit ;

(b) securing in accordance with the provisions of this Act the establishment and maintenance of registers of fellows, associates and registered accountants entitled to practise as accountants and auditors and the publication from time to time of lists of those persons ; and

(c) performing through the council under this Act the functions conferred on it by this Act.

(2) The institute shall have perpetual succession and a common seal which shall be kept in such custody as the council under this Act may from time to time authorise.

(3) The institute may sue and be sued in its corporate name and may hold, acquire and dispose of any property, movable or immovable.

(4) Subject to the provisions of this Act, members admitted to the institute shall—

(a) be enrolled as chartered accountants in the category of—

(i) fellows, or

(ii) associates ; or

(b) be registered as registered accountants,

and shall have status in the institute accordingly.

(5) Persons accorded by the council under this Act status as chartered accountants shall be entitled to the use of that name and—

(a) shall be recorded as fellows if they satisfy the said council that for the five years next preceding the date of application in that behalf they have been fit persons and have, in addition to being the holders of approved academic qualifications, been in continuous active practice on their own account as accountants or in partnership with other accountants ;

(b) shall be recorded as fellows if for the period of not less than ten years immediately preceding the date of application for such enrolment (the period of membership of the association, in the discretion of the council, counting in that behalf) they have been enrolled as associates, whether in active practice as accountants or not and are otherwise fit persons; and 5

(c) shall be recorded as associates if they satisfy the said council that they have passed examinations prescribed or accepted by the institute and are otherwise fit persons to be enrolled in the register. 10

(6) Persons admitted to the institute and registered as registered accountants shall be the holders of qualifications acceptable to the institute but less than those prescribed for enrolment as chartered accountants. 15

(7) Where a person is enrolled or registered as the case may be in the institute, he shall be entitled to the use of such letters after his name as may be authorised by the council according as he is a fellow, an associate or a registered accountant, and shall, when enrolled or registered, as the case may be, receive a certificate in such form as the council may approve for the purpose. 20

Election of president and vice-president of the institute.

2.—(1) There shall be a president and a vice-president of the institute who, subject to the provisions of section 5 and of Schedule 2 to this Act, shall be elected by the council under this Act and hold office each for a term of one year from the date of election, and the president shall be chairman at meetings of the institute, so however that, in the event of the death, incapacity or inability for any reason of the president, the vice-president shall act in his stead for the unexpired portion of the term of office, or as the case may require, and references in this Act to the president shall be construed accordingly. 25

(2) The president and vice-president shall respectively be chairman and vice-chairman of the council under this Act. 30

(3) If the president or the vice-president ceases to be a member of the institute he shall cease to hold any of the offices designated under this section.

Council of institute and membership etc.

3.—(1) There shall be as the governing body of the institute, a council charged with the administration and general management of the institute, and the council shall consist of a total of twenty persons, being fellows or associate members, as follows— 35

(a) five persons nominated by the Minister, of whom each shall be a person appearing to the Minister to be engaged in the practice of accountancy in a different territory within the meaning of the Constitution of the Federation; and 40

(b) fifteen persons elected by the institute annually of whom not more than eight shall be members in active practice as accountants.

(2) The provisions of Schedule 1 to this Act shall have effect with respect to the qualifications and tenure of office of members of the council and the other matters there mentioned. 45

(3) Regulations made by the council with the approval of the Minister may provide for increasing or reducing the membership of the council and may make such amendments of subsection (1) of this section and Schedule 1 paragraph 1 of this Act as the Minister considers expedient for the purposes of or in consequence of the increase or reduction. 50

4.—(1) The council shall establish and maintain a fund, the management and control of which shall be in the hands of the council, and into which shall be paid all moneys received by the council including moneys held by the Association of Accountants in Nigeria incorporated under the Companies Act (and in this Act hereafter referred to as "the association") on its ceasing to exist as provided in the next succeeding section, and there shall be paid thereout accounts and other liabilities incurred by or on behalf of the institute under this Act.

Financial provisions.
Cap. 37.

(2) The council may invest moneys in the fund in any security created or issued by or on behalf of the Government of the Federation or in any other securities in Nigeria approved by the council.

(3) The council may from time to time borrow money for the purposes of the institute, and any interest payable on moneys so borrowed shall be paid out of the fund.

(4) The council shall keep proper accounts on behalf of the institute in respect of each financial year and proper records in relation to those accounts; and the council shall cause the accounts to be audited by a chartered accountant member of the institute and, when audited, the accounts shall be submitted to the members of the institute for approval by them at the next annual general meeting.

(5) An auditor appointed for the purposes of this section shall not be a member of the council.

5.—(1) On the appointed day—

(a) all property held immediately before that day by or on behalf of the association shall, by virtue of this subsection and without further assurance, vest in the institute and be held by it for the purposes of the institute; and

(b) the association shall cease to exist; and

(c) subject to the next succeeding subsection, any act, matter or thing made or done by the association shall cease to have effect.

(2) The provisions of Schedule 2 to this Act shall have effect with respect to, and to matters arising from, the transfer by this section to the institute of the property of the association, and with respect to the other matters mentioned in that Schedule.

Transfer to institute of certain property etc.

THE REGISTER

6.—(1) It shall be the duty of the council to appoint a fit person to be the registrar for the purposes of this Act, and such other persons as the institute may from time to time think necessary.

(2) It shall be duty of the registrar to prepare and maintain, in accordance with rules made by the council, a register of the names, addresses and approved qualifications, and of such other particulars as may be specified in the rules, of all persons who are entitled in accordance with the provisions of this Act to be enrolled as fellows or as associates, or registered as registered accountants, and who, in the manner prescribed by such rules, apply to be so registered.

(3) The register shall consist of three parts of which one part shall be in respect of fellows, the second part shall be in respect of associates and the third part shall be in respect of registered accountants.

Appointment of registrar etc. and preparation of the register.

(4) Subject to the following provisions of this section, the council shall make rules with respect to the form and keeping of the registers and the making of entries therein, and in particular—

(a) regulating the making of applications for enrolment or registration as the case may be, and providing for the evidence to be produced in support of applications ; 5

(b) providing for the notification to the registrar, by the person to whom any registered particulars relate, of any change in those particulars ;

(c) authorising a registered person to have any qualification which is, in relation to the relevant division of the profession, either an approved qualification or an accepted qualification for the purposes of this Act, registered in relation to his name in addition to or, as he may elect, in substitution for any other qualifications so registered ; 10

(d) specifying the fees, including any annual subscription, to be paid to the institute in respect of the entry of names on the register, and authorising the registrar to refuse to enter a name on the register until any fee specified for the entry has been paid ; 15

(e) specifying anything falling to be specified under the foregoing provisions of this section ; 20

but rules made for the purposes of paragraph (d) of this subsection shall not come into force until they are confirmed at a special meeting of the institute convened for the purpose thereafter, or at the next annual general meeting, as the case may be.

(5) It shall be the duty of the registrar— 25

(a) to correct, in accordance with the council's directions, any entry in the register which the council directs him to correct as being in the council's opinion an entry which was incorrectly made ;

(b) to make from time to time any necessary alterations in the registered particulars of registered persons ; 30

(c) to remove from the register the name of any registered person who has died ;

(d) to record the names of members of the institute who are in default for more than four months in the payment of annual subscriptions, and to take such action in relation thereto (including removal of the names of defaulters from the register) as the council under this Act may direct or require. 35

(6) If the registrar—

(a) sends by post to any registered person a registered letter addressed to him at his address on the register enquiring whether the registered particulars relating to him are correct and receives no reply to the letter within the period of six months from the date of posting it ; and 40

(b) upon the expiration of that period sends in the like manner to the person in question a second similar letter and receives no reply to that letter within three months from the date of posting it, 45

the registrar may remove the particulars relating to the person in question from the register ; and the council may direct the registrar to restore to the appropriate part of the register any particulars removed therefrom under this subsection. 50

7.—(1) It shall be the duty of the registrar—

(a) to cause the register to be printed, published and put on sale to members of the public not later than two years from the appointed day; and

Publication
of registers
and lists of
corrections.

(b) in each year after that in which the register is first published under paragraph (a) above, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to the register since it was last printed; and

(c) to cause a print of each edition of the register and of each list of corrections to be deposited at the principal offices of the institute;

and it shall be the duty of the council to keep the register and lists so deposited available at all reasonable times for inspection by members of the public.

(2) A document purporting to be a print of an edition of the register published under this section by authority of the registrar, or documents purporting to be prints of an edition of the register so published and of a list of corrections to that edition so published, shall (without prejudice to any other mode of proof) be admissible in any proceedings as evidence that any person specified in the document, or the documents read together, as being registered was so registered at the date of the edition or of the list of corrections, as the case may be, and that any person not so specified was not so registered.

(3) Where in accordance with subsection (2) of this section a person is, in any proceedings, shown to have been, or not to have been, registered at a particular date, he shall, unless the contrary is proved, be taken for the purposes of those proceedings as having at all material times thereafter continued to be, or not to be, so registered.

REGISTRATION

8.—(1) Subject to section 12 of this Act and to rules made under section 6 of this Act a person shall be entitled to be enrolled as a chartered accountant if—

Registration
of
accountants.

(a) he passes the qualifying examination for membership conducted by the council under this Act and completes the practical training prescribed; or

(b) he holds a qualification granted outside Nigeria and for the time being accepted by the institute and is by law entitled to practise for all purposes as an accountant in the country in which the qualification was granted and, if the council so requires, satisfies the council that he has had sufficient practical experience as an accountant.

(2) Subject to section 12 of this Act and to rules made under section 6 of this Act, a person shall be entitled to be registered as a registered accountant if he satisfies the council that immediately before the appointed day he had had not less than five years of experience as an inspector and auditor of company affairs under the provisions of the Companies Act.

(3) An applicant for registration shall, in addition to evidence of qualification, satisfy the council—

Cap. 37.

(a) that he is of good character,

(b) that he has attained the age of twenty-one years, and

(c) that he has not been convicted in Nigeria or elsewhere of an offence involving fraud or dishonesty.

(4) The council may in its sole discretion provisionally accept a qualification produced in respect of an application for registration under this section. or direct that the application be renewed within such period as may be specified in the direction.

(5) Any entry directed to be made in the register under subsection (4) of this section shall show that registration is provisional, and no entry so made shall be converted to full registration without the consent of the council signified in writing in that behalf. 5

(6) The council shall from time to time publish in the Federal Gazette particulars of qualifications for the time being accepted as aforesaid. 10

Approval of
qualifica-
tions etc.

9.—(1) The council may approve any institution for the purposes of this Act, and may for those purposes approve—

(a) any course of training at an approved institution which is intended for persons who are seeking to become or are already accountants and which the council considers is designed to confer on persons completing it sufficient knowledge and skill for admission to the institute ; 15

(b) any qualification which, as a result of an examination taken in conjunction with a course of training approved by the council under this section, is granted to candidates reaching a standard at the examination indicating in the opinion of the members of the council that the candidates have sufficient knowledge and skill to practise accountancy. 20

(2) The council may, if it thinks fit, withdraw any approval given under this section in respect of any course, qualification or institution ; but before withdrawing such an approval the council shall— 25

(a) give notice that it proposes to do so to each person in Nigeria appearing to the council to be a person by whom the course is conducted or the qualification is granted or the institution is controlled, as the case may be ; and 30

(b) afford each such person an opportunity of making to the council representations with regard to the proposal ; and

(c) take into consideration any representations made as respects the proposal in pursuance of the last foregoing paragraph. 35

(3) As respects any period during which the approval of the council under this section for a course, qualification or institution is withdrawn, the course, qualification or institution shall not be treated as approved under this section ; but the withdrawal of such an approval shall not prejudice the registration or eligibility for registration of any person who by virtue of the approval was registered or eligible for registration (either unconditionally or subject to his obtaining a certificate of experience) immediately before the approval was withdrawn. 40

(4) The giving or withdrawal of an approval under this section shall have effect from such date, either before or after the execution of the instrument signifying the giving or withdrawal of the approval, as the council may specify in that instrument ; and the council shall— 45

(a) as soon as may be publish a copy of every such instrument in the Federal Gazette ; and

(b) not later than seven days before its publication as aforesaid, send a copy of the instrument to the Minister. 50

10.—(1) It shall be the duty of the members of the council of the institute to keep themselves informed of the nature of—

(a) the instruction given at approved institutions to persons attending approved courses of training; and

5 (b) the examinations as a result of which approved qualifications are granted;

and for the purposes of performing that duty the council of the institute may appoint, either from among its own members or otherwise, persons to visit approved institutions, or to attend such examinations.

10 (2) It shall be the duty of a visitor appointed under the foregoing subsection to report to the council on—

(a) the sufficiency of the instruction given to persons attending approved courses of training at institutions visited by him;

(b) the sufficiency of the examinations attended by him; and

15 (c) any other matters relating to the institutions or examinations on which the council may, either generally or in a particular case, request him to report;

but no visitor shall interfere with the giving of any instruction or the holding of any examination.

20 (3) On receiving a report made in pursuance of this section, the council may, if it thinks fit and shall if so required by the institute, send a copy of the report to the person appearing to the council to be in charge of the institution or responsible for the examinations to which the report relates requesting that person to make observations on the
25 report to the council within such period as may be specified in the request, not being less than one month beginning with the date of the request.

PROFESSIONAL DISCIPLINE

30 11.—(1) There shall be a tribunal to be known as the Accountants Disciplinary Tribunal (in this Act hereafter referred to as "the tribunal"), which shall be charged with the duty of considering and determining any case referred to it by the panel established by the following provisions of this section, and any other case of which the tribunal has cognisance under the following provisions of this Act.

Establishment of disciplinary tribunal and investigating panel.

35 (2) The tribunal shall consist of the chairman of the council and six other members of the council appointed by the council.

(3) There shall be a body, to be known as the Accountants Investigating Panel (in this Act hereafter referred to as "the panel"), which shall be charged with the duty of—

40 (a) conducting a preliminary investigation into any case where it is alleged that a member has misbehaved in his capacity as an accountant, or should for any other reason be the subject of proceedings before the tribunal; and

(b) deciding whether the case should be referred to the tribunal.

45 (4) The panel shall be appointed by the council and shall consist of two members of the council and one chartered accountant who is not a member of the council.

(5) The provisions of Schedule 3 to this Act shall, so far as applicable to the tribunal and panel respectively, have effect with respect to those bodies.

(6) The council may make rules not inconsistent with this Act as to acts which constitute professional misconduct.

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Penalties
for unpro-
fessional
conduct, etc.

12.—(1) Where—

(a) a member is judged by the tribunal to be guilty of infamous conduct in any professional respect, or

(b) a member is convicted, by any court in Nigeria or elsewhere having power to award imprisonment, of an offence (whether or not punishable with imprisonment) which in the opinion of the tribunal is incompatible with the status of an accountant; or

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(c) the tribunal is satisfied that the name of any person has been fraudulently registered,

the tribunal may, if it thinks fit, give a direction reprimanding that person or ordering the registrar to strike his name off the relevant part of the register.

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(2) The tribunal may, if it thinks fit, defer or further defer its decision as to the giving of a direction under the foregoing subsection until a subsequent meeting of the tribunal; but—

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(a) no decision shall be deferred under this subsection for periods exceeding two years in the aggregate; and

(b) so far as possible no person shall be a member of the tribunal for the purposes of reaching a decision which has been deferred or further deferred unless he was present as a member of the tribunal when the decision was deferred.

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(3) For the purposes of subsection (1) (b) of this section a person shall not be treated as convicted as therein mentioned unless the conviction stands at a time when no appeal or further appeal is pending or may (without extension of time) be brought in connection with the conviction.

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(4) When the tribunal gives a direction under subsection (1) of this section, the tribunal shall cause notice of the direction to be served on the person to whom it relates.

(5) The person to whom such a direction relates may, at any time within twenty-eight days from the date of service on him of notice of the direction, appeal against the direction to the Supreme Court; and the tribunal may appear as respondent to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceedings before the tribunal, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.

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(6) A direction of the tribunal under subsection (1) of this section shall take effect—

(a) where no appeal under this section is brought against the direction within the time limited for such an appeal, on the expiration of that time;

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(b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal;

(c) where such an appeal is brought and is not withdrawn or struck out as aforesaid if and when the appeal is dismissed ; and shall not take effect except in accordance with the foregoing provisions of this subsection.

- 5 (7) A person whose name is removed from the register in pursuance of a direction of the tribunal under this section shall not be entitled to be registered again except in pursuance of a direction in that behalf given by the tribunal on the application of that person ; and a direction under this section for the removal of a person's name from the register may
10 prohibit an application under this subsection by that person until the expiration of such period from the date of the direction (and where he has duly made such an application, from the date of his last application) as may be specified in the direction.

MISCELLANEOUS AND GENERAL

- 15 13. Any person not a member of the association who, but for this Act, would have been qualified to apply for and obtain membership of the association may within the period of three months beginning with the appointed day apply for membership of the institute in such manner as may be prescribed by rules made by the council ; and if approved, he
20 shall be enrolled or registered, as the case may be, according to his qualification.

Application of Act to unenrolled persons.

- 25 14.—(1) Subject to subsection (2) of this section, a person shall be deemed to practise as an accountant if, in consideration of remuneration received or to be received, and whether by himself or in partnership with any other person,—

When persons are deemed to practise as accountants.

- (a) he engages himself in the practice of accountancy or holds himself out to the public as an accountant ; or

- 30 (b) he offers to perform or performs any service involving the auditing or verification of financial transactions, books, accounts or records or the preparation, verification, or certification of financial, accounting and related statements ;

- (c) he renders professional service or assistance in or about matters of principle or detail relating to accounting procedure or certification of financial facts or data ; or

- 35 (d) he renders any other service which may by regulations made by the council with the approval of the Minister be designated as service constituting practice as an accountant.

- 40 (2) Nothing in this section shall be construed so as to apply to persons who, while in the employ of any government or person, are required under the terms or in the course of such employ, to perform the duties of an accountant or any of them.

- 15.—(1) The council may make rules—

- 45 (a) for the training with chartered accountants of suitable persons in accountancy methods and practice,

- (b) for the supervision and regulation of the engagement, training and transfer of such persons, and

- (c) for the provision of articles.

- (2) The council may also make rules—

- 50 (a) prescribing the amount and due date for payment of the annual subscription and for such purpose different amounts may be prescribed by the rules according as the member of the institute is a fellow, an associate or a registered accountant ;

Rules as to articles, practising fees, etc.

(b) prescribing the form of licence to practice to be issued annually or, if the council thinks fit, by endorsement on an existing licence ;

(c) restricting the right to practise as an accountant in default of payment of the amount of the annual subscription where the default continues for longer than such period as may be prescribed by the rules. 5

(3) Rules when made shall, if the chairman of the council so directs, be published in the Federal Gazette.

Provision of
library
facilities, etc.

16. The institute shall—

(a) provide and maintain a library comprising books and publications for the advancement of knowledge of accountancy, and such other books and publications as the council may think necessary for the purpose ; 10

(b) encourage research into accountancy and accountancy methods and allied subjects to the extent that the council may from time to time consider necessary. 15

Regulations
and rules.

17.—(1) Any regulations made under this Act shall be published in the Federal Gazette as soon as may be after they are made ; and the Minister shall lay a copy of any such regulations before each House of Parliament as soon as may be after they are so published.

(2) Rules made for the purposes of this Act shall be subject to confirmation by the institute at its next annual general meeting or at any special meeting of the institute convened for the purpose, and if then annulled shall cease to have effect on the day after the date of annulment, but without prejudice to anything done in pursuance or intended pursuance of any such rules. 20 25

Offences.

18.—(1) If any person for the purpose of procuring the registration of any name, qualification or other matter—

(a) makes a statement which he believes to be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular, 30

he shall be guilty of an offence.

(2) If, on or after the relevant date, any person not a member of the institute practises as an accountant for or in expectation of reward, or takes or uses any name, title, addition or description implying that he is in practice as an accountant, he shall be guilty of an offence : 35

Provided that, in the case of a person falling within section 13 of this Act—

(a) this subsection shall not apply in respect of anything done by him during the period of three months mentioned in that section ; and 40

(b) if within that period he duly applies for membership of the institute, then, unless within that period he is notified that his application has not been approved, this subsection shall not apply in respect of anything done by him between the end of that period and the date on which he is enrolled or registered or is notified as aforesaid. 45

(3) If, on or after the relevant date, a registered accountant holds himself out as a chartered accountant or takes or uses any name, title, addition or description implying that he is a chartered accountant, he shall be guilty of an offence.

(4) If the registrar or any other person employed by or on behalf of the institute wilfully makes any falsification in any matter relating to the register, he shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine of an amount not exceeding fifty pounds;

(b) on conviction on indictment to a fine of an amount not exceeding five hundred pounds or to imprisonment for a term not exceeding two years, or both.

(6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary 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, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) In this section "the relevant date" means the third anniversary of the appointed day or such earlier date as may be prescribed for the purposes of this section by order of the Minister published in the Federal Gazette; and for the purposes of this section different dates may be prescribed for different territories within the meaning of the Constitution of the Federation.

19. In this Act unless the context otherwise requires—

"accountant" includes an auditor;

"the appointed day" means the day appointed under section 20 (2) of this Act;

"the association" means the Association of Accountants in Nigeria incorporated under the Companies Act;

"chartered accountant" means an accountant enrolled as a fellow or associate member of this institute;

"council" or "council under this Act" means the council established as the governing body of the institute under section 3 of this Act;

"enrolled", in relation to a fellow or an associate, means registered in the part of the register relating to fellows or associates as the case may be;

"fees" includes annual subscriptions;

"the institute" means the Institute of Chartered Accountants of Nigeria under this Act;

"member" means a member of the institute;

"Minister" means the Minister of the government of the Federation charged with responsibility for education;

"the panel" has the meaning assigned by section 11 of this Act;

"president" and "vice-president" mean respectively the office-holders under those names in the institute;

"register" means the register maintained in pursuance of section 6 of this Act;

"registered accountant" means a member of the institute who is not a fellow or an associate member;

"the tribunal" has the meaning assigned to it by section 11 of this Act.

Interpreta-
tion.

Cap. 37.

Short title,
extent,
commence-
ment, and
amendment
of the
Companies
Act.
Cap. 37.

20.—(1) This Act may be cited as the Institute of Chartered Accountants Act 1965 and shall apply throughout the Federation.

(2) This Act shall come into force on such day as may be appointed by order of the Minister published in the Federal Gazette.

(3) To the extent to which the Companies Act makes provision for inspection and audit of the affairs of a company that Act shall, have effect so that any such inspection and audit shall be made only by persons who are members of the institute; and the Companies Act shall be construed accordingly. 5

SCHEDULES

SCHEDULE 1

Section 3 (2) 10

SUPPLEMENTARY PROVISIONS RELATING TO THE COUNCIL

Qualifications and tenure of office of members

1.—(1) Subject to the provisions of this paragraph a member of the council shall hold office for a period of three years beginning with the date of his appointment or election. 15

(2) Any member of the institute who ceases to be a member thereof shall, if he is also a member of the council, cease to hold office on the council.

(3) Any elected member may by notice in writing under his hand addressed to the president resign his office, and any appointed member may, with the consent of the Minister, likewise so resign his office. 20

(4) A person who retires from or otherwise ceases to be an elected member of the council shall be eligible again to become a member of the council, and any appointed member may be reappointed.

(5) Members of the council shall at its meeting next before the annual general meeting of the institute arrange for the five members of the council appointed or elected and longest in office to retire at that annual general meeting. 25

(6) Elections to the council shall be held in such manner as may be prescribed by rules made by the council, and until so prescribed they shall be decided by a show of hands. 30

(7) If for any reason there is a vacation of office by a member and—

(a) such member was appointed by the Minister, the Minister shall appoint another fit person from the territory in respect of which the vacancy occurs; or 35

(b) such member was elected, the council may, if the time between the unexpired portion of the term of office and the next general meeting of the institute appears to warrant the filling of the vacancy, co-opt some fit person for such time as aforesaid.

Powers of Council

2. The council shall have power to do anything which in its opinion is calculated to facilitate the carrying on of the activities of the institute. 40

Proceedings of the Council

3.—(1) Subject to the provisions of this Act the council may in the name of the institute make standing orders regulating the proceedings of the institute or of the council, and in the exercise of its powers under this Act, may set up committees in the general interest of the institute, and make standing orders therefor.

(2) Standing orders shall provide for decisions to be taken by a majority of the members, and, in the event of equality of votes, for the president or the chairman, as the case may be, to have a second or casting vote.

(3) Standing orders made for a committee shall provide that the committee is to report back to the council on any matter not within its competence to decide.

4. The quorum of the council shall be five; and the quorum of a committee of the council shall be fixed by the council.

*Meetings**(a) of the institute*

5.—(1) The council shall convene the annual meeting of the institute on 30th April in every year or on such other day as the council may from time to time appoint, so however that if the meeting is not held within one year after the previous annual meeting, not more than fifteen months shall elapse between the respective dates of the two meetings.

(2) A special meeting of the institute may be convened by the council at any time; and if not less than twenty members of the institute require it by notice in writing addressed to the secretary of the institute setting out the objects of the proposed meeting, the chairman of the council shall convene a special meeting of the institute.

(3) The quorum of any general meeting of the institute shall be ten members, and that of any special meeting of the institute shall be fifteen members.

(b) of the council

6.—(1) Subject to the provisions of any standing orders of the council, the council shall meet whenever it is summoned by the chairman; and if the chairman is required to do so by notice in writing given to him by not less than five other members, he shall summon a meeting of the council to be held within seven days from the date on which the notice is given.

(2) At any meeting of the council, the chairman or in his absence the vice-chairman shall preside; but if both are absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

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

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(4) Notwithstanding anything in the foregoing provisions of this paragraph, the first meeting of the council shall be summoned by the Minister, who may give such directions as he thinks fit as to the procedure which shall be followed at the meeting.

Committees

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7.—(1) The council may appoint one or more committees to carry out on behalf of the institute or of the council, such functions as the council may determine.

(2) A committee appointed under this paragraph shall consist of the number of persons determined by the council, of whom not more than one-third shall be persons who are not members of the council ; and a person other than a member of the council shall hold office on the committee in accordance with the terms of the instrument by which he is appointed.

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

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Miscellaneous

8.—(1) The fixing of the seal of the institute shall be authenticated by the signature of the president or of some other member of the council authorised generally or specially by the institute to act for that purpose.

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(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 institute or of the council as the case may require, by any person generally or specially authorised to act for that purpose by the council.

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

9. The validity of any proceedings of the institute or the council or of a committee of the council shall not be affected by any vacancy in membership, or by any defect in the appointment of a member of the institute or of the council or of a person to serve on the committee, or by reason that a person not entitled to do so took part in the proceedings.

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10. Any member of the institute or of the council, and any person holding office on a committee of the council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the council on behalf of the institute, or on behalf of the council or a committee thereof, shall forthwith disclose his interest to the president or to the council, as the case may be, and shall not vote on any question relating to the contract or arrangement.

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11. A person shall not by reason only of his membership of the institute be required to disclose any interest relating solely to the audit of the accounts of the institute.

SCHEDULE 2

Section 5 (2)

TRANSITIONAL PROVISIONS AS TO PROPERTY, etc.

Transfer of property

1.—(1) Every agreement to which the association was a party immediately before the appointed day, whether in writing or not and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned by the association, shall, unless its terms or subject matter make it impossible that it should have effect as modified in the manner provided by this subparagraph, have effect from the appointed day, so far as it relates to property transferred by this Act to the institute, as if—

(a) the institute had been a party to the agreement ;

(b) for any reference (however worded and whether express or implied) to the association there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the institute and

(c) for any reference (however worded and whether express or implied) to a member or members of the council of the association or an officer of the association there were substituted, as respects anything falling to be done on or after the appointed day, a reference to a member or members of the council under this Act or the officer of the association who corresponds as nearly as may be to the member or officer in question of the association.

(2) Other documents which refer, whether specially or generally, to the association shall be construed in accordance with subparagraph (1) of this paragraph so far as applicable.

(3) Without prejudice to the generality of the foregoing provisions of this Schedule, where, by the operation of any of them or of section 5 of this Act, any right, liability or obligation vests in the institute, the institute 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 taking 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 institute.

(4) Any legal proceedings or application to any authority pending on the appointed day by or against the association and relating to property transferred by this Act to the institute may be continued on or after that day by or against the institute.

(5) If the law in force at the place where any property transferred by this Act is situated provides for the registration of transfers of property of the kind in question (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 transfers, the payment of fees or any other matter) apply with the necessary modifications to the transfer of the property aforesaid ; and it shall be the duty of the council to furnish the necessary particulars of the transfer to the proper officer of the registration authority, and of that officer to register the transfer accordingly.

Transfer of functions, etc.

2.—(1) At its first meeting the council of the institute shall fix a date (not later than six months after the appointed day) for the annual general meeting of the institute.

(2) The members of the council of the association shall be deemed to be the members of the council of the institute until the date determined in pursuance of the foregoing subparagraph when the institute shall have its first annual general meeting, and they shall cease to hold office at the conclusion of such meeting. 5

(3) Any person who, immediately before the appointed day, held office as the president or vice-president of the council of the association by virtue of the articles of association of the association shall on that day become the president or, as the case may be, the vice-president of the institute, and shall be deemed— 10

(a) to have been appointed to that office in pursuance of the provision of this Act corresponding to the relevant provision in the said articles of association ; and 15

(b) to have been so appointed on the date on which he took office, or last took office, in pursuance of the relevant provision of those articles. 20

(4) The members of the association shall, as of the appointed day, be registered as members of the institute ; and, without prejudice to the generality of the provisions of this Schedule relating to the transfer of property, any person who, immediately before the appointed day, was a member of the staff of the association shall on that day become the holder of an appointment with the institute 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. 25

(5) Any person being an office-holder on, or member of, the council of the association immediately before the appointed day and deemed under this paragraph to have been appointed to any like position in the institute, or on the council of the institute, and thereafter ceasing to hold office otherwise than by reason of his misconduct, shall be eligible for appointment to office in the institute or to membership of the council, as the case may be. 30 35

(6) All regulations, rules and similar instruments made for the purposes of the association 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 behalf, have effect, with any necessary modifications, as if duly made for the corresponding purposes of the institute. 40

SCHEDULE 3

Section 11 (5)

SUPPLEMENTARY PROVISIONS RELATING TO THE DISCIPLINARY
TRIBUNAL AND INVESTIGATING PANEL*The Tribunal*

1. The quorum of the tribunal shall be four of whom at least two shall be chartered accountants.

5 2.—(1) The Chief Justice of Nigeria shall make rules as to the selection of members of the tribunal for the purposes of any proceedings and as to the procedure to be followed and the rules of evidence to be observed in proceedings before the tribunal.

(2) The rules shall in particular provide—

10 (a) for securing that notice of the proceedings shall be given, at such time and in such manner as may be specified by the rules, to the person who is the subject of the proceedings ;

(b) for determining who in addition to the person aforesaid, shall be a party to the proceedings ;

15 (c) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the tribunal ;

(d) for enabling any party to the proceedings to be represented by a legal practitioner ;

(e) subject to the provisions of section 12 (5) of this Act, as to the costs of proceedings before the tribunal ;

20 (f) for requiring, in a case where it is alleged that the person who is the subject of the proceedings is guilty of infamous conduct in any professional respect, that where the tribunal adjudges that the allegation has not been proved it shall record a finding that the person is not guilty of such conduct in respect of the matters to which the
25 allegation relates ;

(g) for publishing in the Federal Gazette notice of any direction of the tribunal which has taken effect providing that a person's name shall be struck off a register.

30 3. For the purposes of any proceedings before the tribunal, any member of the tribunal may administer oaths and any party to the proceedings may sue out of the registry of the Supreme Court writs of subpoena ad testificandum and duces tecum ; but no person appearing before the tribunal shall be compelled—

35 (a) to make any statement before the tribunal tending to incriminate himself ; or

(b) to produce any document under such a writ which he could not be compelled to produce at the trial of an action.

40 4.—(1) For the purpose of advising the tribunal on questions of law arising in proceedings before it, there shall in all such proceedings be an assessor to the tribunal who shall be appointed by the uconcil on the nomination of the Chief Justice of Nigeria and shall be a legal practitioner of not less than seven years standing.

(2) The Chief Justice of Nigeria shall make rules as to the functions of assessors appointed under this paragraph, and in particular such rules shall contain provisions for securing—

(a) that where an assessor advises the tribunal on any question of law as to evidence, procedure or any other matters specified by the rules, he shall do so in the presence of every party or person representing a party to the proceedings who appears thereat or, if the advice is tendered while the tribunal is deliberating in private, that every such party or person as aforesaid shall be informed what advice the assessor has tendered ;

(b) that every such party or person as aforesaid shall be informed if in any case the tribunal does not accept the advice of the assessor on such a question as aforesaid.

(3) An assessor may be appointed under this paragraph either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument by which he is appointed.

The Panel

5. The quorum of the panel shall be three.

6.—(1) The panel may, at any meeting of the panel attended by all the members of the panel, make standing orders with respect to the panel.

(2) Subject to the provisions of any such standing orders, the panel may regulate its own procedure.

Miscellaneous

7.—(1) A person ceasing to be a member of the tribunal or the panel shall be eligible for reappointment as a member of that body.

(2) A person may, if otherwise eligible, be a member of both the tribunal and the panel ; but no person who acted as a member of the panel with respect to any case shall act as a member of the tribunal with respect to that case.

8. The tribunal or the panel may act notwithstanding any vacancy in its membership ; and the proceedings of either body shall not be invalidated by any irregularity in the appointment of a member of that body, or (subject to paragraph 7 (2) above) by reason of the fact that any person who was not entitled to do so took part in the proceedings of that body.

9. Any document authorised or required by virtue of this Act to be served on the tribunal or the panel shall be served on the registrar appointed in pursuance of section 6 of this act.

10. Any expenses of the tribunal or the panel shall be defrayed by the institute.

THE HYDROCARBON OIL REFINERIES BILL, 1965

EXPLANATORY MEMORANDUM

This Bill provides for the licensing and control—for excise purposes only—of the refining of hydrocarbon oils as well as the disposal of, and collection of excise duty on, such oils.

F. S. OKOTIE-EBOH,
Minister of Finance

ARRANGEMENT OF CLAUSES

Clause

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Refiner's licence. 2. Application for refiner's licence. 3. Grant of application. 4. Refusal to grant application. 5. Revocation of licence. 6. Expiration and renewal of licence. 7. Offences under section 1. 8. Making of entries. 9. New or further entries of same premises. 10. Proof as to entries. 11. Offences in connection with entries. 12. Power to enter on premises for inspection purposes. 13. Payment of excise duty. 14. Effect of variation in balances struck or excess, etc., in stock of materials. 15. Power to enter on premises, etc., in case of unlawful refining. 16. Power to seize goods in particular cases. | <ol style="list-style-type: none"> 17. Forfeiture and condemnation of refined hydrocarbon oils seized. 18. Power to levy distress. 19. Excise control facilities. 20. Licensees to keep records. 21. Power to require information from licence-holder. 22. Unlawful assumption of office. 23. Officers to have powers of police officers. 24. Offence of concealing, etc., refined hydrocarbon oils on licensed premises. 25. Condemnation proceedings. 26. Compensation in special cases. 27. Offences by bodies corporate. 28. Regulations. 29. Interpretation. 30. Short title, application and commencement. <p>SCHEDULES</p> <p>Schedule 1—Provisions relating to forfeiture.</p> <p>Schedule 2—Form of warrant of distress.</p> |
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A BILL

FOR

AN ACT TO MAKE PROVISION FOR THE LICENSING AND CONTROL FOR EXCISE PURPOSES OF THE REFINING OF HYDROCARBON OILS AND FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

[]

Commence
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 5 1. Subject to the provisions of this Act, no person shall refine any hydrocarbon oils save in a refinery and under a licence issued under this Act (hereafter referred to as "a refiner's licence"). Refiner's licence.
- 10 2. An application for a refiner's licence may be made by any person in the prescribed form and manner to the Board of Customs and Excise (hereafter referred to as "the Board") in respect of the premises mentioned in that behalf in the application. Application for refiner's licence.
- 15 3. If the Board, after due enquiry, is satisfied that the premises mentioned in an application and intended to be used by the applicant as a refinery are in such a state and contains such equipment as would enable proper control for excise purposes to be exercised over activities to be carried on therein, the Board shall, on payment of a fee of two hundred and fifty pounds, issue to the applicant a refiner's licence in the prescribed form in respect of such premises. Grant of application.
- 20 4.—(1) If the Board, after the enquiry, is not satisfied as required by section 3 in respect of the premises to which the application relates, the Board may refuse to grant the application, and shall notify the applicant in writing of such refusal. Refusal to grant application.
- 25 (2) A notification by the Board under subsection (1) of this section of its refusal to grant an application shall contain particulars of what the Board considers necessary to be done in respect of the premises before the application can be granted.
- 30 5.—(1) If at any time during the currency of a refiner's licence the Board is satisfied that— Revocation of licence.
 - (a) proper control for excise purposes can no longer be exercised over the premises to which the licence relates by reason of the state of the premises, or
 - (b) that the person to whom the licence was granted has ceased to refine hydrocarbon oils on such premises,

the Board may revoke the licence.
- 35 (2) The Board shall notify a licence-holder in writing of the revocation of his licence under subsection (1) of this section.

Expiration
and renewal
of licence.

6.—(1) A refiner's licence issued under this Act shall, unless previously revoked, remain in force until 31st December next following the date of issue, and shall then expire.

(2) An application for the renewal of a refiner's licence may be made to the Board in the prescribed form and manner by the person to whom the licence was issued and the provisions of section 3 and section 4 shall apply to such application as they apply to an application made under section 2 of this Act.

Offences
under
section 1.

7.—(1) Any person who refines hydrocarbon oils in contravention of the provisions of section 1 of this Act shall be guilty of an offence, and shall be liable—

(a) on summary conviction to a fine of not less than two hundred pounds or more than one thousand pounds or to imprisonment for a term of two years, or to both;

(b) on conviction on indictment to a fine of an unlimited amount or to imprisonment for a term not exceeding five years, or to both.

(2) Any hydrocarbon oils in respect of the refining of which a person is convicted of an offence under this section shall be liable to forfeiture.

Making of
entries.

8.—(1) The holder of a refiner's licence shall make entry of any premises or articles to which the licence relates as the excise laws may require, and such entry shall be made in the form and manner and contain the particulars prescribed by the Board, and the premises and articles shall be, and be kept, marked in such manner as the Board may direct.

(2) No such entry as aforesaid shall be valid unless the person by whom it was made—

(a) had at the time of its making attained the age of twenty-one years; and

(b) was at that time and is for the time being carrying on the business of refining hydrocarbon oils in the premises in respect of which the entry was made.

(3) Where any person required to make entry is a body corporate—

(a) the entry shall be signed by a director, general manager, secretary or other similar officer of the body and, except where authority for that person to sign has been given under the seal of the body, shall be made under that seal; and

(b) both the body corporate and the person by whom the entry is signed shall be liable for all duties charged in respect of the trade to which the entry relates.

(4) If any person making entry of any premises or article contravenes or fails to comply with any direction of the Board given under this section with respect thereto, he shall be guilty of an offence punishable on conviction by a fine of two hundred pounds.

New or
further
entries of
same
premises.

9.—(1) The Board may at any time, by notice in writing to the person by whom any existing entry was signed addressed to him at any premises entered by him, require a new entry to be made of any premises or article to which the existing entry relates, and the existing entry shall, without prejudice to any liability incurred, become void at the expiration of fourteen days from the delivery of the notice.

(2) Save as permitted by the Board and subject to such conditions as it may impose, no premises or article of which entry has been made by any person shall, while that entry remains in force, be entered by any other person for any purpose of the excise laws, and any entry made in contravention of this subsection shall be void.

(3) Where the person by whom entry has been made of any premises absconds or quits possession of the premises and discontinues the trade in respect of which the entry was made, and the Board permits a further entry to be made of the premises by some other person, the former entry shall be deemed to have been withdrawn and shall be void.

10. For the purpose of any proceedings before any court, if any question arises as to whether or not entry under the excise laws has been made by any person, or of any premises or article, or for any purpose, then—

Proof as to entries.

(a) if a document purporting to be an original entry made by the person, or of the premises or article, or for the purpose, in question is produced to the court by an officer, that document shall, until the contrary is proved, be sufficient evidence that the entry was so made; and

(b) if the officer in whose custody any such entry, if made, would be, gives evidence that the original entries produced by him to the court constitute all those in his custody and that no such entry as is in question is among them, it shall be deemed, until the contrary is proved, that no such entry has been made.

11.—(1) If any person being the holder of refiner's licence issued under this Act uses, for any purpose of his trade, any premises or article required by this Act to be entered for that purpose without entry thereof having been duly made, he shall be guilty of an offence punishable on conviction by a fine of five hundred pounds, and any goods found on such premises shall be liable to forfeiture.

Offences in connection with entries.

(2) If any person who has made entry of any premises or article fraudulently uses those premises or that article for any purpose other than that for which entry thereof was made, he shall be guilty of an offence punishable on conviction by a fine of five hundred pounds.

12.—(1) An officer may at any time enter upon any premises to which a refiner's licence relates for the purposes of inspecting the premises and may examine and take account of any equipment, meters, vessels, utensils, goods or materials used for or in any way connected with the refining of hydrocarbon oils.

Power to enter upon premises for inspection purposes.

(2) Where an officer, after having demanded admission into any such premises as aforesaid, and declared his name and business at the entrance thereto, is not immediately admitted, that officer and any person acting in his aid may break open any door or window of such premises or break through any wall thereof for the purpose of entering the premises.

Payment of
excise duty.

13.—(1) Every holder of a refiner's licence shall pay any duty of excise payable in respect of any hydrocarbon oils refined by him at or within such time, at such place and to such person as the Board may direct, whether or not the payment of that duty has been secured by bond or otherwise.

(2) If any excise duty payable is not paid as aforesaid, it shall be paid on demand made by the Board either to the holder of the refiner's licence personally or by delivering the demand in writing at his place of abode or the premises to which his licence relates, and, if it is not so paid on demand, the licence holder, unless he can show that the demand was not so made or delivered shall, in addition to the amount of the excise duty, be liable to a penalty equal to twice the amount thereof or three hundred pounds whichever is the greater.

Effect of
variation in
balances
struck or
excess, etc.
in stock of
materials.

14.—(1) If at any time when an account is taken by the proper officer and a balance is struck of the quantity of refined hydrocarbon oils in the possession of the holder of the refiner's licence, that quantity differs from the quantity thereof which ought to be in his possession according to any account required by this Act to be kept, the following provisions shall apply—

(a) if the former quantity exceeds the latter, the excess shall be liable to forfeiture, and

(b) if the former quantity is less than the latter, the holder of the refiner's licence shall be liable on summary conviction to a fine equal to twice the amount of the excise duty which would be payable on the quantity of refined hydrocarbon oils equal to that on the deficiency or three hundred pounds whichever is the greater.

(2) At any time when an account is taken by the proper officer and a balance is struck of the stock of materials, the following provisions shall apply—

(a) if any excess is found, or goods not authorised for use as materials are discovered in the stock, such excess or goods shall be liable to forfeiture, and

(b) if any deficiency is found which cannot be accounted for to the satisfaction of the Board, the quantity or value of materials representing such deficiency shall be deemed to have been used in manufacture and, in any particular case, duty shall be charged on the quantity or value of excisable goods reckoned to have been produced with such quantity or value of materials.

Power to
enter on
premises,
etc. in case of
unlawful
refining.

15. If any officer has reasonable grounds to suspect that any refining of hydrocarbon oils contrary to the provisions of this Act is being carried out on any land or premises, he may enter thereon, if need be by force, and dismantle or seize any apparatus and equipment used for or in connection with such unlawful refining.

Power to
seize goods
in particular
cases.

16. Where any refined hydrocarbon oils subject to excise duty become liable to forfeiture under this Act, but such products are not available in sufficient quantity for forfeiture, the Board may seize from the stock of the holder of the refiner's licence, any quantity of such products available or materials capable of conversion into such products of such quantity as would attract up to the same amount of duty as that on the refined hydrocarbon oils liable to forfeiture.

17.—(1) Any officer, police officer, or person authorised in that behalf by the Board may at any time seize or detain any refined hydrocarbon oils liable to forfeiture under this Act or which such officer, police officer, or person so authorised has reasonable grounds to believe are so liable to forfeiture.

Forfeiture and condemnation of refined hydrocarbon oils seized.

(2) Refined hydrocarbon oils so seized or detained shall forthwith be delivered to the Board ; and pending determination by the Board as to forfeiture or disposal, things delivered to the Board shall be dealt with as the Board may direct.

(3) In the application of this section the provisions of Schedule 1 of this Act shall have effect for the purposes of forfeiture, and all proceedings for the condemnation of any thing as being forfeited under this Act.

18.—(1) Where any excise duty on hydrocarbon oils refined under a refiner's licence remains unpaid after the time within which it is payable, the Board may authorise the levying of a distress—

Power to levy distress.

(a) upon the goods, chattels and effects of the holder of the licence in respect of the unpaid duty ; and

(b) upon all equipment, plant, tools, ships, vehicles, animals, and other goods and effects whatsoever used in the refining, sale or distribution of refined hydrocarbon oils found in any premises or on any land in the use or possession of the holder of the licence or of any person on his behalf, or in trust for him.

(2) The authority to distrain under this section shall be in the form set out in Schedule 2 of this Act, and shall be a warrant and authority to levy by distress the amount of the unpaid duty.

(3) For the purpose of levying any distress under this section, any person authorised in writing by the Board may execute a warrant of distress and if necessary break open any building or place in the day-time for the purpose of levying such distress.

(4) A person so authorised as aforesaid to execute a warrant of distress may call to his assistance any police officer, who shall when required aid and assist in the execution of the warrant of distress and in levying the distress.

(5) Where distraint is made on any goods or things under this section the burden of proof that they are not liable to seizure shall lie upon the person claiming that they are not so liable, and any goods or things seized may, at the cost of the owner thereof, be kept for fourteen days ; and if the amount due in respect of duty and the cost and charges of and incidental to the distress are not then paid, the goods or things so seized may be sold.

(6) Out of the proceeds of the sale there shall be paid first the excise duty and thereafter the costs and charges of and incidental to the levying, sale and keeping of the distress ; and the residue, if any, shall be paid to the owner of the goods or things distrained, upon demand made by the owner within one year of the date of sale.

(7) In exercising the power of distress conferred by this section, the person to whom authority to levy distress is given may distrain upon all goods or things belonging to the licence-holder wherever such goods or things may be found.

Excise
control
facilities.

19.—(1) The holder of a refiner's licence shall provide and maintain at his own expense on the premises to which his licence relates—

(a) such office, lavatory and sanitary accommodation, with the requisite furniture, lighting and cleaning for the proper officer as the Board may direct;

(b) such appliances and facilities as may be required to enable the proper officer at any time to examine, or search or to perform any other of his duties at such premises as the Board may direct, and if the holder of the licence fails to comply with any of the foregoing requirements of this subsection, the Board may revoke or suspend his licence.

(2) The requirements which the Board is authorised to impose on the holder of a refiner's licence by subsection (1) of this section shall include the requirement to provide at his own expense and lease to the Board, on such reasonable terms as the Board may determine, living accommodation which the Board considers suitable for occupation by, and by the household of, any officer charged with duties which, in the opinion of the Board, make it desirable that he should reside on or near the premises for which the refiner's licence is granted; and the provisions of the said subsection (1) for failure to comply with the requirements thereof shall have effect accordingly.

(3) The proper officer may affix a lock or seal to any fittings on the premises, or on any apparatus or thing whatsoever therein, and for that purpose he may require the holder of the refiner's licence to provide and maintain any such fittings at his own expense.

(4) If the holder of such licence fails to comply with the requirements of subsection (3) of this section, the Board may provide and install the fitting, and any expense incurred shall be paid to the Board on demand by the holder of the licence.

(5) The failure of the holder of the licence to pay any expense incurred by the Board under subsection (4) shall be an offence for which he shall, in addition to the requirement of the payment of the expense, be liable on summary conviction to a fine of two hundred pounds.

(6) If the holder of a refiner's licence or any member of his family or any servant of the holder—

(a) wilfully destroys or damages a fitting or any lock, key or seal intended for use therewith; or

(b) improperly obtains access to any place or article secured by any such lock or seal thereon; or

(c) has any fitting on premises or on any apparatus or thing whatsoever fastened or attached in such fashion that adequate supervision and control by an officer for the purposes of this Act is not practicable, the holder of the licence, or member of his family, or the servant, as the case may be, shall be guilty of an offence and shall on conviction be liable to a fine of one thousand pounds or to a term of imprisonment of two years.

20.—(1) Every holder of a refiner's licence shall keep on the premises to which the licence relates such records and make all entries therein relating to the refining of hydrocarbon oils and the storage and delivery of hydrocarbon oils and such other materials as the Board may require.

Licensees to
keep records

(2) All entries in the records so kept shall be made legibly in ink and no cancellation or amendment shall be made save in such manner as the Board may from time to time direct.

5 (3) The proper officer may at any time inspect records kept under this section and take copies of any entry.

(4) Failure by the holder of a refiner's licence to comply with the provisions of this section shall be an offence for which the offender shall be liable on summary conviction to a fine of five hundred pounds.

21.—(1) The holder of a refiner's licence shall—

10 (a) produce to the Board for inspection as and when required invoices and other books or documents in his possession relating to hydrocarbon oils refined by him during the preceding period of twelve months or any part thereof;

15 (b) supply answers to questions relating to the refining of hydrocarbon oils and related matters as the Board may reasonably require to implement the provisions of this Act;

(c) produce to the Board such evidence as it may reasonably require in support of any answer so supplied; and

20 (d) make returns in such form and at such intervals as the Board may require.

Power to
require
information
from licence-
holder.

(2) If the holder of a refiner's licence fails without lawful excuse to comply with any of the requirements imposed by the Board under subsection (1) of this section he shall be guilty of an offence and shall be liable on summary conviction to a fine of one hundred pounds.

25 (3) The powers conferred on the Board by subsection (1) of this section, in so far as they relate to the questions regarding the cost of production and the refiner's profits in respect of any hydrocarbon oils refined by him shall be exercisable only by the Board itself.

30 (4) The Board may require the holder of a refiner's licence to supply to it in every year and at such other times as it may direct a certificate of audit by an accountant approved by the Board as to—

(a) the correctness of all the books and records required by or under this Act to be kept by the licence-holder; and

35 (b) any matter necessary to implement any of the provisions of this Act.

(5) The holder of a refiner's licence who without reasonable excuse fails to supply a certificate of audit when required under subsection (4) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine of five hundred pounds.

40 (6) In this section "accountant approved by the Board" means an accountant who is a member of one of the professional bodies for the time being declared by the Board, by notice in the Federal Gazette, to be approved for such purposes, but does not include any such member if he is the holder of a refiner's licence or is employed by any such holder.

Unlawful
assumption
of office.

22. If for any of the purposes incidental to the control of the refining of hydrocarbon oils under this Act any person, without lawful authority, assumes the name, designation or character of an officer he shall, in addition to any other punishment, be liable on conviction to a fine of not less than two hundred pounds or more than five hundred pounds, or to imprisonment for a term of two years, or to both.

Officers to
have powers
of police
officers.

23. For the avoidance of doubt, officers acting under this Act shall have the same powers, authorities and privileges as are given by law to police officers.

Offence of
concealing
etc. refined
hydrocarbon
oils on
licensed
premises.

24.—(1) If any person—

(a) conceals any refined hydrocarbon oils on premises on which they were refined in pursuance of a refiner's licence, or

(b) without the consent of the proper officer, removes any refined hydrocarbon oils from such premises, or

(c) knowingly possesses, buys or receives any such hydrocarbon oils removed from such premises before duty (if any) thereon has been charged and, as the case may be, paid or secured,

such person shall be guilty of an offence and shall on conviction be liable to a fine of six times the value of the goods or five hundred pounds whichever is the greater amount, or to imprisonment for two years, or to both.

(2) Refined hydrocarbon oils in respect of which an offence has been committed under subsection (1) of this section shall be liable to forfeiture.

Condemna-
tion
proceedings.

25.—(1) Where, in any proceedings for the condemnation of any things seized as liable to forfeiture under this Act judgment is given for the claimant, the court before which the case is heard may, if it sees fit, certify that there were reasonable grounds for the seizure.

(2) Where any proceedings, whether civil or criminal, are brought against the Board or any person authorised by or under this Act to seize or detain anything liable to forfeiture on account of the seizure or detention of anything, and judgment is given for the plaintiff or prosecutor, then if—

(a) a certificate relative to the seizure has been granted under subsection (1) of this section; or

(b) the court is satisfied that there were reasonable grounds for seizure or detaining that thing under this Act, the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.

Provided that nothing in this subsection or in section 26 shall affect the right of any person to the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction thereof.

(3) Any certificate under subsection (1) of this section may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it was granted.

26.—(1) Where any refined hydrocarbon oils on the premises of the holder of a refiner's licence are destroyed, stolen or unlawfully removed by or with the assistance or connivance of an officer of Customs and Excise, and that officer is convicted of the offence the Board shall, if the holder of the refiner's licence was not a party to the offence, pay compensation for any loss caused by any such destruction, theft or removal; and it is hereby declared that in any such case no duty shall be payable on any such refined hydrocarbon oils by the licence-holder and duty (if any) paid thereon by the licence-holder shall be refunded.

Compensation in special cases.

(2) Subject to the provisions of subsection (1) of this section, compensation shall not be paid by the Board, and no action shall lie against the Board or any officer for any loss or damage caused to any goods by any officer acting in the execution of his duty except where the loss or damage occurs as the direct result of the unlawful act or negligence of such officer.

27. Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary 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, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate.

28.—(1) The Minister may make such regulations with regard to the conduct of refineries as appear to the Minister to be appropriate for the purpose of ensuring the payment of excise duty on the hydrocarbon oils refined on the premises; and, without prejudice to the generality of the foregoing, such regulations may in particular provide for—

Regulations.

(a) the inspection by officers of the premises and all activities carried on on the premises and the inspection of the meters and other equivalent installations used for the measurement of the quantities of refined hydrocarbon oils produced thereon;

(b) the notice to be given of any change which it is proposed to make in the premises or the use thereof;

(c) the regulation of

(i) the production, storage and warehousing of hydrocarbon oils,

(ii) the removal of hydrocarbon oils to or from the premises used for their production,

(iii) the use and storage of hydrocarbon oils in the premises;

(d) the calculation, securing and collection of the excise duty on hydrocarbon oils;

(e) the exportation, loading as stores, removal to bonded warehouse, deliveries to approved users in Nigeria without payment of the excise duty; and

(f) the form and manner of an application for the grant or renewal of a refiner's licence and the form of such licence.

(2) Every person who acts in contravention of any of the regulations made under this section shall be guilty of an offence.

(3) Every person who is guilty of an offence under this section shall be liable on conviction to a fine of not less than one hundred pounds or more than five hundred pounds in respect of any particular offence, or to imprisonment for a term of two years, or both such fine and such imprisonment, and for the forfeiture or disposal of anything in respect of which the offence is committed.

Interpretation.
No. 55 of
1958.

29. In this Act unless the context otherwise requires—

“excise laws” means the Customs and Excise Management Act, 1958 and any other Act relating to the control of excisable goods ;

“hydrocarbon oils” means petroleum oils produced from coal, shale, peat, or any other bituminous substance, and all liquid hydrocarbons excluding such hydrocarbons which are solid or semi-solid at a temperature of 60°F or which are gaseous at a temperature of 60°F at atmospheric pressure ;

“(Minister” means the Minister of the government of the Federation responsible for finance ;

“officer” means any person employed in the Department of Customs and Excise or for the time being performing customs and excise duties ;

“proper officer” means any officer whose right or duty it is to require the performance of or perform the Act referred to ;

“refinery” means any bonded premises approved by the Board for the treatment of hydrocarbon oils.

Short title,
application
and com-
mencement.

30.—(1) This Act may be cited as the Hydrocarbon Oil Refineries Act, 1965 and shall apply throughout the Federation.

(2) This Act shall come into operation on a day to be appointed by the Minister by order in the Federal Gazette.

SCHEDULES

SCHEDULE 1

Section 17 (3)

Provisions relating to Forfeiture

Notice of Seizure

1.—(1) Save where seizure was made in the presence of—

(a) the person whose offence or suspected offence occasioned the seizure, or

(b) the owner or any of the owners of the thing seized or any servant or agent of his,

the Board shall give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to its knowledge was at the time of the seizure the owner or one of the owners thereof.

(2) Notice under paragraph 1 shall be given in writing and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally ;
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office ;
- (c) where he has no address in Nigeria, or his address is unknown, by publication of notice of seizure in the *Federal Gazette*.

Notice of Claim

2.—(1) Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure, or, if no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Board :

Provided that the Board may, at its discretion, extend the period in which notice of a claim may be given.

(2) The notice shall specify the name and address of the claimant. If a claimant is outside Nigeria the notice shall specify the name and address of a legal practitioner in Nigeria authorised to accept the service of process and to act on behalf of the claimant and where service is affected on such legal practitioner it shall be deemed to be proper service on the claimant.

Condemnation

3. If on the expiration of the relevant period aforesaid for the giving of notice of claim no such notice has been given to the Board, or, if in the case of any such notice given, any requirement of paragraph 2 is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

4. Where notice of claim is duly given in accordance with the foregoing provisions of this Schedule, the Board shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture, the court shall condemn it as forfeited.

5. Where any thing is in accordance with either of the two last foregoing paragraphs condemned or deemed to have been condemned as forfeited then, without prejudice to any delivery by or sale of the thing by the Board under paragraph 12, the forfeiture shall have effect as from the date when the liability to forfeiture arose.

Proceedings for Condemnation by Court

6.—(1) Proceedings for condemnation shall be civil proceedings and may be instituted in a court of summary jurisdiction.

(2) Proceedings for the condemnation of any thing instituted in a court of summary jurisdiction may be so instituted in any such court having jurisdiction in the place where—

(a) any offence in connection with that thing was committed or any proceedings for such an offence are instituted ;

(b) the claimant resides, or if the claimant has specified a legal practitioner under paragraph 2 (2), in the place where the legal practitioner has his office ;

(c) the thing was found, detained or seized or to which it is first brought after having been found, detained or seized.

7.—(1) In any proceedings for condemnation, the claimant or his legal practitioner shall make oath that the thing seized was, or was to the best of his knowledge or belief, the property of the claimant at the time of the seizure.

(2) If the requirement of subparagraph (1) of this paragraph is not complied with, the court shall give judgment for the Board.

8. Where an appeal has been made against the decision of the court in any proceedings for the condemnation of any thing, that thing shall, pending the final determination of the matter, be left with the Board.

Provisions as to Proof

9. In any proceedings arising out of the seizure of any thing, the effect, form and manner of the seizure shall be taken to have been as set forth in the process without any further evidence thereof, unless the contrary is proved.

10. In any proceedings, the condemnation by a court of any thing as forfeited may be proved by the production either of the order or certificate of condemnation or a certified copy thereof purporting to be signed by an officer of the court by which the order or certificate was made or granted.

Special Provisions as to certain Claimants

11. For the purposes of a claim to, or proceedings for the condemnation of, any thing, where that thing is at the time of the seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required by this Schedule to be taken and anything required by this Schedule or by the rules of the court to be done by, or by any other person authorised by, the claimant or owner may be taken or done by, or by any other person authorised by, the following persons respectively, that is to say—

(a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;

(b) where the owners are in partnership, any one of those owners;

(c) where the owners are any number of persons exceeding five, not being in partnership, any two of those persons on behalf of themselves and their co-owners.

12. Where any thing has been seized as liable to forfeiture the Board may at any time, at its discretion, and notwithstanding that the thing has not yet been condemned or is not yet deemed to have been condemned as forfeited—

(a) deliver it up to any claimant upon his paying to the Board such sum as the Board thinks proper, being a sum not exceeding that which, in its opinion, represents the value of the thing, including any duty chargeable thereon which has not been paid; or

(b) if the thing seized is, in the opinion of the Board, of a perishable nature, sell or destroy it.

13.--(1) Subject to the provisions of this paragraph, if in the case of any thing delivered up, sold or destroyed as aforesaid, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Board shall on demand by the claimant tender to him—

(a) an amount equal to any sum paid by him under sub-paragraph (a) of paragraph 12; or

(b) where the Board has sold the thing, an amount equal to the proceeds of sale; or

(c) where it has destroyed the thing, an amount equal to the market value of the thing at the time of its seizure.

(2) If any such amount includes any sum on account of duty chargeable on the thing which had not been paid before its seizure, the Board may deduct so much of that amount as represents that duty.

(3) If the claimant accepts any amount tendered to him under this paragraph, he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing.

Section 18 (2)

SCHEDULE 2

Form of Warrant of Distress

To.....

.....
The Board of Customs and Excise, by virtue of the powers conferred on it by section of the Oil Refineries Act, 1965 hereby authorises you to collect and recover the sum of..... due for excise duty from hydrocarbon oil refiner, having his premises at..... and for the recovery thereof further authorises that you with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary), which assistance he is hereby required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels or other distrainable things of the said hydrocarbon oil refiner wherever the same may be found and on all equipment, plant, tools, ships, aircraft vehicles, animals, goods and effects used within Nigeria in the refining, sale or distribution of refined hydrocarbon oils which you may find in any premises or on any land in the use or possession of the said hydrocarbon oil refiner or of any person on his behalf or in trust for him.

And for the purpose of levying such distress you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

Signed for and on behalf of the Board of Customs and Excise at..... this..... day of..... 19.....

Collector (or as the case may be)

THE PRISONS (AMENDMENT) BILL 1965

EXPLANATORY MEMORANDUM

The purpose of this Bill is to give authority to an Assistant Director of Prisons to give consent to the transfer of prisoners from Native Authority or Local Government Prisons or lock-ups to Federal Government Prisons. Under the Prisons Act 1960 only the Director of Prisons could give this consent.

SHEHU SHAGARI,
Minister of Internal Affairs

A BILL

FOR

AN ACT TO AMEND THE PRISONS ACT 1960

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 5 1. The consent required by subsection (2) of section 31 of the Prisons Act 1960 for the making of an order under that subsection for the transfer of a prisoner from a prison maintained by a native authority or local government council to a prison within the meaning of that Act shall be either that of the Director or that of the assistant director of the prison to which the prisoner is intended to be transferred; and,
- 10 accordingly, in the proviso of the said section 31 (2) there shall be added after the word "Director" the words "or of the assistant director in charge of the prison to which the prisoner is intended to be transferred."

Amendment
of section
31 (2) of
Prisons Act.

No. 41 of
1960.

2.—(1) This Act may be cited as the Prisons (Amendment) Act 1965, and shall apply throughout the Federation.

Citation,
extent and
commence-
ment.

- 15 (2) This Act and the Prisons Act 1960 may be cited together as the Prisons Acts 1960 and 1965.

(3) This Act shall be deemed to have come into force on 28th December 1960.