

BILL

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THE NATIONAL FERTILIZER REGULATORY AGENCY ACT, 2017.

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No.

2017



Sierra Leone

A BILL ENTITLED

THE NATIONAL FERTILIZER REGULATORY AGENCY Short title.
ACT, 2 017.

Being an Act to provide for the establishment of a National Fertilizer Regulatory Agency to provide for the regulation and management of commercial importation, manufacture and distribution of fertilizers in Sierra Leone and for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires –

“Agency” means the National Fertilizer Regulatory Agency established under section 2;

“Board” means the National Regulatory Agency Fertilizer Board established under section 3;

“Executive Director” means the Executive Director of the Agency appointed under section 15;

“fertilizer” means any substance containing or providing one or more recognized plant nutrients that can be available for plants utilization including bio-fertilizer, in-organic or mineral fertilizer and organic fertilizer;

“Minister” means the Minister of Agriculture, Forestry and Food Security and Ministry shall be construed accordingly;

“National Fertilizer Regulatory Agency” means the National Fertilizer Regulatory Agency established under section 2.

PART II—ESTABLISHMENT OF THE NATIONAL FERTILIZER REGULATORY AGENCY.

Establishment of the National Fertilizer Regulatory Agency.

2. (1) There is hereby established a body to be known as the National Fertilizer Regulatory Agency.

(2) The Agency shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of

suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may perform.

(3) The Agency shall have a common seal, the use of which shall be authenticated by the signatures of—

(a) the Chairman or other member of the Board authorised either generally or specially by the Board in that behalf; and

(b) the Executive-Director or some other person authorised by the Board on that behalf.

3. (1) The governing body of the Agency shall be a Board ^{Board of Agency.} which shall be known as National Fertilizer Regulatory Agency Board, in which shall be vested, subject to this Act, the control and supervision of the Agency.

(2) The Board shall consist of a Chairman and the following other members –

(a) Chief Agricultural Officer, Ministry of Agriculture Forestry and Food Security;

(b) Financial Secretary, Ministry of Finance and Economic Development;

(c) Director General of Sierra Leone Agricultural Research Institute;

(d) Executive Chairman, Environmental Protection Agency;

(e) Chief Executive Officer Sierra Leone Import and Export Promotion Agency;

- (f) Director of Crops, Ministry of Agriculture Forestry and Food Security;
- (g) Director of Extension, Ministry of Agriculture Forestry and Food Security;
- (h) President, National Federation of Farmers Sierra Leone;
- (i) Dean of Faculty of Agriculture, Njala University;
- (j) the President, Sierra Leone Chamber of Commerce, Industry and Agriculture;
- (k) the Executive-Director who shall serve as secretary.

(3) The Chairman shall, on the advice of the Minister and subject to the approval of Parliament be appointed by the President from among persons with proven knowledge in the regulation and control of fertilizers.

Tenure of members.

4. (1) The Chairman shall hold office for a period of 3 years and shall be eligible for re-appointment once only.

(2) A person shall cease to be a member of the Board on any of the following grounds—

- (a) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if he becomes bankrupt or insolvent;
- (d) if he is convicted and sentenced for an offence involving fraud or dishonesty;

- (e) if he fails to attend three consecutive meetings of the Board without reasonable cause; or
- (f) if he resigns his office by written notice to the Minister.

5. (1) The Board shall meet for the dispatch of its business at least once every two months at the offices of the Agency and at such time as the Chairman may determine. Meetings of the Board.

(2) The Chairman shall preside at every meeting of the Board, and in his absence, the members present shall appoint a member from among themselves to preside at that meeting.

(3) A minimum of three members of the Board may, by notice in writing signed by them, request the Chairman to summon a special meeting of the Board for such purposes as may be stated in the notice.

(4) The Chairman or, in his absence, the member appointed to act on his behalf shall summon a special meeting within five days of his receipt of the notice referred to in subsection (3).

(5) The quorum at any meeting of the Board shall be 5.

(6) The Chairman or other person presiding shall have a casting vote where there is an equality of votes.

(7) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

(8) The Board may co-opt any person to attend and participate in its deliberations on any matter but such person shall not vote on any issue for the decision by the Board.

(9) The Board shall cause minutes of all its meetings to be taken and signed by the Chairman and kept in proper form.

(10) Subject to this Act, the Board shall regulate its own procedure.

Disclosure of interest.

6. (1) A member of the Board who has any interest, whether direct or indirect in any matter being considered or to be considered by the Board, shall disclose the nature of his interest to the Board and the disclosure shall be recorded in the minutes of the Board and such member shall not take part in any deliberation or decision of the Board relating to that matter.

(2) A member of the Board who contravenes subsection (1) shall be guilty of misconduct and shall be liable to be removed from the Board.

Immunity of members of the Board, etc.

7. (1) No action or other proceedings shall lie or be instituted against any member of the Board or member of a Board of the Board for or in respect of any act or thing done or omitted to be done in good faith in the exercise of his functions under this Act.

(2) No member of the Board shall be personally liable for any debt or obligation of the Agency.

8. (1) The Board may, for the discharge of its functions, appoint one or more Sub-Committees to perform such functions as the Board may determine. ^{Committees of Board.}

(2) A Sub-Committee shall consist of members of the Board or non-members or both as the Board may decide.

(3) Without prejudice to the generality of subsection (1), the Board shall appoint an Audit Sub-Committee consisting of such members of the Board, excluding the Executive-Director of the Agency, and performing such functions as the Board may determine.

(4) A Board shall submit a report of its proceedings to the Board at such time as the Board may determine.

9. (1) Subject to this Act, the Board shall have the control and supervision of the Agency, including overseeing the sound and proper financial management of the Agency. ^{Functions of Board.}

(2) It shall also be the responsibility of the Board to provide such policy guidance and advice as will secure the efficient implementation of the functions of the Agency and enhance the overall performance of the Agency.

10. The Chairman and the other members of the Board and any person co-opted by the Board under subsection (8) of section 5 shall be paid such remuneration, fees and allowances approved by the Minister and shall be reimbursed by the Agency for expenses incurred in connection with the discharge of their functions as the Board may, with the approval of the Minister, determine. ^{Remuneration of members.}

11. (1) Where the Chairman or a member of the Board dies, resigns, is removed from office or is absent for a continuous period exceeding 6 months or is by reason of illness unable to perform the functions of his office for a continuous period of 6 months— ^{Filling of vacancies.}

- (a) the members of the Board shall, elect one of their number to act as Chairman until such time as the Chairman resumes his office or another is appointed in his stead; and
- (b) in the case of the member, the Chairman shall subject to this Act, have another person appointed to the Board.

(2) Where a person is appointed as Chairman or appointed as a member to fill a vacancy, he shall hold office for the remainder of the term of the previous Chairman or member and shall, subject to this Act, be eligible for re-appointment for another term.

PART III—OBJECTS, FUNCTIONS AND POWERS OF AGENCY

Objects of Agency.

12. (1) The object for which the Agency is established is to manage the promotion and development of a competitive fertilizer subsector that ensures environmentally sustainable agricultural production through timely availability of appropriate quantities of affordable fertilizer products and information on them.

Functions of Agency.

13. (1) The Agency shall have responsibility to supervise, coordinate, administer, monitor, manage and regulate the large scale or commercial importation, manufacture and distribution of fertilizers in Sierra Leone.

(2) Without prejudice to the generality of subsection (1), the Agency shall be responsible for—

- (a) regulating and supervising the packaging and labelling of fertilizer in Sierra Leone;

- (b) sampling, inspecting and analysing fertilizers distributed in Sierra Leone to ensure that distributors of fertilizers comply with this Act;
- (c) regulating the importation and exportation of fertilizer throughout Sierra Leone;
- (d) establishing and maintaining a National Fertilizer Register in which shall be recorded—
 - (i) the quantity and types of fertilizer manufactured in or imported into Sierra Leone;
 - (ii) the names, addresses, principal places of business and other particulars of entities registered as dealers in fertilizers; and
 - (iii) other information that the Agency may consider relevant and necessary for the effective and efficient regulation of the importation, manufacture or distribution of fertilizer in Sierra Leone; and
- (e) regulating the manufacture and distribution of fertilizer throughout Sierra Leone.

14. The Agency shall do all things necessary or convenient to be done for or in connection with the performance of its functions and in particular may impose such fees or charges as are reasonable in respect of—

Powers of Agency.

- (a) access to, use of any of the resources or facility of the Agency;
- (b) the provision of programs, services, information or advice by the Agency;
- (c) the registration of importers and manufacturers by the Agency.

PART IV – ADMINISTRATIVE PROVISIONS

Appointment of Executive-Director. 15. (1) The Agency shall have an Executive-Director who shall be appointed by the Board upon such terms and conditions as the Board shall, after consultation with the Minister, determine.

(2) No person shall be appointed an Executive-Director unless he has proven knowledge and experience in the regulation, control, manufacture and distribution of fertilizers and holds such other academic qualifications as may be required by the Board.

Functions of Executive-Director. 16. The Executive-Director shall be responsible to the Board for the performance of the following functions—

- (a) receiving applications and register importers, exporters and manufacturers of fertilizer;
- (b) issuing licences to importers, exporters and manufacturers of fertilizer in such form as may be prescribed;
- (c) imposing such conditions to the licence as may be prescribed, including suspension or revocation of a licence;
- (d) providing overall leadership in the conduct and management of the day-to-day business or activities of the Agency;

- (e) monitoring and supervising the preparation of the annual budgets and reports of the Agency for the review and approval of the Board;
- (f) overseeing the work and discipline of the other staff of the Agency; and
- (g) carrying out such other functions as may be assigned by the Board or necessary for the purposes of the Agency; and

17. (1) The Agency shall have, in addition to the Executive-Director, a secretariat consisting of a Secretary, Finance Officer, Administrative Officer and such other additional technical and administrative staff, as may be required for the efficient performance of the functions of the Agency. Other staff of the Agency.

(2) The Secretary and the other staff of the Agency shall be appointed by the Board subject to such terms and conditions as the Board shall determine.

(3) The Agency may delegate to the Executive-Director—

- (a) the power to appoint such grade or categories of staff as the Agency may require;
- (b) the power to enter into an agreement with an independent body or agency for the purpose of carrying out the functions of the Agency for and on behalf of the Agency.

18. Public officers may at the instance of the Agency, be seconded or otherwise render assistance to the Agency but the Agency may request the withdrawal of any such seconded staff who is unable to carry out assigned functions in a manner satisfactory to the Agency. Secondment of public officers

Protection of officers. 19. No officer or employee of the Agency or any person acting on the directions of an officer or employee of the Agency shall be liable in respect of any matter or thing done by him in good faith under this Act.

PART V—FERTILIZER CONTROL

Restriction on fertilizer manufacturers and distributors. 20. No person shall import, manufacture or distribute fertilizers in commercial quantities unless that person holds a licence issued by the Agency for that purpose.

Licensing of fertilizer manufacturers and distributors. 21. (1) A person who wishes to import, manufacture or distribute fertilizers in commercial quantities in Sierra Leone shall apply to the Agency for a licence for that purpose.

(2) An application to the Agency for a licence to import manufacture or distribute fertilizers in Sierra Leone under subsection (1) shall be made in such form, subject to such terms and conditions and be accompanied by such fees as may be prescribed by the Agency.

Issue of licence. 22. (1) The Agency shall, on the successful application of an importation, manufacturing or distribution licence under section 21, issue a licence in such form and subject to such conditions as may be prescribed.

(2) A licence issued under subsection (1), unless subsequently revoked, shall be conclusive evidence for all purposes that the importer, manufacturer or distributor has been duly registered under this Act.

Refusal, revocation, suspension of licence. 23. (1) The Agency may revoke or suspend a licence issued under section 22 where it is satisfied that such importer, manufacturer or distributor—

- (a) has been registered as a result of a fraud or a mistake or misrepresentation in any particular matter;
- (b) has failed to comply with any of the conditions imposed by the Agency under section 22;
- (c) has contravened this Act or any regulation made under this Act;

PART VI – FINANCIAL PROVISIONS

24. (1) There is hereby established a fund to be known as Fertilizer Support Fund. the Fertilizer Support Fund.

(2) The activities of the Agency shall be financed by the Fertilizer Support Fund consisting of –

- (a) any moneys appropriated from time to time by Parliament for the purposes of the Agency;
- (b) all moneys paid to the Agency by way of fees or charges;
- (c) all other moneys which may, from time to time, accrue to the Agency.

(2) The funds of the Agency shall be applied only for the purposes of the approved budget of the Agency.

25. (1) The Agency shall keep proper books of account and other records in relation to the activities, property and finances of the Agency in a form approved by the Auditor-General, and shall prepare in respect of each financial year of the Agency a financial statement which shall include— Accounts and audit of Agency.

- (a) balance sheet accounts;
- (b) income and expenditure accounts; and
- (c) source and application of funds;

(2) The accounts of the Agency kept under subsection (1) shall, not later than two months after the end of each financial year, be audited by the Auditor-General or an auditor appointed by him.

(3) For the purposes of subsection (2), the Auditor-General or the auditor appointed by him shall be entitled to have access to all books of account, vouchers and other financial records of the Agency and to require such information and explanation thereon as he may think fit.

(4) The Agency shall provide the Auditor-General or the auditor appointed by him with all necessary and appropriate facilities for the examination of the accounts and records of the Agency.

(5) The Auditor-General or the auditor appointed by him shall submit to the Agency a report on the audited accounts and the financial statements referred to in subsection (1) and shall, in his report draw attention to—

- (a) any irregularities in the accounts;
- (b) any matters that are likely to adversely affect the operations of the Agency; and
- (c) any other matter which, in his opinion, ought to be brought to the notice of the Agency.

26. The financial year of the Agency shall be the same as the ^{Financial year of Agency.} financial year of the Government.

27. (1) The Agency shall, within three months after the end ^{Annual report.} of the financial year, submit to the Minister a report on the performance of its functions during that year and on its policy and programmes.

(2) The annual report shall include the accounts and annual financial statement prepared under section 19 and the report of the audit thereon.

(3) The Minister shall lay copies of the annual report before Parliament within two months after he has received the report.

(4) The Agency shall make copies of the report available to all stakeholders once it has been laid before Parliament.

PART VII—MISCELLANEOUS PROVISIONS

28. (1) The Minister may by statutory instrument make ^{Regulations.} Regulations as it considers necessary or expedient for giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing—

- (a) types and form of packaging and labelling of a fertilizer in Sierra Leone;
- (b) conditions for the importation or exportation of fertilizer throughout Sierra Leone;
- (e) conditions applicable to the manufacture and distribution of fertilizer throughout Sierra Leone.

MEMORANDUM OF OBJECTS AND REASONS

PART I—PRELIMINARY – contains definitions and interpretation of words in the Bill.

PART II- ESTABLISHMENT OF THE NATIONAL FERTILIZER REGULATORY AGENCY- establishes the National Fertilizer Regulatory Agency as a body corporate and also establishes the National Committee for Fertilizer Control as the governing body of the Agency.

PART III—OBJECTS, FUNCTIONS AND POWERS OF AGENCY states that the object for which the Agency is established is to manage the promotion and development of a competitive fertilizer subsector that ensures environmentally sustainable agricultural production through timely availability of appropriate quantities of affordable fertilizer products and information on them and also stipulates that the Agency shall have responsibility to supervise, coordinate, administer, monitor, manage and regulate the large scale or commercial importation, manufacture and distribution of fertilizers in Sierra Leone.

PART IV– ADMINISTRATIVE PROVISIONS – makes provision for the appointment and functions of the Executive-Director as well as other staff of the Agency.

PART V—FERTILIZER CONTROL – imposes restrictions on the importation, manufacturing or distribution fertilizers in large scale or commercial quantities unless on a licence issued by the Agency for that purpose.

PART VI – FINANCIAL PROVISIONS – deals with issues relating to the funds and accounts of Agency.

PART VII–MISCELLANEOUS PROVISIONS – makes provision for the Minister to, by statutory instrument, make Regulations that he considers necessary or expedient for giving effect to this Act.

Made this day of , 2017

PROF. PATRICK MONTY JONES,
Minister of Agriculture, Forestry and Food Security.

Freetown,
Sierra Leone,
, 2017