

N.R.C.D. 176

TEMA FOOD COMPLEX CORPORATION ACT, 1973

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SCHEDULE

N.R.C.D. 176**TEMA FOOD COMPLEX CORPORATION ACT, 1973¹**

AN ACT to establish the Tema Food Complex Corporation to provide for related matters.

*Establishment of the Corporation***1. Establishment of Corporation**

(1) There is hereby established a body corporate to be known as the Tema Food Complex Corporation.

(2) The Corporation shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Corporation may for and in connection with the carrying out of its objects, purchase, hold, manage or dispose of movable or immovable property and may enter into contracts and transactions that are expedient.

2. Compulsory acquisition of property

Where there is a hindrance to the acquisition by the Corporation of property, the property may be acquired for the Corporation under the State Property and Contracts Act, 1960 (C.A. 6) or, under the State Lands Act, 1962 (Act 125) and that Act shall apply in relation to the acquisition with the modifications that are necessary to provide for the vesting of the property acquired in the Corporation and for the cost of the acquisition to be defrayed by the Corporation.

*Objectives of the Corporation***3. Objectives**

(1) The objectives of the Corporation are,

- (a) to carry on business as manufacturers or producers of wheat flour, corn flour and the business of wheat and corn millers, manufacturers of biscuit and farinaceous compounds and allied materials of all descriptions, flour merchants, millers, bakers and corn merchants;
- (b) to carry on business as manufacturers of animal food of all kinds, including cattle and poultry food and feeding and fattening preparations of every description;
- (c) to do dairy farming and cultivation of crops, such as grains and legumes;
- (d) to carry on business as manufacturers, wholesalers, retailers, refiners and dealers in starch, and other additives for animal food;

1. The Act was issued as the Tema Food Complex Corporation Decree, 1973 (N.R.C.D. 176) made on the 16th day of May, 1973 and notified in the *Gazette* on 18th May, 1973.

- (e) to crush seeds and produce sesame and groundnut oils and groundnut cake, and to refine oil and make artificial manures and fertilizers of every description;
- (f) to establish cold stores and produce ice blocks, can fish, and carry on the production and marketing of margarine, dressing, mayonnaise, drippings, fishmeal, other fish preparations, and protein concentrates;
- (g) to manufacture cans of all kinds and sizes;
- (h) to act as general merchants, distributors, carriers and transporters of goods by land, importers, exporters and warehousemen;
- (i) to carry on any other activities as appear to the Corporation to be conducive or incidental to the carrying on of its objects.

(2) For the purpose of subsection (1), the Corporation may enter into an arrangement, with any other person for jointly carrying out an objective with that person.

4. Corporation to conduct its affairs on sound commercial lines

(1) The Corporation shall conduct its affairs on sound commercial lines, and in particular, shall perform its functions under this Act as to ensure that its revenues are sufficient to produce on the fair value of its assets, a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operating plus an appropriate allowance for its working capital.

(2) In determining what constitutes a reasonable return, the pertinent economic and financial considerations shall be taken into account, including the need for net operating income in an amount sufficient

- (a) to meet interest payments on borrowing,
- (b) to provide for repayments to be made each year in respect of loans incurred by the Corporation to the extent that the repayments exceed the year's provision for depreciation charged to revenue account,
- (c) to provide a reasonable proportion of the funds needed for expanding the Corporation's activities and improving its working,
- (d) to provide reserves for replacement, expansion or any other purposes and the extent to which the Board considers it necessary to establish those reserves, and
- (e) to make payments to the Consolidated Fund in accordance with section 17.

(3) In this section, the words "**net operating income**" mean the amount of income remaining after subtracting from the total operating revenues the charges which in the normal conduct of business, are correctly charged to the revenue account, including provision for adequate maintenance and straight line depreciation of assets, but before deducting interest and any other charges on borrowings.

*The Board***5. The Board**

The governing body of the Corporation is a Board, consisting of the chairman and not less than three, and not more than six other members appointed by the President in consultation with the Council of State, as well as the managing director.

6. Qualifications and tenure of office of members of the Board

(1) The members of the Board, other than the managing director shall hold office for two years.

(2) A person is not qualified to be a member of the Board if that person

- (a) has been sentenced to death or to a term of imprisonment exceeding twelve months without the option of a fine or has been convicted of an offence involving dishonesty or moral turpitude and has not in each case been granted a free pardon; or
- (b) has been declared an insolvent or a bankrupt under any law in force in Ghana or any other country; or
- (c) is adjudged to be a person of unsound mind.

(3) A member of the Board may resign from office by notice in writing addressed to the Minister and may be removed from office by the President.

(4) Where the office of a member of the Board becomes vacant, the Minister shall notify the President of the occurrence of the vacancy and in the case of a member other than the managing director, where the vacancy occurs before the term of office expires under subsection (1), a person shall be appointed in accordance with section 5 to hold that office for the unexpired portion of the previous holder's term of office.

(5) Where a member of the Board is incapacitated by absence from the Republic, or illness or any other sufficient cause from performing the functions of office, the President may appoint another person to hold office until the incapacity of that person has terminated or until the expiry of the term of office of that member, or whichever first occurs.

(6) A member of the Board is eligible for re-appointment.

7. Remuneration of Board members

A member appointed to the Board under subsection (2) of section 5 and a person co-opted to the Board under section 8 may be paid the remuneration determined by the President.

8. Meetings of the Board

(1) The Board shall meet at least once in every two months for the despatch of business at the times and at the places determined by the Board.

(2) A special meeting of the Board shall be called, on a written request signed by the chairman or by a majority of the members of the Board addressed to the secretary of the Corporation.

(3) The chairman shall preside over the meetings of the Board, and in the absence of the chairman a member of the Board appointed by the members present from among themselves, shall preside.

(4) Questions proposed at a meeting of the Board shall be determined by a simple majority of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote.

(5) The quorum at a meeting of the Board is three.

(6) The Board may co-opt a person to act as an adviser at any of its meetings, and a person so co-opted shall not vote on a matter for decision by the Board.

(7) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or a defect in the appointment of any them.

(8) A member of the Board who has an interest in a company or an undertaking with which the Corporation proposes to make a contract, or who has an interest in a contract which the Corporation proposes to make, shall disclose in writing to the Board the nature of the interest, and

(a) is disqualified, unless the Board otherwise directs, from participating in the deliberations of the Board on the contract and

(b) is disqualified from voting in a decision of the Board on the contract,

and a member who infringes the provisions of this subsection ceases to be a member of the Board.

Management and Staff of the Corporation

9. General policy of Corporation

(1) The Board shall, subject to this Act, have general control of the management of the Corporation on matters of policy.

(2) The Corporation shall have a managing director, and also a plant manager for each division of the Corporation.

(3) Subject to sections 5 to 8, the managing director shall be appointed by the President and shall hold office on the terms and conditions specified in the letter of appointment.

(4) Where the office of the managing director becomes vacant the Board shall notify the Minister who shall inform the President of the occurrence of the vacancy.

(5) Where the managing director is incapacitated from the performance of functions under this Act the Board may, subject to subsection (5) of section 6, authorise an employee of the Corporation to perform those functions for the duration of the incapacity.

(6) The managing director is the chief executive of the Corporation and, subject to the general control of the Board on matters of policy and subject also to the by-laws, is responsible for the direction of the day-to-day business of the Corporation and of its administration and organisation and control of the employees of the Corporation.

(7) The managing director may delegate to an employee of the Corporation or to any other person any of the functions subject to the conditions with respect to the performance of the delegated functions determined by the managing director.

(8) A provision of subsection (7) shall not be construed in a way that absolves the managing director from ultimate responsibility for an act done by a person in pursuance of the delegation.

10. Execution of contracts

(1) The use of the seal of the Corporation shall be authenticated by two signatures, namely,

- (a) the signature of the managing director or any other member of the Board authorised by the Board to authenticate the application of the seal, and
- (b) the signature of the secretary or any other officer of the Corporation authorised by the Board to act in the secretary's place for that purpose.

(2) The Corporation may by instrument in writing under its common seal empower a person generally or in respect of a specific matter as its attorney, to execute deeds on its behalf in a place outside the Republic; and every deed signed by that attorney on behalf of the Corporation and under the seal of the attorney is binding on the Corporation and shall have the same effect as if it were under the common seal of the Corporation.

(3) An instrument or a contract which, if executed or entered into by a person other than a body corporate would not require to be under seal, may be executed or entered into on behalf of the Corporation by the managing director or a member of the Board if that person has previously been authorised by a resolution of the Board to execute or enter into that particular instrument or contract.

(4) The Board may by writing under the common seal of the Corporation appoint a person outside the Republic as an agent to execute or enter into the instrument or contract and the instrument or contract if executed or entered into on behalf of the Corporation shall have effect as if it had been duly executed or entered into as prescribed for the purposes of subsection (3).

(5) A document purporting to be an instrument executed or issued by or on behalf of the Corporation and to be

- (a) sealed with the common seal of the Corporation authenticated in the manner provided by subsection (1), or
- (b) signed by and under the seal of a person appointed as attorney under subsection (2), or
- (c) signed by the managing director or by a member of the Board or any other person authorised in accordance with subsection (3) or (4) to act for that purpose,

shall be deemed to be so executed or issued until the contrary is known.

(6) This section shall have effect subject to section 9 of this Act and of section 12 of the Contracts Act, 1960 (Act 25).

11. Staff of the Corporation

(1) The Corporation may engage the employees that are necessary for the proper and efficient conduct of the business and the performance of the functions of the Corporation.

(2) The Corporation may also engage the services of consultants and advisers as determined by the Board on the recommendation of the managing director.

(3) The Board, with the prior approval of the Minister, is responsible for the appointment, discipline and removal of a person in respect of a post in the Corporation of general manager or any other post of a similar category in the Corporation.

(4) Subject to this section the Board is responsible for the appointment, discipline and removal of a person in respect of a post in the Corporation to which subsection (3) does not apply.

(5) The Board may delegate to the managing director or to any other officer of the Corporation, the power to appoint, discipline and remove a person in respect of a post in the Corporation the initial salary attached to which is less than the official minimum wage.

(6) The Board shall not delegate to an officer of the Corporation other than the managing director the power to appoint, discipline or remove a person in respect of a post the initial salary attached to which exceeds the minimum wage.

(7) Public officers may be transferred or seconded to the Corporation or may otherwise give assistance to the Corporation.

12. Secretary of Corporation

(1) The Corporation shall have an officer to be designated as the secretary of the Corporation.

(2) The secretary shall act as secretary to the Board and shall, subject to the directions of the Board, arrange the business for and record and keep the minutes of the meetings of the Board.

(3) The secretary shall also perform any other functions that the Board may in writing direct or as the managing director may in writing delegate, and shall be assisted by the staff of the Corporation as determined by the Board on the recommendations of the managing director.

13. Internal auditor

(1) The Corporation shall have an internal auditor.

(2) Subject to this Act, the internal auditor is responsible to the managing director for the performance of functions.

(3) As part of the functions under this Act, the internal auditor shall, at intervals of three months, prepare a report on the internal audit work carried out during the period of three months immediately preceding the preparation of the report and shall submit the report to the managing director.

(4) Without prejudice to subsection (3) of this section, the internal auditor shall make in each report the observations that are necessary and that relate to the conduct of the financial affairs of the Corporation during the period to which the report relates.

(5) The internal auditor shall send a copy of each report prepared under this section to the Minister and to the Minister responsible for Finance, the Auditor-General, and the chairman and each of the other members of the Board.

(6) This section shall be read and construed as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict that Act shall prevail.

14. Board members not to sponsor appointments

(1) A member of the Board shall not personally sponsor an application for the employment of a person under this Act.

(2) A member who infringes subsection (1) is liable to be removed from the Board.

Financial Provisions

15. Capital and funds of Corporation

The Government may provide to the Corporation as working capital and as moneys required for the performance of the functions of the Corporation, the sums of money determined by the Minister responsible for Finance after consultation with the Board.

16. Depreciation fund

(1) The Corporation shall have a depreciation fund and for this purpose the Corporation shall open a depreciation reserve account with the Bank of Ghana.

(2) At the end of each financial year the Corporation shall transfer to the credit of the depreciation reserve account the amounts charged to profit and loss account in respect of depreciation for buildings, plants and equipment, fixtures and any other fixed assets.

(3) Amounts transferred to the depreciation reserve account shall be used only to replace fixed assets and equipment which are worn out or have become obsolete.

(4) Where funds in the depreciation reserve account exceed the immediate requirements for the replacement, they may be used for other purposes with the consent of the Minister and subject to the conditions determined by the Minister so long as the primary obligations to use the depreciation reserve account for the replacement of fixed assets and equipment is not prejudiced.

(5) Expenditure in respect of current repairs and in respect of purchases of spare parts shall not be met out of the depreciation reserve account but shall be charged to the income and expenditure account of the Corporation for the financial year during which the expenditure is incurred.

17. Corporation to pay sums into Consolidated Fund

Subject to section 4, at the end of each financial year, after the Corporation has made provision for bad and doubtful debts, depreciation of assets, contributions to staff and superannuation funds and for any other contingencies, a part of profits of the Corporation remaining as directed in writing by the Minister after consultation with the Board and with the Minister responsible for Finance, shall be paid into the Consolidated Fund.

18. Borrowing powers

(1) Subject to article 181 of the Constitution, the Corporation may obtain loans and other credit facilities on the guarantee of the Government from the National Investment Bank or from any other Bank approved by the Minister and the Minister responsible for Finance.

(2) In addition to the powers of the Corporation under subsection (1), the Corporation may, with the prior approval of the Minister and the Minister responsible for Finance, borrow money from any other source.

(3) For the purpose of a technical arrangement in connection with the raising of a loan under subsection (2), the Corporation shall, if the National Investment Bank agrees, use the services of that Bank.

(4) The Corporation may borrow temporarily by way of overdraft or otherwise, the sums of money it requires for meeting its current obligations or performing its functions.

(5) The Minister responsible for Finance may, on behalf of the Government, guarantee the performance of an obligation or undertaking by the Corporation under this section.

(6) The Minister responsible for Finance may from time to time prescribe the maximum sums of money which the Corporation may borrow under subsection (1) or (2).

19. Corporation to keep proper books of account

The Corporation shall keep proper books of account and proper records in relation to the accounts in the form approved by the Auditor-General.

20. Financial year of Corporation

(1) The Corporation's financial year shall end on the 31st day of December in each year, unless otherwise varied by the Board with the prior approval of the Minister.

(2) For the purposes of subsection (1), the period extending from the commencement of this Act to the 31st day of December, 1973 shall be deemed to be a financial year.

21. Audit

(1) The books and accounts of the Corporation shall each year be audited by the Auditor-General in accordance with article 187 of the Constitution.

(2) The Corporation shall pay in respect of the audit, the fee that the Auditor-General and the Board may agree on, or in the case of failure to agree, the fee determined by the Minister.

(3) The Board shall as soon as possible on receiving the report of the Auditor-General, forward a copy of the report to the Minister.

(4) The Minister shall as soon as practicable on receipt of the report, present before Parliament a copy of the Auditor-General's report.

*Miscellaneous***22. Annual report**

(1) The Corporation shall, as soon as possible after the expiration of each financial year but within six months after the termination of that financial year, submit to the Minister an annual report dealing generally with the activities and operations of the Corporation within that year.

(2) The annual report shall include

- (a) a copy of the audited accounts of the Corporation together with the Auditor-General's report,
- (b) each report submitted in relation to that financial year by the internal auditor under section 13,
- (c) a statement of the directions given by the Minister to the Corporation under section 23 within that year,
- (d) a statement of financial and operating plans for the following year, and
- (e) any other information that the Minister may by writing request.

(3) A copy of the annual report of the Corporation shall be sent by the Corporation to the Minister responsible for Finance and the Government Statistician.

(4) The Minister shall, as soon as possible after receiving the annual report of the Corporation, submit the report to Parliament.

(5) The Corporation shall submit to the Minister any other reports on its financial affairs that the Minister may by writing reasonably request.

23. Minister's power of direction

Subject to section 4, which requires the Corporation to operate on sound commercial lines, the Minister may give general directions in writing to the Corporation on matters of policy and the Corporation shall comply with those directions.

24. By-laws

(1) The Board may make by-laws for the purpose of carrying into effect the provisions and principles of this Act and for regulating a matter falling within the scope of the functions of the Corporation.

(2) Without prejudice to subsection (1), the Board may, subject to the Social Security Act, 1991² and of any other enactment, make by-laws or any other instruments under that subsection for providing the conditions of service of the staff of the Corporation.

25. Interpretation

In this Act, unless the context otherwise requires,

“by-laws” means the by-laws made under section 24;

2. P.N.D.C.L. 247.

“**Corporation**” means the Tema Food Complex Corporation established under section 1;

“**Minister**” means the Minister responsible for Industries.

26. Transfer of assets and liabilities of Special Projects Division

(1) The assets, rights, obligations and liabilities in respect of the projects specified in the Schedule which were held and managed immediately before the commencement of this Act by the Special Projects Division are hereby vested in the Corporation established by this Act.

(2) Subsection (1) shall not be deemed to transfer an obligation or a liability which was assumed or entered into by a person before the 30th day of January, 1970.

27. Commencement

*Spent.*³

SCHEDULE

[Section 26]

The Industrial Complex consisting of

- (a) a flour mill and flour mill extension scheme;
 - (b) an animal feed mill plant;
 - (c) pneumatic ship unloading plant with a conveyor system from harbour to silos;
 - (d) a margarine plant;
 - (e) a tin can factory;
 - (f) a fish meal factory;
 - (g) an oil mill;
 - (h) a fish cannery with cold stores and a fish smoking plant.
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3. The section provided that the Decree should be deemed to have come into force on the 1st day of June, 1972.



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