

A BILL

For

A LAW TO ESTABLISH THE IMO STATE CREDIT GUARANTEE FUND SCHEME FOR MICRO AND SMALL ENTERPRISES

Sponsors: Hon.
Hon.

CHAPTER I

INTRODUCTION

BE IT ENACTED by the House of Assembly of Imo State as follows:

1. Title

(i) The Scheme shall be known as the Imo State Credit Guarantee Fund Scheme for Micro and Small Enterprises (Imo CGSMSE).

2. Definitions

For the purposes of this Scheme -

(i) "Amount in Default" means the principal and interest amount outstanding in the account(s) of the borrower in respect of term loan and amount of outstanding working capital facilities (including interest), as on the date of the account becoming Non Performing Asset, or the date of lodgment of claim application whichever is lower or such of the date as may be specified by Imo CGSMSE for preferring any claim against the guarantee cover subject to a maximum of amount Guaranteed.

(ii) "Collateral security" means the security provided in addition to the primary security, in connection with the

credit facility extended by a lending institution to a borrower.

(iii) "Credit facility" means any financial assistance by way of term loan and / or fund based and non-fund based working capital (e.g. Bank Guarantee, Letter of credit etc) facilities extended by the lending institution to the eligible borrower. For the purpose of calculation of guarantee fee, the "credit facility extended" shall mean the amount of financial assistance committed by the lending institution to the borrower, whether disbursed or not. For the purpose of the calculation of service fee, the credit facility extended shall mean the credit facilities (both fund and non-fund based) covered under CGS and for which guarantee fee has been paid, as at March 31, of the relevant year.

(iv) "Eligible borrower" means new or existing Micro and Small Enterprises to which credit facility has been provided by the lending institution without any collateral security and/or third party guarantees.

(v) 'Guarantee Cover' means maximum cover available per eligible borrower of the amount in default in respect of the credit facility extended by the lending institution.

(vi) "Lending institution(s)" means an accredited microfinance bank for the time being registered by the Central Bank of Nigeria and any other banks as may be specified by the Scheme from time to time. The Scheme may, on review of performance, remove any of the lending institutions from the list of eligible institution.

(vii) "Material date" means the date on which the guarantee fee on the amount covered in respect of eligible borrower becomes payable by the eligible institution to the Scheme.

(viii) "Non Performing Assets" means an asset classified as non-performing based on the instructions and guidelines issued by the Central Bank of Nigeria from time to time.

(ix) "Primary security" in respect of a credit facility shall mean the assets created out of the credit facility so extended and/or existing unencumbered assets which are

directly associated with the project or business for which the credit facility has been extended.

(x) "Prime Lending Rate" for a lending institution means the rate so declared by that lending institution for the relevant time period / duration for which the credit facility has been extended.

(xi) "Scheme" means the Imo State Credit Guarantee Fund Scheme for Micro and Small Enterprises.

(xii) "Tenure of guarantee cover" means the maximum period of guarantee cover from Guarantee start date which shall run through the agreed tenure of the term credit and for a period of 3 years or block of a 3 years where working capital facilities alone are extended or loan termination date, whichever is earlier or such period as may be specified by the Scheme.

(xiii) "Management Committee" means the Management Committee of the Imo State Credit Guarantee Fund Scheme for Micro and Small Enterprises established under this act.

CHAPTER II

SCOPE AND EXTENT OF THE SCHEME

3. Guarantees by the Scheme:

(i) Subject to the other provisions of the Scheme, the Scheme undertakes, in relation to credit facilities extended to an eligible borrower from time to time by an eligible institution which has entered into the necessary agreement for this purpose with the Scheme, to provide a guarantee on account of the said credit facilities.

(ii) The Scheme reserves the discretion to accept or reject any proposal referred by the lending institution which otherwise satisfies the norms of the Scheme.

4. Credit facilities eligible under the Scheme:

(i) The Scheme shall cover credit facilities (Fund based and/or Non fund based) extended by Member Lending Institution(s) to a single eligible borrower in the Micro and Small Enterprises sector for credit facility (i) not exceeding Five Hundred Thousand Naira (N500,000.00) by way of term loan and/or working capital facilities on or after entering into an agreement with the Scheme, without any collateral security and/or third party guarantees or such amount as may be decided by the Scheme from time to time.

(ii) Provided that the lending institution applies for guarantee cover in respect of credit proposals approved in the quarter April-June, July-September, October-December and January-March prior to expiry of the following quarter viz. July-September, October-December, January-March and April-June respectively

(iii) Provided further that, as at the material date,

- (a) The dues to the lending institution have not become bad or doubtful of recovery; and/ or
- (b) The business or activity of the borrower for which the credit facility was granted has not ceased; and/ or
- (c) The credit facility has not wholly or partly been utilized for adjustment of any debts deemed bad or doubtful of recovery, without obtaining a prior consent in this regard from the Scheme.

(iv) Credit facilities extended by more than one bank and/or financial institution jointly and/or separately to eligible borrower up to a maximum of One Million Naira (N1,000,000.00) per borrower or such amount as may be specified by the Scheme.

5. Credit facilities not eligible under the Scheme

The following credit facilities shall not be eligible for being guaranteed under the Scheme: -

(i) Any credit facility in respect of which risks are additionally covered under a scheme operated/ administered by Central Bank of Nigeria, to the extent they are so covered.

(ii) Any credit facility in respect of which risks are additionally covered by Government or by any general insurer or any other person or association of persons carrying on the business of insurance, guarantee or indemnity, to the extent they are so covered.

(iii) Any credit facility, which does not conform to, or is in any way inconsistent with, the provisions of any law, or with any directives or instructions issued by the Imo State Government or the Central Bank of Nigeria, which may, for the time being, be in force.

(iv) Any credit facility granted to any borrower, who has availed himself of any other credit facility covered under this scheme or under the schemes mentioned in sub-section (i), (ii) and (iii) above, and where the lending institution has invoked the guarantee provided by the Scheme or under the schemes mentioned in clause (i), (ii) and (iii) above, but has not repaid any portion of the amount due to the Scheme or under the schemes mentioned in clause (i), (ii) and (iii) above, as the case may be, by reason of any default on the part of the borrower in respect of that credit facility.

(v) Any credit facility which has been approved by the lending institution against collateral security and/ or third party guarantee.

(vi) Any credit facility which has been approved by the lending institution with interest rate more than 2% over the Prime Lending Rate (PLR) of the lending institution.

6. Agreement to be executed by the lending institution:

A lending institution shall not be entitled to a guarantee in respect of any eligible credit facility granted by it unless it has

entered into an agreement with the Scheme in such form as may be required by the Scheme for covering by way of guarantee, under the Scheme all the eligible credit facilities granted by the lending institution, for which provision has been made in the Scheme.

7. Responsibilities of lending institution under the scheme:

(i) The lending institution shall evaluate credit applications by using prudent banking judgment and shall use their business discretion/ due diligence in selecting commercially viable proposals and conduct the account(s) of the borrower with normal banking prudence.

(ii) The lending institution shall closely monitor the borrower account.

(iii) The lending institution shall safeguard the primary securities taken from the borrower in respect of the credit facility in good and enforceable condition.

(iv) The lending institution shall ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and in the manner and within such time as may be specified by the Scheme in this behalf and that there shall not be any delay on its part to notify the default in the borrowers account which shall result in the Scheme facing higher guarantee claims.

(v) The payment of guarantee claim by the Scheme to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and initiate such necessary actions for recovery of the outstanding amount, including such action as may be advised by the Scheme.

(vi) The lending institution shall comply with such directives as may be issued by the Scheme, from time to time, for facilitating recoveries in the guaranteed account, or safeguarding its interest as a guarantor, as the Scheme may

deem fit and the lending institution shall be bound to comply with such directives.

(vii) The lending institution shall, in respect of any guaranteed account, exercise the same diligence in recovering the dues, and safeguarding the interest of the Scheme in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Scheme. The lending institution shall, in particular, refrain from any act of omission or commission, either before or subsequent to invocation of guarantee, which may adversely affect the interest of the Scheme as the guarantor. In particular, the lending institution should intimate the Scheme while entering into any compromise or arrangement, which may have effect of discharge or waiver of personal guarantee(s) or security. The lending institution shall also ensure either through a stipulation in an agreement with the borrower or otherwise, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor(s) without intimating the Scheme. Further the lending institution shall secure for the Scheme or its appointed agency, through a stipulation in an agreement with the borrower or otherwise, the right to list the defaulted borrowers' names and particulars on the Website of the Scheme.

CHAPTER III

GUARANTEE FEE

8. Guarantee Fee:

(i) One-time guarantee fee at specified rate within the range of 0.75% to 1.5% of the credit facility approved (comprising term loan and/ or working capital facility) shall be paid upfront to the Scheme by the institution availing of the guarantee

within 30 days from the date of first disbursement of credit facility or such date as specified by the Scheme.

(ii) The amount equivalent to the guarantee fee payable by the eligible lending institution may be recovered by it, at its discretion from the eligible borrower.

(iii) The guarantee fee once paid by the lending institution to the Scheme is non-refundable. Guarantee fee shall not be refunded, except under certain circumstances like -

- (a) Excess remittance,
- (b) Remittance made more than once against the same credit application,
- (c) Guarantee fee not due,
- (d) Guarantee fee paid in advance but application not approved for guarantee cover under the scheme.

CHAPTER IV GUARANTEES

9. Extent of the guarantee

The Scheme shall provide guarantee as follows;

- (i) 85% of the amount in default subject to a maximum of Four Hundred and Twenty Five Thousand Naira (N425,000.00), where credit facility is up to Five Hundred Thousand Naira (N500,000.00)
- (ii) 75% of the amount in default subject to a maximum of Seven Hundred and Fifty Thousand Naira (N750,000.00), where credit facility is up to One Million Naira (N1,000,000.00).
- (iii) The guarantee cover will commence from the date of payment of guarantee fee and shall run through the agreed tenure of the term credit in respect of term credit. Where working capital alone is extended to the eligible borrower, the guarantee cover shall be for a

period of 3 years or for such period as may be specified by the Scheme.

CHAPTER V

CLAIMS

10. Invocation of guarantee

- (i) The lending institution may invoke the guarantee in respect of credit facility within a maximum period of one year from date of Non Performing Assets (NPA), if NPA is after lock-in period or within one year of lock-in period, if NPA is within lock-in period, if the following conditions are satisfied: -
- a. The guarantee in respect of that credit facility was in force at the time of account turning NPA.
 - b. The lock-in period of 18 months from either the date of last disbursement of the loan to the borrower or the date of payment of the guarantee fee in respect of credit facility to the borrower, whichever is later, has elapsed;
 - c. The amount due and payable to the lending institution in respect of the credit facility has not been paid and the dues have been classified by the lending institution as Non Performing Assets. Provided that the lending institution shall not make or be entitled to make any claim on the Scheme in respect of the said credit facility if the loss in respect of the said credit facility had occurred owing to actions/ decisions taken contrary to or in contravention of the guidelines issued by the Scheme
 - d. The credit facility has been recalled and the recovery proceedings have been initiated under due process of law.

(ii) The claim should be preferred by the lending institution in such manner and within such time as may be specified by the Scheme.

(iii) The Scheme shall pay 75 per cent of the guaranteed amount on preferring of eligible claim by the lending institution, within 30 days, subject to the claim being otherwise found in order and complete in all respects. The Scheme shall pay to the lending institution interest on the eligible claim amount at the prevailing Bank Rate for the period of delay beyond 30 days. The balance of 25 per cent of the guaranteed amount will be paid on conclusion of recovery proceedings by the lending institution. On a claim being paid, the Scheme shall be deemed to have been discharged from all its liabilities on account of the guarantee in force in respect of the borrower concerned.

(iv) In the event of default the lending institution shall exercise its rights, if any, to take over the assets of the borrowers and the amount realized, if any, from the sale of such assets or otherwise shall first be credited in full by the lending institutions to the Scheme before it claims the remaining 25 per cent of the guaranteed amount.

(v) The lending institution shall be liable to refund the claim released by the Scheme together with penal interest at the rate of 4% above the prevailing Bank Rate, if such a recall is made by the Scheme in the event of serious deficiencies having existed in the matter of appraisal/ renewal/ follow-up/ conduct of the credit facility or where lodgment of the claim was made more than once or where there existed suppression of any material information on the part of the lending institutions for the settlement of claims. The lending institution shall pay such penal interest, when demanded by the Scheme, from the date of the initial release of the claim by the Scheme to the date of refund of the claim.

(vi) The Guarantee Claim received directly from the branches or offices other than respective operating offices of Lending Institutions will not be entertained.

11. Subrogation of rights and recoveries on account of claims paid

(i) The lending institution shall furnish to the Scheme, the details of its efforts for recovery realizations and such other information as may be demanded or required from time to time. The lending institution will hold lien on assets created out of the credit facility extended to the borrower, on its own behalf and on behalf of the Scheme. The Scheme shall not exercise any subrogation rights and that the responsibility of the recovery of dues including takeover of assets, sale of assets, etc., shall rest with the lending institution.

(ii) In the event of a borrower owing several distinct and separate debts to the lending institution and making payments towards any one or more of the same, whether the account towards which the payment is made is covered by the guarantee of the Scheme or not, such payments shall, for the purpose of this clause, be deemed to have been appropriated by the lending institution to the debt covered by the guarantee and in respect of which a claim has been preferred and paid, irrespective of the manner of appropriation indicated by such borrower or the manner in which such payments are actually appropriated.

(iii) Every amount recovered and due to be paid to the Scheme shall be paid without delay, and if any amount due to the Scheme remains unpaid beyond a period of 30 days from the date on which it was first recovered, interest shall be payable to the Scheme by the lending institution at the rate which is 4% above Bank Rate for the period for which payment remains outstanding after the expiry of the said period of 30 days.

CHAPTER VI

MISCELLANEOUS

12. Appropriation of amount received from the lending institutions

The amount received from the lending institutions shall be appropriated in the order in which the penal interest and other charges have fallen due. If the penal interest have fallen due, then the appropriation shall be made first towards the penal interest and then towards any other charges payable in respect of the eligible credit facility.

13. Appropriation of amount realized by the lending institution in respect of a credit facility after the guarantee has been invoked.

Where subsequent to the Scheme having released a sum to the lending institution towards the amount in default in accordance with the provisions contained in the Section 10 of this scheme, the lending institution recovers money subsequent to the recovery proceedings initiated by it, the same shall be deposited by the lending institution with the Scheme, after adjusting towards the cost incurred by it for recovery of the amount. The Scheme shall appropriate the same first towards the pending service fee, penal interest, and other charges due to the Scheme, if any, in respect of the credit facility towards which the amount has been recovered by the lending institution.

14. Scheme's liability to be terminated in certain cases

(i) If the liabilities of a borrower to the lending institution on account of any eligible credit facility guaranteed under this Scheme are transferred or assigned to any other borrower and if the conditions as to the eligibility of the borrower and the amount of the facility and any other terms and conditions,

if any, subject to which the credit facility can be guaranteed under the Scheme are not satisfied after the said transfer or assignment, the guarantee in respect of the credit facility shall be deemed to be terminated as from the date of the said transfer or assignment.

(ii) If a borrower becomes ineligible for being granted any credit facilities under the Scheme, by reason of cessation of his activity or his activity or his undertaking ceasing to come within the definition of a MSE unit, the liability of the Scheme in respect of any credit facilities granted to him by a lending institution under the Scheme shall be limited to the liability of the borrower to the lending institution as on the date on which the borrower becomes so ineligible, subject, however, to the limits on the liability of the Scheme. However, notwithstanding the death or retirement of a partner where the borrower is a partnership firm or the death of one of the joint borrowers, if the lending institution is entitled to continue the credit facilities to the surviving partner or partners or the surviving borrower or borrowers, as the case may be and if the credit facilities have not already become non performing asset, the guarantee in respect of such credit facilities shall not to be deemed to be terminated as provided in this paragraph.

15. Returns and Inspections

(i) The lending institution shall submit such statements and furnish such information as the Scheme may require in connection with any credit facility under this Scheme.

(ii) The lending institution shall also furnish to the Scheme all such documents, receipts, certificates and other writings as the latter may require and shall be deemed to have affirmed that the contents of such documents, receipts, certificates and other writings are true, provided that no claim shall be rejected and no liability shall attach to the lending

institution or any officer thereof for anything done in good faith.

(iii) The Scheme shall, insofar as it may be necessary for the purposes of the Scheme, have the right to inspect or call for copies of the books of account and other records (including any book of instructions or manual or circulars covering general instructions regarding conduct of advances) of the lending institution, and of any borrower from the lending institution. Such inspection may be carried out either through the officers of the Scheme or any other person appointed by the Scheme for the purpose of inspection. Every officer or other employee of the lending institution or the borrower, who is in a position to do so, shall make available to the officers of the Scheme or the person appointed for the inspection as the case may be, the books of account and other records and information which are in his possession.

16. Conditions imposed under the Scheme to be binding on the lending institution

(i) Any guarantee given by the Scheme shall be governed by the provisions of the Scheme as if the same had been written in the documents evidencing such guarantee.

(ii) The lending institution shall as far as possible ensure that the conditions of any contract relating to an account guaranteed under the Scheme are not in conflict with the provisions of the Scheme but notwithstanding any provision in any other document or contract, the lending institution shall in relation to the Scheme be bound by the conditions imposed under the Scheme.

17. Modifications and exemptions

(i) The Imo State government reserves to itself the right to modify, cancel or replace the Scheme, provided however, that the rights or obligations arising out of, or accruing under a guarantee issued under the Scheme up to the date on which

such modification, cancellation or replacement comes into effect, shall not be affected.

(ii) Notwithstanding anything herein contained, the Scheme shall have a right to alter the terms and conditions of the scheme's guarantee with regards to an account in respect of which guarantee has not been invoked as on the date of such alteration.

(iii) In the event of the Scheme being cancelled, no claim shall lie against the Scheme in respect of facilities covered by the Scheme, unless the provisions contained in Clause (i) and (ii) of Section 10 of the Scheme are complied with by the lending institution prior to the date on which the cancellation comes into force.

18. Interpretation

If any question arises with regard to the directions or instructions or clarifications given under the Scheme, the decision of the Scheme shall be final.

19. Supplementary and general provisions

In respect of any matter not specifically provided for in this Act, the Scheme may make such supplementary or additional provisions or issue such instructions or clarifications as may be necessary for the purpose of the Scheme.

CHAPTER VII

MANAGEMENT COMMITTEE

20. Management Committee of the Imo State Credit Guarantee Fund Scheme for Micro and Small Enterprises

(i) There is hereby established, for the purpose of this Act, a body to be known as the Management Committee of the Imo

State Credit Guarantee Fund Scheme for Micro and Small Enterprises.

(ii) The head office of the Management Committee shall be at Owerri.

(iii) The Management Committee shall:-

- (a) monitor and supervise the implementation of the provisions of this Act;
- (b) administer the operations of the Scheme;
- (c) register accredited lending institutions, draw up guidelines for their operations and supervise their activities;
- (d) perform such other functions as may be specified by any law or enactment; and
- (e) create directories of lending institutions;
- (f) recruit staff for the Scheme;
- (g) disburse funds;
- (h) appoint external auditors;
- (i) engage in fund raising for the purpose of carrying out its functions.
- (j) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

(iv) The Management Committee shall consist of the following members, namely:-

- (a) the Deputy Governor of Imo State, who shall be Chairperson of the Management Committee;
- (b) the Commissioner for Finance;
- (c) the Commissioner for Commerce and Industry;
- (d) the Director General, Imo State Investment Promotion Agency;
- (e) the Branch Controller, Central Bank of Nigeria, Owerri Branch;
- (f) three persons to represent the associations of micro and small enterprises, including not less than one person representing associations of women's enterprises;

(g) the Manager, a person, who shall be the administrative head of the Scheme.

(v) A person appointed as a member of the Management Committee shall hold office for a term of four years only and shall be eligible for re-appointment only once. Provided that the term of office of a member of the Management Committee shall continue so long as he holds the government office by virtue of which he is such a member.

(vi) The Management Committee shall meet at least once in every three months in a year.

(vii) The Management Committee may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Management Committee relevant to the purposes for which he has been associated but shall not have the right to vote.

(viii) The quorum of the Management Committee shall be one-third (1/3) of the members; and the validity of its proceedings shall not be affected by any defect in the appointment of any member.