

PROPOSED ECONOMIC AND FINANCIAL CRIMES (AMENDMENT) ACT, 2017

AN ACT TO AMEND THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT NO.1 2004 TO ENHANCE EFFECTIVENESS OF THE ACT; AND RELATED MATTERS

ENACTED by the National Assembly of the Federal Republic of Nigeria.

1. The Economic and Financial Crimes (Establishment) Act No. 1 2004 (in this Act referred to as "the Principal Act") is amended as set out in this Act.
2. Section 1 (2)(c) of the Principal Act is amended by deleting same.
3. Adding the following subsections to section 1 as follows:
 - A. There shall be a unit domiciled in the Commission to be known as the Nigeria Financial Intelligence Unit (hereinafter referred to as the "NFIU"), which shall be the Central Authority in Nigeria responsible for requesting, receiving, analyzing, and disseminating of financial information to law enforcement agencies, supervisory and regulatory authorities.
 - B. The NFIU shall carry out such other functions as may be prescribed in a regulation made by the Attorney-General of the Federation pursuant to section 43 of this Act and section 23 of the Money Laundering (Prohibition) Act. 2011 (as amended).
 - C. In carrying out its functions the NFIU shall be operationally and administratively autonomous and independent, and shall not be subject to the direction or control of any other authority.
 - D. The NFIU shall have power to –

- i. conduct analysis into any suspected case of money laundering, terrorists financing, financing of the proliferations of weapons of mass destruction, and non-compliance with the provisions of the Money Laundering (Prohibition) Act, the Terrorism (Prevention) Act, the Terrorist Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulation, 2013;
- ii. serve as the secretariat to the Nigerian Sanction Committee and the Inter Ministerial Committee on anti-money laundering/countering the financing of terrorism matter in Nigeria;
- iii. without hindrance, share information or intelligence with other Financial Intelligence Units ("FIUs") either in response to a request made to it or in a spontaneous manner;
- iv. receive requests for information directly from other FIUs and domestic stakeholder agencies and process the same in a confidential and secure manner;
- v. demand for and obtain additional information from any entity within or outside Nigeria where it considers such additional information expedient to the effective performance of its duties;
- vi. enter into Memorandum of Understanding or such other arrangements with domestic stakeholder agencies, other FIUs or Institutions worldwide as will enable it to carry out its functions effectively; and
- vii. collaborate with the Central Bank of Nigeria and other regulatory or supervisory authorities in the conduct of anti-money laundering and combating the financing of terrorism focused examinations of financial institutions and designated non-financial institutions."

4. Section 2 (1) is hereby amended by adding the following:

"O. The Director General of the National Identity Management Commission or his representative" and renumbering Section 2(1)(o) and (p) to read Section 2(1)(p) and 2(1)(q) respectively.

5. Section 3 (1) is hereby amended by adding the word: "the Secretary and " between the words "*than*" and "*ex-officio*" to read as follows:

"The Chairman and members of the Commission other than the Secretary and *ex-officio* members shall hold office for a period of four years and may be re-appointed for a further term of four years and no more".

6. Section 3 (2) is hereby amended by deleting the whole of Section 3 (2) and substituting it with a new Section 3 (2) as follows:

"A member of the Commission may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office, provided that the Chairman shall only be removed subject to the approval of 2/3 majority of the Senate".

7. Substituting Section 6(l) with the following:

"Monitoring, supervising and regulating the activities of Designated Non-Financial Institutions to ensure compliance with anti -money laundering and combating the financing of terrorism regime."

8. Amending section 7(2)(a) and (b) to read as follows:

- a. the Money Laundering (Prohibition) Act 2011 (as amended); 2004; 2003 No.7; 1995 No. 13
- b. the Advance Fee Fraud and Other Related Offences Act 2006; 1995 (as amended)".

9. Adding the following as sub-paragraph 8(2)(e):

"(e) a person who is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than 10 years."

10. Amending Section 9(1)(b) to read as follows:

" appeals by such employees against dismissal or other disciplinary measures." and deleting the rest of the sentence.

11. Adding another subsection to Section 9 as Section 9(3) to read as follows:

"where no provision is made in the Staff regulations regarding any issue the Public Service Rules shall apply".

12. Deleting the words "and Assets" in Section 12(1) (a); 13 (1); and 13 (2) (b) of the Principal Act.

13. Adding another sub-paragraph to Section 12(1) as Section 12(1)(f) to read as follows: "Special Control Unit against Money Laundering".

14. Re-numbering Section 13(3) as 13(5) and inserting the following as Section 13(3) and (4)

"The Special Control Unit against Money Laundering ("SCUML") shall:

- (a) monitor and supervise the activities of all designated non-financial institutions to ensure compliance with the provisions of this Act , the Money Laundering (Prohibition) Act. 2011 (as amended), provisions of the Terrorism

(Prevention) Act, 2011 relating to terrorism financing, and any rules or regulations made thereto.

- (b) advise all designated non-financial institutions on their obligations and responsibilities under this Act; The Money Laundering (Prohibition) Act, 2011 (as amended), the Terrorism (Prevention) Act, 2011(as amended) and any rules or regulations made thereto.
 - (c) take necessary measures to ensure compliance by all designated non-financial institutions regarding their obligations and responsibilities under this Act; the Money Laundering (Prohibition) Act, 2011 (as amended), the Terrorism (Prevention) Act, 2011 (as amended) and any rules or regulations made thereto.
4. Notwithstanding the provisions of Section 5(1)(c) and (2) of the Money Laundering (Prohibition) Act 2011 (as amended):
- a. all Designated Non-Financial Institutions shall forward all reports required from them under the said Money Laundering (Prohibition) Act, 2011 (as amended) to the Commission.
 - b. any reference to the "Minister" under the Money Laundering (Prohibition) Act, 2011 and reference to the Federal Ministry of Industry, Trade and Investment under section 25 of the Money Laundering (Prohibition) Act 2011 (as amended) shall be deemed to be a reference to the "Attorney General of the Federation", and any regulations made by the "Minister" in exercise of the powers conferred on him under the said Money Laundering (Prohibition) Act, 2011 (as amended) shall continue to have effect as if they were made by the Attorney-General of the Federation."

15. Adding the words "or any rules or regulations made pursuant to this Act" after the word "Act" in Section 14(1) (a) of the Principal Act.
16. Deleting the whole of Section 14(2) of the Principal Act and substituting it with the following:

" Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may:

 - (a) subject to full recovery of any proceeds, assets or property derived or involved in the Commission of the offence compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence; or
 - (b) enter into any plea bargain arrangement with any person who is charged for an offence under this Act in accordance with the Administration of Criminal Justice Act 2015 or any other applicable law regulating plea bargain arrangement.
17. Adding another subsection to Section 14 as Section 14(4) and for same to read as follows:

"Notwithstanding the provisions of Sections 14(3); 20; 21; 22; and Section 31(2) and (3), or any other provision in this Act where the property, assets or money recovered belongs to:

 - a. the Government of a State it shall be paid or transferred to the Government of the State;

- b. a person whether body corporate or not it shall be paid or transferred to the person;
- c. an unidentifiable victim; and in any other case, the money or the proceeds from the sale of the property or assets when disposed of shall be paid into the Consolidated Revenue Fund of the Federation.

18. Amending Section 26(1)(a) by adding the word "investigation" between the words "an" and "arrest" to read as follows;

"(a) the seizure is incidental to an investigation, arrest or search"

19. Adding two new sub-paragraphs to Section 26(2) as Section 26(2)(c) and(d), and for same to read as follows:

"(c) manage or administer such property by itself or appoint any person or firm with reasonable or cognate knowledge in the management or administration of such property to do so and shall pay all monies realized from it to a designated account after settlement of all necessary costs incidental to the management or administration of such property including professional fees of the person or firm appointed.

(d) where any movable property seized is liable to decay or deterioration, or is property which cannot be maintained without difficulty or unreasonable expenses, or which is not practicable to maintain, the Commission may

- i. by an order of court made pursuant to an ex- parte application sell or cause such property to be sold at the prevailing market value and shall keep in its custody the proceeds of the sale subject to the settlement of all incidental costs in the sale of the property;

- ii. direct that the property be released on bond to the owner or person from whose custody or control it was seized subject to security being furnished in an amount not less than the market value of such property on the date on which it is released or such other security as the Commission may deem appropriate or reasonable pending the outcome or conclusion of investigation or any proceedings under this Act.”

20. Adding the following as Section 26(3) and renumbering section 26(3) of the Principal as Section 26(4):

“ Where a person to whom property is released on bond pursuant to Section 26(2) (d) (ii) above fails or neglects to surrender that property on demand or to comply with any term or condition for the release of the property, the security furnished in respect of such property shall be forfeited and that person shall be guilty of an offence and shall on conviction be liable to a fine of not less than twice the amount of the security furnished or to imprisonment for a term not less than two years or to both.”

21. Amending Section 27(4) of the Principal Act to read as follows:

“Subject to the provisions of section 24 of this Act, whenever the assets and properties of any person under investigation or arrested for an offence under this Act are attached, the Commission shall apply ex-parte to the Court for an interim attachment order under the provisions of this Act”.

22. Amending Section 28 of the Principal Act to read as follows:

“ Where a person is under investigation or arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic and financial crimes and shall

thereafter by an ex-parte application cause to be obtained an interim attachment order from the court.”

23. Substituting Section 29 of the Principal Act as follows:

(1) Where

- a. any property has come into the possession of an officer of the Commission as unclaimed property; or
- b. any unclaimed property is found by an officer of the Commission to be in the possession of any other person, body corporate or financial institution; or
- c. any property whether or not in the possession of any person, body corporate or financial institution is reasonably suspected to be proceeds of crime under this Act; or
- d. where any person whether or not under investigation voluntarily surrenders any property as proceeds of crime;

the High Court shall upon application made by the Commission, its officers, or any other person authorized by it, and upon being reasonably satisfied that such property is an unclaimed property; or reasonably suspected to be proceeds of crime; or has been voluntarily surrendered to the Commission make an order that the property or the proceeds from the sale of such property be forfeited to the Federal Government of Nigeria.

2. Notwithstanding the provision of subsection (1) of this section the High Court shall not make an order of forfeiture of property or the proceeds from the sale of such property to the Federal Government of Nigeria until such notice or publication as the High Court may direct has been given or made for any

person, body corporate or financial institution in whose possession the property is found or who may have a claim or interest in the property to show cause why the property should not be forfeited to the Federal Government of Nigeria.

3. Application under subsection (1) above shall first be made by a motion *ex-parte* for interim attachment order of the property concerned, and the giving of the requisite notice or publication as required in subsection (2) of this section.
4. At the expiration of 14 days or such other period as the High Court may consider reasonable from the date of the notice or making of the publication stated in subsection (2) and (3) of this section, an application shall be made by an *Ex parte* Originating Summons for the final forfeiture of the property concerned to the Federal Government of Nigeria where there is no claimant, or by a motion on notice to the claimant or interested person where there is a claimant or interested person.
5. An order of forfeiture under this section shall not be based on a conviction for an offence under this Act or any other law."

24. Deleting the whole of section 34(1) of the Act and substituting with the following:

" Notwithstanding anything in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a

person is made through the commission of an offence under this Act7:

- “(a) by a letter or any other recognized mode of communication to the manager of a bank, or the person in control of the financial institution or designated non-financial institution direct him to POST NO DEBIT or stop all outward payments, operations, transactions(including any bill of exchange) in respect of the account; and
- (b) shall within 14 days apply to the Court ex-parte for power to issue an order as specified in FORM B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution or designated non-financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non-financial institution to freeze the account”.

25. Adding a new sub-section to Section 35 as Section 35(4) to read as follows:

“ The Commission shall:

- (a) retain and use seven percent of all proceeds of crime recovered by it for its operational activities irrespective of whether the recovery is made for the Government of the Federation or State or any of their agencies; any person whether body corporate or not; or any foreign or international body or authority.
- (b) charge and receive for its use reasonable fees as may be prescribed by the Commission for training and certification of relevant documents which the Commission may in its discretion issue to members of the public upon request”

26. Altering the words "exceeding one hundred thousand" between the words "not" and "naira" in Section 39(2) (b) to read "less than two hundred thousand".
27. Altering the words "exceeding ten thousand" between the words "not" and the "naira" in Section 39(2) (c) to read " less than one hundred thousand".
28. Adding the following to Section 46 of the Principal Act:
 - "Proceeds" or "Proceeds of crime" shall mean any property derived from or obtained directly or indirectly, through the commission of an offence under this Act".
 - " Property" or "assets" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents or instruments evidencing title to or interest in such assets".
 - "Post no Debit" shall mean to block an account, stop all transactions where money will go out of the account".
29. This Act may be cited as the Economic and Financial Crimes Commission (Amendment) Act, 2016.