

A BILL

FOR

AN ACT TO AMEND THE ECONOMIC AND FINANCIAL CRIMES COMMISSION ACT TO PROVIDE FOR QUICK RECOVERY PROCEDURES FOR STOLEN ASSET; IMPLEMENT ACTIVE PURSUIT OF CASES, BUILD CAPACITY AND IMPROVE TRUST AND CO-OPERATION WITH FOREIGN COUNTERPARTS; ENSURE ADEQUATE FUNDING OF THE COMMISSION; ESTABLISH THE ECONOMIC AND FINANCIAL CRIMES COURT AND FOR OTHER RELATED MATTERS

Sponsored by Hon. Barr. Bassey Eko Ewa

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria and by the Authority of Same-

1 1. The Economic and Financial Crimes Commission Act, 2004
2 Laws of the Federation of Nigeria 2004 (hereinafter referred to as the
3 Principal Act) is amended as set out in this Act.

Amendment of
the Economic and
Financial Crimes
Commission Act,
L.F.N. 2004

4 2. Section 3 of the Principal Act is amended by inserting a new
5 sub-sections (4) and (5) and re-arranging accordingly-

6 “(4)” Petitions against the Chairman or any of the Members of the
7 Economic and Financial Crimes Commission emanating from the public or
8 the private sector shall be submitted to the National Assembly. If upon
9 investigation and found culpable, a simple majority vote of the Members of
10 the National Assembly is required in considering the fate of the Chairman or
11 any of the affected member.

12 “(5)” The National Assembly shall after thorough investigation
13 forward the recommendations to the President of the Federal Republic of
14 Nigeria for implementation, but if the President objects to the removal of the
15 Chairman or any affected Member of the Commission, he shall
16 communicate in writing to the National Assembly advancing reasons
17 against the removal of the Chairman or an affected member within 30 days.

Amendment of
section 12 of
the Principal
Act

1 However, a two third majority vote of the National Assembly shall be required
2 to veto the decision of the President for the affected member to be removed.

3 3. Section 12 of the Principal Act is amended by-

4 (a) Deleting the word "and" immediately after the "Unit" in paragraph
5 (d);

6 (b) Insert a new paragraph (f) to read "Financial Investigation Unit" to
7 be headed by a Retired Assistant Inspector-General of Police, and or its
8 equivalent in the Nigerian Military.

9 (c) Insert a New Sub-Section (3) and re-number accordingly-

10 "(3) All petitions to the Commission shall comply with section 6 (a)
11 and (b) of the Evidence Act".

12 4. Section 6 of the Principal Act is amended by inserting new
13 paragraphs (q), (r), (s), (t), (u) and (v) and re-arrange accordingly-

14 (q) Adopt and implement comprehensive strategic policies to combat
15 corruption, misappropriation or misapplication of public funds and recover
16 stolen assets, credible intent of political actors, public servants and other
17 organs of government political will which is a precondition for fighting foreign
18 corruption and stolen asset recovery;

19 (r) Implement institutional reforms that encourage the active and
20 speedy pursuit of cases, build capacity, and improve trust and co-operation
21 with foreign counterparts;

22 (s) Device specialized systems or units with trained practitioners and
23 adequate resources for addressing the complex and lengthy nature of these
24 cases;

25 (t) Enable the rapid tracing and freezing of stolen assets and multiple
26 avenues for asset recovery, including confiscation without a conviction, and
27 private (civil recovery) actions;

28 (u) facilitate international co-operation including the direct
29 enforcement of foreign orders and the granting of mutual legal assistance in the
30 absence of a bilateral legal assistance agreement when dealing with asset

1 recovery that permit mutual legal assistance requests to freeze assets on an
2 ex parte basis;

3 (v) Ensure preventive measures requiring financial institutions to
4 identify and monitor and collect beneficial ownership information;

5 (w) Supporting law enforcement efforts in pursuing kleptocracy
6 cases;

7 (x) Advocating for pertinent policies, laws and institutional
8 development;

9 (y) Incorporating stolen asset recovery efforts into development
10 policies;

11 (z) Establish placement of mentorship and training programmes
12 for foreign law enforcement agencies, including exchanges and
13 secondments of law enforcement officials;

14 5. Section 12 of the Principal Act is amended by inserting new
15 paragraph (c) and (d) re-arrange accordingly.

16 "(c)" Asset Confiscation and Recovery Unit.

17 "(d)" Financial Investigation Unit.

18 6. Section 13 of the Principal Act is amended by inserting new sub-
19 sections (3) and (4) re-arrange accordingly.

20 "(3)" The Asset Confiscation and Recovery Unit shall be charged
21 with the responsibility for-

22 (a) Employing a dynamic, innovative approach to criminal asset
23 confiscation, with intelligence, operations, legal, policy and other resources
24 from the participating agencies all working together;

25 (b) Using a proactive intelligence-led approach to identify
26 potential criminal asset confiscation matters; and

27 (c) Focusing on developing the most effective and appropriate
28 enforcement strategy in each individual case.

29 "(4)" The Financial Investigation Unit shall have access to all
30 accounts and investigate any account without complying with Section 6(a)

1 and (b) of the Evidence Act; Provided that the investigation emanates from the
2 Financial Investigation Unit-

3 (a) The Unit shall be headed by financial expert drawn from the public
4 or private sector with a requisite experience of not less than 15 years;

5 (b) Accessing unconditionally the bank accounts of individuals,
6 Public or Politically Exposed Persons working or had worked in any strategic
7 position exposed to public funds;

8 (c) Monitor cash transactions of all accounts in Nigeria to determine
9 inflow and outflow daily;

10 (d) The Unit shall engage in any assignment as provided under this
11 Act for the overall mandate of the Commission.

12 7. Section 18 of the Principal Act is amended by inserting new
13 paragraph (c) and re-arrange accordingly-

14 "(c)" all convicted persons shall serve an imprisonment of a term not
15 less than 20 years and have their ill-gotten property, accounts, or investment
16 confiscated to the government;

17 "(d)" Where the accused person open investigation accepts to refund
18 the total amount standing in his/her name and willing to plea bargain, he or she
19 shall be convicted for not than 2 years;

20 "(e)" Any company found guilty of offenses under this Act, both its
21 asset and finances shall be frozen and the company blacklisted from doing
22 business in Nigeria for 50 years.

23 8. Section 35 of the Principal Act is amended by inserting new sub-
24 section (3) and (4) and re-arrange accordingly.

25 "(3)" 0.1% of all contracts awarded by the federal government shall
26 be credited to the Commission to facilitate prosecutions, practitioner networks
27 (global or regional asset recovery), enforcement efforts to combat Economic
28 and Financial crimes and asset recovery;

29 "(4)" 0.1% of Internally Generated Revenue shall be credited to the
30 funds of the Commission;

1 "(5)" 0.1% of the sums of money recovered from the looted funds.

2 9. In this Act, unless the context otherwise requires-

Interpretation

3 "corruption offences" are those bribery of national public officials; bribery
4 of foreign public officials and officials of public international organizations
5 ; embezzlement, misappropriation or other diversion of property by a public
6 official; trading in influence; abuse of functions; illicit enrichment; bribery
7 in the private sector; embezzlement of property in the private sector; and
8 laundering of proceeds of crime;

9 "Asset recovery" is defined to include the powers and is effectively the
10 process by which stolen assets are recovered and returned to the foreign
11 jurisdiction harmed by corruption. "Cases" are investigations, sanctions or
12 acquittals;

13 "an international Dimension cases" where some part of the offence is
14 committed in another jurisdiction, cases where the parties are from another
15 jurisdiction, or cases with evidence in another jurisdiction; the questions
16 were designed to obtain data specifically on cases that involved asset return
17 to a foreign jurisdiction;

18 "categories of Economic and Financial Crimes cases" (investigations,
19 sanctions and acquittals) could include: Bribery of national public officials,
20 Bribery of foreign public officials and officials of public international
21 organizations, Embezzlement, misappropriation or other diversion of
22 property by a public official, Trading in influence, Abuse of functions, Illicit
23 enrichment, Bribery by legal persons, Bribery in the private sector,
24 Embezzlement of property in the private sector, Laundering of the proceeds
25 of crime;

26 "Economic and Financial Crimes Court" - Court established to handle cases
27 of Bribery of foreign public officials and officials of public international
28 organizations, Embezzlement, misappropriation or other diversion of
29 property by a public official Trading in influence, Abuse of functions, Illicit
30 enrichment, Bribery by legal persons, Bribery in the private sector,

1 Crimes Court shall entertain where necessary a plea-bargain and refund of
2 stolen or ill-gotten funds and a mild imprisonment of 2 years.

3 (5) No motion shall lie at any Court or Tribunal to stop the
4 proceedings on any matter properly filed at the Economic and Financial
5 Crimes Court.

6 (6) The Court shall dispense with any matter properly brought before
7 it within 180 days.

8 (7) Appeal emanating from judgments shall only lie before the Court
9 of Appeal of the Federal Republic of Nigeria.

10 (8) The Court of Appeal of the Federal Republic of Nigeria shall sit
11 within 90 days in consideration of an appeal before it from the Economic and
12 Financial Crimes Court.

13 (9) The Economic and Financial Crimes Court shall have divisions in
14 the six geo-political zone and the Federal Capital Territory.

15 *Detention of Persons*

16 4. A person(s) arrested by the Economic and Financial Crimes
17 Commission under investigation shall not be released on bail if the Court is of
18 the opinion that such a bail may impair investigation and distortion of
19 evidence.

20 *Removal from Office of the Judge*

21 5. The Judge of the Economic and Financial Crimes Court shall be
22 suspended for alleged corrupt practices in the discharge of his duties in line
23 with the practice or procedures spelt out by the National Judicial Council.

24 *Equivalent of the Court*

25 6.-(1) For the purpose of exercising any jurisdiction conferred upon it
26 by this Act or as may be conferred by an Act of the National Assembly, the
27 Economic and Financial Crimes Court shall have all the powers of the Federal
28 or High Court of a state.

29 (2) Notwithstanding subsection (1) of this section, the National
30 Assembly may by law make provisions conferring upon the Economic and

1 Financial Crimes Court powers additional to those conferred by this section
2 as may appear necessary or desirable for enabling the Court more effectively
3 to exercise its jurisdiction.

4 *Constitution of the Economic and Financial Crimes Court*

5 7.-(1) The Economic and Financial Crimes Court shall be duly
6 constituted if it consists of at least one Judge of that Court and two other
7 members.

8 (2) The Court shall be duly constituted by-

9 (i) 1 Judge;

10 (ii) a Retired Permanent Secretary with cognate experience of not
11 less than 15 years on financial and Procurement matters; and

12 (iii) a Forensic Financial Expert with cognate experience of not
13 less than 17 years.

14 *Powers of the Judge o make Rules*

15 8. Subject to the provisions of any Act of the National Assembly,
16 the Judge of the Economic and Financial Crimes Court may make rules for
17 regulating the practice and procedure of the Economic and Financial Crimes
18 Court.

19 *Interpretation*

20 9. In this Act, unless the context otherwise requires?

21 "the Court" means the Economic and Financial Crimes Court established by
22 the Section 1 of this Act;

23 "Government Business" "means any transaction of government sponsored
24 by tax payers money budgeted or un-budgeted funds and undertaken by
25 Ministries, Departments and Agencies of government or contracts awarded
26 to any company or group of companies on behalf of the government;

27 "Emolument" means any salary, wage, overtime or leave pay, commission,
28 fee, bonus, gratuity, benefit, advantage (whether or not the allowance,
29 pension or annuity is paid, given or granted in respect of any employment or
30 office);

1 "Functions" includes powers and duties;
2 "Foreign companies" or "foreign enterprises" means companies or enterprises
3 in which the controlling shares are owned by persons other than the
4 Government, its agencies or citizens of Nigeri; "Public officer" means a
5 person holding any of the offices in the Federal or State or Local Government
6 of the Federal Republic of Nigeria;

7 *Citation*

8 **10.** This Act may be cited as the Economic and Financial Crimes
9 Court Act, 2016.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Economic and Financial Crimes commission Act to provide for quick recovery procedures for stolen asset; implement active pursuit of cases, build capacity and improve trust and co-operation with foreign counterparts; ensure adequate funding of the commission; establish the Economic and Financial Crimes Court and for other related matters.