

A BILL

FOR

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

Sponsored by Hon. Kayode Oladele

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- | | | |
|----|--|------------------|
| 1 | 1. The Economic and Financial Crimes (Establishment) Act No. 1 | Amendment of |
| 2 | 2004 (in this Act referred to as "the Principal Act") is amended as set out in | the Economic and |
| 3 | this Act. | Financial Crimes |
| 4 | 2. Section 1(2)(c) of the Principal Act is amended by deleting | Commission. |
| 5 | same. | Establishment |
| 6 | 3. Adding the following subsections to section 1 as follows: | Act 2004 |
| 7 | "3. There shall be a unit domiciled in the Commission to be known | Amendment of |
| 8 | as the Nigeria Financial Intelligence Unit (hereinafter referred to as the | Section 1 of the |
| 9 | "NFIU"), which shall be the Central Authority in Nigeria responsible for | Principal Act |
| 10 | requesting, receiving, analyzing, and disseminating of financial information | Amendment of |
| 11 | to law enforcement agencies, supervisory and regulatory authorities. | Section 1 of the |
| 12 | 4. The NFIU shall carry out such other functions as may be | Principal Act |
| 13 | prescribed in a regulation made by the Attorney-General of the Federation | |
| 14 | pursuant to section 43 of this Act and section 23 of the Money Laundering | |
| 15 | (Prohibition) Act, 2011 (as amended). | |
| 16 | 5. In carrying out its functions the NFIU shall be operationally | |
| 17 | autonomous and independent, and shall not be subject to the direction or | |
| 18 | control of any other authority except on matters of administration or policy | |
| 19 | oversight function of the Commission. | |
| 20 | 6. The NFIU shall have power to- | |

1 (a) conduct analysis into any suspected case of money laundering,
2 terrorists financing, financing of the proliferations of weapons of mass
3 destruction, and non-compliance with the provisions of the Money Laundering
4 (Prohibition) Act, the Terrorism (Prevention) Act, the Terrorist Prevention
5 (Freezing of International Terrorists Funds and Other Related Measures)
6 Regulation, 2013;

7 (b) serve as the secretariat to the Nigerian Sanction Committee and
8 the Inter Ministerial Committee on anti-money laundering/countering the
9 financing of terrorism matter in Nigeria;

10 (c) without hindrance, share information or intelligence with other
11 Financial Intelligence Units ("FIUs") either in response to a request made to it
12 or in a spontaneous manner;

13 (d) receive requests for information directly from other FIUs and
14 domestic stakeholder agencies and process the same in a confidential and
15 secure manner;

16 (e) demand for and obtain additional information from any entity
17 within or outside Nigeria where it considers such additional information
18 expedient to the effective performance of its duties;

19 (f) enter into Memorandum of Understanding or such other
20 arrangements with domestic stakeholder agencies, other FIUs or Institutions
21 worldwide as will enable it to carry out its functions effectively; and

22 (g) collaborate with the Central Bank of Nigeria and other regulatory
23 or supervisory authorities in the conduct of anti-money laundering and
24 combating the financing of terrorism focused examinations of financial
25 institutions and designated non-financial institutions."

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

27 (a) a Chairman, who shall-

28 (ii) be a retired member of any government security or law

1 enforcement agency not below the rank of Deputy Commissioner of Police
2 or equivalent and possessing not less than fifteen years cognate experience.

3 (iii) a legal practitioner with at least 15 years post call experience;

4 (iv) a retired judge of a superior court of record;

5 and renumbering Section 2(1)(o) and (p) to read Section 2(1)(p)
6 and 2(1)(q) respectively.

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

Amendment of
Section 3 of the
Principal Act

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

13 6. Section 3 (2) is hereby amended by deleting the whole of section
14 3 (2) and substituting it with a new section 3 (2) as follows:

Amendment of
Section 3

15 "A member of the Commission may at any time be removed by the
16 President for inability to discharge the functions of his office (whether
17 arising from infirmity of mind or body or any other cause) or for misconduct
18 or if the President is satisfied that it is not in the interest of the Commission
19 or the interest of the public that the member should continue in office,
20 provided that the Chairman shall only be removed subject to the approval of
21 2/3 majority of the Senate".

22 7. Substituting Section 6(1) with the following:

Amendment of
Section 6

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

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

Amendment of
Section 7

27 "(a) the Money Laundering (Prohibition) Act 2011 (as amended);
28 2004; 2003 No.7; 1995 No. 13;

29 (b) the Advance Fee Fraud and Other Related Offences Act 2006;
30 1995 (as amended)".

Amendment of
Section 8

1 **9.** Adding the following as sub-paragraph 8(2)(e):
2 "(e) a person who is qualified to practice as a legal practitioner in
3 Nigeria and has been so qualified for not less than 10 years."

Amendment of
Section 9

4 **10.** Amending Section 9(1)(b) to read as follows:
5 "appeals by such employees against dismissal or other disciplinary
6 measures." and deleting the rest of the sentence.

Amendment of
Section 9

7 **11.** Adding another subsection to Section 9 as Section 9(3) to read as
8 follows:
9 "where no provision is made in the Staff regulations regarding any
10 issue the Public Service Rules shall apply".

Amendment of
Section 12

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

Amendment of
Section 12

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

Amendment of
Section 13

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

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

19 (a) monitor and supervise the activities of all designated non-
20 financial institutions to ensure compliance with the provisions of this Act, the
21 Money Laundering (Prohibition) Act, 2011 (as amended), provisions of the
22 Terrorism (Prevention) Act, 2011 relating to terrorism financing, and any rules
23 or regulations made thereto;

24 (b) advise all designated non-financial institutions on their
25 obligations and responsibilities under this Act; The Money Laundering
26 (Prohibition) Act, 2011 (as amended), the Terrorism (Prevention) Act, 2011(as
27 amended) and any rules or regulations made thereto;

28 (c) take necessary measures to ensure compliance by all designated
29 non-financial institutions regarding their obligations and responsibilities
30 under this Act; the Money Laundering (Prohibition) Act, 2011 (as amended),

1 the Terrorism(Prevention) Act, 2011 (as amended) and any rules or
2 regulations made thereto.

3 4. Notwithstanding the provisions of Section 5(1)(c) and (2) of
4 the Money Laundering (Prohibition) Act 2011 (as amended):

5 (a) all Designated Non-Financial Institutions shall forward all
6 reports required from them under the said Money Laundering (Prohibition)
7 Act, 2011 (as amended) to the Commission.

8 (b) any reference to the "Minister" under the Money Laundering
9 (Prohibition) Act, 2011 and reference to the Federal Ministry of Industry,
10 Trade and Investment under section 25 of the Money Laundering
11 (Prohibition) Act 2011 (as amended) shall be deemed to be a reference to the
12 "Attorney General of the Federation", and any regulations made by the
13 "Minister" in exercise of the powers conferred on him under the said Money
14 Laundering (Prohibition) Act, 2011 (as amended) shall continue to have
15 effect as if they were made by the Attorney-General of the Federation."

16 15. Adding the words "or any rules or regulations made pursuant
17 to this Act" after the word "Act" in Section 14(1) (a) of the Principal Act.

Amendment of
Section 14

18 16. Deleting the whole of Section 14(2) of the Principal Act and
19 substituting it with the following:

Amendment of
Section 14

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

25 (a) subject to full recovery of any proceeds, assets or property
26 derived or involved in the Commission of the offence compound any
27 offence punishable under this Act by accepting such sums of money as it
28 thinks fit, exceeding the maximum amount to which that person would have
29 been liable if he had been convicted of that offence; or

30 (b) enter into any plea bargain arrangement with any person who is

1 charged for an offence under this Act in accordance with the Administration of
2 Criminal Justice Act 2015 or any other applicable law regulating plea bargain
3 arrangement.

Amendment of
Section 14

4 **17.** Adding another subsection to Section 14 as Section 14(4) and for
5 same to read as follows:

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

9 (a) the Government of a State it shall be paid or transferred to the
10 Government of the State;

11 (b) a person whether body corporate or not it shall be paid or
12 transferred to the person;

13 (c) an unidentifiable victim; and in any other case, the money or the
14 proceeds from the sale of the property or assets when disposed of shall be paid
15 into the Consolidated Revenue Fund of the Federation."

Amendment of
Section 26

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

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

Amendment of
Section 26

19 **19.** Adding two new sub-paragraphs to Section 26(2) as Section
20 26(2)(c) and (d), and for same to read as follows:

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

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

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

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

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

Amendment of
Section 26

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

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

Amendment of
Section 27

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

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

Amendment of
Section 28

26 " Where a person is under investigation or arrested for an offence
27 under this Act, the Commission shall immediately trace and attach all the
28 assets and properties of the person acquired as a result of such economic and
29 financial crimes and shall thereafter by an ex-parte application cause to be
30 obtained an interim attachment order from the court."

Amendment of
Section 29

- 1 23. Substituting Section 29 of the Principal Act as follows:
- 2 (1) Where:
- 3 (a) any property has come into the possession of an officer of the
- 4 Commission as unclaimed property;
- 5 (b) any unclaimed property is found by an officer of the Commission
- 6 to be in the possession of any other person, body corporate or financial
- 7 institution;
- 8 (c) any property whether or not in the possession of any person, body
- 9 corporate or financial institution is reasonably suspected to be proceeds of
- 10 crime under this Act; or
- 11 (d) where any person whether or not under investigation voluntarily
- 12 surrenders any property as proceeds of crime; the High Court shall upon
- 13 application made by the Commission, its officers, or any other person
- 14 authorized by it, and upon being reasonably satisfied that such property is an
- 15 unclaimed property; or reasonably suspected to be proceeds of crime; or has
- 16 been voluntarily surrendered to the Commission make an order that the
- 17 property or the proceeds from the sale of such property be forfeited to the
- 18 Federal Government of Nigeria.
- 19 (2) Notwithstanding the provision of subsection (1) of this section the
- 20 High Court shall not make an order of forfeiture of property or the proceeds
- 21 from the sale of such property to the Federal Government of Nigeria until such
- 22 notice or publication as the High Court may direct has been given or made for
- 23 any person, body corporate or financial institution in whose possession the
- 24 property is found or who may have a claim or interest in the property to show
- 25 cause why the property should not be forfeited to the Federal Government of
- 26 Nigeria.
- 27 (3) Application under subsection (1) above shall first be made by a
- 28 motion ex-parte for interim attachment order of the property concerned, and
- 29 the giving of the requisite notice or publication as required in subsection (2) of
- 30 this section.

1 (4) At the expiration of 14 days or such other period as the High
2 Court may consider reasonable from the date of the notice or making of the
3 publication stated in subsection (2) and (3) of this section, an application
4 shall be made by an Ex parte Originating Summons for the final forfeiture of
5 the property concerned to the Federal Government of Nigeria where there is
6 no claimant, or by a motion on notice to the claimant or interested person
7 where there is a claimant or interested person.

8 (5) An order of forfeiture under this section shall not be based on a
9 conviction for an offence under this Act or any other law."

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

Amendment of
Section 34

12 "Notwithstanding anything in any other enactment or law, the
13 Chairman of the Commission or any officer authorized by him may, if
14 satisfied that the money in the account of a person is made through the
15 commission of an offence under this Act:

16 "(a) by a letter or any other recognized mode of communication to
17 the manager of a bank, or the person in control of the financial institution or
18 designated non-financial institution directing him to post no debit or stop all
19 outward payments, operations, transactions(including any bill of exchange)
20 in respect of the account; and

21 (b) shall within 14 days apply to the Court ex-parte for an order as
22 specified in FORM B of the Schedule to this Act, addressed to the manager
23 of the bank or any person in control of the financial institution or designated
24 non-financial institution where the account is or believed by him to be or the
25 head office of the bank, other financial institution or designated non-
26 financial institution to freeze the account".

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

Amendment of
Section 35

29 "The Commission shall:

30 (a) retain and use seven percent of all proceeds of crime recovered

1 by it for its operational activities irrespective of whether the recovery is made
2 for the Government of the Federation or State or any of their agencies; any
3 person whether body corporate or not; or any foreign or international body or
4 authority;

5 (b) charge and retain for its use reasonable fees as may be prescribed
6 by the Commission for training, certification of relevant documents or report
7 which the Commission may in its discretion issue to members of the public
8 upon application"

Amendment of
Section 39

9 26. Altering the words "exceeding one hundred thousand" between
10 the words "not" and "naira" in Section 39(2) (b) to read "less than two hundred
11 thousand"

Amendment of
Section 39

12 27. Altering the words "exceeding ten thousand" between the words
13 "not" and the "naira" in Section 39(2) (c) to read "less than one hundred
14 thousand"

Amendment of
Section 46

15 28. Adding the following to Section 46 of the Principal Act:
16 "Proceeds" or "Proceeds of crime" shall mean any property derived from or
17 obtained directly or indirectly, through the commission of an offence under this
18 Act;
19 "Property" or "assets" shall mean assets of every kind, whether corporeal or
20 incorporeal, movable or immovable, tangible or intangible and legal
21 documents or instruments evidencing title to or interest in such assets";
22 "Post no Debit" shall mean to block an account, stop all transactions where
23 money will go out of the account".

Citation

24 29. This Bill may be cited as the Economic and Financial Crimes
25 Commission (Establishment) (Amendment) Bill, 2016.

EXPLANATORY MEMORANDUM

This bill seeks to amend the Economic and Financial Crimes Commission (Establishment) Act 2004 in order to make the commission more efficient in carrying out its duties under the law.