

A BILL

FOR

AN ACT TO MAKE COMPREHENSIVE PROVISIONS FOR THE CONFISCATION,
FORFEITURE AND MANAGEMENT OF PROPERTIES DERIVED FROM
UNLAWFUL ACTIVITIES AND FOR RELATED MATTERS

Sponsored Hon. Kayode Oladele

[] Commencement

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

PART I - OBJECTIVE AND APPLICATION

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1.-(1) The objectives of this Act are to-

Objectives

(a) provide for an effective legal and institutional framework for
the recovery and management of the proceeds of crime or benefits derived
from unlawful activities;

(b) deprive a person of the proceeds of an unlawful activity, the
instrumentalities of an offence and any other benefit derived from an
offence committed within or outside Nigeria;

(c) prevent the reinvestment of proceeds of unlawful activity in the
furtherance of criminal enterprise;

(d) harmonise and consolidate existing legislative provisions on
the recovery of proceeds of crime and related matters in Nigeria; and

(e) make comprehensive provisions for the restraint, seizure,
confiscation and forfeiture of property derived from unlawful activities and
any instrumentalities used or intended to be used in the commission of such
unlawful activities.

2. The provisions of this Act apply to-

Application

(a) the investigation, detection, identification, tracing and recovery
of realisable assets and the proceeds and instrumentalities of unlawful
activity, by either-

- 1 (i) the Agency established under Part VI of this Act (referred to as
2 "the Agency") in matters of civil forfeiture or complex or high value cases of
3 criminal confiscation or forfeiture; or
- 4 (ii) law enforcement agencies in cases of criminal prosecutions
5 conducted by them;
- 6 (b) the issuing of orders and directives by the Court to support the
7 detection, preservation and recovery of the proceeds and instrumentalities of
8 unlawful activity and realisable assets; and
- 9 (c) the management and realisation of recovered properties by the
10 Agency.

11 PART II - CIVIL FORFEITURE

12 Nature of
13 proceedings

12 3.-(1) Proceedings under this Part shall be civil proceedings.

13 (2) The procedures for the service of documents applicable in civil
14 proceedings shall apply to proceedings under this Part.

15 Preservation
16 orders

15 4.-(1) The Agency may, by way of an ex parte application, apply to the
16 Court for an order restraining any person, subject to such conditions and
17 exceptions as may be specified in the order, from dealing in any manner with
18 any property.

19 (2) The Court shall make an order under subsection (1) of this section
20 if there are reasonable grounds to believe that the property concerned-

- 21 (a) is the proceeds of unlawful activity;
- 22 (b) represents the proceeds of unlawful activity;
- 23 (c) is involved in the facilitation of unlawful activity; or
- 24 (d) is intended to be used to facilitate unlawful activity.

25 (3) A Court making a preservation order may at the same time make
26 any other ancillary orders that it considers appropriate for the proper, fair and
27 effective execution of the preservation order.

28 (4) Any property subject to an ancillary order made under subsection
29 (3) of this section shall be dealt with in accordance with the directions of the
30 Court that made the relevant preservation order.

1 5.-(1) Where a Court makes a preservation order, the Agency shall, Notice of
2 within twenty-one working days after the making of the order, give notice of preservation
3 the order to all persons known to the Agency to have an interest in the orders
4 property which is subject to the order and publish a notice of the order in two
5 widely circulated national newspapers.

6 (2) A person who has an interest in any property that is subject to a
7 preservation order may give notice of his intention to-

8 (a) oppose the making of a forfeiture order; or

9 (b) apply for an order excluding his interest in the property
10 concerned from the operation of the forfeiture order.

11 (3) A notice under subsection (2) of this section shall be served on
12 the Agency, in the case of-

13 (a) a person on whom a notice has been served under subsection (1)
14 of this section, within fifteen working days after the service; or

15 (b) any other person with an interest in the property, within fifteen
16 working days after the date on which a notice under subsection (1) of this
17 section is published in two widely circulated national newspapers.

18 (4) A notice served under subsection (2) or (3) of this section shall
19 contain full particulars of the address for the delivery of documents
20 concerning further proceedings under this Part and shall be accompanied by
21 an affidavit stating the-

22 (a) full particulars of the identity of a person entering appearance;

23 (b) nature and extent of his interest in the property concerned; and

24 (c) reasons which the person intends to rely on in opposing a
25 forfeiture order or applying for the exclusion of his interest from the
26 operation of the forfeiture order.

27 6. A preservation order shall, subject to section 7 of this Act, expire
28 one hundred and twenty days after the date on which it was made unless- Duration of a
29 (a) there is an application for a forfeiture order pending before the preservation
30 Court in respect of the property subject to the preservation order; order

1 (b) there is an unsatisfied forfeiture order in force in relation to the
2 property subject to the preservation order; or

3 (c) the preservation order is rescinded before the expiration of that
4 period.

Renewal of a
preservation
order

5 7.-(1) The Agency may apply to the Court that granted a preservation
6 order under section 4 of this Act for a renewal of that order where the Court is
7 satisfied-

8 (a) the Court is satisfied that there are reasonable grounds to grant the
9 renewal;

10 (b) the preservation order has not been rescinded; and

11 (c) no previous renewal of the preservation order has been sought.

12 (2) Notice of a renewal shall be given in accordance with the
13 provisions of section 5 of this Act.

14 (3) The period of the renewal mentioned in subsection (1) of this
15 section shall not exceed sixty days.

Seizure of
property subject
to preservation
orders

16 8.-(1) Where there are reasonable grounds to believe that a property
17 which, is subject to a preservation order may have its value diminished or be
18 disposed of, destroyed, damaged, or removed contrary to the order, the Agency
19 or an authorised officer may seize the property.

20 (2) Property seized under subsection (1) of this section shall be dealt
21 with in accordance with the directions of the Court that made the relevant
22 preservation order.

Appointment of
asset manager in
respect of property
subject to a
preservation
order

23 9.-(1) Where a Court has made a preservation order, it shall, where it
24 deems appropriate or at the request of the Agency either at the time of the
25 making of the order or at a later time-

26 (a) subject to the directions of the court or the Agency, appoint an
27 asset manager to do any one or more of the following on behalf of the person
28 against whom the preservation order has been made-

29 (i) assume control of the property;

30 (ii) take care of the property;

1 (iii) administer the property and do any act necessary for that
2 purpose;

3 (iv) where the property is a business or undertaking, carry on of the
4 business or undertaking, with due regard to any law which may be
5 applicable;

6 (v) in the case of property that is perishable, or liable to
7 deterioration, decay or injury by being detained in custody, sell or otherwise
8 dispose of the property; and

9 (vi) sell or otherwise dispose of the property where it is not
10 economically viable to maintain it.

11 (b) order a person holding any property subject to a preservation
12 order to surrender immediately, or within such period as the Court may
13 determine, the property into the custody of the asset manager.

14 (2) Where any property subject to a preservation order is not
15 surrendered within the period that has been determined under subsection
16 1(b) of this section, an officer of the Agency or asset manager may enter by
17 force if necessary, any premises, where he reasonably believes that the
18 property is situated in order to search for and seize the property.

19 (3) The officer of the Agency or asset manager may be
20 accompanied by such persons and police officers as are reasonably required
21 in order to effect entry into premises.

22 (4) The Court that makes an order under subsection (1) of this
23 section, may make an order relating to the payment of the fees of the asset
24 manager-

25 (a) from the forfeited property where a forfeiture order is made; or

26 (b) by the Agency where no forfeiture order is made.

27 10.-(1) A Court that has made a preservation order in respect of
28 immovable property with a view to ensuring the effective execution of a
29 subsequent order, may at any time, order the appropriate land registration
30 authority to place a restriction on the land register in respect of the

Orders in respect
of immovable
property subject
to a preservation
order

1 immovable property.

2 (2) An order under subsection (1) of this section may contain
3 restrictions that without consent of the Court, the immovable property shall
4 not-

5 (a) be mortgaged or otherwise encumbered;

6 (b) be attached or sold in execution; and

7 (c) in respect of where-

8 (i) the immovable property that is subject of sequestration, vest in the
9 Official Receiver; or

10 (ii) where the owner of the immovable property is a company or other
11 body corporate which is being wound up, form part of the assets of that
12 company or body corporate.

13 (3) In order to give effect to subsection (1) of this section, the
14 registration authority shall make the necessary-

15 (a) entry in its register and the necessary endorsement on the office
16 copy of the title deed; and

17 (b) endorsement on it, when the original of the title deed is produced.

18 (4) On the making of the necessary entry and endorsement under
19 subsection (3)(a) of this section, the restriction-

20 (a) other than that contemplated in subsection (2)(b) of this section,
21 shall be effective against any person in whose favour a mortgage or other
22 charge was registered prior to the endorsement of the restriction on the title
23 deed of the immovable property; and

24 (b) shall lapse on the transfer of ownership of the immovable property
25 concerned.

26 (5) Unless the Court directs otherwise, the custody of immovable
27 property on the title deed of which a restriction contemplated in subsection
28 (2)(c) of this section was endorsed shall, where the-

29 (a) estate of the owner of the immovable property is sequestered; or

30 (b) owner of the immovable property is a company or other body

1 corporate that is being wound up, vest in the person or persons in whom the
2 custody would have vested where the restriction were not so endorsed.

3 (6) Where the Court has granted its consent to a restriction
4 contemplated in subsection (2)(c) of this section and endorsed on the title
5 deed of the immovable property, the immovable property shall, where the-

6 (a) estate of the owner of the immovable property was
7 sequestrated, be deemed to have vested in the Official Receiver concerned,
8 as the case may be, as if such a restriction was not so endorsed; or

9 (b) owner of the immovable property is a company or other body
10 corporate which is being wound up, be deemed to have formed part of the
11 assets of the company or body corporate as if the restriction were not so
12 endorsed.

13 (7) A person affected by an order contemplated in subsection (1) of
14 this section may at any time, upon showing good cause, apply for the
15 rescission of the order:

16 11.-(1) The Court in making a preservation order in respect of a
17 person holding an interest in property, may make provision for the
18 reasonable legal expenses of the person in connection with proceedings
19 under which the preservation order was granted and reasonable living
20 expenses of the person and his close dependants.

Provision for
expenses

21 (2) The Court shall require an independent costs assessor,
22 authorised by the Agency to certify that legal expenses have been properly
23 incurred before permitting the payment of such expenses from any property
24 covered by the preservation order.

25 (3) A Court shall not make provision for any expenses under
26 subsection (1) of this section unless it is satisfied that the person-

27 (a) cannot meet the expenses concerned out of his property which
28 is not subject to the preservation order; and

29 (b) has disclosed all his interest in the property under oath and has
30 submitted to the Court an affidavit to that effect.

Variation and
rescission of
orders

- 1 12.--(1) A Court that makes a preservation order-
- 2 (a) may, on application by the person mentioned in section 11 of this
- 3 Act, vary the preservation order or an order authorising the seizure of the
- 4 property concerned or any other ancillary order as it may deem appropriate; or
- 5 (b) shall rescind the preservation order when the proceedings against
- 6 the defendant concerned are concluded.
- 7 (2) Where a Court varies or rescinds an order authorising the seizure
- 8 of property under subsection (1) of this section, it shall make such other order,
- 9 as it considers appropriate for the proper, fair and effective execution of the
- 10 preservation order concerned.
- 11 (3) A person affected by an order for the appointment of an asset
- 12 manager may at any time apply for the -
- 13 (a) variation or rescission of the order;
- 14 (b) variation of the terms of the appointment of the manager
- 15 concerned; or
- 16 (c) discharge of the manager.
- 17 (4) A Court that makes an order for the appointment of an asset
- 18 manager-
- 19 (a) may, where it deems it necessary and in the interests of justice, at
- 20 any time-
- 21 (i) vary or rescind the order;
- 22 (ii) vary the terms of the appointment of the manager concerned; or
- 23 (iii) discharge the manager.
- 24 (b) shall rescind the order and discharge the manager concerned
- 25 where the relevant preservation order is rescinded.
- 26 (5) A person affected by an order in respect of immovable property
- 27 may, at any time, apply for the rescission of the order.
- 28 (6) A Court that makes an order in respect of immovable property-
- 29 (a) may, where it deems it necessary and in the interests of justice, at
- 30 any time rescind the order; or

1 (b) shall rescind the order where the relevant preservation order is
2 rescinded.

3 (7) Where an order in respect of immovable property is rescinded,
4 the Court shall direct the registration authority concerned to lift any caveat
5 entered by virtue of that order on the land register in respect of the
6 immovable property and the registration authority shall give effect to the
7 direction.

8 13.-(1) Where a preservation order is in force, the Agency may
9 apply to the Court for a forfeiture order against the whole or any part of the
10 property that is subject to the preservation order.

Application for
forfeiture order

11 (2) The Agency shall give fifteen working days' notice of an
12 application under subsection (1) of this section to every person who was
13 served notice under section 5(2) of this Act.

14 (3) A person who was served notice under section 5(2) of this Act
15 may, subject to compliance with sections 5(3) and (4) of this Act, appear at
16 the hearing of the application under subsection (1) of this section to-

17 (a) oppose the making of the order; or

18 (b) apply for an order-

19 (i) excluding his interest in the property from the operation of the
20 order; or

21 (ii) varying the operation of the order in respect of the property and
22 may adduce evidence at the hearing of the application.

23 (4) Where the Court grants the forfeiture order, the property
24 referred to in subsection (1) of this section shall be forfeited to the Agency..

25 14.-(1) Where a person for any reason, does not serve notice under
26 section 5(2) of this Act, he may apply to the Court for leave to serve the
27 notice out of time.

Service of notice
out of time

28 (2) An application under subsection (1) of this section may be made
29 before or after the date on which an application for a forfeiture order is made
30 under section 13(1) of this Act, but shall be made before judgment is given in

1 respect of the application for the forfeiture order.

2 (3) A Court may grant leave to an applicant referred to in subsection
3 (1) of this section, to serve notice under section 5(2) of this Act within the
4 period which the Court deems appropriate, where the Court is satisfied on good
5 cause shown that the applicant has-

6 (a) for sufficient reason failed to serve notice under section 5(2) of this
7 Act; and

8 (b) an interest in the property which is subject to the preservation
9 order.

10 (4) A notice served after leave has been obtained under this section
11 shall contain full particulars of the address of the person who serves such notice
12 for the delivery of documents concerning further proceedings under this Part
13 and shall be accompanied by the affidavit referred to in section 5(4) of this Act.

14 (5) Where a notice has not been served under section 5(2) of this Act
15 and the Court has granted leave to serve notice under that section within the
16 period that the Court has deemed appropriate, the Court may require the
17 applicant to pay any or all of the costs that have arisen or may arise as a result of
18 the notice being served out of time.

Making of
forfeiture order

19 15.-(1) Subject to section 17 of this Act, a Court shall make an order
20 applied for under section 13(1) of this Act where it finds on a balance of
21 probabilities that the property concerned-

22 (a) is a proceed of unlawful activity;

23 (b) represents the proceeds of unlawful activity;

24 (c) is involved in the facilitation of unlawful activity; or

25 (d) is intended to facilitate unlawful activity.

26 (2) The Court may, where it makes a forfeiture order or at any time
27 thereafter, make any ancillary order that it considers appropriate, including
28 orders for and with respect to facilitating the transfer to the Agency of property
29 forfeited to it under the order.

30 (3) The absence of a person whose interest in property may be

1 affected by a forfeiture order does not prevent the Court from making the
2 order.

3 (4) The validity of an order under subsection (1) of this section is
4 not affected by the outcome of criminal proceedings or of an investigation
5 with a view to instituting such proceedings, in respect of an offence with
6 which the property concerned is in some way associated.

7 (5) The Agency shall publish a notice of a forfeiture order in the
8 Federal Gazette and two widely circulated national newspapers as soon as
9 practicable but not more than thirty days after the order is made.

10 (6) A forfeiture order shall not take effect before the-

11 (a) period allowed for an application under section 12 of this Act or
12 an appeal under section 20 of this Act has expired; or

13 (b) application or appeal has been disposed of.

14 16.-(1) Where an application is made for a forfeiture order against a
15 property, a person who claims an interest in the property may apply to the
16 Court, before which the forfeiture order is made and the Court, if satisfied on
17 a balance of probabilities-

Protection of
third parties

18 (a) that the person was not in any way involved in the unlawful
19 activity or conduct mentioned in section 15(1) of this Act; or

20 (b) that the person had no knowledge of the unlawful activity
21 mentioned in section 15(1) of this Act; or

22 (c) where the person acquired the interest during or after the
23 commission of the unlawful activity or conduct, that he acquired the
24 interest-

25 (i) for sufficient consideration; and

26 (ii) without knowing, and in circumstances such as not to arouse a
27 reasonable suspicion, that the property was, at the time he acquired it, a
28 tainted property, make an order declaring the nature, extent and value of the
29 person's interest, at the time the order was made.

30 (2) A person who-

1 (a) had knowledge of the application for the forfeiture order before
2 the order was made; or

3 (b) appeared at the hearing of that application, shall not be permitted to
4 make an application under subsection (1) of this section, except with leave of
5 Court.

6 (3) A person who makes an application under subsection (1) of this
7 section shall give not less than fourteen days written notice of the making of the
8 application to the Agency, which shall be a party to any proceedings in the
9 application.

10 (4) An applicant or the Agency may appeal against an order made
11 under subsection (1) of this section.

12 (5) A person appointed by the Court under this Act as a manager or
13 trustee shall, on application by any person who has obtained an order under
14 subsection (1) of this section, and where the period allowed by the rules of
15 Court with respect to the making of appeals has expired and any appeal against
16 that order has been determined, direct that-

17 (a) the property or part of it to which the interest of the applicant
18 relates, be returned to the applicant; or

19 (b) an amount equal to the value of the interest of the applicant, as
20 declared in the order, be paid to the applicant.

Exclusion of
interests in
property

21 17.-(1) The Court may on application-

22 (a) (i) under section 13(3) of this Act, or

23 (ii) by a person referred to in section 14(1) of this Act; and

24 (b) by a person referred to in section 14(1) of this Act; and when it
25 makes a forfeiture order, make an order excluding certain interests in the
26 property which is subject to the order, from the operation of the order.

27 (2) The Court may make an order under subsection (1) of this section
28 in relation to the forfeiture of the proceeds of an unlawful activity, where-

29 (a) it finds, on a balance of probabilities, that the applicant has
30 acquired the interest concerned legally and for a consideration, the value of

1 which is not significantly less than the value of that interest; and

2 (b) in case where the applicant had acquired the interest concerned
3 after the commencement of this Act, that he neither knew nor had reasonable
4 grounds to suspect that the property in which the interest is held is the
5 proceed of an unlawful activity or conduct.

6 (3) The Court may make an order under subsection (1) of this
7 section, in relation to the forfeiture of property which is or is intended to be
8 used as an instrumentality in the commission of unlawful activity or
9 conduct, where it finds, on a balance of probabilities, that the applicant for
10 the order had acquired the interest concerned legally and-

11 (a) neither knew nor had reasonable grounds to suspect that the
12 property in which the interest is held has been used or is intended for use in
13 unlawful activity or conduct; or

14 (b) where the offence concerned had occurred before the
15 commencement of this Act, that he has since the commencement of this Act
16 taken all reasonable steps to prevent the use of the property concerned in
17 connection with unlawful activity or conduct.

18 (4) Where an applicant for an order under subsection (1) of this
19 section adduces evidence to show that he did not know or did not have
20 reasonable grounds to suspect that the property in which the interest is held
21 is a proceed of crime or an instrumentality of an offence, the Agency may
22 submit proof of the service on the applicant of a notice issued under section
23 13(3) of this Act in rebuttal of the evidence in respect of the period since the
24 date of such service.

25 (5) Where the Agency submits a proof of the service on the
26 applicant under subsection (4) of this section, the applicant shall, in addition
27 to the facts referred to in subsection (2)(a) and (b) of this section, prove on a
28 balance of probabilities that, since the service, he has taken all reasonable
29 steps to prevent the further use of the property as an instrumentality of an
30 offence.

1 (6) A Court making an order for the exclusion of an interest in
2 property under subsection (1) of this section may, in the interest of the
3 administration of justice or in the public interest, make the order on the
4 condition that the Court deem appropriate, including a condition requiring the
5 person who applied for the exclusion to take all reasonable steps, within a
6 period that the Court may determine, to prevent the future use of the property in
7 connection with unlawful activity or conduct.

Forfeiture order
by default

8 18.-(1) Where the Agency applies for a forfeiture order by default and
9 the Court is satisfied that no person has appeared on the date upon which an
10 application under section 14(1) of this Act is to be heard and, on the grounds of
11 sufficient proof or otherwise, that all persons who served notices under section
12 5(3) of this Act have knowledge of notices given under section 14(2) of this
13 Act, the Court may-

14 (a) make any order by default which the Court could have made under
15 section 13(1) and (2) of this Act; or

16 (b) make such order as the Court may consider appropriate in the
17 circumstances.

18 (2) The Court may, before making an order under subsection (1) of
19 this section, call upon the Agency to adduce such further evidence, either in
20 writing or orally, in support of its application as the Court may consider
21 necessary.

22 (3) A person whose interest in the property concerned is affected by
23 the forfeiture order or other order made by the Court under subsection (1) of
24 this section may, within ninety days after the person has acquired knowledge of
25 such order or direction, set the matter down for variation or rescission by the
26 Court.

27 (4) The Court may, upon good cause shown, vary or rescind the
28 default order or give any other direction on such terms, as it deems
29 appropriate.

1 19.-(1) A person affected by a forfeiture order who was entitled to
2 receive notice of the application for the order under section 14(2) of this Act,
3 but did not receive the notice, may, within thirty days after the notice is
4 published, apply to the Court for an order excluding his interest in the
5 property concerned from the operation of the order, or varying the operation
6 of the order in respect of the property and his interest therein.

Exclusion of
interests in
forfeited property

7 (2) The hearing of the application in subsection (1) of this section
8 shall, to the extent practicable and consistent with the interests of justice be
9 held within thirty days of the filing of the application.

10 (3) The Court may make an order under subsection (1) of this
11 section where it finds on a balance of probabilities that the applicant for the
12 order falls within the provisions of section 14(2) or (3) of this Act.

13 (4) The provisions of section 12(4) and (5) of this Act shall apply to
14 any proceedings under this section.

15 20. Any preservation order and any order authorising the seizure
16 of the property concerned or other ancillary order that is in force at the time
17 of any decision regarding the making of a forfeiture order under section
18 15(1) of this Act shall remain in force pending the outcome of any appeal
19 against the decision concerned.

Effect of appeals
on preservation
or other ancillary
orders

20 21.-(1) With effect from the date when the Court makes a forfeiture
21 order, the property subject to the order shall be forfeited to Agency and vests
22 in the Agency on behalf of the Federal Government.

Effect of
forfeiture order

23 (2) Upon a forfeiture order taking effect, the Agency may take
24 possession of the property from any person in possession or entitled to
25 possession of the property.

26 22.-(1) The Agency or person authorised to act on behalf of the
27 Agency shall, subject to any order for the exclusion of interests in forfeited
28 property under section 17(2)(a) or 19(3) of this Act and in accordance with
29 the directions of the Agency-

Fulfilment of
forfeiture order

30 (a) deposit any moneys forfeited into the Confiscated and Forfeited

1 Properties Account established under section 146 of this Act; or
2 (b) dispose of property forfeited by sale or any other means and
3 deposit the proceeds of the sale or disposition into the Confiscated and
4 Forfeited Properties Account.

5 (2) Any right or interest in forfeited property not exercisable by or
6 transferable to the Agency, shall expire and shall not revert to the person who
7 has possession, or was entitled to possession of the property immediately
8 before the forfeiture order took effect.

9 (3) A person who has possession, or was entitled to possession, of
10 forfeited property immediately before the forfeiture order took effect, or any
11 person acting together with, or on behalf of that person, shall not be eligible to
12 purchase forfeited property at any sale held by the asset manager.

13 (4) A person mentioned in subsection (3) of this section who had
14 possession or was entitled to possession of forfeited property immediately
15 before the forfeiture order came into force, or any other person who acts with or
16 on behalf of that person, commits an offence if he purchases or attempts to
17 purchase the forfeited property.

18 (5) Any person who contravenes the provision of subsection (4) of
19 this section is liable on conviction to a fine of not less than twice the value of the
20 property sold.

21 (6) The expenses incurred in connection with the forfeiture and the
22 sale, including expenses of seizure, maintenance and custody of the property
23 pending its disposition, advertising and the Court costs shall be defrayed out of
24 the Confiscated and Forfeited Properties Account.

Unlawful activity
or conduct forming
the basis of
multiple orders

25 23. The fact that a preservation order or a forfeiture order has been
26 made on the basis of unlawful activity or conduct in which a specific person has
27 been involved shall not prevent the making of another or other preservation
28 orders or forfeiture orders on the basis of the same unlawful activity or
29 conduct.

1 24.-(1) A notice authorised or required to be given to a person under
2 this Part shall, in the case of a deceased person, be sufficiently given to the
3 administrator or executor of the deceased person's estate, or to a person
4 acting in that capacity.

Application of
this Part to
deceased estates

5 (2) A reference in this section to the property of a person shall, in
6 the case of a deceased person, be a reference to property that the deceased
7 person held immediately before his death.

8 (3) An order may be applied for and made under this section-

9 (a) in respect of property which forms part of a deceased person's
10 estate; and

11 (b) on evidence adduced concerning the activities of a deceased
12 person.

13 25.-(1) Where a person has an interest in property as a joint owner,
14 his death after a preservation order is made in respect of the interest does not,
15 while the order is in force, operate to vest the interest in the surviving joint
16 owner or owners and the preservation order continues to apply to the interest
17 as if the person had not died.

Effect of death of
joint owner of
property under a
preservation
order

18 (2) A forfeiture order made in respect of the interest referred to in
19 subsection (1) of this section shall apply as if the order took effect in relation
20 to the interest immediately before the person died.

21 (3) Subsection (1) of this section does not apply to the interest in
22 property where a preservation order ceases to apply to that interest without a
23 forfeiture order being made in respect of that interest.

24 PART III - ADDITIONAL INVESTIGATION POWERS RELATING TO

25 CIVIL RECOVERY

26 26.-(1) On an ex-parte application by the Agency, a Judge of the
27 Court may make a discovery order where satisfied that the Agency is
28 conducting a civil forfeiture investigation as envisaged in Part II of this Act.

Discovery orders

29 (2) The requirements for making the order in subsection (1) of this
30 section are that there are reasonable grounds to-

1 (a) suspect that the property specified in the application for the order
2 is property mentioned in section 4(2) of this Act; and

3 (b) believe that the material sought, by itself or together with other
4 material, is likely to be of substantial value into the specified investigation.

5 (3) A discovery order shall authorise the Agency to give notice in
6 writing to any person that has relevant information requiring him to do, with
7 respect to any matter relevant to the investigation for which the order is sought,
8 any or all of the following-

9 (a) answer questions at a specified time or at once, at a specified place;

10 (b) provide information by a specified time and in a specified manner;

11 (c) produce specified documents or documents of a specified type, at a
12 specified time or at once, and in a manner so specified.

13 (4) "Relevant information" is information whether contained in a
14 document or not that the Agency believes is relevant.

15 (5) A person is not bound to comply with a requirement imposed by a
16 notice given under a discovery order unless evidence of authority to give the
17 notice is produced to him.

18 (6) The application for a discovery order shall state that-

19 (a) property specified in the application is subject to a civil forfeiture
20 investigation; and

21 (b) the order is sought for the purposes of the investigation.

Discovery order
related offences

22 27.-(1) A person commits an offence where-

23 (a) without reasonable excuse he fails to comply with a requirement
24 imposed on him under a discovery order;

25 (b) in purporting to comply with a requirement imposed on him by a
26 discovery notice, he-

27 (i) makes a statement which is false or misleading; or

28 (ii) recklessly makes a statement which is false or misleading.

29 (2) Where a person contravenes a provision of subsection (1) of this
30 section, he shall on conviction in the case of-

1 (i) a body corporate be liable to a fine of not less than ten million
2 Naira; and

3 (ii) an individual, be liable to a fine of not less than one million
4 Naira or imprisonment for a term of not more than two years or to both.

5 28.-(1) A discovery order shall not confer any right to require a
6 person to provide any information that is subject to legal privilege whether
7 in answer to any question or in any document, except that a person may be
8 required to provide the name and address of his client.

Additional
provisions on
discovery orders

9 (2) In consideration of the legal privilege referred to in subsection
10 (1) of this section, no legal privilege shall attach to any of the items listed in
11 section 112(2) of this Act.

12 (3) The Agency may take copies of any document produced in
13 compliance to a requirement to produce them which is imposed by a
14 discovery order.

15 (4) Where originals of documents are required by the Agency, they
16 may be retained until the completion of the investigation.

17 (5) Where an investigation is contemplated following the
18 conclusion of an investigation by the Agency under this Part of the Act, and
19 there is evidence contained in documents referred to in subsection (4) of this
20 section that would support that investigation, the Agency, may on request,
21 release those documents to the body contemplating the investigation.

22 (6) The Agency shall not retain originals of documents where
23 certified true copies of the documents would suffice.

24 29.-(1) An application to vary or discharge a discovery order may
25 be made by-

Variation or
discharge of a
discovery order

26 (a) the Director-General of the Agency; or

27 (b) the person affected by the order.

28 (2) Where an application is made by a person mentioned in
29 subsection (1) of this section, the Court may-

30 (a) vary the order; or

1 (b) discharge the order.

2 PART IV - RECOVERY OF CASH BEING IMPORTED OR EXPORTED

Seizure and
detention of cash
being imported
or exported

3 30.-(1) An authorised officer may seize any cash which is being
4 imported into or exported from Nigeria where it is not less than the minimum
5 prescribed sum and he has reasonable grounds for suspecting that it directly or
6 indirectly represents any person's proceeds of unlawful activity.

7 (2) An authorised officer may detain cash all or part of which he has
8 reasonable grounds for suspecting to be-

9 (a) the proceeds of unlawful activity or is intended to be an
10 instrumentality of an offence;

11 (b) which is not less than the minimum prescribed sum; and

12 (c) which is being imported into or exported from Nigeria.

13 (3) In this Part, cash means-

14 (a) notes and coins in any currency;

15 (b) cheques of any kind, including travellers' cheques;

16 (c) bankers' draft; or

17 (d) bearer bonds and bearer shares.

18 (4) Cash also includes any kind of monetary instrument, where the
19 instrument is so specified by the Central Bank of Nigeria.

20 (5) 'Exported', in relation to any cash, includes cash being brought to
21 any place in Nigeria for the purpose of being exported.

Detention of
seized cash

22 31.-(1) Where the authorised officer continues to have reasonable
23 grounds for his suspicion, cash seized under section 30 of this Act may be
24 detained initially for a period of seventy-two hours.

25 (2) The period referred to in subsection (1) of this section shall not
26 include Saturdays and Sundays or any day which is a public holiday in Nigeria.

27 (3) The period for which the cash, or any part of it, may be detained
28 may be extended by an order of the Court but the order shall not authorise the
29 detention of any of the cash beyond the end of the period of three months
30 commencing from the date of the order.

1 (4) Subsequent orders for the continued detention of the cash may
2 be made by the Court but no order shall authorise the further detention of the
3 cash beyond a period of three months commencing from the date of the last
4 order.

5 (5) Cash shall not be detained for a period beyond two years
6 commencing from the date of the first order.

7 (6) An application for an order under subsections (3) and (4) of this
8 section may be made by an authorised officer or by the Agency and the Court
9 may make the order where satisfied in relation to any cash to be further
10 detained that there are reasonable grounds to believe that the cash is-

11 (a) the proceeds of unlawful activity; or

12 (b) is intended to be an instrumentality of an offence and that
13 either-

14 (i) its continued detention is justified while its derivation is further
15 investigated or consideration is given to bringing, in Nigeria or elsewhere,
16 proceedings against any person for an offence with which the cash is
17 connected; or

18 (ii) proceedings against any person for an offence with which the
19 cash is connected have started and have not been concluded.

20 32.-(1) Where cash under section 31 of this Act-

21 (a) is detained for more than the period specified in section 31(1),
22 the cash shall be forwarded to the Agency to be paid into an interest bearing
23 account and held there and the interest accruing shall be added to it on its
24 forfeiture or release; or

25 (b) was seized under section 30(2) of this Act, the Agency on
26 paying it into the account shall, subject to subsection (2) of this section,
27 release the part of the cash to which the suspicion does not relate.

28 (2) Where part of the cash, referred to in subsection (1) of this
29 section to which suspicion does not relate, may still be subject to a
30 confiscation order under section 82 of this Act and an application for a

Interest to be
paid on seized
cash

1 restraint order under section 51 of this Act in respect of a person who has an
2 interest in the cash has been made and not refused, the Agency may retain the
3 cash in an interest bearing account until such time as a confiscation order is
4 made in respect of the cash or until an application made under sections 56 or 62
5 of this Act are granted by the Court.

Release of
detained cash

6 33.-(1) This section applies where cash is detained under section 31 of
7 this Act.

8 (2) The Court may direct the release of the whole or any part of
9 detained cash where the condition in subsection (3) of this section is met.

10 (3) The condition referred to in subsection (2) of this section requires
11 the Court to be satisfied on application by the person from whom the cash is
12 seized that the conditions in section 31 of this Act no longer exist in relation to
13 the cash to be released.

14 (4) The Agency may, after notifying the Court under whose order the
15 cash is detained, release the whole or part.

Forfeiture of cash
being imported
or exported

16 34.-(1) Where cash is detained under section 31 of this Act, an
17 application for forfeiture of the whole or part of it may be made to the Court.

18 (2) The Court may order forfeiture of cash or any part of it where the
19 Court is satisfied that the cash is proceeds of unlawful activity or is intended to
20 be an instrumentality of an offence.

21 (3) Where an application for forfeiture of cash is made under this
22 section, the cash is to be detained and may not be released under a power
23 conferred by this Act until any proceedings in pursuance of the application,
24 including any proceedings on appeal are concluded.

Appeals

25 35.-(1) Where a Court refuses an application under section 34 of this
26 Act for forfeiture of cash detained under section 31 of this Act, the Agency may
27 appeal to the Court of Appeal.

28 (2) Where an appeal is made to the Court of Appeal by the Agency,
29 cash detained under section 31 of this Act will be further detained pending the
30 outcome of the appeal.

1 (3) No appeal may be made under subsection (1) of this section if
2 the cash has been detained for the period mentioned in section 31(5) of this
3 Act.

4 (4) Where a party to proceedings in which an order is made under
5 section 34 of this Act for forfeiture of cash is aggrieved by the order, he may
6 appeal against the Order.

7 (5) Appeals under this section shall be-

8 (a) made within thirty days commencing from the date on which
9 the order is made or refused; and

10 (b) by way of a rehearing.

11 (6) The Court hearing an appeal under this section may make any
12 order it thinks appropriate in the circumstance and where that Court upholds
13 an appeal made under subsection (4) of this section, it shall order the release
14 of the cash.

15 36.-(1) A person other than the person from whom cash was seized,
16 who claims that any cash detained under section 31 of this Act or any part of
17 it belongs to him, may apply to the Court for the cash to be released to him.

Other owners or
claimants

18 (2) An application under subsection (1) of this section may be made
19 in the course of proceedings under section 31 or 34 of this Act, or at any other
20 time.

21 (3) Where it appears to the Court that the-

22 (a) applicant was deprived of the cash to which an application
23 relates, or of property which it represents, by unlawful activity;

24 (b) property the applicant was deprived of was not, immediately
25 before he was deprived of it, recoverable property; and

26 (c) cash belongs to the applicant, the Court may order the cash to
27 which the application relates to be released to the applicant.

28 37.-(1) If, for any period beginning with the first opportunity to
29 place the cash in an interest-bearing account after the initial detention of the
30 cash for the period mentioned in section 31(1) of this Act, the cash was not

Compensation
where detained
cash is not lodged
in interest bearing
account

1 held in an interest-bearing account while detained, the Court may order an
2 amount of compensation to be paid to the applicant.

3 (2) Where an opportunity to place cash detained sequel to a forfeiture
4 order in an interest-bearing account arises and 48 hours thereafter the cash was
5 not held in an interest-bearing account while detained, the Court may order an
6 amount of compensation to be paid to the applicant.

7 (3) Where no forfeiture order was made and the Court is satisfied that
8 because of exceptional circumstances an applicant has suffered loss as a result
9 of the detention of the cash belonging to him, it may order additional
10 compensation, to be paid to him, taking account of any interest to be paid under
11 section 32 or any amount to be paid under subsection (1) of this section.

12 (4) Where the Court is satisfied that the applicant has suffered loss as a
13 result of detention of the cash and that the circumstances are exceptional,
14 taking account of any interest to be paid under section 32 or any amount to be
15 paid under subsection (2) of this section, it may order compensation, or
16 additional compensation, to be paid to him.

17 (5) The amount of compensation to be paid under subsection (4) of
18 this section is the amount the Court considers reasonable, having regard to the
19 loss suffered and any other relevant circumstances.

20 (6) Compensation under this section shall be paid from the
21 Confiscated and Forfeited Properties Account.

"The minimum
amount"

22 38.-(1) In this Part, the "minimum amount" is the equivalent amount
23 in United States Dollars specified in an order made by the Attorney - General of
24 the Federation.

25 (2) For the purpose of subsection (1) of this section, any amount of
26 cash imported or exported in a currency other than United States dollars shall
27 be taken to be its United States dollar equivalent, calculated in accordance with
28 the prevailing exchange rate.

Nature of
proceedings
under this Part

29 PART V - CRIMINAL FORFEITURE AND CONFISCATION

30 39.-(1) For the purpose of this Part, proceedings on an application for

1 a freezing order, restraint order, forfeiture order or confiscation order are
2 civil proceedings, and not criminal proceedings.

3 (2) The rules of evidence applicable in civil proceedings apply to
4 proceedings on an application for a freezing order, restraint order, forfeiture
5 order or confiscation order.

6 (3) No rule of evidence or construction applicable only in criminal
7 proceedings shall apply to proceedings on an application for a freezing
8 order, restraint order, forfeiture order or confiscation order.

9 (4) Any question of fact to be decided by a Court in any
10 proceedings in respect of an application contemplated under this Part shall
11 be decided on a balance of probabilities.

12 (5) Notwithstanding any rule of law or practice relating to hearsay evidence,
13 evidence given in furtherance of this Part is admissible.

14 40.-(1) Where a person is convicted of an offence, the Court shall
15 make an order of forfeiture in relation to-

Forfeiture after
conviction

16 (a) any asset or property constituting or derived from proceeds of
17 the unlawful activity; and

18 (b) instrumentalities of the offence, or any of the defendant's
19 property used in any manner to commit or to facilitate the commission of
20 such offence.

21 (2) An order made by the Court under subsection (1) of this section,
22 is in addition to-

23 (a) a sentence which the Court may impose on a person convicted
24 for an offence; or

25 (b) any confiscation order imposed under this Act.

26 41.-(1) Where under this Act a Court is required to order forfeiture
27 in respect of any property, the Court may make an order forfeiting any
28 property within Nigeria which represents the proceeds of unlawful activity
29 or instrumentality of an offence under the laws of a foreign country within
30 whose jurisdiction such offence or activity will be punishable by

International
forfeiture
provisions

1 imprisonment for a term exceeding one year and which will be punishable by
2 imprisonment under the laws of Nigeria if the act or activity had occurred
3 within Nigeria.

4 (2) Where it is established that a convicted person has any asset or
5 property in a foreign country, acquired as a result of some criminal activity, the
6 asset or property shall, subject to any treaty or arrangement with that foreign
7 country, be forfeited to the Agency.

8 (3) The forfeited property referred to in subsections (1) and (2) of this
9 section shall be effectively transferred to and interest vested in the Agency.

10 (4) Where a foreign country has forfeited or confiscated property
11 under the laws of that country that relates to unlawful activity conducted in that
12 country and Nigeria, and that country repatriates the whole or part of that assets
13 or a sum of money that represents the unlawful activity in Nigeria, the property
14 shall be realised and the proceeds or the sum of money shall be paid into the
15 Confiscated and Forfeited Properties Account established under Part IX of this
16 Act.

17 (5) Any money paid into the Confiscated and Forfeited Properties
18 Account under subsection (4) of this section shall be utilised to finance any of
19 the purposes specified under section 150(2)(e) of this Act.

Order forfeiting
instrumentalities
of an offence

20 42. Where under this Act the Court is required to make an order of
21 forfeiture in respect of an instrumentality of an offence, the Court may make an
22 order forfeiting-

23 (a) a means of conveyance, including an aircraft, a vehicle or vessel,
24 used or intended to be used to transport or facilitate the transportation, sale,
25 receipt, possession of the proceeds of crime or other instrumentality, or for the
26 concealment of an offence, but a means of conveyance shall not be forfeited
27 under this section-

28 (i) where it is used by its owner as a common carrier in the transaction
29 of his business unless the owner or other person in charge of the means of
30 conveyance consented to or was privy to the commission of the offence;

1 (ii) by reason of any offence established by its owner to have been
2 committed by any other person while the means of conveyance was
3 unlawfully in the possession of a person other than the owner in violation of
4 the criminal laws of Nigeria; and

5 (iii) by reason of any offence established by the owner to have been
6 committed without his knowledge, consent or wilful connivance.

7 (b) books, records, research materials, and data used or intended to
8 be used in the furtherance of any criminal activity;

9 (c) monies, negotiable instruments, securities or other things of
10 value furnished or intended to be furnished by any person in exchange for
11 any illegal act or all proceeds traceable to the exchange, and all monies,
12 negotiable instruments, securities and other things used or intended to be
13 used to facilitate any criminal activity; or

14 (d) real property, including any right, title or any interest, including
15 any leasehold interest, in land or part of a land and any improvement or
16 appurtenance which is used or intended to be used, in any manner to commit,
17 or facilitate any criminal activity.

18 43.-(1) The Court may by an order (in this Act referred to, as a
19 "freezing order") on the application of the Agency prohibit a financial
20 institution from allowing a withdrawal from an account with the financial
21 institution, except in the manner and circumstances specified in the order
22 made by the Court, where-

Account freezing
order

23 (a) there are reasonable grounds to suspect that the account is-

24 (i) a proceed of an unlawful activity, whether or not the identity of
25 the person who committed the offence is known, or

26 (ii) wholly or partly an instrumentality of an offence; and

27 (b) the Court is satisfied that, unless a freezing order is made, there
28 is a risk that the account will be reduced to the extent that a person will be
29 deprived of all or some of the proceeds or instrumentality.

30 (2) A freezing order shall cover the specified account or any related

1 accounts to which the defendant may be a signatory.

2 (3) The Court may make a freezing order in the absence of a finding as
3 to the commission of a particular offence.

Application for
a freezing order

4 44.-(1) An application for a freezing order by the Agency shall be
5 made ex parte, supported by an affidavit deposed to by an authorised officer.

6 (2) The application for a freezing order shall-

7 (a) identify the financial institution;

8 (b) set out sufficient information to identify the account, including the
9 account number; and

10 (c) set out the grounds for suspecting that the content of the account-

11 (i) is a proceed of an offence;

12 (ii) is wholly or partly an instrumentality of an offence; and

13 (iii) will be reduced to the extent that a person will be deprived of all
14 or some of such proceeds or of such an instrumentality.

Service of
freezing order

15 45. A copy of a freezing order made under section 44 of this Act shall
16 be served on-

17 (a) the financial institution affected by the order;

18 (b) the account holder; and

19 (c) any other party that may be affected by the order.

Offence of
contravening
a freezing order

20 46.-(1) A financial institution which allows a withdrawal from an
21 account in respect of which a freezing order exists in a manner that contravenes
22 the order commits an offence and is liable to a fine of not less than five million
23 naira and shall, refund the sum withdrawn.

24 (2) An officer of a financial institution who knowingly or negligently
25 fails to comply with a freezing order commits an offence and is liable on
26 conviction to imprisonment for a term of not less than five years without the
27 option of fine.

Protection from
suits, etc. for those
complying with
a freezing order

28 47. No action, suit or proceeding shall lie against a financial
29 institution or an officer or agent of a financial institution acting in the course of
30 his employment or agency, in relation to any action taken by the institution,

1 officer or agent in complying with a freezing order or in the mistaken belief
2 that action was required under a freezing order.

3 48. A freezing order remains in force until the-

Duration of a
freezing order

4 (a) end of the period specified in the order; or

5 (b) time the Court otherwise directs.

6 49.-(1) The Court that granted an order under section 43 of this Act

Extension of a
freezing order

7 may, on application by the Agency or authorised prosecutor make an order

8 extending the periods referred to in section 48 of this Act, if satisfied that

9 the-

10 (a) conditions in section 43(1) apply;

11 (b) extension is necessary in order to secure a forfeiture order under

12 section 66 of this Act;

13 (c) Court is satisfied that an application has been made to it for a

14 restraint order to cover the account, whether or not the restraint order covers

15 other property which has not been decided.

16 (2) The extension referred to under subsection (1) of this section

17 may be for-

18 (a) end of the period specified in the order; or

19 (b) the period ending when the Court decides the application for the

20 restraint order.

21 50.-(1) The Court that made a freezing order may on application by

Variation or
revocation of a
freezing order in
certain cases

22 a person affected by the order vary or revoke the order where it is satisfied

23 that-

24 (a) the person has given written notice of the application and the
25 grounds for the application to the Agency or authorised prosecutor;

26 (b) the operation of the order will deprive the applicant of the
27 means to provide for his reasonable living expenses and cause undue
28 hardship for the applicant or close dependent relative;

29 (c) the applicant cannot meet the expenses out of property that is

30 not covered by-

- 1 (i) a freezing order; or
2 (ii) a restraint order;
3 (d) the hardship that the applicant will suffer as a result of the order
4 outweighs the risk that the property concerned may be destroyed, lost,
5 damaged, concealed, transferred, removed or have its value diminished, or
6 otherwise be disposed of;
7 (e) the expenses do not, or will not, relate to legal costs that the person
8 has incurred, or will incur, in connection with proceedings relating to the
9 offences with which the defendant has been charged; and
10 (f) it is in the interest of justice to do so.

11 (2) The written notice referred to in subsection (1)(a) of this section
12 shall be given not less than seventy-two hours before the application is
13 heard.

Application for
a restraint order

14 **51.**-(1) The Agency or authorised prosecutor may apply for a restraint
15 order for the purposes specified under this Act.

16 (2) An application for a restraint order shall-

- 17 (a) be made ex parte;
18 (b) be in accordance with sections 52 and 53 of this Act; and
19 (c) provide for the period of the notice referred to in section 57 of this
20 Act to be given to persons affected by the order.

21 (3) The Court making a restraint order may also make further orders in
22 respect of the discovery or disclosure of any facts, including facts relating to
23 any property over which the defendant may have effective control and the
24 location of such property, as the Court may consider necessary or expedient
25 with a view to achieving the objectives of the restraint order.

26 (4) The Court making a restraint order shall at the same time make an
27 order-

- 28 (a) authorising the Agency to take custody or control of any property
29 specified in the order;
30 (b) for entering premises, where necessary; and

1 (c) any other ancillary orders that the Court considers appropriate
2 for the proper, fair and effective execution of the order.

3 (5) Property affected by subsection (4) of this section shall be dealt
4 with in accordance with the directions of the Court that made the restraint
5 order.

6 (6) The Court that made a restraint order-

7 (a) may, on application by a person affected by that order, vary or
8 rescind the restraint order or an order authorising the seizure of the property
9 specified in the order or other ancillary order where it is satisfied that the-

10 (i) operation of the order concerned will deprive the applicant of
11 the means to provide for his reasonable living expenses and cause undue
12 hardship to the applicant or close dependant relatives; and

13 (ii) hardship that the applicant will suffer as a result of the order
14 outweighs the risk that the property concerned may be destroyed, lost,
15 damaged, concealed, transferred or otherwise disposed of; and

16 (b) shall rescind or vary the restraint order when the proceedings
17 against the defendant concerned are concluded.

18 (7) Where the Court has made a restraint order under section 52 of
19 this Act, it shall rescind the order where the relevant person is not charged
20 within such period as the Court may consider reasonable.

21 (8) Where the Court orders the rescission of an order authorising
22 the seizure of property in accordance with subsection (6)(a) of this section,
23 the Court shall make such other order as it considers appropriate for the
24 proper, fair and effective execution of the restraint order.

25 52.-(1) The Court may on the application of the Agency or
26 authorised prosecutor make an order that a property shall not be disposed of
27 or otherwise dealt with by any person except in the manner as may be
28 specified in the order where-

Making the
restraint order

29 (a) a defendant has been convicted of or has been charged with an
30 offence and a confiscation order has been made against that defendant or it

1 appears to the Court that there are reasonable grounds for believing that a
2 forfeiture order or confiscation order may be made against that defendant;

3 (b) when it is proposed that a person is to be charged with an offence
4 and a Court is satisfied that such person is to be so charged, and it appears to the
5 Court that there are reasonable grounds for believing that a forfeiture order or
6 confiscation order may be made against such a person; and

7 (c) an affidavit under section 54 of this Act has been filed in support of
8 the application.

9 (2) The Court may make a restraint order even where there is no risk
10 of the property being disposed of or otherwise dealt with.

Property subject
to a restraint
order

11 **53.** A restraint order may be made in respect of-

12 (a) such realisable property as may be specified in the restraint order
13 and held by the person against whom the order is made;

14 (b) all realisable property held by the person against whom the
15 restraint order is made, whether specified in the order or not;

16 (c) specified property of another person that is subject to the effective
17 control of the relevant person, whether or not that other person's identity is
18 known;

19 (d) specified property of another person that is a proceed of the
20 offence or an instrumentality of the offence, whether or not that other person's
21 identity is known;

22 (e) all property which, where it is transferred to such person after the
23 making of the restraint order, would be a realisable property; and

24 (f) gifts, within the meaning of section 87 of this Act, made by the
25 relevant person.

Affidavit in
support of a
restraint order

26 **54.-(1)** The application for a restraint order shall be supported by an
27 affidavit made by an authorised officer stating that the officer believes that the
28 property is-

29 (a) the proceeds of a specified offence;

30 (b) an instrumentality of a specified offence; or

1 (c) the proceeds of unlawful activity.

2 (2) An affidavit shall contain the following-

3 (a) the grounds on which the authorised officer holds the belief but
4 the grounds need not be based on a finding as to the commission of a
5 particular offence;

6 (b) where the relevant person has been convicted, a copy of the
7 judgement;

8 (c) where the relevant person has been charged, a copy of the
9 charge pending before a competent court; or

10 (d) where the application is to restrain property of a person other
11 than the relevant person, a declaration that the authorised officer reasonably
12 believes that the property is-

13 (i) subject to the effective control of the relevant person;

14 (ii) proceeds of the unlawful activity or an instrumentality of the
15 offence; or

16 (iii) proceeds of other unlawful activity.

17 (3) The Court shall not make a restraint order unless it is satisfied
18 that the facts disclosed in the affidavit support the reasonable beliefs
19 expressed by the authorised officer.

20 55.-(1) The Court may make an order to allow any one or more of
21 the following to be paid out of a property or a specified part of a property
22 covered by a restraint order-

Payment of
expenses out of
restrained
property

23 (a) the reasonable living expenses of the person whose property is
24 restrained;

25 (b) the reasonable living expenses of close dependants of that
26 person;

27 (c) subject to subsection (4) of this section, reasonable legal costs
28 concerning the current proceedings with which the defendant has been
29 charged or is about to be charged.

30 (2) The Court may only make an order under subsection (1) of this

1 section where, the-

2 (a) person whose property is restrained has applied for an order for
3 expenses to be paid out of restrained property;

4 (b) person has notified the Agency in writing of the application and
5 the grounds for the application at least seventy-two hours before the
6 application is heard;

7 (c) person has disclosed all of his interests and liabilities in the
8 property, in a statement on oath that has been filed in the Court; and

9 (d) Court is satisfied that the person cannot meet the expense or debt
10 out of property that is not covered by the restraint order.

11 (3) The Court shall require a costs assessor, authorised by the Agency
12 to certify that legal expenses have been properly incurred before permitting the
13 payment of expenses from any property covered by an order under subsection
14 (1) of this section.

Application to
exclude property
from a restraint
order

15 56.- (1) An application may be made to the Court that issued a restraint
16 order to exclude a specified interest in property that is subject to a restraint
17 order by a person who claims to have an interest in it, where the interest is not
18 the proceeds of an offence or an instrumentality of unlawful activity.

19 (2) The Court shall not exclude property that is subject to a restraint
20 order under this Act unless it is satisfied that a confiscation order cannot be
21 made against-

22 (a) the person who has the interest; or

23 (b) the defendant, where the interest is not held by the defendant but is
24 under his effective control.

25 (3) The applicant shall notify the Agency or authorised prosecutor in
26 writing of the:-

27 (a) application referred to in subsection (1) of this section; and

28 (b) grounds on which the application is made.

29 (4) The Court shall not hear an application to exclude specified
30 property from a restraint order where the Agency or authorised prosecutor has

1 not been given a reasonable opportunity to conduct examinations in relation
2 to the application.

3 (5) The Agency or authorised prosecutor shall give the person
4 notice of any grounds on which it proposes to contest the application, after it
5 has conducted enquiry in relation to the application.

6 (6) The Agency or authorised prosecutor may appear and adduce
7 evidence at the hearing of the application.

8 57.-(1) Where the Court makes a restraint order, the Agency or
9 authorised prosecutor shall give notice to-

Notice of a
restraint order

10 (a) all persons affected by the restraint order; and

11 (b) any other person who may be affected by an order to seize any
12 property in furtherance of the restraint order.

13 (2) The notice referred to in subsection (1) of this section shall-

14 (a) be served before or at the time of any seizure and in any other
15 case after the order is obtained; and

16 (b) contain-

17 (i) a copy of the restraint order;

18 (ii) the details of the issuing Court; and

19 (iii) the name and address of the applicant or other person to whom
20 enquiries regarding the restraint order may be made.

21 58.-(1) A registration authority that keeps a register of properties of
22 a particular kind shall, on application by the Agency, register the details of a
23 restraint order as it affects the property in that register.

Registering
restraint orders

24 (2) A person who subsequently deals with the registered property
25 shall be deemed-

26 (a) not to be acting in good faith for the purposes of section 59 of
27 this Act; and

28 (b) to have notice of the restraint order for the purposes of section
29 60 of this Act.

30 (3) Where the Agency has previously applied to a registration

1 authority under subsection (1) of this section for the registration of the
2 particulars of a restraint order, the Agency shall promptly, notify the
3 registration authority where-

4 (a) the property is no longer covered by the restraint order because it is
5 varied or excluded from the restraint order under section 56 of this Act; or

6 (b) a condition to which a restraint order is subject to is varied under
7 section 55 of this Act.

Setting aside a
disposition
contravening a
restraint order

8 59.-(1) The Agency or authorised prosecutor may apply to the Court
9 to set aside a disposition or dealing with a property that contravenes a restraint
10 order where that disposition or dealing was not-

11 (a) for sufficient consideration; or

12 (b) in favour of a person who acted in good faith.

13 (2) The Agency or authorised prosecutor shall give, to each party to
14 the disposition or dealing, written notice of both the application and the
15 grounds on which it seeks the setting aside of the disposition or dealing.

16 (3) The Court may set aside the disposition or dealing and declare the
17 rights of any person who acquired interest in the property null and void.

Contravening
restraint orders

18 60. A person who disposes of, or deals with a property knowing that,
19 or is reckless as to the fact that, the property is covered by a restraint order,
20 commits an offence and is liable on conviction to imprisonment for a term of
21 five years without an option of fine.

Seizure of
property covered
by a restraint
order

22 61.-(1) An authorised officer may, in order to prevent any realisable
23 property from being disposed of or removed contrary to a restraint order, enter
24 into any premises and seize that property where he has reasonable grounds to
25 believe that the property will be so disposed of or removed.

26 (2) Property seized under subsection (1) of this section shall be dealt
27 with by the Agency in accordance with the directions of the Court that made the
28 relevant restraint order.

Revocation of
a restraint order

29 62.-(1) Any person with an interest in a property covered by a restraint
30 order may within twenty - eight days apply to the Court that made the order for

1 revocation of the order.

2 (2) The person making an application under subsection (1) of this
3 section shall give written notice to the Agency or authorised prosecutor of
4 the application and the grounds on which the revocation is sought.

5 (3) The Agency or authorised prosecutor may adduce additional
6 material to the Court relating to the application to revoke the restraint order.

7 (4) The Court may revoke the restraint order where it is satisfied
8 that the order was obtained by suppression or misrepresentation of fact or by
9 fraud.

10 (5) A restraint order remains in force until it is revoked by the
11 Court.

12 63.-(1) The Court may revoke a restraint order that covers a
13 property belonging to a relevant person or exclude a specified property from
14 a restraint order where the relevant person-

Giving security,
etc. to revoke a
restraint order

15 (a) applies to the Court to revoke the order or exclude the property;

16 (b) gives written notice of the application to the Agency or
17 authorised prosecutor; and

18 (c) gives security that is satisfactory to the Court to meet any
19 liability that may be imposed on a person under this Act.

20 (2) The Court may revoke a restraint order that covers the property
21 of a person who is not a suspect or exclude specified property from a
22 restraint order where the person-

23 (a) applies to the Court to revoke the order or exclude the property;

24 (b) gives written notice of the application to the Agency or
25 authorised prosecutor; and

26 (c) gives an undertaking concerning the property that is
27 satisfactory to the Court.

28 64.-(1) A restraint order in relation to one or more offences ceases
29 to be in force in any of the following cases-

Cessation of
restraint orders

30 (a) within twenty-eight days where the-

1 (i) charge, or all of the charges, that relate to the restraint order are
2 withdrawn;

3 (ii) suspect is acquitted of the offence, or all of the offences, with
4 which he was charged; or

5 (iii) suspect's conviction for the offence, or all of the offences, of
6 which he was convicted are quashed;

7 (b) in respect of property covered by the restraint order where-

8 (i) the Court refuses an application for a forfeiture order that would
9 have covered the property;

10 (ii) the Court excludes the property from a forfeiture order; or

11 (iii) a forfeiture order that covers the property is discharged or ceases
12 to have effect.

13 (c) in respect of property covered by the restraint order where a
14 confiscation order relates to that offence or those offences and where the
15 confiscation order is satisfied or discharged.

16 (2) Subsection (1)(a) of this section shall not apply where-

17 (a) there is a confiscation order that relates to the offence;

18 (b) there is an application for a confiscation order before the Court;

19 (c) the suspect is charged with a related offence; or

20 (d) a new trial is ordered in relation to the offence.

21 (3) Subsection (1)(b) of this section shall only apply where-

22 (a) in the case of a refusal of an application for a forfeiture order-

23 (i) the time for an appeal against the refusal has expired without an
24 appeal being lodged,

25 (ii) an appeal against the refusal has lapsed, or

26 (iii) an appeal against the refusal has been dismissed or finally
27 disposed of;

28 (b) no application for another confiscation order is made relating to-

29 (i) an offence to which the restraint order relates; or

30 (ii) a related offence is pending in a court.

1 (c) no other confiscation order relating to the offence is in force.

2 **65.** Notwithstanding the provisions of subsection (1) of section 64
3 of this Act, the restraint order ceases to be in force in respect of the property-

Restraint
orders and
instrumentalities
owned by third
parties

4 (a) where the relevant person has not been charged with the offence
5 or a related offence within twenty-eight days after the restraint order is
6 made; or

7 (b) where-

8 (i) a restraint order covers property of a person who is not a relevant
9 person;

10 (ii) the property is not an instrumentality of an offence to which the
11 order relates;

12 (iii) the property is not a proceed of an offence;

13 (iv) the property is not subject to the effective control of another
14 person who is charged or who may be charged with an offence in relation to
15 the order; or

16 (v) the property is not a gift within the meaning of section 87 of this
17 Act.

18 **66.-(1)** The Court shall on the application of the Agency,
19 authorised prosecutor or on its own motion make an order that the property
20 specified in the order be forfeited to the Agency, where-

Forfeiture order
where a person
is convicted of
an offence

21 (a) a person has been convicted of one or more offences; and

22 (b) the Court is satisfied that the property to be specified in the
23 order-

24 (i) is property derived directly from one or more of the offences of
25 which the person has been convicted;

26 (ii) is an instrumentality of one or more of those offences; or

27 (iii) represents the value derived from the sale of items mentioned
28 in section 142 of this Act.

29 (2) In considering whether it is appropriate to make an order under
30 subsection (1) of this section in respect of any particular property, the Court

1 may have regard to the-

2 (a) ordinary use or intended use of the property to be specified in the
3 order; and

4 (b) gravity of the offence or offences concerned.

5 (3) An application under subsection (1) of this section shall be made
6 not later than six months after the date of conviction.

Existence of
other confiscation
orders

7 67. The power of the Court to make a forfeiture order in relation to an
8 offence is not affected by the existence of a confiscation order in relation to that
9 offence.

Making of
forfeiture order
where person
has absconded

10 68. Where a person arrested or charged in connection with an offence
11 is absent during trial, the Court may nevertheless make a forfeiture order under
12 section 66 of this Act as if the person has been convicted where the-

13 (a) Court is satisfied on a balance of probabilities that the person has
14 absconded; and

15 (b) person has been arraigned for trial for the offence or there is
16 sufficient evidence for putting a person on trial for the offence.

Third party
interests in
forfeiture orders

17 69.-(1) In making a forfeiture order, the Court may consider third
18 party interests in the property where-

19 (a) the amount received from disposing of the combined interests will
20 likely be greater than the amount received from disposing of each of the
21 interests separately; or

22 (b) disposing of the interests separately would be impracticable or
23 significantly more difficult than disposing of the combined interests.

24 (2) In consideration of third party interests, the Court may make such
25 ancillary orders including an order directing-

26 (a) the Agency to pay a person a specified amount as the value of the
27 person's interest in the property; or

28 (b) that other specified interests in the property be transferred to the
29 person, as it deems fit for the protection of a person having one or more of those
30 other interests.

1 (3) In deciding whether to make an ancillary order, the Court shall
2 have regard to-

3 (a) the nature, extent and value of the person's interest in the
4 property concerned; and

5 (b) any other matter that the Court considers relevant.

6 70.-(1) The Court making a forfeiture order may give all directions
7 that are necessary or convenient for giving effect to the order. Making supporting
directions

8 (2) The Court may, in a forfeiture order specifying registrable
9 property, give a direction to the Agency to do anything necessary and
10 reasonable to obtain possession of any document necessary for the transfer
11 of the property.

12 71.-(1) The Agency or authorised prosecutor shall give written
13 notice of an application for a forfeiture order to a person- Notice of
application for
a forfeiture order

14 (a) convicted of an offence where the order relates to such person;

15 (b) who claims an interest in property covered by the application;

16 and

17 (c) whom the Agency or authorised prosecutor reasonably believes
18 may have an interest in the property.

19 (2) The Court hearing the application may, at any time before the
20 final determination of the application, direct the Agency to give or publish
21 notice of the application to a specified person or class of persons subject to
22 such conditions as to the manner and time as the Court may direct.

23 (3) The Court to which an application for a forfeiture order is made
24 in relation to an offence may, on application by the Agency or authorised
25 prosecutor, dispense with the requirements to give notice to a person under
26 subsections (1) and (2) of this section where the Court is satisfied that the
27 person has absconded in connection with the offence.

28 72.-(1) The Agency or authorised prosecutor shall not, without the
29 leave of the Court apply for a forfeiture order under section 66 of this Act
30 where- Additional
application for
a forfeiture order

1 (a) an application has previously been made under this Act for an
 2 order under the same sections for the forfeiture or for condemnation of the
 3 property under the Customs and Excise Management Act in relation to the
 4 offence; and

5 (b) the application has been finally determined on its merits.

6 (2) The Court shall not grant leave unless it is satisfied that-

7 (a) the property to which the new application relates was identified
 8 only after the first application was determined;

9 ~~(b) additional relevant evidence became available only after the first~~
 10 ~~application was determined;~~ or

11 (c) it is in the interests of justice to grant the leave.

Procedure on
 application by
 a person who
 claims interest
 in a property, etc.

12 73.-(1) A person who claims an interest in a property covered by an
 13 application for a forfeiture order may appear and adduce evidence at the
 14 hearing of the application.

15 (2) The Court may, in determining the application, have cognisance of
 16 the record of any proceeding against the person for an offence that constitutes
 17 unlawful activity; and evidence given in any such proceeding.

18 (3) The Court may make a forfeiture order where a person entitled to
 19 be given notice of the relevant application received notice, but fails to appear at
 20 the hearing of the application.

Vesting of title
 of forfeited
 property

21 74.-(1) Subject to subsection (2) of this section, any property
 22 specified in a forfeiture order vests absolutely in the Agency on behalf of the
 23 Federal Government at the time the order is made.

24 (2) Where the property specified in a forfeiture order is a registrable
 25 property, the Agency shall-

26 (a) give notice in writing of the forfeiture order to the registration
 27 authority;

28 (b) do anything necessary or convenient to protect the interest of the
 29 Federal Government or any other authority as may be appropriate in the

1 circumstance and register the title of the Agency or any other authority in the
2 property.

3 (3) Any action by the Agency under subsection (2)(b) of this
4 section is not a dealing for the purposes of section 76(1) of this Act.

5 75.-(1) Where a person who is the joint owner of property specified Death of a joint
owner of forfeited
property
6 in a forfeiture order, dies before the order is made, but-

7 (a) after the Agency applied for the order; or

8 (b) while a restraint order covering the property was in force, that
9 property is deemed to have been vested in the Agency immediately before
10 the person's death.

11 (2) The restraint order is also deemed to have continued to apply to
12 the property as if the person had not died.

13 76.-(1) The Agency and persons acting on its behalf, shall not Dealing in
forfeited property
14 dispose of, or otherwise deal with the property specified in a forfeiture order
15 unless-

16 (a) the period provided for lodging an appeal against the order has
17 ended without an appeal having been lodged;

18 (b) where an appeal against the order has been lodged, the appeal
19 has lapsed or has been finally determined; or

20 (c) where the order was made in relation to a person's conviction
21 for an offence-

22 (i) the period provided for lodging an appeal against the conviction
23 has ended without an appeal having been lodged; or

24 (ii) where an appeal against the conviction has been lodged, the
25 appeal has lapsed or has finally been determined.

26 (2) Notwithstanding the provision of subsection (1) of this section,
27 the Agency may, with leave of the Court and while the forfeiture order is still
28 in force-

29 (a) dispose of, by sale or otherwise, any property specified in the
30 order that is not money in the exercise of its functions under section 101 of

1 this Act; and

2 (b) subject to the provision of subsection (5) of this section and any
3 regulations made under this Act, credit the proceeds of the disposal and any
4 property specified in the order to the Confiscated and Forfeited Properties
5 Account in accordance with section 147 of this Act.

6 (3) Where any part of the property included in a forfeiture order
7 consists of money-

8 (a) in a bank account, the Agency shall serve a copy of the order on the
9 manager or any person in control of the branch of the bank where the account is
10 operated or on a designated officer at the head office of the bank concerned; or

11 (b) in the possession of any other person, the Agency shall serve a
12 copy of the order on the person or his authorised agent.

13 (4) The manager or person referred to in subsection (3)(a) of this
14 section shall immediately, on being served with a copy of the order, pay over
15 the money to the Agency without any further assurance than this Act and the
16 Agency shall, subject to subsection (5) of this section, credit the money
17 received into the Confiscated and Forfeited Properties Account in line with
18 section 151 of this Act.

19 (5) The Agency may before crediting the Confiscated Assets and
20 Forfeited Properties Account with proceeds of a disposal or money in
21 accordance with subsections (3) and (4) of this section apply any amount
22 received to the payment of its costs, and other charges and expenses of the kind
23 referred to in sections 55(1) and 22(6) of this Act payable to or incurred by it in
24 connection with the disposal and with the restraint order that covered the
25 property.

Unauthorised
dealing in
forfeited property

26 77.-(1) A person who, without due authorisation by the Agency, deals
27 with, sells or otherwise disposes of any property or assets which is the subject
28 of a forfeiture order commits an offence and is liable on conviction to
29 imprisonment for a term of five years without the option of a fine.

30 (2) A manager or person in control of the head office or branch of a

1 bank, or any other person who fails to pay over to the Agency upon the
 2 service of a forfeiture order commits an offence and is liable on conviction to
 3 imprisonment for a term of three years, without the option of a fine.

4 78.-(1) A Court that made a forfeiture order, or that is hearing or is
 5 to hear an application for a forfeiture order, may make an order excluding a
 6 specified interest in the property from forfeiture where-

Making exclusion
orders

7 (a) a person makes an application for the exclusion order;

8 (b) the application for the forfeiture order specifies property in
 9 which the applicant has an interest; and

10 (c) the Court is satisfied that the applicant's interest in the property
 11 is not the proceeds or instrumentality of an offence to which the order of
 12 forfeiture application relates.

13 (2) The Court shall in the exclusion order-

14 (a) specify the nature, extent and value at the time of making the
 15 order of the interest concerned;

16 (b) direct that the interest be excluded from the operation of the
 17 relevant forfeiture order;

18 (c) direct the Agency to transfer the interest to the applicant, where
 19 the interest has vested, in law or equity, in the Agency and is yet to be
 20 disposed of; and

21 (d) direct the Agency to pay the applicant an amount equal to the
 22 value specified under paragraph (a) of this subsection, where the interest has
 23 vested, in law or equity, in the Agency under this Act and has been disposed
 24 of.

25 79.-(1) A person who claims an interest in any property that-

Application for
exclusion orders

26 (a) he reasonably believes may be specified in a forfeiture order
 27 which has been applied for, but yet to be made, may apply to the Court
 28 before whom the application for a forfeiture order was made for an
 29 exclusion order; or

30 (b) is specified in a forfeiture order may, at any time after the

1 forfeiture order is made, apply to the Court that made the forfeiture order for an
2 exclusion order.

3 (2) Except with the leave of Court, a person shall not apply for an
4 exclusion order where he-

5 (a) was notified of the application for the forfeiture order, but failed to
6 appear at the hearing of that application; or

7 (b) appeared at the hearing of that application but failed to apply for an
8 exclusion order.

9 (3) The Court may grant leave to a person to apply for exclusion order
10 where the Court is satisfied that-

11 (a) in the case of subsection (2)(a) of this section, the person had a
12 good reason for not appearing;

13 (b) in the case of subsection (2)(b) of this section, the person now has
14 evidence relevant to his application that was not available to him at the time of
15 the hearing; or

16 (c) there are other special grounds for granting the leave.

Giving notice
of matters relevant
to an application

17 80.-(1) An applicant for an exclusion order shall give written notice to
18 the Agency or authorised prosecutor of both the application and the grounds on
19 which the order is sought.

20 (2) The Agency or authorised prosecutor may appear and adduce
21 evidence at the hearing of the application.

Notice of
discharge of a
forfeiture order

22 81.-(1) Where in relation to a particular property, a forfeiture order
23 that covered that property is discharged by the Court hearing an appeal against
24 the making of the order, the Agency or authorised prosecutor shall, within three
25 working days or such a period as may be specified by the Court, give written
26 notice of the discharge to any person the Agency or authorised prosecutor
27 reasonably believes may have had an interest in that property immediately
28 before the order was made.

29 (2) The Agency shall, where required by a Court, give or publish
30 notice of the discharge to a specified person or class of persons.

1 (3) The Court may also specify the time and manner in which the
2 notice is to be given or published.

3 (4) A notice given under this section shall include a statement to the
4 effect that a person claiming to have had an interest in that property may
5 apply for the transfer of the interest, or its value, to any person.

6 82.-(1) The Court shall make a confiscation order requiring a person to pay an amount to the Agency where- Confiscation
Order

7 (a) a person has been convicted of an offence;

8 (b) the Agency or authorised prosecutor applies for an order; and

9 (c) the Court is satisfied that the person has benefited from-

10 (i) that offence;

11 (ii) any other offence of which the person has been convicted at the
12 same trial, and

13 (iii) any criminal activity which the Court finds to be sufficiently
14 related to those offences.

15 (2) An order made under this section against the person is an order
16 to make a payment to the Agency of any amount that the Court considers
17 appropriate and is in addition to any punishment that the Court may impose
18 in respect of the offence or offences that the person has been found guilty.

19 (3) The Court may make any further orders as it may deem fit to
20 ensure the effectiveness and fairness of that order.

21 (4) The amount that the Court may order the person to pay to the
22 Agency under subsection (1) of this section shall not exceed-

23 (a) the value of the person's proceeds of the offences or related
24 criminal activity as determined by the Court in accordance with the
25 provisions of this Act; or

26 (b) an amount which in its opinion may be realised if the Court is
27 satisfied that the amount which might be realised as contemplated in section
28 84(1) of this Act is less than the value referred to in paragraph (a) of this
29 subsection.
30

- 1 (5) The Court convicting a person may, when passing sentence,
2 indicate that it will conduct an enquiry at a later date where-
- 3 (a) it is satisfied that such enquiry will unreasonably delay the
4 proceedings in sentencing the person; or
- 5 (b) the Agency or authorised prosecutor applies to the Court to first
6 sentence the person and the Court is satisfied that it is reasonable and justifiable
7 to do so in the circumstances.
- 8 (6) The Agency or authorised prosecutor may apply for a confiscation
9 order-
- 10 (a) within six months after the date of conviction; or
- 11 (b) where there is an order extending the period specified in paragraph
12 (a) of this subsection, three months after the end of the period extended by an
13 order.
- 14 (7) The Court hearing an application under this section may, in
15 exceptional circumstances grant leave for extension of time for the application
16 to be made if it is satisfied that it would be in the interests of justice to allow the
17 application.
- 18 (8) The Court before which proceedings under this section are
19 pending may-
- 20 (a) in considering an application under subsection (1) of this section-
- 21 (i) refer to the evidence and proceedings at the trial;
- 22 (ii) hear such further evidence as the Court may deem fit;
- 23 (iii) direct the Agency or authorised prosecutor to tender to the Court a
24 statement referred to in section 88(1) of this Act; and
- 25 (iv) direct a defendant to tender to the Court a statement referred to in
26 subsection 88(5) of this Act.
- 27 (b) adjourn proceedings under this section, subject to sections 88(2)
28 and (6) of this Act;
- 29 (c) set the date of the adjournment mentioned in paragraph (b) of this
30 subsection not later than three months from the date at which the hearing was

1 adjourned; and

2 (d) in exceptional circumstances extend the period referred to in
3 paragraph (c) of this subsection.

4 83.-(1) Subject to the provisions of subsection (2) of this section, Value of proceeds
of unlawful
activities
5 the value of a defendant's proceeds of unlawful activities shall be the sum of
6 the values of the property, services, advantages, benefits or rewards
7 received, retained or derived by him at any time, whether before or after the
8 commencement of this Act, in connection with the unlawful activity carried
9 on by him or any other person.

10 (2) In determining the value of a defendant's proceeds of unlawful
11 activities the Court shall-

12 (a) leave the property out of account where it has made a forfeiture
13 order or where a forfeiture order has previously been made in respect of
14 property which is proved to the satisfaction of the Court to have been the
15 property which the defendant received in connection with the criminal
16 activity carried on by him or any other person;

17 (b) where a confiscation order has previously been made against
18 the defendant, leave out of account those proceeds of unlawful activities
19 which are proved to the satisfaction of the Court to have been taken into
20 account in determining the amount to be recovered under that confiscation
21 order; and

22 (c) ensure that none of the following are deducted-

23 (i) expenses or outgoings that the person incurred in relation to the
24 unlawful activity;

25 (ii) the value of any benefits that the person derives as agent for, or
26 otherwise on behalf of, another person, whether or not the other person
27 receives any of the benefits.

28 84.-(1) The amount realisable at the time of the making of a Amounts that
may be realized
29 confiscation order against a defendant shall be the amount equal to the sum
30 of-

1 (a) the values at that time of all realisable property held by the
2 defendant; and

3 (b) the values at that time of all filtered gifts made by the defendant,
4 less the sum of all obligations, where any, of the defendant having priority and
5 which the Court may recognise for this purpose;

6 (2) Notwithstanding the provisions of section 36(1) of this Act but
7 subject to the provisions of subsection (3) of this section, the value of an affected
8 gift at the time of the making of the relevant confiscation order shall be-

9 (a) the value of the gift, if at the time of the making of the order
10 it, taking into account subsequent fluctuations in the value of the gift, is

11 (b) where subsection (3) of this section applies, the value ascribed
12 in that subsection, whichever is the greater value.

13 (3) Where at the time of the making of the relevant confiscation order,
14 the recipient holds the property-

15 (a) other than cash, which he received, the value concerned shall be
16 the value of the property at that time; and

17 (b) which directly or indirectly represents in his hands the property
18 which he received, the value concerned shall be the value of the property, in so
19 far as it represents the property which he received at the time.

20 (4) For the purposes of subsection (1) of this section, an obligation has
21 priority at the time of the making of the relevant confiscation order if-

22 (a) it is an obligation of the defendant, where he has been convicted
23 by a court of any offence to pay-

24 (i) a fine imposed before that time by the court, or

25 (ii) any other amount under any resultant order made before that time
26 by the court;

27 (b) it is an obligation where-

28 (i) the estate of the defendant had at that time been made subject to any
29 court order; or

30 (ii) the defendant is a company or other juristic person, where such

1 company or juristic person is at that time being wound up, would be payable
2 in pursuance of any secured or preferred claim against the insolvent estate or
3 against such company or juristic person, as the case may be.

4 (5) The Court shall not determine the amounts realisable as
5 contemplated in subsection (1) of this section unless it has afforded all
6 persons holding any interest in the property concerned an opportunity to
7 make representations to it in connection with the realisation of that property.

8 (6) Where there is no amount that may be realised, the Court may
9 make an order for a nominal amount.

10 85.-(1) Subject to the provisions of subsection (2) of this section,
11 the following property shall be realisable under this Part, namely-

Realisable
property

12 (a) any property held by the defendant concerned;

13 (b) any property held by a person to whom that defendant has
14 directly or indirectly made any affected gift; and

15 (c) subject to section 94 of this Act, any property which is subject to
16 the effective control of the defendant.

17 (2) Property shall not be realisable property where a declaration of
18 forfeiture is in force in respect of the property.

19 86.-(1) For the purposes of this Part, the value of property, other
20 than money, in relation to any person holding the property shall be, where-

Value of
property

21 (a) any other person holds an interest in the property, the market
22 value of the property less the amount required to discharge any
23 encumbrance on the property; and

24 (b) no other person holds an interest in the property, the market
25 value of the property.

26 (2) Notwithstanding the provisions of subsection (1) of this
27 section, any reference in this Part to the value at a particular time of a
28 payment or reward, shall be construed as a reference to-

29 (a) the value of the payment or reward at the time when the
30 recipient received it, as adjusted to take into account subsequent fluctuations

1 in the value of money; or

2 (b) where subsection (3) of this section applies, the value mentioned
3 in that subsection, whichever is greater in value.

4 (3) Where at the particular time referred to in subsection (2) of this
5 section the recipient holds-

6 (a) property, other than cash, which he received, the value concerned
7 shall be the value of the property at the particular time; or

8 (b) property which directly or indirectly represents in his hands the
9 property which he received, the value concerned shall be the value of the
10 property, in so far as it represents the property which he received, at the
11 relevant time.

Gifts made by
a defendant

12 87.-(1) For the purposes of this Act, a defendant shall be deemed to
13 have made a gift where he has transferred any property to any other person
14 directly or indirectly for a consideration, the value of which is significantly less
15 than the value of the consideration supplied by the defendant.

16 (2) For the purposes of section 84(2) of this Act, the gift, which a
17 defendant is deemed to have made shall consist of that share in the property
18 transferred by the defendant that is equal to the difference between the value of
19 that property as a whole and the consideration received by the defendant in
20 return.

21 (3) For the purposes of this Act, "affected gift" means any gift made
22 by the defendant concerned-

23 (a) not more than six years before the prescribed date; or

24 (b) at any time, where it was a gift of property-

25 (i) received by that defendant in connection with an offence
26 committed; or

27 (ii) any part which directly or indirectly represented in that
28 defendant's hands property received by him in connection with an offence
29 committed by him or any other person, whether any such gift was made before
30 or after the commencement of this Act.

1 (4) For the purpose of this Part, 'prescribed date' in relation to a
2 defendant means, where-

3 (a) a prosecution for an offence has been instituted against the
4 defendant, it means the date on which such prosecution has been instituted;

5 (b) a restraint order has been made against the defendant, it means
6 the date of such restraint order, whichever is earlier.

7 88.-(1) The Agency or authorised prosecutor may, or where so
8 directed by the Court, tender to the Court a statement in writing under oath or
9 affirmation by an authorised person in connection with any matter which is
10 being enquired into by the Court under section 82 of this Act, or which
11 relates to the determination of the value of a defendant's proceeds of
12 unlawful activities.

Statements
relating to proceeds
of unlawful
activities

13 (2) A copy of such statement shall be served on the defendant or his
14 representative at least fourteen days before the date on which that statement
15 is to be tendered to the Court.

16 (3) A defendant may dispute the correctness of any allegation
17 contained in a statement referred to in subsection (1) of this section, and
18 where the defendant disputes the correctness of any such allegation, he shall
19 state the grounds on which he relies.

20 (4) Where a defendant does not dispute the correctness of any
21 allegation contained in such statement, that allegation shall be deemed to be
22 conclusive proof of the matter to which it relates.

23 (5) A defendant may, or where so directed by the Court, tender to
24 the Court a statement in writing under oath or affirmation by him or by any
25 other person in connection with any matter that relates to the determination
26 of the amount that might be realised as contemplated in section 84(1) of this
27 Act.

28 (6) A copy of the statement referred to in subsection (5) of this
29 section shall be served on the Agency or authorised prosecutor at least

1 fourteen days before the date on which that statement is to be tendered to the
2 Court.

3 (7) The Agency or authorised prosecutor may admit the correctness
4 of any allegation contained in a statement referred to in subsection (5) of this
5 section, and where the Agency or authorised prosecutor admits the correctness
6 of any allegation contained in such statement, that allegation shall be deemed
7 to be conclusive proof of the matter to which it relates.

Evidence relating
to proceeds of
unlawful activities

8 89.-(1) For the purposes of determining whether a defendant has
9 derived a benefit under section 82(1) of this Act, where it is found that the
10 defendant did not at the prescribed date, or since the beginning of a period of six
11 years before the prescribed date, have legitimate sources of income sufficient
12 to justify the interests in any property that the defendant holds, the Court shall
13 accept this fact as prima facie evidence that the interests form part of the
14 benefit.

15 (2) For the purposes of section 82(1) of this Act, where it is found that
16 the Court had ordered the defendant to disclose any facts under section 51(3) of
17 this Act and that the defendant had without sufficient cause failed to disclose
18 such facts or had, after being so ordered, furnished false information, knowing
19 such information to be false or not believing it to be true, the Court shall accept
20 these facts as prima facie evidence that any property to which the information
21 relates

22 (a) forms part of the defendant's benefit, in determining whether he
23 has derived a benefit from an offence; or

24 (b) is held by the defendant as an advantage, payment, service or
25 reward in connection with the offences or related unlawful activities referred to
26 under section 82(1) of this Act.

27 (3) For the purposes of determining the value of a defendant's
28 proceeds of unlawful activities under section 83(1) of this Act, where the Court
29 finds that he has benefited from an offence and that

30 (a) he held property at any time, or since, his conviction; or

1 (b) property was transferred to him at any time since the beginning
2 of a period of six years before the prescribed date, the Court shall accept
3 these facts as prima facie evidence that the property was received by him at
4 the earliest time at which he held it, as an advantage, payment, service or
5 reward in connection with the offences or related unlawful activities
6 referred to in section 82(1) of this Act.

7 (4) For the purpose of determining the value of any property under
8 section 82(1) of this Act, where a Court finds out that the defendant received
9 property at any time as an advantage, payment, service or reward in
10 connection with the offences or related unlawful activities referred to in that
11 section, whether committed by him or by any other person, the Court shall
12 accept this fact as prima facie evidence that he received that property free of
13 any other person's interest in it.

14 (5) Where, at the hearing of an application for a confiscation order
15 in relation to an offence concerning a narcotic substance, the value of the
16 substance is brought into question, an investigating officer from the relevant
17 organisation who is experienced in the investigation of the specified offence
18 may testify, to the best of his knowledge, information and belief, with
19 respect to the-

20 (a) market value, at the time of the offence, of similar or
21 substantially similar narcotic substances; and

22 (b) amount that was, or the range of amounts that were, ordinarily
23 paid for the doing of a similar or substantially similar act or thing.

24 (6) Evidence given in subsection (5) of this section is prima facie
25 evidence of the matters testified.

26 90.-(1) Where the Court is satisfied that-

27 (a) a person-

28 (i) had been charged with an offence;

29 (ii) had been convicted of any offence;

30 (iii) has had a restraint order made against him; or

Procedure where
a person absconds
or dies

1 (iv) can be tried for an offence on the grounds that sufficient evidence
2 exists against him; and

3 (b) a warrant for his arrest had been issued and that the attendance of
4 that person in Court could not be secured after all reasonable steps were taken
5 to execute that warrant;

6 (c) the proceedings against him cannot be resumed within a period of
7 six months due to his continued absence; and

8 (d) there are reasonable grounds to believe that a confiscation order
9 would have been made against him were it not for his continued absence, the
10 Court may, on the application by the Agency, enquire into any benefit the
11 person may have derived from that offence.

12 (2) Where a defendant who has been convicted of an offence dies
13 before a confiscation order is made, the Court may, on the application by the
14 Agency, and if the Court is satisfied that there are reasonable grounds to believe
15 that a confiscation order would have been made against him were it not for his
16 death, enquire into any benefit the deceased may have derived from that
17 offence.

18 (3) The executor of the estate of the deceased shall be entitled to
19 appear before the Court and make representations for purposes of the enquiry
20 referred to in subsection (2) of this section.

21 (4) The Court in conducting an enquiry under this section may-

22 (a) where the Court finds that the defendant or deceased referred to in
23 subsection (1) or (2) of this section has so benefited, make a confiscation order
24 and the provisions of this Part shall, with the necessary changes, apply to the
25 making of the order;

26 (b) where an asset manager has not been appointed in respect of any of
27 the property concerned, direct the Agency to appoint an asset manager in
28 respect of realisable property; and

29 (c) authorise the realisation of the property concerned.

30 (5) The Court shall not exercise its powers under subsection (4) (a)

1 and (c) of this section, except it has afforded a person having any interest in
2 the property concerned an opportunity to make representations to it in
3 connection with the making of any order.

4 (6) The Court in conducting an enquiry under this section shall not
5 apply sections 88 and 89 of this Act.

6 (7) Where a person, excluding a person contemplated in subsection

7 (1) (a) (ii) of this section against whom a confiscation order had been
8 made under subsection (4) of this section is subsequently tried and-

9 (a) convicted of one or more of the offences in respect of which the
10 order had been made, the Court convicting him may conduct an enquiry
11 under section 82 and make an appropriate order; or

12 (b) acquitted of an offence in respect of which the order had been
13 made, the Court acquitting him may make an appropriate order.

14 (8) The Court may make a determination under section 82 of this
15 Act against a person contemplated under subsection (1)(a) and (b) of this
16 section who absconded prior to an enquiry under section 82 of this Act and
17 who is subject to a confiscation order made under subsection (4) of this
18 section where that person is subsequently brought before the Court.

19 (9) The Court making a determination contemplated in subsection
20 (8) of this section shall take into account any order made under subsection
21 (4) of this section.

22 91.-(1) The Court that made a confiscation order may reconsider
23 the order where it believes it is appropriate, if, before the end of the period of
24 six years, starting with the date of conviction,-

25 (a) the Agency or authorised prosecutor applies to the Court to
26 consider evidence which was not available to the Agency or authorised
27 prosecutor at the time of the original confiscation hearing; and

28 (b) there is evidence which was not available to the Agency or
29 authorised prosecutor at the time of the original confiscation hearing;

30 (c) the Agency or authorised prosecutor believes that if the Court

Reconsideration
of the confiscation
order

1 were to determine the amount of the defendant's benefit in pursuance of this
2 section it would exceed the amount determined as the defendant's benefit in the
3 original confiscation hearing;

4 (d) notwithstanding the provisions of subsection (1) (c) of this
5 section, the Agency or authorised prosecutor believes that-

6 (i) the amount determined as the defendant's benefit in the original
7 confiscation hearing is greater than the amount of the confiscation order; and

8 (ii) if the Court were to determine the amount of the defendant's
9 realisable assets in pursuance of this section, it would exceed the amount
10 determined as the defendant's realisable assets in the original confiscation
11 hearing;

12 (e) before the end of the period of six years starting with the date of
13 conviction, the Agency or authorised prosecutor applies to the Court to
14 consider the evidence; and

15 (f) after considering the evidence, the Court believes it is appropriate
16 for it to proceed under this section.

17 (2) Where the Court is proceeding under subsection (1)(c) of this
18 section, it shall make a new calculation of the amount in respect of the
19 defendant's activities mentioned in section 82(1)(c) of this Act.

20 (3) Where the amount found under the new calculation mentioned in
21 subsection (2) of this section, exceeds the amount originally determined as the
22 defendant's benefit, the Court -

23 (a) shall make a new calculation of the defendant's realisable assets
24 for the purposes of section 82 of this Act; and

25 (b) if it exceeds the amount required to be paid under the original
26 confiscation order, may vary the order by substituting for the amount required
27 to be paid by such amount as it deemed fit and proper.

28 (4) Where the court is proceeding under subsection (1)(d) of this
29 section, it shall-

30 (a) make a new calculation of the defendant's realisable assets for the

1 purposes of section 82 of this Act; and

2 (b) if it exceeds the amount required to be paid under the
3 confiscation order, may vary the order by substituting for the amount
4 required to be paid an amount, not exceeding the amount as originally
5 determined within the provisions of section 83 of this Act, as it deemed fit
6 and proper.

7 (5) Section 89 of this Act shall not apply in making a determination
8 under this section.

9 (6) Where a Court applies subsection (2) or (3) of this section, it
10 shall have regard in particular to-

11 (a) any fine imposed on the defendant for the offence or any of the
12 offences concerned; and

13 (b) any other order made under this Act.

14 (7) In making a decision under this section, the Court shall, where
15 one amount exceeds another, take account of any variation in the value of
16 money.

17 **92.-(1)** An amount payable by a person to the Agency under a
18 confiscation order is a civil debt due by the person to the Agency on behalf of
19 the Federal Government.

Enforcement of
confiscation
orders

20 (2) A confiscation order against a person may be enforced as if it
21 were an order made in civil proceedings instituted by the Agency against a
22 person to recover a debt due by that person to the Agency on behalf of the
23 Federal Government.

24 (3) A debt arising from the order is deemed to be a judgment debt.

25 (4) Where a confiscation order is made against a person after his
26 death, this section shall have effect as if the person had died on the day after
27 the order was made.

28 (5) Where a person fails to satisfy any or part of a confiscation
29 order made by the Court, the Court may order that the person against whom
30 the order was made be committed to prison in addition to any other sentence

1 prescribed under this Act.

2 (6) The period of imprisonment referred to under subsection (5) of
3 this section shall be as prescribed in Schedule II to this Act.

Variation of
confiscation
order

4 93.-(1) Where the Court has made a confiscation order, the Agency,
5 authorised prosecutor or the defendant may apply to the Court to vary the order
6 under this section.

7 (2) In considering an application under subsection (1) of this section,
8 the Court shall calculate the available amount and in doing so shall apply
9 section 84 of this Act as if references to the time the confiscation order is made
10 were to the time of the calculation and as if references to the date of the
11 confiscation order were made to the date of the calculation.

12 (3) Where the Court finds that the available amount as so calculated is
13 inadequate for the payment of any amount remaining to be paid under the
14 confiscation order, it may vary the order by substituting for the amount
15 required to be paid, a smaller amount as the Court believes is just.

16 (4) Where a person has been adjudged bankrupt or his estate has been
17 sequestrated, or where an order for the winding up of a company has been
18 made, the Court shall take into account the extent to which the realisable
19 property held by that person or that company may be distributed amongst
20 creditors.

21 (5) The Court may disregard any inadequacy that it believes is
22 attributable, wholly or partly, to anything done by the defendant for the purpose
23 of preserving property held by the recipient of an affected gift from any risk of
24 realisation under this Part.

Property subject
to a person's
effective control

25 94.-(1) Where-

26 (a) a person is subject to a confiscation order;

27 (b) the Agency or authorised prosecutor applies to the Court for an
28 order under this section; and

29 (c) the Court is satisfied that any particular property is subject to the
30 effective control of the person referred to in paragraph (a) of this subsection,

1 the Court may make an order declaring that the whole, or a specified part of
2 that property be made available to satisfy the confiscation order.

3 (2) The order under subsection (1) of this section may be enforced
4 against the property as if the property were the person's property.

5 (3) A restraint order may be made in respect of a property as if -

6 (a) the property were the person's property; and

7 (b) the person had committed an offence.

8 (4) Where the Agency or authorised prosecutor applies for an order
9 under subsection (1) of this section relating to a particular property, it shall
10 give written notice of the application to -

11 (a) the person who is subject to the confiscation order; and

12 (b) any person whom the Agency or authorised prosecutor has
13 reason to believe may have an interest in the property.

14 (5) A person who is subject to the confiscation order, and any
15 person who claims an interest in the property, may appear and adduce
16 evidence at the hearing of the application.

17 (6) Any person claiming an interest under subsection (5) of this
18 section shall give written notice to the Agency or authorised prosecutor of
19 the claim and the grounds on which the claim is based at least seventy-two
20 hours before the date of the hearing.

21 95.-(1) Subject to subsections (2) and (3) of this section, a
22 confiscation order made in relation to a person's conviction for an offence is
23 discharged.

24 (a) if the person's conviction for any of the offences to which the
25 order relates is subsequently quashed; and

26 (b) the Agency or authorised prosecutor does not, within fourteen
27 working days after the conviction is quashed, apply to the court that made
28 the order for the order to be confirmed or varied.

29 (2) Unless and until the Court decides otherwise on such an

Discharge of
confiscation
order where
made in relation
to a conviction

1 application, the quashing of the conviction does not affect the confiscation
2 order:

3 (a) for fourteen working days after the conviction is quashed; and

4 (b) if the Agency or authorised prosecutor makes an application
5 referred to in subsection (1)(b) of this section.

6 (3) The Agency or authorised prosecutor may make an application to
7 confirm the order and an application to vary the order, and the court may hear
8 both applications at the same time.

9 (4) The Agency or authorised prosecutor may apply to the Court for
10 the period mentioned under subsection (2) of this section to be extended in
11 exceptional circumstances.

12 (5) A confiscation order made in relation to a person's conviction for
13 an offence is discharged where the-

14 (a) person's conviction of the offence is subsequently quashed; and

15 (b) order does not relate to any other offence.

16 PART VI - PROCEEDS OF CRIMES RECOVERY AND MANAGEMENT AGENCY

Establishment of
the Proceeds of
Crimes Recovery
and Management
Agency

17 96.-(1) There is established a body to be known as the Proceeds of
18 Crimes Recovery and Management Agency (in this Act referred to as "the
19 Agency").

20 (2) The Agency-

21 (a) is a body corporate with perpetual succession and a common seal;

22 (b) may sue and be sued in its corporate name; and

23 (c) may acquire, hold, purchase, mortgage and deal howsoever with
24 property, movable or immovable, real or personal, subject to the provisions of
25 the Land Use Act.

26 (3) The Agency shall be independent in the discharge of its duties
27 under this Act.

28 (4) The common seal of the Agency shall be kept in the custody of
29 such person as the Board may direct and shall be authenticated by the signature
30 of the Director - General or such other officer as the Board may designate.

- 1 97. The principal objects of the Agency are to- Objectives of
2 (a) enforce and administer the provisions of this Act; the Agency
3 (b) co-ordinate and enforce all other laws on the investigation,
4 identification, tracing and recovery of the proceeds and instrumentalities of
5 unlawful activity and the recovery and the management of proceeds of
6 crime; and
7 (c) regulate, supervise and ensure the effective administration of
8 recovery and management of proceeds of crime and other related matters in
9 Nigeria.
- 10 98.-(1) There is established, a part-time Governing Board for the Governing Board
11 Agency (referred to as "the Board"). of the Agency
- 12 (2) The Board shall consist of the following members-
- 13 (a) a part time Chairman;
- 14 (b) a representative not below the rank of a Director or its
15 equivalent from each of the following Ministries and institutions-
- 16 (i) Attorney-General of the Federation;
- 17 (ii) Federal Ministry of Finance;
- 18 (iii) Accountant-General of the Federation;
- 19 (iv) Central Bank of Nigeria;
- 20 (v) Economic and Financial Crimes Commission;
- 21 (vi) National Drug Law Enforcement Agency;
- 22 (vii) Independent Corrupt Practices and Other Related Offences
23 Commission;
- 24 (viii) Code of Conduct Bureau;
- 25 (ix) National Agency for the Prohibition of Trafficking in Persons;
- 26 (x) Nigeria Customs Service; and
- 27 (xi) Nigeria Police;
- 28 (c) two other part time members with cognate experience in the
29 recovery and management of proceeds of crimes, one of which shall be a
30 representative of the civil society; and

1 (d) the Director - General of the Agency, who shall also be the
2 secretary to the Board.

3 (3) The Chairman shall have at least twenty years cognate experience
4 in the area of law, accounting, finance, public or business administration.

5 (4) The Chairman and other members of the Board other than ex-
6 officio members and the Director-General shall-

7 (a) be appointed by the President on the recommendation of the
8 Attorney-General of the Federation;

9 (b) hold office for a term of four years; and

10 (c) be eligible for re-appointment for another term of four years and
11 no more.

12 (5) The Board may co-opt any person to attend and participate at any
13 of its meetings provided that the person so co-opted shall only be in attendance
14 and shall not count towards the quorum or votes at the meeting.

15 (6) The office of a member of the Board shall become vacant where-

16 (a) his term of office expires;

17 (b) he resigns his office by a notice in writing under his hand
18 addressed to the President;

19 (c) he dies;

20 (d) he is incapable of performing the functions of his office due to
21 mental or physical illness;

22 (e) he has been convicted of a felony or any offence involving
23 dishonesty;

24 (f) he is guilty of gross misconduct relating to his duties; or

25 (g) the President directs the removal of a member where he is
26 satisfied that it is not in the interest of the Agency or of the public for the person
27 to continue in office as a member of the Board; or

28 (h) in the case of an ex - officio member, he ceases to hold the office
29 on the basis of which he became a member of the Board.

30 (7) Where a vacancy occurs in the membership of the Board, it shall

1 be filled by an appointment by the President of a successor to hold office for
2 the remainder of the term of office of his predecessor and the successor shall
3 represent the same interest as that member whose exit created the vacancy.

4 (8) The provisions of the Schedule to this Act shall have effect with
5 respect to the proceedings of the Board and other matters mentioned under
6 this Act.

7 (9) The Board shall-

8 (a) formulate and provide general policy guidelines for the
9 discharge of the functions of the Agency;

10 (b) monitor and ensure the implementation of the policies and
11 programmes of the Agency; and

12 (c) carry out such other functions as are necessary or expedient to
13 ensure the efficient performance of the functions of the Agency under this
14 Act.

15 99.-(1) There shall be for the Agency, a Director-General who shall
16 be appointed by the President on the recommendation of the Attorney-
17 General.

Management and
staff of the Agency

18 (2) A person shall not be appointed as the Director-General, except
19 he has a recognised degree in law, accounting, finance, public
20 administration, business administration or economics with at least fifteen
21 years cognate experience, five of which shall be at senior management level.

22 (3) The Director-General shall hold office-

23 (a) for a period of four years subject to re-appointment by the
24 President on the recommendation of the Attorney-General for a further term
25 of four years and no more; and

26 (b) on such other terms and conditions as may be specified in his
27 letter of appointment.

28 (4) The Director-General shall be the chief executive of the
29 Agency and be responsible for-

30 (a) the day-to-day administration of the Agency;

- 1 (b) the execution of the policies of the Agency;
- 2 (c) the organisation, control and management of the affairs of the
- 3 Agency;
- 4 (d) the implementation of the Agency's functions and ensuring that it
- 5 achieves its goals;
- 6 (e) the direction, supervision and control of other employees of the
- 7 Agency; and
- 8 (f) ensuring the transparent maintenance of accounting records in
- 9 accordance with applicable laws governing statutory bodies.

Other employees
of the Agency
and conditions
of service

10 **100.-(1)** The Agency shall appoint, designate or cause to be deployed,

11 directly or on secondment from any public or private bodies such number and

12 category of employees as it may require to assist it in the effective discharge of

13 its duties and functions under this Act.

14 (2) The Board shall be responsible for determining the job

15 description, title, terms, qualifications and salaries, including allowances of

16 the employees of the Agency, subject to the approval of the National Income,

17 Salaries and Wages Commission in the case of remunerations.

18 (3) The Board shall make rules relating generally to the conditions of

19 service of employees of the Agency, including rules providing for the

20 appointment, promotion, advancement, determination of appointment, and

21 disciplinary control, of those employees.

22 (4) Service in the Agency shall be subject to the Pension Reform Act,

23 provided that nothing in this section shall exclude the Agency from employing

24 staff on non-pensionable terms and conditions.

25 (5) The Agency has powers to-

26 (a) set up Departments, Special Units, technical committees, working

27 groups and task forces to assist the Agency in the performance of its duties and

28 functions under this Act; and

29 (b) make changes to its structure, from time to time, with the approval

30 of the Board.

1 (6) There shall be appointed for each of the Departments and
2 Special Units, a principal officer who shall be known by such designation as
3 the Agency may determine.

4 **101. The Agency shall-**

Functions and
powers of the
Agency

5 (a) implement, enforce and duly administer the provisions of this
6 Act;

7 (b) adopt measures for the effective investigation and tracing of
8 proceeds of crimes;

9 (c) oversee the management of recovered assets;

10 (d) authorise and appoint private asset managers and ensure that
11 assets managers are properly bonded and insured;

12 (e) ensure transparency in the appointment of asset managers,
13 monitoring asset and management costs;

14 (f) establish and maintain-

15 (i) disposal systems;

16 (ii) lists of approved auctioneers and valuers, and issue instructions
17 for the realisation or security of assets whilst ensuring fair process.

18 (g) establish and maintain a central database of the activities and
19 casework of the Agency, all seized and recovered assets and of the asset
20 managers and auctioneers, insurers and other necessary support services;

21 (h) negotiate the return and management of all assets seized by
22 foreign countries on behalf of the Federal and State Governments for the
23 benefit of Nigerians under the direction of the Attorney-General of the
24 Federation;

25 (i) recommend that in exceptional circumstances, a portion not
26 exceeding two per cent of the recovered proceeds of offences be allocated to
27 the agency responsible for the recovery of the proceeds for operational
28 expenses;

29 (j) recommend the proper application of all returned assets and
30 proceeds of unlawful activities;

1 (k) collaborate with relevant organisations in the investigation of the
2 proceeds of unlawful activity or the instrumentalities of offences;

3 (l) maintain statistics as to amounts sought, managed and recovered
4 by the Agency;

5 (m) collaborate with other government bodies both within and
6 outside Nigeria that are carrying on functions wholly or in part analogous with
7 those of the Agency;

8 (n) have the custody and management of confiscated and forfeited
9 assets and funds pursuant to this Act;

10 (o) maintain an accurate inventory of all assets, recording their
11 location, value, condition, and a description of their status in relation to any
12 proceedings;

13 (p) establish training programmes for its staff, prosecutors, judicial
14 officers and financial investigators; and

15 (q) carry out such other activities as are necessary or expedient for the
16 full discharge of all or any of the functions conferred on it under this Act.

Powers of the
Agency

17 **102.**-(1) For the purpose of effectively managing seized, confiscated
18 and forfeited assets and funds, and in exercise of its administrative powers, the
19 Agency may, subject to the provisions of this Act, execute such agreements or
20 contracts as it considers necessary and, in particular may-

21 (a) engage contractors, consultants, brokerage companies,
22 investment advisers, financial investigators and other experts for the effective
23 discharge of its functions under this Act; and

24 (b) order the disposal of assets that are perishable or susceptible to
25 deterioration, or whose maintenance or administration may be excessively
26 onerous or expensive leading to a diminution of the recoverable amount.

27 (2) Where seized assets are disposed under subsection (1)(b) of this
28 section, the proceeds from the disposal shall be deposited and maintained in an
29 interest bearing account that guarantees the reasonable preservation of its
30 economic value, until such time as a final judicial decision is taken.

1 (3) The Agency may do anything it considers appropriate for
2 facilitating, or which is incidental or conducive to the performance of the
3 functions of the Agency.

4 103.-(1) In the performance of its functions under this Act, the
5 Agency shall cooperate with relevant organisations, financial supervisory
6 institutions and any other person or authority involved in the investigation
7 and prosecution of crimes under this Act or any other law relating to the
8 recovery of unlawful activities.

Co-operation with
other bodies

9 (2) The Agency shall have power to require any relevant
10 organisation or authority to surrender to it, any proceedings for the recovery
11 of the proceeds or instrumentalities of unlawful activities by the relevant
12 organisation or authority.

13 104. Where at the commencement of an investigation for an
14 offence or where in the course of an investigation, it appears to a relevant
15 organisation that there is a reasonable prospect of recovering the proceeds or
16 instrumentalities of unlawful activity or assets, the organisation shall inform
17 the Agency and shall take such measures as are necessary under this Act to
18 recover those proceeds or instrumentalities of unlawful activity or assets.

Information
relating to the
recovery of
proceeds of crime

19 105. There is established for the Agency a fund comprising of-

Fund of the
Agency

20 (a) take off grants, annual subventions and other budgetary
21 allocations received from the Federal Government;

22 (b) such monies as may, from time to time, be granted to the
23 Agency by the Government of the Federation;

24 (c) gifts, grants, aids, and testamentary disposition, if the terms and
25 conditions attached to any of them are not inconsistent with the functions of
26 the Agency;

27 (d) five per cent of the annual total amount realized from proceeds
28 of unlawful activities that has been paid into the Confiscated and Forfeited
29 Properties Account; and

30 (e) such other sums of monies as may be received by the Agency

1 from other sources.

Expenditure of
the Agency

2 106. The Director-General, under the direction of the Board, shall,
3 from time to time, apply the funds at the disposal of the Agency to-

4 (a) the cost of administration of the Agency;

5 (b) pay the salaries, allowances and benefits of employees of the
6 Agency;

7 (c) pay other overhead allowances and benefits and other
8 administrative costs, charges and expenses of the Agency; and

9 (d) undertake such other activities as are connected with the functions
10 of the Agency under this Act.

Estimates of
the Agency

11 107.-(1) The Agency shall not later than 30th September in each
12 financial year prepare and present to the Attorney-General for onward
13 transmission to the National Assembly, a statement of estimated income and
14 expenditure for the following financial year.

15 (2) Notwithstanding the provisions of subsection (1) of this section,
16 the Agency may, where necessary due to unforeseen circumstances, submit
17 supplementary or adjusted statements of estimated income and expenditure to
18 the Attorney-General for onward transmission to the National Assembly for
19 approval.

Accounts and
audit

20 108.-(1) The Agency shall keep proper and regular accounts and other
21 records of monies received and paid by the Agency and of the several purposes
22 for which the monies have been received or paid, and of its assets, credits and
23 liabilities.

24 (2) The Agency shall do all things necessary to ensure that all
25 payments out of its funds and bank accounts are correctly made and properly
26 authorised and that adequate control is maintained over the assets in its custody
27 and over the expenditures incurred by the Agency.

28 (3) The Agency shall, within the first four months of each financial
29 year, submit its accounts to auditors appointed by the Agency from the list and
30 in accordance with guidelines approved by the Auditor-General of the

1 Federation, its accounts for audit.

2 (4) As soon as the accounts and the financial statements of the
3 Agency have been audited in accordance with the requirement of this Act,
4 the Board shall forward a copy of the audited financial statements to the
5 Attorney -General for onward transmission to the National Assembly,
6 together with any report or observations made by the auditors and the
7 Auditor-General on the statement of accounts.

8 (5) The remuneration of the auditor shall be paid out of the funds of
9 the Agency.

10 (6) The audited accounts of the Agency and the Auditor-General's
11 report on those accounts shall form part of the Auditor-General's overall
12 annual report to the National Assembly.

13 109.-(1) The Director-General shall, not later than 30th June in Annual report
14 each financial year, submit to the Board in respect of the preceding financial
15 year an annual report on the activities of the Agency in such form as the
16 Board may direct.

17 (2) The report under subsection (1) of this section, shall include-

18 (a) information with regard to the activities of the Agency in that
19 year;

20 (b) a copy of the audited accounts of the Agency in respect of that
21 year together with the Auditor-General's report on the accounts; and

22 (c) such other information as the Board may request.

23 (3) The Board shall, on receiving the annual report, cause it to be
24 submitted to the Attorney - General for onward transmission to the National
25 Assembly within the financial year.

26 (4) The Director-General shall from time to time, provide the
27 Board with such information relating to the affairs of the Agency as the
28 Board may request.

29 PART VII - INVESTIGATION, SEARCH AND SEIZURE

30 110.-(1) This Part applies to all relevant organisations in the Production orders

1 conduct of investigations, searches, and seizures in connection with the
2 recovery of proceeds of unlawful activities under the applicable Acts.

3 (2) In addition to existing powers in existing legislation, a relevant
4 organisation may apply the provisions of this Part as they relate to the operation
5 of the relevant organisation.

6 (3) For the purpose of this Part-

7 (a) a forfeiture investigation is an investigation into whether property
8 constitutes or is derived from the proceeds of an unlawful activity or is the
9 instrumentality of an offence; and

10 (b) a confiscation investigation is an investigation into whether a
11 person has benefited from unlawful activity.

12 (4) A relevant organisation shall, in its application of this Part, inform
13 the Agency of any investigation, search or seizure being conducted by it.

Making
production orders

14 **111.**-(1) The Court may, on an ex-parte application made to it by the
15 Agency or relevant organisation, make an order requiring the production of
16 specified material within a specified period, if the Court is satisfied that each of
17 the requirements for the making of the order is fulfilled.

18 (2) The requirements for making the order are, there are reasonable
19 grounds to suspect, that-

20 (a) a person has property constituting or derived from the proceeds of
21 an unlawful activity;

22 (b) a person has derived a benefit from an offence or unlawful
23 activity; and

24 (c) the material sought, by itself or together with other material, is
25 likely to be of substantial value into a specified investigation.

Application for
a production
orders

26 **112.**-(1) An application for a production order shall confirm that-

27 (a) the order is sought for the purposes of investigation;

28 (b) a person specified in the application appears to be in possession or
29 control of the material; and

30 (c) the material sought for is not subject to legal privilege.

1 (2) In consideration of legal privilege or any other claimed client
2 privilege, the following items shall not be subject to that privilege any
3 material in relation to-

- 4 (i) the purchase or sale of property;
5 (ii) the purchase or sale of any business;
6 (iii) the purchase or sale of any high-value item;
7 (iv) any investment;
8 (v) any matter concerning the payment of any tax;
9 (vi) any matter concerning the transfer of any funds whatsoever;
10 (vii) any client account;
11 (viii) the formation or conduct of any trust;
12 (ix) any paid fees or retainer fees; and
13 (x) anything produced in the furtherance of any unlawful activity.

14 (3) An application for a production order may be made to a Judge in
15 Chambers.

16 113.-(1) A production order is an order either requiring-

17 (a) the person specified in the application as appearing to be in
18 possession or control of the material to produce the material to an authorised
19 officer for him to take away; or

20 (b) the person mentioned in paragraph (a) of this subsection to give
21 an authorised officer access to the material within the period stated in the
22 order.

23 (2) The specified period stated in a production order may be a
24 period of seven days beginning on the day on which the order is made,
25 except it appears to the Court making the order that a longer or shorter period
26 would be appropriate in the particular circumstances.

27 (3) A matter to which the Court shall have regard for the purposes
28 of deciding whether an earlier time is appropriate under subsection (2) of
29 this section are-

30 (a) the urgency of the situation; and

Access to
material sought

	1	(b) any hardship that may be caused to the person required by the
	2	production order to produce documents or make documents available.
Contents of production orders	3	114. A production order shall-
	4	(a) specify the form and manner in which the documents are to be
	5	produced; and
	6	(b) set out the effect of section 122 of this Act.
Powers under production orders	7	115. An authorised officer may inspect, take extracts from, or make
	8	copies of a document produced or made available under a production
	9	order.
Retaining produced documents	10	116. -(1) An authorised officer may retain a document produced under
	11	a production order for as long as is necessary for the purposes of this Act.
	12	(2) The person to whom a production order is given may require the
	13	authorised officer to-
	14	(a) certify in writing a copy of the document retained to be a true copy
	15	and give the person the copy; or
	16	(b) allow the person to do one or more of the following-
	17	(i) inspect the document;
	18	(ii) take extracts from the document; and
	19	(iii) make copies of the document.
Documents in possession, etc. of Government departments	20	117. -(1) A production order may be made in relation to material in the
	21	possession or control of a government department.
	22	(2) A production order-
	23	(a) so made may require any officer of the department, whether
	24	named in the order or not, who may for the time being be in possession or
	25	control of the material to comply with it; and
	26	(b) containing the requirement referred to in paragraph (a) of this
	27	subsection shall be served as if the proceedings were civil proceedings against
	28	the department.
	29	(3) Where a production order contains the requirement referred to in
	30	subsection (2)(a) of this section-

1 (a) the person on whom it is served shall take all reasonable steps to
2 bring it to the attention of the officer concerned; or

3 (b) any other officer of the department who is in receipt of the order
4 shall take all reasonable steps to bring it to the attention of the officer
5 concerned.

6 (4) Where the production order is not brought to the attention of the
7 officer concerned within the period stated in the order, the person on whom it
8 is served shall report the reasons for the failure to the Court that issued the
9 order.

10 118.-(1) This section applies where any of the material specified in
11 an application for a production order consists of information contained in a
12 computer.

Computer
information

13 (2) Where an order requires a person to produce a material to an
14 authorised officer for him to take away, it has effect as an order to produce
15 the material in a form in which it can be taken away by him and in which it is
16 visible and legible.

17 (3) Where an order requires a person to give an appropriate officer
18 access to a material, it has effect as an order to give the officer access to the
19 material in a form in which it is visible and legible.

20 119. A person shall not be excused from producing a document or
21 making a document available under a production order on the ground that-

Prohibition of
privilege against
self-incrimination

22 (a) to do so would tend to incriminate or expose the person to a
23 penalty; or

24 (b) producing the document or making it available would breach an
25 obligation, whether imposed by an enactment or otherwise, of the person not
26 to disclose the existence or contents of the document.

27 120. A person who in connection with an application for a
28 production order makes a statement which-

Making false
statements in
applications

29 (a) is deliberately false or misleading, or

30 (b) deliberately omits any matter or thing without which the

1 statement is misleading, commits an offence and is liable on conviction to a
2 fine of not less than one million naira or to imprisonment for a term of not less
3 than twelve months or to both.

Order of grant
entry

4 **121.**-(1) This section shall apply where the Court makes a production
5 order requiring a person to give an authorised officer access to the material on
6 any premises.

7 (2) The Court may, on an application made to it by an authorised
8 officer and specifying the premises, make an order to grant entry in relation to
9 the premises.

10 (3) The order to grant entry under this section, is an order requiring
11 any person who appears to an authorised officer to be entitled to grant entry to a
12 premises, to allow the authorised officer to enter the premises to obtain access
13 to the material.

Offences of
actions
detrimental to
the investigation

14 **122.**-(1) This section applies where a person knows or suspects that an
15 authorised officer or any other officer of a relevant organisation is acting, or is
16 about to act, in connection with an investigation under section 110 of this Act,
17 or a money laundering investigation within the provisions of the Money
18 Laundering (Prohibition) Act.

19 (2) A person commits an offence where he-

20 (a) makes a disclosure which is likely to be detrimental to the
21 investigation; or

22 (b) falsifies, conceals, destroys or disposes of, or causes or permits the
23 falsification, concealment, destruction or disposal of, documents which are
24 relevant to an investigation.

25 (3) A person does not commit an offence under subsection (2)(a) of
26 this section, where-

27 (a) he does not know or suspect that a disclosure is likely to be
28 detrimental to an investigation; or

29 (b) the disclosure is made in the exercise of a function under this Act
30 or in compliance with a requirement imposed under-

- 1 (i) or by virtue of this Act;
- 2 (ii) the Money Laundering (Prohibition) Act; or
- 3 (iii) the Terrorism (Prevention) Act.

4 (4) A person does not commit an offence under subsection (2)(b) of
5 this section where he does not-

6 (a) know or suspect that the documents are relevant to the
7 investigation; or

8 (b) intend to conceal any facts disclosed by the documents from an
9 authorised officer.

10 (5) A person found guilty of an offence under subsection (2) of this
11 section is liable on conviction to a fine of not less than five million naira or
12 imprisonment for a term of not less than two years or to both.

13 123.-(1) The Court may, on an ex-parte application made to it by
14 the Agency or relevant organisation, issue a search and seizure warrant
15 where it is satisfied that each of the requirements for the making the order is
16 fulfilled.

Search and
seizure warrants

17 (2) The requirements for the issue of a search and seizure warrant
18 under subsection (1) of this section are that-

19 (a) the requirements for the issue of a production order under
20 section 111 of this Act are satisfied;

21 (b) an investigation as specified in section 110 of this Act is being
22 conducted;

23 (c) there are reasonable grounds to believe that there is on the
24 premises-

25 (i) material likely to be of substantial value, by itself or together
26 with other material, to the investigation;

27 (ii) material relating to a specified person which is likely to be of
28 substantial value, whether by itself or together with other material, to the
29 investigation, but that the material cannot at the time of the application be
30 particularized;

1 (iii) property forming or derived from the proceeds of unlawful
2 activity; or

3 (iv) an instrumentality of an offence, which may be destroyed or
4 dissipated unless an authorised officer can secure immediate access to the
5 premises in order to preserve the property;

6 (d) a production order made under section 111 of this Act in relation to
7 material held on the premises has not been complied with; or

8 (e) it would not be practicable to make an order under section 111 of
9 this Act in relation to the material sought because-

10 (i) it is not practicable to communicate with any person entitled to
11 produce the material;

12 (ii) it is not practicable to communicate with any person entitled to
13 grant entry to the premises;

14 (iii) it is not practicable to communicate with any person entitled to
15 grant access to the material;

16 (iv) the investigation might be seriously prejudiced except an
17 authorised officer could secure immediate access to the material; or

18 (v) entry into the premises will not be granted except a warrant is
19 produced.

20 (3) A search and seizure warrant shall not confer the right to seize
21 material that is subject to legal privilege.

22 (4) In considering legal privilege, the items listed in section 112(2) of
23 this Act shall not be entitled to that privilege under this section.

24 (5) Where an authorised officer has entered premises in execution of a
25 warrant issued under this section, he may-

26 (a) seize and retain any material, other than an item subject to legal
27 privilege which is likely to be of substantial value, whether by itself or together
28 with other material, to the investigation;

29 (b) make a photographic or video record of the premises and its
30 contents;

1 (c) inspect, make copies of, take extracts from any book, record or
2 document;

3 (d) search any person who is in or on the premises, and for the
4 purpose of the search, detain the person and remove him to such place as
5 may be necessary to facilitate the search, and seize and detain any article
6 found on him; or

7 (e) stop, search and seize any vehicle or conveyance.

8 (6) A search warrant issued under this Part shall authorise a person
9 named in the warrant and any accompanying person to-

10 (a) enter the premises or any part of the premises by force where
11 necessary;

12 (b) detain any person found in or on any premises or in any
13 conveyance for the purpose of the search; and

14 (c) search for and seize any property under the direction of the
15 authorised officer in charge of the search.

16 (7) A person shall not be searched under this Act except by a person
17 who is of the same gender as the person to be searched.

18 (8) A warrant may authorise persons to accompany any authorised
19 officer who is executing it.

20 (9) An accompanying person under subsection (8) of this section
21 has the same powers as the officer whom he accompanies in respect of the-

22 (a) execution of the warrant; and

23 (b) seizure of anything to which the warrant relates, provided that
24 he may exercise those powers only in the company and under the
25 supervision of an authorised officer.

26 (10) A copy of a search warrant together with the details of the
27 persons conducting the search shall be handed to the person who appears to
28 be in charge of the premises or left in a conspicuous place where the
29 premises is unattended.

30 124.-(1) Where, in the course of an investigation mentioned in

Seizure of
property

1 section 110 of this Act, an authorised officer or officer of a relevant agency has
2 reasonable grounds to suspect that any movable or immovable property is-

3 (a) material which is mentioned in section 123(2)(c)(i) and (ii) of this
4 Act;

5 (b) property which is mentioned in section 123(2)(c)(iii) of this Act;

6 (c) an instrumentality which is mentioned in section 123(2)(c)(iv) of
7 this Act, he shall seize the property.

8 (2) A list of all movable or immovable property seized pursuant to
9 subsection (1) of this section and the location where the property was
10 discovered shall be prepared and signed by the officer effecting the seizure.

11 (3) A copy of the list referred to in subsection (2) of this section shall
12 be served as soon as possible, on the owner of the property and on the person
13 from whom the property was seized, if not the owner.

14 (4) Where it is not practicable or otherwise desirable to remove seized
15 property, it may be left in the custody of the person from whom it is seized
16 subject to an undertaking that the property shall be surrendered to the Agency
17 on demand.

18 (5) A person who has committed to an undertaking within the
19 provisions of subsection (4) of this section shall remain committed to that
20 undertaking until-

21 (a) notified in writing by the Agency or person authorised by the
22 Agency that he is relieved of the commitment; or

23 (b) he is served with a notice of a restraint order under section 57 of
24 this Act in connection with the property.

25 (6) Any person who commits to an undertaking within the provisions
26 of subsection (4) of this section commits an offence where he fails to surrender,
27 on demand, property subject to the undertaking or otherwise fails to comply
28 with any term or condition imposed under that subsection.

29 (7) A person found guilty of an offence under subsection (6) of this
30 section shall on conviction be liable to a fine not less than three times the value

1 of the property subject to the undertaking or a term of imprisonment of not
2 less than two years or to both.

3 125. Where any property is seized under this Act, the seizure shall
4 be effected by removing the property from the custody or control of the
5 person from whom it is seized and placing it under the custody of the Agency
6 or such person or authority as the Agency may determine.

Retention of
seized property

7 126. A person who-

8 (a) refuses an authorised officer access to any premises, or fails to
9 submit to a search by a person authorised to search him under this Act;

Obstructing the
execution of a
search and seizure
warrant

10 (b) assaults or obstructs any authorised officer or any
11 accompanying person mentioned in section 123 (6) of this Act in the
12 execution of the search and seizure warrant;

13 (c) conceals or attempts to conceal from, an authorised officer or
14 any accompanying person mentioned in section 123 (6) of this Act, any
15 book, document, or article, in relation to which the officer has reasonable
16 grounds for suspecting or believing that an offence under an applicable Act
17 has been or is being committed, or which is liable to seizure under this Act;

18 (d) rescues or endeavours to rescue or causes to be rescued any
19 person who has been duly arrested or anything which has been duly seized;

20 (e) destroys anything to prevent its seizure or securing of the thing,
21 commits an offence and is liable on conviction to a term of imprisonment not
22 less than two years without the option of a fine.

23 127.-(1) The Court may, on an application made to it by the Agency
24 or an authorised officer, make a customer information order if he is satisfied
25 that each of the conditions for making of the order is fulfilled.

Customer
information
orders

26 (2) The conditions for the issue of a customer information order are
27 that-

28 (a) a person specified in the application is subject to an
29 investigation of the type specified in section 110 of this Act;

30 (b) that a specified person has-

- 1 (i) property constituting or derived from the proceeds of an unlawful
2 activity; or
- 3 (ii) derived a benefit from unlawful activity;
- 4 (c) the person named in the application for the order is subject to-
- 5 (i) a money laundering investigation within the provisions of the
6 Money Laundering (Prohibition) Act; or
- 7 (ii) a terrorist financing investigation under the Terrorism
8 (Prevention) Act;
- 9 (d) the person specified in the application holds all or some of the
10 property mentioned in subsection (2)(b) of this section;
- 11 (e) in the case of a money laundering investigation, there are
12 reasonable grounds for suspecting that the person specified in the application
13 for the order has committed a money laundering offence;
- 14 (f) in the case of a terrorism financing investigation, there are
15 reasonable grounds for suspecting that the person specified in the application
16 for the order has committed a terrorism financing offence;
- 17 (g) in the case of any investigation, there are reasonable grounds for
18 believing that customer information which may be provided in compliance
19 with the order is likely to be of substantial value, whether or not by itself, to the
20 investigation for the purposes of which the order is sought;
- 21 (h) that the material is sought for the purpose of the investigation; and
- 22 (i) the order is sought against the financial institution or financial
23 institutions specified in the application.
- 24 (3) An application for a customer information order may specify-
- 25 (a) all financial institutions;
- 26 (b) a particular description or descriptions of financial institutions; or
- 27 (c) a particular financial institution or institutions.
- 28 (4) A customer information order is an order that a financial
29 institution covered by the application for the order shall, on being required to
30 do so by notice in writing given by an authorised officer, provide any such

1 customer information as it has relating to the person specified in the
2 application.

3 (5) A financial institution, which is required to provide information
4 under a customer information order, shall provide the information to an
5 authorised officer in such manner and at or by such time, as may be required
6 by the officer.

7 (6) Where a financial institution on which a requirement is
8 imposed by a notice given under a customer information order requires the
9 production of evidence of authority to give the notice, the financial
10 institution is not bound to comply with the requirement unless evidence of
11 the authority has been produced to it.

12 128.-(1) "Customer information", in relation to a person and a
13 financial institution, is information whether the person holds, or has held, an
14 account or accounts at the financial institution, whether solely or jointly
15 with another and, if so, information as to the matters referred to in-

Meaning of
customer
information

16 (a) subsection (2) of this section where the person is an individual;
17 (b) subsection (3) of this section where the person is a company or
18 limited liability partnership or a similar body whether incorporated or
19 otherwise established within Nigeria or elsewhere.

20 (2) The matters referred to in subsection (1)(a) of this section are-

21 (a) the account number or numbers;
22 (b) the person's full name;
23 (c) his date of birth;
24 (d) his most recent address and any previous addresses;
25 (e) the date or dates on which he began to hold the account or
26 accounts and where he has ceased to hold the account or any of the accounts,
27 the date or dates on which he did so;

28 (f) any evidence of his identity as was obtained by the financial
29 institution under or for the purposes of any legislation relating to money
30 laundering;

1 (g) the full name, date of birth and most recent address, and any
2 previous addresses, of any person who holds, or has held, an account at the
3 financial institution jointly with him; and

4 (h) the account number or numbers of any other account or accounts
5 held at the financial institution to which he is a signatory and details of the
6 person holding the other account or accounts.

7 (3) The matters referred to in subsection (1)(b) of this section are-

8 (a) the account number or numbers;

9 (b) the person's full name;

10 (c) a description of any business which the person carries on;

11 (d) the country or territory in which it is incorporated or otherwise
12 established and any number allocated to it by virtue of relevant legislation;

13 (e) any number assigned to it for the purposes of value added tax in
14 Nigeria;

15 (f) its registered office and any previous registered offices, whether in
16 Nigeria or elsewhere;

17 (g) the date or dates on which it began to hold the account or accounts
18 and, where it has ceased to hold the account or any of the accounts, the date or
19 dates on which it did so;

20 (h) evidence of its identity as was obtained by the financial institution
21 under or for the purposes of any legislation relating to money laundering and
22 terrorist financing; and

23 (i) the full name, date of birth and most recent address and any
24 previous addresses of any person who is a signatory to the account or any of the
25 accounts.

Penalties

26 **129.-(1)** A financial institution who without reasonable excuse fails to
27 comply with a requirement imposed on it under a customer information order,
28 commits an offence under this Act and is liable on conviction to a fine of not
29 less than ten million Naira.

30 (2) Where in compliance with a customer information order, a

1 financial institution-

2 (a) makes a statement which it knows to be false or misleading in a
3 material particular; or

4 (b) recklessly makes a statement which is false or misleading in a
5 material particular, the financial institution commits an offence and is liable
6 on conviction be liable to a fine of not less than ten million naira.

7 **130.**-(1) A customer information order has effect in spite of any
8 restriction on the disclosure of information, however imposed.

Supplementary
provisions relating
to customer
information orders

9 (2) An application for a customer information order may be made
10 ex-parte to a Judge in Chambers.

11 (3) An application to discharge or vary a customer information
12 order may be made to the Court by-

13 (a) the Agency;

14 (b) an officer of a relevant organisation; or

15 (c) the person affected by the order.

16 (4) On application by a person mentioned in subsection (3) of this
17 section, the Court may-

18 (a) vary the order; or

19 (b) discharge the order.

20 (5) The person who applied for a customer information order need
21 not be the same person who makes an application to discharge or vary the
22 order.

23 (6) An officer of the Agency or authorised officer shall not make an
24 application for a customer information order or an application to vary the
25 order unless authorised to do so by the Director - General of the Agency.

26 **131.**-(1) The Court may, on an ex-parte application made by the
27 Agency or authorised officer, make an account monitoring order where it is
28 satisfied that each of the conditions for making the order is fulfilled.

Account
monitoring orders

29 (2) The conditions for making the order that-

30 (a) a person specified in the application is subject to an

- 1 investigation of the type specified in section 110 of this Act;
- 2 (b) that a specified person has-
- 3 (i) property constituting or derived from the proceeds of an unlawful
- 4 activity; or
- 5 (ii) derived a benefit from unlawful activity;
- 6 (c) the person named in the application for the order is subject to-
- 7 (i) a money laundering investigation within the provisions of the
- 8 Money Laundering (Prohibition) Act; or
- 9 (ii) a terrorism financing investigation under the Terrorism
- 10 (Prevention) Act;
- 11 (d) the person specified in the application holds all or some of the
- 12 property mentioned in subsection (2) (b) of this section;
- 13 (e) in the case of a money laundering investigation, there are
- 14 reasonable grounds for suspecting that the person specified in the application
- 15 for the order has committed a money laundering offence;
- 16 (f) in the case of a terrorism financing investigation, there are
- 17 reasonable grounds for suspecting that the person specified in the application
- 18 for the order has committed a terrorism financing offence;
- 19 (g) in the case of any investigation, there are reasonable grounds for
- 20 believing that customer information which may be provided in compliance
- 21 with the order is likely to be of substantial value, whether or not by itself, to the
- 22 investigation for the purposes of which the order is sought; and
- 23 (h) that the information is sought for the purpose of the
- 24 investigation.
- 25 **132.-(1)** Account information is information relating to an account or
- 26 accounts held at the financial institution specified in the application by the
- 27 person so specified; whether solely or jointly with another.
- 28 (2) The application for an account monitoring order may specify
- 29 information relating to-
- 30 (a) all accounts held by the person specified in the application for the

Meaning of
account
information and
monitoring orders

1 order at the financial institution so specified;

2 (b) a particular description or descriptions of accounts so held; or

3 (c) a particular account or accounts, so held.

4 (3) An account monitoring order is an order that the financial
5 institution specified in the application for the order shall, for the period
6 stated in the order, provide account information of the description specified
7 in the order to an authorised officer in the manner, and at or by the time or
8 times, stated in the order.

9 (4) The period stated in an account monitoring order shall not
10 exceed the period of ninety days commencing from the day the order is
11 made.

12 (5) Nothing in subsection (4) of this section shall prevent further
13 applications for account monitoring orders in respect of accounts that have
14 been subject to previous account monitoring orders from being made.

15 133.-(1) An account monitoring order has effect in spite of any
16 restriction on the disclosure of information however imposed.

Supplementary
provisions relating
to account
monitoring orders

17 (2) An application for an account monitoring order may be made
18 ex-parte to a Judge in Chambers.

19 (3) An application to discharge or vary an account monitoring
20 order may be made to the Court by-

21 (a) the Agency;

22 (b) an authorised officer; or

23 (c) a person affected by the order.

24 (4) On application by a person mentioned in subsection (3) of this
25 section, the Court may-

26 (a) vary the order; or

27 (b) discharge the order.

28 (5) The person who applied for an account monitoring order need
29 not be the same person who makes an application to discharge or vary the
30 order.

1 (6) An officer of the Agency or authorised officer shall not make an
2 application for an account monitoring order or an application to vary such an
3 order unless authorised to do so by the Director - General of the Agency or in
4 the case of a terrorism financing investigation, the chief executive of the
5 relevant organisation in charge of that investigation.

Evidence
overseas

6 **134.**-(1) This section shall apply where the Director-General is
7 carrying out an investigation referred to in section 110 (1) or (2) of this Act.

8 (2) The Director-General may issue a letter of request where he
9 reasonably believes that there is evidence in a country or territory outside
10 Nigeria as to-

11 (a) whether a property constitutes or is derived from the proceeds of
12 an unlawful activity or is the instrumentality of an offence;

13 (b) whether a person has benefited from unlawful activity; and

14 (c) the extent and whereabouts of the benefit from unlawful activity.

15 (3) A letter of request is a letter requesting assistance in obtaining
16 outside Nigeria such evidence as is specified in the letter for use in the
17 investigation.

18 (4) The Director-General shall send the letter of request to the
19 Attorney-General.

20 (5) Where the Attorney-General believes it is appropriate to do so, he
21 may forward a letter received under subsection (4) of this section to-

22 (a) a court or tribunal which is specified in the letter and which
23 exercises jurisdiction in the place where the evidence is to be obtained; or

24 (b) an authority recognised by the government of the country or
25 territory concerned as the appropriate authority for receiving letters of request.

26 (6) Evidence obtained in pursuance of a letter of request shall not be
27 used-

28 (a) by any person other than the Director-General or a person making
29 the investigation; or

30 (b) for any purpose other than that for which it is obtained.

1 (7) Subsection (6) of this section does not apply where the
2 authority mentioned in subsection (5) of this section consents to the use.

3 (8) Evidence includes documents and other materials.

4 **135.-(1)** Information obtained by or on behalf of the Director-
5 General in connection with the exercise of any of his functions may be
6 disclosed, where the disclosure is for the purposes of any of the following-

Disclosure of
information held
by the Director-
General

7 (a) any criminal investigation which has been, is being or may be
8 carried out, whether in Nigeria or elsewhere;

9 (b) the exercise of the Director-General's functions;

10 (c) safeguarding national security;

11 (d) in connection with the collection of revenue;

12 (e) investigations or proceedings outside Nigeria which have led or
13 may lead to the making of an external order by a court outside Nigeria where
14 property is found or believed to have been obtained as a result of or in
15 connection with a criminal enterprise, and is for the recovery of specified
16 property or a specified sum of money; or

17 (f) the exercise of a designated function.

18 (2) A person in receipt of a disclosure under subsection (1) of this
19 section shall not further disclose the information in contravention of the
20 conditions imposed at the time of disclosure.

21 (3) Information that is held by or on behalf of a permitted person,
22 whether it was obtained before or after the coming into force of this Act, may
23 be disclosed to the Director-General for the purpose of the exercise by the
24 Director-General of his functions under this Act.

25 (4) The permitted persons referred to in subsection (3) of this
26 section are the-

27 (a) Inspector-General of Police;

28 (b) Director of the Nigerian Financial Intelligence Centre;

29 (c) Chairman of the Economic and Financial Crimes Commission;

30 (d) Chairman of the Independent Corrupt Practices and Other

1 Related Offences Commission;

2 (e) Chairman of the National Drugs Law Enforcement Agency;

3 (f) Executive-Secretary, National Agency for the Prohibition of

4 Traffic in Persons and other related matters;

5 (g) Executive - Chairman of the Federal Inland Revenue Service;

6 (h) Comptroller-General of the Nigeria Customs Service;

7 (i) Chairman of the Code of Conduct Bureau; and

8 (j) Director of Public Prosecutions of the Federation.

9 (5) The Attorney-General may by order designate as permitted
10 persons other persons who exercise functions, which he believes are of a public
11 nature.

12 (6) The power to authorise a disclosure under subsection (3) of this
13 section may be delegated, either generally or for a specified purpose.

14 PART VIII - ADMINISTRATION

Powers and duties
of the Agency in
respect of property
seized

15 136. This Part sets out the powers and duties of the Agency in respect
16 of property, in this Part referred to as "controlled property", seized and put
17 under the control and custody of the Agency by a Court order made under
18 section 52 of this Act.

Preserving
controlled
property

19 137.-(1) The Agency may do anything that is reasonably necessary for
20 the purpose of preserving the controlled property, including-

21 (a) becoming a party to any civil proceedings affecting the property;

22 (b) ensuring that the property is insured;

23 (c) realising or otherwise dealing with any of the property that is
24 securities or investments; and

25 (d) where any of the property is a business-

26 (i) employing, or terminating the employment of persons in the
27 business, and

28 (ii) doing anything necessary or convenient to carry on the business
29 on a sound commercial basis.

30 (2) The Agency shall, for the purposes of exercising its functions

1 under subsection (1) of this section, engage persons competent and qualified
2 in the relevant area of business.

3 138. The Agency may exercise the rights attaching to any of the
4 controlled property that are shares, securities, stocks, bonds or debentures as
5 if the Agency were the registered holder of the shares, securities, stocks,
6 bonds or debentures, to the exclusion of the registered holder.

Rights attaching
to shares

7 139. The Agency may-

8 (a) destroy the controlled property or any part of it on the grounds
9 of public interest, health or safety; or

Destroying or
disposing of
property

10 (b) dispose of the controlled property or any part of it, by sale or
11 other means to avoid deterioration or loss of value.

12 140.-(1) The Agency shall give written notice of the proposed
13 destruction or disposal to-

Notice of proposed
destruction or
disposal

14 (a) the owner of the controlled property; and

15 (b) any other person whom the Agency has reason to believe may
16 have an interest in the property.

17 (2) The notice referred to under subsection (1) of this section shall
18 state the date, venue and time of the proposed destruction or disposal.

19 (3) A person who has been so notified may object in writing to the
20 Agency within fourteen days of receiving the notice.

21 141.-(1) Where, in spite of an objection detailed in section 140 (2)
22 of this Act, the Agency wishes to continue with a proposed destruction or
23 disposal that has been objected to, the Agency shall apply to the Court that
24 made the order covering the controlled property for an order that the Agency
25 may destroy or dispose of the property.

Procedure where
person objects to
proposed
destruction or
disposal

26 (2) The Court shall make an order to destroy the controlled
27 property on the grounds of public interest or health and safety.

28 (3) In making an order for the destruction of controlled property,
29 the Court shall take into account whether it is in the public interest to destroy
30 the controlled property, including-

- 1 (a) the use to which the property would be put if it were sold;
2 (b) whether the cost of restoring the property in a saleable condition
3 would exceed its realisable value;
4 (c) whether the cost of sale would exceed its realisable value; and
5 (d) whether the sale of the property would otherwise be proper.

6 (4) The Court shall make an order to dispose of the controlled
7 property where, the-

- 8 (a) property is likely to lose value; or
9 (b) cost of controlling the property until it is finally dealt with by the
10 Agency is likely to exceed, or represent a significant proportion of, the value of
11 the property when it is finally dealt with.

12 (5) The Court may also make an order requiring that a specified
13 person bear the costs of-

- 14 (a) controlling the controlled property until it is finally dealt with by
15 the Agency; or
16 (b) an objection to a proposed destruction or disposal of the
17 property.

Proceeds from
sale of property

18 **142.** Any amount realised from any disposal of the controlled
19 property under section 140 of this Act shall be deemed to be-

20 (a) covered by the restraint order that related to the property disposed
21 of; and

22 (b) where the restraint order covered the property disposed of, on the
23 basis that the property was proceeds of unlawful activity or was an
24 instrumentality of unlawful activity, the amount realised shall continue to be
25 proceeds of that unlawful activity or an instrumentality of that unlawful
26 activity.

Discharge of
confiscation orders
by credits to the
confiscated and
forfeited Account

27 **143.** Where the Agency credits money to the Confiscated and
28 Forfeited Properties Account as required by section 147 of this Act in
29 satisfaction of a person's liability under a confiscation order, the person's
30 liability under the order is, to the extent of the credit, discharged.

1 144. Where the restraint order relating to the controlled property
2 ceases to be in force and the property is returned to its owner, the Agency
3 shall pay to the owner the income generated from the property less all
4 reasonable expenses incurred by the Agency in respect of the property.

Agency to return
income generated
from controlled
property

5 145.-(1) Except where the Court is satisfied that the Agency is
6 negligent in respect of taking custody and control of a property, the Agency
7 is not liable for -

Agency is not
liable for loss,
etc.

8 (a) any loss or damage, sustained by a person claiming an interest
9 in all or part of the controlled property, arising from the Agency taking
10 custody and control of the property; or

11 (b) the cost of proceedings taken to establish an interest in the
12 property.

13 (2) In the management of controlled property, the Agency shall not
14 pay any rates, land tax or municipal or statutory charges imposed by virtue
15 of any law in respect of the controlled property, except out of any rents or
16 profits that the Agency receives from the property.

17 PART IX - CONFISCATED AND FORFEITED PROPERTIES ACCOUNT

18 146.-(1) There is established a special designated account at the
19 Central Bank of Nigeria to be known as the Confiscated and Forfeited
20 Properties Account.

Establishment of
Confiscated and
Forfeited Properties
Account

21 (2) The Confiscated and Forfeited Properties Account shall be
22 managed by the Accountant-General of the Federation.

23 147.-(1) There shall be credited to the Confiscated and Forfeited
24 Properties Account-

Credits to the
Confiscated and
Forfeited Properties
Account

25 (a) funds realised from the proceeds of sale, management or other
26 form of disposal of seized, attached, confiscated and forfeited property
27 under this Act;

28 (b) proceeds of any property seized or forfeited pursuant to section
29 23 (2)(c) of the Code of Conduct Bureau and Tribunal Act;

30 (c) money paid to Nigeria by a foreign country-

- 1 (i) under any treaty or arrangement providing for mutual assistance in
2 criminal matters;
- 3 (ii) as mentioned in section 41(4) of this Act; and
- 4 (iii) repatriation of proceeds of unlawful activity.
- 5 (d) amounts paid to the Agency on behalf of the Federal Government
6 in settlement of proceedings connected with this Act.
- 7 (2) The following are confiscated or forfeited assets, the-
- 8 (a) remainder of the money and amounts referred to in section 76(2)
9 and (4) of this Act;
- 10 (b) amount representing proceeds from a disposition authorised by
11 regulations made pursuant to this Act;
- 12 (c) amount referred to in section 92 of this Act;
- 13 (d) remainder of the money and amounts referred to in section 143 of
14 this Act;
- 15 (e) proceeds of an unlawful activity and money confiscated or
16 forfeited under the-
- 17 (i) Customs and Excise Management Act;
- 18 (ii) Terrorism (Prevention) Act;
- 19 (iii) Money Laundering (Prohibition) Act;
- 20 (iv) Economic and Financial Crimes Commission (Establishment,
21 etc.) Act;
- 22 (v) Corrupt Practices and Other Related Offences Act;
- 23 (vi) National Drug Law Enforcement Agency Act;
- 24 (vii) Trafficking In Persons (Prohibition) Law Enforcement and
25 Administration Act;
- 26 (viii) Code of Conduct Bureau and Tribunal Act;
- 27 (v) Criminal Code;
- 28 (vi) Penal Code; and
- 29 (xi) any other law dealing with confiscation and forfeiture of property
30 in force in Nigeria;

- 1 (f) instrumentalities of unlawful activity, including the proceeds
2 of their disposal or confiscation under the-
- 3 (i) Customs and Excise Management Act;
4 (ii) Terrorism (Prevention) Act;
5 (iii) Money Laundering (Prohibition) Act;
6 (iv) Economic and Financial Crimes Commission (Establishment,
7 etc.) Act;
8 (v) Corrupt Practices and Other Related Offences Act;
9 (vi) National Drug Law Enforcement Agency Act;
10 (vii) Trafficking In Persons (Prohibition) Law Enforcement and
11 Administration Act;
12 (viii) Code of Conduct Bureau and Tribunal Act;
13 (ix) Criminal Code;
14 (x) Penal Code; and
15 (xi) any other law dealing with confiscation and forfeiture of
16 property in force in Nigeria.
- 17 (g) amount referred to in section 34 of this Act.

18 148. The Minister of Finance shall, with the approval of the
19 President, from time to time, apply the funds in the Confiscated and
20 Forfeited Properties Account to-

Payments out of
the Account

- 21 (a) compensate any State which has suffered grave pecuniary loss
22 on account of the offence or conduct that gave rise to the confiscation or
23 forfeiture order;
- 24 (b) compensate any person who has suffered grave pecuniary loss
25 on account of the offence or conduct that gave rise to the confiscation or
26 forfeiture order;
- 27 (c) pay any foreign country or an agency under the provisions of
28 any treaty agreement or scheme for mutual legal assistance;
- 29 (d) make payments under any programme approved by the
30 President under section 150 of this Act;

1 (e) make any payment necessary to satisfy Nigeria's obligations in
2 respect of a registered foreign forfeiture order; and

3 (f) make any payment the Agency, on behalf of the Federal
4 Government, is directed to make by an order under sections 69(2)(a) and
5 78(2)(d) of this Act and regulations made under section 161 of this Act.

Audit of the
Confiscated and
Forfeited
Properties
Account

6 149. The Confiscated and Forfeited Properties Account shall be
7 audited in accordance with the guidelines supplied by the Auditor-General for
8 the Federation.

Programmes for
expenditure on
law enforcement,
etc.

9 150.-(1) The President may, by notice in the Federal Gazette approve
10 a programme for the expenditure of money standing to the credit of the
11 Confiscated and Forfeited Properties Account.

12 (2) The President may approve expenditure out of the Confiscated
13 and Forfeited Properties Account for any one or more of the following
14 purposes-

15 (a) crime prevention measures;

16 (b) law enforcement measures;

17 (c) measures relating to treatment of drug addiction;

18 (c) measures outlined for the rehabilitation of victims of human
19 trafficking;

20 (d) education, health, youth development, mass housing, rural
21 electrification, agricultural reform, water and sanitation;

22 (f) measures relating to the compensation and rehabilitation of
23 victims of terrorist activities; and

24 (g) such other development programmes as may be approved by the
25 Federal Government.

26 PART X - JURISDICTION

Jurisdiction

27 151.-(1) The Federal High Court (in this Act referred to as "the
28 Court") shall have jurisdiction to try offences, hear and determine proceedings
29 arising under this Act whether or not the offence was commenced in Nigeria
30 and completed outside Nigeria and the-

1 (a) victim is a citizen or is resident in Nigeria, in transit or has a link
2 with Nigeria or is dealing with or on behalf of the Government of Nigeria;
3 and

4 (b) alleged offender is in Nigeria and not extradited to any other
5 country for prosecution.

6 (2) If a person is convicted of an offence under this Act and-

7 (a) the person has benefited from-

8 (i) that offence;

9 (ii) any other offence of which the person has been convicted at the
10 same trial; or

11 (iii) any criminal activity which the Court convicting the person
12 finds to be sufficiently related to those offences; or

13 (b) in committing the offence or offences for which he has been
14 convicted, has made use of any instrumentality to facilitate the offence or
15 any of the offences of which he has been convicted; the Court convicting the
16 person, upon the application of the Agency or authorised prosecutor, shall
17 subject to its jurisdiction, make an order under section 66 or 82 of this Act.

18 (3) Where a Court making an Order under subsection (2) of this
19 section lacks requisite jurisdiction to do so, it shall upon the application of
20 the Agency or authorised prosecutor refer the matter to the appropriate Court
21 for the purpose of making the required Order.

22 (4) The penalty imposed on a person convicted of an offence under
23 this Act may be reduced in such manner as the Court deems fit where that
24 person has, before any proceeding, made possible or facilitated the
25 identification of other accused persons and their sponsors or who, after the
26 commencement of the proceedings, has made possible or facilitated the
27 arrest of such persons or recovery of other person's proceeds of unlawful
28 activity.

29 (5) In any proceedings under this Act, the Court shall have power,
30 notwithstanding anything to the contrary in any other enactment, to adopt all

1 legitimate measures that it may deem necessary to avoid unnecessary delays
2 and abuse in the conduct of proceedings.

3 PART XI - GENERAL PROVISIONS RELATING TO LEGAL PROCEEDINGS

Onus and standard
of proof in relation
to recovery of
proceeds of
unlawful activities

4 152.-(1) Subject to the provisions of this Act, the applicant in any
5 proceedings under this Act bears the onus of proving the matters necessary to
6 establish the grounds for making the order applied for.

7 (2) Any question of fact to be decided by the Court in any proceedings
8 for the recovery of proceeds of unlawful activity under this Act shall be decided
9 on the balance of probabilities.

Stay of
proceedings

10 153.-(1) An application for stay of proceedings in respect of any
11 matter brought under this Act shall not be entertained except at the stage of final
12 judgement on the substantive matter.

13 (2) The fact that criminal proceedings have been instituted or have
14 commenced, whether or not under this Act, shall not constitute a ground for
15 stay of proceedings under this Act.

Appeals against
a confiscation
or forfeiture
order

16 154.-(1) A person-

17 (a) against whom a confiscation order is made; or

18 (b) who has an interest in a property against which a forfeiture order is
19 made, may appeal against the confiscation or forfeiture order in the manner set
20 out in this section.

21 (2) A person against whom a confiscation or forfeiture order was
22 made in relation to a conviction for an offence may appeal against the order as if
23 it were an appeal against sentence in respect of the offence.

24 (3) A person may appeal against any order made under this Act, other
25 than those referred to in subsection (2) of this section, where the-

26 (a) person had been convicted of the offence to which the order
27 relates; and

28 (b) order relates to the sentence imposed on the person in respect of
29 the offence.

30 (4) The Agency has the same right of appeal as a person under this

1 section in respect of the grant or refusal of an order under this Act.

2 (5) This section does not affect any other right of appeal conferred
3 on a person under the Constitution of the Federal Republic of Nigeria or any
4 other law.

5 155.-(1) A property may be subject to the effective control of a
6 person whether or not the person has a-

Property under
effective control

7 (a) legal, equitable or other interest in the property; or

8 (b) right, power or privilege in connection with the property.

9 (2) Any property that is held on trust for the ultimate benefit of a
10 person is deemed to be under the effective control of the person.

11 (3) In determining whether or not a property is subject to the
12 effective control of a person-

13 (a) the effect of any order made in relation to the property under this
14 Act is to be disregarded;

15 (b) regard may be had to-

16 (i) shareholdings in, debentures over or directorships of a company
17 that has an interest, whether direct or indirect, in the property;

18 (ii) a trust that has a relationship to the property; and

19 (iii) family, domestic and business relationships between persons
20 having an interest in the property, or in companies of the kind referred to in
21 sub-paragraph (i) of this paragraph or trusts of the kind referred to in sub-
22 paragraph (ii) of this paragraph, and other persons.

23 (4) For the purposes of this section, family relationships include
24 the relationship-

25 (a) between spouses or arising from co-habitation;

26 (b) of child and parent that arise as a result of the definition of a
27 child in section 163 of this Act; and

28 (c) traced through relationships mentioned in paragraphs (a) and
29 (b) of this subsection.

30 (5) For the avoidance of doubt, property may be subject to the

1 effective control of more than one person.

Publication of
notice, etc.

2 **156.** Where in this Act a notice or other document is required by virtue
3 of any provision to be published, it is sufficient if the notice or other document
4 is published in the Federal Gazette or two widely circulated national
5 newspapers.

Inconsistency
with applicable
Acts

6 **157.** Subject to the provisions of the Constitution of the Federal
7 Republic of Nigeria, where a provision of this Act is inconsistent with a
8 provision of an applicable Act, the provision of this Act shall prevail and the
9 provision of the applicable Act shall, to the extent of the inconsistency, be
10 void.

Legal
proceeding

11 **158.**-(1) No civil action shall be commenced against the Agency or its
12 authorised officers before the expiration of a period of thirty days after written
13 notice of intention to commence the suit shall have been served on the Agency
14 by the intending plaintiff or his agent, and the notice shall clearly and explicitly
15 state the-

- 16 (a) cause of action;
17 (b) particulars of the claim;
18 (c) name and place of abode of the intending plaintiff; and
19 (d) relief sought.

20 (2) The notice referred to in subsection (1) of this section and any
21 summons, or other documents required or authorized to be served on the
22 Agency under this Act or any other enactment or law, may be served by-

- 23 (a) delivering it to the office of the Agency; or
24 (b) sending it by registered mail to the postal address of the Agency.

Restriction on
execution against
property of the
Agency

25 **159.** In any action or suit against the Agency, no execution shall be
26 levied or attachment process issued against the Agency unless not less than
27 thirty days' notice of the intention to execute or attach has been given to the
28 Agency.

Indemnity of
officers of the
Agency

29 **160.** A member of the Board, Director-General, officer or employee
30 of the Agency shall be indemnified out of the assets of the Agency against any

1 proceedings brought against him in his capacity as a member of the Board,
 2 Director-General, officer or employee of the Agency where the act
 3 complained of is not beyond his powers.

4 PART XII - MISCELLANEOUS

5 **161.**-(1) The Attorney-General may make regulations as are Regulations and
guidelines
 6 necessary or expedient for the efficient implementation of the provisions of
 7 this Act and, in particular, regulations providing for the manner and
 8 procedure for the repatriation of forfeited assets referred to in section 41 of
 9 this Act.

10 (2) The Agency shall with the approval of the Attorney-General,
 11 issue guidelines as may be necessary for the exercise of any of the duties,
 12 functions or powers of the Agency under this Act.

13 **162.** The National Drug Law Enforcement Agency Act, Cap N30, Consequential
amendments
and transitional
provisions
 14 Laws of the Federation of Nigeria, 2004 ("the Principal Act") is amended as
 15 follows-

- 16 (a) in section 3(1)(c), by deleting the word 'confiscate' in line 1;
 17 (b) by deleting sections 27, 28, 29 and 31;
 18 (c) in section 32, by deleting paragraphs (c)(i), (ii) and (iii); (e) and
 19 (f);
 20 (d) in section 33, by deleting sections (1)(b), (2) and (3);
 21 (e) in section 34, by deleting the phrase-
 22 (i) 'and attach' in line 2; and
 23 (ii) 'and shall thereafter cause to be obtained an interim attachment
 24 order by the Federal High Court' in lines 2 and 3;
 25 (f) in section 35, deleting subsection (4);
 26 (g) by deleting sections 36, 37, 38, 39, 40, 42 and 43;
 27 (h) in section 52, by deleting the sentence, 'confiscation includes
 28 forfeiture or the permanent deprivation of property by a Federal High Court'
 29 and 'freezing means temporarily prohibiting the transfer, conversion,
 30 disposal or movement of property, asset or money or temporarily assuming

- 1 custody or control of them on the basis of attachment by the Agency"; and
- 2 (i) by deleting the Fourth Schedule to the Act.
- 3 (2) The Trafficking in Persons (Prohibition) Law Enforcement and
- 4 Administration Act, 2005 (as amended), is further amended as follows-
- 5 (a) by deleting sections 35, 36, 37, 38, 39 and 40;
- 6 (b) in section 41, by deleting the words-
- 7 (i) 'and attach' in line 2, and
- 8 (ii) 'and shall thereafter cause to be obtained an interim attachment
- 9 order by the Federal High Court' in lines 4 and 5;
- 10 (c) by deleting sections 42(4), 43, 44, 45, 46, 47 and 48;
- 11 (d) in section 52(b), by substituting the words 'Victims of Trafficking;
- 12 Trust Fund' with the words 'Confiscated and Forfeited Properties Account';
- 13 (e) in section 54(2), by deleting the words 'where all proceeds of the
- 14 sale of assets and properties of traffickers are paid into';
- 15 (f) in section 64, by deleting the following definitions- 'confiscation
- 16 includes forfeiture or the permanent deprivation of property by a court' and
- 17 'freeze means temporarily prohibiting the transfer, conversion, disposal or
- 18 movement of money or temporarily assuming custody or control of the money';
- 19 and
- 20 (g) in the Second Schedule, by deleting Form F.
- 21 (3) The Economic and Financial Crimes Commission
- 22 (Establishment) Act, 2004 is amended as follows-
- 23 (a) in section 6(a), by deleting the word 'confiscate' in line 1;
- 24 (b) in section 15(2)(c) by deleting the word 'forfeited under this Act'
- 25 in line 2;
- 26 (c) by deleting sections 20, 21, 22, 24, 25(a), (c) and (d), 26(1)(b), (2)
- 27 and (3) and 27(2);
- 28 (d) in section 28, by deleting the phrase-
- 29 (i) 'and attach' in line 2, and
- 30 (ii) 'thereafter shall cause to be obtained an interim attachment order'

1 from the Court in lines 3 and 4;

2 (c) by deleting section 29, 30, 31, 32, 33 and 34;

3 (d) in Schedule 1, by deleting Form 'B'.

4 (4) The Corrupt Practices and Other Related Offences Act, 2000 is
5 amended as follows-

6 (a) in section 38 by-

7 (i) inserting immediately after the words 'under the custody of', in
8 section 38(1) line 3, the words 'the Proceeds of Crimes Recovery and
9 Management Agency if a forfeiture or confiscation order is to be sought or
10 otherwise of;

11 (ii) inserting a new section 38(2) (A) immediately after subsection
12 38(2), to read as follows -

13 "38 (2) (A) if the property mentioned in subsection (2) of this
14 section is to be the subject of a forfeiture or confiscation order, the authority
15 of the Proceeds of Crimes Recovery and Management Agency is to be
16 sought prior to leaving the property in the custody of such a person as is
17 mentioned in that subsection".

18 (iii) inserting a new paragraph (c) immediately after section 38(3).
19 (b) to read as follows-

20 "(c) the property referred to in this subsection shall not be
21 returned without notifying the Agency".

22 (iv) by deleting subsections (5)(6) and (7); and

23 (b) by deleting sections 39, 45, 46, 47 and 48;

24 (5) Without prejudice to section 6 of the Interpretation Act, the
25 amendment of the Acts specified in subsections (1), (2), (3) and (4) of this
26 section, shall not affect anything done under or pursuant to the amended
27 Acts.

28 (6) An agreement or arrangement in existence under the repealed
29 enactments before the commencement of this Act shall continue to have

1 effect subject to such modifications as may be necessary to give effect to this
2 Act.

3 (7) All proceeds of unlawful activity, instrumentalities of offences
4 and property recovered by the relevant organisations prior to the
5 commencement of this Act under any enactment that have not been paid to the
6 Federal Government shall vest in the Agency.

7 (8) For the purpose of subsection (7), of this section, the Agency shall
8 appoint an auditor from the list of auditors and in accordance with the
9 guidelines issued by the Auditor-General of the Federation to establish the
10 nature, amount and location of the proceeds, instrumentalities and property
11 referred to in subsection (7) of this section.

12 (9) Property other than money referred to in subsection (7) shall be
13 realised by sale or otherwise by the Agency and the proceeds paid into the
14 Confiscated and Forfeited Properties Account.

15 (10) Money referred to in subsection (7) of this section shall be paid
16 into the Confiscated and Forfeited Properties Account.

17 (11) The provisions of subsections (1) to (6) of this section shall
18 commence six months after the date of assent by the President.

Interpretation

19 **163.** In this Act, unless the context otherwise requires-
20 "abscond", in relation to a person who is alleged to have committed an offence,
21 means-

22 (a) a charge alleging that the person committed the offence has been
23 filed in court;

24 (b) a warrant for the person's arrest is issued in relation to the charge;
25 and

26 (c) at the end of the period of six months commencing on the day on
27 which the warrant is issued-

28 (i) the person cannot be found;

29 (ii) the person is, for any other reason, not amenable to justice and, if
30 the person is outside Nigeria, extradition proceedings have not commenced or

1 are not pending; or

2 (iii) the person is, because he is outside Nigeria, not amenable to
3 justice, and extradition proceedings have been commenced and
4 subsequently those proceedings terminate without an order for the person's
5 extradition being made;

6 "account" means any facility or arrangement through which a financial
7 institution accepts deposits or allows withdrawals and includes-

8 (a) a facility or arrangement for a:

9 (i) fixed term deposit; or

10 (ii) safety deposit box;

11 (b) a credit card account;

12 (c) a loan account, other than a credit card account;

13 (d) an account held in the form of units in-

14 (i) a cash management trust; or

15 (ii) a trust of a kind prescribed by the regulations; and

16 (e) a closed account, and it is immaterial whether an account has a
17 nil balance or any transactions have been allowed in relation to an account;

18 "account freezing order" means an order under section 43 of this Act;

19 "affected gift" has the meaning given to it under section 87(3) of this Act;

20 "applicable Acts" includes-

21 (a) the **Corrupt Practices and Other Related Offences Act**;

22 (b) the **Economic and Financial Crimes Commission**
23 **(Establishment) Act**;

24 (c) the **Money Laundering (Prohibition) Act**;

25 (d) the **Terrorism (Prevention) Act**;

26 (e) the **National Drug Law Enforcement Agency Act**;

27 (f) the **Trafficking in Persons (Prohibition) Law Enforcement and**
28 **Administration Act**; and

29 (g) such other Acts as the Attorney-General may by order
30 published in the Federal Gazette, designate.

- 1 "authorised officer" means-
- 2 (a) a member of staff of the Agency designated by the Director -
- 3 General;
- 4 (b) a member, officer or employee of a relevant organization; or
- 5 (c) any other person included in a class of persons declared by the
- 6 regulations to be within this definition:
- 7 "authorised prosecutor" means a prosecutor authorised by a relevant
- 8 organisation for the purpose of this Act:
- 9 "Attorney-General" means the Attorney-General of the Federation;
- 10 "benefit" includes service or advantage:
- 11 "books" includes any account, deed, paper, writing or document and any record
- 12 of information however compiled, recorded or stored, whether in writing, on
- 13 microfilm, by electronic process or otherwise:
- 14 "child" means a person under the age of eighteen years;
- 15 "civil proceedings" refers to proceedings that are civil proceedings and are not
- 16 criminal proceedings: and
- 17 (a) the rules of evidence applicable in civil proceedings apply to such
- 18 proceedings:
- 19 (b) rules of evidence applicable only in criminal proceedings shall not
- 20 apply to such proceedings:
- 21 (c) rules of construction applicable only in criminal proceedings shall
- 22 not apply to proceedings:
- 23 (d) any question of fact to be decided by the Court in respect of such
- 24 proceedings shall be decided on a balance of probabilities: and
- 25 (e) evidence given in furtherance of such proceedings is admissible
- 26 despite any rule of law or practice relating to hearsay evidence:
- 27 "close dependant relative" means-
- 28 (a) the person's spouse or cohabiting partner; or
- 29 (b) the person's child, or member of the person's household, who
- 30 depends on the person for support:

1 "complex or high value cases" means cases that may be determined as such
2 by the Attorney-General of the Federation from time to time by Regulations
3 made under this Act;

4 "Confiscated and Forfeited Properties Account" means the account
5 established under section 146 of this Act;

6 "confiscation order" means an order made under section 70 of this Act;

7 "controlled property" has the meaning given to it under section 136 of this
8 Act;

9 "conveyance" means a mode of transportation and includes an aircraft, a
10 vehicle and vessel;

11 "conveyance" means a mode of transportation and includes an aircraft, a
12 vehicle and vessel;

13 "convicted for an offence" for the purpose of recovery of proceeds of
14 unlawful activities means the person-

15 (a) is convicted, whether summarily or on indictment;

16 (b) is sentenced for the offence, notwithstanding that the Court in
17 passing sentence took into account an offence of which he has not been
18 found guilty; or

19 (c) absconds in connection with the offence;

20 "Court" means the Federal High Court, the High Court of a State, the High
21 Court of the Federal Capital Territory, Abuja, or a Tribunal;

22 "criminal enterprise" means participation, either solely or jointly with
23 others, in any unlawful activity;

24 "data held in a computer" includes data held in-

25 (a) any removable data storage device for the time being held in a
26 computer;

27 (b) data storage device on a computer network of which the
28 computer forms a part; or

29 (c) data held in any remote storage device to which data has been
30 sent from the computer;

- 1 "data storage device" means a thing containing, or designed to contain data;
- 2 "date of conviction" in relation to a person's conviction of an offence, means,
3 in the case of a person-
- 4 (a) charged with, and found guilty of, the offence, the day on which
5 the person was found guilty of the offence; or
- 6 (b) who absconds, the day on which the person is taken to have
7 absconded in connection with the offence;
- 8 "deal" when used in relation to a person's property, includes-
- 9 (a) where a debt is owed to that person, making a payment to any
10 person in reduction of the amount of the debt;
- 11 (b) removing property from Nigeria;
- 12 (c) receiving or making a gift of property; and
- 13 (d) if property is covered by a restraint order, engaging in a transaction
14 that has the direct or indirect effect of reducing the value of the person's interest
15 in the property, and "dealing" is to be similarly construed;
- 16 "derived", in relation to a person having derived proceeds, a benefit or wealth,
17 includes any other person who at the request or direction of the person, having
18 derived the proceeds, benefit, or wealth directly or indirectly;
- 19 "Director-General" means the Director-General appointed for the Agency
20 under section 99 of this Act;
- 21 "effective control" has the meaning given to it under section 155 of this Act;
- 22 "encumbrance", in relation to property, includes any interest, mortgage,
23 charge, right, claim and demand in respect of the property;
- 24 "evidential material" means evidence relating to-
- 25 (a) property in respect of which action has been or could be taken
26 under this Act; or
- 27 (b) benefits derived from the commission of a relevant offence;
- 28 "exclusion order" means an order made under section 78(1) of this Act;
- 29 "financial institution" has the meaning given in the Money Laundering
30 (Prohibition) Act;

- 1 "freezing order" has the meaning given to it in section 43 of this Act;
- 2 "interest", in relation to property or a thing, means-
- 3 (a) a legal or equitable estate or interest in the property or thing; or
- 4 (b) a right, power or privilege in connection with the property or
- 5 thing, whether present or future and whether vested or contingent;
- 6 "instrumentality of an offence" means property used or intended to be used
- 7 in or in connection with the commission of an offence, whether the property
- 8 is situated within or outside Nigeria;
- 9 "lawfully acquired", in relation to property or wealth, means that the
- 10 property or wealth and the consideration for it was lawfully acquired;
- 11 "legal practitioner" has the meaning given to it by the Legal Practitioners
- 12 Act;
- 13 "member" means a member of the Board including the Chairman and the
- 14 Director - General of the Agency;
- 15 "officer", in relation to a financial institution or a corporation, means a
- 16 director, secretary, executive officer or employee of a financial institution;
- 17 "permitted person" means a person referred to in section 135(4) or (5) of this
- 18 Act;
- 19 "person's property" includes property in respect of which a person has a
- 20 beneficial interest;
- 21 "premises" means property and structures that are on the property, including
- 22 buildings, vessels, boats and vehicles whether temporary or not and whether
- 23 designed for habitation or not;
- 24 "person's property" includes property in respect of which a person has a
- 25 beneficial interest;
- 26 "proceedings are concluded" where-
- 27 (a) the defendant is acquitted on all counts in proceedings for an
- 28 offence, when he is acquitted;
- 29 (b) the defendant is convicted in proceedings for an offence and the
- 30 conviction is quashed or the defendant is pardoned before a confiscation

1 order is made, when the conviction is quashed or the defendant is pardoned
2 before a confiscation order is made;

3 (c) a confiscation order is made against the defendant in proceedings
4 for an offence, whether the order is made by the Court or the Court of Appeal,
5 when the order is-

6 (i) satisfied or discharged; or

7 (ii) quashed and there is no further possibility of an appeal against the
8 decision to quash the order;

9 "proceeds of unlawful activity" means property-

10 (a) wholly derived or realised, whether directly or indirectly, from
11 unlawful activity; or

12 (b) partly derived or realised, whether directly or indirectly, from
13 unlawful activity, whether the property is situated within or outside Nigeria, or
14 whether or not a person has been convicted of the offence;

15 "proceeds of confiscated and forfeited assets" has the meaning given to it under
16 section 147(2) of this Act;

17 "property" means real or personal property of every description, whether
18 situated in Nigeria or elsewhere and whether tangible or intangible, and
19 includes an interest in any such real or personal property;

20 "quashing a conviction for an offence" means-

21 (a) the quashing of a conviction of a person who had been convicted
22 whether summarily or on indictment;

23 (b) the quashing or setting aside of the finding of guilt where a person
24 had been charged with and found guilty of an offence but discharged without
25 conviction; or

26 (c) the quashing or setting aside of the conviction of a person who
27 absconded but was later brought before a Court and discharged;

28 "realisable property" means any free property held by the defendant or any free
29 property held by the recipient of an affected gift;

30 "registrable property" means a property title to which is passed by registration

- 1 in a register kept pursuant to a provision of any law in force in Nigeria;
- 2 "registration authority", in relation to property of a particular kind, means an
- 3 authority responsible for administering a law in force in Nigeria providing
- 4 for registration of title to, or charges over, property of that kind;
- 5 "related offence" means an offence the physical elements of which are
- 6 similar to another offence;
- 7 "relevant organisation" means-
- 8 (a) the Economic and Financial Crimes Commission;
- 9 (b) the Independent Corrupt Practices and other Related Offences
- 10 Commission;
- 11 (c) the National Drug Law Enforcement Agency;
- 12 (d) the Trafficking in Persons (Prohibition) Law Enforcement
- 13 Agency;
- 14 (e) the National Agency for Food and Drug Administration and
- 15 Control;
- 16 (f) the Nigeria Customs Service;
- 17 (g) the Code of Conduct Bureau;
- 18 (h) the Federal Inland Revenue Service; and
- 19 (i) such other organisations as the Attorney-General may, from
- 20 time to time, designate;
- 21 "relevant person" means a person against whom a restraint order is made,
- 22 whether or not that person is charged with an offence;
- 23 "restraint order" means an order under sections 51, 52, 53 or 54 of this Act
- 24 that is in force;
- 25 "sufficient consideration" in relation to an acquisition or disposal of
- 26 property, means a consideration that is sufficient and that reflects the value
- 27 of the property, having regard solely to commercial considerations; and
- 28 "unlawful activity" means an act, omission or conduct which constitutes an
- 29 offence or which contravenes any law in force in Nigeria, whether the act,
- 30 omission or conduct occurred before or after the commencement of this Act

1 or where the offence is committed in a country outside Nigeria, would also
2 constitute an offence if it had been committed in Nigeria.

Short Title

3 **164.** This Bill may be cited as the Proceeds of Crimes Bill, 2016.

4 SCHEDULE I

5 SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

6 [Section 98(7)]

7 *Proceedings of the Board*

8 1. Subject to this Act and section 27 of the Interpretation Act, the
9 Board shall have power to regulate its proceedings and may make standing
10 orders with respect to the holding of its meetings, and those of its committees,
11 notices to be given, the keeping of minutes of its proceedings, the custody and
12 production for inspection of such minutes and such other matters as the Board
13 may, from time to time determine.

14 2. There shall be at least three ordinary meetings of the Board in
15 every calendar year and subject thereto, the Board shall meet whenever it is
16 convened by the Chairman, and if the Chairman is requested to do so by notice
17 given to him by not less than four other members, he shall convene a meeting of
18 the Board to be held within 30 days from the date on which the notice was
19 given.

20 3. Every meeting of the Board shall be presided over by the
21 Chairman and if the Chairman is unable to attend a particular meeting, the
22 members present at the meeting shall elect one of their number to preside at the
23 meeting.

24 4. The quorum of any meeting of the Board shall consist of the
25 Chairman (or in an appropriate case, the person presiding at the meeting
26 pursuant to paragraph 2 of this Schedule) and three other members.

27 5. A question put before the Board at a meeting shall be decided by
28 consensus and where this is not possible, by a majority of the votes of the
29 members present and voting.

30 6. The Chairman shall, in the case of an equality of votes, have a

1 casting vote in addition to his deliberate vote.

2 7. Where the Board seeks the advice of any person on a particular
3 matter, the Board may invite that person to attend, for such period as it
4 deems fit, but a person who is invited by virtue of this paragraph shall not be
5 entitled to vote at any meeting of the Board and shall not count towards the
6 quorum.

7 8. The Board shall meet for the conduct of its business at such
8 places and on such days as the Chairman may appoint.

9 9. Where the Board seeks the advice of any person on a particular
10 matter, the Board may invite that person to attend for such period as it deems
11 fit, but a person who is invited by virtue of this paragraph shall not be
12 entitled to vote at any meeting of the Board and shall not count towards the
13 quorum.

14 *Committees*

15 10. The Board may appoint one or more committees to carry out,
16 on behalf of the Board, such of its functions as the Board may determine and
17 report on any matter with which the Board is concerned.

18 11. A committee appointed under paragraph 10 of this Schedule
19 shall be presided over by a member of the Board and shall consist of such
20 number of persons (not necessarily all members of the Board) as, may be
21 determined by the Board and a person other than a member of the Board
22 shall hold office on the committee in accordance with the terms of his
23 appointment.

24 12. A decision of a committee of the Board shall be of no effect
25 until it is confirmed by the Board.

26 *Miscellaneous*

27 13. The fixing of the seal of the Agency shall be authenticated by
28 the signature of the Director-General and such other person as the Board
29 may designate.

30 14. A contract or an instrument which, if made or executed by any

1 person not being a body corporate, would not be required to be under seal, may
2 be made or executed on behalf of the Agency by the Director-General or by any
3 person generally or specifically authorized to act for that purpose by the Board.

4 15. A document purporting to be a contract, an instrument or other
5 document signed or sealed on behalf of the Agency shall be received in
6 evidence and until the contrary is proved, be presumed without further proof, to
7 have been properly signed or sealed.

8 16. The validity of any proceeding of the Board or its committees
9 shall not be affected by-

10 (a) any vacancy in the membership of the Board or its committees;

11 (b) reason that a person not entitled to do so took part in the
12 proceedings; or

13 (c) any defect in the appointment of a member.

14 17.-(1) Any member of the Board or committee who has a personal
15 interest in any arrangement entered into or proposed to be considered by the
16 Board or any committee shall-

17 (a) disclose his interest to the Board or committee; and

18 (b) not vote on any question relating to the arrangement.

19 (2) Failure by any member of the Board or committee to comply with
20 the provision of sub-paragraph (1)(a) of this paragraph may constitute a ground
21 for removal of the member from the Board or committee.

SCHEDULE II

SENTENCES IN DEFAULT OF FAILURE TO SATISFY A CONFISCATION ORDER

Table		[Section 92(6)]	
		Amount	Period
An amount not exceeding N50,000	7 days	An amount not exceeding N50,000	7 days
An amount exceeding N50,000 but not exceeding N150,000	14 days	An amount exceeding N50,000 but not exceeding N150,000	14 days
An amount exceeding N150,000 but not exceeding N250,000	28 days	An amount exceeding N150,000 but not exceeding N250,000	28 days
An amount exceeding N250,000 but not exceeding N700,000	45 days	An amount exceeding N250,000 but not exceeding N700,000	45 days
An amount exceeding N700,000 but not exceeding N1,400,000	3 months	An amount exceeding N700,000 but not exceeding N1,400,000	3 months
An amount exceeding N1,400,000 but not exceeding N2,800,000	6 months	An amount exceeding N1,400,000 but not exceeding N2,800,000	6 months
An amount exceeding N2,800,000 but not exceeding N5,600,000	12 months	An amount exceeding N2,800,000 but not exceeding N5,600,000	12 months
An amount exceeding N5,600,000 but not exceeding N14,000,000	18 months	An amount exceeding N5,600,000 but not exceeding N14,000,000	18 months
An amount exceeding N14,000,000 but not exceeding N28,000,000	2 years	An amount exceeding N14,000,000 but not exceeding N28,000,000	2 years
An amount exceeding N28,000,000 but not exceeding N70,000,000	3 years	An amount exceeding N28,000,000 but not exceeding N70,000,000	3 years
An amount exceeding N280,000,000	10 years	An amount exceeding N280,000,000	10 years

EXPLANATORY MEMORANDUM

(This Memorandum does not form part of this Act but is intended to explain its purport)

This Act provides legal and institutional framework for the recovery and management of proceeds of crime or benefits derived from unlawful activities, harmonises and consolidates existing legislative provisions on the recovery of proceeds of crime and related matters in Nigeria; and makes provisions for the restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentalities used or intended to be used in the commission of unlawful activities.

