

ASSETS RECOVERY BILL, 2019

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A BILL

FOR

AN ACT TO PRESCRIBE THE PROCEDURE TO ENABLE THE GOVERNMENT TO RECOVER ASSETS WHICH ARE PROCEEDS OF CRIME OR TERRORIST ASSETS AND TO ESTABLISH A COMMITTEE TO ADMINISTER THE BILL TO FACILITATE DEVELOPMENT AND PUBLIC ACCOUNTS ABILITY AND FOR RELATED MATTERS

Sponsored by Hon. Ossai Nicholas Ossai

[] Commencement

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

1 PART I - ESTABLISHMENT OF ASSETS RECOVERY COMMITTEE

2 1.-(1) There is established, a body to be known as the Assets
3 Recovery Committee (in this Bill referred to as "the Committee").

Establishment
of Assets Recovery
Committee

4 (2) The Committee shall be a body corporate with perpetual
5 succession and a common seal and may sue and be sued in its corporate
6 name.

7 (3) The Committee may acquire, hold and dispose of movable and
8 immovable assets for the purpose of its functions.

9 (4) The Committee shall consist of:

10 (a) Minister or his representative, who shall be the Chairman;

11 (b) a representative of Federal Ministry of Finance, not below the
12 rank of a Director;

13 (c) the Chairman of Economic and Financial Crimes Commission;

14 (d) the Chairman of Independent Corrupt Practices and other
15 related offences Commission;

16 (e) a representative of Nigerian Police Force, not below the rank of
17 a Commissioner;

- 1 (f) a representatives of Assets Management Corporation of Nigeria;
2 and
3 (g) The Secretary of the Committee.
- Schedule 4 (5) The supplementary provisions contained in the schedule to this
5 Bill, shall have effect with respect to the proceedings of the Committee and
6 other matters.
- Cessation of
office for members
of the Committee 7 2. The office of any member of the Committee shall become vacant
8 if:
9 (a) the person resigns his appointment by notice in writing under his
10 hand addressed to the office of the Minister;
11 (b) the person is no longer serving the Institution he is representing;
12 (c) the Minister, in consultation with other members of the Committee
13 is satisfied that it is not in the best interest of the Committee for the person to
14 continue in office and notifies the member to that effect;
15 (d) the person is incapable of performing the functions of the office by
16 reason of disease of body or mind and was declared so by a medical
17 practitioner; or
18 (e) by reason of corruption, bankruptcy, conviction of a criminal
19 offence or death.
- Allowances of
the Committee 20 3. Members of the Committee, may receive allowances as are
21 applicable to government agencies or as may be determined by applicable
22 Government Regulations.
- Powers of the
Committee 23 4. The Committee shall have power to:
24 (a) determine the policy and general administration for recovery of
25 assets;
26 (b) constitute relevant committees to assist in executing specific
27 assignments for the Committee; and
28 (c) do such other functions as are conferred on it by this Bill or the
29 government.

- 1 5. The objective of the Bill is to: Objectives
- 2 (a) prescribe the procedure for public assets recovery which are
- 3 proceeds of crime or terrorists assets;
- 4 (b) establish a committee that facilitates the administration of this
- 5 Bill;
- 6 (c) prescribe variety of orders and circumstances under which such
- 7 orders are exercised to facilitate recovery of looted public assets;
- 8 (d) prescribe the procedure for dealing with unexplained wealth, or
- 9 abandoned wealth received by law enforcement agents;
- 10 (e) to provide support to other legal frameworks that facilitate
- 11 public assets recovery and accountability;
- 12 (f) provide the sanctity of public assets against looting and other
- 13 related financial mismanagement with appropriate sanctions on offenders;
- 14 and
- 15 (g) provide a legal frame work that keeps Nigeria in tune with other
- 16 jurisdictions in guarding the integrity of public office.

17 PART II - FUNCTIONS AND POWERS OF THE COMMITTEE

- 18 6.-(1) The Committee shall: Functions and
powers of the
Committee
- 19 (a) be responsible for recovery of public assets in conjunction with
- 20 relevant authorities;
- 21 (b) establish functional website where information regarding
- 22 recovered assets or assets under recovery and any relevant information on
- 23 public assets;
- 24 (c) carry out such other functions that are conducive to the
- 25 discharge of its functions under this Bill; and
- 26 (d) liaise with appropriate authorities to implement Whistle
- 27 Blowers Policy.
- 28 (2) The Committee shall exercise the following powers:
- 29 (a) powers to obtain information from all categories of individuals
- 30 and body corporate;

- 1 (b) powers to conduct search either in the day or in the night;
2 (c) facilitate the prosecution of accused persons in liaison with
3 appropriate authorities; and
4 (d) power to arrest all suspected individual that are holding or in
5 possession of public assets contrary to law.

6 PART III - STAFF OF THE COMMITTEE

Secretary of
the Committee

- 7 7. There shall:
8 (a) be appointed, by the Minister, a Secretary to the Committee, who
9 shall be a person of integrity and has appropriate qualifications and cognate
10 working experience in recovery of assets;
11 (b) be the Chief Administrative Officer of the Committee and shall be
12 responsible for the execution of the functions of the Committee and the day-to-
13 day running of the affairs of the Committee;
14 (c) hold office in the first instance for a period of three years and shall
15 be eligible for reappointment for further term of three years and no more; and
16 (d) receive salary and other emoluments as may be specified in the
17 letter of appointment.

Other staff of
the Committee

- 18 8.-(1) The Committee may appoint a few assistance or redeploy staff
19 from existing staff of the government to assist the Secretary in exercising the
20 functions of his office.
21 (2) The remuneration of the staff of the Committee shall be
22 determined by the Minister.
23 (3) The Secretary shall be responsible for:
24 (a) convening, on the authority of the Chairman, meetings of the
25 Committee;
26 (b) recording the minutes of all meetings of the Committee and such
27 other meetings as the Committee may direct;
28 (c) maintaining and keeping minute books and a register of recovered
29 assets and assets under recovery;
30 (d) keeping in safe custody all title documents relating to the

1 properties of the Committee;

2 (e) keeping in safe custody the common seal of the Committee; and

3 (f) carrying out such other duties and responsibilities as may be
4 assigned to him, from time to time, by the Committee.

5 (4) The Staff can be on permanent or temporary appointment.

6 (5) Staff appointed on temporary basis under sub-clause (4) of this
7 clause shall be precluded from the grant of pension and gratuity.

8 9. The Committee may subject to the provision of this Bill, make Staff Regulations
9 staff regulation relating generally to the condition of service of the
10 employees of the Committee, such regulation may provide for the
11 appointment, promotion, discipline, appeals and other related matters.

12 PART IV - FINANCIAL PROVISION AND MANAGEMENT OF RECOVERED

13 PUBLIC ASSETS

14 10.-(1) The Committee shall establish and maintain a fund which Establishment
of fund for the
Committee
15 shall be known as recovered assets fund to be utilized in saving the
16 recovered assets pending the transmission of the assets to the institution
17 responsible for utilizing the assets.

18 (2) There shall be paid and credited to the Fund established for the
19 Committee:

20 (a) sums appropriated from the federal budget for the fiscal year;

21 (b) gifts, donations and contributions from national and
22 international Institutions and philanthropist; and

23 (c) ten per cent, of the total value of the assets, as the cost of
24 recovery.

25 11. The Committee shall not later than 30th September each year Annual budget
of the Committee
26 or other date stipulated by law or policy, submit to the Minister an estimate
27 of expenditure or income of the Committee for the next fiscal year for
28 incorporation into the national budget.

29 12. The Secretary shall submit to the Committee quarterly and Reports
30 annual reports of the activities of the Committee.

1 (b) assets protected by the Order; or

2 (c) specified items of assets in which the defendant has an interest.

3 17.-(1) Notwithstanding the provision of any other law, where Restriction Order
4 specified assets is reasonably believed by the Committee to be or terrorist
5 assets, it may apply to the Court for a Restriction Order in respect of that
6 assets.

7 (2) It shall be sufficient for the purposes of sub-clause (1) of this
8 clause, for the Committee to show that the assets is a looted asset or terrorist
9 assets, without having to show that the assets was derived directly or
10 indirectly from a particular offence or that any person has been charged in
11 relation to such an offence.

12 (3) The Committee may make an application for the order even
13 where the act which is the subject of the application was committed by a
14 person who is deceased at the time of the application.

15 (4) The Judge shall, where he is satisfied that there are reasonable
16 grounds to believe that the assets referred to in the application are looted,
17 make a Restriction Order which may:

18 (a) authorise, require or secure the delivery up, seizure, detention
19 or custody of the assets; and

20 (b) appoint an Asset Manager who shall be authorised or required
21 to take:

22 (i) custody and control of the assets and to manage or otherwise
23 deal with it as the Judge may direct,

24 (ii) steps which the Judge considers appropriate to secure the
25 detention, custody or preservation of the assets or for any other purpose.

26 (5) In order to prevent assets subject of a Restriction Order from
27 being disposed of or removed contrary to the Order, the Committee may
28 seize the assets where there is reasonable grounds to suspect that the assets
29 will be disposed of or removed.

30 (6) The Judge may make a Restriction Order where a person was

1 acquitted of the offence, the charge was withdrawn before verdict was returned
2 or the proceedings were stayed.

Order in respect
of immovable
assets

3 18.-(1) On the application from the Committee, the Court may make a
4 order on immovable assets where the Court is satisfied that the assets is a
5 proceed of crime or terrorist assets.

6 (2) An order under sub-clause (1), of this clause, may include a
7 restriction that the assets shall not, without the consent of a the Committee:

8 (a) be mortgaged or otherwise burdened;

9 (b) be attached or sold in execution; or

10 (c) vest in the liquidator when the estate of the owner of that
11 immovable assets is sequestrated.

Variation and
rescission of
Order

12 19.-(1) Any person affected by a Restriction Order may apply to the
13 Court for the variation or rescission of the Order, on the application of the
14 affected party, the Court may:

15 (a) vary or rescind the Order where necessary in the interests of
16 justice; or

17 (b) rescind the Order where the proceedings concerned are
18 concluded.

19 (2) Where a Restriction Order in respect of immovable assets is varied
20 or rescinded, the Court shall direct the Registrar to cancel or, as the case may
21 be, amend any restriction endorsed by virtue of that Order on the title deed of
22 the immovable assets , and the Registrar shall give effect to any such direction
23 and declare the respective rights of every person who acquired an interest in the
24 assets on or after the day on which the Order was made and before the day on
25 which it was varied or rescinded.

Contravention
of the Order

26 20.-(1) A person who contravenes a Restriction Order by disposing of
27 or otherwise dealing with assets that is subject to the Order commit an offence,
28 and shall be liable on conviction to a term not exceeding two years and a fine
29 equivalent to the value of the asset,

30 (2) The Committee may apply to the Court for an order that any

1 dealing with assets be set aside where:

2 (a) the disposition or dealing shall be set aside from the day on
3 which it took place; or

4 (b) the disposition or dealing shall be set aside from the day on
5 which he makes the order and declare the respective rights of every person
6 who acquired an interest in the assets on or after the day on which the
7 disposition or dealing took place and before the day on which he makes the
8 order.

9 21.-(1) Restriction Order shall expire 12 months after the date on Duration of
10 which it was made unless: Order

11 (a) the assets is dealt with in contravention of the Order; or

12 (b) the dealing was not for sufficient consideration or not in favour
13 of a person who acted in good faith and without notice of the Order.

14 The Judge may, on an application under sub-clause (2), order that:

15 (a) there is an application for a Recovery Order pending before the
16 Court in respect of the assets which is the subject of the Restriction Order;

17 (b) there is an unsatisfied Recovery Order in force in relation to the
18 assets which is the subject of the Restriction Order; or

19 (c) the Restriction Order is rescinded before the expiry of that
20 period.

21 (2) The Committee may, on good cause shown, apply to a Judge to
22 extend the duration of a Restriction Order for a specific period not exceeding
23 3 years as the Judge thinks fit to do in the interests of justice.

24 22. The Committee may, for the purposes of, or in connection with Ancillary Order
25 an application for, or the enforcement of an Order, apply to Court for an
26 Ancillary Order under this Bill.

27 23.-(1) A Judge may, on an application made by the Committee, Production Order
28 make a Production Order where he is satisfied that each of the requirements
29 for the making of the Order set out under sub-clause (2) of this clause are
30 fulfilled.

1 (2) The application shall state that:

2 (a) the Order is sought for the purposes of the Investigation;

3 (b) the Order is sought in relation to material, or material of a
4 description, specified in the application; and

5 (c) a person specified in the application appears to be in possession or
6 control of the material.

Disclosure
Order

7 24.-(1) A Court may, on an application made by the Committee, make
8 a Disclosure Order where he is satisfied that each of the requirements for the
9 making of the Order set out under this clause are fulfilled.

10 (2) An application for the Order shall state that the assets or a person
11 specified in the application is the subject of an Investigation and the Order is
12 sought for the purposes of the Investigation.

Customer
information
Order

13 25.-(1) A Judge may, on an application made by the Committee, make
14 a Customer Information Order where he is satisfied that:

15 (a) assets specified in the application is the subject of an Investigation
16 and the person specified in the application appears to hold the assets;

17 (b) the Order is sought:

18 (i) for the purposes of the Investigation, and

19 (ii) against every financial institution specified in the application.

20 (2) A Customer Information Order is an Order that a financial
21 institution specified in the application for the Order shall, on being required to
22 do so by notice in writing given by the Committee, provide such customer
23 information as it may have, relating to a person specified in the application.

24 (3) A financial institution which is required to provide information
25 under a Customer Information Order shall provide the information to the
26 Committee in such manner, and at or by such time, as the Committee shall
27 specify.

Account and
monitoring order

28 26.-(1) A Court may, on an application made by the Committee, make
29 an Account Monitoring Order where it is satisfied that:

30 (a) the assets specified in the application is the subject of an

1 Investigation and a person specified in the application appears to hold the
2 assets;

3 (b) the Order is sought:

4 (i) for the purposes of the Investigation,

5 (ii) against the financial institution specified in the application in
6 relation to account information of the description so specified.

7 (2) An application for the Order may specify information relating
8 to:

9 (a) all accounts held by the person specified in the application for
10 the Order at the financial institution so specified;

11 (b) a particular description, or descriptions, of accounts so held; or

12 (c) a particular account, or particular accounts, so held.

13 (3) An Account Monitoring Order is an Order that a financial
14 institution specified in the application for the Order shall, for the period
15 stated in the order, provide account information of the description specified
16 in the Order to the Committee in the manner, and at or by the time, stated in
17 the Order.

18 27. Where a person who has an interest in assets that is the subject
19 of a Restriction or other Orders may apply to the Court to exclude his
20 interest from the Order, the Court shall grant the application where the court
21 is satisfied that:

22 (a) the assets is not proceeds of crime;

23 (b) the applicant was not in any way, involved in the commission of
24 the offence in relation to which the Order was made;

25 (c) where the applicant acquired the interest before the commission
26 of the offence, the applicant did not know that any person would use, or
27 intend to use, the assets in or in connection with the commission of the
28 offence; or

29 (d) where the applicant acquired the interest at the time or after the
30 commission of the offence, the interest was acquired in circumstances

Exclusion of
some assets from
Order

1 which would not arouse a reasonable suspicion that the assets was a proceed of
2 crime.

Unexplained
wealth

3 28. Where respondents, who are holding appointive or elective
4 offices, failed to explain the source of their wealth or where the respondent is
5 either directly or indirectly is connected to a person holding appointive or
6 elective offices and there are reasonable grounds to suspect that the respondent
7 is or has been involved in serious crime, and there is clear inconsistency in their
8 apparent legal income and their visible assets in, the committee shall apply to
9 court for restriction and subsequent confiscation of the wealth.

10 PART VI - MISCELLANEOUS PROVISIONS

Power to obtain
information

11 29.-(1) For the purpose of carrying out the functions conferred on the
12 Committee under this Bill, the Secretary or any other officer of the Committee
13 authorised on behalf of the Committee:

14 (a) shall have a right of access to all the records of all sectors 'Covered
15 under this Bill; and

16 (b) may by notice in writing served on any person in charge of the
17 institution to furnish information on such matters as may be specified in the
18 notice.

19 (2) It shall be the duty of any person required to furnish information
20 pursuant to sub-clause (1) of this clause, to comply with the notice within time
21 frame provided.

Procedure and
limitation of suit
against the
Committee

22 30. A person who has a cause of action against the Committee shall:

23 (a) give the Committee three months' notice of intention to commence
24 an action in writing disclosing the cause of action and relief sought and served
25 at the principal office of the Committee; and

26 (b) any cause of action against the Committee for any claim shall
27 commence within two years from the date the cause of action arose.

Service of
process

28 31. Any document, summons, notices, process or any other thing
29 required or authorized to be served on the Committee shall be served by
30 delivering same at the office of the Secretary of the Committee.

1 (4) The quorum of the Committee shall be formed by the Chairman or
2 a person sitting in his place and three other members the Committee including
3 the Secretary.

4 PART II - COMMITTEES

5 2.-(1) The Committee may appoint sub-committees to carry out, on its
6 behalf, such functions that the Committee shall legitimately carry out.

7 (2) The decision of the sub-committee appointed under paragraph
8 2(1) shall have no effect until it is approved by the Committee.

9 PART III - MISCELLANEOUS

10 3.-(1) The Secretary of the Committee shall be the custodian of the
11 seal of the Committee.

12 (2) Fixing of the common seal of the Committee shall be
13 authenticated by the signature of the Chairman of the Committee or some other
14 persons authorized to do so.

15 (3) Any contract or instrument, which if made or executed by a person
16 not being a body corporate, shall not be required to be made under seal, shall be
17 executed on behalf of the Committee by the -Secretary or any other person
18 authorized to do so.

19 (4) Where the Committee desires to obtain an expert opinion from a
20 person not being a member of the Committee, the Committee may co-opt such
21 person for such period the Committee may determine, but the co-opted person
22 shall not have the right to vote or to count in forming a quorum.

23 (5) The validity of any proceeding of the Committee or of a committee
24 shall not be adversely affected by any vacancy in the membership of the
25 Committee or Committee or by any defect in the appointment of a member of
26 the Committee or Committee or by reason that a person not entitled to take part
27 in the proceedings of the Committee or the Committee took part.

EXPLANATORY MEMORANDUM

This Bill seeks to prescribe the procedure to enable the government to recover assets which are proceeds of crime or terrorist assets and to establish a committee to administer the Bill to facilitate development and public accounts ability.

