

SB. 12

A BILL

FOR

AN ACT TO AMEND THE PROCEEDS OF CRIME (RECOVERY AND MANAGEMENT) Act No. 16 BY CREATING AN AGENCY TO MANAGE THE DISPOSAL OF PROPERTIES REASONABLY SUSPECTED TO HAVE BEEN DERIVED FROM UNLAWFUL ACTIVITIES AND FOR RELATED MATTERS

Sponsored by Senator Idiat Oluranti Adebule PhD.

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

Amendment of The Proceeds of Crime (

Recovery and Management) Act No. 16

1. The Proceeds of Crime (Recovery and Management) Agency Act N16 (here after referred to as the “Principal Act”) is hereby amended as set out in this Bill.

RECOVERY OF PROCEEDS OF CRIME (RECOVERY AND MANAGEMENT AGENCY ESTABLISHMENT) ACT, 2023

2. Insertion of a new Section 1

Section 1 (1) There is established a body to be known as the Proceeds of Crime (Recovery and Management) Agency.

Section 1(2)

- (a) The Agency shall be a body with perpetual succession and common seal
- (b) May sue or be sued in its corporate name and may, for the purpose of its function the agency shall acquire, hold or dispose of property (whether moveable or immovable)

Section 1 (3) provides for the Objectives of the Act.

The objectives of this Act are to-

- (a) provide for an effective legal and institutional framework for the recovery and management of the proceeds of crime, benefits derived therein, instrumentality of unlawful activities, and unclaimed properties reasonably suspected to be proceeds of crime ;
- (b) make 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 ;
- (c) make provisions for non-conviction based procedure for the recovery of proceeds of crime ;
- (d) strengthen the criminal confiscation procedure by ensuring that the total benefit from a person’s criminal activity is calculated and an equivalent amount, where recoverable, is confiscated on behalf of the Federal Government ;
- (e) strengthen collaboration among the relevant organisations in tracing and

forfeiting properties reasonably suspected to be proceeds of unlawful activity through non-conviction based forfeiture proceedings ; and

(f) make provisions for the handover, management and disposal of properties forfeited to the Federal Republic of Nigeria.

Section 1 (4) the provisions of this Act shall apply to-

(a) detection, identification, investigation, and recovery of realisable assets and the proceeds and instrumentalities of unlawful activity by relevant organisations ;

(b) orders and directives by the Court to support the detection, recovery and preservation the proceeds and instrumentalities of unlawful activity and realisable properties by relevant organisations.

(c) confiscation orders to recover a sum equivalent to the amount a convicted person has acquired from the offences charged and related offences, including accrued benefits ;

(d) management of the recovered assets and property by the Agency under this Act ; and

(e) training and certification of asset recovery officers, asset recovery agents, auctioneers, bankers, consultants and judicial officers.

3. Insertion of a new section 2

Section 2 (1)- Composition of the Agency

The agency shall consist of the following members:

a) An executive secretary who shall be -

- (i) the Chief Executive and Accounting Officer of the agency.
- (ii) a lawyer with not less than 15 years cognate experience

(b) the AG/ Minister of Justice or representative

(c) The minister of finance or the representative

(d) a representative each of the relevant agencies

e) representative of the following:

(i) Ministry of Foreign Affairs

(ii) Civil society organisation

(iii) Auctioneers

(iv) Auditor-General

(v) National Insurance Commission

(vi) Estate surveyors and valuers and

(vii) such other organisations as the Attorney-General may designate;

Section 2 (2)- The members of the agency, other than the Executive Secretary shall be part-time members.

Section 2 (3) -The Executive secretary and members of the agency shall be appointed by the President and The appointment shall be subject to the confirmation of the Senate.

Section 2(4)- Tenure of office

(a) The executive secretary and members of the agency shall hold office for a period of 5 years and shall not be subject to renewal or re-appointment.

(b) A member of the agency may at any time be removed by the President for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the agency or the interest of the public that the member should continue in office.

(c) A member of the agency may resign his membership by notice in writing addressed to the President and that member shall, on the date of the receipt of the notice by the President, cease to be member.

Section (5) – Vacancy in Membership

Where a vacancy occurs in the membership of the agency, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, however the successor shall represent the same interest as his predecessor.

Section (6)- Standing Orders

The agency may take standing orders from regulating its proceedings

4. Amendment of the Marginal notes of Section 3

Establishment and functions of Proceeds of Crime (Recovery & Management Agency) establishment Act by replacing the " Directorate " with the word " Agency" and deleting the words "in the relevant organisation"

5. Amendment of the title in Part II

Part II— Proceeds of Crime (Recovery and Management) Agency by replacing " Directorate " with the word " Agency".

6. Amendment of Section 3

Section 3 of the Principal Act is Amended

“3. The Agency shall—”

(a) enforce and administer the provisions of this Act ;”

by replacing the " relevant organization " with the word " Agency.

7. Amendment of Section 3 (b)

Section 3(b) of the Principal Act is Amended

(a) “3. ” by deleting the " establish Proceeds of Crime (Management) Directorate which shall—

" with the word " Agency.

8. Amendment of Section 3 (j)

Section 3 (j) of the Principal Act is Amended

“3 (j) carry out such other necessary or expedient functions as may be assigned to it by the Ministry of Justice to ensure the efficient performance of its functions under this Act.

—” by replacing the " head of the relevant organization " with the word " Federal Ministry of Justice.

8. Amendment of Section 4

Section 4 of the Principal Act is Amended

“ 4. The Agency may subject to the provisions of this Act, execute such contracts or other arrangements, as it considers necessary and, in particular ”

by replacing the " relevant organization " with the word " Agency.

9. Amendment of the Marginal notes

Powers of the Agency by replacing the " relevant organisation " with the word " Agency" “

10. Amendment of Section 5

Section 5 of the Principal Act is Amended

“ 5 (1) Subject to the provisions of this Act, the Agency shall—

(a)be informed of any property seized by the relevant organisations in the course of investigation, within 14 days or soon thereafter for the purpose of documentation ” by replacing the " Directorate " with the word " Agency.

11. Amendment of the Marginal notes

Role of the Agency in the process of management of forfeited properties.by replacing the " relevant organisation " with the word " Agency" “

12. Amendment of Section 5 (2)

Section 5 (2)of the Principal Act is Amended

“ 5 (2) Properties forfeited shall be vested in the Agency for and on behalf of the Federal Government of Nigeria.” by replacing the " Directorate " with the word " Agency.

13. Amendment of the sub title

“PART III—RELATIONSHIP BETWEEN THE AGENCY AND THE DIRECTORATE IN THE
RELEVANT ORGANIZATIONS”

by replacing the " Directorate " with the word " Agency.

14. Amendment of Section 6

Section 6 of the Principal Act is Amended

(1) In the performance of their functions and exercise of their powers under this Act, the Agency shall cooperate with the head of the directorate in the relevant organisations .

by replacing the " Directorate " with the word " Agency.

15. Amendment of Section 9(8)

Section 9 (8) of the Principal Act is Amended

“(8) Upon the grant of a preservation order by the Court, The Agency shall take possession of the property from any person in possession or entitled to possession of the property and may appoint a receiver in order to do so.”

by replacing the " Directorate " with the word " Agency

16. Amendment of Section 13 (1)

Section 13 (1) of the Principal Act is Amended

“13 (1) Where are reasonable grounds to believe that a property, which is subject to a preservation order, may have its value diminished, or be disposed of, destroyed, or damaged, removed contrary to the order or may deteriorate in terms of quality or utility, the relevant organization shall promptly apply to the Court *ex-parte* for an order directing the Agency to sell the property at the prevailing market value.”

by inserting the word " Agency”

17. Amendment of Section 14 (1)

Section 14 (1) of the Principal Act is Amended

“14 (1) Where the Court has made a preservation order, it may direct the Agency to

by replacing the " relevant Organizations " with the word " Agency

18. Amendment of Section 14 (1) (a)

Section 14 (1) (a) of the Principal Act is Amended

“14 (1) Where the Court has made a preservation order, it may direct the Agency to

(a) by deleting the words " appoint an asset manager to— and replacing same with Agency "

19. Amendment of Section 14 (2)

Section 14 (2) of the Principal Act is Amended

“14 (2) Where any property subject to a preservation order is not surrendered within the period that has been determined under subsection (1) (b), an authorised officer of the Agency may enter by force, if necessary, any premises,

where he reasonably believes the property is situate, in order to search for and seize the property.....”

by replacing the words " relevant organization" with "Agency"..

20. Amendment of Section 14 (3)

Section 14 (3) of the Principal Act is Amended

“14 (3) The Agency may be accompanied by authorised officers of the relevant organisation or law enforcement officers as are reasonably required in order to effect entry into premises.”

by replacing the words " Appointed asset managers" with "Agency".

21. Amendment of Section 17 (1)

Section 17 (1) of the Principal Act is Amended

“17 (1) Where a preservation order is in force and before the expiration of the stipulated time, the relevant organisation may apply to the Court by way of motion on notice for a forfeiture order against all or any part of the property that is subject to the preservation order.”

by replacing the word " of" with "on".

22. Amendment of Section 21 (1) and (2)

Section 21(1) of the Principal Act is Amended

“21—(1) With effect from the date when the Court makes a forfeiture order, the property subject to the order is forfeited to Federal Government of Nigeria.

(2) On a forfeiture order taking effect, the relevant organisation shall promptly handover to the Agency, the forfeited property.

23, Amendment of Section 22 (1)

Section 22(1) of the Principal Act is Amended

“22 (1) The Agency shall, in accordance with the directions of the Court—

- (b) deposit any money forfeited under this Act into the Confiscated and Forfeited Properties Account established under section 68 of this Act ; or
- (c) dispose of the property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the said account.

24. Amendment of Section 28

Section 28(1) (a) of the Principal Act is Amended

“ 28.—(1) Where cash under section 27 of this Act—

- (a) is detained, by officers of other relevant organization, the Agency shall be immediately notified within seven days, for purpose of documentation and

the cash paid into the designated account of the Agency; or”
by replacing the words " Directorate ” with “Agency”.

25. Amendment of Section 45 (5)

Section 45(5) of the Principal Act is Amended

“(5) The amount that the Court may order a convicted person to pay to the Agency under subsection (1) shall not exceed—”

by replacing the words " relevant organization ” with “Agency”.

26. Amendment of Section 56

Section 56 of the Principal Act is Amended

“Where any property is seized under this Act, the seizure is effected by removing the property from the custody or control of the person from whom it is seized and placing it under the custody of the Agency ”

By replacing the words “ relevant organization ” with “Agency”.

27. Amendment of Section 58

Section 58 of the Principal Act is Amended

“ PART VIII—ADMINISTRATION

1. This Part sets out the powers and duties of Agency , in respect of property, (in this Part referred to as “controlled property”), seized and placed under the control and custody of the Agency by order of the Court.”

by replacing the " relevant organization " in line 1 and line 3 with the word " Agency.

28. Amendment of the Marginal notes

“Powers and duties of the Agency in respect of property seized”

by replacing the " relevant organisation " with the word " Agency”.

29. Amendment of Section 59 (1)

Section 59(1) of the Principal Act is Amended

1. —(1) The Agency shall do everything that is reasonably necessary for the purpose of preserving the controlled property, including—

by replacing the " relevant organisation " with the word " Agency”.

30. Amendment of Section 60

Section 60 of the Principal Act is Amended

“The Agency may exercise the rights attaching to any of the controlled property that are shares, securities, stocks, bonds or debentures as if the Agency were the registered holder of the shares, securities, stocks, bonds or debentures, to the exclusion of the registered holder.”

by replacing the " relevant organisation " with the word " Agency” in line one and two.

31. Amendment of Section 61

Section 61 of the Principal Act is Amended

The Agency may—
destroy the controlled property or any part of it on the grounds of public interest, health or safety; or

by replacing the " relevant organisation " with the word " Agency”.

32. Amendment of Section 62 (1)

Section 62(1) of the Principal Act is Amended

(1) The Agency shall give written notice of the proposed destruction or disposal of the controlled property to—

by replacing the " relevant organisation " with the word " Agency”.

33. Amendment of Section 64

Section 64 of the Principal Act is Amended

64. Where the Agency pay monies into the designated account, as required by the provisions of this Act in satisfaction of a person’s liability under a confiscation order, the person’s liability under the order is, to the extent of the payment, discharged.

by replacing the " relevant organisation " with the word " Agency”.

34. Amendment of Section 65

Section 65 of the Principal Act is Amended

Where the restraint order relating to the controlled property ceases to be in force, the property shall be returned to its owner, the Agency shall pay to the owner the income generated from the property less all reasonable expenses incurred by the Agency on the controlled property.

by replacing the " relevant organisation " with the word " Agency”.

35. Amendment of Section 66

Section 66 of the Principal Act is Amended

“The Agency in respect of property in its custody shall not be liable for—

- (a) any loss or damage, sustained by a person claiming an interest in all or part of the controlled property, arising from the Agency taking custody and control of the property ; and
 - (b) the cost of proceedings taken to establish an interest in the property.
- (2) In the management of controlled property, the Agency shall not pay any rates, land tax, municipal or statutory charges imposed under any law pertaining to the controlled property, except out of the rents or profits that had accrued from the controlled property.”

by replacing the words " relevant organisation " with " Agency”.

36. Amendment of Section 70 (a)

Section 70 of the Principal Act is Amended

70. The President may, subject to the approval by Federal Executive Council authorise the expenditure for money in the Confiscated and Forfeited Properties Account to be used to—

- (a) permit the Agency to invest in various government portfolios to ensure that the funds can accrue interest that would be applied for the implementation of development projects as approved by the Federal Executive Council (FEC) or the National Assembly ;

by replacing the " relevant organisation " with the word " Agency”.

37. Amendment of Section 80

Section 80 of the Principal Act is Amended

80. The Chairman, member of the Board, officers or staff of the Agency and the relevant organisation, or a seconded officer from any organisation or from any public office of the Federation, shall be indemnified out of the assets of the relevant organisation against any proceedings brought against him in his official capacity, where the act complained of is not beyond his powers.

by including the words " Agency” in line one and line four.

38. Amendment of the Marginal notes of Section 80

“Indemnity of officers of the Agency and the relevant organisation.”

by including the word " Agency".

39. Amendment of Section 81(1)

Section 81(1) of the Principal Act is Amended

81 (1) The Attorney-General of the Federation may, in consultation with the Agency and the relevant organisations make regulations with regard to a standardised automated asset forfeiture management system expedient for the efficient implementation of the provisions of this Act.

by adding the Agency in line 1

Citation

41. This Bill may be cited as the Proceeds of Crime (Recovery and Management) Agency Act (Amendment) Bill 2023.

Explanatory memorandum

This Bill seeks to amend the Proceeds of Crimes (Recovery and Management) Act 2022 by creating an Agency to manage the disposal of properties reasonably suspected to have been derived from unlawful activities and for related matters .