

PROCEEDS OF CRIMES (RECOVERY AND MANAGEMENT) AGENCY BILL, 2020

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PROCEEDS OF CRIMES (RECOVERY AND MANAGEMENT) AGENCY ACT 2020

A BILL

FOR

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

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

Commencement []

PART I

OBJECTIVES AND APPLICATION

1. Objectives

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 or benefits derived from unlawful activities;
- (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) Establish the Proceeds of Crimes (Recovery and Management) Agency Act 2020 (in this Act referred to as "the Agency") to carry out the functions conferred on it under this Act; and
- (f) Enable the Agency to work with a relevant organisation to implement confiscation proceedings against a convicted person.

2. Application

The provisions of this Act apply to –

- (a) Detection, identification, investigation, and recovery of realisable assets and the proceeds and instrumentalities of unlawful activity by relevant organisation and the Agency;
- (b) Orders and directives by the Court to support the detection, recovery and preservation of the proceeds and instrumentalities of unlawful activity and realisable properties by relevant organisation and the Agency;

- (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.

PART II

PROCEEDS OF CRIMES (RECOVERY AND MANAGEMENT) AGENCY

3. Establishment of the Proceeds of Crimes Recovery and Management Agency

- (1) There is established the Proceeds of Crimes (Recovery and Management) Agency (in this Act referred to as “the Agency”).
- (2) The Agency –
 - (a) Is a body corporate with perpetual succession and a common seal;
 - (b) May sue and be sued in its corporate name, and
 - (c) May acquire, hold, purchase, mortgage, and deal with property, movable or immovable, real or personal, subject to the provisions of the Land Use Act.
- (3) The Agency shall be independent in the discharge of its duties under this Act.
- (4) The common seal of the Agency shall be –
 - (a) Kept in the custody of such person as the Board may direct; and
 - (b) Authenticated by the signature of the Director-General or such other officer, as the Board may designate.

4. Functions of the Agency

(1) The Agency shall –

- (a) enforce and administer the provisions of this Act;
- (b) take over and assume responsibility for the proper and effective management of properties recovered from cases relating to proceeds of crimes or unlawful activities;
- (c) set standards to be applied in the handling of properties referred to in paragraph (b) of this section;
- (d) ensure the effective preservation of properties recovered, which may be required in the investigation and prosecution of cases relating to proceeds of crime or unlawful activities;
- (e) ensure accountability in the management of all properties seized, confiscated, or forfeited under this Act, or under other applicable laws;
- (f) supervise and ensure the effective administration of recovery and management of proceeds of crime and other related matters in Nigeria;
- (g) provide training on the recovery and management of the proceeds of crimes and related matters;
- (h) authorise and appoint private asset managers and ensure that assets managers are properly bonded and insured;
- (i) establish and maintain –
 - (i) assets management and disposal systems, and
 - (ii) lists of approved auctioneers and valuers, and issue instructions for the realisation or security of assets whilst ensuring fair process;
- (j) establish and maintain a central database of -
 - (i) all seized and recovered assets, and

- (ii) asset managers, auctioneers, insurers, and other necessary support services;
- (k) Under the direction of the Attorney-General of the Federation, work with the Federal Ministry of Justice to negotiate the return and management of all assets seized from foreign countries on behalf of the Federal or State Governments, or any other victim or for the benefit of Nigerians;
- (l) recommend that a portion not exceeding two percent of the recovered proceeds of crime, be allocated to the relevant organisation or the Agency responsible for the recovery of the proceeds, for operational and training expenses;
- (m) maintain statistics as to amounts recovered and managed by the Agency;
- (n) collaborate with other government bodies outside Nigeria that are carrying on functions, wholly or in part, similar with those of the Agency;
- (o) maintain an accurate inventory of all assets, with records of their location, value, condition, and description of their status in relation to any proceedings before the Court;
- (p) adopt measures for the effective tracing of proceeds of crimes in matters being managed by the Agency;
- (q) recommend reparations to victims of crime, where proceeds have been recovered; and
- (r) carry out such other functions as are necessary or expedient to ensure the efficient performance of its functions under this Act.

5. Powers of the Agency

- (1) The Agency may, subject to the provisions of this Act, execute such contracts or other arrangements, as it considers necessary and, in particular –
 - (a) engage contractors, asset managers, auctioneers, accountants, consultants, brokerage companies, investment advisers, financial investigators and other experts for the effective performance of its functions under this Act;

(b) dispose assets subject to an interim forfeiture order of a court that –

(i) are perishable or susceptible to deterioration, or

(ii) may be excessively burdensome or expensive to maintain or administer,

leading to a reduction of the recoverable amount;

(c) maintain a designated interest yielding account that guarantees the reasonable preservation of the economic value of all seized assets and pay into such account any amount realised from the disposal of a seized asset referred to in paragraph (b) of this section, until such time as final judicial decision is taken; and

(d) do anything it considers appropriate for facilitating, or which is incidental or conducive to the performance of its functions.

(2) The Agency may, set up such departments, special units, technical committees, working groups and task forces as it deems necessary for the effective performance of its functions under this Act.

6. Establishment and functions of the Board

- (1)** There is established, a part-time Governing Board for the Agency (in this Act referred to as “the Board”).
- (2)** The Board shall consist of –
- (a)** a Chairman;
 - (b)** ex-officio members not below the rank of a Director or its equivalent, from-
 - (i) Federal Ministry of Justice,
 - (ii) Central Bank of Nigeria,
 - (iii) Economic and Financial Crimes Commission,
 - (iv) Nigerian Financial Intelligence Unit,
 - (v) National Drug Law Enforcement Agency,
 - (vi) NAPTIP,
 - (vii) Independent Corrupt Practices and Other Related Offences Commission,
 - (viii) Nigeria Customs Service,
 - (ix) Nigeria Police Force,
 - (x) Code of Conduct Bureau, and
 - (xi) Federal Ministry of Interior
 - (c)** one representative of a non-governmental organisation or a professionally recognized body with at least 15 years cognate experience in the recovery of assets and management of proceeds of crimes;
 - (d)** the Director-General of the Agency, who shall be the Secretary to the Board.

- (3)** The Chairman shall have, at least, twenty years cognate experience in law or economics, or accountancy with speciality in asset recovery and management.
- (4)** The Chairman and other members of the Board, other than the *ex-officio* members, shall –
- (a)** be appointed by the President, on the recommendation of the Attorney-General of the Federation;
 - (b)** hold office for a term of five years; and
 - (c)** be eligible for re-appointment for another term of five years and no more.
- (5)** The office of a member of the Board shall become vacant if –
- (a)** his term of office expires;
 - (b)** he resigns his office by a notice, in writing, under his hand addressed to the President;
 - (c)** he dies;
 - (d)** he becomes incapable of performing the functions of his office due to mental or physical illness;
 - (e)** is convicted of a felony or any offence involving dishonesty;
 - (f)** he is declared bankrupt;
 - (g)** he is guilty of gross misconduct relating to his duties;
 - (h)** the President directs the removal of a member, where he is satisfied that it is not in the interest of the Agency or of the public for the person to continue in office as a member of the Board; or
 - (i)** in the case of an *ex-officio* member, he ceases to hold the office on the basis of which he became a member of the Board.
- (6)** Where a vacancy occurs in the membership of the Board, it shall be filled by an appointment by the President, and the successor shall –

- (a) hold office for the remainder of the term of office of his predecessor; and
 - (b) represent the same interest, as that of the member, whose exit created the vacancy.
- (7) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters mentioned in the Schedule.

7. Powers of the Board

The Board shall –

- (a) formulate and provide general policy guidelines for the discharge of the functions of the Agency;
- (b) monitor and ensure implementation of the policies and programmes of the Agency;
- (c) establish appropriate disciplinary procedure for the staff of the Agency; and
- (d) carry out such other functions as may be requested by the Agency to ensure the efficient performance of the functions of the Agency under this Act.

8. Appointment and Tenure of the Director-General of the Agency

- (1) There shall be for the Agency, a Director-General who shall be appointed by the President on the recommendation of the Attorney- General and subject to confirmation by the Senate.
- (2) A person shall not be appointed as the Director-General, except he holds a degree in law, accounting, finance, business administration, or economics with at least twenty (20) years cognate experience, ten (10) of which shall be at a senior management level in the public sector.
- (3) The Director-General shall hold office –
- (a) for a period of five years, which may be renewed for a further term of five years and no more; and

- (b) on such terms and conditions, as may be specified in his letter of appointment.
- (4) The Director-General shall be the chief executive of the Agency and be responsible for –
 - (a) the day-to-day administration of the Agency;
 - (b) the execution of the policies of the Agency;
 - (c) the implementation of the Agency’s functions;
 - (d) ensuring the transparent maintenance of accounting records and transparent management of assets recovered by the Agency in accordance with applicable laws governing statutory bodies;
 - (e) keeping the minutes of the meetings of the Board and such other records as the Board may direct; and
 - (f) performing such other duties as are assigned to him under this Act or any other law.

9. Staff

- (1) The Director General shall appoint for the Agency, staff and other professionals for the proper discharge of the functions of the Agency, on such terms and conditions, as the Board may determine in accordance with approved Government policy.
- (2) Public officers may be transferred or seconded to the Agency, from relevant organisation and other public bodies on such terms and conditions as may be determined by the Board but can only be seconded for a period of two years renewable only once.
- (3) For the purposes of this Act, a public officer, who is transferred or seconded to the Agency under subsection (2) of this section, shall be regarded as a staff of the Agency and subject only to the control and direction of the Agency.

10. Conditions of service of staff

- (1) The Board shall be responsible for approving –

 - (a) the job description, title, terms, qualifications, and allowances; and
 - (b) salaries and remunerations, subject to the approval of the National Income, Salaries and Wages Commission.
- (2) In determining the terms and conditions of service for the staff of the Agency, the Agency shall take into account the nature of the operations of the Agency, which requires probity, integrity and incorruptibility and the need for commensurate compensation for services rendered.
- (3) The Agency shall, with the approval of the Minister responsible for Finance, establish a suitable welfare scheme for the Chairman, Director-General and staff of the Agency.
- (4) The Agency shall, subject to the approval of the Board, make rules relating generally to the conditions of service of its staff, including rules providing for the appointment, promotion, and disciplinary control over its staff.
- (5) The Agency shall publish rules made under subsection (4) of this section in such manner as it may determine.
- (6) Service in the Agency shall be subject to the Pension Reform Act (Act No. 4, 2014), provided that nothing in this section shall exclude the Agency from employing staff on non-pensionable terms and conditions.

11. Screening of certain staff of the Agency

- (1) A person may not be appointed as a staff of the Agency, unless –

 - (a) information with respect to that person has been gathered by the Department of State Security; and
 - (b) the Agency, after evaluating the information gathered, is satisfied that the person may be so appointed, having successfully undergone the necessary clearance.
- (2) The Agency may at any time, after consultations with the Department of State Security, subject a person referred to in subsection (1) of this section to further screening and investigation.

12. Fund of the Agency

There is established for the Agency a fund (in this Act referred to as “**the Fund**”), which consist of –

- (a) budgetary allocations received from the Federal Government;
- (b) take-off grants and annual subventions;
- (c) allocations from recovered funds as provided for under this Act;
- (d) gifts, grants, aids, and testamentary disposition, provided the terms and conditions attached to any of them are not inconsistent with the functions of the Agency; and
- (e) such other sums of monies as may accrue to the Agency from other sources.

13. Expenditure of the Agency

The Director-General shall apply the funds of the Agency to –

- (a) the cost of administration of the Agency;
- (b) pay the salaries, allowances, and benefits of staff of the Agency;
- (c) pay other overhead allowances and benefits, charges and expenses of the Agency; and
- (d) undertake such other activities, as are connected with the functions of the Agency under this Act.

14. Estimates of the Agency

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

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

15. Accounts and audit

- (1)** The Agency shall –
 - (a)** keep proper and regular accounts, and other records of monies received and paid by the Agency, and of the several purposes for which the monies have been received or paid, and of its assets, credits and liabilities;
 - (b)** do all things necessary to ensure that all payments out of the Fund and designated interest yielding account are correctly made and properly authorised, and that adequate control is maintained over the assets in its custody and over the expenditures incurred by the Agency; and
 - (c)** within the first four months of each financial year, submit its accounts to auditors appointed by the Agency, from the list and in accordance with guidelines approved by the Auditor-General of the Federation, its accounts for audit.
- (2)** As soon as the accounts and the financial statements of the Agency have been audited, in accordance with the requirement of this Act, the Board shall forward a copy of the audited financial statements to the Attorney-General of the Federation for onward transmission to the National Assembly, together with any report or observations made by the auditors and the Auditor-General on the statement of accounts.
- (3)** The remuneration of the auditors shall be paid out of the Fund of the Agency.
- (4)** The audited accounts of the Agency and the Auditor-General's report on those accounts shall form part of the Auditor-General's overall annual report to the National Assembly.

16. Annual Report

- (1)** The Director-General shall, not later than 30th June in each financial year, submit to the Board in respect of the preceding financial year an annual report on the activities of the Agency in such form, as the Board may direct.
- (2)** The report under subsection (1) of this section shall include –
 - (a)** information with regard to the activities of the Agency in that year;

- (b) a copy of the audited accounts of the Agency in respect of that year, together with the Auditor-General’s report on the accounts; and
 - (c) such other information as the Board may request.
- (3) The Board shall, on receiving the annual report, cause it to be submitted to the Attorney General of the Federation for onward transmission to the National Assembly within the financial year.
- (4) The Director-General shall provide the Board with such information relating to the affairs of the Agency, as the Board may request.

PART III

RELATIONSHIP BETWEEN THE AGENCY, RELEVANT ORGANISATIONS, AND OTHER RELEVANT ENTITIES

17. Co-operation with relevant organisations and other relevant entities

- (1) In the performance of its functions and in the exercise of its powers under this Act, the Agency shall cooperate with relevant organisations and other relevant entities.
- (2) In this section, “other relevant entities” includes, any other institution or authority not listed as relevant organisation.

18. Role of the Agency in the process of recovery and management of Proceeds of Crime

- (1) The Agency shall, by virtue of section 2 of this Act, have exclusive power in the management of seized, confiscated and forfeited properties by all relevant organisations.
- (2) Subject to the provisions of this Act –
 - (a) the Agency shall be informed by the relevant organisation of any property seized in the course of investigation, within 30 days for the purpose of documentation;

- (b)** the Agency shall be a party to any interim forfeiture proceedings instituted by the relevant organisations under this Act;
 - (c)** in any civil forfeiture proceedings, where a preservation order has been granted under this Act, the Agency shall take possession of the property from any person or entity in possession or entitled to possession of the property, and may appoint a receiver in order to do so;
 - (d)** in any confiscation proceedings under this Act, the Agency shall be a party to the proceedings instituted by the relevant organisations;
 - (e)** the relevant organisation shall, subject to the specific orders of the Court in paragraph (d) of this subsection, transfer the management of any seized or forfeited property to the Agency within 30 days;
 - (f)** in any criminal forfeiture proceedings under the relevant laws, the Agency shall be a party to the proceedings instituted by the relevant organisations; and
 - (g)** the relevant organisation shall, subject to the specific orders granted by the Court in paragraph (f) of this subsection, transfer the management of the recovered property to the Agency within 30 days.
- (3)** Properties seized, confiscated or forfeited under subsection (2) (e) and (g) of this section, shall be vested in the Agency for and on behalf of the Federal Government of Nigeria.

PART IV

NON-CONVICTION BASED RECOVERY OF THE PROCEEDS OF CRIME

19. Application of this Part

This Part applies to the recovery of proceeds of crime or unlawful activity, without convicting a person for an offence or for an unlawful activity.

20. Nature of proceedings under this Part

(1) Subject to the provisions of this Act –

(a) proceedings under this Part shall be civil proceedings;

(b) the rules and laws applicable in civil proceedings shall apply; and

(c) the standard of proof required in proceedings under this Part shall be on a balance of probabilities.

(2) The rules or practice relating to hearsay evidence, given in furtherance of the proceeding is admissible.

21. Preservation order

(1) A preservation order that is similar to an interim forfeiture order shall be granted by the court to preserve property derived from unlawful activity.

(2) The Agency or any relevant organisation may, by an *ex parte* application, apply to the Court for a preservation order restraining a person from dealing in any manner with any property, subject to such conditions and exceptions as may be specified in the order.

(3) The Court shall make an order under subsection (2) of this section, where there are reasonable grounds to believe that the property concerned –

- (a)** are the proceeds of unlawful activity, whether they are -

 - (i) in the hands of the person who unlawfully acquired the property in the first instance, or
 - (ii) traced to any person to whom the proceeds have been passed;

- (b)** represents the proceeds of unlawful activity, whether they are-

 - (i) in the hands of the person who unlawfully acquired the property in the first instance, or
 - (ii) traced to any person to whom the property that represents the proceeds have been passed;

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

- (d)** is intended to be used to facilitate unlawful activity.

- (4)** Where further property has been acquired as a result or profits accruing from the proceeds of unlawful activity, that further property shall be treated as the proceeds of unlawful activity.

- (5)** Where property referred to in subsection (3) of this section is comingled with other property, this section applies to the portion of the property, resulting from unlawful activity.

- (6)** The Court may make an ancillary order if -

 - (a)** a person disposes of any property mentioned in subsection (3) of this section; and
 - (b)** the person, who obtains the property disposed of, does so in good faith, for value and without notice that it was property mentioned in subsection (3) of this section.

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

- (8)** On a preservation order taking effect, 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.

22. Notice of preservation orders

- (1)** Where the Court makes a preservation order, the Agency or relevant organisation shall, within 15 days after the making of the order-

(a) serve notice of the order to all persons known to have an interest in the property which is subject to the order; and

(b) publish the order in two widely circulating national newspapers and gazetted by the Federal Ministry of Justice.

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

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

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

- (3)** A notice under subsection (2) of this section shall be served on the Agency or other relevant organisation, in the case of-

(a) a person on whom a notice has been served under subsection (1) of this section, within 21 days after-service of the notice; or

(b) any other person with an interest in the property, within 21 days after the date on which a notice under subsection (1) of this section is published in two widely circulating national newspapers.

(4) A notice served under subsection (2) or (3) of this section shall contain full particulars of the address for the service of documents concerning further proceedings under this Part, and shall be accompanied by an affidavit stating the –

- (a)** full particulars of the identity of a person entering appearance;
- (b)** nature and extent of his interest in the property concerned; and
- (c)** reasons which the person intends to rely on in opposing the preservation order or applying for the exclusion of his interest from the operation of the preservation order.

23. Duration of a Preservation Order

A preservation order shall, subject to section 24 of this Act, expire 60 days after the date on which it was made, unless –

- (a)** there is an application for a forfeiture order pending before the Court in respect of the property subject to the preservation order;
- (b)** there is an unsatisfied forfeiture order in force, in relation to the property subject to the preservation order; or
- (c)** the preservation order is rescinded before the expiration of that period.

24. Renewal of a preservation order

(1) The Agency or relevant organisation may apply to the Court that granted a preservation order under section 21 of this Act for a renewal of the order, where –

- (a)** the preservation order has not been rescinded;
- (b)** no previous renewal of the preservation order has been granted; and
- (c)** there are reasonable grounds to grant the renewal.

- (2) Notice of a renewal shall be given in accordance with the provisions of section 22 of this Act.
- (3) The period of the renewal mentioned in subsection (1) of this section shall not exceed 60 days.

25. Seizure of property subject to preservation orders

- (1) Where there 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, damaged, or removed contrary to the order, the Agency or relevant organisation may seize the property.
- (2) The Agency shall within seven days of the seizure under subsection (1) seek the direction of the Court that made the preservation order.
- (3) Where the Agency reasonably believes that property subject to the preservation order or seizure may deteriorate in terms of quality or utility, it may apply ex-parte to the Court for an order to sell the property at the prevailing market value.
- (4) The proceeds from the sale of any property under subsection (3) of this section shall be paid into a designated interest yielding account pending the determination of the proceedings.
- (5) Where no order is made in relation to a property seized under subsection (1) of this section, the Agency shall pay to the owner of the property, all the monies realised from the sale of those items together with accrued interest.

26. Appointment of asset manager for property subject to a preservation order

- (1) Where the Court has made a preservation order, it shall either by itself, or at the request of the Agency at the time of the making of the order or at a later time direct the Agency to –
 - (a) appoint an asset manager to –
 - (i) assume control of the property,
 - (ii) administer the property and do any act necessary for that purpose,
 - (iii) carry on the business or undertaking, where the property is an on-going business or undertaking, with due regard to any applicable law,

- (iv) sell or otherwise dispose of the property, in the case of property that is perishable, or liable to deterioration, decay or injury by being detained in custody, and
 - (v) sell or otherwise dispose of the property where it is not economically viable to maintain; and
 - (b) order a person holding any property subject to a preservation order to surrender the property into the custody of the asset manager, immediately or within such period as the Court may determine.
- (2) Where any property subject to a preservation order is not surrendered within the period that has been determined under subsection 1 (b) of this section, an authorised officer may enter by force, if necessary, any premises, where he reasonably believes the property is situated, in order to search for and seize the property.
- (3) The authorised officer of the Agency or asset manager may be accompanied by such persons or law enforcement officers as are reasonably required in order to effect entry into premises.
- (4) For the purposes of subsection (3) of this section, “law enforcement officers” include, officers of the Agency, Nigerian Police Force, or the Nigerian Security and Civil Defence Corps.
- (5) The Court that made an order under subsection (1) of this section, may make an order for the payment of the fees of the asset manager -
 - (a) from the forfeited property, where a forfeiture order is made; or
 - (b) by the Agency, where no forfeiture order is made.

27. Orders in respect of immovable property subject to a preservation order

- (1) The Court making a preservation order may, direct the appropriate land registration authority to place a restriction on the land register, in respect of the immovable property.

- (2)** An order of restriction made under subsection (1) of this section may specify that the immovable property shall not, without the consent of the Court:
- (a)** be mortgaged or otherwise encumbered;
 - (b)** be attached or sold in execution;
 - (c)** vest in the official receiver concerned, when the estate of the owner of that immovable property is sequestrated; and
 - (d)** form part of the assets of any company or body corporate, where the owner of the immovable property is a company or other body corporate, which is being wound up.
- (3)** Subject to subsection (1) of this section, the registration authority shall –
- (a)** enter the restriction in its register and endorse the office copy of the title deed to that effect; and
 - (b)** endorse on the original of the title deed, when it is produced.
- (4)** The restriction referred to in subsection (3) (a) of this section shall –
- (a)** be effective against any person, in whose favour a mortgage or other charge was registered, prior to the endorsement of the restriction on the title deed of the immovable property; and
 - (b)** lapse on the lawful transfer of ownership of the immovable property concerned.
- (5)** A person affected by an order specified in subsection (1) of this section may, at any time, upon showing good cause, apply for the rescission of the order.

28. Provision for expenses

- (1)** The Court may, in making a preservation order in respect of a person holding an interest in property, make provision for the reasonable legal expenses of the person in connection with proceedings under which the preservation order was granted and reasonable living expenses of the person and his close dependants.
- (2)** The Court shall require an independent costs assessor, authorised by the Agency to certify that reasonable legal expenses have been properly incurred before permitting the payment of the expenses from any property covered by the preservation order.
- (3)** The Court shall not make provision for any expenses under subsection (1) of this section unless it is satisfied that the person –
 - (a)** cannot meet the expenses concerned out of his property which is not subject to the preservation order; and
 - (b)** has disclosed under oath all his interest in the preserved property and any other property or assets that are not under preservation order and has submitted to the Court an affidavit to that effect.

29. Variation and rescission of orders

The Court that makes a preservation order –

- (a)** may, on application by the person mentioned in section 28 of this Act or on its own, vary the preservation order, an order authorising the seizure of the property concerned, or any other ancillary order, as it may deem appropriate; or
- (b)** may rescind the preservation order when the proceedings against the defendant concerned are concluded in the person's favour.

30. Application for forfeiture order

(1) Where a preservation order is in force and before the expiration of the stipulated time, the Agency or the relevant organisation may apply to the Court for a forfeiture order against all or any part of the property that is subject to the preservation order.

(2) The Agency or relevant organisation shall give 21-day notice of an application under subsection (1) of this section to every person who was served notice under section 22 (2) of this Act.

(3) A person who was served notice under section 22 (2) of this Act may, subject to compliance with section 22 (3) and (4), appear at the hearing of the application under subsection (1) of this section to –

(a) oppose the making of the order; or

(b) apply for an order –

(i) excluding his interest in the property from the operation of the order, or

(ii) varying the operation of the order in respect of the property,

and may adduce evidence at the hearing of the application.

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

31. Service of notice out of time

(1) Where a person for any reason, failed to serve notice under section 22 (2) of this Act, he may apply to the Court for leave to serve the notice out of time.

- (2)** An application under subsection (1) of this section may be made before or after the date on which an application for a final forfeiture order is made under section 30 (1) of this Act, but shall be made before judgement is given in respect of the application for the final forfeiture order.
- (3)** The Court may grant leave to an applicant referred to in subsection (1) of this section, to serve notice under section 22 (2) of this Act within the period which the Court deems appropriate, where the Court is satisfied on good cause shown that the applicant has –
- (a)** sufficient reason for failing to serve notice under that section 22 (2); and
 - (b)** an interest in the property that is subject to the preservation order.
- (4)** A notice served after leave has been obtained under this section shall –
- (a)** contain full particulars of the address of the person who served the notice for the delivery of documents concerning further proceedings under this Part; and
 - (b)** be accompanied by the affidavit referred to in section 22 (4) of this Act.
- (5)** Where the Court has granted leave for notice under section 22 (2) of this Act to be served out of time under this section, it may direct the applicant to pay any or all of the costs that have arisen or may arise as a result of the notice being served out of time.

32. Making of a forfeiture order

- (1)** Subject to section 34 of this Act, the Court shall make an order applied for under section 30 (1) of this Act where it finds on a balance of probabilities that the property concerned –
- (a)** is the proceeds of unlawful activity;

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

(2) The Court may –

- (i)** where it makes a forfeiture order, or
- (ii)** at any time after making the order,

make any ancillary order that it considers appropriate, including orders for and with respect to facilitating the transfer of property forfeited to the Agency, on behalf of the Federal Government of Nigeria.

(3) The absence of a person whose interest in property may be affected by a forfeiture order shall not prevent the Court from making the order.

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

(5) Within 30 days of the making of the forfeiture order –

- (a)** the Agency shall publish the forfeiture order in two widely circulating national newspapers; and
- (b)** the Agency shall also publish the forfeiture order in the Federal Government Gazette.

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

- (a)** the period allowed for an application under section 29 of this Act or an appeal under section 37 of this Act has expired; or

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

33. Protection of third parties

(1) Where a forfeiture order is granted, a person who claims to have an interest in the property may apply to the Court that granted the order for a relief protecting his interest in the forfeited property.

(2) The Court before which an application is made under subsection (1) of this section may, if satisfied that –

(a) the person was not in any way involved in the unlawful activity or conduct mentioned in section 32 (1) of this Act;

(b) the person had no knowledge of the unlawful activity mentioned in section 32 (1) of this Act; or

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

(i) for sufficient consideration, and

(ii) without knowing that the property was, at the time he acquired it, a tainted property,

make an order declaring the nature, extent and value of the person's interest, at the time the order was made.

(3) A person, who makes an application under subsection (1) of this section shall give not less than 14 days written notice of the making of the application to the Agency.

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

(5) The Agency shall

(a) on application by any person who has obtained an order under subsection (1) of this section, direct the asset manager or receiver that;

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

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

(6) Where the period allowed by the rules of Court with respect to appeals has expired and any appeal against forfeiture order has been determined in favour of the applicant, the Agency shall, on an application by any person, who obtained an order under subsection (1) of this section, direct that –

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

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

34. Power of Court to exclude certain interests in property under preservation order

(1) The Court, may on application –

(a) under section 30 (3) of this Act; or

(b) by a person referred to in section 31 (1) of this Act; and

(c) when it makes a forfeiture order,

make an order excluding certain interests in the property that is subject to the order, from the operation of the order.

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

- (a) it finds, that the applicant has acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of the interest; and
 - (b) in a case where the applicant had acquired the interest concerned after the commencement of this Act, that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is the proceed of an unlawful activity or conduct.
- (3) The Court may make an order under subsection (1) of this section, in relation to the forfeiture of property which is or intended to be used as an instrumentality in the commission of unlawful activity or conduct, where it finds, that the applicant for the order had acquired the interest concerned legally and –

 - (a) he did not know or did not have reasonable grounds to suspect that the property in which the interest is held has been used or is intended for use in unlawful activity or conduct; or
 - (b) where the unlawful activity or conduct concerned occurred before the commencement of this Act, that he has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned in connection with unlawful activity or conduct.
- (4) Where an applicant for an order under subsection (1) of this section adduces evidence to show that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is a proceed of crime or an instrumentality of an offence, the Agency may submit proof of the service on the applicant of a notice issued under section 27 (3) of this Act in rebuttal of the evidence in respect of the period since the date of the service.
- (5) Where the Agency submits a proof of the service on the applicant under subsection (4) of this section, the applicant shall, in addition to the facts referred to in subsections (2) (a) and (b) of this section, prove that, since the service, he has taken all reasonable steps to prevent the further use of the property as an instrumentality of an offence.

35. Forfeiture order by default

- (1) Where the Agency applies for a forfeiture order by default and the Court is satisfied that no person has appeared on the date on which an application under section 31 (1) of this Act is to be heard, and on the grounds of sufficient proof or otherwise, that all persons who were served notices under section 22 (3) of this Act have knowledge of notices given under section 31 (2) of this Act, the Court may make—

 - (a) a default forfeiture order which the Court could have made under sections 30 (1) and (2) of this Act; or
 - (b) such other orders as the Court may consider appropriate in the circumstances.
- (2) The Court may, before making a default forfeiture order under subsection (1) of this section, call on the Agency to adduce such further evidence, either in writing or orally, in support of its application, as the Court may consider necessary.
- (3) A person whose interest in the property concerned is affected by the default forfeiture order or other order made by the Court under subsection (1) of this section may, within 30 days after the person has acquired knowledge of the order or direction, shall apply to the Court to vary or rescind the order.
- (4) The Court may, on good cause shown by the person, vary or rescind the default forfeiture order or give any other direction on such terms, as it deems appropriate.

36. Exclusion of interests in forfeited property

- (1) A person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 30 (2) of this Act, but did not receive the notice, may, within 30 days after the notice is published, apply to the Court for an order excluding his interest in the property concerned from the operation of the order, or varying the operation of the order in respect of the property and his interest in the property.
- (2) An application under subsection (1) of this section shall be accompanied by an affidavit specifying—

- (a) the nature and extent of the applicant's right, title or interest in the property concerned;
 - (b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;
 - (c) any additional facts supporting the application; and
 - (d) the relief sought.

- (3) The hearing of the application under subsection (1) of this section shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the application.

- (4) The Court may consolidate the hearing of the application with a hearing of any other application filed by a person under this section.

- (5) At the hearing, the applicant may testify and present evidence and witnesses on his or her own behalf and may cross-examine any witness who appears at the hearing.

- (6) The Agency or authorised officer concerned may present evidence and witnesses in rebuttal and in defence of their claim to the property and may cross-examine any witness who appears at the hearing.

- (7) The Court may make an order under subsection (1) of this section where it finds that the applicant for the order
 - (a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and
 - (b) where the applicant had acquired the interest concerned after the commencement of this Act, that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activity.

- (8)** The Court may make an order under subsection (1) of this section, in relation to the forfeiture of an instrumentality, if it finds that the applicant for the order
- (a)** had acquired the interest concerned legally; and
 - (b)** did not know or did not have reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence; or
 - (c)** where the unlawful act or conduct concerned occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence.
- (9)** The provisions of sections 26 (4) and (5) of this Act shall apply to any proceedings under this section.

37. Effect of appeals on preservation or other ancillary orders

A preservation order and any order authorizing the seizure of the property concerned or other ancillary order that is in force at the time of any decision regarding the making of a forfeiture order under this Act shall remain in force pending the outcome of any appeal against the decision concerned.

38. Effect of forfeiture order

- (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 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.

39. Fulfilment of forfeiture order

- (1)** The Agency shall, subject to any order made in favour of a third party interest under sections 34 (2) (a) or 36 (3) of this Act and in accordance with the directions of the Court –

 - (a)** deposit any monies forfeited under this Act into the Confiscated and Forfeited Properties Account established under section 120 of this Act; or
 - (b)** dispose of the property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the Confiscated and Forfeited Properties Account.
- (2)** Subject to the provisions of this Act, any right or interest in forfeited property not exercisable by or transferable to the Agency, shall expire and shall not revert to the person, who had possession, or was entitled to possession of the property immediately before the forfeiture order took effect.
- (3)** A person referred to in subsection (2) of this section or any other person, who acts with or on behalf of the person –

 - (a)** commits an offence, if he purchases or attempts to purchase the forfeited property; and
 - (b)** is liable on conviction to a fine of at least twice the value of the property sold.
- (4)** The expenses incurred in connection with the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertisement, and the Court costs shall be defrayed out of the Confiscated and Forfeited Properties Account.

40. Unlawful activities or conduct forming the basis of multiple orders

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

41. Application of this Part to deceased estates

- (1)** A notice authorized or required to be given to a person under this Part shall, in the case of a deceased person, be sufficiently given to the administrator or executor of the deceased person's estate, or to a person acting in that capacity.
- (2)** A reference in this section to the property of a person shall, in the case of a deceased person, be a reference to property that the deceased person held immediately before his death.
- (3)** An order may be applied for and made under this section –
 - (a)** in respect of property, which forms part of a deceased person's estate; and
 - (b)** on evidence adduced concerning the activities of a deceased person.

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

- (1)** Where a person has an interest in property, as a joint owner, his death after a preservation order is made in respect of the interest does not, while the order is in force, operate to vest the interest in the surviving joint owner or owners, and the preservation order shall continue to apply to the interest, as if the person had not died.
- (2)** A forfeiture order made in respect of the interest referred to in subsection (1) of this section shall apply, as if the order took effect in relation to the interest immediately before the person died.
- (3)** Subsection (1) of this section does not apply to the interest in property where a preservation order ceases to apply to that interest without a forfeiture order being made in respect of that interest.

PART V

ADDITIONAL INVESTIGATION POWERS RELATING TO NON-CONVICTION BASED RECOVERY OF THE PROCEEDS OF CRIME

43. Discovery orders

- (1) The Court may, on an ex-parte application by the Agency, make a discovery order, where it is satisfied that the Agency is conducting a non-conviction based recovery investigation as envisaged in Part IV of this Act.
- (2) The order referred to in subsection (1) of this section shall be made where there are reasonable grounds to suspect that –

 - (a) the property specified in the application for the order is property mentioned in section 21 of this Act, and that the person specified in the application holds or has held that property; or
 - (b) the material sought, by itself or together with other material, is likely to be of substantial value to the non-conviction based recovery investigation.
- (3) A discovery order shall authorize the Agency to give notice, in writing, to any person that has relevant information to –

 - (a) provide information at a specified time, place and in a specified manner; and
 - (b) produce a specified document at a specified time, place or at once, and in a manner so specified.
- (4) A person is not bound to comply with a requirement imposed by a notice given under a discovery order, unless evidence of authority to give the notice is produced to him by the Agency.
- (5) The application for a discovery order shall state that –

 - (a) property specified in the application is subject to a non-conviction based recovery of the proceeds of crime investigation; and
 - (b) the order is sought for the purposes of the investigation.
- (6) A statement made by a person in response to a requirement imposed on him under a disclosure order shall not be used in evidence against him in criminal proceedings, unless it relates to a prosecution for an offence under –

 - (a) section 44 of this Act;

- (b) section 117 of the Criminal Code that relates to perjury.

44. Discovery order related offences

- (1) A person commits an offence, where –
 - (a) without reasonable excuse he fails to comply with a requirement imposed on him under a discovery order; or
 - (b) in purporting to comply with a requirement imposed on him by a discovery notice, he knowingly or recklessly makes a statement that is false or misleading.
- (2) A person who contravenes subsection (1) of this section, commits an offence and is liable on conviction, in the case of –
 - (a) a body corporate, to a fine of not less than ten million Naira (~~₦~~10,000,000); and
 - (b) an individual, to a fine of not less one million Naira (~~₦~~1,000,000) or imprisonment for a term of not more than two years or to both the fine and imprisonment.

45. Additional provisions on discovery orders

- (1) A discovery order shall not confer any right to require a person to provide any information that is subject to legal privilege whether in answer to any question or in any document, except that a person may be required to provide the name and address of his client.
- (2) In consideration of the legal privilege referred to in subsection (1), legal privilege shall not attach to any material in relation to –
 - (a) the purchase or sale of property;
 - (b) the purchase or sale of any business;
 - (c) the purchase or sale of any high-value item;
 - (d) any investment;
 - (e) any matter concerning the payment of any tax;
 - (f) any matter concerning the transfer of any funds whatsoever;
 - (g) any client account;
 - (h) the formation or conduct of any trust;
 - (i) any paid fees or retainer fees; and
 - (j) anything produced in the furtherance of any unlawful activity.

- (3)** The Agency may take copies of any document produced in compliance with a discovery order.
- (4)** Where originals of documents are required by the Agency or the relevant organizations they may be retained until the completion of the investigation.
- (5)** The Agency shall not retain originals of the documents produced in compliance with a discovery order, where certified true copies of the documents would suffice.

46. Variation or discharge of a discovery order

An application to vary or discharge a discovery order may be made by the Director-General of the Agency or the person affected by the order.

PART VI

RECOVERY OF IMPORTED OR EXPORTED CASH

47. Seizure and detention of imported and exported cash

(1) A designated officer may seize and detain any cash in the process of being imported into or exported from Nigeria, where he has reasonable grounds to suspect that it –

- (a)** directly or indirectly represents proceeds of unlawful activity or is intended to be an instrumentality of an offence; or
- (b)** is above the prescribed amount under the law and has not been declared to the appropriate authorities.

(2) In this Part,

(a) “cash” includes –

- (i)** notes and coins in any currency,
- (ii)** cheques of any kind, including travellers’ cheques,
- (iii)** bankers’ draft,
- (iv)** bearer bonds and bearer shares, or
- (v)** any kind of monetary instrument, where the instrument is so specified by the Central Bank of Nigeria;

(b) “designated officer” means an officer of Nigeria Customs Service, National Drug Law Enforcement Agency, Nigeria Police Force, or Nigeria Immigration Service.

(3) The “prescribed amount” in this Part, means the equivalent amount in United States Dollar specified in the Money Laundering Prohibition Act, the Customs and Excise Act or in an order or regulations issued by the Attorney-General, in consultation with the Central Bank of Nigeria.

(4) For the purpose of subsection (3) of this section, any amount of cash imported or exported in a currency other than United States dollars shall be taken to be its United States dollar equivalent, calculated in accordance with the prevailing exchange rate.

- (5) The court shall adopt summary proceedings under this Part

48. Detention of seized cash

- (1) Where the designated officer continues to have reasonable grounds for his suspicion, cash seized under section 47 of this Act may be detained initially for a period of 72 hours to enable the designated officer to report to the Agency for the purpose of applying to the Court for an order to detain the cash.
- (2) The period referred to in subsection (1) of this section shall not include Saturdays and Sundays or any day which is a public holiday in Nigeria.
- (3) The period for which the cash, or any part of it, may be detained may be extended by an order of the Court, but the order shall not authorize the detention of the cash, or any part of it, beyond three months, commencing from the date of the order.
- (4) Subsequent orders for the continued detention of the cash may be made by the Court but no order shall authorize the further detention of the cash beyond a period of three months commencing from the date of the last order.
- (5) Cash shall not be detained for a period beyond 12 months commencing from the date of the first order.
- (6) An application for an order under subsections (3) and (4) of this section may be made by a designated officer, and the Court may make the order, where satisfied, in relation to any cash to be further detained, that there are reasonable grounds to believe that the cash is –
- (a) the proceeds of unlawful activity; or
 - (b) intended to be an instrumentality of an offence and that –
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing, in Nigeria or elsewhere, proceedings against any person for an offence with which the cash is connected, or
 - (ii) proceedings against a person for an offence with which the cash is connected have started and have not been concluded.
- (7) Where cash is detained by virtue of subsection (6) of this section, the Court may direct its release if satisfied, on an application made by the person from whom it was seized that-
- (a) there are no justifiable grounds for the detention of the cash; or
 - (b) the grounds for the continued detention of the cash, as specified in subsection (6) of this section, cease to exist.

49. Interest to be paid on seized cash

(1) Where cash under section 48 of this Act –

- (a) is detained, by the Nigeria Customs Service, the Agency shall be immediately notified within 72 hours, and the cash shall be forwarded by the designated officer to the Agency to be paid into the designated interest yielding account, and the interest accruing shall be added to it on its forfeiture or release; or
- (b) was seized under section 47 (1) of this Act, the Agency shall, subject to subsection (2) of this section, release on an application made by the person from whom the cash was seized, the part of the cash to which the suspicion does not relate.

(2) Where –

- (a) part of the cash, referred to in subsection (1) of this section to which suspicion does not relate, may still be subject to a confiscation order, under Part VII of this Act; and
- (b) an application for a restraint order, under Part VII of this Act in respect of a person, who has an interest in the cash has been made and not refused,

the Agency may retain the cash in the designated interest yielding account, until such time as a confiscation order is made in respect of the cash, or until an application made under this Act is granted by the Court.

50. Release of detained cash

- (1) This section applies where cash is detained under section 48 of this Act.
- (2) The Court may direct the release of the whole or any part of detained cash, where the condition in subsection (3) of this section is met.
- (3) The Court shall be satisfied on application by the person from whom the cash is seized, that the conditions in section 48 of this Act no longer exist in relation to the cash to be released.
- (4) The Agency may, after notifying the Court under whose order the cash is detained, release the whole or part of the cash, where satisfied that its detention is no longer justified.

51. Application for forfeiture of seized or detained cash

- (1) Where cash is detained under section 48 of this Act, an application for forfeiture of the whole or part of the cash may be made to the Court.
- (2) The Court may order forfeiture of cash or any part of the cash, where it is satisfied that the cash is proceeds of unlawful activity or is intended to be an instrumentality of an unlawful activity.

- (3) Where an application for forfeiture of cash has been granted, the cash shall not be released until all proceedings, including proceedings on appeal are concluded.

52. Appeals

- (1) Where the Court refuses an application under section 51 of this Act for forfeiture of cash detained under section 48 of this Act, the Agency may appeal to the Court of Appeal.
- (2) Where an appeal is made to the Court of Appeal by the Agency, cash detained under section 48 of this Act shall be further detained only with the leave of the court pending the outcome of the appeal.
- (3) If a party to proceedings, in which an order is made under section 48 of this Act for forfeiture of cash, is aggrieved by the order, he may appeal against the order with the leave of the court.
- (4) The Court of Appeal in hearing an appeal under this section may make any order it deems appropriate in the circumstance, and where the Court upholds an appeal made under subsection (3) of this section, it shall order the release of the cash.
- (5) Appeals under this section shall be in accordance with applicable Court of Appeal Rules and shall be determined within the prescribed time provided in this Act.
- (5) The decision of the Court of Appeal under this section shall be final and no further appeal shall lie to the Supreme Court.

53. Other owners or claimants

- (1) A third party, who has interest in the cash detained under section 48 of this Act or any part of it, may apply to the Court for the release of the cash or any part of it.
- (2) An application under subsection (1) of this section may be made in the course of proceedings under sections 48 or 51 of this Act within 21 days of the cash being detained.
- (3) Where it appears to the Court that -
- (a) the applicant was deprived of the cash to which an application relates; and
 - (b) the cash belongs to the applicant,
- the Court may order the cash to which the application relates to be released to the applicant.

54. Compensation where detained cash is not lodged in the designated interest yielding account

- (1)** Where a forfeiture order is not made in respect of cash detained under section 48 of this Act, the person to whom the cash belongs or from whom it was seized may make an application to the Court for compensation if the funds was not lodged in an interest yielding account.
- (2)** Where a forfeiture order was not granted and the Court is satisfied that the applicant has suffered loss as a result of the detention of the cash belonging to him, it may on its own or on an application by the applicant, order reasonable compensation, to be paid to him.
- (3)** Compensation under this section shall be paid from the Confiscated and Forfeited Properties Account.

PART VII

CONFISCATION OF PROCEEDS OF CRIME

55. Objectives of this Part

The objectives of this Part are to –

- (a) demonstrate that a convicted person should not be allowed to benefit from the proceeds of his criminal activity;
- (b) provide an effective process by which 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 of Nigeria;
- (c) enable the Agency to work with the relevant organization to implement confiscation proceedings against a convicted person;
- (d) ensure the preservation of all realizable properties; as defined under section 73 of this Act; and
- (e) ensure that the realizable properties are preserved and available to satisfy a confiscation order.

56. Application of this Part

The provisions of this Part apply to –

- (a) restraint orders designed to prevent a defendant from dealing with realisable assets held under his custody or control, and
- (b) confiscation orders that aim to secure payment of a sum of money up to the amount that a convicted person has acquired from the offences for which he was convicted
- (c) management of realisable property by the Agency once a **restraint** order is granted by the court

57. Application for restraint order

The Court may, on the application of a relevant organization or the Agency, make an order that realizable property shall not, except in the manner as may be specified in the order, be disposed of or otherwise dealt with by any person, where -

- (a) a defendant –
 - (i) has been convicted of an offence or has been charged with an offence and a confiscation order has been made against the defendant, or it appears to the Court that there are

reasonable grounds for believing that a confiscation order may be made against the defendant, or

(ii) is to be charged with an offence and the Court is satisfied that the defendant is to be charged, and it appears to the Court that there are reasonable grounds for believing that a confiscation order may be made against the defendant; and

(b) an affidavit under section 60 of this Act has been filed in support of the application.

58. Purposes of restraint order

(1) The relevant organization or the Agency may apply to the Court for a restraint order for the purposes specified under this Part.

(2) A restraint order may specify that it applies to —

(a) all realizable property held by the specified person, whether the property is described in the order; or

(b) realizable property transferred to the specified person after the order is made.

(3) An application for a restraint order may

(a) be made *ex-parte*; and

(b) provide for the period of the notice referred to in section 62 of this Act to be given to persons affected by the order.

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

(5) The Court making a restraint order shall, at the same time, make an order —

(a) authorizing the Agency or an authorized person acting on its behalf, to take custody or control of any property specified in the order;

(b) for entering premises, where necessary; and

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

(6) The Court that made a restraint order-

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

- (i) the operation of the order will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship to the applicant or close dependent relatives, and
 - (ii) the hardship that the applicant will suffer as a result of the order outweighs the risk that the property may be destroyed, lost, damaged, concealed, transferred or otherwise disposed of; and
 - (b) shall rescind or vary the restraint order when the proceedings against the defendant concerned are concluded.
- (7) Where the Court orders the rescission of an order authorizing the seizure of property in accordance with subsection (6) (a) of this section, the Court shall make such other order as it considers appropriate for the proper, fair and effective execution of the restraint order.

59. Property subject to a restraint order

A restraint order may be made in respect of -

- (a) such realizable property as may be specified in the restraint order and held by the person against whom the order is made;
- (b) all realizable property held by the person against whom the restraint order is made, whether specified in the order or not;
- (c) specified property of another person that is subject to the effective control of the relevant person, whether that other person's identity is known;
- (d) specified property of the relevant person that is in the custody of another person which are proceeds of the offence or an instrumentality of the offence, whether that other person's identity is known;
- (e) all property which, when it is transferred to a person referred to in paragraph (d) of this subsection after the making of the restraint order, would be a realizable property; and
- (f) affected gifts, within the meaning of section 75 (3) of this Act, made by the relevant person.

60. Affidavit in support of a restraint order

- (1)** The application for a restraint order shall be supported by an affidavit made by the relevant organization or the Agency stating the belief that the property is of a type mentioned in section 59 of this Act.
- (2)** An affidavit shall contain –

 - (a)** a summary of the evidence on which the relevant organization or the Agency based its belief under subsection (1) of this section;
 - (b)** the grounds on which the relevant organization or the Agency holds its belief, but the grounds need not be based on a finding as to the commission of an offence;
 - (c)** where the relevant person has been convicted, a copy of the judgement;
 - (d)** where the relevant person has been charged, a copy of the charge sheet properly filed in a court of competent jurisdiction;
 - (e)** where a person is about to be charged, a copy of the charge sheet or charges that will be laid; and
 - (f)** where the application is to restrain property of a person, other than the relevant person, a declaration that the relevant organization or the Agency reasonably believes that the property is –

 - (i)** realizable property, and
 - (ii)** subject to the effective control of the relevant person.
- (4)** The Court shall not make a restraint order unless it is satisfied that the facts disclosed in the affidavit supports the reasonable belief expressed by the relevant organisation or the Agency.
- (5)** The Court may request the relevant organization or Agency to provide additional information in support of the affidavit.

61. Payment of expenses out of restrained property

- (1)** The Court may make an order to allow certain expenses to be paid out of a property or a specified part of a property covered by a restraint order-

 - (a)** the reasonable living expenses of the person whose property is restrained; and
 - (b)** subject to subsection (3) of this section, reasonable legal costs concerning the current proceedings with which the defendant has been charged or is about to be charged.
- (2)** The Court may make an order under subsection (1) of this section, where-

 - (a)** the person whose property is restrained has applied for an order for expenses to be paid out of restrained property;
 - (b)** the person has notified the relevant organization or the Agency, in writing, of the application, at least seventy-two hours before the application is heard;
 - (c)** the person has disclosed all his interests and liabilities in the property and any other property that are not listed in the restraint order, in a statement under oath that has been filed in the Court; and
 - (d)** the Court is satisfied that the person cannot meet the expenses or cost out of any of the other properties that are not covered by the restraint order.
- (3)** The Court shall authorize the Agency to require a cost assessor to certify that legal expenses have been properly incurred before permitting the payment of expenses or cost from any property covered by an order under subsection (1) of this section.

62. Notice of restraint order

- (1)** Where the Court makes a restraint order, the Agency shall give notice to –

 - (a)** all persons affected by the restraint order; and
 - (b)** any other person who may be affected by an order to seize any property in furtherance of the restraint order.

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

 - (a)** be served before or at the time of any seizure and in any other case after the order is obtained; and
 - (b)** contain –

 - (i)** a copy of the restraint order,
 - (ii)** the details of the issuing Court, and
 - (iii)** the name and address of the applicant or other person to whom inquiries regarding the restraint order may be made.

- (3)** If the Court varies its decision, a notice of such decision shall be served on the Agency and the relevant organization shall promptly notify the Agency if –

 - (a)** property is no longer covered by the restraint order because it is varied or excluded from the restraint order under section 67 of this Act; or
 - (b)** a condition to which a restraint order is subject to is varied.

63. Registration of restraint orders

- (1)** A registration authority that keeps a register of properties of a particular kind shall, on application by the Agency, register the particulars of a restraint order, as it affects the property in that register.
- (2)** A person, who subsequently deals with the registered property shall be deemed –

 - (a)** not to be acting in good faith for the purposes of section 64 of this Act; and
 - (b)** to have notice of the restraint order for the purposes of section 62 of this Act.
- (3)** Where the Agency has previously applied to a registration authority under subsection (1) of this section, the Agency shall promptly notify the registration authority, where –

 - (a)** the property is no longer covered by the restraint order because it is varied or excluded from the restraint order under section 67 of this Act; or
 - (b)** a condition to which a restraint order is subject to is varied under section 61 of this Act.

64. Setting aside a disposition contravening a restraint order

- (1) The Agency may apply to the Court to set aside a disposition or dealing with a property that contravenes a restraint order, where that disposition or dealing was not –

 - (a) for sufficient consideration; or
 - (b) in favour of a person, who acted in good faith.
- (2) The Agency shall give to each party to the disposition or dealing, written notice of both the application and the grounds on which it seeks the setting aside of the disposition or dealing.
- (3) The Court may set aside the disposition or dealing and declare the rights of any person, who acquired interest in the property void.

65. Contravening restraint orders

A person, who disposes of or deals with a property, knowing that such an action is reckless, as to the fact that, the property is covered by a restraint order, commits an offence and is liable on conviction to imprisonment for a term of two years or an option of fine of not less than five million Naira (N5,000,000) or both.

66. Seizure of property covered by a restraint order

- (1) The Agency or a person authorized by the Agency may, in order to prevent any realizable property from being disposed of or removed contrary to a restraint order, enter into any premises and seize the property if he has reasonable grounds to believe that the property will be disposed of or removed.
- (2) The Agency may be accompanied by a law enforcement officer in order to effect its seizure.

67. Exclusion of specific property under a restraint order

- (1) The Court that made a restraint order, on an application by a person, who is not a relevant person may, subject to conditions referred to in subsection (2) of this section, vary that order and exclude certain property from the order.
- (2) The conditions for varying the order referred to in subsection (2) of this section are that the person making the application in subsection (1) of this section –

 - (a) does so in writing within 28 days of the making of the restraint order; and
 - (b) gives written notice to the relevant organization or the Agency of the application and the grounds on which the exclusion is sought.

- (3) The Agency may adduce additional evidence to the Court relating to the application for exclusion under the restraint order.
- (4) The Court shall not exclude property that is subject to a restraint order under this Act, unless it is satisfied that a confiscation order cannot be made against –
 - (a) the person, who has the interest; or
 - (b) the defendant, where the interest is not held by the defendant but is under his effective control.
- (5) The Court shall not hear an application to exclude specified property from a restraint order where the Agency has not been given a reasonable opportunity to conduct examinations in relation to the application.
- (6) The Agency shall give the person notice of any grounds on which it proposes to contest the application, after it has conducted enquiry in relation to the application.
- (7) The Agency may appear and adduce evidence at the hearing of the application.

68. Application for distress order subject to leave of Court

- (1) If a Court makes a restraint order, an application for an order of distress shall not be made in respect of any realizable property to which the restraint order applies, except with leave of the Court.
- (2) The Court may determine an application in respect of a distress order mentioned in subsection (1) of this section.
- (3) Notice of an application under subsection (2) of this section shall be served on the Agency, at least fourteen days before the application is to be heard.

69. Cessation of restraint orders

- (1) A restraint order, in relation to one or more offences, ceases to be in force, if –
 - (a) within 28 days after –
 - (i) the charge or all the charges that relate to the restraint order are withdrawn,
 - (ii) the defendant is acquitted of the offence or all the offences with which he was charged, or
 - (iii) the defendant's conviction for the offence, or all the offences, of which he was convicted are quashed;

- (b) the Court has made a restraint order under section 57 (1) (a) (ii) of this Act, and the defendant is not charged to Court within such period, as the Court may consider reasonable;
 - (c) a restraint order covers property that is not realizable property including gifts within the meaning of section 75 (3) of this Act;
 - (d) the Court is satisfied that the order was obtained by suppression or misrepresentation of fact or by fraud; and
 - (e) a confiscation order relates to that offence, those offences or related criminal activity and -
 - (i) the confiscation order is satisfied, or
 - (ii) the confiscation order is discharged.
- (2) The period referred to in subsection (1) (b) of this section shall not exceed ten days, starting on the day on which the restraint order is made.
- (3) Restraint orders remain in force until rescinded by the Court.

70. Making of confiscation orders

- (1) The Court may make a confiscation order requiring a person to pay to the Agency for deposit into the Confiscated and Forfeited Properties Account (in this Act referred to as “the Confiscated and Forfeiture Account”) as provided under this Act, an amount equal to the total proceeds of a person’s criminal activities, where available if -
- (a) the person has been convicted of an offence;
 - (b) the relevant organization or the Agency, applies for the confiscation order; and
 - (c) the Court is satisfied that the person has benefited from-
 - (i) that offence,
 - (ii) any other offence of which the person has been convicted at the same trial, and

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

- (2) Where a person has been convicted of an offence and the relevant organization or the Agency fails to apply for a confiscation order under subsection (1) (b) of this section, the Court may, if it –
 - (a) considers that it is in the public interest to do so; and
 - (b) is satisfied as specified under subsection (1) (c) of this subsection,direct the Agency to apply for the confiscation order.

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

- (4) The Court may make any further orders as it may deem fit to ensure the effectiveness and fairness of the confiscation order.

- (5) The amount that the Court may order a convicted person to pay to the Agency under subsection (1) shall not exceed –
 - (a) the value of the convicted person’s proceeds from the offences or criminal activity, as determined by the Court, in accordance with the provisions of this Act; or
 - (b) an amount, which in the Court’s opinion may be realized, if the Court is satisfied that the amount which might be realized as contemplated in section 72 (1) of this Act is less than the value referred to in paragraph (a) of this subsection.

- (6) The Court convicting a person may, when passing sentence, indicate that it will conduct an inquiry at a later date where –
 - (a) it is satisfied that the inquiry will unreasonably delay the proceedings in sentencing the person; or
 - (b) the relevant organization or the Agency applies to the Court to first sentence the convicted person and the Court is satisfied that it is reasonable and justifiable to do so in the circumstances.

- (7) The relevant organization or the Agency may apply for a confiscation order –

- (a) within six months after the date of conviction; or
 - (b) where there is an order extending the period specified in paragraph (a) of this subsection, three months after the end of the period extended by an order.
- (8) The Court hearing an application under subsection (7) of this section may, in exceptional circumstances, grant leave for extension of time for the application to be made, if it is satisfied that it may be in the interests of justice to allow the application.
- (9) The Court before which proceedings under this section are pending may –
 - (a) in considering an application under subsection (1) of this section –
 - (i) refer to the evidence and proceedings at the trial,
 - (ii) hear such further evidence, as the Court may deem fit,
 - (iii) direct the relevant organization or the Agency to tender to the Court a statement referred to in section 76 (1) of this Act, and
 - (iv) direct a convicted person to tender to the Court the statement referred to in section 76 (5) and (6) of this Act;
 - (b) adjourn proceedings under this section, subject to section 76 (2) and (8) of this Act;
 - (c) set the date of the adjournment in paragraph (b) of this subsection not later than three months from the date at which the hearing was adjourned; and
 - (d) in exceptional circumstances, extend the period referred to in paragraph (c) of this subsection.

71. Value of proceeds of criminal activities

- (1) Subject to the provisions of subsection (2) of this section, the value of a defendant's proceeds of criminal activity is the sum of the values of the property, services, advantages, benefits and rewards received, retained or derived by him at any time, whether before or after the commencement of this Act, in connection with the criminal activity carried on by him or any other person connected with the criminal activity.
- (2) In determining the value of a convicted person's proceeds of criminal activities, the Court shall –
 - (a) leave out of account, any property, where the Court has previously made a forfeiture order in respect of the property, which is proved to the satisfaction of the Court to have been the property, which the convicted person received in connection with the criminal activity carried on by him or any other person connected with the criminal activity;

- (b) where a confiscation order has previously been made against the convicted person, leave out of account those proceeds of criminal activities which are proved to the satisfaction of the Court to have been taken into account in determining the amount to be recovered under that confiscation order; and
- (c) ensure that the following are deducted –
 - (i) expenses or outgoings that the person incurred in relation to the criminal activity, or
 - (iii) the value of any benefits that the convicted person derives as agent for, or otherwise on behalf of, another person, whether the other person receives any of the benefits.

72. Amounts that may be realized

- (1) The amount realizable at the time of the making of a confiscation order against a convicted person shall be the amount equal to the sum of the values, at that time, of all -
 - (a) realizable property held by the convicted person; and
 - (b) affected gifts made by the convicted person,less the sum of all priority obligations, where any, and which the Court may recognize for this purpose.
- (2) Notwithstanding the provisions of section 74 (1) of this Act but subject to the provisions of section 74 (2) of this Act, the value of an affected gift at the time of the making of the relevant confiscation order shall be –
 - (a) the value of the affected gift, at the time when the recipient received it, taking into account subsequent fluctuations in the value of money; or
 - (b) where subsection (3) of this section applies, the value mentioned in that subsection, whichever is the greater value.
- (3) Where at the time of the making of the relevant confiscation order, the recipient holds the property –
 - (a) other than cash, which he received, the value concerned shall be the value of the property at that time; and
 - (b) which directly or indirectly represents the property which he received, the value concerned is the value of the property in his custody, in so far as it represents the property, which he received at the time.

- (4)** For the purposes of subsection (1) of this section, an obligation has priority, at the time of the making of the relevant confiscation order, if –
- (a)** it is an obligation of the convicted person, where he has been convicted by a court of any offence to pay -
- (i) a fine imposed before that time by the Court, or
- (ii) any other amount under any resultant order made before that time by the Court;
- (b)** it is an obligation, where –
- (i) the insolvent estate of the convicted person had at that time been made subject to any Court order; or
- (ii) the convicted person is a company or other juristic person, where the company or juristic person is at that time being wound up,
- would be payable in pursuance of any secured or preferred claim against the insolvent estate or against such company or juristic person.
- (5)** The Court shall not determine the amounts realizable as contemplated in subsection (1) of this section, unless it has afforded all persons holding any interest in the property concerned an opportunity to make representations to it, in connection with the realization of that property.
- (6)** Where there is no amount that may be realized, the Court may make an order for a nominal amount.

73. Realizable Property

- (1)** Subject to the provisions of subsection (2) of this section, property is realisable under this Part, if the property is -
- (a) held by the defendant concerned;
- (b) held by a person to whom that defendant has directly or indirectly made any affected gift; and
- (c) subject to the effective control of the defendant as provided in section 82 of this Act.
- (2)** Property shall not be realisable property where a forfeiture order is in force in respect of the property.

74. Value of property

- (1)** For the purpose of this Part, the value of property, other than money, in relation to a person holding the property of a convicted person is, where –

- (a) any other person holds an interest in the property, the market value of the property less the amount required to discharge any encumbrance on the property; and
 - (b) no other person holds an interest in the property, the market value of the property.
- (2) Notwithstanding the provisions of subsection (1) of this section, a reference in this Part to the value at the time of payment or reward, is construed as a reference to –
- (a) the value of the payment or reward at the time when the recipient received it, as adjusted to take into account subsequent fluctuations in the value of money; or
 - (b) where subsection (3) of this section applies, the value mentioned in that subsection, whichever is greater in value.
- (3) Where, at the time referred to in subsection (2), the recipient holds –
- (a) property, other than cash, which he received, the value concerned is the value of the property at that time; or
 - (b) property which directly or indirectly represents the property which he received, the value concerned is the value of the property in his custody, if it represents the property which he received, at the relevant time.

75. Gifts made by a convicted person

- (1) For the purposes of this Act, a convicted person shall be deemed to have made a gift, where he has transferred any property to any other person directly or indirectly for a consideration, the value of which is significantly less than the value of the consideration supplied by the convicted person.
- (2) For the purposes of section 72 (2) of this Act, the gift which a convicted person is deemed to have made shall consist of that share in the property transferred by the convicted person that is equal to the difference between the value of that property as a whole and the consideration received by the convicted person in return.
- (3) For the purpose of this Part, “affected gift” means any gift made by the convicted person concerned –
 - (a) not more than six years before the prescribed date; or
 - (b) at any time, where it was a gift of property –
 - (i) received by that convicted person in connection with an offence committed, or

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

- (4) For the purpose of this Part, 'prescribed date' in relation to a convicted person means, where –
- (a) a prosecution for an offence has been instituted against the convicted person, the date on which the prosecution was instituted; or
 - (b) a restraint order has been made against the convicted person, the date of the restraint order, whichever is earlier.

76. Statements relating to proceeds of criminal activity

- (1) The relevant organisation or the Agency, as the case may be, may, or where directed by the Court, tender to the Court a statement in writing under oath or affirmation by a person authorized by the Agency in connection with any matter which is being inquired into by the Court which relates to the determination of the value of a convicted person's proceeds of criminal activities.
- (2) A copy of the statement referred to in subsection (1) of this section shall be served on the convicted person or his representative, at least 14 days before the date on which the statement is to be tendered before the Court.
- (3) A convicted person may dispute the correctness of an allegation contained in a statement referred to in subsection (1) of this section, and where the convicted person disputes the correctness of the allegation, he shall state the grounds on which he relies.
- (4) Where a convicted person does not dispute the correctness of any allegation contained in the statement, the allegation is deemed to be conclusive proof of the matter to which it relates.
- (5) A convicted person may tender before ~~to~~ the Court a statement in writing under oath or affirmation by him or by any other person in connection with any matter that relates to the determination of the amount that might be realised as specified in section 72 (1) of this Act.
- (6) For the purpose of obtaining information to assist the Court, the Court may, at any time, order the convicted person to give it information specified in the order.
- (7) An order under subsection (6) of this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (8) A copy of the statement or information referred to in subsection (5) or (6) of this section shall be served on the relevant organisation and the Agency, as the case may be, at least fourteen days before the date on which that statement is to be tendered before the Court.

- (9)** The relevant organisation and the Agency, as the case may be, may admit the correctness of any allegation contained in a statement or information referred to in subsection (5) or (6) of this section, and where the relevant organisation and the Agency, as the case may be, admits the correctness of any allegation contained in such statement, that allegation is deemed to be conclusive proof of the matter to which it relates.
- (10)** Section 77 (1) of this Act does not affect any power of the Court to deal with the convicted person, in respect of a failure to comply with an order under this section.
- (11)** An information given under this section that amounts to an admission by the convicted person that he has benefited from criminal conduct is not admissible in evidence in proceedings for any other offence.

77. Evidence relating to proceeds of criminal activity

- (1) For the purposes of determining whether a convicted person has derived a benefit under section 70 (1) of this Act, where it is found that the defendant did not at the prescribed date, or since the beginning of a period of six years before the prescribed date, have legitimate sources of income sufficient to justify the interests in any property that the convicted person holds, the Court shall accept this fact as *prima facie* evidence that the interests form part of the benefit.
- (2) For the purposes of section 70 (1) of this Act, where it is found that the Court had ordered the convicted person to disclose any facts under section 58 (5) or 76 (6) of this Act and that the convicted person had, without sufficient cause, failed to disclose the facts or had, after being so ordered, furnished false information, knowing the information to be false, the Court shall accept those facts as *prima facie* evidence that any property to which the information relates -
- (a) forms part of the convicted person's benefit, in determining whether he has derived a benefit from an offence; or
 - (b) is held by the convicted person as an advantage, payment, service or reward in connection with the offences or related criminal activity.
- (3) For the purpose of determining the value of a convicted person's proceeds of criminal activities in an enquiry under section 71 (1) of this Act, if the Court finds that he -
- (a) has benefited from an offence and that -
 - (i) he held property at any time at, or since, his conviction, or
 - (ii) the property was transferred to him at any time since the beginning of a period of six years before the prescribed date,the Court shall accept these facts as *prima facie* evidence that the property was received by him at the earliest time at which he held it, as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 70 (1) of this Act; or
 - (b) has benefited from an offence and that expenditure had been incurred by him since the beginning of the period specified in paragraph (a) of this subsection, the Court shall accept the facts as *prima facie* evidence that the expenditure was met out of the advantages, payments, services or rewards, including any property received by him in connection with the offences or related criminal activities referred to in section 70 (1) of this Act.
- (4) For the purpose of determining the value of any property under section 71 (1) of this Act, where the Court finds out that the convicted person received property at any time as an advantage, payment, service, or reward in connection with the offences or related criminal activities referred

to in that section, whether committed by him or by any other person, the Court shall accept this fact as *prima facie* evidence that he received that property free of any other person's interest in it.

- (5) Where, at the hearing of an application for a confiscation order in relation to an offence concerning a narcotic substance, the value of the narcotic substance is brought into question, an investigating officer from the relevant organisation, who is experienced in the investigation of the specified offence, may testify to the best of his knowledge, information and belief, with respect to –
- (a) the market value, at the time of the offence, of similar or substantially similar narcotic substances; and
 - (b) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing.
- (6) Evidence given in subsection (5) of this section is *prima facie* evidence of the matters testified.

78. Procedure where a person absconds or dies

- (1) The Court may, on the application by the relevant organisation or the Agency, inquire into any benefit the person may have derived from an offence, where it is satisfied that –
- (a) a person –
 - (i) had been charged with an offence,
 - (ii) had been convicted of any offence,
 - (iii) has had a restraint order made against him, or
 - (iv) can be tried for an offence on the grounds that sufficient evidence exists against him;
 - (b) a warrant for arrest of the person had been issued and that the attendance of that person in Court cannot be secured after all reasonable steps were taken to execute that warrant;
 - (c) the proceedings against the person cannot be resumed within a period of six months due to his continued absence; and
 - (d) there are reasonable grounds to believe that a confiscation order may have been made against him but for his continued absence.
- (2) Where a defendant, who has been convicted of an offence, dies before a confiscation order is made, the Court may, on the application by the relevant organisation or the Agency, enquire into any benefit the person may have derived from that offence if the Court is satisfied that there are

reasonable grounds for believing that a confiscation order would have been made against him, but for his death.

- (3) The executor of the estate of the deceased is entitled to appear before the Court and make representations for purposes of the enquiry referred to in subsection (2) of this section.
- (4) The Court in conducting an inquiry under this section may, where –
- (a) the Court finds that the defendant or deceased referred to in subsections (1) or (2) of this section has so benefited, make a confiscation order, and the provisions of this Part shall, with necessary modifications, apply to the making of the order;
 - (b) an asset manager has not been appointed, in respect of any of the property concerned, direct the Agency to appoint an asset manager in respect of realisable property; and
 - (c) authorise the realisation of the property concerned.
- (5) The Court shall not exercise its powers under subsection (4) (a) and (c) of this section, except it has afforded a person having any interest in the property concerned an opportunity to make representations to it in connection with the making of any order.
- (6) The Court in conducting an enquiry under this section shall not apply the provisions of sections 76 and 77 of this Act.
- (7) Where a person, excluding a person specified in subsection (1) (a) (ii) of this section, against whom a confiscation order had been made under subsection (4) of this section is subsequently tried and –
- (a) convicted of one or more of the offences in respect of which the order had been made, the Court convicting him may conduct an inquiry under section 71 and make an appropriate order; or
 - (b) acquitted of an offence in respect of which the order had been made, the Court acquitting him may make an appropriate order.
- (8) The Court may make a determination under section 70 of this Act against a person specified under subsections (1) (a) and (b) of this section who absconded prior to an inquiry under section 71 of this Act, and who is subject to a confiscation order made under subsection (4) of this section where that person is subsequently brought before the Court.
- (9) The Court making a determination contemplated in subsection (8) of this section shall take into account any order made under subsection (4) of this section.

79. Reconsideration of the confiscation order

- (1) This section applies, where -

- (a) the Court has made a confiscation order;
 - (b) there is evidence, which was not available to the relevant organisation or the Agency, at the time of the original confiscation hearing;
 - (c) the relevant organisation or the Agency, believes that if the Court were to determine the amount of the convicted person's benefit in pursuance of this section, it may exceed the amount determined as the defendant's benefit in the original confiscation hearing;
 - (d) notwithstanding the provisions of subsection (1) (c) of this section, the relevant organisation or the Agency believes that -
 - (i) the amount determined as the convicted person's benefit in the original confiscation hearing is greater than the amount of the confiscation order, and
 - (ii) if the Court were to determine the amount of the convicted person's realisable assets in pursuance of this section, it would exceed the amount determined, as the convicted person's realisable assets in the original confiscation hearing;
 - (e) before the end of the period of six years commencing from the date of conviction, the agency may on its own, apply to the court to reconsider the evidence or where the discovery was made by the relevant organization, it shall notify the Agency, who shall apply to the Court to reconsider the evidence; and
 - (f) after considering the evidence, the Court believes it is appropriate for it to proceed under this section.
- (2) Where the Court is proceeding under subsection (1) (c) of this section, it shall make a new calculation of the amount in respect of the convicted person's activities mentioned in section 70 (1) (c) of this Act.
- (3) Where the amount found under the new calculation mentioned in subsection (2) of this section exceeds the amount originally determined, as the convicted person's benefit, the Court -
- (a) shall make a new calculation of the convicted person's realisable assets for the purposes of section 70 of this Act; and
 - (b) if it exceeds the amount required to be paid under the original confiscation order, may vary the order by substituting for the amount required to be paid by such amount as it deemed fit and proper.
- (4) Where the court is proceeding under subsection (1) (d) of this section -
- (a) it shall make a new calculation of the convicted person's realisable assets for the purposes of section 70 of this Act; and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid an amount, not exceeding the

amount as originally determined within the provisions of section 71 of this Act, as it deemed fit and proper.

- (5) Section 77 of this Act shall not apply in making a determination under this section.
- (6) Where a Court applies subsection (2) or (3) of this section, it shall have regard to -
 - (a) any fine imposed on the convicted person for the offence or any of the offences concerned; and
 - (b) any other order made under this Act.
- (7) In making a decision under this section, the Court shall, where one amount exceeds another, take account of any variation in the value of money.

80. Enforcement of confiscation orders

- (1) An amount payable by a person to the Agency under a confiscation order is a civil debt due by the person to the Federal Government.
- (2) A confiscation order against a person may be enforced, as if it were an order made in civil proceedings instituted by the Agency against a person to recover a debt due by that person to the Federal Government.
- (3) A debt arising from the order is deemed to be a judgement debt.
- (4) Where a confiscation order is made against a person after his death, this section shall have effect, as if the person had died on the day after the order was made.
- (5) Where a person fails to satisfy any or part of a confiscation order made by the Court, the Court may order that the person against whom the order was made be committed to prison in addition to any other sentence prescribed under this Act.
- (6) The period of imprisonment referred to under subsection (5) of this section shall be as prescribed in the Schedule to this Act.
- (7) An order to pay an amount under a confiscation order is due to be paid on the day that the confiscation order is made.
- (8) The Court making the order may, on the application by the convicted person, grant a period of time to pay the amount under the confiscation order.
- (9) The period of time referred to in subsection (8) of this section shall not exceed six (6) months from the date the order is made.
- (10) The Court making the order may, having regard to the special circumstances of the case, extend the period referred to in subsection (9) of this section by a further six months.

- (11) Where the convicted person intends to apply to the Court for an extension of the type referred to in subsection (8) of this section, he shall notify the Agency, in writing, at least fourteen days prior to the application.
- (12) The Agency may appear and adduce evidence at a hearing under subsection (8) of this section.
- (13) Any sentence of imprisonment imposed under subsection (5) of this section shall be served consecutively with any other sentence of imprisonment imposed, whether as a result of the proceedings in connection with which the confiscation order was made or any other proceedings.

81. Variation of confiscation order

- (1) Where the Court has made a confiscation order, the Agency or the convicted person may apply to the Court to vary the order under this section.
- (2) In considering an application under subsection (1) of this section, the Court shall calculate the available amount and in doing so shall apply the provisions of section 72 of this Act, as if references to the –
 - (a) time the confiscation order is made were to the time of the calculation; and
 - (b) date of the confiscation order was made to the date of the calculation.
- (3) Where the Court finds that the available amount calculated is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid, a smaller amount, as the Court believes is just.
- (4) Where a person has been adjudged bankrupt or his estate has been sequestrated, or where an order for the winding up of a company has been made, the Court shall take into account the extent to which the realisable property held by that person or that company may be distributed amongst creditors.
- (5) The Court may disregard any inadequacy that it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of an affected gift from any risk of realisation under this Part.

82. Property subject to a person's effective control

- (1) Where –
 - (a) a person's property is subject to a confiscation order;

- (b) the Agency, applies to the Court for an order under this section; and
- (c) the Court is satisfied that any particular property is subject to the effective control of the person referred to in paragraph (a) of this subsection,

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

- (2) The order under subsection (1) of this section may be enforced against the property, as if the property were the person's property.
- (3) A restraint order may be made in respect of a property that is under the effective control of a person, as if –
 - (a) the property was the person's property; and
 - (b) the person had committed an offence.
- (4) Where the Agency, applies for an order under subsection (1) of this section relating to a particular property, it shall give written notice of the application to –
 - (a) the person who is subject to the confiscation order; and
 - (b) any person whom the Agency has reason to believe may have an interest in the property.
- (5) A person, who is subject to the confiscation order, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.
- (6) Any person claiming an interest under subsection (5) of this section shall give written notice to the Agency of the claim and the grounds on which the claim is based at least 72 hours before the date of the hearing.

83. Discharge of confiscation order made in relation to a conviction

- (1) A confiscation order made in relation to a person's conviction for an offence is discharged, where –
 - (a) the person's conviction of the offence is subsequently quashed; and
 - (b) the order does not relate to any other offence.
- (2) Where the Agency deposits money into the Account as provided under this Act, in satisfaction of a person's liability under a confiscation order, the person's liability under the confiscation order is, to the extent of the deposit, discharged.

PART VIII

INVESTIGATION, SEARCH AND SEIZURE

84. Objectives of this Part

- (1) The objectives of this Part are to –
- (a) safeguard the constitutional and individual's right to privacy in the conduct of investigation, search, and seizure;
 - (b) provide relevant organisations and the Agency with investigative tools, including tools relating to –
 - (i) establishing the whereabouts and extent of a person's realisable assets,
 - (ii) identifying and recovery of property or instrumentalities that may be subject to civil forfeiture and confiscation, and
 - (iv) a detained cash investigation.
- (2) The investigative tools referred to under subsection (1) of this section are –
- (a) production order;
 - (b) search and seizure warrant;
 - (c) customer information order; and
 - (d) account monitoring order.

85. Application of this Part

- (1) This Part applies to all relevant organisations and the Agency, in the conduct of investigations, searches, and seizures in connection with the recovery of proceeds of unlawful activities under this Act and the relevant laws.
- (2) Notwithstanding the provisions of any other relevant laws, a relevant organisation and the Agency, shall comply with the provisions of this Part in the conduct of the matters referred to in subsection (1) of this section.
- (3) For the purpose of this Part –

- (a) “civil forfeiture investigation” is an investigation into whether property constitutes or is derived from the proceeds of unlawful activity or is the instrumentality of an offence;
- (b) “confiscation investigation” is an investigation into whether a person has benefited from a criminal activity;
- (c) “detained cash investigation” is an investigation contemplated in Part VI of this Act; and
- (e) “civil recovery investigation” is an investigation under the Part IV of this Act.

86. Making of a production order

The Court may, on an *ex-parte* application by relevant organisation or the Agency, make an order requiring the production of specified material within a specified period, if the Court is satisfied that each of the requirements for the making of the order is fulfilled.

87. Application for a production order

- (1)** The application for the order shall state that a person specified in the application is subject to a –

 - (a)** confiscation investigation;
 - (b)** forfeiture investigation;
 - (c)** detained cash investigation, as contemplated in Part VI of this Act;
 - (d)** money laundering investigation; or
 - (e)** civil recovery investigation, as contemplated in Part IV of this Act.

- (2)** An application for a production order shall confirm that –

 - (a)** the order is sought for the purposes of investigation;
 - (b)** the order is sought in relation to material, or material of a description, specified in the application;
 - (c)** a person specified in the application appears to be in possession or control of the material; and
 - (d)** the material sought for is not subject to legal privilege.

- (3)** In consideration of legal privilege or any other claimed client privilege, the following items shall not be subject to privilege, any material in relation to –

 - (a)** the purchase or sale of property,
 - (b)** the purchase or sale of any business,
 - (c)** client accounts
 - (d)** the formation or conduct of any trust, and
 - (e)** anything produced in the furtherance of any unlawful activity.

- (4)** There shall be reasonable grounds for suspecting that in the case of a –

 - (a)** confiscation investigation, the person to whom the application for the production order relates to, has benefited from his criminal activity;
 - (b)** forfeiture investigation, the person to whom the application for the production order relates to, has control of the proceeds of unlawful activity or an instrumentality;

- (c) a detained cash investigation into the intended use of cash, the cash, in whole or part, to which the application for the production order relates to, is a subject of investigation, and –
 - (i) is intended by any person to be used in unlawful or criminal conduct, or
 - (ii) is, or represents the proceeds of unlawful or criminal activity;
 - (d) a money laundering investigation, the person to whom the application for the production order relates to, has committed a money laundering offence;
 - (e) civil recovery investigation, the person mentioned in the application has or had control of property that –
 - (i) are the proceeds of unlawful or criminal activity;
 - (ii) represents the proceeds of unlawful or criminal activity;
 - (iii) is involved in the facilitation of unlawful or criminal activity; or
 - (iv) is intended to be used to facilitate unlawful or criminal activity.
- (5) There shall be reasonable grounds for believing that-
- (a) the person the application specifies, as appearing to be in possession or control of the material so specified, is in possession or control of it.
 - (b) the material is likely to be of substantial value, whether by itself, to the investigation for the purposes of which the order is sought.
 - (c) it is in the public interest for the material to be produced or for access to it to be given, having regard to –
 - (i) the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) the circumstances under which the person the application specifies, as appearing to be in possession or control of the material, is in possession of it.
- (6) An application for a production order may be made to a judge in chambers.

88. Access to materials sought, including documents, information, etc.

- (1) The application for the order under section 87 of this Act shall require –
- (a) the person specified in the application to produce the material to an authorised officer for him to take away; or
 - (b) the person mentioned in paragraph (a) to give an authorised officer access to the material within the period stated in the order.

- (2)** The period stated in a production order may be a period of seven days beginning on the day on which the order is made, except it appears to the Court making the order that a longer or shorter period may be appropriate in the circumstances.
- (3)** A matter to which the Court shall have regard for the purposes of deciding whether an earlier time is appropriate under subsection (2) of this section are –

 - (a)** the urgency of the situation; and
 - (b)** any hardship that may be caused to the person required by the production order to produce documents or make documents available.

89. Content of a production order

A production order shall –

- (a)** specify the form in which the documents are to be produced; and
- (b)** set out the purpose for which the production order is sought.

90. Powers under production orders

An authorised officer may inspect, take extracts from, or make copies of a document produced or made available under a production order.

91. Retaining produced documents

- (1)** An authorised officer of a relevant organisation or the Agency may retain a document produced under a production order for as long as is necessary for the purposes of this Act.
- (2)** The person to whom a production order is given may require the relevant organisation or an authorised officer or the Agency to –
 - (a)** certify in writing a copy of the document retained to be a true copy and give the person the copy; or
 - (b)** allow the person to -
 - (i)** inspect the document,
 - (ii)** take extracts from the document, and
 - (iii)** make copies of the document.

92. Documents in possession, etc. of a Ministry, Department or Agency of Government

- (1)** A production order may be made in relation to material in the possession or control of a Ministry, Department or Agency of Government.
- (2)** A production order –

 - (a)** may require any accountable officer of the Ministry, Department or Agency of Government who may for the time being be in possession or control of the material to comply with the order; and
 - (b)** referred to in paragraph (a) of this subsection shall be served, as if the proceedings were civil proceedings against the Ministry, Department or agency of Government.
- (3)** Where a production order contains the requirement referred to in subsection (2) (a) of this section -

 - (a)** the person on whom it is served shall take all reasonable steps to bring it to the attention of the officer concerned; or
 - (b)** accountable officer of the Ministry, Department or Agency of Government who is in receipt of the order shall take all reasonable steps to bring it to the attention of the officer concerned.
- (4)** Where the production order is not brought to the attention of the officer concerned within the period stated in the order, the person on whom it is served shall report the reasons for the failure to the Court that issued the order.

93. Computer information and other electronic storage devices

- (1)** This section applies where any of the material specified in an application for a production order consists of information contained in a computer and other electronic storage devices.
- (2)** Where an order requires a person to give an appropriate officer access to a material, it has effect, as an order to give the officer access to the material in a form in which it is visible and legible.
- (3)** Where an order requires a person to produce a material to an authorised officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

94. Prohibition of privilege against self-incrimination

A person shall not be excused from producing a document or making a document available under a production order on the ground that –

- (a) to do so may tend to incriminate or expose the person to a penalty; or
- (b) producing the document or making it available may breach an obligation, whether imposed by an enactment or otherwise.

95. Making false statements in applications

A person who in connection with an application for a production order makes a statement which –

- (a) is deliberately false or misleading, or
- (b) deliberately omits any matter or thing which makes the statement to be misleading,

commits an offence and is liable on conviction to a fine of not less than one million Naira (₦1,000,000) or an imprisonment for a term of at least 12 months, or to both.

96. Order to grant entry

- (1) This section shall apply, where the Court makes a production order requiring a person to give an authorised officer access to the material on any premises.
- (2) The Court may, on an application made to it by an authorised officer and specifying the premises, make an order to grant entry in relation to the premises to allow the authorised officer to enter the premises to obtain access to the material.

97. Actions detrimental to an investigation

- (1)** This section applies if a person knows or suspects that a relevant organisation or an authorised officer or the Agency is acting or proposing to act, in connection with –
- (a)** a confiscation investigation;
 - (b)** a forfeiture investigation;
 - (c)** a civil recovery investigation; or
 - (d)** a detained cash investigation.
- (2)** The person commits an offence if –
- (a)** he makes a disclosure which is likely to prejudice the investigation, or
 - (b)** he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which are relevant to the investigation.
- (3)** A person does not commit an offence under subsection (2) (a) of this section if the Court is satisfied that –
- (a)** he does not know or suspect that the disclosure is likely to prejudice the investigation,
 - (b)** the disclosure is made in the exercise in compliance with a requirement imposed under or by virtue of
 - (i)** this Act,
 - ii)** the Money Laundering (Prohibition) Act, or
 - (iii)** the Terrorism (Prevention) Act;
 - (c)** he is a legal practitioner and the disclosure falls within subsection (4) of this section.
- (4)** A disclosure falls within this subsection, if it is a disclosure –
- (a)** to a client or his legal representative, in connection with the rendering legal advice to the client, or
 - (b)** to any person in connection with legal proceedings or contemplated legal proceedings.
- (5)** A disclosure does not fall within subsection (4) of this section, if it is made with the intention of furthering a criminal purpose.

- (6)** Legal proceedings or contemplated legal proceedings do not include any proceedings in connection with any matter mentioned in section 87 (3) of this Act.
- (7)** A person who commits an offence under subsection (2) of this section is liable on conviction a fine not less than two million Naira (N2,000,000) or imprisonment for a term not exceeding two year or to both the fine and imprisonment.

98. Search and seizure warrants

- (1)** The Court may, on an *ex-parte* application by an authorised officer of a relevant organisation or the Agency, issue a search and seizure warrant, where it is satisfied that each of the requirements for the making of the order is fulfilled.
- (2)** The requirements for the issue of a search and seizure warrant under subsection (1) of this section are that –
- (a)** the requirements for the issue of a production order under section 86 of this Act are satisfied;
 - (b)** an investigation, as specified in section 87 of this Act, is being conducted;
 - (c)** there are reasonable grounds to believe that there is on the premises -
 - (i)** material likely to be of substantial value, by itself or together with other material, to the investigation,
 - (ii)** material relating to a specified person which is likely to be of substantial value, whether by itself or together with other material, to the investigation, but that the material cannot at the time of the application be particularised,
 - (iii)** property forming or derived from the proceeds of unlawful or criminal activity, or
 - (iv)** an instrumentality of an offence, which may be destroyed or dissipated, unless an authorised officer can secure immediate access to the premises in order to preserve the property;
 - (d)** a production order made under section 86 of this Act, in relation to material held on the premises, has not been complied with; or
 - (e)** it may not be practicable to make an order under section 86 of this Act in relation to the material sought because -
 - (i)** it is not practicable to communicate with any person entitled to produce the material,
 - (ii)** it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (iii)** it is not practicable to communicate with any person entitled to grant access to the material,
 - (iv)** the investigation might be seriously prejudiced except an authorised officer is able to secure immediate access to the material, or
 - (v)** entry into the premises will not be granted, except a warrant is produced.

- (3) A search and seizure warrant shall not confer the right to seize material that is subject to legal privilege.
- (4) In considering legal privilege, the items listed in section 87 of this Act shall not be entitled to that privilege under this section.
- (5) Where an authorised officer has entered premises in execution of a warrant issued under this section, he may -

 - (a) seize and retain any material, other than an item subject to legal privilege which is likely to be of substantial value, whether by itself or together with other material, to the investigation;
 - (b) make a photographic or video record of the premises and its contents;
 - (c) inspect, make copies of, take extracts from any book, record or document;
 - (d) search any person, who is in or on the premises, seize and detain any incriminating article found on him; or
 - (e) stop, search, and seize any vehicle or conveyance.
- (6) A person shall not be searched under this Act, except by a person, who is of the same gender as the person to be searched.
- (7) A copy of a search warrant, together with the details of the persons conducting the search, shall be handed to the person, who appears to be in charge of the premises or left in a conspicuous place where the premises are unattended.

99. Seizure of property

- (1) Where, in the course of an investigation mentioned in section 87 of this section, the relevant organisation or an authorised officer of the Agency, has reasonable grounds to suspect that any movable or immovable property is property or any instrumentality mentioned in section 98 (2) (c) of this Act, he shall seize the property.
- (2) A list of all movable or immovable property seized under subsection (1) of this section and the location, where the property was discovered, shall be prepared and signed by the officer effecting the seizure.
- (3) A copy of the list referred to in subsection (2) of this section shall be served as soon as possible, on the owner of the property and on the person from whom the property was seized, if not the owner.

- (4) Where it is not practicable or desirable to remove seized property, it may be left in the custody of the person from whom it is seized subject to an undertaking that the property is surrendered to the Agency on demand.
- (5) A person, who has committed to an undertaking within the provisions of subsection (4) of this section, shall remain committed to that undertaking until –
- (a) he is notified, in writing, by the Agency or any person authorised by the Agency that he is relieved of the commitment; or
 - (b) he is served with a notice of a restraint order under section 62 of this Act in connection with the property.
- (6) Any person, who commits to an undertaking within the provisions of subsection (4) of this section, commits an offence, where he fails to surrender, on demand, property subject to the undertaking or fails to comply with any term or condition imposed under that subsection.
- (7) A person, who commits an offence under subsection (6) of this section, shall on conviction be liable to a fine of at least three times the value of the property subject to the undertaking or a term of imprisonment of at least two years or both the fine and imprisonment.

100. Retention of seized property

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 or such person or authority, as the Agency may determine.

101. Obstructing the execution of a search and seizure warrant

A person, who -

- (a) refuses an authorised officer access to any premises, or fails to submit to a search by a person authorised to search him under this Act;
- (b) assaults or obstructs any authorised officer or any accompanying person mentioned in section 98 of this Act in the execution of the search and seizure warrant;
- (c) conceals or attempts to conceal from, an authorised officer or any accompanying person mentioned in the order, any book, document, or article, in relation to which the officer has reasonable grounds for suspecting or believing that an offence under an applicable Act has been or is being committed, or which is liable to seizure under this Act;
- (d) rescues, endeavours to rescue, or causes to be rescued any person, who has been duly arrested or anything which has been duly seized under this Act; or

(e) destroys anything to prevent its seizure or securing of the thing under this Act,

commits an offence and is liable on conviction to a fine of five million Naira (N5,000,000) or a term of imprisonment of not less than two years or to both the fine and imprisonment.

102. Customer information orders

(1) The Court may, on an application made to it by an authorised officer of a relevant organisation or the Agency, make a customer information order, if it is satisfied that each of the conditions for making of the order is fulfilled.

(2) The Agency or relevant organization may also obtain customer information from the Nigeria Financial Intelligence Unit (the NFIU)

(3) The conditions for the issue of a customer information order are that-

(a) a person specified in the application is subject to an investigation of the type specified in section 87 of this Act;

(b) that a specified person has -

(i) property constituting or derived from the proceeds of an unlawful or criminal activity, or

(ii) derived a benefit from an unlawful or criminal activity;

(c) the person named in the application for the order is subject to -

(i) a money laundering investigation within the provisions of the Money Laundering (Prohibition) Act, or

(ii) a terrorist financing investigation under the Terrorism (Prevention) Act;

(d) the person specified in the application holds all or some of the property mentioned in subsection (2) (b) of this section;

(e) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;

(f) in the case of a terrorism financing investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a terrorism financing offence;

- (g) in the case of any investigation, there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself, to the investigation for the purposes of which the order is sought;
 - (h) that the material is sought for the purpose of the investigation; and
 - (i) the order is sought against the financial institution or financial institutions specified in the application.
- (4) An application for a customer information order may specify -
- (a) all financial institutions;
 - (b) a particular description or descriptions of financial institutions; or
 - (c) a designated non- financial institution.
- (5) A “customer information order” is an order that a financial institution or designated non-financial institution covered by the application for the order shall, on being required to do so by notice in writing given by the authorised officer of a relevant organisation or the Agency, provide any such customer information, as it has relating to the person specified in the application.
- (5) A financial institution or designated non-financial, which is required to provide information under a customer information order, shall provide the information to an authorised officer of a relevant organisation or the Agency, in such manner and at or by such time, as may be required by the authorised officer.

103. Meaning of customer information

- (1) “Customer information”, in relation to a person and a financial institution or designated non-financial, is information, whether the person holds or has held an account at the financial institution or designated non-financial, whether solely or jointly with another and, if so, information as to the matters referred to in –
- (a) subsection (2) of this section, where the person is an individual; or
 - (b) subsection (3) of this section, where the person is a company or limited liability partnership or a similar body whether incorporated or otherwise established within Nigeria or elsewhere.
- (2) The matters referred to in subsection (1) (a) of this section are –
- (a) the account number or numbers;

- (b) the person's full name;
 - (c) his date of birth;
 - (d) his most recent address and any previous addresses;
 - (e) the date on which he began to hold the account and, where he has ceased to hold the account, the date on which he did so;
 - (f) any evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
 - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him; and
 - (h) the account number of any other account held at the financial institution to which he is a signatory and details of the person holding the other account.
- (3) The matters referred to in subsection (1) (b) of this section are –
- (a) the account number;
 - (b) the person's full name;
 - (c) a description of any business, which the person carries on;
 - (d) the country or territory in which it is incorporated or otherwise established, and any number allocated to it by virtue of relevant legislation;
 - (e) any number assigned to it for the purposes of value added tax in Nigeria;
 - (f) its registered office and any previous registered offices, whether in Nigeria or elsewhere;
 - (g) the date on which it began to hold the account and, where it has ceased to hold the account, the date on which it did so;
 - (h) evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering or terrorist financing; and
 - (i) the full name, date of birth and most recent address and any previous addresses of any person, who is a signatory to the account.
 - (j) Nothing in this Section shall prevent the Agency or relevant organization from seeking additional customer information from the Nigeria Financial Intelligence Unit.

104. Penalties

- (1) A financial institution, who without reasonable excuse fails to comply with a requirement imposed on it under a customer information order, commits an offence under this Act and is liable on conviction to a fine of not less than ten million Naira (~~₦~~10,000,000).
- (2) A designated non-financial institution, who without reasonable excuse fails to comply with a requirement imposed on it under a customer information order, commits an offence under this Act and is liable on conviction to a fine of not less than two million Naira (~~₦~~2,000,000).
- (3) Where in compliance with a customer information order, a financial institution and non-designated non-financial information –
 - (a) makes a statement, which it knows to be false or misleading in a material particular; or
 - (b) recklessly makes a statement, which is false or misleading in a material particular,the financial institution commits an offence and is liable on conviction to a fine of not less than ₦10,000,000 while the non-designated financial institutions is liable on conviction to a fine of not less than two million Naira (N2,000,000).
 - (c) The officials of the financial and designated non-financial institutional may also be held liable to additional penalties under the Money Laundering Prohibition Act.

105. Supplementary provisions relating to customer information orders

- (1) A customer information order has effect in spite of any restriction on the disclosure of information, however imposed.
- (2) An application for a customer information order may be made *ex-parte* to a judge in chambers.
- (3) An application to discharge or vary a customer information order may be made to the Court by -
 - (a) an authorised officer of a relevant organisation or the Agency; or
 - (b) the person affected by the order.
- (4) On application by a person mentioned in subsection (3) of this section, the Court may vary or discharge the order.
- (5) The officer who applied for a customer information order need not be the same officer who makes an application to discharge or vary the order.
- (6) The authorised officer shall not make an application for a customer information order or an application to vary the order, unless authorised in writing to do so by the –

- (a) chief executive of the relevant organisation; or
- (b) the Director-General of the Agency in cases being dealt with by the Agency.

106. Account monitoring orders

- (1) The Court may, on an application made to it by an authorised officer of a relevant organisation or the Agency, make an account monitoring order where it is satisfied that each of the conditions for making the order is fulfilled.
- (2) The conditions for making the order are that –
 - (a) a person specified in the application is subject to an investigation of the type specified in section 87 of this Act;
 - (b) a specified person has –
 - (i) property constituting or derived from the proceeds of a criminal activity, or
 - (ii) derived a benefit from criminal activity;
 - (c) the person named in the application for the order is subject to -
 - (i) a money laundering investigation within the provisions of the Money Laundering (Prohibition) Act, or
 - (ii) a terrorism financing investigation under the Terrorism (Prevention) Act;
 - (d) the person specified in the application holds all or some of the property mentioned in subsection (2) (b) of this section;
 - (e) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
 - (f) in the case of a terrorism financing investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a terrorism financing offence;
 - (g) in the case of any investigation, there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
 - (h) the information is sought for the purpose of the investigation.

107. Meaning of account information and monitoring orders

- (1) “Account information” is information relating to an account held at the financial institution or non-designated financial institution specified in the application by the person so specified, whether solely or jointly with another person.
- (2) The application for an account monitoring order may specify information relating to -

 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
 - (b) a particular description or descriptions of accounts so held; or
 - (c) a particular account, so held.
- (3) “An account monitoring order” is an order that the financial institution specified in the application for the order shall, for the period stated in the order, provide account information of the description specified in the order to the authorised officer of a relevant organisation or the Agency in the manner, and at or by the time, stated in the order.
- (4) The period stated in an account monitoring order shall not exceed the period of 90 days commencing from the day the order is made.
- (5) Nothing in subsection (4) of this section shall prevent further applications for account monitoring orders in respect of accounts that have been subject to previous account monitoring orders from being made.

108. Supplementary provisions relating to account monitoring orders

- (1) An account monitoring order has effect in spite of any restriction on the disclosure of information.
- (2) An application for an account monitoring order may be made *ex-parte* to a judge in chambers.
- (3) An application to discharge or vary an account monitoring order may be made to the Court by -

 - (a) an authorised officer of a relevant organisation or the Agency; or
 - (b) the person affected by the order.
- (4) On application by a person mentioned in subsection (3) of this section, the Court may vary or discharge the order.

- (5) The officer who applied for an account monitoring order need not be the same officer who makes an application to discharge or vary the order.
- (6) The authorised officer shall not make an application for a customer information order or an application to vary the order unless authorised in writing to do so by the –
 - (a) chief executive of the relevant organisation; or
 - (b) the Director-General of the Agency in cases being dealt with by the Agency.

PART IX

ADMINISTRATION

109. Powers and duties of the Agency in respect of property seized

This Part sets out the powers and duties of the 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.

110. Preserving controlled property

- (1) The Agency shall do everything that is reasonably necessary for the purpose of preserving the controlled property, including –
 - (a) becoming a party to any civil proceedings affecting the controlled property;
 - (b) becoming a party to any proceedings arising out of criminal proceedings, including the confiscation proceedings, affecting the controlled property;
 - (c) ensuring that the controlled property is insured;
 - (d) realising or otherwise dealing with controlled property that is securities or investments; and
 - (e) where a controlled property is a business –
 - (i) employing, or terminating the employment of persons in the business, and
 - (ii) doing anything necessary or convenient to carry on the business on a sound commercial basis.
- (3) The Agency shall, for the purposes of performing its functions under subsection (1) of this section, engage persons competent and qualified in the relevant area of business.

111. Rights attaching to shares

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.

112. Destroying or disposing of property

The Agency may –

- (a) destroy the controlled property or any part of it on the grounds of public interest, health or safety; or
- (b) dispose of the controlled property or any part of it, by sale or other means to avoid deterioration or loss of value.

113. Notice of proposed destruction or disposal of controlled property

- (1) The Agency shall give written notice of the proposed destruction or disposal of the controlled property to –
 - (a) the owner of the controlled property; and
 - (b) any other person whom the Agency has reason to believe may have an interest in the controlled property.
- (2) The notice referred to under subsection (1) of this section shall state the date, venue, and time of the proposed destruction or disposal.
- (3) A person who has been served with a notice under subsection (1) of this section may object, in writing, to the Agency within 14 days of receiving the notice.

114. Procedure where person objects to proposed destruction or disposal

- (1) Notwithstanding the written objection referred to in section 113 (3) of this Act, where the Agency wishes to continue with the proposed destruction or disposal of the controlled property, the Agency shall apply to the Court that made the order for an order to destroy or dispose of the controlled property.
- (2) The Court shall make an order to destroy the controlled property if –

- (a) it is in the public interest to do so;
 - (b) **the benefit of the disposal or sale of the property far outweighs the retention;** or
 - (c) it is required to protect the health or safety of the public.
- (3) In making an order for the destruction of controlled property, the Court shall –
- (a) consider the overriding public interest in the sale or disposal of the controlled property;
 - (b) assess the cost of restoring the property in a saleable marketable condition, and whether this exceeds its realisable value;
 - (c) consider whether the cost of sale may exceed the realisable value of the property; and
 - (d) ensure the legality of the sale of the property.
- (4) The Court shall make an order to dispose of the controlled property where –
- (a) the property is likely to lose value; or
 - (b) the cost of managing the property until it is finally dealt with by the Agency is likely to exceed, or represent a significant proportion of, the value of the property when it is finally disposed of.
- (5) The Court may also make an order –
- (a) requiring that a person authorized by the Agency should bear the cost of managing the controlled property while maintaining the value of the property at the time of the application until it is finally disposed of by the Agency; or
 - (b) refusing an objection to a proposed destruction or disposal of the controlled property.

115. Proceeds from sale of property

Any amount realised from the disposal of the controlled property under section 113 of this Act shall be deemed to be -

- (a) covered by the restraint order related to the controlled property being disposed of; and
- (b) proceeds of that unlawful activity or its instrumentality, where the restraint order covered the controlled property disposed of on the basis that the controlled property was proceeds of unlawful activity or its instrumentality.

116. Discharge of confiscation orders by payment into the Confiscated and Forfeited Properties Account

Where the Agency pay monies into the Confiscated and Forfeited Properties Account, as required by section 121 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.

117. Agency to return income generated from controlled property

Where the restraint order relating to the controlled property ceases to be in force and 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.

118. Agency is not liable for loss, etc.

- (1)** Where the Court is satisfied that the Agency was not negligent in respect of taking custody and control of a property, the Agency 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 any rents or profits that the Agency receives on the controlled property.

119. International forfeiture provisions

- (1)** Where the Court under this Act orders forfeiture of any property, which was established to be the proceeds of unlawful activity or instrumentality of an unlawful activity within Nigeria and the other constituents of the instrumentality of the-unlawful activity is situate in a foreign country, the Agency under the direction of the Attorney General of the Federation shall initiate proceedings, including by way of mutual legal assistance in that foreign country for the recovery of the forfeited property.
- (2)** Where it is established that a convicted person has any asset or property in a foreign country, acquired as a result of an unlawful activity, the Agency under the direction of the Attorney General shall apply for the asset or property, subject to any treaty or arrangement with that foreign country, to be forfeited to the Federal Government of Nigeria.

- (3) The forfeited property referred to in subsections (1) and (2) of this section shall be transferred to and interest vested in the Federal Government of Nigeria, as provided under the provisions of this Act.
- (4) Where a foreign country has forfeited or confiscated property under the laws of its country-
- (a) that relates to unlawful activity conducted in that country and Nigeria; and
 - (b) repatriates the whole or part of that assets or a sum of money that represents unlawful activity in Nigeria,
- the property shall be realised and the proceeds or the sum of money is paid into the Confiscated and Forfeited Properties Account established under Part X of this Act.
- (5) Any money paid into the Confiscated and Forfeited Properties Account under subsection (4) of this section shall be utilised to finance any of the purposes specified under this Act and as approved by the Federal Executive Council.

PART X

CONFISCATED AND FORFEITED PROPERTIES ACCOUNT

120. Establishment of the Confiscated and Forfeited Properties Account

- (1) There is established, under this Act, the Confiscated and Forfeiture Property Account, a special designated account opened and maintained at the Central Bank of Nigeria.
- (2) The Confiscated and Forfeited Properties Account shall be managed by the Director General of the Agency who shall be responsible for providing reports to the Minister of Finance.

121. Payments into the Confiscated and Forfeited Properties Account

- (1) There shall be paid into the Confiscated and Forfeited Properties Account –
- (a) monies realised from the proceeds of sale, management or other form of disposal of seized, attached, and forfeited assets under this Act and other relevant laws;
 - (b) monies realised from the proceeds of sale, management, or other form of disposal of seized, attached, confiscated, and forfeited assets under this Act and other relevant laws;

- (c) proceeds of any property seized or forfeited under section 23 (2) (c) of the Code of Conduct Bureau and Tribunal Act, which relates to seizure and forfeiture to the State of any property acquired in abuse or corruption of office;
 - (d) monies paid to Nigeria by a foreign country –
 - (i) under any treaty or arrangement providing for mutual assistance in criminal matters,
 - (ii) as mentioned in section 119 (4) of this Act, or
 - (iii) through repatriation of proceeds of unlawful activity; and
 - (e) monies paid to the Agency on behalf of the Federal Government in settlement of proceedings connected with this Act and other relevant laws.
- (2)** Confiscated or forfeited assets are -
- (a) the remainder of the money and amounts referred to in section 51 (2) and (4) of this Act;
 - (b) the amount representing proceeds from a disposition authorised under this Act or by regulations made under this Act or under any other relevant law;
 - (c) the amount referred to in section 80 of this Act
 - (d) remainder of the money and amounts referred to in section 115 of this Act;
 - (e) proceeds of an unlawful activity and money confiscated or forfeited under -
 - (i) the Customs and Excise Management Act,
 - (ii) the Terrorism (Prevention) Act,
 - (iii) the Money Laundering (Prohibition) Act,
 - (iv) the Economic and Financial Crimes Commission (Establishment, etc.) Act,
 - (iv) the Corrupt Practices and Other Related Offences Act,
 - (v) the National Drug Law Enforcement Agency Act,
 - (vi) the Code of Conduct Bureau and Tribunal Act,
 - (vii) the Administration of Criminal Justice Act 2015, and
 - (x) any other law dealing with confiscation and forfeiture of property in force in Nigeria;
 - (f) instrumentalities of unlawful activity, including the proceeds of their disposal or confiscation under –

- (i) the Customs and Excise Management Act,
- (ii) the Terrorism (Prevention) Act,
- (iii) the Money Laundering (Prohibition) Act,
- (iv) the Economic and Financial Crimes Commission (Establishment, etc.) Act,
- (v) the Corrupt Practices and Other Related Offences Act,
- (vi) the National Drug Law Enforcement Agency Act,
- (vii) the Code of Conduct Bureau and Tribunal Act,
- (vii) the Administration of Criminal Justice Act 2015,
- (ix) the Trafficking in Persons (Prohibition) Enforcement, and Administration Act, 2003 as amended in 2015
- (x) any other law dealing with confiscation and forfeiture of property in force in Nigeria; and
- (x) cash forfeited under section 51 of this Act.

122. Payments out of the Confiscated and Forfeited Properties Account

The President may, subject to the approval by Federal Executive Council authorise the expenditure, from time to time, for moneys 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;
- (b)** Compensate any State which has suffered grave pecuniary loss on account of the offence or conduct that gave rise to the confiscation or forfeiture order;
- (c)** compensate any person who has suffered grave pecuniary loss on account of the offence or conduct that gave rise to the confiscation or forfeiture order;
- (d)** pay any foreign country or an agency under the provisions of any treaty agreement or scheme for mutual legal assistance;
- (e)** make payments under any programme approved by the President under section 124 of this Act;
- (f)** make any payment necessary to satisfy Nigeria’s obligations in respect of a registered foreign forfeiture order;
- (g)** make such other payments, on behalf of the Federal Government, directed to be made under any relevant law; and
- (h)** pay, with the approval of the National Assembly, two percent allocation to the Agency or any other relevant organization for the recoveries made by the Agency and the relevant organization in any given year.

123. Audit of the Confiscated and Forfeited Properties Account

The Confiscated and Forfeited Properties Account shall be audited in accordance with the guidelines supplied by the Auditor-General for the Federation.

124. Authorisation of expenditures for approved programmes of relevant organisations etc.

- (1)** Subject to approval by the National Assembly, the President may authorise, from time to time, monies in the Confiscated and Forfeited Properties Account to meet approved programmes of the Agency and the relevant organisations.
- (2)** The President may approve expenditure out of the Confiscated and Forfeited Properties Account for any one or more of the following purposes –

 - (a)** judicial, criminal justice reform and crime prevention measures;
 - (b)** law enforcement measures;
 - (c)** measures relating to treatment of drug addiction;
 - (d)** measures outlined for the rehabilitation of victims of human trafficking;
 - (e)** education, health, youth development, mass housing, rural electrification, agricultural reform, water, and sanitation;
 - (f)** measures relating to the compensation and rehabilitation of victims of terrorist activities;
 - (g)** Humanitarian and social investment programmes
 - (h)** Tracing and recovery of assets and management of the assets and properties to ensure its preservation
 - (i)** Legal fees and expenses anticipated under this Act
 - (j)** Major infrastructure reforms; and
 - (k)** such other development programmes, as may be approved by the Federal Executive Council or the National Assembly from time to time.

PART XI

JURISDICTION

125. Jurisdiction

- (1) The Federal High Court, Federal Capital Territory High Court, and State High Courts (in this Act referred to as “the Court”) shall have jurisdiction to try offences, hear, and determine proceedings arising under this Act.
- (2) **The Chief Justice of Nigeria shall designate special courts at the states where the proceedings under this Act may be determined from time to time in order to reduce backlog of cases in the Federal High Court.**
- (3) The penalty imposed on a person who is suspected to have committed an offence or convicted of an offence under this Act may be reduced in such manner as the Court deems fit or following an application by the Agency where the person has –
 - (a) before the commencement of any proceedings, made possible or facilitated the identification of other accused persons and their sponsors;
 - (b) after the commencement of the proceedings, made possible or facilitated the arrest of other accused persons or recovery of other person’s proceeds of unlawful activity;
 - (c) cooperated with the Agency and relevant organizations
- (3) The Court shall, notwithstanding anything to the contrary in any other enactment, rules, or regulations, have power to adopt all legitimate measures it deems necessary to avoid unnecessary delays and abuse in the conduct of proceedings.

PART XII

GENERAL PROVISIONS RELATING TO LEGAL PROCEEDINGS

126. Burden of proof

Subject to the provisions of this Act, the defendant in any proceedings under this Act bears the burden of proving that he is the legitimate owner of the assets suspected to be proceeds of crime or derived from unlawful activity or that the assets is of legitimate origin and is not proceeds of unlawful activity .

127. Stay of proceedings

- (1) An application for stay of proceedings, in respect of any matter brought under this Act, shall not be entertained except at the stage of final judgement on the substantive matter.
- (2) The fact that criminal proceedings have been instituted or have commenced, whether under this Act, shall not constitute a ground for stay of proceedings under this Act.
- (3) The Agency has the same right of appeal, as any other person under this section, in respect of the grant or refusal of an order under this Act.
- (4) This section does not affect any other right of appeal conferred on a person under the Constitution of the Federal Republic of Nigeria or any other law.

128. Publication of notice, etc.

Where in this Act, a notice or other document is required by any provision of this Act to be published, it is sufficient if the notice or other document is published in the Federal Gazette and two widely circulating national newspapers.

129. Relationship with relevant laws

Subject to the provisions of the Constitution of the Federal Republic of Nigeria, where a provision of this Act is inconsistent with any provision of any relevant law on civil forfeiture, confiscation, and management of proceeds of crime, the provisions of this Act shall prevail.

130. Pre-action notice

- (1) A civil action shall not be commenced against the Agency before the expiration of a period of 30 days after written notice of intention to commence the suit shall have been served on the

Agency by the intending plaintiff or his agent, and the notice shall clearly and explicitly state the

-

- (a) cause of action;
- (b) particulars of the claim;
- (c) name and place of abode of the intending plaintiff; and
- (d) relief sought.

(2) The notice referred to in subsection (1) of this section and any summons or other documents, required or authorised to be served on the Agency under this Act or other enactment or law, may be served by -

- (a) delivering it to the office of the Agency; or
- (b) sending it by registered mail to the postal address of the Agency.

131. Restriction on execution against property of the Agency

In any action or suit against the Agency, execution shall not be levied, or attachment process issued against the Agency, unless at least 30 thirty days' notice of the intention to execute or attach has been given to the Agency.

132. Indemnity of officers of the Agency

A member of the Board, Director-General, officer or staff of the Agency, or a seconded person from any relevant organisation or from any public office of the Federation to the Agency shall be indemnified out of the assets of the Agency against any proceedings brought against him in his capacity, as a member of the Board, Director-General, officer, staff, or seconded person, where the act complained of is not beyond his powers.

PART XIII

MISCELLANEOUS

133. Regulations and guidelines

(1) The Attorney-General of the Federation may, in consultation with the Agency make regulations as are necessary or expedient for the efficient implementation of the provisions of this Act.

- (2) The Agency shall issue guidelines, as may be necessary for the exercise of any of the duties, functions, or powers of the Agency under this Act.

134. Consequential amendments and transitional provisions

- (1) The National Drug Law Enforcement Agency Act, Cap N30, LFN 2004 is amended by

(a) by deleting Sections 27, 28, 31, 32, and 33 (2), and (3)

(b) by deleting sections 38, 39, 40 and 42. 43,

(c) in section 52, by deleting the definition of the words “confiscation” and “freezing” or “seizure”;

(d) by deleting the Fourth Schedule.

(e) by repealing the NDLEA (Disposal of Forfeited Assets and Properties) Regulations

- (3) The Corrupt Practices and Other Related Offences Act, (CAP. C31 LFN 2004) is amended by:

(a) by deleting section 20;

(b) **by deleting section 38;**

(c) **by deleting section 48 and 51.**

- (4) The Economic and Financial Crimes Commission (Establishment) Act (CAP E1 LFN 2004 is amended by

(a) **by deleting section 6 (d), (k), and (m);**

(b) in section 13 (1) (e);

(c) by deleting sections 20, 21, 22, 24, 25, and 26 (1) (b) and 26 (2) and 26 (3), delete section 27 (4) and (5);

(e) by deleting sections 29 and 30

(g) by deleting section 31, 32, and 33

- (5) The Advanced Fee Fraud and other Related Offences Act, 2006 is amended by

(i) By deleting Section 16 (5) (b)

(j) by deleting Section 17 and Section 59

- (6) Without prejudice to section 6 of the Interpretation Act, the amendment of the Acts specified in subsections (1), (2), (3) and (4), shall not affect anything done under or pursuant to the amended Acts.

- (7) An agreement or arrangement in existence under the amended Acts before the commencement of this Act shall continue to have effect subject to such modifications as may be necessary to give effect to this Act.

135. Interpretation

In this Act –

“Agency” means the Proceeds of Crime (Recovery and Management Agency)

“assets” includes “funds” or “property”. Funds or property refers to assets of every kind whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit;

“asset manager” means a person authorised by the Agency to fulfil the functions mentioned in **section 26(1)(a)** of this Act;

“authorised officer” means a qualified person, who is -

- (a) a member of staff of the Agency or persons so designated by the Director-General of the Agency;
- (b) member, officer, or employee of a relevant organisation; or
- (c) any other person included in a class of persons declared by the regulations to be within this definition;

“Attorney-General” means the Attorney-General of the Federation and Minister of Justice;

“benefit” includes service or advantage;

“books” include any books of account, deed, paper, writing, or document, and any record of information, however, compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise;

“child” means a person under the age of eighteen years;

“civil proceedings” refers to proceedings that are civil proceedings and are not criminal proceedings

“close dependant relative” means –

(a) the person's spouse; or

(b) the person's child.

"Confiscation" which includes forfeiture where applicable means the permanent deprivation of funds or other assets by order of a competent authority or a court. Confiscation or forfeiture takes place through a judicial or administrative procedure or order of the court that transfers the ownership of the specified assets to the government.

"Confiscated and Forfeited Properties Account" means the account established under section 120 of this Act;

"confiscation order" means, an order made under section 70 of this Act;

"controlled property" has the meaning given to it by section 109 of this Act

"conveyance" means, a mode of transportation, and includes an aircraft, a vehicle, and a vessel;

"convicted person" for the purpose of recovery of proceeds of criminal activities means, the person -

(a) is convicted for the offence;

(b) is sentenced for the offence, notwithstanding that the Court in passing sentence took into account an offence of which he has not been found guilty; or

(c) absconds in connection with the offence;

"Court" means the Federal High Court or State High Court;

"data" includes -

(a) information in any form; and

(b) any programme or part of a programme;

"data held in a computer" includes data held in –

(a) any removable data storage in electronic devices for the time being held in a computer;

(b) data storage in electronic devices on a computer network of which the computer forms a part; and

(c) data held in any remote storage in electronic devices to which data has been sent from the computer.

"data storage device" means a thing containing, or designed to contain data;

"date of conviction" in relation to a person's conviction of an offence, means, in the case of a person -

(a) charged with, and found guilty of the offence, the day on which the person was found guilty of the offence; or

- (b) who absconds, the day on which the person is taken to have absconded in connection with the offence;

“deal” when used in relation to a person’s property, includes -

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt;
- (b) removing property from Nigeria;
- (c) receiving or making a gift of property; and
- (e) where property is covered by a restraint order, engaging in a transaction that has the direct or indirect effect of reducing the value of the person’s interest in the property,

and “dealing” shall be construed, accordingly;

“derived”, in relation to a person having derived proceeds, a benefit or wealth, includes any other person who at the request or direction of the person, having derived the proceeds, benefit, or wealth directly or indirectly;

“designated non-financial institutions” means

- (b) businesses involved in the hospitality industry;
- (c) casinos;
- (d) clearing and settlement companies;
- (e) company service providers, who provide services to third parties;
- (f) consultants and consulting companies;
- (g) dealers in luxury items;
- (h) dealers in precious metals and precious stones;
- (i) dealers in real estate, estate developers, estate agents and brokers;
- (j) high value dealers;
- (k) law firms and notaries;
- (l) licensed professional accountants
- (m) mortgage brokers;
- (n) non-profit organisations;
- (o) practitioners of mechanized farming;
- (p) religious and charitable organisations;
- (q) supermarkets;
- (r) tax consultants;
- (s) trust and company service providers; or
- (t) other businesses and professions as may be designated by the Attorney-General in regulations;

“detained cash” means cash or items that have been seized and detained under this Act;

“Director-General” means the Director-General appointed for the Agency under this Act

“discovery order” has the meaning given to it under section 43 of this Act;

“effective control” has the meaning given to it under section 82 of this Act;

“encumbrance”, in relation to property, includes any interest, mortgage, charge, right, claim, and demand in respect of the property;

“evidential material” means evidence relating to -

- (a) property in respect of which action has been or could be taken under this Act; or
- (b) benefits derived from the commission of a relevant offence;

“financial institution” has the meaning given in the Money Laundering (Prohibition, etc.) Act 2011 (as amended in 2012)

“Freeze” means to prohibit the transfer, conversion, disposition, or movement of any property, equipment or other instrumentalities on the basis of, and for the duration of the validity of an action initiated by a competent authority or a court order under a freezing mechanisms, or until a forfeiture or confiscation order is made by a competent authority.

“Fund” Funds refers to assets of every kind whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit;

“interest”, in relation to property or a thing, means –

- (a) a legal or equitable estate, or interest in the property or thing; or
- (b) a right, power or privilege in connection with the property or thing, whether present or future, and whether vested or contingent;

“instrumentality of an offence” means property used or intended to be used in or in connection with the commission of an offence, whether the property is situated within or outside Nigeria;

“lawfully acquired”, in relation to property or wealth, means that the property or wealth, and the consideration for it, was lawfully acquired;

“legal practitioner” has the meaning given to it by the Legal Practitioners Act;

“money laundering” has the same meaning as defined under the Money Laundering (Prohibition) Act, 2011 (as amended in 2012)

“Non-conviction-based confiscation” means confiscation through a judicial procedure related to a criminal offence for which a criminal conviction is not required.

“Nigeria Financial Intelligence Unit” means the Unit set up under the Nigeria Financial Intelligence Unit Act, 2018.

“officer”, in relation to a financial institution or a corporation, means a director, secretary, executive officer, or employee of a financial institution;

“premises” means property and structures that are on the property, including buildings, vessels, boats and vehicles, whether temporary or not and whether designed for habitation or not;

“person’s property” includes property in respect of which a person has a beneficial interest;

“proceedings are concluded”- where –

- (a) the defendant is acquitted on all counts in proceedings for an offence, on the date he is acquitted;
- (b) the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, on the date the conviction is quashed, or the defendant is pardoned before a confiscation order is made;
- (c) a confiscation order is made against the defendant in proceedings for an offence, whether the order is made by the Court or the Court of Appeal, on the date the order is -
 - (i) satisfied or discharged, or
 - (ii) quashed and there is no further possibility of an appeal against the decision to quash the order;

“proceeds” means property, whether –

- (a) wholly or partly derived or realized, directly or indirectly, from an unlawful activity,
- (b) the property is situated within or outside Nigeria;

“property” includes funds and means assets of every kind, corporeal or incorporeal, moveable or immoveable, tangible or intangible and legal documents or instruments evidencing title to or interest such assets whether situated within Nigeria or outside Nigeria.

“quashing a conviction for an offence” means –

- (a) the quashing of a conviction of a person, who had been convicted;
- (b) the quashing or setting aside of the finding of guilt, where a person had been charged with and found guilty of an offence but discharged without conviction; or
- (c) the quashing or setting aside of the conviction of a person, who absconded but was later brought before a Court and discharged;

“realizable property” means has the meaning assigned to it in section 73 of this Act;

“registration authority”, in relation to property of a kind means, an authority responsible for registration of title to, or charges over property of that kind;

“related offence” means, an offence the physical elements of which are like another offence;

“relevant laws” means laws of relevant organization, and any other law relating to civil forfeiture, confiscation, and management of proceeds of crime;

“relevant organization” means –

- (a) the Economic and Financial Crimes Commission;
- (b) the Independent Corrupt Practices and other Related Offences Commission;
- (c) the National Drug Law Enforcement Agency;
- (d) The National Agency for Prohibition of Trafficking in Persons
- (e) the National Agency for Food and Drug Administration and Control;
- (f) the Nigeria Customs Service;
- (g) the Nigerian Financial Intelligence Unit;
- (h) the Code of Conduct Bureau;
- (i) the Nigeria Police Force;
- (j) the Department of State Services;
- (k) the Armed Forces;
- (l) the Standard Organization of Nigeria;
- (m) the Nigeria Maritime and Safety Agency;
- (n) the Nigeria Immigration Service;
- (o) the Nigeria Ports Authority;
- (p) the National Inland Waterways Authority;
- (q) the Nigerian Security and Civil Defence Corps;
- (r) the Federal Inland Revenue Service; and
- (s) such other organisations as the Attorney - General may, from time to time, designate;

“relevant person” means, a person who has been convicted of, or has been charged with, an offence, or it is proposed that the person be charged with an offence;

“restraint order” means an order under Part VII of this Act that is in force;

“seize” means to prohibit the transfer, conversion, disposition, or movement of property based on an action initiated by a relevant organization, the agency or based on a court order.

“sufficient consideration” in relation to an acquisition or disposal of property, means a consideration that is sufficient and that reflects the value of the property, having regard solely to commercial considerations; and

“unlawful activity” means an act, omission, or conduct, committed directly or indirectly which constitutes an offence or which contravenes a law in force in Nigeria, whether the act, omission or conduct occurred before or after the commencement of this Act or where the offence is committed in a country outside Nigeria, would also constitute an offence if it had been committed in Nigeria;

“Terrorism Financing” has the same meaning as defined under the Terrorism (Prevention Act) 2011(as amended in 2013)

136. Short Title

This Act may be cited as Proceeds of Crimes (Recovery and Management) Agency Act, 2020.

Schedule – Section 28 (6)

Amount	Period
An amount not exceeding ₦50,000.00	7 days
An amount exceeding ₦50,000.00 but not exceeding ₦150,000.00	14 days
An amount exceeding ₦150,000.00 but not exceeding ₦250,000.00	28 days
An amount exceeding ₦250,000.00 but not exceeding ₦700,000.00	45 days
An amount exceeding ₦700,000.00 but not exceeding ₦1,400,000.00	3 months
An amount exceeding ₦1,400,000.00 but not exceeding ₦2,800,000.00	6 months
An amount exceeding ₦2,800,000.00 but not exceeding ₦5,600,000.00	12 months
An amount exceeding ₦5,600,000.00 but not exceeding ₦14,000,000.00	18 months
An amount exceeding ₦14,000,000.00 but not exceeding ₦28,000,000.00	2 years
An amount exceeding ₦28,000,000.00 but not exceeding ₦70,000,000.00	3 years
An amount exceeding ₦70,000,000.00 but not exceeding ₦140,000,000.00	5 years
An amount exceeding ₦140,000,000.00 but not exceeding ₦280,000,000.00	7 years

An amount exceeding ₦280,000,000.00

10 years