

ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT, ETC.) ACT

ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT, ETC.) ACT

ARRANGEMENT OF SECTIONS

PART I

Establishment of the Economic and Financial Crimes Commission, etc.

SECTION

1. Establishment of the Economic and Financial Crimes Commission.
2. Composition of the Commission.
3. Tenure of office.
4. Vacancy in membership.
5. Standing orders.

PART II

Functions of the Commission

6. Functions of the Commission.
7. Special powers of the Commission.

PART III

Staff of the Commission

8. Appointment of Secretary and other staff of the Commission.
9. Staff regulations.
10. Pensions.
11. Training programme.
12. Establishment of special units, etc.

13. Special duties of the units.

PART IV

Offences

14. Offences relating to financial malpractices.

15. Offences in relation to terrorism.

16. Offences relating to false information.

17. Retention of proceeds of a criminal conduct.

18. Offences in relation to economic and financial crimes and penalties.

19. Jurisdiction and special powers of Court.

20. Forfeiture after conviction in certain cases.

21. Forfeiture of property.

22. Foreign assets.

23. Forfeiture of passports.

24. Property subject to forfeiture.

25. Further provisions as to forfeiture of property.

26. Seizure of property.

PART V

Forfeiture of Assets of Persons Arrested for Offences under this Act

27. Disclosure of assets and properties by an arrested person, etc.

28. Investigation of assets and properties of a person arrested of an offence under this Act, etc.

29. Interim forfeiture order.

30. Final order.

31. Final disposal of forfeited property.

32. Offences in relation to forfeiture orders.

33. Consequences of an acquittal in respect of assets and properties.

34. Freezing order on banks or other financial institutions.

PART VI

Financial Provisions

35. Funds of the Commission.

36. Accounts and audit.

37. Annual report.

PART VII

Miscellaneous Provisions

38. Power to receive information without hindrances, etc.

39. Protecting informants and information, etc., and penalty for false information.

40. Appeals against interlocutory ruling, etc.

41. Immunities.

42. General savings.

43. Regulations.

44. Repeal of Act No.5 of 2002.

45. Savings.

46. Interpretation.

47. Short title.

SCHEDULE

Forms

ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT, ETC.) ACT

An Act to repeal the Financial Crimes Commission (Establishment) Act, 2002 and enact the Financial Crimes Commission (Establishment, etc.) Act, 2004; and for matters connected therewith.

[2004 No. 1.]

[4th June, 2004]

[Commencement.]

PART I

Establishment of the Economic and Financial Crimes Commission, etc.

1. Establishment of the Economic and Financial Crimes Commission

(1) There is established a body to be known as the Economic and Financial Crimes Commission (in this Act referred to "the Commission") which shall be constituted in accordance with and shall have such functions as are conferred on it by this Act.

(2) The Commission-

(a) shall be a body corporate with perpetual succession and a common seal;

(b) may sue and be sued in its corporate name and may, for the purposes of its functions, acquire, hold or dispose of property (whether movable or immovable);

(c) is the designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.

2. Composition of the Commission

(1) The Commission shall consist of the following members-

(a) a Chairman who shall-

(i) be the chief executive and accounting officer of the Commission;

(ii) be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant-Commissioner of Police or equivalent; and

(iii) possess not less than 15 years cognate experience;

(b) the Governor of the Central Bank of Nigeria or his representative; and

(c) a representative each of the following Federal Ministries-

(i) Foreign Affairs;

- (ii) Finance;
- (iii) Justice;
- (d) the Chairman, National Drug Law Enforcement Agency or his representative;
- (e) the Director-General of-
 - (i) the National Intelligence Agency or his representative;
 - (ii) the Department of State Security Services or his representative;
- (f) the Registrar-General of the Corporate Affairs Commission or his representative;
- (g) the Director-General, Securities and Exchange Commission or his representative;
- (h) the Managing Director, Nigeria Deposit Insurance Corporation or his representative;
- (i) the Commissioner for Insurance or his representative;
- (j) the Postmaster-General of the Nigeria Postal Service or his representative;
- (k) the Chairman, Nigerian Communications Commission or his representative;
- (l) the Comptroller-General, Nigeria Customs Service or his representative;
- (m) the Comptroller-General, Nigeria Immigration Service or his representative;
- (n) the Inspector-General of Police or his representative;
- (o) four eminent Nigerians with cognate experience in any of the following, that is, finance, banking, law or accounting; and
- (p) the Secretary to the Commission who shall be the head of administration.

(2) The members of the Commission, other than the Chairman and the Secretary, shall be part-time members.

(3) The Chairman and members of the Commission other than ex officio members shall be appointed by the President and the appointment shall be subject to confirmation of the Senate.

3. Tenure of office

(1) The Chairman and members of the Commission other than ex officio members shall hold office for a period of four years and may be re-appointed for a further term of four years and no more.

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

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

4. Vacancy in membership

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

5. Standing orders

The Commission may make standing orders regulating its proceedings or those of any of its committees.

PART II

Functions of the Commission

6. Functions of the Commission

The Commission shall be responsible for-

- (a) the enforcement and the due administration of the provisions of this Act;
- (b) the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- (c) the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- (d) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds;
- (e) the adoption of measures to eradicate the commission of economic and financial crimes;
- (f) the adoption of measures which include co-ordinated preventative and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of

economic and financial related crimes;

(g) the facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;

(h) the examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;

(i) the determination of the extent of financial loss and such other losses by government, private individuals or organisations;

(j) collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning-

(i) the identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes;

(ii) the movement of proceeds or properties derived from the commission of economic and financial and other related crimes;

(iii) the exchange of personnel or other experts;

(iv) the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved;

(v) maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;

(iv) undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same;

(k) dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;

(l) the collection of all reports relating to suspicious financial transactions, analyse and disseminate to all relevant government agencies;

(m) taking charge of, supervising, controlling, co-ordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes;

(n) the co-ordination of all existing, economic and financial crimes investigating units in Nigeria;

(o) maintaining a liaison with the office of the Attorney-General of the Federation, the Nigerian Custom Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the

Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisor institutions involved in the eradication of economic and financial crimes;

(p) carrying out and sustaining rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria; and

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

7. Special powers of the Commission

(1) The Commission has power to-

(a) cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under this Act or other law relating to economic and financial crimes;

(b) cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's lifestyle and extent of the properties are not justified by his source of income.

(2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of-

(a) the Money Laundering Act, 2004; 2003 No.7, 1995 No. 13;

(b) the Advance Fee Fraud and Other Related Offences Act, 1995;

(c) the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended;

(d) the Banks and Other Financial Institutions Act, 1991, as amended;

(e) the Miscellaneous Offences Act; and

(f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

PART III

Staff of the Commission

8. Appointment of Secretary and other staff of the Commission

(1) There is established for the Commission a secretariat which shall be headed by the Secretary who shall be appointed by the President.

(2) The Secretary shall be-

(a) the head of the Secretariat of the Commission;

(b) responsible for the administration of the Secretariat and the keeping of the books and records of the Commission;

(c) appointed for a term of five years in the first instance and may be re-appointed for a further term of five years subject to satisfactory performance; and

(d) subject to the supervision and control of the Chairman and the Commission.

(3) The Commission may, from time to time, appoint such other staff or second officers from government security or law enforcement agencies or such other private or public service as it may deem necessary to assist the Commission in the performance of its functions under this Act.

(4) The staff of the Commission appointed under subsection (3) of this section, shall be appointed upon such terms and conditions as the Commission may, after consultation with the Federal Civil Service Commission, determine.

(5) For the purpose of carrying out or enforcing the provisions of this Act, all officers of the Commission involved in the enforcement of the provisions of this Act shall have the same powers, authorities and privileges (including power to bear arms) as are given by law to members of the Nigerian Police.

9. Staff regulations

(1) The Commission may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the Commission and without prejudice to the generality of the foregoing, the regulations may provide for-

(a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Commission; and

(b) appeals by such employees against dismissal or other disciplinary measures, and until the regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Commission.

(2) Staff regulations made under subsection (1) of this section shall not have effect until approved by the Commission, and when so approved the regulations may not be published in the *Gazette* but the Commission shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

10. Pensions

(1) Service in the Commission shall be public service for the purposes of the Pensions Act and, accordingly, officers and other persons employed in the Commission shall in respect of their service in

the Commission, be entitled to pension, gratuities and other retirement benefits as are prescribed thereunder, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension or gratuity in respect to that office.

[L.F.N. 2004 Cap. P4.]

(2) For the purposes of the application of the provisions of the Pensions Act, any power exercisable under the Act by a Minister or other authority of the Government of the Federation (not being the power to make regulations under section 23 thereof) is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

11. Training programme

The Commission shall initiate, develop or improve specific training programmes for its law enforcement and other personnel charged with responsibility for the eradication of offences created by this Act and such programme shall include-

- (a) methods used in the detection of offences created under this Act;
- (b) techniques used by persons involved in offences created under this Act and appropriate counter-measures;
- (c) detection and monitoring of the movement of proceeds and property derived from economic and financial crimes intended to be used in the commission of offences under this Act;
- (d) methods used for the transfer, concealment or disguise of such proceeds, property and instruments;
- (e) collection of evidence;
- (f) law enforcement techniques;
- (g) legal prosecution and defence; and
- (h) dissemination of information on economic and financial crimes and related offences.

12. Establishment of special units, etc.

(1) For the effective conduct of the functions of the Commission, there may be established for the Commission the following units-

- (a) the General and Assets Investigation Unit;
- (b) the Legal and Prosecution Unit;
- (c) the Research Unit;
- (d) the Administration Unit; and
- (e) the Training Unit.

(2) Notwithstanding the provisions of subsection (1) of this section, the Commission has power to set up any unit or committee as may be necessary to assist the Commission in the performance of its duties and functions under this Act.

13. Special duties of the units

(1) The General and Assets Investigation Unit shall be charged with the responsibility for-

- (a) the prevention and detection of offences in violation of the provisions of this Act;
- (b) the arrest and apprehension of economic and financial crimes perpetrators;
- (c) the investigation of assets and properties of persons arrested for committing any offence under this Act;
- (d) the identification and tracing of proceeds and properties involved in any offence under this Act and the forfeiture of such proceeds and properties to the Federal Government;
- (e) dealing with matters connected with extradition and mutual assistance in criminal matters involving economic and financial crimes.

(2) The Legal and Prosecution Unit shall be charged with the responsibility for-

- (a) prosecuting offenders under this Act;
- (b) supporting the General Assets Investigating Unit by providing the unit with legal advice and assistance whenever it is required;
- (c) conducting such proceedings as may be necessary towards the recovery of any assets or property forfeited under this Act;
- (d) performing such other legal duties as the Commission may refer to it, from time to time.

(3) There shall be appointed for each of the Units a principal officer who shall be known by such designation as the Commission may determine.

PART IV

Offences

14. Offences relating to financial malpractices

(1) A person who, being an officer of a bank or other financial institution or designated non-financial institution-

(a) fails or neglects to secure compliance with the provisions of this Act; or

(b) fails or neglects to secure authenticity of any statement submitted pursuant to the provisions of this Act,

commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of five hundred thousand naira (N500,000) or both such imprisonment and fine.

(2) Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.

(3) All moneys received by the Commission under the provisions of subsection (2) of this section shall be paid into the Consolidated Revenue Fund of the Federation.

15. Offences in relation to terrorism

(1) A person who wilfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used by any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life.

(2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.

(3) Any person who, makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

16. Offences relating to false information

(1) Any person who in the discharge of his duty under this Act gives information which is false in any material particular to a public officer or any person who is to take decision or do any other act in relation thereto commits an offence under this Act and the onus shall be on him to prove that he exercised due diligence to prevent the commission of the offence having regards to the nature of his function and circumstances.

(2) The penalty for the offence under subsection (1) of this section shall be imprisonment for a term not less than two years and not more than three years, provided that where the offender is a public officer the penalty shall be imprisonment for a term not less than three years and not more than five years.

(3) Without prejudice to the provisions of any other enactment, any regulatory agency or body in the financial sector shall in the exercise of its functions, liaise with the Commission to investigate and monitor the commission of economic and financial crimes.

17. Retention of proceeds of a criminal conduct

A person who-

(a) whether by concealment, removal from jurisdiction, transfers to nominees or otherwise retains the control of the proceeds of an economic or financial crime on behalf of another person knowing that the proceeds are as a result of criminal conduct by the principal; or

(b) knowing that any property in whole or in part, directly or indirectly representing another person's proceeds of an economic or financial crime, acquires or uses that property or has possession of it,

commits an offence and is liable on conviction to imprisonment for a term not less than three years or to a fine equivalent to 100 percent of the value of the proceeds of the economic or financial crime or to both such imprisonment and fine.

18. Offences in relation to economic and financial crimes and penalties

(1) A person who-

(a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act;

(b) engages in the management, organisation or financing of any of the offences under this Act;

(c) engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act; or

(d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from any offence under this Act,

commits an offence under this Act and is liable on conviction to the penalties provided in subsection (2) of this section.

(2) The penalties for offences under subsection (1) shall be imprisoned for a term not less than two years and not exceeding three years.

19. Jurisdiction and special powers of Court

(1) The Federal High Court or High Court of a State or the Federal Capital Territory has jurisdiction to try offenders under this Act.

(2) The Court shall have power, notwithstanding anything to the contrary in any other enactment-

(a) to impose the penalties provided for in this Act;

(b) to ensure that all matters brought before the Court by the Commission against any person, body or authority shall be conducted with dispatch and given accelerated hearing;

(c) to adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters brought by the Commission before it or against any person, body or authority.

(3) The Chief Judge of the Federal High Court or a High Court of a State or the High Court of the Federal Capital Territory Abuja, as the case may be, shall by order under his hand, designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases under this Act or other related offences arising under this Act.

(4) A court or judge so designated shall give such matters priority over other matters pending before it.

(5) In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known source of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and taken into consideration by the Court as corroborating the testimony of any witness in the trial.

20. Forfeiture after conviction in certain cases

(1) A person convicted of an offence under this Act shall forfeit to the Federal Government-

(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds the person obtained, directly or indirectly, as a result of such offence not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

[Schedule.]

(c) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under paragraph (a) of this subsection.

(2) The Court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to this Act, that the person forfeit to the Federal Government all properties described in subsection (1) of this section.

(3) In this section, "**proceeds**" means any property derived or obtained, directly or indirectly, through the commission of an offence under this Act.

21. Forfeiture of property

For the avoidance of doubt and without any further assurance than this Act, all the properties of a person convicted of an offence under this Act and shown to be derived or acquired from such economic or financial crime and already the subject of an interim order shall be forfeited to the Federal Government.

22. Foreign assets

(1) Where it is established that any convicted person has assets or properties in a foreign country, acquired as a result of such economic or financial crime, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Government.

(2) The Commission shall, through the office of the Attorney-General of the Federation, ensure that the forfeited assets or properties are effectively transferred and vested in the Federal Government.

23. Forfeiture of passports

The passport of any person convicted of an offence under this Act shall be forfeited to the Federal Government and shall not be returned to that person till he has served any sentence

imposed or unless or until the President directs otherwise after the grant of a pardon or on the exercise of the prerogative of the mercy under the Constitution of the Federal Republic of Nigeria, 1999.

24. Property subject to forfeiture

Any property-

(a) whether real or personal, which represents the gross receipts a person obtains directly as a result of the violation of this Act or which is traceable to such gross receipts;

(b) within Nigeria which represents the proceeds of an offence under the laws of a foreign country within whose jurisdiction such offence or activity would be punishable by imprisonment for a term exceeding one year and which would be punishable by imprisonment under this Act if such act or activity had occurred within Nigeria,

is subject to forfeiture to the Federal Government and no other property rights shall exist on it.

25. Further provisions as to forfeiture of property

Without prejudice to the provisions of any other law permitting the forfeiture of property, the following shall also be subject to forfeiture under this Act and no proprietary right shall exist in them-

(a) all means of conveyance, including aircraft, vehicles, or vessels which are used or are intended for use to transport or in any manner, to facilitate the transportation, sale, receipt, possession or concealment of economic or financial crime except that-

(i) no means of conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it shall appear that the owner or other person in charge of such means of conveyance was a consenting party or privy to a violation of this Act;

(ii) no means of conveyance shall be forfeited under this section by reason of any act established by the owner thereof to have been committed by any person other than such owner while such means of conveyance was unlawful in the possession of a person other than the owner in violation of the criminal laws of Nigeria or any part thereof; and

(iii) no means of conveyance shall be forfeited under this section to the extent of an interest of an owner, by reason of any act established by that owner to have been committed without the knowledge, consent or wilful connivance of that owner;

(b) all books, records, research materials and data used or intended to be used in violation of any provision of this Act;

(c) all monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for any illegal act or in violation of this Act or all proceeds traceable to such an exchange, and all monies, negotiable instruments and securities used or intended to be used to facilitate any violation of this Act;

(d) all real property, including any right, title and interest (including any leasehold interest) in the whole or any piece or parcel of land and any improvements or appurtenances which is used or intended to be used in any manner or part to commit, or facilitate the commission of an offence under this Act.

26. Seizure of property

(1) Any property subject to forfeiture under this Act may be seized by the Commission in the following circumstances-

(a) the seizure is incidental to an arrest or search; or

(b) in the case of property liable to forfeiture upon process issued by the Court following an application made by the Commission in accordance with the prescribed rules.

(2) Whenever property is seized under any of the provisions of this Act, the Commission may-

(a) place the property under seal; or

(b) remove the property to a place designated by the Commission.

(3) Property taken or detained under this section shall be deemed to be in the custody of the Commission, subject only to an order of a Court.

PART V

Forfeiture of Assets of Persons Arrested for Offences under this Act

27. Disclosure of assets and properties by an arrested person, etc.

(1) Where a person is arrested for committing an offence under this Act, such person shall make a full disclosure of all his assets and properties by completing the Declaration of Assets Form as specified in Form A of the Schedule to this Act.

[Schedule.]

(2) The completed Declaration of Assets Form shall be investigated by the Commission.

(3) Any person who-

(a) knowingly fails to make full disclosure of his assets and liabilities; or

(b) knowingly makes a declaration that is false; or

(c) fails, neglects or refuses to make a declaration or furnishes any information required, in the Declaration of Assets Form,

commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years.

(4) Subject to the provisions of section 24 of this Act, whenever the assets and properties of any person arrested under this Act are attached, the Commission shall apply to the Court for an interim forfeiture order under the provisions of this Act.

(5) The Chairman of the Commission shall have powers to make such changes or modifications to the Declaration of Assets Form specified in Form A of the Schedule to this Act as may become necessary in order to give effect to the provisions of this Act.

[Schedule.]

28. Investigation of assets and properties of a person arrested of an offence under this Act, etc.

Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the Court.

29. Interim forfeiture order

Where-

(b) the assets or properties of any person arrested for an offence under this Act has been seized; or

(c) any assets or property has been seized by the Commission under this Act,

the Commission shall cause an *ex parte* application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is *prima facie* evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.

30. Final order

Where a person is convicted of an offence under this Act, the Commission or any authorised officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired or obtained as a result of the crime subject to an interim order under this Act.

31. Final disposal of forfeited property

(1) A copy of every final order forfeiting the asset and property of a person convicted under this Act shall be forwarded to the Commission.

(2) Upon receipt of a final order pursuant to this section, the Secretary to the Commission shall take steps to dispose of the property concerned by sale or otherwise and where the property is sold, the proceeds thereof shall be paid into the Consolidated Revenue Fund of the Federation.

(3) Where any part of the property included in a final order is money in a bank account or in the possession of any person, the Commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and the manager or person shall forthwith pay over the money to the Commission without any further assurance than this Act and the Commission shall pay the money received into the Consolidated Revenue Fund of the Federation.

(4) The Attorney-General of the Federation may make rules or regulations for the disposal or sale of any property or assets forfeited pursuant to this Act.

32. Offences in relation to forfeiture orders

(1) Any person who, without due authorisation by the Commission, deals with, sells or otherwise disposes of any property or asset which is the subject of an attachment, interim order or final order, commits an offence and is liable on conviction to imprisonment for a term of five years without the option of a fine.

(2) Any manager or person in control of the head office or branch of a bank, other financial institution or designated non-financial institution who fails to pay over to the Commission upon the production to him of a final order, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than one year and not more than three years, without the option of a fine.

33. Consequences of an acquittal in respect of assets and properties

(1) Where a person is discharged or acquitted by a court of an offence under this Act, the Court may make an order of revocation or confirmation as the case may be, of an interim order made

pursuant to this Act whichever order is considered just, appropriate or reasonable in the circumstances.

(2) The property may be attached where a discharge is merely given on technical grounds.

(3) Where an interim order is revoked by a court under subsection (1) of this section, all assets and properties of the person concerned shall be released to him by the Commission.

34. Freezing order on banks or other financial institutions

(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorised by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act and/or any of the enactments specified under section 7 (2) (a) to (f) of this Act, apply to the Court ex parte for power to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution or designated non-financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non- financial institution to freeze the account.

[Schedule.]

(2) The Chairman of the Commission, or any other authorised by him may by an order issued under subsection (1) of this section, direct the bank, other financial institution or designated non-financial institution to supply any information and produce books and documents relating to the account to stop all outward payment, operations or transactions (including any bill of exchange) in respect of the account of the person.

(3) The manager or any other person in control of the financial institution shall take necessary steps to comply with the requirements of the order made pursuant to subsection (2) of this section.

(4) In this section-

(a) “**bank**” has the meaning given to it in the Banks and Other Financial Institutions Act, 1991 as amended, 1991 No. 25;

(b) the reference to an order issued includes a reference to any order, direction or requirement addressed to the manager of a bank or any other officer of a bank which directs or purports to direct the manager or such officer to stop all outward payments, operations or transactions in respect of any account with the bank.

PART VI

Financial Provisions

35. Funds of the Commission

(1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure reasonably incurred by the Commission in the execution of its functions under this Act.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section, such monies as may in each year be approved by the National Assembly for the purpose of the Commission.

(3) The Commission may accept gifts of land, money or other property (whether within or outside Nigeria) upon such terms and conditions, if any, as may be specified by the person or organisation making the gift provided that the terms and conditions are not contrary to the objectives and functions of the Commission under this Act.

36. Accounts and audit

The Commission shall keep proper accounts in a form, which conforms to accepted commercial standards of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from the list of auditors and in accordance with the guidelines supplied by the Auditor-General for the Federation.

37. Annual report

The Commission shall, not later than 30th September in each year, submit to the National Assembly, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the Commission.

PART VII

Miscellaneous Provisions

38. Power to receive information without hindrances, etc.

(1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who-

(a) wilfully obstructs the Commission or any authorised officer of the Commission in the exercise of any of the powers conferred on the Commission by this Act; or

(b) fails to comply with any lawful enquiry or requirements made by any authorised officer in accordance with the provisions of this Act,

commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500,000 or to both such imprisonment and fine.

39. Protecting informants and information, etc., and penalty for false information

(1) Officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by the order of the Court.

(2) Any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

(a) is false, or intended to mislead or is untrue in any material particular;

(b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment;

(c) where any person who has made a statement to an officer of the Commission or to the Attorney-General in the course of such officer or Attorney-General exercising any power conferred by this Act, subsequently thereto makes any other statement to any person having authority or power under any law to receive or require to be made such other statement regardless of whether or not the person making the statement is under a legal or other obligation to tell the truth, he shall, if such other statement is inconsistent with any statement previously made to an officer of the Commission or such other public officer, be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or to both; and

(d) for the purpose of subsections (1) and (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

40. Appeals against interlocutory ruling, etc.

Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court.

41. Immunities

Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case under this Act, shall have all the powers and immunities of a Police Officer under the Police Act and any other law conferring power on the police, or empowering and protecting law enforcement agencies.

42. General savings

Any offence committed or proceedings instituted before the commencement of this Act under the provisions of-

- (a) the Miscellaneous Offences Act;
- (b) the Banks and Other Financial Institutions Act, 1991 as amended;
- (c) the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended;
- (d) the Advance Fee Fraud and Other Related Offences Act;
- (e) the Money Laundering Act; and
- (f) any other law or regulation relating to Economic and Financial Crimes,

shall as the case may require be enforced or continue to be enforced by the Economic and Financial Crimes Commission established under this Act.

43. Regulations

The Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under this Act.

44. Repeal of Act No.5 of 2002

The Economic and Financial Crimes Commission (Establishment) Act, No.5 of 2002 is repealed.

45. Savings

The repeal of the Act specified in section 44 of this Act shall not affect anything done or purported to be done under or pursuant to the Act.

46. Interpretation

In this Act-

“Commission” means the Economic and Financial Crimes Commission established by section 1 of this Act;

“Court” means the Federal High Court or the High Court of the Federal Capital Territory or the High Court of a State;

“Designated Non-financial Institution” means dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may, from time to time, designate;

“economic and financial crimes” means the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation governing the economic activities of government and its administration and

includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.;

“Financial Institution” means banks, body, association or groups of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorisation and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, projecting financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other businesses as the Central Bank or other appropriate regulatory authorities may, from time to time, designate;

“other appropriate regulatory authorities” includes the Securities and Exchange Commission, the National Insurance Commission and the Federal Ministry of Commerce;

“terrorism” means-

(a) any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or property, natural resources, environmental or cultural heritage and is calculated or intended to-

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii) create general insurrection in a State;

(b) any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organisation or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i), (ii) and (iii).

47. Short title

This Act may be cited as the Economic and Financial Crimes Commission (Establishment etc.) Act, 2004.

SCHEDULE

[Sections 20 and 27.] CONFIDENTIAL FORM A

ECONOMIC AND FINANCIAL CRIMES COMMISSION ACT, 2004

Declaration of Assets Form

To be completed in TRIPLICATE and in BLOCK LETTERS or typed All available information should be included

Important-

It is an offence punishable by up to a maximum of five years imprisonment under the Act to-

(A) (i) knowingly fail to make full disclosure of your assets and liabilities;

(ii) knowingly make a declaration that is false;

(iii) fail, neglect or refuse to make a declaration or furnish any information required.

(B) (i) Each item is to be completed. If it does not apply, the person affected must write "nil" or "none" in the space. Where necessary an extra sheet or sheets may be used and attached to this

		Nationality	Alien Naturalis ed	Registration Certificate No																
	(a)																			
	(b)																			

	Name of School/University	Date Attended		
11.	Schools attended with dates....			
Primary School.....				
	Post Primary School.....			
	Name of School/University	Date Attended		
	Or Secondary School.....			
	University, etc.....			
	Qualification attended.....			



12. Amount held in own account- ₦k

(i) Cash in hand

(ii) Cash at bank.....

(iii) Outside Nigeria (Countries/Banks to be named).....

.....

13. Amount held on behalf of or as trustee for any person other than your wife/husband-

(i) Cash in hand

(ii) Cash at bank.....

(iii) Outside Nigeria (Countries/Banks to be named).....

..... 14. Loans or advances made

..... 15. Loans or advances received.....

16. Amount held on behalf of or as trustee of wife/husbands-

(i) Cash in hand.....

(ii) Cash at bank

(iii) Outside Nigeria (Countries/Banks to be named)

.....

17. Wife's/husband's/children's account held (beneficial or otherwise)-

(i) Cash in hand.....

(ii) Cash at bank.....

(iii) Outside Nigeria (Countries/Banks to be named).....

.....

18. Government securities, including premium bonds and other interests held in companies, firms or partnerships (giving names of companies, firms and partnerships-

(i) by you (here state the bonds, etc.)

₦k

(ii) by wife (wives)/husband* (here state the bonds, etc.).....

.....

(iii) by children (here state the bonds, etc.).....

.....

19. Property in Nigeria in which you are interested in giving date when acquired-

(i) Land .

(ii) Buildings.....

(iii) Other property, (if any)

20. Membership, ownership, directorship, shareholding or other related interest in-

(i) a Company incorporated in Nigeria.....

(ii) a Company incorporated outside Nigeria.....

(iii) a Partnership or sole proprietorship.....

21. Property outside Nigeria in which you are interested in giving date when acquired-

(i) Land.....

(ii) Buildings.....

(iii) Other property, (if any).....

22. Property outside Nigeria in which any wife/husband* is interested in giving date when acquired- (i)

Land.....

(ii) Buildings.....

(iii) Other property, (if any)

₦k

23. Property outside Nigeria in which any wife/husband* is interested in giving date when acquired- (i) Land

.....

(ii) Buildings.....

(iii) Other property, (if any).....

24. Property in Nigeria in which any child of yours is interested in giving date when acquired-

(i) Land.....

(ii) Buildings

(iii) Other property, (if any).....

25. Property outside Nigeria in which any child of yours is interested in giving date when acquired- (i)

Land.....

(ii) Buildings.....

(iii) Other property, (if any).....

26. Names of other dependant relatives-

.....

27. Estate in which you are interested as trustee or beneficially interested. Name of deceased or trustee)-

.....

28. Property held by any person on your behalf (in or outside Nigeria)-

(i) Cash in hand.....

(ii) Cash at bank

(iii) Land.....

(iv) Buildings

(v) Other property.....

₦k

If outside Nigeria, insert name of countries and banks-

.....

.....

.....

Signature of Accused Person

.....

Signature and Address of Witness

FORM B

[Section 33 (1).] FREEZING ORDER

(This form may be amended according to circumstances)

1. To the
Manager.....

(Here insert name and branch of bank)

Under the authority conferred on me by section 33 of the Economic and Financial Crimes Commission Act, you are hereby ordered-

(a) to supply the following information relating to the undermentioned accounts, that is to say-

.....
.....

(Here set out the information required in respect of named accounts)

(b) to produce the books and documents relating to the undermentioned accounts, that is to say-

.....
.....

(Here set out the books and documents to be produced in respect of the named accounts)

(c) to stop all outward payments, operations or transactions (including bills of exchange) as far as possible in the ordinary course of banking in respect of the following accounts-

.....
.....

(Here indicate the accounts)

2. This order shall remain in force until revoked.

DATED at..... this..... day of.....20.....

.....

Chairman/Authorised office

ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation