

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

EXPLANATORY MEMORANDUM

This Act facilitates the provision and obtaining by Nigeria of international assistance in criminal matters, including the provision and obtaining of evidence and things, the making of arrangements for persons to give evidence or assist in criminal investigations, the recovery, forfeiture or confiscation of property in respect of offences, the restraining of dealings in property or the freezing of assets that may be recovered, forfeited or confiscated in respect of offences, the execution of requests for search and seizure, the location and identification of witnesses and suspects, the service of documents.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

Arrangement of Sections

Section:

PART I – OBJECTIVES, SCOPE AND APPLICATION

1. Objectives of this Act.
2. Application.
3. Designation of foreign States and organisations to which this Act applies.
4. States and International Organisations not covered by this Act.

PART II – DESIGNATION OF CENTRAL AUTHORITY AND REQUESTS FOR ASSISTANCE

5. Designation of Central Authority.

PART III REQUESTS FOR ASSISTANCE BY NIGERIA

6. Content and form of request for assistance.
7. Request to be made by the Attorney-General.
8. Request for taking of evidence, etc.
9. Request for attendance in Nigeria of a person.
10. Penalty not to be imposed for refusal to consent.
11. Immunities and privileges.
12. Limitation on use of statement.
13. Request for enforcement of forfeiture order.
14. Assistance in locating or identifying persons.
15. Assistance in service of processes.

PART IV – REQUEST FOR ASSISTANCE TO NIGERIA

16. Request to be made to the Attorney-General.
17. Response to requests from foreign States.
18. Expenses incurred for providing assistance.
19. Refusal of assistance.
20. Exceptions to political offences.
21. Request for evidence gathering for criminal proceedings.
22. Refusal to give evidence, etc. by person named in an order for the gathering of evidence.
23. Report on refusal to give evidence or produce a thing.
24. Contempt of court for refusal to give evidence or produce a thing.
25. Transmission of evidence outside Nigeria.
26. Request for an order for the gathering of evidence by the use of technology.
27. Production order for criminal matters.
28. Supplementary provisions regarding production order.
29. Immunities in compliance of production order.
30. Failure to comply with production order.
31. Request for attendance of person in foreign State.
32. Request for attendance of prisoner or person under detention.
33. Custody of person in transit.

34. Escape from custody while in transit.
35. Request for enforcement of foreign forfeiture order.
36. Registration of foreign forfeiture order.
37. Proof and authentication of orders of court of foreign State.
38. Evidence in relation to proceedings and orders in foreign State.
39. Request for search and seizure.
40. Issue of search warrant.
41. Additional powers of person executing search warrant.
42. Immunities in respect of authorised officer executing search warrant.
43. Assistance in locating or identifying a person in Nigeria.
44. Assistance in service of process in Nigeria.
45. Penalty not to be imposed for failure to comply with summons.

PART V – INTERCEPTION OF TELECOMMUNICATIONS AND POSTAL ITEMS, AND SURVEILLANCE INCLUDING COVERT ELECTRONIC SERVEILLANCE

46. Request for information.
47. Interception of telecommunications.
48. Interception of telecommunications by service providers.
49. Interception of telecommunications to preserve communication data.
50. Interception of communications to provide stored data.
51. Interception of communication for gathering, recording and transmitting information.
52. Interception of postal items.
53. Preservation of computer data.
54. Order for interception of telecommunications.
55. Order for preservation of communications data.
56. Admissibility of evidence contained in intercepted telecommunications.
57. Subscriber information.

PART VI – REQUEST BY FOREIGN STATES FOR FORFEITURE AND CONFISCATION OF PROPERTY

58. Request for freezing, seizure and confiscation of proceeds of crime.
59. Request for enforcement of Restraint and Confiscation orders.
60. Enforcement of alternative court orders in Nigeria.
61. Amendment to foreign Restraint and Confiscation orders.
62. Setting aside of registration of foreign Restraint and Confiscation orders.
63. Interested parties and Restraint and Confiscation orders.
64. Electronic communication of Restraint and Confiscation order.
65. Application of enactments relating to money laundering, terrorism and other related crimes.
66. Reciprocal sharing of confiscated property.
67. Disposal or release of property.

PART VII – USE OF EXHIBITS AND PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS

68. Use of exhibits abroad.
69. Loan Order for the use of exhibits outside Nigeria.

70. Burden of proof.

71. Request to produce judicial or official records.

72. Court order to produce judicial or official records.

73. Transmission and return of documents, records, items or other material to and from Nigeria.

PART VIII – ADMISSIBILITY IN NIGERIA OF EVIDENCE OBTAINED OUTSIDE NIGERIA

74. Foreign records, items, etc.

75. Authentication of documents.

76. Requirements of notification for the admissibility of foreign documents and items.

77. Proof of service abroad.

78. Confidentiality and limitation on use of information and evidence.

PART IX – SPECIAL PROVISIONS ON COOPERATION

79. Special cooperation with a foreign State

80. Covert investigation.

81. Joint investigation.

82. Consultation with foreign States.

83. Voluntary assistance.

PART X - MISCELLANEOUS

84. Delegation of power by the Attorney-General.

85. Regulations.

86. Repeal and transitional provisions.

87. Interpretation.

88. Citation.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

A Bill

For

An Act to make provision for Mutual Assistance in Criminal Matters under an agreement or other arrangement between Nigeria and other foreign states; and for related matters.

Commencement.

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

PART I - OBJECT, SCOPE AND APPLICATION

1. The object of this Act is to facilitate the provision and obtaining by Nigeria of international mutual assistance in criminal matters, including -

Object of this Act.

 - (a) the provision and obtaining of evidence and statements from persons;
 - (b) the making of arrangements for persons to give evidence or assist in criminal investigations;
 - (c) the location and identification of witnesses and suspects;
 - (d) the provision and production of relevant documents, records, items and other materials;
 - (e) the facilitation of voluntary attendance of persons in the requesting State;
 - (f) effecting a temporary transfer of persons in custody to assist in an investigation or appear as a witness;
 - (g) the identification, tracing, freezing, restraining, recovery, forfeiture and confiscation of proceeds, property and other instrumentalities of crime;
 - (h) the return and disposal of property;
 - (i) obtaining and preserving computer data;
 - (j) the interception of postal items;
 - (k) the interception of telecommunications;
 - (l) the conversion of electronic surveillance;
 - (m) the restraint of dealings in property, or the freezing of assets, that may be recovered, forfeited or confiscated in respect of offences;
 - (n) the execution of requests for search and seizure;
 - (o) the recovery of pecuniary penalties in respect of a

serious offence or a serious offence in a foreign State;

(p) the examination of objects and premises;

(q) effecting service of documents; and

(r) any other assistance that is not contrary to the law of the requesting State.

2. (1) This Act applies to mutual legal assistance in respect of criminal matters under an agreement or other arrangements between Nigeria and a foreign State.

Application.

(2) Mutual legal assistance shall not be provided under this Act with respect to an offence in a foreign State where the offence —

(a) is not an offence under the laws of Nigeria in accordance with section 19 (1) (g) of this Act;

(b) subject to section 20 of this Act, is of a political character; or

(c) is an offence only under a military law or a law relating to military obligation.

(3) This Act does not apply to the extradition, rendition, arrest or detention of any person with a view to the extradition or rendition of that person.

3. (1) The President shall, for the purposes of this Act and by order published in the Federal Government Gazette, designate a State to be a foreign State if there is an agreement or other arrangement between Nigeria and that foreign State under which that foreign State has agreed to provide assistance in criminal matters to Nigeria.

Designation of foreign States and organisations to which this Act applies.

(2) An order under subsection (1) of this section—

(a) may provide that the provisions of this Act apply to that foreign State or organisation subject to such restrictions, limitations, exceptions, modifications, adaptations, conditions or qualifications as are specified in the order, in which case the provisions of this Part apply accordingly; and

(b) is conclusive evidence that the agreement or arrangement referred to in the order complies with this Act, and that this Act applies in the case of the foreign State referred to in the order.

(3) The President may, by a subsequent order, vary or revoke an order made under subsection (1).

1. (1) This Act does not prevent the provision of or obtaining the international assistance or co-operation in criminal matters to or from—

States and International Organisations not covered by this Act.

(a) the International Criminal Police Organisation, (in this Act referred to as "Interpol"), or any other international organisation;

(b) any other foreign State under bilateral or multilateral

arrangements; or;

(c) any foreign State, other than assistance of a kind that may be provided or obtained under this Act.

(2) Where a foreign State or organisation in respect of which an order has not been made under section 3 of this Act makes a request for mutual legal assistance in a criminal matter under this Act, the Attorney-General may, with the consent of the President —

(a) give a special direction in writing that the provisions of this Act apply to that foreign State in relation to the requested mutual assistance, subject to any restriction, limitation, exception, modification, adaptation, condition or qualification contained in the direction; or

(b) enter into an arrangement with that foreign State or organisation for mutual legal assistance in respect of a matter specified in the arrangement, where the assistance sought is in respect of an act which, when committed in Nigeria, would be a serious offence.

PART II - DESIGNATION OF CENTRAL AUTHORITY AND REQUESTS FOR ASSISTANCE

5. (1) For the purposes of this Act, the Attorney-General of the Federation is designated as the Central Authority for Nigeria and is responsible for —

Designation of
Central
Authority.

(a) making, receiving and transmitting requests for assistance;

(b) executing or arranging for the execution of the requests;

(c) certifying, authenticating, arranging for the certification and authentication of any document or other material supplied in response to a request for assistance, where necessary;

(d) taking practical measures to facilitate the expeditious execution and transmission of requests for assistance;

(e) negotiating and agreeing on terms and conditions relating to requests for assistance and ensuring compliance with the terms and conditions;

(f) transmitting the evidentiary materials gathered in response to requests for assistance;

(g) performing any other function specified under this Act; and

(h) doing other things that are necessary for the effective and efficient provision and receiving of assistance under this Act.

(2) For the purposes of this Act, the Attorney-General shall communicate directly with the designated Central Authority of any other foreign State unless Nigeria and that foreign State have agreed otherwise.

6. (1) A request for assistance under this Act shall be -
- (a) dealt with according to the law of the foreign State to which the request is made; and

- (b) made to the Attorney-General.

- (2) A request made under subsection (1) shall -

- (a) specify the purpose of the request and nature of the assistance being sought;

- (b) identify the person or authority that initiated the request;

- (c) include -

- (i) a certification from the Central Authority of that foreign State that the request is made in respect of a criminal matter within the meaning of this Act,

- (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws,

- (iii) a description of the offence to which the criminal matter relates, including its maximum penalty,

- (iv) details of the procedure which that foreign State wishes Nigeria to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that foreign State pursuant to the request,

- (v) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that foreign State, a statement indicating when the judicial proceedings are likely to be instituted,

- (vi) a statement setting out the requests of that foreign State concerning the confidentiality of the request and the reason for the requests,

- (vii) details of the period within which that foreign State requires the request to be met,

- (viii) if the request involves a person travelling from Nigeria to that foreign State, details of allowances to which the person is entitled, and of the arrangements for security and accommodation for the person while he is in that foreign State pursuant to the request,

- (ix) any other information required to be included in the request under any treaty or other agreement between Nigeria and that foreign State, if any, and

(x) any information that may assist in giving effect to the request or which is required under this Act or any regulation made under this Act.

(3) A request under this section-

(a) shall be in writing and in the English language, unless otherwise agreed;

(b) shall be dated and signed by the Central Authority of the foreign State making the request; and

(c) may be transmitted by electronic or other means.

(4) Where the request referred to under this section relates to the-

(a) location of a person who is suspected to be involved in or to have benefited from the commission of the serious offence in a foreign State; or

(b) tracing of property that is suspected to be connected with the serious offence in a foreign State,

the request shall state the name, identity, nationality, location and description of that person, location and description of the property, if known, and a statement setting out the basis for suspecting the matter referred to under this subsection.

(5) A request for assistance under this section shall not be refused solely on grounds of non-compliance with the provisions of subsections (2) and (4) of this section.

PART III - REQUESTS FOR ASSISTANCE BY NIGERIA

7. (1) A request on behalf of Nigeria to a foreign State for mutual legal assistance in a criminal matter under this Act shall be made by the Attorney-General.

Request to be made by the Attorney-General.

(2) The request shall be in writing, dated and signed by the Attorney-General and may be transmitted by electronic or other means.

8. (1) The Attorney-General may, if he is satisfied that there are reasonable grounds for believing that an evidence is relevant to criminal investigation commenced or proceedings instituted in Nigeria, request the Central Authority of a foreign State to arrange for the evidence to be taken in the foreign State and delivered to the Central Authority of Nigeria.

Request for taking of evidence, etc.

(2) The Attorney-General may, if he is satisfied that there are reasonable grounds for believing that a thing would be relevant to a criminal matter in Nigeria, request the Central Authority of a foreign State to -

(a) assist in obtaining, by search and seizure, if necessary, the thing in the foreign State, a photograph or copy of the thing; and

(b) arrange for the thing, photograph or copy of the thing to be sent to him.

(3) An evidence, a thing, photograph or copy of a thing, received by the Attorney-General pursuant to a request made under subsection (1) or (2) may, subject to the provisions of the Evidence Act and the Administration of Criminal Justice Act as the case may be, be admitted as evidence at any criminal proceedings to which the request relates.

Act No. 13,
2015.

(4) In assessing the weight, if any, to be attached to an evidence received by the Attorney-General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceeding to which the request relates, a court shall have regard to whether –

(a) it was possible to challenge the evidence taken; and

(b) the law of the foreign State concerned allowed the parties to the criminal proceedings to be legally represented when the evidence was taken.

9. (1) The Attorney-General may request the Central Authority of a foreign State to assist in arranging for the attendance in Nigeria of a person in that foreign State for the purpose of giving any evidence or assistance, if he is satisfied that –

Request for
attendance in
Nigeria of a
person.

(a) there are reasonable grounds to believe that the person is capable of giving the evidence or assistance relevant to a criminal matter involving a serious offence; and

(b) the person consents to travel to Nigeria for the purpose of giving the evidence or assistance.

(2) The Attorney-General may, for the purposes of subsection (1), make arrangements with the Central Authority of that foreign State for the purpose of the attendance of that person in Nigeria, his return to the foreign State and other relevant matters.

10. Where, pursuant to section 9 of this Act, the Attorney-General requests the assistance of the Central Authority of a foreign State in arranging the attendance in Nigeria of a person, the person shall not, by reason only of his refusal or failure to consent to attend as requested, be subjected to any penalty or liability or be otherwise prejudiced in law.

Penalty not to be
imposed for
refusal to
consent.

11. (1) A person who is in Nigeria pursuant to a request made under section 9 of this Act shall not be –

Immunities and
privileges.

(a) detained, prosecuted or punished in Nigeria for an offence that is alleged to have been committed, or that was committed, before his departure from the foreign State pursuant to the request;

(b) subjected to any civil suit in respect of an act or omission that is alleged to have occurred, or that had occurred, before his departure from the foreign State pursuant to the request; or

(c) required to give evidence or assistance in relation to a criminal matter in Nigeria other than the criminal matter to which the request relates.

(2) Subsection (1) ceases to apply if the person –

- (a) has left Nigeria, or
- (b) has had the opportunity of leaving Nigeria but has remained in Nigeria otherwise than for the purpose –
 - (i) to which the request relates, or
 - (ii) of giving evidence or assistance in a criminal matter in Nigeria certified by the Attorney-General in writing to be a criminal matter in which it is desirable that the person gives evidence or assistance.
- (3) A certificate issued by the Attorney-General under subsection (2) (b) (ii) has effect from the day specified in the certificate, which may be a day before the day on which the certificate is given.

12. Where a person is in Nigeria pursuant to a request made under section 9 of this Act and that person has made a statement in relation to the criminal matter to which the request relates or in relation to a criminal matter certified by the Attorney-General under section 11 (2) (b) (ii) of this Act, that statement – Limitation on use of statement.

- (a) shall not be admitted or otherwise used in any prosecution of the person for an offence against the laws of Nigeria, other than for the offence of perjury or contempt of court in relation to the giving of that evidence, unless the Central Authority of the foreign State concerned consents to it being so used;
- (b) may be admitted or used against the person in any criminal proceeding in Nigeria –
 - (i) for the purpose of impeaching his credibility, or
 - (ii) as evidence of any fact stated in that statement of which direct oral evidence by him would be admissible; and
- (c) if, in giving the evidence, he makes a statement that is inconsistent with that statement.

13. (1) The Attorney-General may, if he is satisfied that there are reasonable grounds for believing that some or all of the property concerned in criminal proceedings in Nigeria are located in a foreign State, request the Central Authority of that foreign State to make arrangements – Request for enforcement of forfeiture order.

- (a) for the enforcement and satisfaction of a forfeiture order; or
- (b) where a forfeiture order may be made in criminal proceedings which have been or are to be instituted in Nigeria, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order.

(2) A certificate purporting to be issued by or on behalf of the Central Authority of

a foreign State stating –

- (a) that property has been recovered in the foreign State pursuant to a request under subsection (1);
- (b) the value of the property; or
- (c) the date on which the property was recovered,

shall, in any judicial proceeding, be admissible as evidence of the matter so stated.

14. Where the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in a foreign State, a person who –

Assistance in locating or identifying persons.

- (a) is or may be concerned in or affected by; or
- (b) could give evidence or assistance relevant to any criminal matter in Nigeria,

the Attorney-General may request the Central Authority of that foreign State to assist in locating, or, if the person's identity is unknown, identifying and locating that person.

15. Without prejudice to any law in Nigeria dealing with the service of processes, the Attorney-General may request the Central Authority of a foreign State to assist in effecting service of any process where the Attorney-General is satisfied that for the purposes of, or in connection with, any criminal matter in Nigeria, it is necessary or desirable to serve that process on a person or an authority in that foreign State.

Assistance in service of processes.

PART IV - REQUEST FOR ASSISTANCE TO NIGERIA

16. A request by a foreign State to Nigeria for assistance in a criminal matter under this Act shall be made to the Attorney-General.

Request to be made to the Attorney-General.

17. (1) Where the Attorney-General is satisfied that the request from a foreign State relates to a criminal matter, he shall receive the request and may accede to it, by directing in writing the relevant person, body or competent authority to execute the request.

Response to requests from foreign States.

- (2) Where the Attorney-General directs the execution of the request, the relevant person, body or competent authority shall expeditiously –

- (a) give effect to the request and collate any evidentiary material in response to the request;
- (b) prepare a report in connection with the execution; and
- (c) forward the report and the evidentiary material to the Attorney-General.

- (3) The relevant person, body or competent authority shall, where necessary, certify, authenticate or arrange for the certification or authentication of any document or other material supplied in response to a request for assistance.

- (4) The Attorney-General shall, without delay after the execution of each request,

forward the outcome in the form of a report to that foreign State and authorise the transmission of any evidentiary material to the foreign State.

18. (1) The expenses incurred for providing assistance shall be borne by the person, body or competent authority executing the request. Expenses incurred for providing assistance.
- (2) A foreign State is responsible for –
- (a) travel and incidental expenses of –
 - (i) a witness or expert required to travel to the foreign State,
 - (ii) an accompanying official of a witness under subparagraph (i).
 - (b) the fees of an expert;
 - (c) the costs of translation required by the foreign State;
 - (d) the costs related to evidence gathering through the use of technology, including evidence by video;
 - (e) costs related to interception by the use of service providers;
 - (f) the costs related to storage of communications and the preservation of communications or computer data; and
 - (g) such other costs as the Attorney-General and the Central Authority of the foreign State may agree on.
- (3) Where the Attorney-General considers that the expenses required in order to comply with the request of a foreign State are of an extraordinary nature, he shall consult with the Central Authority of that foreign State.
- (4) The Attorney-General shall, in consultation with the Central Authority of the foreign State, come to an agreement as to the terms and conditions under which compliance with a request may continue in view of the extraordinary expenses.
- (5) Where the Attorney-General and the Central Authority of the foreign State fail to reach an agreement, he may refuse assistance under section 19 of this Act.
19. (1) The Attorney-General shall refuse in whole or in part a request by a foreign State for mutual legal assistance under this Act, if he has reasonable grounds to believe that – Refusal of assistance.
- (a) the provision of the assistance would prejudice the sovereignty, security, public order or other essential public interest of Nigeria;
 - (b) the Central Authority of the foreign State has, in respect of that request, fails to comply with the terms of any treaty or other agreement between Nigeria and that foreign State;
 - (c) subject to section 20 of this Act, the request relates to the investigation, prosecution or punishment of a person

for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

- (d) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Nigeria, would have constituted a military offence under the laws of Nigeria and does not constitute an offence under the criminal law of Nigeria;
- (e) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or is otherwise prejudicial to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- (f) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person has –
 - (i) been convicted, acquitted or pardoned by a competent court or other authority in that foreign State, or
 - (ii) undergone the punishment provided by the law of that foreign State, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
- (g) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Nigeria, would not have constituted an offence against the laws of Nigeria;
- (h) the facts constituting the offence to which the request relates do not indicate a serious offence;
- (i) the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
- (j) the Central Authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made;
- (k) in the case of a request for assistance under sections 21, 22, 23, 24 and 25 or sections 35, 36, 37 and 38 of this Act, the Central Authority fails to undertake to return to the Attorney-General, on his request, anything obtained pursuant to the request on completion of the criminal matter in respect of which the request was made;
- (l) the provision of the assistance could prejudice a criminal matter in Nigeria; or

(m) the provision of the assistance would require steps to be taken that would be contrary to any written law in Nigeria.

(2) Where the failure to give an undertaking by the Central Authority is with the consent of the Attorney-General, subsection (1) (j) of this section does not apply.

(3) A request by a foreign State for assistance under this Part may be refused by the Attorney-General-

(a) in accordance with the terms of any treaty or other agreement between Nigeria and that foreign State;

(b) if, in the opinion of the Attorney-General, the provision of the assistance would, or would likely, prejudice the safety of any person, whether that person is within or outside Nigeria;

(c) if, in the opinion of the Attorney-General, the provision of the assistance would impose an excessive burden on the resources of Nigeria;

(d) where a State is not a foreign State under this Act and its Central Authority fails to give an undertaking to the Attorney-General that it will, subject to its laws, comply with a future request by Nigeria to that State for assistance in criminal matters; or

(e) for any other reason specified in this Act.

(4) Without prejudice to subsection (3) (c), if there is a request for assistance by a foreign State and the Attorney-General is of the opinion that the expenses involved -

(a) in complying with the request, or

(d) in continuing to effect the assistance requested for, is of an extraordinary or substantial nature,

he shall consult with the Central Authority of the foreign State on the conditions under which the request is to be effected or under which the Attorney-General is to cease to give effect to it, as the case may be.

20. (1) For the purposes of section 19 (1) (c) of this Act, the following offences are not considered to be offences of a political character-

Exceptions to political offences.

(a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;

(b) an offence against the life or person of a Head of Government or a Minister of a Government;

(c) an offence established under any multilateral international treaty to which Nigeria and the foreign State are parties and which is declared in the multilateral treaty concerned not to be regarded as an offence of a political character for the purposes of mutual assistance

in criminal matters; and

(d) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraphs (a) - (c)

(2) The Attorney-General may restrict the application of any of the provisions of subsection (1) to a request from a foreign State that has made similar provision in its laws.

21. (1) Where a request is made by the Central Authority of a foreign State that evidence be taken in Nigeria for the purpose of any criminal proceeding pending in a court in that foreign State, the Attorney-General may, subject to such conditions as he may specify, request the taking of the evidence.

Request for evidence gathering for criminal proceedings.

(2) A request by a foreign State for assistance to obtain evidence in Nigeria shall specify, as the circumstances permit-

(a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;

(b) the samples of property to be taken, examined or transmitted; and

(c) the site to be viewed or photographed.

(3) Subject to any other enactment, where the Attorney-General approves a request of a foreign State to obtain evidence in Nigeria, regarding an offence over which that foreign State has jurisdiction, he or a person authorised by him, shall apply *ex-parte* to the Judge of a High Court in the area in which the evidence sought is located for an order for the gathering of the evidence regarding the offence.

(4) The Judge to whom an application is made shall-

(a) take the evidence on oath of each witness appearing before him to give evidence in relation to the criminal matter as if the witness were giving evidence on a charge against a person for an offence against the laws of Nigeria;

(b) cause the evidence to be reduced into writing and certify that the evidence was taken by him; and

(c) cause the evidence so certified to be forwarded to the Attorney-General.

(5) The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign State relate or his legal representative, if any.

(6) The Judge conducting proceedings under subsection (4) shall allow the following persons to have legal representation at the proceedings -

(a) the person to whom the proceedings in the foreign State relate;

(b) any other person giving evidence or producing any material or thing at the proceedings; and

- (c) the Central Authority of the foreign State.
- (7) The certificate referred to in subsection (4) (c) shall state whether the person to whom the criminal proceedings in the foreign State relate or his legal representative, if any, was present at the proceedings.
- (8) The laws for the time being in force with respect to the compelling of persons to attend before a Judge of a High Court, and to give evidence, answer questions and produce materials or things shall, where applicable, apply for the purposes of this section as if it were a hearing of a charge against a person for an offence against the laws of Nigeria.
- (9) Notwithstanding subsection (8) of this section, a person-
- (a) to whom the criminal proceedings in the foreign State relate, is for the purposes of this section, competent, but not compellable, to give evidence; and
 - (b) who is required under this section to give evidence for the purposes of any criminal proceeding in a foreign State is not required to answer any question that the person could not be compelled to answer in those proceedings in that foreign State.
- (10) A duly certified foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.
- (11) Evidence taken under this section is not admissible in evidence or otherwise used for the purposes of any judicial proceeding, disciplinary proceeding or other proceeding in Nigeria, except in a prosecution of the person who gave the evidence, for the offence of perjury or contempt of court in respect of that evidence.
- (12) Notwithstanding subsection (9), evidence taken under this section may be used for impeaching the credibility of the person who gave the evidence in any judicial proceeding in accordance with the provisions of the Evidence Act.
- (13) The Judge shall issue an order for the gathering of evidence where he is satisfied that -
- (a) an offence has been or may have been committed in contravention of the laws of the foreign State; and
 - (b) evidence relating to the commission of the offence may be -
 - (i) obtained from a building, receptacle or place in Nigeria, or
 - (ii) given by a person believed to be in Nigeria.
- (14) An order for the gathering of evidence made under subsection (13) -
- (a) shall provide for the manner in which the evidence is to be obtained in accordance with the laws of Nigeria in order to give effect to the request made by the foreign

Act No. 18,
2011

State;

(b) may include terms and conditions that the Judge considers necessary, including those relating to the interests of the person named in the order and of third parties;

(c) authorise the person named in the order to -

(i) attend court to give evidence on oath or otherwise until excused,

(ii) make a record from data or make a copy of a record or thing in the person's possession, including any document or its copy,

(iii) produce to the court or to the person designated by the court, a record or thing in the person's possession, including any document or its copy, and

(iv) provide, where appropriate, an affidavit or certificate that pursuant to the request is to accompany the copy, record or thing so produced.

(15) The Judge who makes an order under subsection (13) or another Judge of the same Court may vary its terms and conditions.

22. (1) A person named in an order for the gathering of evidence under section 21 (13) of this Act may refuse to answer a question or produce a document or thing where the refusal is based on—

(a) a law in force in Nigeria;

(b) a privilege recognised by a law in force in the foreign State that made the request; or

(c) a law in force in that foreign State that, in that jurisdiction, renders the answering of that question or production of that document or thing by that person an offence.

Refusal to give evidence, etc. by person named in an order for the gathering of evidence.

(2) Where a person refuses to answer a question or produce a document or thing under subsection (1) (a), the Judge who made the order for the gathering of evidence shall determine whether the reasons for the refusal are well founded in accordance with the law in force in Nigeria.

(3) Where a Judge determines that the reasons adduced under subsection (2) have no legal basis, the Judge shall order the person to answer the question or produce the document or thing.

(4) Where the person refuses to answer a question or to produce a document or thing, pursuant to subsection (1) (b) or (c), that person shall forward to the Judge, within seven days, a detailed statement in writing of the reasons for the refusal to answer the question or to produce the document or thing.

23. (1) The Judge shall, as soon as practicable after receipt of the detailed statement under section 22 (4) of this Act, forward a report to the Attorney-General on the refusal, accompanied with a -

Report on refusal to give evidence or produce a thing.

(a) transcript of each examination held during the evidence-gathering proceedings;

(b) general description of each document or thing produced under the order for the gathering of evidence; and

(c) copy of each statement given in respect of the reasons for a refusal to answer a question or produce a document or thing.

- (2) The Attorney-General shall, on receipt of the report, notify the foreign State concerned and request the foreign State to provide a written statement on whether the person's refusal is well founded under the law of that foreign State.

- (3) A written statement received by the Attorney-General from that foreign State is admissible in the evidence-gathering proceedings.

24. A person who -

(a) without giving a detailed statement as required by section 22 (4) of this Act, refuses to comply with an order of a Judge to give evidence or produce a document or a thing, or

Contempt of court for refusal to give evidence or produce a thing.

(b) having refused, pursuant to section 22 (4) of this Act, continues to refuse notwithstanding the admission in evidence of a statement to the effect that the refusal is not well founded in law in that foreign State, is in contempt of court and is liable on conviction to a fine not exceeding N200,000 or imprisonment for a term not exceeding three months or both.

25. (1) The Attorney-General shall, on receipt of the report under section 23 (1) of this Act and if satisfied that the foreign State has agreed to comply with the terms and conditions imposed in respect of forwarding a record, document or thing outside Nigeria, transmit -

Transmission of evidence outside Nigeria.

(a) the report and the record or thing produced to that foreign State; and

(b) a copy of the order accompanied with a copy of any statement forwarded under section 22 (4) of this Act that contains -

(i) the reasons based on law in force in the foreign State, and

(ii) a determination of the Judge to the foreign State that the reasons for refusal are justified.

- (2) Subject to subsection (1), the Attorney-General may require compliance by the foreign State of terms and conditions -

(a) necessary to give effect to the request; and

(b) with respect to the -

(i) preservation and return to Nigeria of the record or thing produced, and

(ii) protection of interests of third parties.

(3) The execution of an order made under section 22 (4) of this Act that was not fully executed due to a refusal, by reason of a law in force in that foreign State, to -

(a) answer a question; or

(b) produce a certain record or thing to the Court, may be continued, where a court of that foreign State determines that the reasons are not well founded and the foreign State advises the Attorney-General, accordingly.

(4) A person named in an order made under section 21 (3) of this Act whose reasons for refusing to -

(a) answer a question; or

(b) produce a record or thing, are determined in accordance with subsection (3) of this section, as not being well founded, shall not during the continued execution of the order, refuse to answer that question or produce that record or thing to the court, except with the permission of the Judge who made the order under section 22 (3) of this Act or another Judge of the same Court.

26.

(1) The Central Authority of a foreign State may make a request for a hearing by video conference or any other means of technology designated by the Attorney-General where a person in Nigeria has to be heard as a witness or an expert in that foreign State.

(2) Where the Attorney-General approves a request by a foreign State to require a witness or expert to provide evidence on oath or otherwise by means of technology that permits the virtual presence of the person in the territory over which the foreign State has jurisdiction, the Attorney-General may apply *ex parte* to a Court for an order to take the evidence of the person in camera.

(3) A request for an order for the gathering of evidence by means of technology may include hearing by -

(a) video link;

(b) telephone or video conference; or

(c) any other means of technology designated by the Attorney-General.

(4) The Court to which an application is made may, subject to the Rules of Court, make the order where -

(a) there are reasonable grounds to believe that an offence has been or may have been committed in contravention

Request for an order for the gathering of evidence by the use of technology.

of the law of the foreign State;

- (b) the use of the technology to gather evidence is not contrary to any enactment;
 - (c) the required technical means are available to carry out the hearing; and
 - (d) the witness or expert concerned has agreed to the hearing by video conference or other technical means.
- (5) Without limiting the provisions of section 6 (3) of this Act, a request for evidence gathering by means of technology shall specify—
- (a) reasons why it is not practicable for a witness or expert to attend a hearing in person;
 - (b) the means of technology that will be used to gather evidence;
 - (c) the name of the Judge and persons who will be conducting the hearing;
 - (d) an indication that the witness or expert is willing to take part in the hearing by the indicated means of technology; and
 - (e) measures for the protection of the person to be heard.
- (6) An order for the gathering of evidence by the use of technology shall summon or make arrangements for the person to—
- (a) attend at a time and place determined by the Judge in Chambers to give evidence on oath or otherwise by means of technology and remain in attendance until excused by the authorities of the foreign State;
 - (b) answer a question put to the person by the authorities of the foreign State or by a person authorised by those authorities in accordance with the law applicable to that foreign State; or
 - (c) produce at the time and place determined by the Judge in Chambers a thing, including a document or its copy, in order to show it to the authorities of the foreign State by means of the technology.
- (7) The Court shall -
- (a) notify the witness or expert;
 - (b) ensure the identification of the witness or expert;
 - (c) verify that the witness or expert agrees to the hearing by the indicated technology; and
 - (d) ensure that the person to be heard is assisted by an interpreter if necessary prior to the hearing.

(8) Evidence that relates to an offence under subsection (4) may be given by a person believed to be in Nigeria.

(9) The foreign State shall bear the cost of the use of the technology, including --

- (a) the servicing of the technology;
- (b) the remuneration of interpreters provided by the Court;
- (c) the allowances for witnesses and experts and traveling expenses incurred as a result of the hearing, unless there is a waiver in part or whole by the Attorney-General.

(10) An order made under subsection (4) may include terms or conditions that the Judge considers necessary, including those relating to the protection of the interests of the person named in it and of third parties.

(11) The Court may vary the terms and conditions of the order.

(12) Where a person gives evidence by means of technology, the --

- (a) evidence shall be given as if the witness were physically before the court or tribunal outside Nigeria for the purpose of the laws relating to evidence and procedure except that the evidence given shall not disclose confidential, privileged or protected information; and
- (b) Criminal Code Act or Penal Code Act or any other enactment relating to perjury, shall apply to evidence given by the person as if the person were a witness before a court in Nigeria.

(13) At the conclusion of the hearing, the Court shall ensure that there is a record that indicates--

- (a) the date and place of the hearing;
- (b) the identity of the person heard;
- (c) the identity and function of each person who participated in the hearing; and
- (d) any oath or affirmation taken, and furnish the foreign State with the record through the Attorney-General.

(14) A witness or expert who has agreed to be heard and refuses to --

- (a) attend at the time and place determined by the Judge under subsection (6); or
- (b) answer a question or produce a document or a thing as ordered by the Judge,

commits contempt of court and is liable on conviction to a fine not exceeding N200,000 or imprisonment for a term not exceeding three months or both.

27. (1) Where a request is made by the Central Authority of a foreign State that any particular thing or description of a thing in Nigeria be produced for the purpose of any criminal matter in that foreign State, the Attorney-General or a person duly authorised by him may apply to the Court for an order under subsection (3). Production order for criminal matters.
- (2) An application for an order under subsection (3) in relation to a thing in the possession of a financial institution shall be made only to the Federal High Court, (in this Act referred to as "the Court").
- (3) Where, on the application referred to under subsection (1), the Court is satisfied that the conditions referred to in subsection (4) are fulfilled, it may make an order that the person who appears to the Court to be in possession of the thing to which the application relates shall -
- (a) produce the thing to an authorised officer for him to take away; or
 - (b) give an authorised officer access to the thing, within seven days of the date of the order or such other period as the Court may consider appropriate.
- (4) The conditions referred to in subsection (3) are that reasonable grounds exist for
- (a) suspecting that a specified person has committed or benefited from a serious offence in a foreign State;
 - (b) believing that the thing to which the application relates -
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made, and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) the Court is satisfied that it is not contrary to the public interest or any written law for the thing to be produced or access to it to be given.
- (5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign State relate or his legal representative, if any.
- (6) A person who is required by an order under this section to produce or make available any article for the purposes of any criminal proceeding in a foreign State is not required to produce an article that the person could not be compelled to produce in the proceedings in that foreign State.
- (7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.

28. (1) Where a Court orders a person under section 27 of this Act to give an authorised officer access to a thing on any premises, the Court may, on the same or subsequent application of an authorised officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the thing.
- (2) Where any material to which an order under section 27 of this Act relates, consists of information contained in or accessible by means of any data equipment, an order -
- (a) under section 27 (3) (a) of this Act shall have effect as an order to produce the material in a form which can be taken away and which is visible, legible and comprehensible; and
 - (b) under section 27 (3) (b) of this Act shall have effect as an order to give access to the material in a form which is visible, legible and comprehensible.
- (3) A person is not excused from producing or making available a thing by an order under section 27 of this Act on the ground that the production or making available of the thing -
- (a) might tend to incriminate the person or make the person liable to a penalty; or
 - (b) will be in breach of an obligation, whether imposed by law or otherwise.
- (4) An order under section 27 of this Act shall -
- (a) not confer any right to the production of, or access to, items subject to legal privilege; and
 - (b) have effect notwithstanding any obligation as to secrecy or other restrictions on the disclosure of information imposed by law or otherwise.
- (5) An authorised officer may photograph or make copies of a thing produced or to which access is granted pursuant to an order made under section 27 of this Act.
- (6) Where an authorised officer takes possession of a thing under an order made under section 27 of this Act or takes any photograph or makes any copy of the thing pursuant to subsection (5), he shall inform the Attorney-General and shall, unless the Attorney-General otherwise directs, immediately send the article or the photograph or copy of the article to the Central Authority of the foreign State concerned.
- (7) In this section, "data equipment" means any equipment which -
- (a) automatically processes, records or stores information;
 - (b) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment, wherever situated;
 - (c) can be used to retrieve information whether the information is recorded or stored in the equipment

Supplementary provisions regarding production order.

itself or in other equipment, wherever situated; or

- (d) can be used to carry out any combination of the functions specified in paragraphs (a) to (c) of this subsection.

29. (1) A civil or criminal action, other than a criminal action for an offence under section 30 of this Act, shall not lie against a person for –
- Immunities in compliance of production order.
- (a) producing or giving access to a thing if he had produced or given access to the thing in good faith in compliance with an order made against him under section 27 of this Act; or
 - (b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with the order.
- (2) A person who complies with an order made under section 27 of this Act shall not be treated as being in breach of any restriction on the disclosure of information or thing imposed by law, contract or rules of professional conduct.

30. A person who:
- Failure to comply with production order.
- (a) without reasonable excuse, contravenes or fails to comply with an order made under section 27 of this Act, or
 - (b) in purported compliance with the order, produces or makes available to an authorised officer any material known to the person to be false or misleading in a material particular without –
 - (i) indicating to the authorised officer that the material is false or misleading and the part of the material that is false or misleading, or
 - (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire the correct information,

commits an offence and is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term not exceeding one year or both.

31. (1) The Central Authority of a foreign State may request the Attorney-General to assist in arranging the attendance in that foreign State of a person in Nigeria for the purpose of giving evidence or assistance in relation to a criminal matter in that foreign State.
- Request for attendance of person in foreign State.
- (2) The Attorney-General may assist in making arrangements for the travel of the person to the foreign State pursuant to a request referred to in subsection (1), if the Attorney-General is satisfied that –
- (a) the request relates to a criminal matter in that foreign State involving a serious offence in a foreign State;

- (b) there are reasonable grounds to believe that the person concerned is capable of giving evidence or assistance relevant to the criminal matter;
 - (c) the person concerned has freely consented to attend as requested; and
 - (d) the Central Authority of the foreign State has given adequate undertakings in respect of the matters referred to in subsection (3).
- (3) The matters in relation to which undertakings are to be given by the Central Authority of a foreign State are –
- (a) that the person shall not be –
 - (i) detained, prosecuted or punished for an offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person's departure from Nigeria,
 - (ii) subjected to any civil suit in respect of an act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Nigeria, or
 - (iii) required to give evidence or assistance in relation to a criminal matter in that foreign State other than the criminal matter to which the request relates, unless the person has left the foreign State or has had the opportunity of leaving the foreign State but remained in the foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;
 - (b) any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of that foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;
 - (c) that the person will be returned to Nigeria in accordance with arrangements agreed to by the Attorney-General; and
 - (d) such other matters as the Attorney-General thinks appropriate.
- (4) Where, pursuant to this section, the Central Authority of a foreign State requests the assistance of the Attorney-General in arranging the attendance of any person in the foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

32. (1) Where a request by the Central Authority of a foreign State under section 31 of this Act relates to –
- Request for attendance of prisoner or person under detention.
- Cap. P29, LFN, 2004.
- (a) a prisoner within the meaning given to it in the Prisons Act; or
- (b) a person under detention in a prescribed institution,
- the Attorney-General may assist in the matters specified in subsection (2).
- (2) The Attorney-General may, for the purpose of subsection (1), assist in arranging the transfer of the prisoner or person into the custody, of an officer of the foreign State for the purpose of transporting the person from Nigeria to that foreign State and, after that to be –
- (a) detained in that foreign State under the custody of such authority as may be lawful in that foreign State; and
- (b) produced, from time to time under custody before the Central Authority or a court in that foreign State before which he is required to attend as a witness.
- (3) Immediately on the attendance of a prisoner or person being dispensed with by the Central Authority or court in the foreign State, he shall –
- (a) be transported, in the custody of an officer of that foreign State, to Nigeria and returned into the custody of a Nigerian officer having lawful authority to take him into custody; and
- (b) after that, continue to undergo the imprisonment or detention which he was undergoing before the transfer of his custody under subsection (1).
- (4) The period during which a person was under foreign custody under this section shall count towards the period of his imprisonment or detention in Nigeria.
- (5) A transfer under subsection (1) is not effected unless the Central Authority of the foreign State gives an undertaking to –
- (a) bear and be responsible for all the expenses of the transfer of custody;
- (b) keep the person under lawful custody throughout the transfer of his custody; and
- (c) return him into custody in Nigeria immediately after his attendance before the Central Authority or court in that foreign State.
33. (1) A person who, being in custody in a foreign State, consents to give evidence or assistance in relation to a criminal matter in another foreign State may be transported through Nigeria, in the custody of another person, to that other foreign State, if the foreign State in which the person is in custody gives to the Attorney-General prior notice of the transportation.
- Custody of person in transit.
- (2) The person being transported through Nigeria in custody may be kept in the custody of such authorised officer as the Attorney-General directs in writing

until his transportation is continued, where an aircraft, vessel or train by which the person is being transported lands, calls or stops in Nigeria,

(3) Where -

(a) a person is being held in custody pursuant to a direction under subsection (2); and

(b) the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time,

the Attorney-General may direct that the person be transported in custody to the foreign State from which the person was first transported, and such direction shall be sufficient authority for that person's removal from Nigeria by such means as the Attorney-General may direct.

(4) The cost and expenses incurred by Nigeria in respect of subsections (2) and (3) of this section shall be reimbursed by the foreign State from which the person was first transported.

34. (1) A person who, whilst being kept in custody pursuant to a direction under section 33 (2) of this Act, escapes from the custody, commits an offence and is liable on conviction to a fine not exceeding N2,000,000 or imprisonment for a term not exceeding two years, or both.

Escape from custody while in transit.

(2) An authorised officer may, without warrant, re-arrest a person kept in custody if he has reasonable grounds to believe that the person has escaped from custody under subsection (1).

(3) A person who has been re-arrested under this section shall be returned to custody in accordance with the provisions of this Act.

35. (1) The Central Authority of a foreign State may request the Attorney-General to assist in the -

Request for enforcement of foreign forfeiture order.

(a) enforcement and satisfaction of a foreign forfeiture order made in any judicial proceedings instituted in that foreign State against property that is reasonably believed to be located in Nigeria; or

(b) restraining of dealing in any property that is reasonably believed to be located in Nigeria and against which the order may be enforced or which may be available to satisfy the order; where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that foreign State,

(2) On receipt of a request referred to in subsection (1), the Attorney-General may

(a) in the case of subsection (1) (a), act or authorise the taking of action under section 36 of this Act, the regulations made pursuant to this Act; or

(b) in the case of subsection (1) (b), act or authorise the taking of action under the regulations made under this Act, in which case section 36 and the regulations made under this Act shall apply accordingly.

36.

(1) The Attorney-General or a person authorised by him may apply to the Court for the registration of a foreign forfeiture order.

Registration of
foreign
forfeiture
order.

(2) The Court may, on an application referred to in subsection (1), register the foreign forfeiture order if it is satisfied –

(a) that the order is in effect and not subject to further appeal in the foreign State;

(b) where a person affected by the order did not appear in the proceedings in the foreign State, that the person had received notice of the proceedings in sufficient time to enable him defend the proceedings; and

(c) that enforcing the order in Nigeria would not be contrary to the interests of justice.

(3) For the purposes of subsection (2), the Court shall take into consideration a certificate referred to in section 38 of this Act if tendered.

(4) The Court shall revoke the registration of a foreign forfeiture order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by other means.

(5) Where an amount of money, if any, payable or remaining to be paid under a foreign forfeiture order registered in the Court under this section is expressed in a currency other than that of Nigeria, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Nigeria on the basis of the Central Bank of Nigeria exchange rate prevailing on the date of registration of the order.

(6) For the purposes of subsection (5), a certificate issued by the Central Bank of Nigeria stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceeding as evidence of the facts so stated.

(7) In this section, "appeal" includes –

(a) any proceeding by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

37.

(1) For the purposes of sections 35 and 36 of this Act and the regulations made under this Act –

Proof and
authentication
of orders of
court of foreign
State.

(a) an order made or a judgment given by a court of a foreign State purporting to bear the seal of that court or to be signed by any person in his capacity as a Judge, Magistrate or an officer of the court, is deemed, without further proof, duly sealed or to have been signed by that person; and

(b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a foreign State is deemed, without further proof, to be a true copy.

- (2) A document is duly authenticated for the purpose of subsection (1) (b) if it purports to be certified by a person in his capacity as a Judge, Magistrate or officer of the court in question or by or on behalf of the Central Authority of that foreign State.

38.

- (1) For the purposes of sections 35 and 36 of this Act and the regulations made under this Act, a certificate purporting to be issued by or on behalf of the Central Authority of a foreign State stating that—

Evidence in relation to proceedings and orders in foreign State.

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that foreign State;
- (b) a foreign forfeiture order is in effect and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign forfeiture order remains unpaid in that foreign State, or that other property recoverable under a foreign forfeiture order remains unrecovered in that foreign State;
- (d) a person has been notified of any judicial proceeding in accordance with the laws of that foreign State; or
- (e) an order, however described, made by a court of that foreign State for the purpose of—
 - (i) recovering, forfeiting or confiscating payments or other awards received in connection with a serious offence against the law of that foreign State, or value of the payments or awards;
 - (ii) recovering, forfeiting or confiscating property derived or realised, directly or indirectly, from payments or other awards received in connection with the serious offence in a foreign State or the value of the property; or
 - (iii) forfeiting, destroying or otherwise disposing of any drug or other substance in respect of which an offence against the corresponding drug law of that foreign State has been committed, or which was used in connection with the commission of the offence, shall, in any proceeding in a court, be received in evidence without further proof.

- (2) In any proceeding in a court, a statement contained in a duly authenticated document, which purports to—

- (a) have been received in evidence or to be a copy of a document so received, or
- (b) set out or summarise evidence given in proceedings in a court in a foreign State,

shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a Judge, Magistrate or officer of the court in the foreign State, or by or on behalf of a Central Authority of that foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

39. (1) The Attorney-General may, on the request of the Central Authority of a foreign State, assist to search for and seize property in Nigeria. Request for search and seizure.

(2) The request shall specify the –

(a) property to be searched for and seized; and

(b) information required to obtain the requisite warrant and facilitate the execution of the request.

(3) The Attorney-General shall, at the conclusion of the search and seizure under a warrant issued under section 40 of this Act, certify and forward to the foreign State a report that contains information on the –

(a) outcome of the search;

(b) place and circumstances of seizure;

(c) location of the thing or computer data seized; and

(d) person or authority responsible for the safe custody of the thing or computer data seized.

40. (1) Where the Attorney-General, on receipt of a request referred to in section 39 (1) of this Act, is satisfied that – Issue of search warrant.

(a) the request relates to a criminal matter in that foreign State in respect of a serious offence in a foreign State; and

(b) there are reasonable grounds for believing that the property to which the request relates is relevant to the criminal matter and is located in Nigeria, the Attorney-General, or an authorised officer directed by him, may apply to the Court for a warrant in respect of premises specified by him.

(2) Where the Judge receives an application under subsection (1) and is satisfied by evidence on oath that there are reasonable grounds to believe that –

(a) an offence over which the foreign State has jurisdiction has been or may have been committed;

(b) evidence of commission of the offence may be found in a building, receptacle, vessel or place in Nigeria;

(c) the thing does not consist of or include items subject to legal privilege;

(d) it is not contrary to the public interest for the warrant to be issued; and

(e) it would not, in the circumstances, be appropriate to grant an order for the gathering of evidence under section 21 of this Act,

he may issue a search warrant under his hand authorising a police officer or person named in the warrant to execute it.

(3) In issuing a warrant under this section, the Judge -

(a) may subject the execution of the warrant to such conditions as he considers fit; and

(b) shall specify a time and place for a hearing to consider the execution of the warrant and the report of the police or authorised person who executed the warrant.

41. (1) Where an authorised officer has entered a premises in the execution of a warrant issued under section 40 of this Act, he may seize and retain a thing that is specified in the warrant, other than items subject to legal privileges. Additional powers of person executing search warrant.
- (2) An authorised officer may photograph or make a copy of a thing seized under subsection (1).
- (3) Where an authorised officer seizes a thing, takes a photograph or makes a copy of a thing under a warrant, he shall inform the Attorney-General and shall, unless the Attorney-General otherwise directs, immediately forward the thing, photograph or copy of the thing to the Central Authority of the foreign State concerned.
- (4) A thing seized under this Part shall not be forwarded to the foreign State unless the Attorney-General is satisfied that the foreign State has agreed to comply with the terms and conditions relating to the forwarding of the thing outside Nigeria.
- (5) A person who unlawfully hinders or obstructs an authorised officer in the execution of a warrant issued under this section, commits an offence and is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term not exceeding one year or both.

42. (1) Civil or criminal action shall not lie against a person for-

(a) producing or giving access to a thing if he had produced or given access to the thing in good faith in compliance with a warrant issued under section 40 of this Act; or

(b) doing or omitting to do an act if he had done or omitted to do the act in good faith and as a result of complying with the warrant.

Immunities in respect of authorised officer executing search warrant.

(2) A person who complies with a warrant issued under section 40 of this Act shall not be treated as being in breach of any restriction on the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

43. (1) The Central Authority of a foreign State may request the Attorney-General to assist in locating, or identifying in Nigeria, a person who is believed to be in Nigeria. Assistance in locating or identifying a person in Nigeria.

(2) On receipt of a request made under subsection (1), the Attorney-General may authorise assistance in accordance with this section if he is satisfied that –

(a) the request relates to a criminal matter in the foreign State; and

(b) there are reasonable grounds for believing that the person to whom the request relates –

(i) is or might be concerned in, or could give or provide evidence or assistance relevant to the criminal matter; and

(ii) is in Nigeria.

(3) Where, in relation to a request made under subsection (1), the Attorney-General authorises assistance in accordance with this section, he shall forward the request to the appropriate authority in Nigeria.

(4) The appropriate authority referred to in subsection (3) shall –

(a) to the best of its ability, locate or identify, as the case may be, the person to whom the request relates; and

(b) inform the Attorney-General of the outcome of the actions taken.

(5) On receipt of information under subsection (4) (b), the Attorney-General shall inform the Central Authority of the foreign State.

44. (1) The Central Authority of a foreign State may request the Attorney-General to assist in effecting the service of process on a person in Nigeria. Assistance in service of process in Nigeria.

(2) On receipt of a request made under subsection (1), the Attorney-General may authorise the service of the process in accordance with this section if he is satisfied that:

(a) the request relates to a criminal matter in that foreign State;

(b) there are reasonable grounds for believing that the person to be served is in Nigeria;

(c) the foreign State has furnished sufficient details of the consequences of a failure to comply with the process; and

(d) where the request relates to the service of a summons to appear as a witness in that foreign State, the foreign State has given an undertaking that the person will not be

subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding anything to the contrary in the summons.

(3) Where service is authorised under subsection (2), the Attorney-General may, at the request of a foreign State, arrange for the service in Nigeria of a process relating to a criminal matter in the foreign State.

(4) Without limiting the manner in which the service of a process in a foreign State may be proved in Nigeria, service of the process may be proved by the affidavit of the person who served the process.

45. The person who is to appear as a witness pursuant to section 32 (2)(b) of this Act shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding anything to the contrary in the summons.

Penalty not to be imposed for failure to comply with summons.

PART V - INTERCEPTION OF TELECOMMUNICATIONS AND POSTAL ITEMS, AND SURVEILLANCE, INCLUDING COVERT ELECTRONIC SURVEILLANCE

46. (1) Except in the case of a request under section 57 of this Act, a request for assistance under this Part may only be made if it appears to the foreign State that there are grounds to suspect that the information obtained under this Part contains an information relevant to the commission of a criminal offence in the foreign State.

Request for information.

(2) A request for assistance under sections 47, 50 and 81 of this Act may only be made where -

(a) the criminal matter arising in the foreign State is of a serious nature; and

(b) there are grounds to suspect that the information obtained pursuant to this Part will contain information relevant to the commission of a criminal offence in Nigeria.

(3) The duration, detailed conditions and the monitoring and preserving of the product of the investigative activities undertaken pursuant to sections 47, 50 and 81 of this Act shall be agreed between Nigeria and the foreign State, if permissible under the laws of Nigeria.

(4) Without prejudice to the general grounds of refusal specified in section 19 of this Act, the Attorney-General may refuse a request for assistance under this Part and may not inform the foreign State of the reasons for the refusal.

47. (1) A foreign State may request assistance to effect or facilitate the interception of telecommunications in Nigeria which may consist of assistance to -

Interception of telecommunications

(a) intercept telecommunications electronically or through other technology;

(b) record and subsequently transmit information gathered

through the interception; and

(c) provide stored communications.

(2) In addition to any other requirement of this Act, a request for assistance to intercept telecommunications in Nigeria shall include –

(a) the type of telecommunications sought to be intercepted;

(b) sufficient information to identify the telecommunications sought to be intercepted;

(c) details of the location of the telecommunication sought to be intercepted;

(d) if possible, the provision of sufficient technological data, in particular the relevant network connection number, telecommunications address or service identifier, to ensure that the request can be executed;

(e) details of any provision of law under which an interception order or warrant for the interception of telecommunications is required in the foreign State and any provision of law which ensures respect for the rights of those whose telecommunications are intercepted;

(f) a copy of any related order or warrant obtained, if any;

(g) the form of assistance to be provided by Nigeria, being –

(i) the interception and immediate transmission to the foreign State of telecommunications, or

(ii) the interception, recording and subsequent transmission to the foreign State of telecommunications;

(h) the desired duration of the interception;

(i) details of the criminal offence under investigation;

(j) the relevance of the evidence sought;

(k) confirmation of an interception order or warrant issued in connection with a criminal investigation in the foreign State; and

(l) the path of the relevant telecommunication.

(3) Notwithstanding any preference expressed by the foreign State under subsection (2) (g), Nigeria may comply with a request for assistance under this section by either means.

48.

(1) Where the request for interception involves the interception of telecommunication services that are operated through a gateway in Nigeria, the Attorney-General shall cause the appropriate authority to ensure that the systems of telecommunications are made directly accessible for the lawful interception

Interception of telecommunications by service providers.

through the intermediary of a designated communications service provider in Nigeria.

(2) Subject to the provisions of subsection (1), a foreign State, in conjunction with the competent authority concerned, may, for the purpose of criminal investigation and in accordance with its law, be allowed to carry out the interception through the designated service provider if the subject of the interception is present in Nigeria.

49. Where the request for the interception of telecommunications is in respect of the expeditious preservation of communication data, pending the submission of a request for the production of the data, the request shall be accompanied with –

Interception of telecommunications to preserve communication data.

- (a) the identification of the authority that seeks to preserve the data;
- (b) a brief description of the conduct under investigation;
- (c) a description of the data to be preserved and its connection with the investigation or proceeding to which the request relates and which indicates whether the communication data to be preserved includes –
 - (i) subscriber information;
 - (ii) traffic data; or
 - (iii) any other information that comprises communication data.
- (d) available information to identify the person who has custody of the stored communication data or the location of the computer system;
- (e) stated reasons for the necessity of the preservation; and
- (f) an indication of the manner and time within which the foreign State intends to submit a substantive request for mutual legal assistance for the production of the required communication data.

50. Where the request for interception of communication is for the purpose of providing stored data, the request shall be accompanied with –

Interception of communications to provide stored data.

- (a) the name of the authority with access to the relevant data;
- (b) the location at which the data is held;
- (c) the intended purpose for the data;
- (d) sufficient information to identify the data;
- (e) details of the data of the relevant interception;
- (f) the recipient of the data;
- (g) the intended duration for the use of the data; and

- (h) the terms for the use and disclosure of the data to third party.

51. Where the request for the interception of communication is in respect of information to be gathered, recorded and transmitted, the request shall be accompanied with –

Interception of communication for gathering, recording and transmitting information.

- (a) the name of the authority with access to the relevant information and the location at which it is held;
- (b) sufficient information to identify the relevant communication;
- (c) details of the date of the relevant interception; and
- (d) other information that may be necessary for the identification and disclosure of the relevant material.

52. (1) The Central Authority of a foreign State may request the Attorney-General to assist in the interception of a postal item during the course of its carriage by a postal service and in the subsequent transmission to the foreign State of the item or, where appropriate, a copy or record of the postal item.

Interception of postal items.

(2) The Attorney-General may grant a request under subsection (1) if he is satisfied that –

- (a) the foreign State has jurisdiction over the matter for which the request is sought;
- (b) there are grounds to suspect that the information obtained pursuant to the interception will be relevant to the commission of a criminal offence in the foreign State; and
- (c) the criminal offence arising in the foreign State is of a serious nature.

(3) Investigative techniques and other procedure used for the purpose of dealing with a request under this section shall be in accordance with the laws of Nigeria and the duration and the detailed conditions of the techniques and procedure used shall be agreed between the Central Authority of the foreign State and the Attorney-General.

(4) The Attorney-General shall, if he approves the request, authorise the appropriate authority to intercept the item.

(5) The appropriate authority in Nigeria shall make a report to the Attorney-General

- (a) on how the subsequent transmission of the item was effected after the interception of the item; and
- (b) where interception of the item was not effected, the reasons for the inability to effect the interception.

(6) The Attorney-General shall on receipt of the report referred to under subsection (5) transmit to the Central Authority of the foreign State –

- (a) a certificate of the effected interception; or
- (b) a report containing reason for the inability to effect the interception.

(7) Without prejudice to section 19 of this Act, the Attorney-General may refuse a request for assistance under this section and need not inform the foreign State of the reasons for the refusal.

53. (1) A request for the preservation of computer data under this Part may be made by the Central Authority or other competent authority of a foreign State. Preservation of computer data.

(2) A request may be made pursuant to subsection (1) where it appears to the Central Authority or competent authority that there are grounds to suspect that the preserved computer data may contain information relevant to criminal activities in the foreign State.

(3) In addition to the information required by section 6 of this Act, a request for the preservation of computer data shall include -

- (a) the identity of the agency or authority making the request;
- (b) a brief description of the conduct under investigation;
- (c) the identity of the individual whose computer data is to be preserved, or that person's telecommunications address;
- (d) a statement that the foreign State intends to submit a request under this Act to obtain the computer data within the period specified in subsection (4) of this section; and
- (e) a description of the computer data to be preserved and its relevance to the investigation or prosecution.

(4) The preservation of computer data pursuant to a request made under this section shall be for a period of one hundred and 21 days.

(5) Notwithstanding the general grounds for refusal contained in section 19 of this Act, a request for the preservation of computer data under this section may be refused only to the extent that it appears to the Attorney-General that compliance would be contrary to the laws of Nigeria or will prejudice its security, international relations or other essential public interests.

(6) Where the Attorney-General considers that the preservation of computer data pursuant to a request made under this section shall -

- (a) not ensure the future availability of the computer data;
or
- (b) threaten the confidentiality of or otherwise prejudice, the investigation in the foreign State, he shall promptly inform the foreign State, which shall then determine whether the request shall be executed.

(7) Where the Central Authority of a foreign State submits a request for assistance to obtain the preserved computer data to the Attorney-General before the expiry

of the period stated in subsection (4), the data shall continue to be preserved pending the determination of that request and where the request is granted, until the data is obtained pursuant to the request for assistance

54. (1) Where the Attorney-General approves a request of a foreign State to intercept telecommunication in Nigeria relating to an offence, he shall apply *ex-parte* motion to the Court or through his officers for an order to intercept telecommunications. Order for interception of telecommunications.
- (2) Notwithstanding subsection (1), the Inspector-General of Police, may with the prior written consent of the Attorney-General, direct a senior police officer to apply *ex-parte* to the Court for an order under this section, for the purpose of assisting the law enforcement agency of a foreign State to obtain evidence relating to the commission of an offence.
- (3) The Court to which an application is made may make an order to –
- (a) require a telecommunications service provider to intercept and retain a specified communication, or communication of a specified description, received or transmitted by that telecommunications service provider;
 - (b) authorise a senior police officer or other competent person to intercept or listen to a conversation provided by a telecommunications service provider; or
 - (c) authorise a police officer or competent person to enter a premises and to install on the premises a device for the interception and retention of specified telecommunications or telecommunications of a specified description and to remove and retain the device, where there is suspicion of the commission of an offence or the whereabouts of a person suspected by the police officer to have committed the offence is contained in that telecommunication or telecommunications of that description.
- (4) The Court may, in an order under subsection (3), authorise a competent authority to facilitate access to the systems of telecommunication services required to be intercepted to execute a request.
55. (1) Where the Attorney-General approves a request of a foreign State for the preservation of communication data, section 54 shall apply, with the necessary modification, for the purpose of an order to preserve the communication data. Order for preservation of communication data.
- (2) An order made under this section shall be for a period of 120 days, to enable the foreign State submit a substantive request to obtain the preserved communication data.
- (3) Where an order is made under section 54 (2) for purposes of the preservation of communication data, the relevant data shall be preserved –
- (a) pending a determination of the request; or
 - (b) until the communication data is obtained after the approval of the request.
- (4) Where the Attorney-General is of the opinion that an order made under section

54 (2) of this Act for purposes of the preservation of communication data --

- (a) does not warrant the future availability of the required communication data;
- (b) may threaten the confidentiality of or adversely affect the investigation of the foreign State; or
- (c) the request concerns an offence which the foreign State considers a political offence or an offence connected with a political offence,

he shall, in writing, promptly inform the foreign State.

- (5) The foreign State shall, on receipt of information forwarded to it by the Attorney-General under this section, determine whether to execute the request or not.

56. Notwithstanding the Evidence Act, information contained in a communication which is --

- (a) intercepted and retained in a foreign State in accordance with the laws of that foreign State and certified by a Judge of that foreign State to have been intercepted; or
- (b) obtained through data,

Admissibility of evidence contained in intercepted telecommunications.

is admissible in proceedings for an offence under this Act as evidence of the truth of its contents and where it contains hearsay, it shall be corroborated.

57. (1) A request for the provision of subscriber information under this section in connection with a criminal matter may be made by an agency or authority competent to make the request under the laws of a foreign State through the Central Authority of the foreign State and may be transmitted through the office of the Attorney-General to an agency or authority competent to receive the request under the laws of Nigeria.

Subscriber information.

(2) In addition to the information required by section 6 of this Act, a request under this section shall include --

- (a) the identity of the agency or authority making the request;
- (b) confirmation that it relates to a duty or function of the agency or authority making the request;
- (c) information for the purpose of locating the requested subscriber information;
- (d) one of the names, address, telephone number, e-mail address, Internet Protocol address or any similar identifier associated with the subscriber whose information is sought under this subsection; and
- (e) details of the subscriber information requested.

PART VI - REQUEST BY FOREIGN STATES FOR FORFEITURE AND
CONFISCATION OF PROPERTY

58. (1) A request under this Act may seek assistance in the identification, tracing, restraining, freezing, seizure, forfeiture and confiscation of proceeds and instrumentalities of crime believed to be within Nigeria.
- (2) In addition to the information required by section 6 of this Act, a request for assistance under subsection (1) shall also include:
- (a) details of the property in relation to which assistance is sought, including, if known, the estimated value of the property;
 - (b) the location and estimated value of the property;
 - (c) the link between the property and the offence for which the request is made;
 - (d) where applicable, a certified copy of any constraint or confiscation order, or of any other relevant court order, made in the foreign State;
 - (e) details of any third party interests in the property and any notification provided to the third party by the requesting State;
 - (f) a certificate in respect of the property; and
 - (g) any other relevant statement.
- (3) The Central Authority of a foreign State shall issue the certificate under subsection (2) (f) to confirm that -
- (a) there are reasonable grounds to believe that the whole or part of the property is located in Nigeria;
 - (b) criminal proceedings have been instituted in the foreign State for an offence connected to the property; and
 - (c) criminal investigations are in progress in the foreign State for a serious offence connected to the relevant property.
- (4) Where the Attorney-General receives a request from the Central Authority of a foreign State under subsection (1), he may direct the competent authority to apply through *ex-parte* motion to the Court for an order in relation to the request.
- (5) A certificate issued by a foreign State under subsection (3) is *prima facie* evidence of the facts stated in it without verification of the signature or official character of the person who signed the request.
- (6) In addition to the grounds of refusal specified under section 19 of this Act, the Attorney-General may refuse a request under subsection (1) if he does not receive compelling and timely evidence or the connection with proceeds of crime is of nominal value.

Request for
freezing,
seizure and
confiscation of
proceeds of
crime.

(7) The Attorney-General may –

(a) direct the imposition of provisional measures on confiscated property in accordance with the request of a foreign State but shall notify the foreign State before lifting any provisional measure to enable the foreign State give reasons if it requires the measures to be continued; and

(b) take measures to preserve property, if there are reasonable grounds to believe that the property will ultimately be subject to an order of confiscation on the basis of an arrest of a person in a foreign State or a criminal charge related to the acquisition of the property.

(8) For the purposes of subsection (4), “an order in relation to the proceeds of crime” means–

(a) an order restraining dealings with the property in respect of which there is reasonable ground to believe that it has been derived or obtained, directly or indirectly from, or used in, or in connection with, the commission of a serious offence;

(b) an order to confiscate property derived or obtained directly or indirectly from, or used in, or in connection with, the commission of a serious offence; or

(c) an order to impose a pecuniary penalty calculated by reference to the value of the property derived or obtained directly or indirectly from, or used in, or in connection with, the commission of a serious offence.

59. (1) Where the Attorney-General receives a request from the Central Authority of a foreign State for the enforcement of a restraint or confiscation order, he may if satisfied that—

(a) the order is final and not subject to review or appeal;

(b) the order is in force in the foreign State concerned; or

(c) the person against whom the order was made, has been convicted of a serious offence within the jurisdiction of the foreign State,

lodge a certified copy of the restraint or confiscation order with the Registrar of the Court for that purpose.

(2) The Registrar with whom a certified copy of the restraint or confiscation order is lodged shall, in the prescribed manner, register the order in respect of the property specified in the order.

(3) The Registrar who registers a certified copy of the restraint or confiscation order shall give written notice of its registration at the Court to the particular person against whom the order has been made.

(4) Where a person against whom the restraint or confiscation order has been made

Request for
enforcement of
Restraint and
Confiscation
orders.

is not present in Nigeria, the person shall be informed, in the manner prescribed by rules of court, of the registration of the particular order.

(5) A restraint or confiscation order registered in accordance with subsection (2), has the same effect as a restraint or confiscation order made by the Court at which it was registered and may be enforced as a judgment of the Court.

60. Where a court in Nigeria is unable, for justifiable reason, to enforce an order in accordance with the request by the Central Authority of a foreign State under section 59, the Central Authority may subsequently request the making of a similar order that is available under the laws of Nigeria.

Enforcement of alternative court orders in Nigeria.

61. (1) Where an amendment is made to a foreign restraint or confiscation order in the foreign State or after its registration in Nigeria, a copy of that amendment shall be registered in the same manner as the original order was registered.

Amendment to foreign Restraint and Confiscation orders.

(2) The amendment to a restraint or confiscation order is of no effect until it is registered in the manner specified under subsection (1).

62. The Court shall on application set aside the registration of a foreign restraint or confiscation order, if it is satisfied that the -

Setting aside of registration of foreign Restraint and Confiscation orders.

(a) order was registered contrary to a provision of this Act; or

(b) sentence or order in support of which the restraint or confiscation order was made, has been satisfied in full or has ceased to have effect.

63. (1) The Court may, in an action relating to a restraint or confiscation order pursuant to section 59, require notice to be given to a person who appears to have an interest in the property and that the person shall be added as a respondent to the application.

Interested parties and Restraint and Confiscation orders.

(2) If the Court is satisfied that the person added as a respondent to the application, has -

(a) an interest in the property which is the subject of the application, and

(b) exercised reasonable care to ensure that the property is not from the proceeds of a serious offence,

the Court shall order that the interest of that person shall not be affected by the order and the order shall also declare the nature and extent of the interest of that person.

(3) The Court may also under this section of this Act make an order for payment of damages or costs in relation to the registration of the restraint or confiscation order.

64. (1) A foreign restraint or confiscation order or an amendment to either of them may be received by means of electronic communication and registered by the Court, subject to subsection (3). (2) An electronic copy of an order under subsection (1) shall have the same effect as a duly authenticated copy of the order or its amendment. (3) Registration of an order under subsection (1) shall cease to have effect 30 days from the date of registration, unless an authenticated copy of the original order is registered.

Electronic communication of Restraint and Confiscation order.

65. Where a foreign restraint or confiscation Order is registered in accordance with section 59 (2) of this Act, the provisions of any enactment relating to the laundering of money, a terrorist act and proceeds of other related crimes shall still apply to the registered Order.

Application of enactments relating to money laundering, terrorism and other related crimes.

66. (1) The Attorney-General may enter into an administrative arrangement with the Central Authority of a foreign State for the reciprocal share – out with that foreign State of the whole or a part of the property that is realised in the foreign State or Nigeria following the execution of a request on the direction of the Attorney-General – (a) for the confiscation of property located in the foreign State, or (b) for the enforcement of a foreign restraint or confiscation order.

Reciprocal sharing of confiscated property.

- (2) Subject to any other enactment, the share – out of confiscated property under this Act, shall vest in Nigeria free from any right, interest or encumbrance of a person, except a right, interest or encumbrance which-

(a) is held by a purchaser in good faith for valuable consideration without notice, or

(b) is not otherwise void under any provision of this Act.

- (3) Where Nigeria disputes the claim of a person who holds an encumbrance to which the property is subject, the Attorney-General shall apply to the Court to determine the issue.

- (4) The vesting of property in Nigeria shall take effect without a transfer, conveyance, deed or other instrument and the property shall be registered by the authority empowered to do so in the prescribed manner.

67. (1) Subject to this Act, the laws of Nigeria shall apply to the determination of-

(a) disposal of property confiscated or obtained as a result of the enforcement of a fine, and

(b) the circumstances for the release of property which is the subject of a restraint or confiscation order under this Act.

Disposal or release of property.

- (2) Subject to section 66 of this Act, the proceeds of crime obtained through a court order under section 58 (4) of this Act or the equivalent of those proceeds may be-
- (a) returned to Nigeria;
 - (b) returned to the legitimate owner; or
 - (c) shared with the foreign State concerned in accordance with the proportion that Nigeria, in consultation with the foreign State, considers appropriate in the circumstances.
- (3) Where the Attorney-General approves the request of a foreign State to return confiscated property to that foreign State, the Attorney-General shall-
- (a) take the necessary measures to enable any appropriate authority to return the property to the foreign State;
 - (b) where necessary, waive any requirement that is likely to impede the return of confiscated property which is the source of embezzled public funds or laundered embezzled public funds;
 - (c) where necessary, waive any requirement that is likely to prevent the return of confiscated property if the foreign State-
 - (i) establishes prior ownership of the confiscated property, or
 - (ii) recognises that damage to the foreign State is likely to occur if the property is not returned to the foreign State.
- (4) The Attorney-General shall, in considering a request for the return of property to a foreign State, take into account the need to -
- (a) return the property to its legitimate owner; and
 - (b) compensate victims of the crime.
- (5) The Attorney-General may deduct expenses incurred in investigations, prosecution or judicial proceedings that led to the return or disposition of confiscated property.

PART VII - USE OF EXHIBITS AND PRODUCTION OF JUDICIAL OR
OFFICIAL RECORDS

68. (1) The Central Authority of a foreign State may request for assistance to obtain an exhibit admitted in evidence in a proceeding in respect of a serious offence in a court in Nigeria. Use of exhibits abroad.
- (2) Where the Attorney-General approves the request, he shall, after giving reasonable notice to the parties to the proceeding, apply to the court that has possession of the exhibits for an order to release the exhibit on loan ("Loan Order").
- (3) The application shall -
- (a) contain a description of the exhibit requested for;
 - (b) state the reasons for the request and a description of tests that are to be performed on the exhibit and the location where the tests will be performed;
 - (c) designate a person or class of persons to whom the exhibit is to be given; and
 - (d) specify a period of time within which the exhibit shall be returned.
69. (1) Where the court to which an application is made under section 68 (2) of this Act is satisfied that the Central Authority of the foreign State which has requested for an exhibit to be forwarded to it for a fixed period, has agreed to comply with the terms and conditions that the Court proposes to include in the Loan Order, the Court may make the Loan Order, after having considered representations of the persons to whom notice of the application was given in accordance with section 69 (2) of this Act. Loan Order for the use of exhibits outside Nigeria.
- (2) The Loan Order shall -
- (a) contain a description of the exhibit;
 - (b) direct the person who has possession of the exhibit to deliver it to the person designated in the order or who is a member of the class of persons designated;
 - (c) contain a description of authorised tests to be performed on the exhibit and a statement of the location for the performance of the test;
 - (d) indicate the location to which the exhibit may be moved;
 - (e) specify conditions for the preservation of the exhibit; and
 - (f) specify the period of time within which the exhibit shall be returned.
- (3) The Loan Order may include terms and conditions that the court may consider necessary.
- (4) The Court may vary a Loan Order made under this section.

- (5) A copy of the Loan Order made or varied shall be forwarded by the Attorney-General to the person who had possession of the exhibit when the Loan Order was made.

70. The burden of proving that an exhibit forwarded to the Central Authority of a foreign State pursuant to a Loan Order made under section 69 (1) of this Act, and returned to Nigeria - Burden of proof.

(a) is not in the same condition as it was when the Loan Order was made, or

(b) was tampered with after the Loan Order was made,

is on the party who makes that allegation and, in the absence of proof to the contrary, the exhibit shall be considered to have been in the continuous possession of the Court that made the Loan Order.

71. (1) Where the Attorney-General approves the request by the Central Authority of a foreign State in relation to the production of a judicial or official record, he shall, after giving reasonable notice to the person or authority concerned, apply to the Court for an order to execute the request. Request to produce judicial or official records.

(2) The application shall -

(a) specify the type and description of judicial or official record required;

(b) state the reasons for the request;

(c) designate a person or authority to be responsible for and have custody of the record; and

(d) specify the period of time within which the document shall be returned.

(3) For the purpose of this section and section 72 of this Act-

(a) "judicial record" means a judgment, an order or a decision of a court and any other document held by judicial authorities; and

(b) "official record" means a document held by a Ministry, Department or Agency of the Government or by a prosecution authority.

72. (1) Where the Court to which an application is made under section 71 (1) of this Act is satisfied that the Central Authority of the foreign State has - Court order to produce judicial or official records.

(a) requested a judicial or an official record to be sent to it for a fixed period; and

(b) agreed to comply with the terms and conditions that the court proposes to include in the order, the Court may, after having considered the representations, if any, of the persons to whom notice of the application was given under section 71 (1) of this Act, make the relevant order and cause the Registrar of the Court to notify the Central

Authority of the foreign State through the Attorney-General.

(2) The order shall –

- (a) specify the type and description of the judicial or official record;
- (b) order the person or authority in possession of the judicial or official record to deliver it to the person or authority designated in the order;
- (c) specify the period of time within which the judicial or official record shall be returned; and
- (d) indicate any condition for the safe custody of the judicial or official record.

(3) The Attorney-General shall, as soon as practicable after notification, request the appropriate person, body or authority to make available copies of the judicial or official records which are –

- (a) publicly available; or
- (b) not publicly available, subject to the conditions that apply to their provision under the laws of Nigeria.

73.

(1) Where compliance with a request under this Act involves the transmission of material to a foreign State, the Attorney-General may –

- (a) transmit the documents, records, items or other materials subject to the terms and conditions prescribed in paragraph (c) of this subsection;
- (b) postpone the transmission of the material if it is required for proceedings in Nigeria; or
- (c) require the foreign State to agree to terms and conditions necessary to protect the interest of any third party in respect of the material designated for transmission and may refuse to transmit the material pending the agreement.

Transmission and return of documents, records, items or other material to and from Nigeria.

(2) Where the Attorney-General postpones the transmission of material, he shall provide the Central Authority of the foreign State with a certified copy of the relevant document or record pending the transmission of the original.

(3) Where the Attorney-General requires the foreign State to agree to terms and conditions under subsection (1), he may refuse to effect the transmission pending the required agreement.

(4) Where any document, record or property is transmitted to a foreign State in compliance with a request under this Act, it shall be returned to Nigeria when it is no longer required in connection with the criminal matter specified in the request unless the Attorney-General has indicated that its return is no longer necessary.

(5) The Attorney-General shall authenticate any material that is to be transmitted

to a foreign State.

- (6) For the purposes of this section, "material" includes a document, record, item, article or thing.

PART VIII – ADMISSIBILITY IN NIGERIA OF EVIDENCE OBTAINED OUTSIDE NIGERIA

74. (1) Notwithstanding the provisions of the Evidence Act –

- (a) a record or a copy of a record, or
- (b) an affidavit, a certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, which is forwarded to the Attorney-General by the Central Authority of a foreign State in accordance with a request of Nigeria,

Foreign records, items, etc.

Act No. 13, 2011.

is admissible in evidence in a proceeding in Nigeria irrespective of the fact that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

- (2) To determine the probative value of a record or a copy of the record admitted in evidence under this Act, the Judge may –

- (a) examine the record or a copy of the record; and
- (b) receive evidence orally or by affidavit, including evidence as to the circumstances in which the information contained in the record or copy of the record was written, recorded, stored or reproduced, and draw a reasonable inference from the form or content of the record or copy of the record.

- (3) Notwithstanding the provisions of the Evidence Act –

- (a) an item or article; and
- (b) an affidavit, certificate or other statement pertaining to the item or article made by a person in a foreign State as to the identity and possession of the item or article from the time it was obtained until it was forwarded to the Attorney-General by the Central Authority of the foreign State in accordance with a request by Nigeria,

Act No. 13, 2011.

is admissible in evidence in a proceeding in Nigeria notwithstanding that the affidavit, certificate or other statement pertaining to the item or article contains hearsay or a statement of opinion.

75. An affidavit, certificate, deposition, record of evidence or other statement in section 74 of this Act shall, in the absence of evidence to the contrary, be proof of statements contained in the document, if it is –

Authentication of documents.

- (a) purported to be signed or certified by a Judge or Magistrate, or to bear the stamp or seal of a Minister,

government department or other competent authority; or

- (b) verified by the oath of a witness or public officer of the foreign State from which the document or material emanates.

76. Unless otherwise determined by the Court, a record, copy of record, an item, article, affidavit, certificate or other statement under sections 77 and 78 of this Act shall not be received in evidence in proceedings before the Court unless –

Requirements of notification for the admissibility of foreign documents and items.

- (a) the party who intends to produce it has given to the party against whom it is intended to be produced seven working days notice of that intention accompanied with a copy of the record, affidavit, certificate or other statement; and
- (b) in the case of an item or article, the party who intends to produce it has made it available for inspection by the party against whom it is intended to be produced during the subsequent five working days following a request by him that it be made available.

77. The service of a document in a foreign State may be proved by the affidavit of the person who served it.

Proof of service abroad.

78. (1) Subject to subsection (2), a document forwarded to the Attorney-General by a foreign State in accordance with a request by Nigeria is privileged and a person shall not disclose to an unauthorized person the –

Confidentiality and limitation on use of information and evidence.

- (a) document or its purpose, or
- (b) whole or part of the contents of the document,

except in compliance with the conditions for which it was forwarded and for the purpose of giving evidence.

(2) A person in possession of a document is not required, except as provided under this Act, to –

- (a) give evidence relating to information that is contained in the document; or
- (b) produce the document.

(3) Except as otherwise required by this Act in respect of the execution of a request by a foreign State for mutual legal assistance, a person shall not disclose the –

- (a) fact that the request has been received; or
- (b) content of the request.

(4) A person shall not use an item or article obtained from a foreign State following a request made by the Attorney-General under this Act, for the purposes of an

investigation or a proceeding other than the investigation or proceeding disclosed in the request, unless the Attorney-General, after consultation with the foreign State, consents to the use.

- (5) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not exceeding N1,000,000 or imprisonment for a term of not exceeding two years, or to both.

PART IX - SPECIAL PROVISIONS ON COOPERATION

79. (1) The Attorney-General may disclose to the Central Authority of a foreign State information in possession of a competent authority in Nigeria if the disclosure -
- Special
cooperation
with a foreign
State
- (a) is likely to assist in carrying out any investigation, prosecution or judicial proceeding in the foreign State;
 - (b) may lead to a request for assistance by the foreign State; or
 - (c) may lead to the tracing, freezing or confiscation of proceeds of crime.

- (2) Where the information is disclosed, the Attorney-General may impose conditions on the use of the information and the person who receives the information shall comply with the conditions.

80. (1) In order to give effect to a request for assistance under this Act, the Attorney-General shall, with the consent of the President, enter into an administrative arrangement with the Central Authority of a foreign State for assistance in the conduct of investigations into a crime by an authorised officer within Nigeria under a covert or false identity, or through covert electronic surveillance.
- Covert
investigation.

- (2) The arrangement referred to in subsection (1) shall have regard to the laws and procedures used in Nigeria and shall -

(a) indicate the duration of the covert investigation or surveillance;

(b) provide in detail the conditions of the covert investigation;

(c) provide for the monitoring and preservation of the product of covert investigation; and

(d) indicate the designation of the officers concerned.

- (3) The Attorney-General and the Central Authority of the foreign State shall ensure that -

(a) the covert investigation is conducted and supervised under the strictest confidentiality; and

(b) security is provided for the officers acting under the covert or false identity.

- (4) Without limiting subsection (1), a request made under the arrangement entered into under that subsection may include the use of a tracking device.

81. (1) The Attorney-General may establish a joint investigation team with the Central Authority of a foreign State for a fixed period to carry out criminal investigations within and outside Nigeria, in order to give effect to a request for assistance under this Act. Joint investigation.

- (2) A joint investigation team shall consist of such members and for such purposes as may be specified in the agreement, including where –

- (a) investigations into a serious offence are complicated and demanding, and have a link with a foreign State; or
- (b) the conduct of investigations into a serious offence by a foreign State necessitate the coordinated and concerted action of the competent authorities of Nigeria.

- (3) A joint investigation team established in Nigeria shall operate under the following general conditions –

- (a) there shall be a team leader who shall be a representative of the competent authority authorised to participate in the criminal investigation, and act in accordance with the laws of Nigeria;
- (b) the members of the team shall operate under the leadership of the team, and take into account the conditions set out by their own authorities; and
- (c) the team shall carry out investigative measures which have been approved by the Attorney-General.

- (4) The Central Authority of a foreign State in which a joint investigation team is established or the Attorney-General, if the team is established in Nigeria, is responsible for making the necessary organisational arrangements for the operations of the team.

- (5) Where a joint investigation team requires assistance from a foreign State, the Attorney-General may make the relevant request on behalf of the team in accordance with the relevant agreement.

82. (1) The Attorney-General and the Central Authority of a foreign State shall consult at the request of the Attorney-General or Central Authority of the foreign State in respect of a matter under this Act. Consultation with foreign States.

- (2) Where criminal proceedings are likely to be initiated or are pending in Nigeria and in a foreign State against the same person in respect of the same conduct, the Attorney-General and the Central Authority of that foreign State shall consider the appropriate venue for the proceedings to take place in the interests of the proper administration of justice.

- (3) In considering the appropriate venue, the Attorney-General and the Central Authority of the foreign State shall take into account –

- (a) the location of the accused person;

- (b) the location, protection of other interests of witnesses and third parties;
- (c) the interests of any victim;
- (d) the location of documents, exhibits and other relevant materials;
- (e) the sanctions available in case of conviction;
- (f) the ability to address sensitive or confidential information or material;
- (g) possible delays;
- (h) possible problems in respect of obtaining evidence;
- (i) resources and cost;
- (j) confiscation and proceeds of crime; and
- (k) any other matter of public interest and national security.

83. (1) Where the Attorney-General is of the opinion that assistance may be offered to a foreign State for the purpose of a criminal investigation without a request from the foreign State, the Attorney-General shall notify the Central Authority of that foreign State, stating the reasons, for the intended purpose of the assistance. Voluntary assistance.

(2) The notification to offer assistance shall—

- (a) indicate the authority responsible for the assistance;
- (b) specify the criminal conduct under investigation; and
- (c) specify the expected duration of the assistance.

(3) The notification shall also require the foreign State to —

- (a) confirm or decline the offer of assistance; or
- (b) enter into an administrative arrangement for the purpose of the assistance, within 90 days after the receipt of the notice.

84. (1) The Attorney-General may delegate in writing his powers under this Act to any authorised person or competent authority. Delegation of power by the Attorney-General.

(2) A delegation under this section does not preclude the Attorney-General himself from exercising at any time any of the powers so delegated.

85. (1) The Attorney-General may make such regulations as are necessary or expedient to give full effect to, or for carrying out, the provisions of this Act. Regulations.

(2) Regulations made under subsection (1) may provide for the—

- (a) making, receiving and refusal of requests;

- (b) form, content and conditions for grant of requests;
- (c) confidentiality of requests;
- (d) transfer of detained persons to Nigeria;
- (e) gathering of evidence and investigative measures;
- (f) interception of telecommunication in Nigeria and the preservation of communication data;
- (g) interception of items in the course of carriage by a postal service;
- (h) seizure and confiscation of the proceeds of crime;
- (i) disposal, release and sharing of confiscated property;
- (j) transfer of criminal proceedings from Nigeria to a foreign State; and
- (k) taking of any other action necessary or expedient for the effective implementation of this Act.

86. (1) The Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act, Cap. M24, Laws of the Federation of Nigeria, 2004 is repealed. Repeal and transitional provisions.
- (2) Without prejudice to section 6 of the Interpretation Act, the repeal of the Act specified in subsection (1), does not affect anything done under or pursuant to the Act.
- (3) An agreement or arrangement in existence under the repealed enactment 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.
- (4) Any subsidiary legislation in force at the commencement of this Act shall continue to have effect with such modifications as are necessary to give effect to the provisions of this Act.

87. (1) In this Act — Interpretation.
- “agreement” means a treaty, convention or other international agreement that is in force, to which Nigeria is a party and contains a provision relating to mutual assistance in criminal matters;

“appropriate authority” means —

- (a) in section 43 of this Act, any other competent authority apart from the Attorney-General empowered by law to give commands, enforce obedience, take action or make final decisions;
- (b) in section 48, the Minister for telecommunications; and
- (c) in section 52, the Minister responsible for postal matters.

“ancillary criminal matter” means the —

- (a) restraining of dealing with, or the seizure, forfeiture or confiscation of property in connection with a serious offence or a serious offence in a foreign State, as the case may be; or
- (b) obtaining, enforcement or satisfaction of a forfeiture order or a foreign forfeiture order, as the case may be.

"appeal" includes proceedings by way of discharging or setting aside of a judgment and an application for stay of execution;

"article" includes material;

"assistance" means mutual assistance in criminal matters under this Act;

"authorised person" means any officer of the office of the Attorney - General or officer of a competent authority or law enforcement officer;

"Attorney-General" means the Attorney-General of the Federation and Minister of Justice;

"Central Authority" means, in the case of-

- (a) Nigeria, the Attorney-General as designated under section 5 of this Act; and
- (b) a foreign State, a person or authority designated under the laws of that foreign State, to be responsible for the transmission, receipt and handling of requests for assistance under this Act.

"communications" includes telecommunications and the transmission of an item through the public postal service;

"communications data" means -

- (a) traffic data;
- (b) subscriber information; and
- (c) information that is not traffic data or subscriber information held or obtained by a service provider of a postal service or a telecommunications service which relates to the provision of that service.

"competent authority means -

- (a) department or agency of government authorised by the Attorney-General;
- (b) an organisation, agency or body of a foreign State authorised by the Central Authority of the foreign State, to handle, submit or receive mutual assistance request under this Act.

"computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, and includes a programme

suitable to cause a computer system to perform a function;

"computer system" means a device or a group of inter-connected or related devices, including the internet, one or more of which, pursuant to a programme, performs automatic processing of data;

"confiscation or forfeiture order" means an order issued by a court to deprive a convicted person of—

- (a) the proceeds of unlawful activity;
- (b) property that represents the proceeds of unlawful activity;
- (c) an instrumentality of unlawful activity; or
- (d) a sum of money that represents his benefits from unlawful activity.

"content data" means the substance of a communication, or the message or information that is being conveyed by a telecommunication, whether or not an interpretation, a process, mechanism or device needs to be applied or used to make the meaning of the communication, or the message or information intelligible;

"Court" means the Federal High Court, except where otherwise indicated;

"covert electronic surveillance" means covert surveillance carried out by or with an electronic surveillance device which transmits, records or otherwise captures audio product, visual images or location or position information, but does not include covert surveillance using a device designed primarily for the interception of telecommunications;

"covert surveillance" means surveillance carried out in a manner that is calculated to ensure that the subject of the surveillance is not aware that the surveillance is or may be taking place;

"criminal activity" means an act engaged in by a person which constitutes an offence—

- (a) in Nigeria;
- (b) by reason of a foreign classification of crime under an international agreement which is binding on Nigeria; or
- (c) in a foreign State with which Nigeria has a mutual legal assistance agreement or other arrangement.

"criminal investigation" means an investigation into an offence;

"criminal matter" means proceedings or investigations relating to—

- (a) the restraint or freezing of property that may be confiscated or forfeited by a Court, or that may be needed to satisfy a pecuniary penalty imposed in respect of an offence;
- (b) the confiscation or forfeiture of property by a Court in respect of an offence; and

- (c) the imposition or recovery of a pecuniary penalty in respect of an offence.

"criminal proceedings", in relation to an offence, means --

- (a) a trial of a person for the offence; or
- (b) any proceeding to determine whether any person should be tried for an offence.

"data" means representation in any form of information or concept;

"dealing", in relation to any property, includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property, whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise;
- (c) disposing of or converting the property;
- (d) bringing the property into or removing the property from Nigeria;
- (e) using the property to borrow money, or as security, whether by way of a charge, mortgage or pledge or otherwise; or
- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt.

"document" means --

- (a) a record of information, including anything-
 - (i) on which there are writings, marks, figures, symbols and perforations for interpretation, and
 - (ii) from which sounds, images or writings can be produced with or without the aid of anything else;
- (b) a map, plan, drawing, photograph or similar thing.

"dual criminality" means conduct which constitute an offence under the laws of Nigeria and of a foreign State;

"embezzled public funds" means public funds which are dishonestly or fraudulently withheld for the purpose of conversion by one or more individuals to whom such funds have been entrusted, to be held or used for other purposes;

"laundered embezzled public funds" means the embezzled public funds which are laundered in order to conceal their true source or origin;

"essential public interests" includes sovereignty, security, national interests, public order and an excessive burden on the resources of Nigeria;

"foreign law immunity certificate" means a certificate given, or a declaration made, by a foreign State or under the law of a foreign State, certifying or declaring that, under the law of that State, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required to —

- (a) answer a specified question; or
- (b) produce a specified thing.

"foreign organisation" includes an international criminal tribunal and an international organisation;

"foreign State" includes each Commonwealth member State being a State or political sub-division of a State, a province, a colony, dependency, possession, protectorate, condominium, trust territory or a territory which fall under the jurisdiction of that State, that is a party to an agreement with Nigeria and a State and foreign organisation designated under section 3 (1) of this Act;

"gateway" means a hardware or software set up that translates between two dissimilar protocols to enable the passage of data;

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

"in writing" includes e-mail, facsimile or other agreed form of electronic transmission with approved levels of security and authentication in place;

"instrumentalities of crime" means any property-

- (a) used in, or in connection with, the commission of an offence; or
- (b) intended to be used in, or in connection with, the commission of an offence or unlawful activity, irrespective of where the property is located or the offence is committed.

"items subject to legal privilege" means —

- (a) communication between a legal practitioner and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communication between a legal practitioner and his client or any person representing his client, or between the legal practitioner or his client or the person representing his client and any other person, made in connection with, or in contemplation of, judicial proceedings and for the purposes of those proceedings; and
- (c) items enclosed with or referred to in the communication mentioned in sub — paragraphs (a) and (b) of this definition and made —

- (i) in connection with the giving of legal advice, or
- (ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or thing held with the intention of furthering a criminal purpose.

"intercept material" means any document, record or recording obtained by a State as a result of the interception of telecommunications conducted pursuant to the laws of that State, except where the interception was authorised for the purposes of complying with a request under section 48 of this Act;

"interception of telecommunications" means the listening to, recording, opening, acquiring, seizing, interrupting, suppressing, stopping, disrupting, copying, destroying or viewing of communication conveyed by means of telecommunications either –

- (a) between its point of origin and its point of destination while it is in transit; or
- (b) contemporaneously with the communication's transmission at the point of origin or its reception at the point of destination, and includes the content, data and any available transmission data.

"Loan Order" means an order made by a court under section 69 (1) of this Act;

"material" includes any book, document or other record in any form, and any container or article relating to it;

"military offence" means an offence within the meaning of the Armed Forces Act, 2004;

"offence", means an offence under the laws of Nigeria and includes an offence within the meaning of the relevant agreement;

"police officer" means an officer in the Nigeria Police Force;

"postal item" means any letter, package or other item which is being or will be carried by a postal service;

"postal service" means a service, whether public or private, which –

- (a) consists of the collection, sorting, conveyance, distribution and delivery of postal items; or
- (b) is offered or provided for the purpose of making available or facilitating a means of transmission from place to place of postal items.

"premises" includes the whole of or part of a structure, building, aircraft or vessel;

"preservation of computer data" means the protection of computer data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate, but excludes

communications data that is stored on a highly transitory basis as an integral function of the technology used in its transmission and which already exists in a stored form;

"proceedings" means a procedure conducted by or under the supervision of a Judge or Magistrate or judicial officer, in relation to an alleged or proven offence or property derived from that offence, and includes an inquiry, investigation, preliminary or final determination of facts;

"proceeds of crime" includes any property, benefit or advantage that is wholly or partly obtained, derived or realised directly or indirectly through the commission of a criminal act or omission;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes legal documents or instruments evidencing title to, or interest in, the assets;

"record" means a material or thing on which data is recorded and which is capable of being read or understood by a person, computer system or other device;

"request" means a request for mutual legal assistance under this Act;

"serious offence" includes –

- (a) participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, smuggling of persons, rape, defilement, illicit trafficking in stolen and other goods, bribery and corruption, serious fraud, counterfeiting and piracy of products;
- (b) murder, grievous bodily harm and armed robbery;
- (c) any other offence against the laws of Nigeria where –
 - (i) the maximum penalty for the offence is death, or
 - (ii) the minimum term of imprisonment is not less than one year; and
- (d) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraph (a) or (b) of this definition;

"serious offence in a foreign State" means any offence classified as a serious offence under the laws of a foreign State;

"service provider" means –

- (a) public or private body licensed to provide its customers the ability to communicate by means of a computer system; or
- (b) a body licensed to process or store communications data on behalf of a communication service provider or customer of that service, which is authorised by the Attorney-General to intercept telecommunications in accordance with this Act.

"share-out" means the proportionate sharing of confiscated property;

"stored communication" means the content data which is no longer in the course of transmission and which has been stored in a form allowing retrieval;

"subscriber information" means any information held by a postal or telecommunications service provider relating to the name, address, telephone number, e-mail address, internet protocol address or any similar identifier associated with a subscriber to any postal or telecommunications service;

"surveillance" includes -

- (a) monitoring, observing or listening to persons, their movements, conversations or other activities or communications;
- (b) recording anything monitored, observed or listened to in the course of the surveillance; or
- (c) activities in paragraphs (a) and (b) of this definition with the assistance of a surveillance device;

"telecommunication" means the emission, transmission or reception of signs, signals, writing, images, sounds or intelligence of any nature by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

"telecommunication service" means a communication provided to a person for the transmission and receipt of telecommunications, which enables communications to be transmitted or received over a telecommunications system operated by a service provider;

"telecommunications system" means a system which exists for the purpose of transmitting and receiving telecommunications;

"thing" includes material, items, articles, objects, matters, substances, entities, mechanisms, devices or machines;

"traffic data" means any information -

- (a) that is attached or associated with communication by means of which the communication has been, is being or may be transmitted or received; or
- (b) which can be established by any person using any postal or telecommunication service.

"transmission data" means data that -

- (a) relates to the telecommunication functions of dialing, routing, addressing or signaling;
- (b) is transmitted to identify, activate or configure a device, including a computer program, in order to establish or maintain access to a telecommunication service for the purpose of enabling a communication, or is generated during the creation, transmission or reception of a communication and identifies or purports to identify the type, direction, date, time, duration, size, origin,

destination or termination of the communication; or

- (c) does not reveal the substance, meaning or purpose of the communication.

"a criminal matter arises in a foreign State" means if the Central Authority of that foreign State certifies that criminal or forfeiture proceedings have been instituted in a court exercising jurisdiction in that State or that there is reasonable cause to believe that an offence has been committed in respect of which such proceedings could be so instituted;

"a reference to a foreign State" includes a reference to –

- (a) a territory of that foreign State; and
- (b) a ship or aircraft of, or registered in, that foreign State; and
- (c) "a reference to the law of a foreign State" includes a reference to the law in force in any part of that foreign State;

(3) "judicial proceedings that are criminal proceedings" means a proceedings –

- (a) instituted in a foreign State when a person is produced and charged in court with a serious offence in a foreign State;
- (b) concluded on the occurrence of the –
 - (i) discontinuance of the proceedings,
 - (ii) acquittal of the defendant,
 - (iii) quashing of the defendant's conviction for the offence,
 - (iv) grant of a pardon in respect of the defendant's conviction for the offence,
 - (v) court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a foreign Forfeiture order,
 - (vi) satisfaction of a foreign forfeiture order made in the proceedings, whether by payment of the amount due under the order, by the defendant serving imprisonment in default, by the recovery of all property liable to be recovered or otherwise.

88. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 2018.

Citation.

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THIS BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.


MOHAMMED ATABA SANI-OMOLORI
CLERK TO THE NATIONAL ASSEMBLY

20th DAY OF MAY, 2019

Schedule to the Mutual Assistance in Criminal Matters Bill, 2018

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Mutual Assistance in Criminal Matters Bill, 2018.	An Act to make provision for Mutual Assistance in Criminal Matters under an agreement or other arrangement between Nigeria and other foreign states; and for related matters.	This Bill facilitates the provision and obtaining by Nigeria of international assistance in criminal matters, including the provision and obtaining of evidence and things, the making of arrangements for persons to give evidence or assist in criminal investigations, the recovery, forfeiture or confiscation of property in respect of offences, the restraining of dealings in property or the freezing of assets that may be recovered, forfeited or confiscated in respect of offences, the execution of requests for search and seizure, the location and identification of witnesses and suspects, the service of documents.	30 th May, 2017	24 th July, 2018

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

MOHAMMED ATABA SANI-OMOLORI

28th Clerk to the National Assembly
Day of May, 2019

MUHAMMADU BUHARI, GCFR

President of the Federal Republic of Nigeria
20 Day of May, 2019

I ASSENT

June