



RESETTING NIGERIA'S FISCAL FIRMAMENT

**Highlights of the Fiscal
Responsibility Act
(Amendment) Bill, 2019**



A Bill for an Act to provide for prudent management of the Nation's Resources, ensure long Term Macro-Economic stability of the National Economy, secure greater accountability and transparency in Fiscal operations within the Medium Term Fiscal Policy Framework and the establishment of the Fiscal Responsibility Commission to ensure the promotion and enforcement of the Nation's Economic objectives; and for related matters

SILVER LINING IN A RECESSION

Nigeria slid into a second economic recession in four years, no thanks to the coronavirus pandemic that brought the global economy to its knees. The struggle to get out of the woods is a tough one that calls not just for hard decisions but for an urgent reset of the country's fiscal firmament. The Fiscal Responsibility Act (Repeal and Reenactment) Bill, 2019 before the National Assembly not only provides a most veritable tool for the reset but also presents a sturdy framework for macro-economic stability and attainment of a prudent and prosperous economy hinged on best practices of transparency and accountability.

The Fiscal Responsibility Act, 2007, which came to life on 30th July, 2007, enabled the establishment of the Fiscal Responsibility Commission (FRC) to enforce the letters of the Act. The Act

PREAMBLE

provides a concise and focused legislative framework that regulates fiscal conduct, imposes limitations on government spending, and prohibits certain fiscal activities, such as some kinds of debt securities and irresponsible borrowing by various tiers of the government. However, certain inherent loopholes, weaknesses and errors have hampered effective implementation of the Act.

These include lack of clear offences regime exacerbated by lack of sanctions; and inadequate funding, both critical factors that have greatly hampered implementation of the Operating Surplus measure which is one aspect of the mandates of the Commission that has added great value to governance through generation of independent revenue to government. Notably, the Commission has caused over N1.7 trillion to be remitted to the Consolidated Revenue Fund (CRF) even with all the lapses in the Act. Yet Government has invested less than N5.8bn in the operations of the Commission since inception 11 years ago in Recurrent, Personnel and Capital costs. Imagine how much more would have accrued to Government coffers had these lapses been addressed before now. Nigeria would probably not have gone into recession even in the face of the pandemic. Certainly, the revenue crisis besetting the economy would not have happened. This is the time to fix the lapses

PREAMBLE

and we believe that a holistic remedy can only come through a substantial amendment of the FRA, 2007.

It is the Commission's firm belief that the proposed amendments to the F.R.A, 2007, as graphically articulated in this compendium, will greatly improve the potency and functionality of the Fiscal Responsibility Act as well as the structure and performance of the Commission.



Victor Muruako, Esq
Acting Chairman, FRC

COMMITMENT

We are committed to passage of FRA amendment bill – Senate Finance Committee

The Senate Committee on Finance has expressed commitment for the passage of the Fiscal Responsibility Act (Amendment) Bill. Chairman of the Committee, Distinguished Senator Solomon Olamilekan Adeola, gave the commitment when the management team of the Fiscal Responsibility Commission (FRC) paid an advocacy visit to the Committee. Distinguished Sen. Adeola said the Committee is working assiduously towards the passage of the bill since it was referred after passing second reading in senate plenary. He noted that the leadership of the Senate is keen on the bill due to its potential to empower the FRC to efficiently implement the provisions of the Fiscal Responsibility Act. According to him, the National Assembly believes that an efficient and impactful FRC would be helpful in advancing the oversight function of the legislature, adding that senators and members of the House of Representatives will have no difficulties throwing their weight behind the bill. The FRC team was led by the Acting Chairman, Mr. Victor Muruako while members of the Senate Committee on Finance who received them were the Deputy Chairman, Distinguished Sen. Isa Jibril; and Distinguished Senators Uche Ekwunife, Gershom Bassey, Opeyemi Bamidele and Danladi Sankara.



**Distinguished Sen.
Solomon Adeola**

*Chairman,
Senate Committee on Finance*

RATIONALE FOR THE BILL

The Bill to repeal and reenact the Fiscal Responsibility Act, 2007, is premised primarily on the need to give teeth to the Fiscal Responsibility Commission (FRC) to empower and enable it enforce the spirit and letters of the Act.

As indicated in its long title, the Act contains provisions that present some kind of silver bullets that, if faithfully implemented, can block wastages, check corruption and instill prudence, transparency and accountability in the management of public finance in Nigeria. The amendment process fortunately, also offer opportunity to strengthen certain provisions of the Act that advance the fulfillment of its objectives. Specific reference is in this instance made

RATIONALE FOR THE BILL

to the expansion of the powers of the Commission and empowering it to command compliance with the Act.

The urgency of these amendments is underscored by the current state of affairs of the country's economy, which is in a second recession in four years. It is imperative to note that the salient proposals contained in the Bill present antidotes to the quagmire.



THE COMMISSION

Enhanced powers to bark and bite

The amendment bill enhances the powers of the Commission beyond its current toothless bulldog status to one that enables it to bark and bite. The following specific highlights are germane:

- Request for and compel disclosure of information relating to public revenues and expenditure
- Conduct investigations to ascertain violations of the Act
- Access to inspect, search and seize documents and records deemed necessary for the performance of the functions of the Commission; and as required as evidence pursuant to the ex-parte orders of a competent court.



H i g h l i g h t s O f T h e B i l l

Enhanced powers to bark and bite

- Receive statements and attestations on oath
- Monitor and enforce the remittance of revenue by all corporations and government agencies into the Consolidated Revenue Fund and publish same at the commencement of every fiscal year
- Collaborate and cooperate with any Law Enforcement or Anti Corruption Agency, including the Nigerian Police, EFCC, ICPC in the performance of any of the functions of the Commission
- Review or verify the financial records of any government agency, corporation, ministry, department, extra-ministerial department, etc
- Make rules and issue guidelines for implementation of the FRA
- Play more significant roles in the annual budgetary process
- Undertake the prosecution of offenders or violators of the FRA

Enhanced Functions

Vis-à-vis its increased potency, the amendment bill also enhances the functions of the Commission in the following specific ways:

- * Monitor and enforce the provisions of the FRA and by so doing, promote the economic objectives of Nigeria contained in section 16 of the 1999 Constitution (As Amended)
- * Disseminate such standard practices including international good practice that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters
- * Undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public.
- * Enforce the submission of periodic returns on revenue performance showing estimates, actual collection and remittances to the Consolidated Revenue Fund



Enhanced Functions

of the Federal Government by corporations and agencies accompanied by accurate documentary evidence of collections and remittances

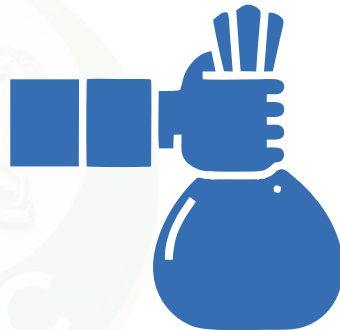
- * Ensuring that all profits or dividend payments due to the Federal Government from any privatized entity in which the Federal Government is a shareholder are duly remitted into the Consolidated Revenue Fund
- * Attend and monitor monthly monitoring meeting of all revenue collectors in collaboration with the office of the Accountant General of the Federation.
- * Monitor the operation of the Excess Crude Account and the various Funds created under the Nigerian Sovereign Investment Authority (Establishment, Etc.) Act, 2011



Funding

To cure the defect of funding gaps the Commission currently suffers, the amendment bill contains the following specific solutions:

- * Establishment and maintenance of a Fund from which shall be defrayed all expenditure incurred by the Commission
- * The Commission shall be entitled on monthly basis to 5% of the funds remitted into the Consolidated Revenue Fund of the Federal Government as Operating Surplus as cost of collection
- * Granting of financial autonomy to the Commission on the recommendation of the Minister of Finance
- * These funding buffers are necessary for independence and autonomy of the Commission and given the fact agencies and corporations put under its purview has increased from 30 to 122.



Composition, Appointment and Removal

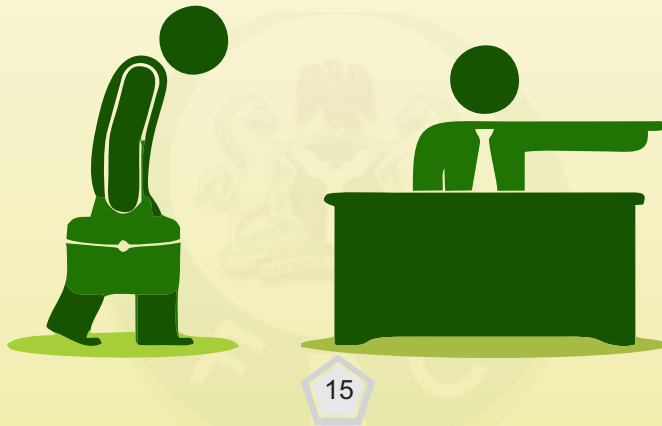
The amendment bill moves away from the current unwieldy, geopolitically-based considerations for the composition of the Commission towards more professional, technocratic and broad-based representation by providing for the following:

- Appointment of a Secretary to the Commission who shall be its head of administration
- Make only the Chairman & the Secretary full time members of the Commission, while the others, who are ex-officio, remain part-time members
- The Chairman and the Secretary of the Commission to serve a single term of five years
- Removal of a member who is convicted of a felony or any offence involving dishonesty, corruption or fraud by any court whether in Nigeria or elsewhere



Independence, Protection and Security of Tenure

- The amendment bill provides that the Commission shall be independent in the performance of its functions
- The provisions of Public Officers Protection Act shall apply to its members and staff in the discharge of their functions
- The appointment of the Secretary of the Commission, as head of its administration, shall be subject to Senate confirmation
- Removal of a member of the Commission by the President shall be supported by a simple majority vote of members of the Senate



The Council

The amendment bill seeks to establish the Fiscal Responsibility Council to comprise the Leadership of the Commission and those at the sub-national level to periodically deliberate on issues pertaining to extant fiscal policy framework and related matters.



THE BUDGETARY PROCESS

The amendment bill makes substantial proposals to improve the country's budgetary process from **preparation**, **appropriation**, and **implementation** of the annual budgets and other fiscal documents.



ADVOCACY



Acting Chairman of the FRC, **Barr. Victor Muruako** and
Chairman, Senate Committee on Finance, **Sen. Solomon
Adeola**, at a meeting in the Senate

ADVOCACY



FRC Management Team
visit to the Senate Committee on Finance



ADVOCACY

Chairman, House of Representatives Committee on Finance, **Hon. James Faleke** and Acting Chairman of the FRC, **Mr. Victor Muruako**, during an advocacy visit

ADVOCACY



Minister of Finance, Budget and National Planning, **Mrs Zainab Ahmed** and Acting Chairman of the FRC, **Mr. Victor Muruako**, during an advocacy meeting

The Medium Term Expenditure Framework (MTEF)

- * To ensure improved coordination and performance of the MTEF, the bill provides that the Minister of Finance shall be responsible for matters related thereto, including the preparation and submission of the document to stipulated authorities. This corrects the ambiguity of the current FRA which vaguely places this responsibility on the 'Federal Government'
- * The "consolidated debt profile and limit for the Federal, State and Local Governments" is made part of the information that shall be contained in the MTEF in order to make the debt profile of each tier of government evident and help in the management of the consolidated debt of the Federation
- * The bill makes public consultation in the preparation of the draft MTEF compulsory
- * The bill lists the Commission as part of the bodies from which the



The Medium Term Expenditure Framework (MTEF)

Minister of Finance shall seek input in the preparation of the MTEF; and also submit same to when approved by the Federal Executive Council

- * The bill provides the following clear timelines for preparation and approval of the MTEF:
 - The Minister shall before the end of the second quarter of each financial year present MTEF to the Federal Executive Council for consideration and approval
 - The Federal Executive Council shall, not later than the end of July of each financial year consider and approve the MTEF
 - MTEF shall be presented to the National Assembly not later than mid-August of each financial year for consideration and adoption
 - The National Assembly shall, before the last day of August each financial year, consider and approve the MTEF; and failure to so do one week after the deadline shall cause the approval to be dispensed with and the Framework shall take effect as presented

The Annual Budget

The amendment bill provides timelines for the preparation and presentation of the Annual Budget to the National Assembly, accordingly:

- The Federal Ministry of Finance, Budget and National Planning shall, not later than the end of September each financial year, present the budget for the next financial year for the consideration and approval of the Federal Executive Council
- The Federal Executive Council shall, not later than the last day of October of each financial year, approve the budget
- The National Assembly shall give priority attention to the consideration of the budget upon presentation of same to it by the President



FISCAL DISCIPLINE FOR CORPORATIONS

The amendment bill makes the following provisions relating to fiscal discipline for Government Owned Corporations and Agencies:

- * Submission of additional documents including estimated revenue breakdown into monthly collection along with their annual budget & revenue and expenditure schedules to the Minister of Finance
- * Breakdown of projected Operating Surplus into quarterly estimates to ensure fiscal accountability
- * Commit the Corporations and Agencies to taking measures to combat corruption and diversion of government revenue
- * Limit the expenditure of MDAs to not more than 75% of their gross revenue



REMITTANCE OF OPERATING SURPLUS

- * Corporations and agencies under the remit of the FRA shall remit 80% of their Operating Surplus to the Consolidated Revenue Fund of the Federal Government
- * The calculation of this surplus shall be in accordance with the template issued by the Commission
- * Any valid circular requiring certain payments into the Consolidated Revenue Fund (CRF) and evidence of compliance to said directive will be taken into cognizance in computing the actual Operating Surplus payable by the Agency or Corporation so directed by the Minister
- * The amendment bill also provides that the amount of Operating Surplus payable by each Corporation will be calibrated to depend on the nature & extent of the particular Corporation's funding from the Treasury accordingly:
 - a self-funded corporation shall limit its annual expenditure within its internally generated revenue to not more than 70% of its gross revenue and remit 30% quarterly into the CRF - a partially funded corporation shall limit its annual expenditure within its

REMITTANCE OF OPERATING SURPLUS

internally generated revenue to not more than 60% of its gross revenue and remit 40% quarterly into the CRF

- * A fully funded corporation shall remit 100% of its internally generated revenue into the CRF
- * The determination of the Operating Surplus shall take into account measures to discourage deficit results in the published Audited Financial Statement as well as incentive/positive recognition for Corporations which meet its targets



OFFENCES AND SANCTIONS

Owing to the complete absence of proper offences and penalties regime in the FRA, 2007, the Commission was crippled with respect to enforcement. Accordingly, the following offences and accompanying sanctions have been provided for in the amendment bill:

- Willful (directly or indirectly) hindrance or obstruction of the Commission or its agent from performance of functions attracts a term of not less than three (3) months imprisonment or a fine not less than **N500,000.00** or both fine upon conviction
- Provision of false information (including in documents) in



OFFENCES AND SANCTIONS

response to a request or in the performance of a function imposed by the Act attracts a term of not less than six (6) months imprisonment or fine not less than **N1,000,000.00** or both fine upon conviction

- Misleading and partial (instead of full) disclosure of information regarding functions imposed by the Act attracts a term of not less than three (3) months imprisonment or fine not less than **N500,000.00** or both upon conviction
- Refusal or failure to give information in the performance of a function imposed by the Act attracts a term of not less than one year imprisonment or a fine of not less than **N1,000,000.00** or both upon conviction
- Failure to perform, without lawful excuse, a duty imposed upon or assigned by this Act attracts a term of not less than three (3) months imprisonment or fine not less than **N500,000.00** or both upon conviction
- Any person(s) who borrows or lends or is responsible for borrowing or lending in contravention of the Act commits an offence and shall upon conviction be liable to imprisonment for a term not less than six (6) months or with a fine not less than **N1,000,000.00** or both

OFFENCES AND SANCTIONS

- Any person who under-declares public revenue generated or collected by any government institution, corporation, agency, or government owned company commits an offence and shall upon conviction be liable to refund the total amount under-declared, imprisonment for a term not less than three years or with a fine not less than 10% of the total amount under-declared, or with both fine and imprisonment
- Any person who duplicates a project or item in the` budget, or accepts and expends a grant regarding an item for which monies are appropriated, released and spent from the budget, commits an offence and shall upon conviction be liable to imprisonment for a term not less than one year or with a fine not less than **N1,000,000.00** or with both fine and imprisonment
- Any person who spends or authorizes the spending of any money collected or generated without appropriation by the National Assembly, commits an offence and shall upon conviction be



OFFENCES AND SANCTIONS

liable to imprisonment for a term not less than three years or with a fine not less than 10% of the total amount spent or with both fine and imprisonment

- Any person who transfers or spends any sum allocated for a particular project, or service in an Appropriation Act, on another project or service without approval of the National Assembly, commits an offence and shall upon conviction be liable to imprisonment for a term not less than three (3) months or a fine not less than **N500,000.00** or to both imprisonment and fine
- Assault of an officer, staff or agent of the Commission in the performance of a function under the Act attracts imprisonment for a term of two years without an option of fine; and the court shall have the power to award appropriate compensation to the staff or officer so assaulted
- Aiding or abetting of an offence under the Act attracts same sanction as the principal offender upon conviction
- Any person who violates provisions in the Act relating to remittance of Operating Surplus commits an offence and shall upon conviction be liable to imprisonment for a term not less than

one (1) year or a fine not less than **N2,000,000.00** or to both imprisonment and fine, and shall in addition, remit the full amount so outstanding

- Partial remittance of Operating Surplus funds as provided for in the Act attracts imprisonment for a term not less than six (6) months or a fine not less than **N1,000,000.00** or both, and shall in addition, remit the full amount so outstanding
- Contravention of any provision of the Act commits an offence and shall where no other punishment has been provided be liable to imprisonment for a term not less than three (3) months or a fine not less than **N500,000.00**



FORFEITURE OF PROCEEDS OF CORRUPTION

The amendment bill provides that a Federal High Court, whether under a criminal or civil action, is empowered to recover all benefits of related corrupt enrichment; and upon conviction, the offender will also forfeit all ill-acquired funds to the Consolidated Revenue Fund (CRF)



POSTSCRIPT

NASS must seize the moment

The 9th National Assembly is on the edge of a momentous breakthrough. It stands a chance to gain public applause by passing the Fiscal Responsibility Act (Repeal and Reenactment) Bill, 2019. This fiscal reset bill seeks to pull Nigeria out of the miasma of financial indiscipline; budgetary impudence; and public finance mismanagement that combined to help tip the country into a second recession in four years.

This bill, as has been aesthetically presented in the preceding pages, offers the legislature a golden opportunity to not only restore a healthy fiscal firmament for the country but also take back a lavish oversight space in furtherance of its constitutional mandate. There is no reason why members of the Senate and House of Representatives of the 9th assembly should miss this moment under the sun. It is hopeful already that the bill has gone through second reading and awaiting public hearing in the Senate.

This progressive step at the National Assembly encourages us at **OrderPaper Nigeria** to continue to offer our modest support to the Fiscal Responsibility Commission (FRC) in the drive for prudence, transparency and accountability in public finance management. In the spirit of what we stand for, **OrderPaper** will not relent in mobilizing support for the passage of the bill and eventual assent by the President. Why don't you join us?

Oke Epia

Executive Director,

Order Paper Nigeria

About OrderPaper Nigeria

OrderPaper Nigeria is the country's premier, preeminent policy think-tank and multi-platform legislative interface. The organization is founded on a vision to bridge the gap between people and parliament and is driven by a mission to be the most authoritative organization of choice and reference for parliamentary reporting, legislative analysis and public policy advisory in Nigeria.



OrderPaper

OrderPaper conceived and implements the Growth Initiative for Fiscal Transparency (GIFT) capsule of interventions in public finance management on which basis we work with the Fiscal Responsibility Commission and have contributed to the production of this document. OrderPaper also designed and deployed the ConsTrack mobile app for budget monitoring and public projects tracking.

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ABOUT FISCAL RESPONSIBILITY COMMISSION (FRC)

The Fiscal Responsibility Commission (FRC) was established by the Fiscal Responsibility Act, 2007, to ensure the implementation of its provisions. It is an agency under the presidency that is charged with a mandate to promote a transparent and accountable government financial management framework for Nigeria. The FRC has a mandate to ensure that revenue-raising policies, resource allocation decisions, and debt management decisions are undertaken in a prudent, transparent and timely fashion as provided for in the law.



The FRC performs key oversight responsibilities relating to the macroeconomic environment of the country which helps to aid the work of legislative oversight over the entire public finance architecture of the country and the economy in general.

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