

# **COURSE TITLE: CRIMINAL LAW**

## **COURSE CODE: LPB 302**

### **TOPIC: OFFENCES OF CORRUPTION UNDER ICPC AND EFCC ACTS. (PART 1**

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#### **1.0 INTRODUCTION**

Apart from the negative impacts of corruption on the society, democratic institutions and the rule of law, corruption has also been linked with other forms of crime such as organized and economic crime, including money laundering. Although the Criminal and Penal Codes contained offences against corruption, they have not been able to effectively combat the scourge. For instance, both Codes have provisions dealing with the forfeiture of proceeds of crime; they are however insufficient to deal with the full range of economic and financial crimes. New laws became necessary to deal with new crimes or those not sufficiently covered by the general criminal law and to provide for stiffer penalties for financial crimes. This led to the enactment of the Corrupt Practices and other Related Offences Act 2000 and the Economic and Financial Crimes Commission (Establishment Act) 2004, among others.

#### **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

- Understand the scope of bribery under the ICPC Act
- Explain corruption related acts prohibited by the EFCC Act

#### **3.0 MAIN CONTENT**

##### **3.1 Offences of corruption under ICPC Act**

Under the Corrupt Practices and other Related Offences Act 2000 (ICPC Act) a wide range of offences are created which cover acts of corruption that can be committed by both public and non-public officers. We shall look at some of these as follows:

##### ***a) Accepting or giving gratification***

Section 8 of the ICPC Act makes it an offence for any person to accept gratification by corruptly asking for or receiving any property or benefit, or an attempt of this. A public officer who

commits any of these acts is liable to imprisonment for seven years. The provision of section 8 is *impairi material* (i.e. the same) with that of section 98 of the Criminal Code on bribery. Section 9 of the ICPC Act cover acts of any person giving or accepting gratification through agent, by corruptly giving or procuring any property or benefit, this provision is the same as section 98A of the Criminal Code. Section 17 of the ICPC Act is on the offence of receiving gratification through agent. The section also defines what are ‘consideration’, ‘agent’ and ‘principal’. This offence attracts five years imprisonment. Section 1 of the ICPC Act has a very wide definition of the word ‘gratification’ used throughout in the Act.

***b) Acceptor or giver of gratification to be guilty irrespective of purpose not carried out***

Section 10 ICPC Act deals with any person who asks for, receives or obtains property or benefit. This provision is similar to the provision of section 98B of the Criminal Code. The difference is that under section 10 of the ICPC Act, the word ‘corruptly’ was not used to qualify the ‘asking’ or ‘receiving’. Also, section 10 of the ICPC Act only captured the provisions in section 98B(1) and excludes the one under section 98B(2) but the provision of 98B(2) is made as section 11 of the ICPC Act. Therefore, on sections 8, 9, 10 and 11 of the ICPC Act, the analysis made under bribe above as regards sections 98, 98A and 98B of the Criminal Code will apply.

***c) Fraudulent acquisition or receipt of property***

Section 12 of the ICPC Act is on fraudulent acquisition of property and the provision is almost the same as the one in section 101 of the Criminal Code, save that the provision of section 12 ICPC Act excludes the words ‘and to be fined at the discretion of the court’ contained in section 101 of the Criminal Code. Also, the punishment under the ICPC Act is stiffer, being seven years imprisonment while that of the Criminal Code is three years. Also the proviso that, the offender cannot be arrested without warrant contained in section 101 of the Criminal Code is not included in the provision of section 12 of the ICPC Act.

Section 13 of the ICPC Act is on fraudulent receipt of property and same provision is part of the one contained in section 427 of the Criminal Code, the penalty is provided under section 14 of the Act as three years imprisonment. Section 14 of the ICPC Act is on penalty for offences committed through postal system. This provision is remaining part of that contained in section 427 of the Code. While the offence under the Act carries a surprisingly lesser penalty of seven years imprisonment that of the Code is stiffer as it is imprisonment for life.

***d) Deliberate frustration of investigation by the Commission***

It is an offence under section 15 of the ICPC Act for anyone with intent to defraud, conceal a crime or frustrate the Commission in its investigation of anyone suspected of crime under the Act, by destroying or falsifying any book, document, etc., or is a privy to such acts, or, omits or is a privy to omitting any material particular from any such book, document, etc. The penalty is imprisonment for seven years.

Section 16 of the ICPC Act prohibits a public officer from making false statements or returns. This attracts seven years imprisonment. This offence is similar to the in section 103 of the Criminal Code but that of the Code carries a lesser punishment of three years.

***e) Wider scope of bribery offence***

Section 18 of the ICPC Act makes it an offence for any person to give bribe to a public officer or for a public officer to solicit, counsel or accept gratification in respect of any act or omission which includes voting or abstaining from voting at any meeting of public body in favour or against any measure, resolution or the preventing of any official act. Receiving bribe to vote at meetings is wider that covered by the Criminal Code.

Also, receiving gratification covers acts such as performing or otherwise, aiding, expediting or delaying, or hindering the performance of any official act. The punishment for this is five years imprisonment. This offence is wider in scope than the ones under the Criminal Code in respect of bribery. Section 19 of the ICPC Act makes if an offence for any public officer to use his office for gratification by conferring corrupt or unfair advantage upon himself or any person. The offence carries a punishment of five years imprisonment.

***f) Forfeiture of gratification***

Under section 20 of the ICPC Act, any public officer found guilty of soliciting, offering or receiving gratification under the Act, in addition to the punishment specified for the offence, shall forfeit the gratification and also be liable to pay a fine of not less than five times the sum or value of the gratification. Where the gratification cannot be valued, the fine to be paid is ten thousand naira.

***g) Bribery in respect of auctions or contracts***

Sections 21 and 22 of the Act, provides for offences on account of accepting bribe in respect of auctions and for giving assistance as regards contracts, etc. The provision of section 22 prohibits various acts such as, influencing execution of contracts, inflation of contract sum or price of goods and services, signing of contracts without budgetary provision, transferring or spending the sum allocated for a particular project or service on another. These offences carry punishment ranging from three to seven years imprisonment, and in some cases with additional fine of one hundred thousand or one million naira, as the case may be.

***h) Duty to report bribe***

It is now mandatory under section 23 of the ICPC Act, for a public officer to who gratification has been given, offered or promised, and any person from whom gratification has been solicited or obtained or from whom an attempt has been made to obtain from, to report the same to either at the nearest office of the Independent Corrupt Practices and Other Related Offences

Commission (ICPC) or a police officer. Failure to report without reasonable excuse carries a fine of one hundred thousand naira or to a term of imprisonment not exceeding two years, or to both fine and imprisonment.

Other offences specified in the ICPC Act includes dealing with property acquired through gratification – section 24, making false or misleading statement to the ICPC – section 25, attempt and conspiracy punishable as an offence under the Act – section 26.

*i) Powers of the Commission*

The ICPC Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which have powers to receive all cases of alleged corrupt practices, under the Act, investigate and prosecute them. The Chairman of the Commission also has wide powers under sections 45, 46, 48, 50 and 51 of the Act to enhance the effective performance of the Commission.

**3.2 Offences of corruption under the EFCC Act**

The Economic and Financial Crimes Commission (Establishment Act) 2004 (EFCC Act) also created corruption and related offences under the Act. The definition of economic and financial crimes in section 46 of the EFCC Act includes any form of fraud, money laundering, embezzlement, bribery, tax evasion, foreign exchange malpractices, looting and any form of corrupt malpractices, etc. So this makes the consideration of the Act relevant to this unit.

*a) Securing compliance with the Act*

Section 14 of the EFCC Act makes it an offence for any person who being an officer of a bank or other financial or non-designated financial institution, to fail or neglect to secure compliance with the provisions of the Act or the authenticity of any statement submitted pursuant to the provisions of the Act. The punishment is a term of imprisonment not exceeding five years or to a fine of five hundred thousand naira or to both such fine and imprisonment.

*b) Giving false information*

Under section 16 of the EFCC Act it is an offence for any person to give false information to any public officer in relation to any information required under the Act. The punishment is not less than two years and not more than three years imprisonment. Where the offender is a public officer, penalty is stiffer, from three to five years.

*c) Concealment of proceeds of crime*

Under sections 17 and 18 of the EFCC Act, concealment or retention of or acquiring interest in the proceeds of crime is a crime with punishment ranging from two to three years. In some cases, the imprisonment can be with a fine.

*d) Forfeiture of assets*

A person convicted of an offence under the EFCC Act, shall have his passport, assets and properties, shown to be derived or acquired from economic or financial crime forfeited to the Federal Government. See sections 20, 21, 22 and 23.

*e) Powers of the Commission*

The Economic and Financial Crimes Commission have powers under its establishment Act to examine and investigate all cases of economic and financial crimes, including advance fee fraud, money laundering, computer credit card fraud, contract scam, etc. It also has powers to identify, trace, freeze, confiscate or seize proceeds of crimes committed under the Act. See section 6.

## **5.0 SUMMARY**

Under the ICPC Act, it is an offence to give, accept or obtain gratification or attempt these by corruptly asking for or receiving any property or benefit, or an attempt of this. Under the ICPC Act, it is an offence for a public officer to solicit, counsel or accept gratification for the purpose of voting or abstaining from voting at any meeting of public body in favour or against any measure, resolution or the preventing of any official act. Under the ICPC Act gratification covers acts such as performing or otherwise, aiding, expediting or delaying, or hindering the performance of any official act. ICPC Act prohibits various acts such as, influencing execution of contracts, inflation of contract sum, price of goods and services, signing of contracts without budgetary provision, spending the sum allocated for a particular project or service on another. It is now mandatory under the ICPC Act to report bribe.

Definition of economic and financial crimes under the EFCC Act includes any form of fraud, money laundering, embezzlement, bribery, tax evasion, foreign exchange malpractices, looting and any form of corrupt malpractices, etc.

## **TOPIC: CORRUPTION RELATED OFFENCES UNDER THE CODE OF CONDUCT BUREAU AND TRIBUNAL ACT (CCBT ACT (PART 2**

The CCBT Act Cap C15, L,F,N 2004 sets out certain codes of conduct which every public officer in Nigeria is required by law to obey and observe in the discharge of his or her official duties. A breach of any of the provisions of the Act creates a criminal liability on the part of the affected public servant. According to the short title to the Act, the purpose of the law is to establish the Code of Conduct Bureau and Tribunal to deal with complaints of corruption by public servants. The acts that will constitute crimes under the CCBT Act are contained mainly in sections 10, 12, 13, 14, and 17 thereof. The following can be identified as offences under the Act.

### ***a) Prohibition from accepting gift or benefit***

A public officer is prohibited from asking for or accepting bribe or gift or benefits from any other person, on account of anything done or omitted to be done by him in discharge of his duties. As a way of proving this, any officer who receives gift or benefit from any commercial, business enterprises or persons having contracts with government shall be deemed to have received a bribe unless the contrary is proved. Exceptions are that a public officer may accept gifts or benefit from relatives or personal friends only on occasions as recognized by custom. Thus, gifts given at Yuletide, Ramadan, and New Year periods, etc., would normally be permitted. Also, no public officer shall accept any property, gift or benefit as an inducement or bribe for granting of any favour in discharge of his duties. See section 10 and 12.

### ***b) No abuse of office***

A public officer shall not abuse his office by doing or directing to be done any arbitrary act prejudicial to the rights of any person, knowing such act is unlawful or contrary to government policy (see sec 13). You will recall that this is an offence under criminal law. Sec 104 of CC

### ***c) Prohibition from operating foreign account***

You must bear in mind that a category of public officers, which includes the President, Vice-president, Governor, Deputy Governor, Ministers, Commissioners, members of the National and State Assembly, and such public officers and persons as the National Assembly may by law prescribe are prohibited from maintaining or operating a foreign bank account (see sec 7).

Also, you need to know that a retired public officer while receiving his pension is prohibited from accepting more than one position where he is paid salary in any company owned or controlled by government or in any public authority.

### ***d) Declaration of assets***

The Code in section 1 provides for declaration of assets by every public officer which shall be done within three months of the coming into force of the Code or immediately after assumption

office. Thereafter, this shall be done at the end of every four years, and at the end of his term of office. Any declaration which is false shall be a breach of the Code. Any public officer who does an act prohibited by the Code through a nominee, trustee or other agent shall be deemed to have committed a breach of the Code . Any allegation concerning a breach of the Code by a public officer shall be referred to the Code of Conduct Bureau (section 3).

Note: Read Section 3 of the CCBT Act for the functions of the Bureau.