

MONEY LAUNDERING (PROHIBITION) (AMENDMENT) ACT, 2012

EXPLANATORY MEMORANDUM

This Act amends the Money Laundering (Prohibition) Act, No. 11 2011 to expand the scope of Money Laundering offences and enhance customer due diligence measures.

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ARRANGEMENT OF SECTIONS

Section:

1. Amendment of Act No. 11, 2011
2. Amendment of section 2 (5)
3. Amendment of section 3
4. Amendment of section 6
5. Amendment of section 9
6. Amendment of section 10
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8. Amendment of section 12
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MONEY LAUNDERING (PROHIBITION) (AMENDMENT), 2012

A BILL

FOR

An Act to amend the Money Laundering (Prohibition) Act No. 11, 2011 to expand the scope of money laundering offences and enhance customer due diligence measures; and for related matters.

[] Commencement

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

1. The Money Laundering (Prohibition) Act No. 11, 2011 (in this Act referred to as “the Principal Act”) is amended as set out in this Act. Amendment of Act No.11, 2011
2. Section 2(5) of the Principal Act is amended by deleting immediately after the word “forfeit” in line 4, the expression, “not less than 25% of”. Amendment of section 2(5)
3. Section 3 of the Principal Act is amended: Amendment of section 3
 - (a) by substituting subsection (1) for a new subsection “(1)”:

“(1) A Financial Institution and Designated Non-Financial Institution shall -

 - (a) identify a customer, whether permanent or occasional, natural or legal person, or any other form of legal arrangements, using identification documents as may be prescribed in any relevant regulation;
 - (b) verify the identity of that customer using reliable, independent source documents, data or information”; and

(c) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the Financial Institution or the Designated Non-Financial Institution is satisfied that it knows who the beneficial owner is”;

(b) by substituting for subsections (2), (3) and (4), new subsections “(2)”, “(3)” and “(4)”:

(2) Financial Institutions and Designated Non-Financial Institutions shall undertake customer due diligent measures when -

- (a) establishing business relationships;
- (b) carrying out occasional transactions above the applicable designated threshold prescribed by relevant regulation, including transactions carried out in a single operation or in several operations that appear to be linked;
- (c) carrying out occasional transaction that are wire transfers;
- (d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds; or
- (e) the Financial Institution or Designated Non-Financial Institution has doubts about the veracity or adequacy of previously obtained customer identification data.

(3) Financial Institutions or Designated Non-Financial Institutions shall :

- (a) conduct on-going due diligent on a business relationship;
 - (b) scrutinize transactions undertaken during the course of the relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, their business and risk profile and where necessary, the source of funds; and
 - (c) ensure that documents, data or information collected under the customer due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.
- (4) Financial Institutions and Designated Non-Financial Institutions shall take enhanced measures to manage and mitigate the risks and :
 - (a) where higher risks are identified, take simplified measures to manage and mitigate the risks;
 - (b) where lower risks are identified, take simplified measures to manage and mitigate the risks provided that simplified customer due diligent measures are not permitted whenever there is suspicion of money laundering or terrorist financing;
 - (c) in the case of cross-border correspondent banking and other similar relationships and in addition to carrying out customer due diligence measures–
 - (i) gather sufficient information about a respondent institution;
 - (ii) assess the respondent institution's anti-money laundering and combating the financing of terrorism controls;

- (ii) document respective responsibilities of each institution in this regard; and
- (iv) obtain management approval before establishing new correspondent relationships”;

(d) by deleting the existing subsection (7) and renumbering the existing subsection (8) as subsection (7); and

(e) by substituting for the words, “Public Officer” in line 1 and paragraph (b), line 2, of the renumbered subsection (7), the words “politically exposed person”.

4. Section 6 of the Principal Act is amended:

Amendment of section 6

(a) by substituting for the marginal note, “Special surveillance and certain transactions”, a new marginal note, “Suspicious transaction reporting”;

(b) in subsection (2), lines 2 and 3, substitute for the expression “within 7 days after the transaction referred to in subsection (1) of this section”, the phrase “immediately report any suspicious transaction to the Economic and Financial Crimes Commission”;

(c) in subsection (4), line 1, by inserting immediately after the word, “the”; the words, “ the Economic and Financial Crimes Commission (EFCC)”;

(d) in subsection (5)(b), line 2, by substituting for the words “Commission, the Governor of Central Bank or their ” for the words “the Economic and Financial Crimes Commission or his.”

5. Section 9 of the Principal Act is amended :

Amendment of section 9

(a) by substituting for the marginal note, “Arousing awareness among employees of Financial Institutions”, a new marginal

note, “Internal procedures, policies and controls”;

(b) in sub-section (1), by substituting for paragraph (d), a new paragraph “(d)”:

“(d) the establishment of an internal audit unit to ensure compliance with and ensure the effectiveness of the measures taken to enforce the provision of this Act”; and

(c) by substituting for subsection (2), a new subsection “(2)”:

“(2) Notwithstanding the provisions of this Act or any other law, the Central Bank of Nigeria, Securities and Exchange Commission, National Insurance Commission or any other relevant regulatory authority may :

(a) impose a penalty of not less than ₦1, 000,000 for capital brokerage and other financial institutions and ₦5,000,000 in the case of Bank; and

(b) in addition, suspend any licence issued to the Financial Institution or Designated Non-Financial Institution for failure to comply with the provisions of subsection (1) of this section”.

6. Section 10(1) of the Principal Act is amended by substituting for the expression, “Commission in writing within 7 and 30 days respectively”, in line 3, the expression “Economic and Financial Crimes Commission in writing within 7 days”. Amendment of section 10

7. Section 11 of the Principal Act is amended: Amendment of section 11

(a) by substituting the marginal note, for a new marginal note “prohibition of numbered or anonymous account, accounts in fictitious names and shell banks”; and

(b) by deleting the existing sub-section (2) and inserting new sub-sections “(2), (3) and (4)”:

“(2) A person shall not establish or operate a shell bank in Nigeria.

(3) A financial institution shall:

(a) not enter into or continue correspondent banking relationships with shell banks; and

(b) satisfy itself that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

(4) Any person, Financial Institution or corporate body that contravenes the provisions of subsections (1) (2) and (3) of this section, commits an offence and is liable on conviction to:

(a) in the case of an individual, a term of imprisonment of not less than 2 years but not more than 5 years; or

(b) in the case of a financial institution or corporate body, a fine of not less than N10,000,000 but not more than N50,000,000, in addition to:

(i) the prosecution of the principal officers of the corporate body, and

(ii) the winding up and prohibition of its constitution or incorporation under any form or guise.”

8. Section 12 of the Principal Act is amended by substituting for the marginal note “Liability of directors, etc of Financial Institutions”, a new marginal note, “Liability of directors, employees of Financial Institutions, Designated Non-Financial Institutions, Financial Intelligence Unit, Regulators, the Commission, and the Agency”.

Amendment of section 12

9. Substitute for section 15 of the Principal Act a new section “15”:

Substitution for section 15

“Money
laundering
offences

“15(1) Money laundering is prohibited in Nigeria.

(2) Any person or body corporate, in or outside Nigeria, who directly or indirectly –

- (a) conceals or disguises the origin of;
- (b) converts or transfers;
- (c) removes from the jurisdiction; or
- (d) acquires, uses, retains or takes possession or control of;

any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act;

commits an offence of money laundering under this Act.

(3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.

(4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to-

(a) a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and

(b) withdrawal of licence.

(5) Where the body corporate persists in the commission of the offence for which it was convicted in the first instance, the Regulators may withdraw or revoke the certificate or licence of the

body corporate.

- (6) The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in this Act or any other law in Nigeria”.
- (7) A person who commits an offence under subsection (2) of this section shall be subject to the penalties specified in this section notwithstanding that the various acts constituting the offence were committed in different countries or places.”

10. Section 16 of the Principal Act is amended:

Amendment of section 16

- (a) in subsection (1) (f), by substituting for the figures “2”, “3”, “4”, “5”, “6” or “7” in line 3, the figures “4”, “5”, “6”, “7”, “9”, “10”, “12”, “13” or “14”;
- (b) by substituting for subsection (2), a new subsection “(2)”:

“(2) A person who commits an offence under subsection (1):

- (a) paragraph (a), is liable on conviction to imprisonment for a term of not less than 2 years or a fine of not less than ₦10,000,000; or
- (b) paragraphs (b) – (f), is liable to imprisonment for a term of not less than 3 years or a fine of ₦10,000,000 or to both, in the case of individual and, ₦25,000,000, in the case of a body corporate.”

11. Substitute for section 20 of the Principal Act a new section”20”:

Substitution for section 20

“Jurisdiction to
try offences
under this Act

20(1) The Federal High Court shall have jurisdiction to:

- (a) try offences under this Act or any other related enactment; and
- (b) hear and determine proceedings arising under this Act whether or not the offence was commenced in Nigeria and completed outside Nigeria and the victim is:
 - (i) a citizen or resident of Nigeria,
 - (ii) not a citizen of any country but ordinarily resident in Nigeria,
 - (iii) in transit or has a link with Nigeria,
 - (iv) dealing with or on behalf of

the Government of Nigeria, or
a citizen of Nigeria or an
entity registered in Nigeria, or
(v) the alleged offender and is in
Nigeria and not extradited to
any other country for
prosecution.

- (2) The Federal High Court shall have jurisdiction to impose any penalty provided for an offence under this Act or any other related law.
- (3) In any trial for an offence under this Act, the Court shall have power, notwithstanding anything to the contrary in any other enactment, adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters.
- (4) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter brought under this Act shall not be entertained until judgment is delivered”.

12. Substitute for section 23 of the Principal Act a new section “23”:

Substitution for section 23

“Regulations 23(1) The Attorney - General may make orders, rules, guidelines or regulations as are necessary for the efficient implementation of the provisions of this Act.

(2) Orders, rules, guidelines or regulations made under subsection (1) of this section may provide for the:

(a) method of custody of video and other electronic recordings of suspects

apprehended under this Act;

- (b) method of compliance with directives issued by relevant international institutions on money laundering and terrorism financing counter measures;
- (c) procedure for freezing, unfreezing and providing access to frozen funds or other assets;
- (d) procedure for the prosecution of all money laundering cases in line with international human rights standards; and
- (e) any other matter the Attorney - General may consider necessary or expedient for the purpose of the implementation of this Act.”

13. Section 25 of the Principal Act is amended by inserting in Amendment of section 25 alphabetical order, the following definitions:

“account” means a facility or an arrangement by which a Financial Institution:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account;
- (c) pays cheques or payment orders drawn on a Financial Institution or cash dealer by a person or collect cheques or payment orders on behalf of a person; or
- (d) supplies a facility or an arrangement for a safe deposit box;

“beneficiary” includes a natural or legal person or any other form of legal arrangement identified by the originator as the receiver of the requested wire transfer;

“beneficial owner” refers to:

- (a) the natural person who ultimately owns or controls a customer;
- (b) the natural person on whose behalf a transaction is being conducted; and
- (c) a person who exercises ultimate effective control over a legal person or arrangement;

“business relationship” means an arrangement between a person and a Financial Institution or Designated Non-Financial Institution for the purpose of concluding a transaction;

“competent authority” means any agency or institution concerned with combating money laundering and terrorist financing under this Act or under any other law or regulation;

“Correspondent banking” means the provision of banking services by one bank (the correspondent bank) to another bank (the respondent bank);

“false declaration” refers to a misrepresentation of:

- (a) the value of the currency or bearer negotiable instrument being transported; and
- (b) other relevant data required for submission in the declaration or otherwise requested by the authorities;

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

“Nigerian Financial Intelligence Unit (NFIU)” refers to the

central unit responsible for the receiving, requesting, analyzing and disseminating to the competent authorities disclosures of financial information concerning the suspected proceeds of crime and potential financing of terrorism.

“politically exposed persons” (‘PEPs’) includes :

- (a) individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or government, senior politicians; senior government, judicial or military officials; senior executives of State owned corporations and important political party officials,
- (b) individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians; senior government, judicial or military officials; senior executives of State owned corporations and important political party officials,
- (c) persons who are or have been entrusted with a prominent function by an international organization and includes members of senior management such as directors, deputy directors and members of the board or equivalent functions other than middle ranking or more junior individuals;

“Proceeds” means property derived from or obtained, directly or indirectly through the commission of an offence;

“Property” means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and legal documents or instruments evidencing title to or interest in such assets;

“regulators” means competent regulatory authorities responsible for ensuring compliance of Financial Institutions and Designated Non-Financial Institutions with requirements to combat money laundering and terrorist financing;

“shell bank” means a bank that is not physically located in the country in which it is incorporated and licensed and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision; and “physical presence” in relation to shell banks, means having structure and management located within a country and not merely the existence of a local agent or low level staff;

“suspicious” means a matter which is beyond mere speculations and based on some foundation; and

“wire transfer” means any transaction carried out on behalf of a natural person or legal originator through a Financial Institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution, irrespective of whether the originator and the beneficiary are the same person.

14. This Act may be cited as the Money Laundering (Prohibition) (Amendment) Act, 2012. Citation

