

ADVANCE FEE FRAUD AND OTHER FRAUD RELATED OFFENCES ACT

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An Act to prohibit and punish certain offences pertaining to advance fee fraud and other fraud related offences and to repeal other Acts related therewith.

[2007 No.62.]

[Commencement.]

[5th June, 2006]

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

PART I

Offences

1. Obtaining property by false pretence, etc.

(1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-

(a) obtains, from any other person, in Nigeria or in any other country, for himself or any other person; or

(b) induces any other person, in Nigeria or in any other country, to deliver to any person, any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act.

(2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act.

(3) A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than 7 years without the option of a fine.

1. Other fraud related offences

A person who –

(a) with intent to defraud, represents himself as capable of producing, from a piece of paper or from any other material, any currency note by washing, dipping or otherwise treating the paper or material with or in a chemical substance or any other substance; or

(b) with intent to defraud, represents himself as possessing the power or as capable of doubling or otherwise increasing any sum of money through scientific or any other medium of invocation of any juju or other invisible entity or of anything whatsoever; or

(c) not being the Central Bank of Nigeria, prints, makes or issues, or represents himself as capable of printing, making or issuing any currency note,

commits an offence and is liable on conviction to imprisonment for a term of not more than 15 years and not less than 5 years without the option of a fine.

1. Use of premises

A person who, being the occupier or is concerned in the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence under this Act commits an offence and is liable on conviction to imprisonment for a term of not more than 15 years and not less than 5 years without the option of a fine.

1. Fraudulent invitation

A person who by false pretence, and with the intent to defraud any other person, invites or otherwise induces that person or any other person to visit Nigeria for any purpose connected with the commission of an offence under this Act commits an offence and is liable on conviction to imprisonment for a term of not more than 20 years and not less than 7 years without the option of a fine.

1. Receipt of fraudulent document by victim to constitute attempt

(1) Where a false pretence which constitutes an offence under this Act is contained in a document, it shall be sufficient in a charge of an attempt to commit an offence under this Act to prove that the document was received by the person to whom the false pretence was directed.

(2) Notwithstanding anything to the contrary in any other law, every act or thing done or omitted to be done by a person to facilitate the commission by him of an offence under this Act shall constitute an attempt to commit the offence.

1. Possession of fraudulent document to constitute attempt

A person who is in possession of a document containing a false pretence which constitutes an offence under this Act commits an offence of an attempt to commit an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the document contains the false pretence.

1. Laundering of funds obtained through unlawful activity, etc.

(1) A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specified unlawful activity-

(a) with the intent to promote the carrying on of a specified unlawful activity; or

(b) where the transaction is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity; or

(ii) to avoid a lawful transaction under Nigerian law, commits an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the property involved in the financial transaction represents the proceeds of some form of unlawful activity.

(2) A person who commits an offence under subsection (1) of this section, is liable on conviction-

(a) in the case of a financial institution or corporate body, to a fine of N 1 million and where the financial institution or corporate body is unable to pay the fine, its assets to the value of the fine shall be confiscated and forfeited to the Federal Government; or

(b) in the case of director, secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term of not more than 10 years and not less than 5 years.

(3) When as a result of negligence, or regulation in the internal control procedures, a financial institution fails to exercise due diligence as specified in the Banks and Other Financial Institutions Act, 1991 as amended or the Money Laundering (Prohibition) Act, 2004 in relation to the conduct of financial transactions which in fact involve the proceeds of unlawful activity-

(a) the financial institution commits an offence and is liable on conviction to refund the total amount involved in the financial transaction and not less than N100,000 sanction by the appropriate financial regulatory authority;

(b) a director, secretary, employee or other staff of the financial institution who facilitates, contributes or otherwise is involved in the failure to exercise due diligence as stipulated under this section, commits an offence and is liable on conviction to imprisonment for a term of not less than three years and may also be liable to be banned indefinitely for a period of three

years from exercising the profession which provided the opportunity for the offence to be committed.

(4) A person who transports or attempts to transport a monetary instrument or funds from a place in Nigeria to or through a place outside Nigeria or to a place in Nigeria from or through a place outside Nigeria-

(a) with the intent to promote the carrying on of specified unlawful activity; or

(b) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity; or

(ii) to avoid a lawful transaction under Nigerian law,

commits an offence under this Act, if he knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation are the proceeds of some form of unlawful activity and the intent of the transaction.

(5) A person who commits an offence under subsection (3) of this section is liable on conviction to a fine of N500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is higher, or imprisonment for a term of not less than 10 years or to both such fine and imprisonment.

(6) In this section-

(a) **“conducts”** includes initiating, being involved, connected with, concluding, or participating in initiating or concluding a transaction;

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

(c) **“financial transaction”** means-

(i) a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects foreign monetary instruments; or

(ii) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, foreign commerce in any way or degree;

(d) **“knows or ought to know that the property involved in a financial transaction represents the proceeds of some form of unlawful activity”** means

that the person knew or ought to have known that the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes an offence under this Act;

(e) **“monetary instrument”** means coin or currency of Nigeria or of any other country, traveller’s cheque, personal cheque, bank cheque, money order, investment security in bearer form or otherwise in such form that title thereto passes upon delivery;

(f) **“proceeds”** means any property derived or obtained, directly or indirectly through the commission of an offence under this Act;

(g) **“property”** includes assets, monetary instruments and instrumentalities used in the commission of an offence under this Act;

(h) **“specified unlawful activity”** means-

(i) any act or activity constituting an offence under this Act;

(ii) with respect to a financial transaction occurring in whole or in part in Nigeria, an offence against the laws of a foreign nation involving obtaining property by fraud by whatever name called;

(i) **“transaction”** includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

1. **Conspiracy, aiding, etc.**

A person who—

(a) conspires with, aids, abets, or counsels any other person to commit an offence; or

(b) attempts to commit or is an accessory to an act or offence; or

(c) incites, procures or induces any other person by any means whatsoever to commit an offence,

under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

9. Conviction for alternative offence

(1) Where a person is charged with an offence under this Act and the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged and such a person shall be punished as is prescribed for that offence under this Act.

(2) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Act.

10. Offences by bodies corporate

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Act, the High Court may order that the body corporate shall thereupon and without any further assurance, but for such order, be wound up and all its assets and properties forfeited to the Federal Government.

11. Restitution

(1) In addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person-

(a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim;

(b) in any other case-

(i) to return the property to the victim or to a person designated by him; or

(ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.

(2) An order of restitution may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as a judgment in a civil action.

PART 11

12. Duty to obtain subscriber's name and address

(1) Any person or entity providing an electronic communication service or remote computing service either by e-mail or any other form shall be required to obtain from the customer or subscriber-

(a) full names;

(b) residential address, in the case of an individual;

(c) corporate address, in the case of corporate bodies.

(2) Any customer or subscriber who –

(a) fails to furnish the information specified in subsection (1) of this section;

or

(b) with the intent to deceive, supplies false information or conceals or disguises the information required under this section,

commits an offence and is liable on conviction to imprisonment for a term of not less than 3 years or a fine of

N 100,000.00.

(3) Any person or entity providing the electronic communication service or remote computing service either by e-mail or any other form, who fails to comply with the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine of N100,000.00 and forfeiture of the equipment or facility used in providing the service.

13. Duties of telecommunications and internet service providers and internet cafes

(1) Notwithstanding the provisions of the Nigerian Communications Commission Act 2003 or the provisions of any other law or enactment, any person or entity who in the normal course of business provides telecommunications or internet services or is the owner or person in the management of any premises being used as a telephone or internet cafe or by whatever name called shall-

(a) be registered with the Economic and Financial Crimes Commission (in this Act referred to as "the Commission");

(b) maintain a register of all fixed line customers which shall be liable to inspection by any authorised officer of the Commission; and submit returns to the Commission on demand on the use of its facilities.

(2) Any person whose normal course of business involves the provision of non-fixed line or Global System of Mobile Communications (GSM) or is in the management of any such services, shall submit on demand to the Commission such data and information as are necessary or expedient for giving full effect to the performance of the functions of the Commission under this Act.

(3) Any person specified under subsections (1) and (2) of this section shall exercise the duty of care to ensure that his services and facilities are not utilised for unlawful activities.

(4) It shall be a valid defence for any provider of wire or electronic communication service, its officers, employees or agents or other specified persons for providing information or facilities to the Commission in any cause, matter or suit that the said provider, its officers, employees or agents or any other specified persons acted in compliance with the obligations imposed under this Act.

(5) Any person or entity who by virtue of subsections (1) and (2) of this section knows or ought to know that he should-

(a) be registered with the Commission; or

(b) furnish the Commission on demand, with the returns on the use of his service and facilities; or

(c) facilitate access to data and information by authorised employees or staff of the Commission,

and fails to do so with intent to conceal or disguise the nature of his activities or the use of his services and facilities, commits an offence and is liable on conviction to imprisonment for a term of not less than three years without an option of fine and in the case of a continuing offence, a fine of N50,000.00 for each day the offence persists.

(6) Any person or entity convicted more than once under this Act shall have his operational licence revoked or cancelled.

PART III

Jurisdiction, etc.

14. Jurisdiction to try offences, etc.

The Federal High Court or the High Court of the Federal Capital Territory and the High Court of the State shall have jurisdiction to try offences and impose penalties under this Act.

15. Possession of pecuniary resources not accounted for

In a trial for an offence under this Act, the fact that a person-

(a) is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income; or

(b) that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account,

may be proved and may be taken into consideration by the High Court as corroborating the testimony of a witness in the trial.

16. Power to control property of an accused person

(1) Where at any stage of a trial, the High Court is satisfied that a *prima facie* case has been made out against a person, the High Court may by an order and for such time as it may direct or require –

(a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order; addressed to the manager of the bank or to the head office of the bank where the person has an account or is believed to have account, direct the manager or the bank –

(i) to stop all outward payments, operations or transactions (including any bill of exchange) for the time being specified in the order;

(ii) to supply any information and produce books and documents, in respect of the account of that person; and

(b) where necessary or expedient, vest in the High Court or otherwise acquire the custody of, any property, movable or immovable, of the person, for the preservation of the property, pending the determination of the proceedings.

(2) An order under subsection (1) of this section shall have effect as specified therein, but the order may at any time thereafter be varied or annulled by the High Court.

(3) Failure to comply with the requirement of an order under this section shall be an offence punishable on conviction-

(a) in the case of an individual, by imprisonment for a term of not less than 2 years or more than 5 years without the option of a fine;

(b) in the case of any group of persons not being a body corporate, by the like punishment of each of such persons as is prescribed in paragraph (a) of this subsection;

(c) in the case of a body corporate, by a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or N500,000, whichever is higher.

17. Power to make an order of forfeiture without conviction for an offence

(1) Where any property has come into the possession of any officer of the Commission as unclaimed property or any property is found by any officer of the Commission to be in the possession of any other person, body corporate or financial institution or any property in the possession of any person, body corporate or financial institution is reasonably suspected to be proceeds of some unlawful activity under this Act, the Money Laundering Act of 2004, the Economic and Financial Crimes Commission Act of 2004 or any other law enforceable under the Economic and Financial Crime Commission Act of 2004, the High Court shall upon application made by the Commission, its officers, or any other person authorised by it and upon being reasonably satisfied that such property is an unclaimed property or proceeds of unlawful activity under the Acts stated in this subsection make an order that the property or the proceeds from the sale of such property be forfeited to the Federal Government of Nigeria.

(2) Notwithstanding the provision of subsection (1) of this section the High Court shall not make an order of forfeiture of the property or the proceeds from the sale of such property to the Federal Government of Nigeria until such notice or publication as the High Court may direct has been given or made for any person, body corporate or financial institution in whose possession the property is found or who may have interest in the property or claim ownership of the property to show cause why the property should not be forfeited to the Federal Government of Nigeria.

(3) Application under subsection (1) above shall first be made by a motion *ex parte* for interim forfeiture order of the property concerned and the giving of the requisite notice or publication as required in subsection (2) of this section.

(4) At the expiration of 14 days or such other period as the High Court may reasonably stipulate from the date of the giving of the notice or making of the publication stated in subsections (2) and (3) of this section, an application shall be made by a motion on notice for the final forfeiture of the property concerned to the Federal Government of Nigeria.

(5) In this section –

“**financial institution**” shall have the same meaning as in section 7 of this Act;

“**property**” includes assets whether movable or immovable, money, monetary instruments, negotiable instruments, securities, shares, insurance policies, and any investments.

(6) An order of forfeiture under this section shall not be based on a conviction for an offence under this Act or any other law.

18. Power of arrest

The power of arrest in respect of an offence under this Act shall be in accordance with the provisions of the Criminal Procedure Act or the Criminal Procedure Code as the case may be.

19. Power to grant bail

The courts shall have power to grant bail to an accused person charged with an offence under this Act or any other law triable by the courts upon such terms and conditions as the courts may deem fit.

PART IV

Miscellaneous

20. Interpretation

In this Act –

“false pretence” means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true;

“document” in this Act includes letters, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter and further includes a document transmitted through fax or telex machine or any other electronic or electrical device, a telegram and a computer printout.

21. Repeal of the Advance Fee Fraud and Other Fraud Related Offences Act No. 13 of 1995 and the Advance Fee Fraud and Other Fraud Related Offences (Amendment) Act, 2005

(1) The Advance Fee Fraud and Other Fraud Related Offences Act No. 13 of 1995, and the Advance Fee Fraud and Other Fraud Related Offences (Amendment) Act, 2005 are repealed.

(2) The repeal of the Acts specified in subsection (1) of this section shall not affect anything done or purported to be done under or pursuant to the Acts.

22. Citation

This Act may be cited as the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

No Subsidiary Legislation