

**CHAPTER 405****SECOND-TIER FOREIGN EXCHANGE MARKET ACT**1986  
No. 23**An Act to establish the Second-Tier Foreign Exchange Market for trading in Foreign Currencies and other Foreign Exchange Instruments and other matters incidental thereto.**

[29th September, 1986]

Commence-  
ment.Establishment  
of the Second-  
Tier Foreign  
Exchange  
Market.

1. (1) There is hereby established a Second-Tier Foreign Exchange Market (hereafter in this Act referred to as "the Market") where transactions in foreign exchange shall be conducted in accordance with the provisions of this Act.

(2) Subject to this Act, the Central Bank of Nigeria may, with the approval of the Minister, issue from time to time guidelines to regulate the procedures for transactions in the market and such other matters as may be deemed appropriate for the effective operation of the Market.

(3) If the provisions of any other enactment are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and that other law shall, to the extent of the inconsistency, be void.

Cap. 114

(4) For the avoidance of doubt, the provisions of the Exchange Control (Anti-Sabotage) Act shall not apply to transactions lawfully conducted in the Market.

Instruments of  
transactions in  
the market.

2. (1) Transactions in the Market shall be conducted in any convertible foreign currency.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, transactions in the market shall, in addition, be conducted through the usual money market instruments, that is to say—

- (a) foreign bank notes;
- (b) foreign coins;
- (c) travellers' cheques;
- (d) bank drafts;
- (e) mail or telegraphic transfers; and

*Second-Tier Foreign Exchange Market Act*

(f) such other money market instruments as the Central Bank may, from time to time, with the approval of the Minister, determine.

3. (1) Any person executing any transaction in the Market shall not be required, and if required, shall not be obliged, to disclose the source of foreign currency to be sold in the Market.

Non-disclosure of sources of imported foreign currency.

(2) No foreign currency imported pursuant to this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Government of the Federation or of a State except as provided in section 19(6) of this Act.

4. For the avoidance of doubt, foreign currency from the following sources may be sold in the Market, that is to say—

Sources of foreign currency in the Market.

- (a) foreign currency domiciliary accounts maintained in authorised banks in Nigeria in accordance with the Foreign Currency (Domiciliary Accounts) Act;
- (b) foreign currency held or imported by—
  - (i) Nigerian citizens returning home from abroad;
  - (ii) foreign nationals resident in Nigeria;
  - (iii) foreign tourists visiting Nigeria;
- (c) agency commissions, professional fees and other forms of invisible earnings;
- (d) non-oil export proceeds earned by exporters of Nigerian commodities;
- (e) unspent balance of foreign currency held by Nigerians resident in Nigeria;
- (f) foreign currency imported by foreigners to purchase goods in Nigeria;
- (g) foreign currency imported or held by foreign embassies and international organisations from external sources;
- (h) funds held in approved external accounts by oil producing companies;
- (i) funds held in external accounts by individuals, bodies corporate and unincorporate, commission agents, professional bodies, insurance companies and such similar bodies;
- (j) foreign currency imported by tourists to Nigeria;

Cap. 151

- (k) foreign currency provided by the Central Bank;
- (l) foreign exchange imported from direct investment in Nigeria;
- (m) foreign currency from such other sources as the Minister may, from time to time by order published in the *Federal Gazette*, specify.

Appointment  
of Authorised  
Dealers.

Cap. 113

Cap. 28

Cap. 114

Cap. 151

5. (1) Notwithstanding anything to the contrary contained in any other enactment whatsoever, including—

- (a) the Exchange Control Act;
- (b) the Banking Act;
- (c) the Exchange Control (Anti-Sabotage) Act;
- (d) Foreign Currency (Domiciliary Accounts) Act;

the Minister may, for the purpose of this Act, appoint any bank or non-banking corporate organisation as an Authorised Dealer of foreign currency; which authorisation shall be liberally granted to organisations that show evidence of adequate resources and capacity to operate in accordance with the provisions of this Act.

(2) An Authorised Dealer appointed under subsection (1) of this section shall operate in the Market subject to such terms and conditions as the Minister may specify in the letter of appointment.

Revocation of  
appointment  
of Authorised  
Dealers.

6. (1) The Minister may revoke the appointment of any Authorised Dealer, if he has reason to believe that it is not in the national interest that such person shall continue to operate as an Authorised Dealer under this Act.

(2) Any person aggrieved by the decision of the Minister in subsection (1) of this section to revoke his appointment as an Authorised Dealer may, within 28 days of the receipt by him of the Minister's letter of revocation, appeal in writing to the President, Commander-in-Chief of the Armed Forces.

(3) The President, Commander-in-Chief of the Armed Forces may, after giving consideration to the circumstances of the case, revoke the decision of the Minister.

(4) The decision of the President, Commander-in-Chief of the Armed Forces shall be final and no suit or proceedings shall be entertained in any court of law.

7. The Market shall be structured along the inter-bank system, that is to say—

Structure of  
the Market.

- (a) dealings between the public and Authorised Dealers appointed under this Act;
- (b) dealings between the Authorised Dealers appointed under this Act *interse*; and
- (c) weekly biddings and price fixing sessions between Authorised Dealers appointed under this Act on the one hand and the Central Bank on the other hand.

8. (1) The Central Bank shall supervise and monitor the operation of the Market established by this Act to ensure an efficient performance of the Market.

Supervision and monitoring of the Market.

(2) The Minister shall have overall control of the system and shall issue such direction not inconsistent with this Act as to him may seem appropriate for the efficient operation of the Market established by this Act.

9. (1) Dealings in the Market shall be by way of spot and forward transactions as defined in subsection (2) of this section.

Dealings and pricing in the Market.

(2) For the purposes of subsection (1) of this section—

- (a) “spot transaction” means the purchase or sale of foreign exchange for immediate delivery or within a period of three working days from the date of the transaction;
- (b) “forward transaction” means the purchase or sale of foreign exchange at a fixed exchange rate for delivery at a fixed date not earlier than four working days from the date of the forward contract.

(3) The rate at which each transaction is to be executed shall be the rate mutually agreed between the applicant purchaser and the Authorised Dealer concerned.

10. (1) Subject to subsection (2) of this section, any public or private sector transaction adequately supported by appropriate documents shall for the purposes of this Act be an eligible transaction for the purchase of foreign exchange in the Market.

Transactions permitted in the Market.

(2) For the avoidance of doubt, no application for the purchase of foreign exchange in the Market shall be processed or in any way attended to unless such application is accompanied by satisfactory documentary evidence of a valid, due or outstanding obligation in

respect of a commercial or service transaction or of a capital transaction of the nature referred to in section 14 (4) or 15 of this Act.

(3) The guidelines issued from time to time under subsection (2) of section 1 of this Act shall, in addition to any other provisions, make provision concerning the specifications of the documents that may be tendered in support of an application under this Act.

Transactions  
not permitted  
etc.

**11.** (1) Nothing in this Act shall be construed—

- (a) as permitting any unrestrained or general dealing in foreign currency on terms not consistent with the provisions of this Act;
- (b) to imply that transactions relating to goods, services or items absolutely prohibited by any Act or law may be conducted in the Market.

(2) Any convertible currency or money market instrument stipulated in subsection (2) of section 2 of this Act purchased or obtained from the Market shall not be lodged in any domiciliary account opened under the Foreign Currency (Domiciliary Accounts) Act.

Cap. 151

Repatriation  
of funds.

**12.** Any foreign exchange purchased from the Market may be repatriated from Nigeria and shall not be subject to any further approval by the Minister or the Central Bank or any other exchange control requirements.

Restriction in  
the importation  
and exportation  
of the naira.

**13.** Nothing in this Act shall affect the operation of any law restricting the importation or exportation of the naira.

Investment of  
foreign-  
currency.  
Cap 303

**14.** (1) Subject to the provisions of the Nigerian Enterprises Promotion Act, any person may invest in an appropriate enterprise any foreign currency imported into Nigeria and converted into naira in the Market in accordance with the provisions of this Act.

(2) The Central Bank shall, within 14 days of the submission of the relevant document in support of importation of capital by an Authorised Dealer, issue a Certificate of Importation in such form as the Minister may prescribe.

(3) Where any fund is imported into Nigeria and invested in any enterprise pursuant to the provisions of subsection (1) of this section, such fund as well as any profits or dividends derived therefrom may

be repatriated at the option of the importer through the Market as provided in subsection (4) of this section.

(4) An application for the repatriation of profits, dividends and capital affected by subsection (1) of this section shall be submitted to the Minister who may approve that such fund be repatriated through the Market.

(5) The Minister may approve an application under subsection (4) of this section if he is satisfied that—

- (a) the application relates to a *bona fide* current transaction;
- (b) where the application relates to a transfer of capital abroad, that it is not such as to destabilize or prejudice the orderly operation of the Market.

(6) The Minister may delegate his functions under subsection (4) and (5) of this section to any employee of his Ministry and of such ranks as he may designate from time to time.

15. (1) All transactions to which the provisions of subsection (2) of this section relate are hereby declared to be Official First-Tier foreign exchange transactions and shall be settled at the rate of exchange prevailing at the date when—

Transitional provisions: Official First-Tier Market transactions.

- (a) all documentation prescribed by the Central Bank to be relevant to the transaction concerned were submitted to the Central Bank;
- (b) the obligation to which the documentation relates has, having regard to the nature of such transaction, become due and payable; and
- (c) the corresponding naira component of the transaction has been deposited with the Central Bank;

whichever last occurs; so however that no such transaction shall be regarded as due and payable unless the provisions of paragraphs (a) and (c) of this sub-section have all been complied with.

(2) The Official First-Tier Market transactions referred to in subsection (1) of this section are as follows—

- (a) any transaction covered by a specific import licence issued in 1985 or 1986 for which a confirmed and irrevocable letter of credit was established on or before the last day immediately preceding the commencement of this Act;

- (b) capital transfers, profits, dividends and other invisible payments for which approval has been granted by the Federal Ministry of Finance and Economic Development or the Central Bank on or before the last day immediately preceding the commencement of this Act;
- (c) public or private sector transactions relating to debt service obligations that are due and payable, official contributions and grants to international organisations and remittances to Nigerian Missions abroad;
- (d) net proceeds of air tickets sold by foreign airlines up to and including the last day immediately preceding the commencement of this Act;

Provided that the first leg of the journey out of Nigeria had begun before the date of commencement of this Act;

- (e) any transaction valid for foreign exchange in respect of which advance import duty on Form C 188A had been paid, a Clean Report of Findings issued by the Inspection Agent, and documents submitted to the Central Bank of Nigeria for the issue of cover not later than the last day immediately preceding the commencement of this Act.

Outstanding obligations.

**16.** (1) All transactions in respect of which documents were lodged with the Central Bank for the issue of the necessary foreign exchange cover not later than December 31, 1983, shall be subject to refinancing in accordance with the relevant refinancing scheme established for such transactions.

(2) All outstanding obligations to surrender foreign exchange or to submit documents in support of receipt of goods for which the Central Bank has already made available foreign exchange on the basis of confirmed letters of credit shall not be extinguished by the establishment of the Market under this Act.

Termination of the First-Tier Foreign Exchange Market.

**17.** (1) The Minister shall, with the approval of the President, Commander-in-Chief of the Armed Forces, appoint a date when the First-Tier Foreign Exchange Market shall cease to operate.

(2) Accordingly, as from the date of the termination of the First-Tier Foreign Exchange Market as may be specified under sub-section (1) of this section, all foreign exchange transactions shall be conducted in the Second-Tier Foreign Exchange Market set up under section 1 (1) of this Act.

18. (1) All Authorised Dealers appointed under this Act shall submit to the Minister, at such intervals as the Minister may prescribe, returns of their activities in the Market; and such returns shall be in such forms as the Minister may, from time to time by regulations published in the *Federal Gazette*, prescribe.

Requirement to submit returns.

(2) Any Authorised Dealer who fails, neglects or refuses to submit the returns referred to in subsection (1) of this section, shall be guilty of an offence and liable to be dealt with as provided in subsection (5) of section 17 of the Banking Act.

Cap. 28

19. (1) Any person, body corporate or unincorporate who—

Offences and penalties.

- (a) with intent to defraud, forges, mutilates, utters or defaces any foreign currency, travellers' cheques or other instrument of exchange in the Market; or
- (b) converts any foreign exchange to a use for which it is not intended under this Act; or
- (c) negotiates any draft, foreign bank note, other foreign exchange or any other trading instrument otherwise than as permitted by this Act; or
- (d) forges or produces as genuine any false document to the Central Bank or the Market with a view to utilising such document in any transaction in the Market established under this Act;

shall be guilty of an offence under this Act and liable as provided in subsection (2) of this section.

(2) Any person convicted of an offence under subsection (1) of this section shall be liable—

- (a) in the case of an individual, to imprisonment for a term of 15 years without any option of a fine; and
- (b) in the case of a body corporate, to a fine ten times the amount of the foreign currency involved.

(3) All the assets, movable or immovable including motor vehicles, of any person convicted of an offence under this section shall be forfeited to the Federal Government.

(4) Where the person convicted in subsection (2) of this section is an Authorised Dealer, the Tribunal by whom he is convicted may recommend to the Minister that his appointment as an Authorised Dealer be revoked.



(5) Where an offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence, was a proprietor, director, manager, secretary or other similar officer of the body corporate, or was purporting to act in such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he had exercised all such diligence as he ought to have exercised having regard to the nature of his functions in that capacity.

(6) The Tribunal may, in addition to any other penalty imposed, order that the foreign currency involved be forfeited to the Government of the Federation.

(7) An offence under this Act shall be triable by the Special Tribunal established under the Exchange Control (Anti-Sabotage) Act as amended.

(8) The provisions relating to appeals and confirmation contained in the Recovery of Public Property (Special Military Tribunals) Act (as amended) shall apply *mutatis mutandis* as if they are one with the provisions of this Act.

**20.** (1) The requirement heretofore to surrender all foreign currency on importation thereof into Nigeria is hereby abolished.

(2) Accordingly, no person shall be required to declare such foreign currency, unless its value is in excess of the equivalent of US \$5,000 (five thousand United States dollars); so however that no person shall have the power to export foreign exchange which had earlier been imported, unless at the port of entry the importer had declared such foreign currency.

(3) Foreign exchange in excess of US \$5,000 (five thousand United States dollars) or its equivalent shall be declared for reason of statistics only.

(4) Subject to the foregoing provisions of this section the Central Bank shall design a new form to replace form K popularly known  
TM

as the Yellow Form for use in the declaration of foreign exchange imported under this Act.

(5) An exporter of Nigerian commodities shall open a foreign currency domiciliary account with an authorised bank of its choice in Nigeria into which all the proceeds of such export shall be fully credited.

Cap. 114

Abolition of  
mandatory  
requirement to  
surrender  
foreign  
currency.

(6) All foreign exchange transactions at the weekly fixing sessions under this Act shall be subject to such levy payable to the Central Bank as the Minister may, from time to time, specify.

(7) The proceeds of non-oil exports deposited in the foreign currency domiciliary account shall be utilized only for eligible transactions.

21. Notwithstanding the provisions of subsection (4) of section 1 of this Act, the relevant provisions of all existing enactments including the following, that is to say—

Modification  
of existing  
legislation.

- |  |          |
|--|----------|
| (a) the Bill of Exchange Act;                        | Cap. 35  |
| (b) the Central Bank of Nigeria Act;                 | Cap. 47  |
| (c) the Exchange Control Act;                        | Cap. 113 |
| (d) the Banking Act                                  | Cap. 28  |
| (e) the Exchange Control (Anti-Sabotage) Act;        | Cap. 114 |
| (f) the Foreign Currency (Domiciliary Accounts) Act; | Cap. 151 |

shall be read with such modifications as to bring them into conformity with the provisions of this Act.

22. (1) The Minister may, after consultation with the Central Bank, make such regulations, not inconsistent with the provisions of this Act as may be required for carrying into effect the intendment of this Act.

Regulations.

(2) In particular, the Minister may, after consultation with the Central Bank, make regulations relating to the following—

- (a) concerning the various forms required under this Act;
- (b) designating additional sources of foreign exchange under section 4 of this Act;
- (c) the form of permit to be issued to an Authorised Dealer appointed under this Act; and
- (d) the rate of levy on certain transactions under this Act.

23. In this Act, unless the context otherwise requires—

Interpretation.

“Authorised Dealer” means any bank or other corporate body appointed as such by the Minister under the provisions of this Act;

“Central Bank” means the Central Bank of Nigeria;

“First-Tier Foreign Exchange Market” means the foreign exchange market operated by the Central Bank up to the date specified by virtue of section 17 of this Act;

“foreign currency” means convertible foreign currency;

“Market” means the Second-Tier Foreign Exchange Market established pursuant to section 1 (1) of this Act;

“Minister” means the Minister charged with responsibility for matters relating to finance; and “Ministry” shall be construed accordingly.

Short title.

**24.** This Act may be cited as the Second-Tier Foreign Exchange Market Act.

---

**SECOND-TIER FOREIGN EXCHANGE MARKET ACT**

**CHAPTER 405**

**SUBSIDIARY LEGISLATION**

---

*No Subsidiary Legislation*