

ARRANGEMENT OF SECTIONS

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Dec 13.1995]

*ADVANCE FEE FRAUD AND OTHER FRAUD
RELATED OFFENCES ACT 1995*

Act No. 13

[1st April 1995]

Commence-
ment

THE FEDERAL MILITARY GOVERNMENT hereby decrees
as follows:-

PART I – OFFENCES

Obtaining
property by
false pretence,
etc.

1.-(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 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, is guilty of 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 is guilty of an offence under this Act.

(3) A person who is guilty of an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not less than 10 year without the option of a fine.

Other fraud
related
offences.

2. A person who: -

- (a) with intent to defraud represents himself as capable of producing

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

3. 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 is guilty of an offence and liable on conviction to imprisonment for a term of not less than 5 years.

Use of
premises

4. A person who by false pretence, and with 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 is guilty of an offence and liable on conviction to imprisonment for a term of not less than 7 years without the option of a fine.

Fraudulent
invitation

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

Receipt of
Fraudulent
letter etc by
victim to
constitute
attempt.

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.

(3) In this section-

"Other document" includes a document transmitted through a fax or telex machine or any other electronic or electrical device, a telegram and a computer printout.

Possession of
fraudulent
letter to
constitute
attempt.

6. A person who is in possession of a letter containing a false pretence which constitutes an offence under this Act is guilty 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 letter contains the false pretence.

Laundering of
funds obtained
through
unlawful
activity, etc

7. (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, is guilty of 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 is guilty of 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 N1 million, and where the financial institution or corporate body is unable to pay the fine, its asset to the value of the fine shall be confiscated and forfeited to the federal government; or

(b) in the case of a director, secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term of not less than 10 years without the option of a fine.

(3) 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 a specific 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 specific unlawful activity, or

(ii) to avoid a lawful transaction under Nigeria law, knows, 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 is the proceeds of some form of unlawful

activity and the intent of the transaction.

(4) A person who is guilty of 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 both such fine and imprisonment.

(5) In this section: -

(a) "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(b) "financial institution" means a bank or other financial institutions as defined in the Banks and other Financial Institutions Act 1991;

(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 instrument, 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.

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(e) "monetary instrument" means coin or currency of Nigeria or of any other country, traveler's cheque, personal cheque, bank cheque, money order, investment security in bearer form or otherwise in such from 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;

(h) "property" includes assets, monetary instruments and instrumentalities used in the commission of an offence under this Act;

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

(ii) with respect to a financial transaction occurring in whole or 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 certificates of deposit or other monetary instrument or any other payment, transfer, or delivery by through, or to a financial institution, by whatever means effected.

8. A person who -

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

Conspiracy,
aiding, etc.

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(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 is guilty of the offence and liable on conviction to the same punishment as is prescribed for that offence under this Act.

Conviction for
alternative
office

9.-(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 the 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 under this Act.

Offences by
bodies
corporate

10.-(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 be guilty of 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 tribunal may order that the body corporate

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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.-(1) In addition to any other penalty prescribed under this Act, the Tribunal 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.

Restitution

(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 II - JURISDICTION, ETC.

12.-(1) A Tribunal constituted under the Special Tribunal (Miscellaneous Offences) Act, as amended, shall have jurisdiction to try offences under this Act.

(2) The Tribunal shall have power, notwithstanding anything to the contrary in any other law, to impose the penalties provided for in this Act.

Jurisdiction to
try offences,
etc. 1984 No.
20.

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(3) In the exercise of its jurisdiction under this Act or any other enactment, the Tribunal shall not be subjected to any order of certiorari, mandamus or prohibition of any High Court or any other court order.

Cap. 62 LFN

(4) The provisions of subsection (3) of this section shall apply notwithstanding the provisions of the constitution of the Federal Republic of Nigeria 1979, as amended, or any other enactment or law, including any inherent power of any High Court or any other court howsoever.

Prosecution,
etc.

13.-(1) A prosecution for an offence under this Act shall be instituted before the Tribunal in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorize so to do, and in addition thereto, he may:-

(a) after consultation with the Attorney-General of any state in the Federation, authorize the Attorney-General or any officer in the Ministry of Justice of that state; or

(b) if the tribunal so directs or the Inspector-General of police so requests, authorize any other legal practitioner in Nigeria, including a legal practitioner in the Nigeria Police Force, to undertake the prosecution directly or assist therein.

(2) The question whether any or what authority has been given in pursuance of subsection (1) of this section shall not be inquired into by any person other than the Attorney-General of the Federation.

(3) A person accused of an offence under this Act shall be entitled to defend himself in person or by a person of his own choice who is legal practitioner resident in Nigeria.

14. In a trial for an offence under this Degree, the fact: -

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

(b) that he has 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 Tribunal as corroborating the testimony of a witness in the trial.

15.-(1) A person convicted of an offence under this Act may, within 21 days of the conviction or judgment appeal to the Special Appeal Tribunal established under the Recovery of Public (Special Military Tribunal) Act 1984, as amended in accordance with the provisions of that Act.

(2) The decision of the Special Appeal Tribunal shall be final and where there is no appeal, the decision of the Tribunal shall be final.

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

(a) prohibit any disposition of property, moveable 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 manners as may be specified in the order;

Possession of pecuniary resources, etc. not accounted for.

Right of appeal to the Special Appeal Tribunal. 1984 No. 3.

Power to control property of an accused person

(b) 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 an 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

(c) where necessary or expedient, vest in the Tribunal or otherwise acquire the custody of any property, moveable 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 Tribunal.

(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 two years or more than five years without the option of 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. 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.

Power of
arrest. Cap. 80
LFN

18.-(1) Subject to subsection (2) of this section, the Tribunal shall not grant bail to a person charged with an offence punishable with a term imprisonment without the option of fine under this Act.

Bail

(2) Notwithstanding subsection (1) of this section, the Tribunal may grant bail, for an amount equal to that involved in the offence, if the person charged with the offence -

- (a) deposits half the amount in the Tribunal as security for the bail;
- (b) provides surety for the balance of the amount; and
- (c) hands over his passport to the tribunal for the duration of the bail.

PART III - MISCELLANEOUS

19.- (1) The absence from Nigeria of a person accused of an offence under this Act shall not prevent his being tried and convicted under this Act.

Trial in
absentia.

(2) An order of the Tribunal made pursuant to a trial under subsection (1) of this section shall, where expedient, be executed on the person convicted, but the commencement of a sentence or imprisonment shall be deferred until his return to Nigeria.

Inconsistency.
1984 No. 20.

20. Where a provision of this Act is inconsistent with a provision of the Special Tribunal (Miscellaneous Offences) Act 1984 or any other enactment or law the provision of this Act shall, to the extent of its inconsistency, be void.

Evidence of
accomplices

21. Notwithstanding anything to the contrary contained in any law (including any rule of law), no witness shall, in a trial under this Act, be presumed to be unworthy of credit by reason only that he took part in the commission of the offence.

Compellable
witnesses

22. (1) Whenever two or more persons are summoned to appear before the Tribunal or charged with an offence under this Act, the Tribunal may require one or more of them to give evidence as a witness.

(2) A person who refuses to be sworn or to answer any lawful question after having been required to give evidence as a witness under subsection (1) of this section may be dealt with in the same manner as a witness refusing to do so in a High Court in Nigeria.

Interpretation

23. In this Act, unless the context otherwise requires:-

1984 No. 20

"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;

"Tribunal" means a Tribunal constituted under the Special Tribunal (Miscellaneous Offence) Act 1984.

Citation

24. This Act may be cited as the Advance Fee Fraud and other Fraud Related Offences Act 1995.

MADE at Abuja this 1st day of April 1995.

GENERAL SANI ABACHA,
*Head of State, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria.*

EXPLANATORY NOTE

*(This note does not form part of above Act but is intended
to explain its purpose)*

The Act, basically, creates offences relating to advance fee fraud and other fraud related offences. For example, it is an offence under the Act for a person-

- (a) to obtain property by false pretence, with intent to defraud;
- (b) to represent 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;
- (c) to allow his premises to be used for a purpose that constitutes an offence under the Act; and
- (d) to fraudulently invite or otherwise induce a person to visit Nigeria for a purpose connected with the commission of an offence under the Act.

Jurisdiction to try offences under the Act is vested in a Tribunal constituted under the Special Tribunal (Miscellaneous Offences) Act 1984.