

MONEY LAUNDERING (PROHIBITION) ACT, 2004

EXPLANATORY MEMORANDUM

This Act-

- (a) provides for the repeal of the Money Laundering Act 2003;
- (b) makes comprehensive provisions to prohibit the laundering of the proceeds of a crime or an illegal act; and
- (c) provides appropriate penalties and expands the interpretation of financial institutions and scope of supervision of regulatory authorities on money laundering activities, among other things.

MONEY LAUNDERING (PROHIBITION) ACT 2004

ARRANGEMENT OF SECTIONS

SECTION:

PART I - PROHIBITION OF MONEY LAUNDERING

1. Limitation to make or accept cash payment.
2. Duty to report international transfer of funds and securities.
3. Identification of Customers.
4. Duties incumbent upon casino.
5. Occasional cash transaction by designated non financial institutions.
6. Special surveillance on certain transaction.
7. Preservation of records.
8. Communication of information.
9. Arousing awareness among employees of financial institutions
10. Mandatory disclosure by financial institutions.
11. Liability of directors, etc. of Financial Institutions.
12. Surveillance of bank accounts, etc.
13. Determination of flow of transactions, etc.

PART II - OFFENCES

14. Money laundering offences.
15. Other offences.
16. Retention of proceeds of a criminal conduct.
17. Conspiracy, aiding and abetting.
18. Offences by a body corporate.

PART III - MISCELLANEOUS

19. Trial of offences.
20. Power to demand and obtain records etc.
21. Obstruction of the Agency or authorized officers.
22. Repeal of section 13 Cap. 253 LFN 1990.
23. Repeal, etc. of 2003 No. 7.
24. Interpretation.
25. Short title.

MONEY LAUNDERING (PROHIBITION) ACT, 2004

A BILL

FOR

AN ACT TO REPEAL THE MONEY LAUNDERING (PROHIBITION) ACT 2003; AND
ENACT THE MONEY LAUNDERING (PROHIBITION) ACT 2004; AND
FOR MATTERS CONNECTED THEREWITH.

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Commencement

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

PART 1- PROHIBITION OF MONEY LAUNDERING

1. No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding-
 - (a) N500,000 or its equivalent, in the case of an individual; or
 - (b) N2,000,000 or its equivalent in the case of a body corporate.

Limitation to make or accept cash payment

2. (1) A transfer to or from a foreign country of funds or securities of a sum exceeding US\$10,000 or its equivalent by any person or body corporate shall be reported to the Central Bank of Nigeria (in this Act referred to as the "Central Bank") or Securities and Exchange Commission.

Duty to report international transfer of funds and securities.

 - (2) A report made under subsection (1) of this section shall indicate the nature and amount of the transfer, the names and addresses of the sender and the receiver of the funds or securities.
 - (3) The Nigerian Customs Service shall report any declaration made pursuant to section 12 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 to the Central Bank.
 - (4) The Central Bank and the Securities and Exchange Commission shall weekly forward reports received pursuant to subsections (1) and (3) of this section to the Commission.
 - (5) Notwithstanding the provisions of subsection (4) of this section, the Commission reserves the power to demand and receive reports directly from Financial Institutions.

3. (1) A financial institution shall verify its customer's identity and address before opening an account for, issuing a passbook to, entering into fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer.

Identification of customers.

 - (2) An individual shall be required to provide proof of his-
 - (a) identity, by presenting to the financial institution a valid original copy of an official document bearing his names and photograph; and
 - (b) address, by presenting to the financial institution the originals of receipts issued within the previous three months by public utilities.
 - (3) A body corporate shall be required to provide proof of its identity by presenting its certificate of incorporation and other valid official documents attesting to the existence of the body corporate.
 - (4) The Manager, employee or assignee delegated by a body corporate to open an account shall be required to produce not only the documents specified in subsection(2) of this section, but also proof of the power of attorney granted to him in that behalf.

(5) A casual customer shall be in the same way as in subsection (2) of this section for any number of transactions involving a sum exceeding US\$5,000 or its equivalent if the total amount is known at the commencement of the transaction or as soon as it is known to exceed the sum of US\$5,000 or its equivalent.

(6) Where a financial institution suspects or has reasonable grounds to suspect that the amount involved in a transaction is the proceeds of a crime or an illegal act, it shall require identification of the customer notwithstanding that the amount involved in the transaction is less than US\$5,000 or its equivalent.

(7) If it appears that a customer may not be acting on his own account, the financial institution shall seek from the customer by all reasonable means, information as to the true identity of the principal.

4. (1) A casino shall-

Duties incumbent upon casinos

(a) verify the identity of its customers carrying out financial transactions by requiring the customer to present an authentic document bearing his name and address;

(b) record all transactions under this section in chronological order including-

(i) the nature and amount involved in each transaction, and

(ii) each customer's surname, forenames, and address, in a register forwarded to the Federal Ministry of Commerce for that purpose.

(2) A register kept under subsection(1)(b) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.

5. (1) A designated non-financial institution whose business involves the one of cash transaction shall-

Occasional cash transaction by designated non-financial institutio

(a) in the case of-

(i) a new business, before commencement of business,

(ii) existing business,

within three months from the commencement of this Act, submit to the Federal ministry of Commerce a declaration of its activities;

(b) prior to any transaction involving a sum exceeding US\$5,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving licence, national identity card or such other document bearing his photograph as may be prescribed by the Federal Ministry of Commerce;

(c) record all transactions under this section in chronological order, indicating each customers surname, forenames and address in a register numbered and forwarded to the Federal Ministry of Commerce.

(2) The Federal Ministry of commerce shall forward information received pursuant to subsection(1) of this section to the commission within 7 days of its receipt.

(3) A register kept under subsection(1)(c) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.

(4) The Minister responsible for Commerce may make regulations for guiding the operations of designated non-financial institutions under this section.

(5) Notwithstanding the provisions of subsection(2) of this section, the Commission shall have power to demand and receive reports directly from such designated non-financial institutions.

- (6) A designated non-financial institution that fails to comply with the requirements of customer identification and the submission of returns on such transaction as specified in this Act within 7 days from the date of the transaction commits an offence and is liable on conviction to
- (a) a fine of ₦25,000 for each day during which the offence continues;
 - (b) suspension, revocation or withdrawal of licence by the appropriate licensing authority as the circumstances may demand.
- 6: (1) When a transaction or suspicious transaction, whether or not it relates to the laundering of the proceeds of a crime or an illegal act—
- Special surveillance on certain transactions
- (a) involves a frequency which is unjustifiable or unreasonable,
 - (b) is surrounded by conditions of unusual or unjustified complexity, or
 - (c) appears to have no economic justification or lawful objective, the financial institution or designated non financial institution involved in such transaction shall seek information from the customer as to the origin and destination of the funds, the aim of the transaction and the identity of the beneficiary.
- (2) A financial institution or designated non-financial institution shall within 7 days after the transaction referred to in subsection (1) of this section—
- (a) draw up a written report containing all relevant information on the matters mentioned in subsection (1) of this section together with the identity of the principal and, where applicable, of the beneficiary or beneficiaries;
 - (b) take appropriate action to prevent the laundering of the proceeds of a crime or an illegal act; and
 - (c) send a copy of the report and action taken to the Commission.
- (3) The provisions of subsections (1) and (2) of this section shall apply whether the transaction is completed or not.
- (4) The Commission shall acknowledge receipt of any disclosure, report or information received under this section and may demand such additional information as it may deem necessary.
- (5) The acknowledgement of receipt shall be sent to the financial institution or designated non-financial institutions within the time allowed for the transaction to be undertaken and it may be accompanied by a notice deferring the transaction for a period not exceeding 72 hours.
- (6) If the acknowledgment of receipt is not accompanied by a stop notice, or if when the stop notice expires, the order specified in subsection (7) of this section to block the transaction has not reached the financial institution or designated non-financial institution, it may carry out the transaction.
- (7) When it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction, the Federal High Court may, at the request of the Commission, or other person or authority duly authorized in that behalf, order that the funds, accounts or securities referred to in the report be blocked.
- (8) An order made by the Federal High Court under subsection (7) of this section shall be enforced forthwith.
- (9) A financial institution or designated non financial institution which fails to comply with the provisions of subsections (1) and (2) of this section is guilty of an offence and liable on conviction to a fine of ₦1, 000,000 for each day during which the offence continues.

7. A financial institution or designated non-financial institution shall preserve and keep at the disposal of the authorities specified in section 3 of this Act- Preservation of records.
- (a) the record of a customer's identification for a period of at least five years after the closure of the accounts or the severance of relations with the customer; and
 - (b) the record and other related information of a transaction carried out by a customer and the report provided for in section 6 of this Act shall be preserved, for a period of at least 5 years after carrying out the transaction or making of the report as the case may be.
8. The records referred to in section 7 of this Act shall be communicated only to the Central Bank of Nigeria, the Commission, the National Drug Law Enforcement Agency (in this Act referred to as the "Agency") or other regulatory authorities, and such other regulatory authorities, judicial persons as the Central Bank may, from time to time, by order public in the gazette, specify. Communication of information.
9. (1) Every financial institution shall develop programmes to combat the laundering of the proceeds of a crime or other illegal act, and these shall include-- Arousing awareness among employees of financial institut
- (a) the designation of compliance officers at management level at its headquarters and at every branch and local office;
 - (b) regular training programme for its employees;
 - (c) the centralisation of the information collected; and
 - (d) the establishment of an internal audit unit to ensure compliance with and ensure the effectiveness of the measures taken to enforce the provisions of this Act.
- (2) Notwithstanding the provisions of this Act, the Governor of the Central bank shall impose a penalty of not less than 1 million Naira or the suspension of any licence issued on a financial institution for failure to comply with the provisions of subsection(1) of this section.
10. (1) Notwithstanding anything to the contrary in any other law or regulation, a financial institution or designated non-financial institution shall report to the Commission and Agency in writing within 7 days any single transaction, lodgment or transfer of funds in excess of- Mandatory disclosure by financial institutio
- (a) N1,000,000 or its equivalent, in the case of an individual; or
 - (b) N5,000,000 or its equivalent, in the case of a body corporate.
- (2) A person other than a financial institution may voluntarily give information on any transaction, lodgment or transfer of funds in excess of-
- (a) N1,000,000 or its equivalent, in the case of an individual; or
 - (b) N5,000,000 or its equivalent, in the case of a body corporate.
11. (1) Where funds are blocked under section 6(7) of this Act and there is evidence of conspiracy with owner of the funds, the financial institution or the designated non-financial institution involved shall not be relieved of liability under this Act and criminal proceedings for all offences arising there from, may be brought against its director and employees involved in the conspiracy. Liability of directors, etc of financial institut
12. (1) The Commissioner or Agency, Central Bank of Nigeria or other regulatory authorities pursuant to an order of the Federal High Court obtained upon an ex parte application supported by a sworn declaration made by the Chairman or an authorized officer of the Commission or Agency, Central Bank of Nigeria or other regulatory authorities justifying the request, may in order to identify and locate proceeds, properties, objects or other things related to the commission of an offence under this Act, the Economic and Financial Crimes Commission(Establishment) Act or any other law- Surveillance o bank accounts 2002 No.5

- (a) place any bank account or any other account comparable to a bank account under surveillance;
 - (b) tap any telephone line or place it under surveillance;
 - (c) obtain access to any computer system; and
 - (d) obtain communication of any authentic instrument or private contract, together with all bank, financial and commercial records, when the account, telephone line or computer system is used by any person suspected of taking part in a transaction involving the proceeds, of a financial or other crime.
- (2) The National Drug Law Enforcement Agency may exercise the powers conferred under subsection 1 of this section where it relates to identifying or locating properties, objects or proceeds of narcotic drugs or psychotropic substances.
- (3) In exercising the powers conferred under subsection (2) of this section, the National Drug Law Enforcement Agency shall promptly make a report to the Commission.
- (4) Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in subsections (1) and (2) of this section or for refusing to be a witness to facts likely to constitute an offence under this Act, the Economic and Financial Crimes Commission (Establishment, Etc.) Act and or any other law.
- 13: The Commission shall in consultation with the Central Bank and the Corporate Affairs Commission determine the flow of transactions and the identities of beneficiaries under this Act including the beneficiaries of individual accounts and of corporate accounts. Determination of flow of transactions, etc

PART 11 — OFFENCES

- 14: (1) Any person who—
- (a) converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substances or any other crimes or illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drug or psychotropic substances or any other crime or illegal act to evade the illegal consequences of his action, or
 - (b) collaborates in concealing or disguising the genuine nature, origin, location disposition movement or ownership of the resources property or right thereto derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act,
- commits an offence under this section and is liable on conviction to a term of not less than 2 years or more than 3 years
- (2) A person who commits an offence under subsection 1 of this section, shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or place.
- 15: (1) Without prejudice to the penalties provided for illicit traffic in narcotic drugs psychotropic substances, the laundering of drug money or the proceeds of a crime or an illegal act, any person who Money Laundering offences
- (a) being a director or employee of a financial institution warns or in any other way intimates the owner of the funds invoked in the transaction
- Other Offences

referred to in section 6 of this Act about the report he is required to make or the action taken on it or who refrains from making the report as required;

- (b) destroys or removes a register or record required to be kept under this Act; or
- (c) carries out or attempts under a false identity to carry out any of the transactions specified in sections 1 to 5 of this Act; or
- (d) makes or accepts cash payments exceeding the amount authorized under this Act; or
- (e) fails to report an international transfer of funds or securities required to be reported under this Act; or
- (f) being a director or an employee of a financial institution or designated non-financial institution contravenes the provisions of sections 2, 3, 4, 5, 6, 7 or 10 of this Act,

commits an offence under this section.

(2) A person who commits an offence under subsection (1) of this section shall be liable on conviction—

- (a) in the case of an offence under paragraphs (a) to (c), of subsection (1) to imprisonment for a term not less than 2 years or more than 3 years;
- (b) in the case of an offence under paragraphs (d)-(f) where the offender,
 - (i) is an individual, a fine of not less than ₦250,000 or more than 1 million Naira or a term of imprisonment of not less than 2 years or more than 3 years or to both fine and imprisonment,
 - (ii) is a financial institution or any body corporate, to a fine of not less than ₦250,000.

(3) A person found guilty of an offence under this section may also be banned indefinitely or for a period of 5 years from exercising the profession, which provided the opportunity for the offence to be committed.

Cap

253LFN 1990

(4) A person found guilty of an offence under paragraphs (d), (e) or (f) of subsection (1) of this section shall not be affected by the provisions of sections 18, 19, 20 and 25 of the National Drug Law Enforcement Agency Act.

(5) When as a result of a serious oversight or a flaw in the internal control procedures, a financial institution or person designated in section 9 of this Act, fails to meet any of the obligations imposed on him or it by this Act, the disciplinary authority responsible for the financial institution or the person's professional body may, in addition to any penalty in this Act take such disciplinary action against the financial institution or person as is in conformity with its professional and administrative regulations.

16: Any person who—

- (a) whether by concealment, removal from jurisdiction, transfer to nonresidents or otherwise retains the proceeds of a crime or an illegal act on behalf of another person knowing or suspecting that other person to be engaged in a criminal conduct or has benefited from a criminal conduct, or Conspiracy, aiding, etc.
- (b) knowing that any property either in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or has possession of it,

Retention of
proceeds of
a criminal conduct

commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or to both such imprisonment and fine.

- 17: A person who—
- (a) conspires with, aids, abets or counsels any other person to commit an offence,
 - (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,

Offences by a body corporate

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

- 18: (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 applicable shall 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 court may order that the body corporate shall thereupon and without any further assurances, but for such order, be wound up and all its assets and properties forfeited to the Federal Government.

Trial of offences

PART III — MISCELLANEOUS

- 19: (1) The Federal High Court shall have exclusive jurisdiction to try offences under this Act.
- (2) In any trial for an offence under this Act, the fact that an accused person 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 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 Federal High Court as corroborating the testimony of any witness in such trial.
- 20: For the purposes of this Act, the Director of Investigation or an officer of the Commission or Agency duly authorised in that behalf may demand, obtain and inspect the books and records of the financial institution to confirm compliance with the provisions of this Act.
- 21: A person who wilfully obstructs the Commission or Agency any authorised officer in the exercise of the powers conferred on the Commission or Agency by this Act commits an offence and is liable on conviction—
- (a) in the case of an individual, to imprisonment for a term not less than 2 years and not exceeding 3 years;
 - (b) in the case of a financial institution or other body corporate, to a fine of 1million Naira.
- 22: Section 13 of the National Drug Law Enforcement Agency Act is repealed.
- 23: (1) The Money Laundering Act 2003 is repealed.
- (2) The repeal of the Act specified in subsection (1) of this section shall not affect anything done or purported to be done under or pursuant to the Act

Trial of offences

Power to demand and obtain records

Obstruction of the Commission or authorised officers

Repeal of section 13 CAP 253 LFN 1990

Repeal of the money Laundering Act, of 2003 No. 7

"Agency" means National Drug Law Enforcement Agency;

"Central Bank" means the Central Bank of Nigeria;

"Commission" means the Economic and Financial Crimes Commission;

"designated non-financial institution" means dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate";

"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 or other appropriate regulatory authorities may from time to time designate;

"other regulatory authorities" means the Securities and Exchange Commission, National Insurance Commission and the Federal Ministry of Culture and Tourism;

"Transactions" means

- (a) acceptance of deposits and other repayable funds from the public,
- (b) lending,
- (c) financial leasing,
- (d) money transmission services,
- (e) issuing and managing means of payment (for example, credit and debit cards, cheques, traveller's cheques and bankers' drafts etc);
- (f) financial guarantees and commitments,
- (g) trading for account of customer (spot- forward, swaps, futures options act) in,
 - (i) money market instruments (cheques, bills, CDs, etc),
 - (ii) foreign exchange,
 - (iii) exchange, interest rate and index instruments,
 - (iv) transferable securities,
 - (v) commodity futures trading;
- (h) participation in capital markets activities and the provision of financial services related to such issues,
- (i) individual and collective portfolio management,
- (j) safekeeping and administration of cash or liquid securities on behalf of clients,
- (k) life insurance and all other insurance related matters, and
- (l) money changing.

I CERTIFY, IN ACCORDANCE WITH SECTION 2(1) OF THE ACTS AUTHENTICATION ACT, CAP. 4, LAWS OF THE FEDERATION OF NIGERIA 1990, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.



IBRAHIM SALIM, CON


CLERK TO THE NATIONAL ASSEMBLY

24th Day of March, 2004

SCHEDULE TO MONEY LAUNDERING (PROHIBITION) BILL, 2004.

(1) SHORT TITLE OF THE BILL	(2) LONG TITLE OF THE BILL	(3) SUMMARY OF THE CONTENTS OF THE BILL	(4) DATE PASSED BY SENATE	(5) DATE PASSED BY HOUSE OF REPRESENTATIVES
Money Laundering (Prohibition) Bill, 2004	An Act to repeal the Money Laundering (Prohibition) Act 2003; and enact the Money Laundering (Prohibition) Act 2004; and for matters connected therewith.	<p>This Bill seek to-</p> <p>(a) provide for the repeal of the Money Laundering Act 2003;</p> <p>(b) make comprehensive provisions to prohibit the laundering of the proceeds of a crime or an illegal act; and</p> <p>(c) provides appropriate penalties and expands the interpretation of financial institutions and scope of supervision of regulatory authorities on money laundering activities, among other things.</p>	23 rd March, 2004	23 rd March, 2004

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. 4, Laws of the Federation of Nigeria 1990.


 IBRAHIM SALIM, CON
 Clerk to the National Assembly
 24th Day of March, 2004

I ASSENT.

CHIEF OLUSEGUN OBASANJO, GCFR
 President of the Federal Republic of Nigeria
 Day of March, 2004