

MONEY LAUNDERING (PROHIBITION) ACT, 2011
EXPLANATORY MEMORANDUM

This Act-

- (a) provides for the repeal of the Money Laundering Act 2004 and enactment of Money Laundering (Prohibition) Act, 2011;
- (b) makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act; and
- (c) provides appropriate penalties and expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

MONEY LAUNDERING (PROHIBITION) ACT, 2011

ARRANGEMENT OF SECTIONS

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PART 1 – PROHIBITION OF MONEY LAUNDERING

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6. Special surveillance on certain transactions.
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MONEY LAUNDERING (PROHIBITION) ACT, 2011

A Bill

For

An Act to repeal the Money Laundering (Prohibition) Act, 2004 and enact the Money Laundering (Prohibition) Act, 2011; and for related matters.

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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) ~~₦~~5,000,000.00 or its equivalent, in the case of an individual; or
 - (b) ~~₦~~10,000,000.00 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 by a person or body corporate including a Money Service Business of a sum exceeding US\$10,000 or its equivalent shall be reported to the Central Bank of Nigeria, Securities and Exchange Commission or the Commission in writing within 7 days from the date of the transaction.

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) Transportation of cash or negotiable instruments in excess of US\$10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigerian Customs Service.
 - (4) The Nigerian Customs Service shall report any declaration made pursuant to subsection (3) of this section to the Central Bank and the Commission.
 - (5) Any person who falsely declares or fails to make a declaration to the Nigerian Customs Service pursuant to section 12 of the Foreign

Exchange (Monitoring and Miscellaneous Provisions) Act, commits an offence and shall be liable on conviction to forfeit not less than 25% of the undeclared funds or negotiable instrument or to imprisonment of not less than 2 years or to both.

Cap. F34, LFN, 2004

3. (1) A Financial Institution and a Designated Non-Financial Institution shall-
- Identification of customers.
- (a) verify its customer's identity and update all relevant information on the customer-
 - (i) 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, and
 - (ii) during the course of the relationship with the customer;
 - (b) scrutinize all on-going transactions undertaken throughout the duration of the relationship in order to ensure that the customer's transaction is consistent with the business and risk profile.
- (2) An individual shall be required to provide proof of his-
- (a) identity, by presenting to the Financial Institution or Designated Non-Financial Institution a valid original copy of an official document bearing his names and photograph or any other identification documents as the relevant regulators may from time to time approve;
 - (b) address, by presenting to the Financial Institution or Designated Non-Financial Institution the originals of receipts issued within the previous 3 months by public utilities or any other documents as the relevant regulatory authorities may from time to time approve.
- (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 comply with the provisions of subsection (2) of this section for any number or manner of transactions including wire transfer involving a sum exceeding US\$1,000 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\$1,000 or its equivalent.

(6) Where a Financial Institution or Designated Non-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\$1,000 or its equivalent.

(7) If it appears that a customer may not be acting on his own account, the Financial Institution or Designated Non-Financial Institution shall seek from the customer by all reasonable means, information as to the true identify of the principal and where the customer is a body corporate, the Financial Institution or Designated Non-Financial Institution shall-

(a) take reasonable measures to understand the ownership and control structure of the customer; and

(b) determine the natural persons who truly own or control the customer.

(8) Where the customer is a Public Officer, the Financial Institution or Designated Non-Financial Institution shall in addition to the requirements of subsection (1) and (2) of this Section-

(a) put in place appropriate risk management systems; and

(b) obtain senior management approval before establishing and during any business relationship with the Public Officer.

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 a valid original document bearing his name and address;

(b) record of 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 Ministry 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-
 - (a) in the case of-
 - (i) a new business, before commencement of the business,
 - (ii) existing business, within 3 months from the commencement of this Act, submit to the Ministry a declaration of its activities;
 - (b) prior to any transaction involving a sum exceeding US\$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving license, national identity card or such other document bearing his photograph as may be prescribed by the Ministry;
 - (c) record all transaction under this section in chronological order, indicating each customers surname, forenames and address in a register numbered and forwarded to the Ministry.
- (2) The Ministry shall forward the 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) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.
- (4) The Minister may make regulations for guiding the operations of Designated Non-Financial Institutions under this section.

Occasional cash transaction by designated non-Financial Institutions.

(5) Notwithstanding the provisions of subsection (2) of this Section, the Commission shall have powers to demand and receive reports directly from 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 ₦250,000 for each day during which the offence continues; and

(b) suspension, revocation or withdrawal of license by the appropriate licensing authority as the circumstances may demand.

6. (1) Where a transaction-

(a) involves a frequency which is unjustifiable or unreasonable;

(b) is surrounded by conditions of unusual or unjustified complexity;

(c) appears to have no economic justification or lawful objective; or

(d) in the opinion of the Financial Institution or Designated Non-Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious and the Financial Institution involved in such transaction shall seek information from the customer as to the origin and destination of the fund, 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

Special Surveillance
on Certain
Transactions.

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)(a) The acknowledgement of receipt shall be sent to the Financial Institution or Designated Non-Financial Institution 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.
 - (b) Notwithstanding the provisions of paragraph (a) of this subsection, the Chairman of the Commission, the Governor of the Central Bank or their authorized representative shall place a Stop Order not exceeding 72 hours, on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime.
 - (6) If the acknowledgment of receipt is not accompanied by a stop notice, or where the stop notice has expired and 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) Where 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 persons 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 commits an offence and is liable on conviction to a fine of ₦1, 000,000 for each day during which the offence continues.

(10) The directors, officers and employees of Financial Institutions and Designated Non-Financial Institutions who carry out their duties under this Act in good faith shall not be liable to any civil or criminal liability or have any criminal or civil proceedings brought against them by their customers.

7. A Financial Institution and Designated Non-Financial Institution shall preserve and keep at the disposal of the authorities specified in section 8 of this Act-
- Preservation of records.
- (a) the record of a customer's identification for a period of at least 5 years after the closure of the account 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 on demand to the Central Bank of Nigeria, or the National Drug Law Enforcement Agency (in this Act referred to as the "Agency") and such other regulatory authorities, judicial persons as the Commission may, from time to time, by order published in the gazette, specify.
- Communication of information.
9. (1) Every Financial Institution and Designated Non-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 Institutions.
- (a) the designation of compliance officers at management level at its headquarters and at every branch and local office;
 - (b) regular training programmes for its employees;
 - (c) the centralization 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 provision of this Act.
- (2) Notwithstanding the provision of this Act, the Central Bank of Nigeria, may impose a penalty of not less than ₦1million or the suspension of any license issued to the Financial Institution or Designated Non-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 in writing within 7 and 30 days respectively any single transaction, lodgment or transfer of funds in excess of-
- Mandatory disclosure by Financial Institutions.
- (a) ₦5,000,000 or its equivalent, in the case of an individual; or
- (b) ₦10, 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.
- (3) Any Financial Institution or Designated Non-Financial Institution that contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less ₦250, 000 and not more than ₦1million for each day the contravention continues.
11. (1) The opening or maintaining of numbered or anonymous accounts by any person, Financial Institution or corporate body is prohibited.
- Prohibition of Numbered or Anonymous Accounts.
- (2) Any person, Financial Institution or corporate body that contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to-
- (a) in the case of an individual, a term of imprisonment of not less than 2 years but not more than 5 years;
- (b) in the case of a Financial Institution or corporate body, a fine of not less than ₦10 million but not more than ₦50 million.
12. Where funds are blocked under subsection 7 of section 6 of this Act and there is evidence of conspiracy with the 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
- Liability of Directors, etc of Financial Institutions.

its director and employees involved in the conspiracy.

13. (1) The Commission, 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 of the Commission or an authorized officer of the Central Bank of Nigerian 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 of Bank Accounts.
- (a) place any bank account or any other account comparable to a bank account under surveillance;
 - (b) obtain access to any suspected computer system;
 - (c) 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 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 power conferred under subsection (2) of this section, the 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 subsection (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 or any other law.
14. The Commission shall in consultation with the Central Bank and the Corporate Affairs Commission determine the flow of transaction and the identities of beneficiaries under this Act including the beneficiaries of individual accounts and of corporate accounts.
- Determination of Flow of Transactions.

PART II – OFFENCES

15. (1) Any person who-
- Money laundering offences
- (a) converts or transfers resources or properties derived directly from-
 - (i) illicit traffic in narcotic drugs and psychotropic substances, or
 - (ii) participation in an organized criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants smuggling, tax evasion, sexual exploitation, illicit arms trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints and hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Act or any other legislation in Nigeria relating to money laundering, illegal bunkering, illegal mining, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action;
 - (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 the acts specified in paragraph (a) of this subsection commits an offence under this section and is liable on conviction to imprisonment for a term not less than 5 years but not more than 10 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 places.
16. (1) Without prejudice to the penalties provided under section 15 of this Act, any person who-
- Other Offences.
- (a) being a director or employee of a Financial Institution warns or in any other way intimates the owner of the funds involved in the transaction 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;
- (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;
- (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 Section 2, 3, 4, 5, 6 or 7 of this Act, commits an offence.

(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 of not less than 2 years but not more than 3 years or to a fine of ~~₦~~500,000 and not more than ~~₦~~1,000,000;
- (b) in the case of an offence under paragraph (d), a forfeiture of 25% of the excess above the limits placed in section 1 of this Act;
- (c) in the case of an offence under paragraphs (e) and (f) where the offender-
 - (i) is an individual, a fine of not less ~~₦~~1,000,000 or not more than ~~₦~~3,000,000 or a term of imprisonment of not less than 2 years or not more than 3 years or to both, and
 - (ii) is a financial institution or anybody corporate to a fine of not less than ~~₦~~3,000,000 or more than ~~₦~~25,000,000.

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

committed.

- (4) Where as a result of a serious oversight or a flaw in its internal control procedures, a Financial Institution or person designated under subsection (1) (a) of section 9 of this Act, fails to meet any of the obligations imposed 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 persons as is in conformity with its professional and administrative regulations.

17. A person who-

Retention of
proceeds of a
criminal conduct.

- (a) conceals, removes from jurisdiction, transfers to nominees 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; and
- (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 possession of it, commits an offence under this Act and is liable on conviction to imprisonment for a term not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine.

18. A person who-

Conspiracy, aiding
and abetting.

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

19. (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

Offences by a body
corporate.

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.

PART III – MISCELLANEOUS

20. (1) The Federal High Court shall have exclusive jurisdiction to try offences under this Act. Trial of offences.
- (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 of 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.
21. For the purpose of this Act, the Director of Investigation or an officer of the Ministry, Commission, or Agency duly authorized in that behalf may demand, obtain and inspect the books and records of the Financial Institution or Designated Non-Financial Institution to confirm compliance with the provision of this Act. Power to demand and obtain records.
22. A person who willfully obstructs the officers of the Ministry, the Commission, the Agency or any authorized officer in the exercise of the powers conferred on the Ministry, the Commission, or the 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; and
- (b) in the case of a financial institution or other body corporate, to a fine of ₦1,000,000.
23. Section 13 of the National Drug Law Enforcement Agency Act is repealed. Repeal of section 13 of Cap N30 LFN 2004.
24. (1) The Money Laundering (Prohibition) Act 2004 is repealed. Repeal of the Money Laundering (Prohibition) Act ,2004
- (2) The repeal of the enactment specified in subsection (1) of this

section shall not affect anything done or purported to be done under or pursuant to that enactment.

25. In this Act-

Interpretation.

“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 factorization 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 service, investment management, local purchase order financing export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank, or other appropriate regulatory authorities may from time to time designate;

“Other Regulatory Authorities” means the Securities and Exchange Commission, and the National Insurance Commission;

“Ministry” means the Federal Ministry of Commerce and “Minister” means the Minister charged with responsibility for matters pertaining to commerce;

“Money Service Business” include currency dealers; money transmitters; cheque cashers; and issuers of travelers ‘ cheques, money orders, or stored value;

“Public Officers” ‘ means individuals who are or have been entrusted with prominent public function, both within and outside Nigeria and those associated with them;

“Terrorism Financing” is the financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism;

“Transaction” means-

- (a) acceptance of deposit and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) money transmission service;
- (e) issuing and managing means of payment (for example, credit and debit cards, cheques, travelers’ cheque and bankers’ drafts etc.);
- (f) financial guarantees and commitment;
- (g) trading for account of customer (spot-forward, swaps, future options, etc.) in-
 - (i) money market instruments (cheques, bills CDs, etc.),
 - (ii) foreign exchange,
 - (iii) exchange interest rate and index instruments,
 - (iv) transferable securities, and
 - (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.

26. This Act may be cited as the Money Laundering (Prohibition) Act, 2011.

Citation.

