

Highlights of the Money Laundering (Prevention and Prohibition) Act 2022

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Introduction

On 17 May 2022, the President of the Federal Republic of Nigeria, Muhammadu Buhari assented to the Money Laundering (Prevention and Prohibition) Bill, 2022. The Money Laundering (Prevention and Prohibition) Act 2022 (the “**Act**”) repealed the Money Laundering (Prohibition) Act 2011 (the “**2011 Act**”).

The objectives¹ of the Act include expanding and strengthening the existing legal and institutional framework for combating and preventing Money Laundering.

Notable provisions

a. Conduct of separate transactions:

Financial institutions and designated non-financial businesses and professions² are mandatorily obligated to report to the Nigerian Financial Intelligence Unit and Special Control Unit against Money Laundering (“SCUML”) any single transaction in excess of N5,000,000 or its equivalent for individuals and N10,000,000 or its equivalent for corporate bodies.³ The Act prohibits a situation where a person splits a single transaction into two or more separate transactions with the intent to avoid the reporting of such transaction.⁴

b. International transfers of funds, securities, and cash

The transfer of funds, securities or cash exceeding \$10,000 to and from a foreign country by a corporate body must be reported to the Central Bank of Nigeria, the Securities and Exchange Commission and the Economic and Financial Crimes Commission within 1 day from the date of the transaction⁵. The 2011 Act had provided to the effect that such transfers be reported within 7 days.

c. Identification of customers

The Act obligates financial and designated non-financial businesses and professions to identify its customers as well as persons alleging to act on behalf of its customers⁶.

d. Politically exposed persons

A politically exposed person is defined by the Act to include individuals who are or have been entrusted with prominent public functions domestically or by a foreign country. For example, Heads of States or Government, senior politicians, senior government, judicial or military officials, senior executives of State-owned corporations and

important political party officials.

Financial institutions and non-designated financial businesses and professions shall establish procedures for determining whether a customer or a customer's beneficiary is a politically exposed person ⁷.

Where a customer is a foreign politically exposed person, financial institutions or non-designated financial businesses and professions are to seek and obtain the approval of senior management before establishing or continuing such business relationship, identify the source of income of such foreign politically exposed person or their beneficiaries and conduct on-going monitoring of the relationship⁸.

If the customer is a domestic politically exposed person, financial institutions or designated non- financial businesses and professions shall adopt the above measures where there is a higher risk business relationship with such person⁹.

e. Casinos

Casinos are obligated to forward records of financial transactions by customers to the Special Control Unit against Money Laundering¹⁰. Casinos under the Act include internet and ship-based casinos¹¹.

f. Attorney-client privilege

Generally, communications between lawyers and their clients are confidential except where there is requirement to disclose under the laws. The Act provides to the effect that attorney-client privilege does not apply to the following transactions – purchase or sale of property, purchase or sale of any business, managing client money, securities or assets, opening or management of bank, savings or securities accounts, creation or management of trust companies or similar structures or any proceeds from an unlawful act¹².

g. Assessing new technologies, products, and business practices

Financial institutions and non-designated businesses and professions are to identify and assess money laundering and terrorism financing risks that may result from the development of new technologies, business practices and products and adopt appropriate measures that would mitigate such risks¹³.

h. Special Control Unit against Money Laundering (“SCUML”)

The Act statutorily recognizes the SCUML, which had been set up by the Federal Government in 2005 under the Federal Ministry of Industry, Trade, and Investment. The SCUML is responsible for the supervision of non-designated financial businesses and professions in their compliance with the provisions of the Act¹⁴.

i. Punishment for money laundering offences

Under the 2011 Act, a person who commits the offence of money laundering is liable to imprisonment for a period of not less than 7 years or a fine of not less than 100% of the proceeds of the offence or both. The Act has now provided that such a person is liable to imprisonment for a period not less than 4 years or a fine of not less than five times the value of the proceeds of the offence or both. The liability of a fine of not less than five times the value of the proceeds also applies to corporate bodies guilty of money laundering offences.

It is noteworthy that the Act provides to the effect that it shall not be necessary to establish a specific unlawful act for the purpose of proving money laundering as knowledge, intent or suspicion of money laundering may be inferred from objective factual circumstances¹⁵.

j. Periodic reports on money laundering

The Attorney General shall prepare and submit a Nigerian Money Laundering Strategy Report to the President every

two years. The Nigerian Money Laundering Strategy Report shall contain contributions from competent authorities¹⁶.

k. Expanded scope of financial institutions and designated non-financial businesses and professions.

The Act has expanded the scope of “financial institutions” to include virtual assets service providers and “designated non-financial businesses and professions” to include businesses involved in the hospitality industry, dealers in mechanized farming equipment, farming equipment and machineries, dealers in precious metals and precious stones, dealers in real estate, estate developers, estate agents and brokers, high value dealers, mortgage brokers, practitioners of mechanized farming, trust and company service providers and pools betting¹⁷.

l. Virtual assets

Following the development and use of digital currencies and assets, the Act refers to funds as including virtual assets. The Act further defines virtual assets to mean digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes but does not include digital representation of fiat currencies, securities and other financial assets¹⁸.

Conclusion

The Money Laundering (Prevention and Prohibition) Act 2022 strengthens the existing system for combating money laundering and related offences. It is applaudable that the Act provides for a periodic reporting on money laundering to the President as this would serve as a yardstick for tracking the effective implementation of the provisions of the Act. The application of the Act to virtual assets is noteworthy to the effect that the Act now imposes mandatory reporting obligations on virtual assets service providers in respect of the transfer of virtual assets where such transaction exceeds the required monetary threshold¹⁹.

1. Section 1 ↩
2. Section 30 of the Act defines “Designated non-financial business and profession” to include automotive dealers, businesses involved in the hospitality industry, casinos, clearing and settlement companies, consulting companies, dealers in real estate, high value dealers, legal practitioners, licensed professional accountants, tax consultants, etc. ↩
3. Section 11 ↩
4. Section 2(2) ↩
5. Section 3(1) ↩
6. Section 4(1)(d) ↩
7. Section 4(7) ↩
8. Section 4(8) ↩
9. Section 4(9) ↩
10. Section 5(1) ↩
11. Section 5(3) ↩
12. Section 11(4) ↩
13. Section 13 ↩
14. Section 17 ↩
15. Section 18 (8) and (9) ↩
16. Section 26 ↩
17. Section 30 ↩
18. Section 30 ↩
19. N5,000,000 or its equivalent for individuals and N10,000,000 for corporate bodies. ↩

Your Key Contacts



Chisa Theodora Uba

Partner, Lagos

D +234 1 279 7035

M +234 802 311 5469

chisa.uba@dentons.com



Joy E. Ebong

Associate Counsel, Lagos

D +234 1 2797030

M +234 905 253 6219

joy.ebong@dentons.com