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("Act" Or "Mla")

What You Should Know About The Money Laundering Act 2022

(Prevention And Prohibition)



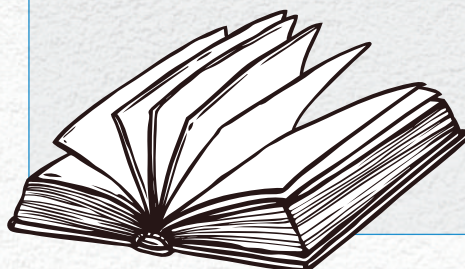
President Muhammadu Buhari recently assented to and passed into law the Money Laundering (Prevention and Prohibition) Act, 2022.

The law strengthens the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework in the country, and sets out containment and punitive measures against money laundering in Nigeria.

The Act repeals the former Money Laundering (Prohibition) Act, 2011 and provides comprehensive legal and Institutional Framework for the prevention and prohibition of money laundering in Nigeria and establishes a department under the Economic and Financial Crimes Commission ("EFCC"), which shall be known as Special Control Unit Against Money Laundering ("SCUML").

The five key objectives as stipulated in Section 1 of the MLA are:

- a Provide for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria;
- b Strengthen the existing system for combating money laundering and related offences;
- c Make adequate provisions to prohibit money laundering;
- d Expand the scope of money laundering offences and provide appropriate penalties; and
- e Establish SCUML under the EFCC for effective implementation of the money laundering provisions of the MLA.



Limitation on Cash Payments¹

The Act prohibits money laundering and criminalizes cash payments exceeding N5,000,000 or its equivalent, in the case of an individual; or (b) N10,000,000 or its equivalent, in the case of a body corporate. Transactions above this threshold must now be routed electronically or through a financial institution. The MLA specifically warns against splitting the payment into two or more transactions separately with intent to avoid the duty to report a transaction which should be reported.²

Duty to Report International Transfer or Transportation of Funds, Securities and Cash³

The Act prohibits money laundering and criminalizes cash payments exceeding N5,000,000 or its equivalent, in the case of an individual; or (b) N10,000,000 or its equivalent, in the case of a body corporate. Transactions above this threshold must now be routed electronically or through a financial institution. The MLA specifically warns against splitting the payment into two or more transactions separately with intent to avoid the duty to report a transaction which should be reported.

Customer Due Diligence (“CDD”)⁴

Under the MLA, Financial Institutions (“FI”) and Designated Non-Financial Businesses (“DNFB”) are obliged to verify the identity of their customers whether permanent or occasional, natural or legal person or any other form of legal arrangements. The FIs and DNFBs are also to take reasonable measures to ensure that anybody appearing to act on behalf of a customer is so authorized and verify the identity of that person.⁵

It is important to also note that FIs and DNFBs are required to continuously conduct due diligence on a business relationship and scrutinize transactions undertaken during the course of the relationship by assessing their source of funds; their business and risk profile; their transaction history; customers’ existing records and keep up-to-date records of the customers’ data.

Determination of Politically Exposed Persons (“PEPs”)⁶

In performing the due diligence obligations, the MLA describes the procedures for politically exposed persons. PEPs under the Act are classified into two (2) categories: Foreign politically exposed persons and Domestic politically exposed persons. Regarding foreign PEPs, the MLA requires FIs and DNFBs to obtain the approval of senior management before the establishment or continuous establishment of existing business relationships; and take reasonable measures to establish the source of funds of customers and their beneficiaries identified as politically exposed persons.⁷ The above duties extend to domestic PEPs where there is a high-risk business relationship with such a person.⁸

1. Section 2 of the MLA
2. Section 2(2) of the MLA
3. Section 3 of the MLA
4. Section 4 of the MLA
5. Section 4 (1)(d) of the MLA

6. Section 4 (8)(9) of the MLA
7. Section 4 (8) of the Act
8. Section 4 (9) of the Act



Cash transactions by DNFBs.⁹

DNFBs and Professions that make use of cash transactions are now required to submit a declaration of their activities to SCUML within Three (3) months from the commencement of the Act (i.e between May 13 2022 – August 13 2022). For DNFBs whose business involves cash transactions, prior to any transaction which involves a sum exceeding US\$1,000 or its equivalent, they are now required to ensure their customers fill a standard data form, attaching proof of identification such as international passport, driving license, national identity card or such other document bearing his photograph.

Under the MLA, DNFBs are also required to record all cash transactions in a chronological order in a cash transaction register and forward same to SCUML within Seven (7) days from the date of the transaction. These records shall be preserved for at least Five (5) years. Failure to comply with the requirements of customer identification and the submission of returns amounts to an offence, punishable upon conviction by a fine of N250,000 for each day during which the offence continues; and suspension, revocation or withdrawal of license by the appropriate licensing authority.



9. Section 6 of the MLA
10. Section 7 of the MLA
11. Section 8 of the MLA

Suspicious Transaction Reporting¹⁰

FIs and DNFBs are mandated under the MLA to report transactions that are deemed to be suspicious to SCUML immediately. FIs and DNFBs have a duty to look out for and report transactions that involve a frequency which is unjustifiable or unreasonable; or surrounded by conditions of unusual or unjustified complexity; or appears to have no economic justification or lawful objective' and or inconsistent with the customers' known transaction patterns. Reports are also compulsory where a transaction evokes reasonable suspicion of being proceeds of crime, unlawful act, money laundering or terrorist financing.

Duty to Keep and Preserve Records¹¹

DNFBs and FIs are obligated to keep all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction. The records are to be made swiftly available to the competent authorities and such other regulatory authorities or judicial persons, upon request. This is also in line with the provisions under CAMA that requires companies to file annual file annual returns and preserve records for six years.



12. Section 375 (2) of Companies and Allied Matters Act (CAMA 2020).

Duty to Have Anti-Money Laundering Programs and Policies¹³

The MLA mandates FIs and DNFBs to develop programmes to combat the laundering of the proceeds of a crime or other unlawful acts. In event of non-compliance, CBN, SEC, National Insurance Commission or SCUML may impose a penalty.

The compulsory programs may include: (a) hiring compliance officers at management level at its headquarters, every branch and local office (b) regular training programmes their employees (c) have central databases (d) having an internal audit unit.

Mandatory Disclosure of Lodgments and Transfers

FIs and DNFBs are to report in writing to the SCUML within seven days, any single transaction, lodgement or transfer of funds in excess of — (a) N5,000,000 or its equivalent, in the case of an individual; or (b) N10,000,000 or its equivalent, in the case of a body corporate. Failure to comply is a crime and liable on conviction to a fine of at least N250,000 and not more than N1,000,000 for each day the contravention continues.

Restriction on Lawyer-Client Privilege¹⁴

Before now, all communications made by a client to his lawyer in the normal course of professional employment are privileged. Such communications cannot be disclosed by the lawyer except with the consent of his clients or as may be permitted by law.¹⁵

This MLA excludes the application of lawyer-client privilege and the invocation of client confidentiality

to the following specific transactions: (a) the purchase or sale of property; (b) the purchase or sale of any business; (c) the managing of client money, securities or other assets; (d) the opening or management of bank, savings or securities accounts; (d) the creation, operation or management of trusts, companies or similar structures; or (e) anything produced in furtherance of any unlawful act.¹⁶

Liability of Directors and employees of FIs and DNFBs¹⁷

Where funds are blocked by an order of the Federal High Court at the request of the Unit or the Commission because of the impossibility of ascertaining the origin of the funds within the period of stoppage of the transaction and there is evidence of conspiracy with the owner of the funds, the FIs or DNFBs involved shall not be relieved of liability and criminal proceedings for all offences arising there from, may be brought against the director and employees involved in the conspiracy.



13. Section 10 of the MLA

14. Section 11(4) of the MLA

15. Section 192 of the Evidence Act, Rule 19 of the Rules of Professional Conduct, 2007

16. Section 11 (4) of the Act

17. Section 13 of the MLA

Establishment of the Special Control Unit Against Money Laundering (“SCUML”)

The Special Control Unit Against Money Laundering (“SCUML”) was first established by the Federal Government of Nigeria in 2005 under the Federal Ministry of Industry, Trade and Investment, and it works in collaboration with the Economic and Financial Crimes Commission (EFCC). The Act gave statutory backing to the establishment of SCUML and charged it with the responsibility of supervising the DNFBs and FIS in their compliance with the Act, relevant laws and applicable regulations. **Other functions of SCUML as provided in the Act are:**

(a) Registration and certification of designated non-financial businesses and professions in accordance with the provisions of the Act, relevant laws, and applicable regulations;

(b) Taking the necessary enforcement actions to ensure compliance with the Act, relevant laws, and applicable regulations;

(c) Conducting off-site, on-site and on the spot checks, inspection of designated nonfinancial businesses and professions for the purposes of money laundering control and supervision;

(d) Receiving cash -based transaction reports and currency transaction reports from designated non -financial businesses and professions.



Jurisdiction to try offences under the MLA

The Federal High Court located in any part of Nigeria regardless of the location where the offence is committed shall have jurisdiction to try offences under this Act or any other related enactment; and hear and determine proceedings arising under the Act. The Federal High Court exercises jurisdiction whether or not the offence was commenced or completed in Nigeria where the alleged offence was committed in Nigeria; on a ship, vessel or air craft registered in Nigeria; by a citizen or non-citizen of Nigeria if the person’s conduct would also constitute an offence under a law of the country where the offence was committed; or outside Nigeria where the alleged offender is in Nigeria and not extradited to any other country for prosecution.



Expanded Scope of Designated Non-Financial Business and Profession and Property

The MLA expanded the scope of Designated Non-Financial Business Profession to include: (a) business involved in the hospitality industry, (b) dealers in mechanized farming equipment, farming equipment and machineries, (c) dealers in precious metals and precious stones, (d) dealers in real estate, estate developers, estate agents and brokers, (e) high value dealers, (f) mortgage brokers, (g) practitioners of mechanized farming, (h) trust and company service providers, and (i) pools betting. (j) legal practitioners and notaries, (k) licensed professional accountants, (l) mortgage brokers, (m) supermarkets, (n) tax consultants, (o) trust and company service providers, (p) casinos (q.) consultants and consulting companies (r.) clearing and settlement companies, (s.) hotels; and such other businesses and professions as may be designated by the Minister responsible for Trade and Investment.

The Act also expanded the meaning of property to include virtual assets, defined by the Act to mean a 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 assets.

Conclusion

The MLA strengthens the existing system for combating money laundering and related offences. It is commendable that the MLA provides for a periodic reporting on money laundering to the President as this would serve as a measure for tracking the effective implementation of the provisions of the Act.

A major difficulty that the Act is the restrictions and granularity of reporting and compliance that it introduces which may invariably stifle ordinary business operations in Nigeria. Nigeria is ranked 131 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of Nigeria improved to 131 in 2019 from 146 in 2018. As much as the intention of the Act is to combat money laundering and related offences, the harsh restrictions and mandatory obligations on transactions may affect the growth of the ease of doing business in Nigeria.

Disclaimer

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