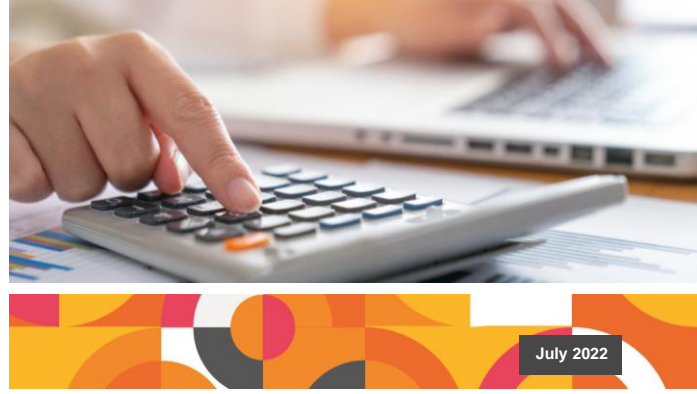


An overview of the Key Provisions of the Money Laundering (Prevention and Prohibition) Act 2022



Introduction

On 13 May 2022, the President assented to the Money Laundering (Prevention and Prohibition) Act 2022 (**the “Act”**). The Act repealed the Money Laundering (Prohibition) Act 2011 (**the “repealed Act”**). One of the objectives of the Act is to provide a comprehensive legal and institutional framework for combating money laundering and other related offences in Nigeria.

Key Provisions

The Act retained the following restrictions/obligations:

1. prohibition of cash payment on transactions exceeding ₦5Million or ₦10Million (or its equivalent) for individuals and corporates respectively.
2. the obligation to disclose transactions exceeding ₦5Million or ₦10Million (or its equivalent) for individuals and corporates respectively.
3. the obligation to report a transfer (to or from a foreign country) exceeding \$10,000 to the Nigerian Financial Intelligence Unit (“**NFIU**”) and the Securities and Exchange Commission (“**SEC**”).
4. declaration of cash or negotiable instruments exceeding \$10,000 to the Nigeria Customs Service.
5. the obligation to conduct due diligence on customers and business relationships.
6. obligation to set up internal control measures to combat laundering of proceeds of crime and other unlawful acts.

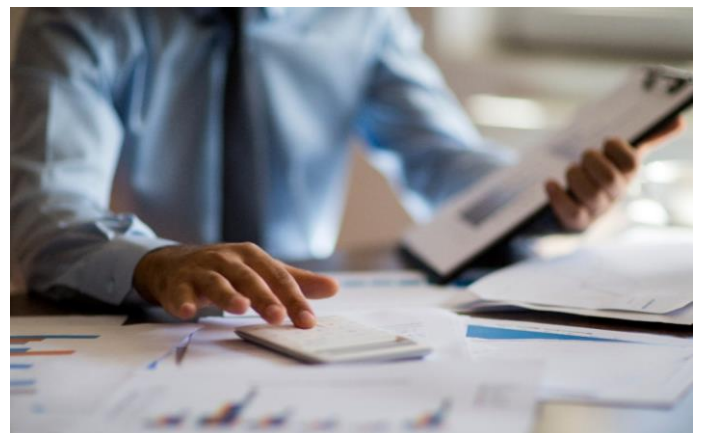
New Key provisions include:

1. the Act defines funds to include ‘virtual asset’. Virtual asset means 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 representations of fiat currencies, securities and other financial assets.
2. the Act extends the definition of Financial Institution to include Virtual Asset Service Providers (“**VASP**”).
3. the Act establishes the Special Control Unit Against Money Laundering (“**SCUML**”) (a department under the Economic and Financial Crimes Commission) as the authority responsible for supervising DNFI to ensure compliance with the provisions of the Act.

The Act empowers SCUML to suspend any licence issued to a designated non-financial business and profession, for failure to comply with the obligations to establish internal procedures, policies and controls; and also to impose fine of not more than ₦1Million.

4. the Act overrides ‘lawyer/client confidentiality’ where a transaction relates to the following:
 - i. purchase or sale of property
 - ii. purchase or sale of business
 - iii. management of client money, securities and other assets
 - iv. the opening or management of bank savings or securities
 - v. account creation, operation or management of trusts, companies or similar structures.
5. Financial Institutions (“**FIs**”) and Designated Non-Financial Institutions (“**DNFIs**”) must identify and assess money laundering and terrorism financing risks that may arise in relation to the development of new products and use of new or developing technology and take appropriate measures to manage/mitigate the risks.

On the flipside and interestingly, Non Profit/ Non Governmental Organisations (“**NPO/NGO**”) (usually companies limited by guarantee and Incorporated Trustees) that were designated as DNFI under the *Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013* (**the “Regulation”**) issued pursuant to the repealed Act were excluded from the definition of DNFI under the Act, notwithstanding that the Regulation is an existing subsidiary legislation.



Takeaway

Considering technological disruption and the evolution of how funds are transferred, the scope of coverage has been extended by the expansion of the definition of funds and FIs, thereby bridging the gap in the repealed Act.

Fiat currencies now have digital representations developed using blockchain technology, e.g., e-Naira (Nigeria) and Sand Dollar (Bahamas). These are different from cryptocurrencies which are issued by private entities. Since no government guarantees their value and they are highly volatile, the CBN has restricted transacting in crypto through banks and financial institutions in Nigeria.

Digital representations of fiat currencies are excluded from the definition of virtual assets because since they are fiat, their origin is traceable, and the Act as well as other legislation have sufficiently covered their reporting requirements when they are above a certain threshold.

Following the decision in **Central Bank of Nigeria v. the Registered Trustees of the Nigerian Bar Association (“NBA”)** (where the NBA successfully challenged the scope of application of the repealed Act to legal practitioners), legal practitioners were excluded from the definition of DNFIs under the repealed Act. It is instructive to note that the definition of DNFIs under the Act yet includes and subjects legal practitioners to regulation under the Act.

The exclusion of legal professional/client privilege appears in the same section on mandatory disclosure required to be made to the NFIU and SCMUL by FIs and DNFIs respectively. The implication is that if any of the listed transactions reaches the reporting threshold, a report must be filed with the SCUML (as legal practitioners are classified as DNFIs).

It is important to note that while NGO/NPOs are not included in the definition of DNFIs under the Act, they are still subject to regulation under the Act based on section 4 of the Interpretation Act. Section 4 provides that **“Where an enactment is repealed and another enactment is substituted for it, then any subsidiary instrument in force by virtue of the repealed enactment shall, so far as the instrument is not inconsistent with the substituted enactment, continue in force as if made in pursuance of the substituted enactment.”** Until the Regulation is replaced, it will continue to apply alongside the Act.

Even though SCUML was already performing the responsibilities imposed by s. 17 of the Act, it is now empowered to suspend licences and impose penalties on DNFIs. Overall, FIs and DNFIs are encouraged to evaluate their processes to ensure their internal control measures are sufficient to discharge the obligations under the Act.



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