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Legal Alert ? July 2014 ? Foreign Exchange Payments in Nigeria

Despite continuing trade liberalisation, divergent opinions remain as to whether goods and services can be paid for in a foreign currency in Nigeria? This divergence in opinion is easily resolved by a review of the provisions of the Central Bank of Nigeria (Establishment) Act ("CBN Act") and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act ("Forex Act").

In furtherance of the CBN and Forex Acts, the Central Bank of Nigeria ("CBN") compiled and issued the Foreign Exchange Manual, which Manual serves as a guide to participants when processing their foreign exchange transactions.

Common Mode of Payment.

The common mode of payment in Nigeria is by cash, in the Naira currency. By Law, any person who refuses to accept payment in the Nigerian currency of the Naira is guilty of an offence and liable on conviction to a fine of N50,000; or to a term of imprisonment of six (6) months.

The CBN is empowered to prescribe the circumstances and conditions under which foreign currencies may however be accepted as a medium of exchange in Nigeria. And in furtherance of this statutory duty, the CBN issued the Foreign Exchange Manual.

Exception to the Common Mode of Payment.

Under the current CBN Foreign Exchange Manual, the payment for any goods or services, in any convertible foreign currency, is at the discretion of the person making the payment; provided that any such foreign currency payment originates from a domiciliary account, or from the payee's offshore sources.

Except expressly required by a Statute, operators of domiciliary accounts are not obligated to

disclose the sources of the foreign currency or currencies in their domiciliary accounts. This is because data collated on foreign exchange transactions are primarily for statistical and foreign exchange reserve purposes.

Also, foreign currency transactions in the foreign exchange autonomous market or in domiciliary accounts are not liable to government expropriation.

Hotels and Foreign Exchange Licensing

Like other regulated institutions, Hotels that are registered by the Central Bank of Nigeria as Authorised Buyers of foreign currencies, may receive payment for the services that they provide in any convertible foreign currency.

Also, Hotels that are registered by the CBN as Authorised Buyers may buy from their Guests, foreign currencies, and can exchange unutilised foreign or local currencies from such Guests.

All foreign exchange receipts must however be domiciled in the Hotel's Foreign Currency Domiciliary Account with a licensed Bank in Nigeria.

It is also a mandatory requirement that all foreign exchange transactions must have documentation showing the name, address and passport number of the customer of the Hotel making the currency transaction; the name and address of the Hotel; the amount purchased; what foreign currency was involved in the transaction; the commission earned and the equivalent in Naira.

Lastly, monthly returns of all the purchased and sold foreign currencies must be submitted to the Trade and Exchange Department of CBN not later than 10 days after the end of each month. Where no foreign exchange sale or purchase is made, a Nil return is required to be filed.

Some Foreign Exchange Offences and Sanctions.

There are various foreign exchange offences for which stiff sanctions are prescribed. Some of these offences are the forgery of foreign currencies; the conversion of any foreign exchange sourced from the foreign exchange autonomous market to a use not approved by the applicable laws; or the negotiation of any foreign exchange or any other trading instrument contrary to the provisions of the applicable law; round-tripping of foreign exchange sourced from the autonomous foreign exchange market; failure to render monthly returns; etc.

On conviction, some of the penalties for any foreign exchange infringement include, for individuals, a term of imprisonment of five (5) years; or a fine of five (5) times the amount of the foreign exchange involved. In the case of a corporate body, the fine for contravention includes a penalty of ten (10) times the amount of the foreign exchange involved.

Further sanctions are the forfeiture of the proceeds of the foreign exchange contravention to the Federal Government of Nigeria ("FGN"); the suspension or revocation of the licence of the dealer involved; and the forfeiture of the foreign currency to the Nigerian Federal Government.

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