Legal Alert for July 2010 – Money Laundering Law in Nigeria

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Legal News

The Lagos State Government has signed into Law a bill for the regulation, standardisation and grading of Hotels and other Tourism businesses in Lagos State. This new law amends the Hotel Licensing Law 2003, and requires that no person, whether corporate or an individual, shall operate a Hotel establishment or practice any form of tourism business in Lagos State without it first obtaining a license from the Lagos State Hotel and Tourism Licensing Authority. Any contravention of this law attracts a fine ranging from ₦100,000 to ₦500,000 or a term of imprisonment of two years.

LEGAL ALERT— Money Laundering Legislations in Nigeria

There is no definitive statutory definition of what constitutes a Money Laundering offence. The Anti-Money Laundering/Combating Financing of Terrorism Regulations 2009 however defines Money Laundering as the process whereby criminals attempt to conceal the origin and or ownership of property and other assets that are or were derived from a criminal activity or activities. These regulations go further to acknowledge that money laundering and terrorism financing are now a global phenomena and malaise which pose major threats to international peace and security, national development and progress, if left un-combated.

The combined provisions of the Money Laundering Act, 2004 and the Anti-Money Laundering/Combating Financing of Terrorism Regulations 2009 provide a guide on what financial activity could constitute money laundering. While there is currently before the Nigerian National Assembly the Money Laundering Act (Repeal and Re-enactment) Bill 2010 which Bill seeks to, among other things, increase the cash

amount(s) or withdrawal(s) that a financial institution or a non-financial institution must statutorily report to the financial regulators, a consideration of the existing Money Laundering Law is vital to both financial institutions and non-financial institutions and their customers.

Money Laundering (Prohibition) Act, 2004

The Money Laundering (Prohibition) Act, 2004 ("the Money Laundering Act") makes various provisions prohibiting the laundering of the proceeds of a crime or of any criminal or illegal activity, and provides for appropriate penalties for money laundering infringements.

According to the provisions of the Money Laundering Act, no person or corporation or organisation is allowed to make or accept cash payments of a sum in excess of ₦500,000.00 or its equivalent in the case of an individual, and ₦2,000,000.00 or its equivalent in the case of a corporation, unless such cash payment or acceptance is undertaken through a financial institution. Also, a transfer of funds or securities to or from a foreign country in excess of US$10,000 or its naira equivalent must be reported to the Central Bank of Nigeria ("CBN") or the Securities and Exchange Commission ("SEC") in the case of a public corporation.

The mandatory reporting of all monetary transfers to or from outside the country must indicate the nature of the transfer, the amount of the transfer, the names and addresses of the sender and the receiver of the funds or securities that were transferred, and the ultimate beneficiary of the transfer if different from the latter persons. The Nigerian Custom Service ("NCS") is also mandatorily required to forward all monetary declarations it collates to the Central Bank of Nigeria.

The Central Bank of Nigeria with the Securities and Exchange Commission are in turn required to forward weekly reports of the above mentioned declarations, submitted to them, to the Economic and Financial Crimes Commission ("EFCC"). Despite this provision, the EFCC is itself empowered to directly demand and receive these reports or declarations directly from the Financial Institutions concerned.

Another money laundering prevention mechanism is the requirement that all financial institutions must verify their customers' identity and physical address before establishing any business relationship with such a customer or customers. The business relationship contemplated by this Act, between the financial institution and the customer, includes the opening of any form of account, safe deposit box and other kinds of fiduciary relationship accounts. The types of a customer identification

contemplated by this Act include a valid official document like a Driver's License, an International passport issued in the last three months preceding its submission, utility bills, etc all of which must bear the customer's full names and or photograph. A corporation on the other hand is required to provide proof of its legal existence by presenting its certificate of incorporation and other valid registration documents attesting to its existence as a body corporate recognised by law.

In the event that a financial institution suspects or has reasonable grounds to suspect that the amount involved in a transaction is derived from the proceeds of a crime or from an illegal activity, such financial institution must require from its customer physical evidence attesting to the customer's identification notwithstanding that the amount involved in the transaction is less than US$5,000 or its equivalent. Where the customer is not acting on its own behalf but for a principal, all the information on the identity of the principal must be obtained as if the principal were the customer.

Casino owners, dealers in jewelry, cars, luxury goods, professional consultants including Lawyers, Doctors, Accountants, etc, Hotels, Supermarkets and other designated non-Financial Institutions are required to also obtain and verify the identity of their clients and or customers by keeping a record or register of the particulars of the names of these clients or customers, their addresses and the nature of each transaction. The Federal Ministry of Commerce, to whom these records are forwarded for non-Financial Institutions, is required to in turn forward the reporting records and or declarations to the EFCC. The Register of this information, that is collated or assembled, must be preserved by the non-Financial Institutions for a period of at least five years after the last transaction recorded in the Register.

Where a designated financial institution fails to verify the identity of its customers or does not submit the returns of financial transactions undertaken by its customers with it, within seven days from the date the transaction was undertaken, such a financial institution commits an offence, and if convicted is liable to a fine of ₦25,000 for each day that the offence continues un-remedied; this is in addition to, and as may be appropriate, such an institution suffering a suspension or revocation or withdrawal of its operating license by the appropriate licensing or regulatory Authority.

Special money laundering surveillance and investigation could occur where a transaction or transactions involves a frequency which is

unjustifiable or unreasonable, or is surrounded by conditions of unusual or unjustifiable complexity, or appears to have no economic justification or lawful objective. The financial institution or designated financial institution involved in such a transaction must seek from its customer information or clarification as to the origin and designation of the funds, the objective of the transaction and the ultimate beneficiary. The reporting institution must also draw-up a report which it must forward to the EFCC. Where necessary, the institution should take action to prevent the laundering of the proceeds of a crime or of any illegal financial activity, whether the transaction is completed or not. Such preventive actions include the very short-term freezing of the account of the customer pending when the EFCC is informed and EFCC takes action. Failure to comply with these provisions attracts a fine, on conviction, of ₦1,000,000 for each day during which the offence continues.

The protective rules on banker/customer confidentiality are not applicable to money laundering investigations and prosecutions especially where an ex-parte order of the Federal High Court is obtained to place a bank account or such other fiduciary account under surveillance, tap every telephone or electronic system of the suspected customer or institution.

Any person who converts or transfers or conceals or disguises or collaborates or aids and abets the concealing or disguising of the genuine nature, origin, location, movement or ownership of a right, asset or property which is derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or from any other criminal or illegal activity is guilty of an offence which on conviction carries a prison sentence of not less than 2 years or more than 3 years. The fact that the various acts constituting the offence were committed in different countries or places shall not be a bar to the prosecution and conviction of such a person neither will the substantive illicit traffic in narcotic drugs or psychotropic substances be exempted from further separate prosecution and conviction.

Also, any person who retains the proceeds of a crime or of any illegal activity on behalf of another person commits an offence and will be liable on conviction to imprisonment for a term of not less than 5 years or to a fine equivalent to five times the value of the proceeds of the criminal conduct or to both such fine and term of imprisonment. Where a corporation is convicted of an offence under the Money Laundering (Prohibition) Act, the Federal High Court may order that the corporation

be wound up and its properties forfeited to the Federal Government of Nigeria.

The Federal High Court has the exclusive jurisdiction to try offences under the Money Laundering (Prohibition) Act, 2004. In the trial of offences under this Act, the Federal High Court is authorise to admit collaborating evidence establishing that an accused person is in possession of property for which he or she cannot satisfactorily provide an account and which property is disproportionate to his or her known sources of income.

To facilitate the obtaining of evidence, the Director of investigation or an authorised officer of the Economic and Financial Crime Commission (''EFCC''), duly authorised in that behalf, may demand, obtain and inspect financial records of any financial institution to confirm its compliance with the provisions of this Act. Any willful obstruction of EFCC or its authorised officers in the discharge of their duties under this Act is an offence which on conviction carries a term of imprisonment of not less than two years and not more than three years in the case of an individual. The punishment for a corporation is a fine of One Million Naira (₦1,000,000).

Conclusion

The provisions of the Money Laundering (Prohibition) Act remains one of the most effective measures to combating terrorism, narcotic related crimes, embezzlement of public funds, which latter offence is more commonly known in Nigeria as corruption. Unfortunately, the lack of sufficient political will has not provided the minimum enforcement results required. Of equal concern are the human capacity capabilities of the enforcing agencies in Nigeria in the area of modern day sophisticated money laundering technological advances. While continuing amendments to our legislations, including this one, are commended, greater enforcement of the existing legislations is urgently required in order for the minimum levels of development and advancement that Nigeria urgently requires, can be achieved.

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