



# TEMPLARS Legislative Watch: Senate Passes Money Laundering (Prevention and Prohibition Bill) 2022

21 April 2022

## Introduction

16<sup>th</sup> March 2022: The Nigerian Senate passed the **Money Laundering (Prevention and Prohibition) Bill 2022** (“the Bill”), which seeks to abolish the Money Laundering (Prohibition) Act 2011 (as amended) (“the Act”). Upon its passage into law, the Bill will strengthen the existing system for preventing and prosecuting of money laundering and terrorism financing in Nigeria.

The four key objectives of the Bill are: (a) to strengthen the existing system for combating money laundering and related offences, (b) make adequate provisions to prohibit money laundering, (c) expand the scope of money laundering offences and provide appropriate penalties and (d) establish the Special Control Unit Against Money Laundering under the Economic and Financial Crimes Commission.

This Newsletter highlights the novel provisions sought to be introduced by the Bill.

## NOTABLE PROVISIONS OF THE BILL

### 1. Prohibition of Transaction Splitting

Prior to the passing of the Bill, some individuals and corporate entities had adopted transaction splitting as a method to avoid the reporting of transactions that are within the monetary thresholds of ₦5,000,000 (Five Million Naira) (approximately \$10,000.00) for individuals and ₦10,000,000 (Ten Million Naira) (approximately \$20,000.00) for corporate

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entities stipulated by the Act. To address this, the Bill seeks to prohibit the conduct of two or more transactions separately with one or more Financial Institutions or Designated Non-Financial Business and Professions (the “**Relevant Institutions**”) with the intent to avoid the duty to report a transaction which should have been reported under the Act or breach the duty to disclose information under the Act by any other means<sup>1</sup>.

## 2. Identification of Customers

In addition to the existing obligations imposed on Relevant Institutions to, among others, identify and verify the identity of their customers<sup>2</sup>, the Bill seeks to impose a further obligation on the Relevant Institutions to take reasonable measures to ensure that anybody purporting to act on behalf of a customer is so authorised and verify the identity of that person.<sup>3</sup>

## 3. Determination of Politically Exposed Persons

The Bill seeks to impose an obligation on the Relevant Institutions to put in place appropriate risk management systems and procedure to determine if a customer or the beneficial owner of a customer is a politically exposed person (“PEPs”)<sup>4</sup>. Additionally, the Bill seeks to classify PEPs into foreign and domestic PEPs. Regarding foreign PEPs, the Bills requires the Relevant Institution to do the following: (a) obtain the approval of senior management before the establishment or continuous establishment of existing business relationships, (b) take reasonable measures to establish the source of funds of customers and their beneficiaries identified as politically exposed persons; and (c) conduct enhanced ongoing monitoring on the business relationship.<sup>5</sup> The above duties extend to domestic PEPs where there is a high-risk business relationship with such a person.<sup>6</sup>

## 4. Restrictions on Attorney-Client Privilege

Before now, communications between an attorney and clients in respect of cases or transactions being handled by the attorney are privileged<sup>7</sup>. Accordingly, such communications cannot be disclosed by the attorney except with the consent of his clients or as may be permitted by law. Riding on the latter exception, the Bill seeks to excludes the application of attorney-client privilege 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,

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<sup>1</sup> Section 2(2) (a & b) of the Bill.

<sup>2</sup> Section 3(1) (a, b & c) of the Act.

<sup>3</sup> Section 4(1)(d) of the Bill.

<sup>4</sup> Section 4(7) of the Bill.

<sup>5</sup> Section 4(8) of the Bill.

<sup>6</sup> Section 4(9) of the Bill.

<sup>7</sup> Section 192 of the Evidence Act, Rule 19 of the Rules of Professional Conduct, 2007.

securities, or other assets, (d) the opening or management of bank, savings, or securities accounts, (e) the creation, operation or management of trusts, companies, or similar structures, and (e) anything produced in furtherance of an unlawful act<sup>8</sup>. *As such, if the Bill is passed into law in its present form, attorney-client privilege would no longer be claimable in respect of those transactions.*

## 5. Duty to Assess New Products, Business Practices and Technologies for Money Laundering and Terrorism Financing Risks

A provision that the Bill seeks to introduce is the obligation for the Relevant Institutions to identify and assess the money laundering and terrorism financing risks that may arise from the development of new products, business practices, technologies, delivery mechanism and the use of new or developing technologies for both new and pre-existing products. To carry out this obligation, the Relevant Institutions are required to undertake risk assessments and take appropriate measures to manage and mitigate the risks<sup>9</sup>.

## 6. The Special Control Unit Against Money Laundering

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). However, the Bill now seeks to give statutory backing to the establishment of SCUML and charge it with the responsibility of supervising the Relevant Institutions in their compliance with the Bill, relevant laws and applicable regulations.<sup>10</sup> Other functions sought to be assigned to SCUML are:

- a. Registration and certification of designated non-financial businesses and professions in accordance with the provisions of the Bill, relevant laws, and applicable regulations;
- b. Taking the necessary enforcement actions to ensure compliance with the Bill, relevant laws, and applicable regulations;
- c. Conducting off-site, on-site and on the spot checks, inspection of designated non-financial businesses and professions for the purposes of money laundering control and supervision;
- d. Establishment and maintenance of a comprehensive database of designated non-financial businesses and professions;
- e. Receipt of cash -based transaction reports and currency transaction reports from

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<sup>8</sup> Section 11(4) of the Bill.

<sup>9</sup> Section 13(1) and (2) of the Bill.

<sup>10</sup> Section 17(1) of the Bill.

- designated non -financial businesses and professions;
- f. Sensitization of designated businesses and professions regarding their responsibilities under the Bill; and
  - g. Any other functions necessary to fulfil its responsibilities under the Bill or any other relevant laws and applicable regulations.

*There is a potential conflict between the SCUML and Economic and Financial Crimes Commission that will need to be addressed to prevent an overlap or duplication of functions.*

## **7. Publication of the Nigeria Money Laundering Strategic Report**

The Bill seeks to introduce the publication of the Nigeria Money Laundering Strategic Report (the “Report”) by the Attorney General of the Federation within two years of its passage into Law and every two years thereafter. The Report, which would be submitted to the President, is expected to contain contributions from all competent authorities and shall provide details of: (a) the number of currency transactions and activities undertaken during the period of the report, (b) convictions made for money laundering offences and financing of terrorism, (c) areas of high-risk concerns encountered, and (d) amounts of money frozen, retained or confiscated for trafficking in drugs, corruption, and other criminal activities<sup>11</sup>. Additionally, the report is to include plans to reduce and develop better coordinated responses to money laundering.<sup>12</sup>

## **8. Expanded Scope of Designated Non-Financial Business and Profession and Property**

The Bill 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<sup>13</sup>.

Also, given the recent technological developments and the upsurge of virtual assets such as cryptocurrencies, Non-Fungible Tokens (“NFTs”) and the Metaverse, the Bill expanded the meaning of property to include virtual assets, defined by the Bill to mean a digital representation of value that can be digitally traded, or transferred, and can be used for

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<sup>11</sup> Section 26 of the Bill.

<sup>12</sup> Section 26(3) of the Bill.

<sup>13</sup> Section 30 of the Bill.

payment or investment purposes but does not include digital representation of fiat currencies, securities and other financial assets<sup>14</sup>.

## CONCLUSION

The Bill, though an initiative aimed at abolishing and replacing the existing legal framework on money laundering and terrorism financing in Nigeria, is yet to become law. Because Nigeria operates a bicameral system of legislature (i.e., has the Senate and the House of Representatives), to become law, the Bill, notwithstanding that it has been passed by the Senate, would be sent to the House of Representatives for consideration and will go through similar legislative procedure it went through before it was passed by the Senate. Thereafter, agreement would be reached between the Senate and the House of Representatives on any amendment(s) made on the Bill by the latter, after which it would be presented to the President for assent.

Given the above protracted legislative procedure and the preparation for Presidential and legislative elections early next year, it would be difficult for this Bill to become Law before the end this year, unless, due to political will, the hearing of the Bill is accelerated by the House of Representatives, both Houses agree to uniform Bill that is passed to the President and the President signs it into law without delay. We will keep tabs on the Bill and provide updates as developments arise.

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<sup>14</sup> Section 30 of the Bill.