

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT

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FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS
PROVISIONS) ACT

An Act to establish an Autonomous Foreign Exchange Market and to provide for the monitoring and supervision of the transactions conducted in the market and for matters connected therewith.

[1995 No. 17.]

[16th January, 1995]

[Commencement.]

PART I

Establishment of the Autonomous Foreign Exchange Market and dealings in the Market

1. Establishment of the Autonomous Foreign Exchange Market

(1) There is hereby established an Autonomous Foreign Exchange Market (in this Act referred to as "the Market") where transactions in foreign exchange shall be conducted in accordance with the provisions of this Act.

(2) Subject to this Act, the Central Bank of Nigeria may, with the approval of the Minister, issue, from time to time, guidelines to regulate the procedures for transactions in the Market and for such other matters as may be deemed appropriate for the effective operation of the Market.

2. Instruments of transactions in the Market

(1) Transactions in the Market shall be conducted in any convertible foreign currency.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, transactions in the Market shall also be conducted through the usual money market instruments, that is-

(a) foreign bank notes;

(b) foreign coins;

(c) travellers' cheques;

(d) bank drafts;

(e) mail or telegraphic transfers; and

(f) such other money market instruments as the Central Bank may, from time to time, with the approval of the Minister, determine

3. Non-disclosure of sources of imported foreign currency

(1) Except as required under any enactment or law, a person executing a transaction in the Market shall not be required and, if required, shall not be obliged, to disclose the source of any foreign currency to be sold in the Market.

(2) No foreign currency imported pursuant to this Act shall be liable to seizure or forfeiture or to suffer any form of expropriation by the Federal or a State Government except as provided under this Act.

4. Sources of foreign currency in the Market

For the avoidance of doubt, foreign currency from the following sources may be sold in the Market, that is-

- (a) foreign currency domiciliary accounts maintained in authorised banks in Nigeria;
 - (b) foreign currency held or imported by-
 - (i) Nigerian citizens returning home from any other place outside Nigeria;
 - (ii) foreign nationals resident in Nigeria;
 - (c) agency commissions, professional fees and other forms of invisible earnings;
 - (d) non-oil export proceeds earned by exporters of Nigerian commodities;
 - (e) foreign currency held by Nigerian citizens resident in Nigeria;
 - (f) foreign currency imported by foreign nationals to purchase goods in Nigeria;
 - (g) foreign currency imported or held by foreign embassies, high commissions and international organisations from external sources;
 - (h) foreign currency held in external accounts by individuals, bodies corporate and unincorporated, commission agents, professional bodies, insurance companies and other similar bodies;
 - (i) foreign currency imported by tourists into Nigeria;
 - (j) foreign currency provided by the Central Bank;
 - (k) foreign currency imported for direct investment in Nigeria;
- and
- (l) foreign currency from such other sources as the Minister may, from time to time, specify by order published in the *Gazette*.

5. Appointment of Authorised Dealers and Authorised Buyers

(1) The Central Bank may appoint, as an Authorised Dealer or Authorised Buyer of foreign currency, any bank or non-banking corporate organisation which shows evidence of adequate resources and capacity to operate in accordance with the provisions of this Act.

(2) An Authorised Dealer or Authorised Buyer appointed under subsection (1) of this section shall operate in the Market subject to such terms and conditions as the Central Bank may specify in the letter of appointment.

6. Revocation of appointment as Authorised Dealer or Authorised Buyer

(1) The Central Bank may revoke the appointment of an Authorised Dealer or Authorised Buyer, if it has reason to believe that it is not in the national interest that the Authorised Dealer or Authorised Buyer shall continue to operate as an Authorised Dealer or Authorised Buyer under this Act.

(2) A person aggrieved by the decision of the Central Bank under subsection (1) of this section may, within 28 days of the receipt by him of the letter of revocation, appeal in writing to the Minister.

(3) The Minister may, after giving consideration to the circumstances of the case, reverse or affirm the decision of the Central Bank, as the case may be.

7. Transactions in the Market

(1) Transactions in the Market shall be as in the inter-bank system, that is, between-

- (a) the public and Authorised Dealers appointed under this Act;
- (b) the Authorised Dealers appointed under this Act; and
- (c) the Authorised Dealers and Authorised Buyers appointed under this Act.

(2) Transactions in the Market shall be as prescribed, from time to time, by the Central Bank.

8. Supervision and monitoring of the Market

(1) The Central Bank shall supervise and monitor the operation of the Market to ensure the efficient performance of the Market.

(2) The Minister may, from time to time, issue such directives not inconsistent with this Act as to him may seem appropriate for the efficient operation of the Market.

9. Rate in the Market

The rate at which each transaction in the Market shall be executed shall be the rate mutually agreed between the applicant purchaser and the Authorised Dealer or Authorised Buyer concerned.

10. Transactions permitted in the Market

Subject to the provision of paragraph (b) of section 11 of this Act and except where a transaction is prohibited by law, any transaction adequately supported by appropriate documentation shall, for the purposes of this Act, be an eligible transaction for the purchase of foreign exchange in the Market.

11. Transactions not permitted, etc.

Nothing in this Act shall be construed-

(a) as permitting any unrestrained or general dealing in foreign currencies on terms inconsistent with the provisions of this Act;

(b) to imply that transactions relating to goods, services or items absolutely prohibited by any enactment or law may be conducted in the Market

12. Importation and exportation of foreign currencies

(1) No person shall be required to declare at the port of entry into Nigeria any foreign currency unless its value is in excess of US \$5,000 or its equivalent.

(2) Foreign currency in excess of US \$5,000 or its equivalent, whether being imported into or exported out of Nigeria, shall be declared on the prescribed form for reasons of statistics only.

13. Repatriation of funds

Any foreign currency purchased from the Market may be repatriated from Nigeria and shall not be subject to any further approval.

14. Importation and exportation of the naira

The importation and exportation of the naira shall remain prohibited except as permitted under guidelines issued, from time to time, by the Central Bank.

15. Investment of foreign currencies and capital in enterprises or securities in Nigeria

(1) Any person may invest in any enterprise or security, with foreign currency or capital imported into Nigeria through an Authorised Dealer either by telegraphic transfer, cheques or other negotiable instruments and converted into the naira in the Market in accordance with the provisions of this Act.

(2) The Authorised Dealer through which the foreign currency or capital for the investment referred to in subsection (1) of this section is imported shall, within 24 hours of the importation, issue a Certificate of Capital Importation to the investor and shall, within 48 hours thereafter, make returns to the Central Bank giving such information as the Central Bank may, from time to time, require.

(3) The Central Bank shall furnish to the Minister, on a quarterly basis, detailed reports on the returns furnished to the Central Bank under subsection (2) of this section for information and statistical purposes only.

(4) Foreign currency imported into Nigeria and invested in any enterprise pursuant to subsection (1) of this section shall be guaranteed unconditional transferability of funds, through an Authorised Dealer in freely convertible currency, relating to-

(a) dividends or profits (net of taxes) attributable to the investment;

(b) payments in respect of loan servicing where a foreign loan has been obtained;
and

(c) the remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

(5) The repatriation referred to in subsection (4) of this section shall be communicated by an Authorised Dealer to the Central Bank, within fourteen days of the repatriation and the Central Bank shall furnish same to the Minister on a monthly basis for information and statistical purposes only.

16. Authorised Dealers to submit returns

(1) An Authorised Dealer and Authorised Buyer appointed under this Act shall submit to the Central Bank, at such intervals as the Central Bank may prescribe, returns of

activities in the Market and the returns shall be in such form as the Central Bank may, from time to time, by circulars and guidelines direct.

(2) The Central Bank shall furnish to the Minister, on a quarterly basis, detailed reports on the returns submitted to it under subsection (1) of this section.

(3) An Authorised Dealer or Authorised Buyer which contravenes the provisions of subsection (1) of this section, by failing, neglecting or refusing to submit the returns, is guilty of an offence and liable on conviction to be dealt with as provided in the Central Bank of Nigeria Act and the Banks and Other Financial Institutions Act as if it had contravened the provisions of those Acts relating to the submission of returns.

[Cap. C4.]

PART II

Operation of Foreign Currency Domiciliary Accounts

17. Domiciliary accounts

(1) Any person may open, maintain and operate a domiciliary account designated in foreign currency with an Authorised Dealer.

(2) The foreign currency in which a domiciliary account may be opened, maintained and operated shall be any internationally convertible currency.

(3) Except as provided under any other enactment or law, a person making an application to open a domiciliary account under this Act shall not be obliged to disclose the source of the foreign currency sought to be deposited in the account.

(4) A person may open more than one domiciliary account under this Act designated in the same or different foreign currencies and at the same or in different banks.

(5) No money imported for the purpose of this Act shall be liable to seizure or forfeiture or suffer any form of expropriation by the Federal or a State Government.

18. Rate of interest

(1) A bank shall pay, to the credit of a domiciliary account, interest at such rate as the Central Bank may, from time to time, prescribe.

(2) The Central Bank may authorise a bank to transact banking business in any foreign currency deposited with the bank pursuant to this Act.

19. Exporters to open account

An exporter of goods, including petroleum products, shall open and maintain a foreign currency domiciliary account into which may be retained foreign currency corresponding to the entire proceeds of the export concerned.

20. Monitoring and supervision by the Central Bank

The Central Bank shall, in the normal course of its duties, monitor and supervise the general operations of the provisions of this Part of this Act.

21. Importation and exportation of foreign currency in cash

(1) A person who imports foreign currency in excess of US \$10,000 or its equivalent in cash and not by means of a bank draft, mail or telegraphic transfer and deposits the foreign currency in a domiciliary account with an Authorised Dealer shall only make cash withdrawals from the account.

(2) The foreign currency referred to in subsection (1) of this section which has been imported into Nigeria in cash shall only be exportable from Nigeria in cash.

(3) For the avoidance of doubt, no Authorised Dealer shall permit or in any way facilitate the withdrawal of the foreign currency referred to in subsection (1) of this section by any means other than by cash.

22. Payments for certain goods

(1) Notwithstanding anything to the contrary contained in any enactment or law and except as provided in subsection (2) of this section, no person shall, in Nigeria, make or accept cash payment, whether denominated in foreign currency or not, for the purchase or acquisition of the following-

(a) landed properties;

(b) securities, including stocks, shares, debentures and all forms of negotiable instruments; and

(c) motor cars', including other vehicles of any description whatsoever.

(2) Payments for the items specified in subsection (1) of this section shall, as from the commencement of this Act, be made by means of bank transfers or cheques drawn on banks in Nigeria only.

23. Special surveillance of certain transactions

Notwithstanding anything to the contrary in any enactment or law, the Central Bank shall have access at all reasonable times to the offices, registers, books of accounts and documents relating to accounts maintained with an Authorised Dealer to confirm compliance with the provisions of this Part of this Act.

24. Preservation of records

An Authorised Dealer shall-

(a) maintain at all times a register for the purpose of recording details of all transactions carried out by it under the provisions of this Part of this Act; and

(b) preserve a register maintained under subsection (1) of this section for a period of at least seven years after the last transaction recorded in the register.

25. Duty to report international transfer of funds

For the purpose of determining and monitoring the flow of foreign currencies into Nigeria, an Authorised Dealer shall, notwithstanding any other requirement contained in any enactment or law, notify the Central Bank of any cash transfer to or from a foreign country of a sum greater than US \$10,000 or its equivalent and the Central Bank shall furnish thereon returns to the Minister on a quarterly basis.

PART III

Securities

26. Dealing in securities

(1) A person, whether-

- (a) resident in or outside Nigeria; or
- (b) a citizen of Nigeria or not,

may deal in, invest in, acquire or dispose of, create or transfer any interest in securities and other money market instruments whether denominated in foreign currencies in Nigeria or not.

(2) A person may invest in securities traded on the Nigerian capital market or by private placements in Nigeria.

PART IV

Export of goods and services

27. Export of goods and services

A person may export goods or services from Nigeria if-

- (a) the goods or services are not prohibited by law in Nigeria;
- (b) payment for the goods or services is made by means of letter of credit or any other internationally acceptable mode for payments; and
- (c) the amount of the payment made or to be made is such as to represent a fair return for the goods or services.

PART V

Collection of debts

28. Duty to collect debts

(1) Except with the permission of the Minister, no agency of the Government authorised to receive any foreign currency or to receive from a person resident outside Nigeria a payment in naira, shall do or refrain from doing any act with intent to secure or do any act which involves, or which is in association with, or is preparatory to any transaction securing-

- (a) the delay in receipt, by the agency of the Government, of the whole or any part of the foreign currency, or of the payment, as the case may be; or
- (b) that the foreign currency or payment, as the case may be, shall cease in whole or in part to be receivable by the agency of the Government.

(2) Unless the Minister otherwise directs, nothing in this section shall impose on any agency of the Government an obligation, in relation to any debt arising out of the carry-

ing on of any trade or business, to procure the payment thereof at an earlier time than is customary in the course of that trade or business.

(3) The Minister may direct the assignment to the Accountant-General for the Federation the right to demand and receive the foreign currency or payment.

PART VI

Offences

29. Offences under Part I

(1) **In** relation to Part I of this Act, a person, who-

(a) with intent to defraud, forges, mutilates, utters or defaces any foreign currency, travellers' cheques or other instrument of exchange in the Market; or

(b) converts any foreign currency to a use for which it is not intended under this Act; or

(c) negotiates any draft, foreign bank note, other foreign exchange or any other trading instrument otherwise than as permitted by this Act; or

(d) forges or produces as genuine to the Central Bank or the Market any false document with a view to utilising the document in any transaction in the Market, is guilty of an offence under this Act.

(2) A person convicted of an offence under subsection (1) of this section is liable-

(a) in the case of an individual, to imprisonment for a term of five years or to a fine of five times the amount of foreign currency involved; and

(b) in the case of a body corporate, to a fine of ten times the amount of the foreign currency involved.

(3) All the assets, movable or immovable, of a person convicted of an offence under this section shall be forfeited to the Federal Government.

(4) Where the person convicted under this section is an Authorised Dealer, the Central Bank shall revoke his appointment as an Authorised Dealer.

(5) **In** addition to any other penalty imposed under this section, the foreign currency involved shall be forfeited to the Federal Government.

30. Offences under Part II

(1) **In** relation to Part II of this Act, a person who-

(a) being a depositor, withdraws from an account affected by this Act, any foreign currency and sells the foreign currency to an unauthorised dealer whether in or outside Nigeria; or

(b) with intent to defraud, forges, mutilates, utters or defaces any passbook maintained pursuant to this Act; or

(c) being a bank, converts the proceeds of any domiciliary account maintained in the bank to a use for which it was not intended; or

(d) being a depositor, negotiates any draft, foreign bank note or negotiable instrument otherwise than through the banking system; or

(e) being an Authorised Dealer, permits or in any way facilitates the withdrawal by a depositor of foreign currencies contrary to section 2] of this Act; or

(f) makes or accepts cash payments contrary to section 21 of this Act, is guilty of an offence under this Act.

(2) A person convicted of an offence under subsection (1) of this section is liable-

(a) in the case of an individual, to imprisonment for a term not exceeding two years;

(b) in the case of an officer at the port of entry or a bank official, to imprisonment for a term not exceeding five years;

(c) in the case of a body corporate, to a fine of ten times the amount of foreign currency involved.

(3) In addition to the penalty imposed under this section-

(a) the foreign currency involved, shall be forfeited to the Federal Government;

(b) where an offence under this Part of this Act is committed by a body corporate the court may order that the body corporate shall thereupon and without any further assurance, but for the order, be wound up and all the assets and properties of the body corporate shall be forfeited to the Federal Government;

(c) where an offence under this Part of this Act is committed by an Authorised Dealer, the court may, in addition to the penalty prescribed in paragraph (b) of this subsection, recommend that the license of the Authorised Dealer be revoked.

31. Offences by bodies corporate

Where an offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence was a proprietor, director, manager, secretary or other similar officer of the body corporate, who was purporting to act in such capacity, shall be deemed to be guilty of that offence and liable to be punished as specified in this Part of this Act, unless he proves that the offence was committed without his consent or connivance and that he had exercised all such diligence as he ought to have exercised having regard to the nature of his functions in that capacity.

PART VII

*Miscellaneous***32. Blocked accounts**

(1) Where there is a seizure of foreign currency for any reason connected with the contravention of this Act, the foreign currency shall be lodged in a blocked account with the Central Bank.

(2) Where the foreign currency remains in the blocked account for a period of more than three years and in the absence of any action by the person from whom the foreign currency was seized to retrieve the foreign currency within the period, the Minister shall direct the Central Bank to transfer the foreign currency into the Consolidated Revenue Fund.

33. Directives by the Minister

(1) The persons specified in subsection (2) of this section shall comply with such directions as may be given to them, respectively, by the Central Bank, being-

(a) in the case of any such persons, directives as respects the exercise of any functions exercisable by them by virtue of anything done under any provision of this Act; and

(b) in the case of Authorised Dealers, directives-

(i) as to the terms on which they are to accept foreign currency; or

(ii) requiring them to offer their specified currency to the Central Bank on such terms as may be specified in the directives.

(2) The persons referred to in subsection (1) of this section are as follows, that is-

(a) bankers and Authorised Dealers;

(b) persons to whom any power of the Central Bank under this Act has been delegated;

(c) Government agencies authorised to accept the custody of securities and documents of title to securities;

(d) persons entrusted with the payment of capital moneys, dividends or interest in Nigeria.

34. Jurisdiction

The Federal High Court shall have jurisdiction to try all offences under this Act. [1999 No. 20.]

35. Application to the State

This Act shall bind the State and apply to transactions by a Government Department or other person acting on behalf of the State.

36. Extent of this Act

The obligations and prohibitions imposed by this Act shall, unless otherwise prescribed, apply to all persons subject to this Act notwithstanding that they are not in Nigeria and are not Nigerian citizens.

37. Modification of existing legislation

(1) Notwithstanding the provisions of this Act, the relevant provisions of all existing enactments, including the following, that is-

(a) the Bills of Exchange Act;

[Cap. B8.]

(b) the Central Bank of Nigeria Act;

[Cap. C4.]

(c) the Banks and Other Financial Institutions Act;

[Cap. B3.]

(d) the National Economic Intelligence Committee (Establishment, etc.) Act,

[Cap. N31.]

shall be read with such modifications as to bring them into conformity with the provisions of this Act.

(2) If the provisions of any other law, including the enactments specified in subsection (1) of this section, are inconsistent with those of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

38. Repeals and savings

(1) The following enactments are hereby repealed, that is-

(a) the Exchange Control (Anti-Sabotage) Act;

[Cap. 114. L.F.N. 1990.]

(b) the Foreign Currency (Domiciliary Account) Act; and

[Cap. 151. L.F.N. 1990.]

(c) the Second-Tier Foreign Exchange Market Act.

(2) It is hereby declared that without limiting the provisions of the Interpretation Act, the repeal by these Acts shall not affect any document made or anything whatsoever done under the enactments so repealed.

[Cap. I23.]

(3) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under any enactment

repealed by this Act shall, if in force at the commencement of this Act and so far as it could have been made, issued, given or done under this Act, continue in force and have effect as if made, issued, given or done under the corresponding provision of this Act

39. Transitional provisions

The Minister may by order make such transitional provisions as appear to him necessary or expedient to give full effect to the provisions of this Act.

40. Regulations

The Minister may, after consultation with the Central Bank, make such regulations, not inconsistent with the provisions of this Act as may be required for carrying into effect the intendment of this Act.

41. Interpretation

In this Act, unless the context otherwise requires-

"Authorised Buyer" means any *bureau de change*, hotel or other corporate body appointed as such by the Central Bank under the provisions of this Act;

"Authorised Dealer" means any bank licensed under the Banks and Other Financial Institutions Act, and such other specialise bank and issued with licence to deal in foreign exchange;

[Cap. B3.]

"Autonomous Foreign Exchange Market" means a market in which the Authorised Dealers, Authorised Buyers, foreign exchange end-users and the Central Bank are participants and may include any other participant that the Government of the Federation may, from time to time, recognise;

"bank" has the meaning assigned to it by section 55 of the Central Bank of Nigeria Act,

[Cap. C4.]

"capital" means all cash contributions, plant, machinery, equipment, building, spare parts, raw material and other business assets, other than goodwill;

"Central Bank" means the Central Bank of Nigeria;

"Certificate of Title" in relation to a security, means any document whereby a person recognises the title of another to a security issued or to be issued by the first-mentioned person;

"coupon" means a coupon representing dividends or interest in a security;

"domiciliary account" means a foreign currency account domiciled in Nigeria opened, maintained and operated with banks in Nigeria under this Act;

"foreign capital" means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets, other than goodwill brought into Nigeria with no initial disbursement of Nigerian foreign exchange and intended for the production of goods and services related to an enterprise, as applicable;

"foreign currency" means any currency, other than Nigerian currency, and includes any note which is or has at any time been legal tender in any territory outside Nigeria, and where reference is made to foreign currency, the reference includes the right to receive foreign currency in respect of any credit or balance at a bank;

"inter-bank foreign exchange market" means foreign exchange market with end-users, Authorised Dealers and Authorised Buyers as participants;

"Minister" means the Minister charged with responsibility for matters relating to finance and **"Ministry"** shall be construed accordingly.

42. Short title

This Act may be cited as the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation