



**WORKING PAPER
ON
MONEY LAUNDERING LEGISLATION:
REFORM OF THE FOREIGN EXCHANGE
(MONITORING AND MISCELLANEOUS PROVISIONS)
ACT, CAP. F 34,
LAWS OF THE FEDERATION OF NIGERIA, 2004.**

NIGERIAN LAW REFORM COMMISSION
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PART

A

INTRODUCTION

INTRODUCTION

1. Foreign Exchange is the system of exchanging the money of one country for that of another country.¹ It could as well mean payment for international transactions. It is made up of convertible currencies that are generally accepted for the settlement of international trade and other external obligations. Such currencies include those of the group of seven (G7) industrialized countries comprising the United States Dollar, British Pounds Sterling, Deutsche Mark, Japanese Yen, French Franc, Italian Lira and Canadian Dollar.²
2. In the Nigerian context, it could refer to the price of the Nigerian local currency, the Naira, relative to other world currencies standardized to their relative weight to the United States Dollars, the Pounds or Euros. The three basic macroeconomic prices are the Interest Rate, the Inflation Rate, and the exchange Rate- the IIE algorithm. Theory has it that these prices are co-linear. In a situation where currency failure and recession are present, the exchange rate becomes a major driver of the two prices. These will determine what the country will have in its reserve.
3. The National Reserve (NR) is the aggregate of the foreign currency denominated balance of the nation's net-worth, usually denominated in the United States Dollars. It is made up of the Central Bank of Nigeria's (CBN) own Reserves and the Government's Reserves. The CBN's Reserves is the United States Dollars stock represented by its domestic Naira proportions, in line with approved executive instruments. Government's Reserve on the other hand is the component of the external national earnings that is not yet monetized. The CBN's Reserve constitutes the main source of foreign exchange funding of the foreign exchange market amongst other numerous foreign exchange income earners available to the CBN.

¹Oxford Advanced Learner's Dictionary, 7th edition at p.582

²Mohammed A. Zubairu 'An Evaluation Of Foreign Exchange Management In A Depressed Economy (A Case Study Of Nigeria)' A Project Submitted to the Postgraduate School, Ahmadu Bello University Zaria, in Partial fulfillment of the requirements for the award of the degree of Master of Business Administration (M.B.A). Department of Business Administration, Faculty of Administration, Ahmadu Bello University, Zaria. September, 1998

4. Generally, because no country exists in a state of autarky, trade must go on with other countries and earnings must accrue to avert entropy. Hence the resource capacity of any country resides in the ability to sell to other countries and receive value over and above what it pays. This is why foreign currency earning is very crucial. Hence local currency is printed to represent only the quantum at agreed rates, which is already earned in goods and services delivered to other countries.³
5. A Foreign Exchange Market is the medium of interaction between the sellers and buyers of foreign exchange in a bid to negotiate a mutually acceptable price for the settlement of international transactions. The objectives of such a market include the provision of an avenue for the exchange of national currencies and the creation of an effective mechanism for the allocation of foreign exchange.
6. Exchange rate is a price at which a currency is regulated in the market, which varies from time to time. Some factors which cause variation in the exchange rate are government policy, interaction of demand and supply, activities of Nigerian Stock Exchange (NSE), international Trade Oil glut and recession.
7. Foreign Exchange Control is defined by "Encyclopaedia Britannica" as governmental restrictions on private transactions in foreign exchange. It is also defined as types of controls that governments put in place to ban or restrict the amount of foreign currency or local currency that is allowed to be traded or purchased.
8. Essentially, the main aim of exchange control, as deduced from most systems where exchange controls are in place, is to prevent or redress an adverse balance of payments, by limiting foreign purchases to an amount not in excess of foreign Exchange receipts.
9. At the International level Foreign Exchange Control is recognised in Article 14 of Articles of Agreement of the International Monetary Fund (IMF) as a strategy

³Dr Owolabi "Specific Questions Arising From Foreign Exchange(Monitoring and Miscellaneous Provisions) Act" a memo submitted to Nigerian Law Reform Commission on reform of the Act.

usually adopted by countries with transitional economies and in particular, the ones with the weaker economies

10. Unless the policy framework and management of Foreign Exchange is properly articulated in terms of its revenue generation and expenditure a country runs the risk of balance of trade or balance of payment problems.
11. However, in order that a country may optimize the advantage of international trade, it should be imperative for that country to institute appropriate foreign exchange policy and management i.e. Foreign Exchange Control
12. In Nigeria, the need to regulate and/or control foreign exchange has become more urgent following the major economic problems which the country has faced since the beginning of the 1980s. Among these problems have been the rising external debt burden and the increasing inability to finance the imported critical productive sectors.
13. In times past, Nigeria had adopted a very stringent approach to the regulation of the foreign exchange market⁴ but with the enactment of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act⁵, the atmosphere in the foreign exchange market became more relaxed.

The Pre-Foreign Exchange Monitoring and Miscellaneous Provision Act, 1995

14. The evolution of the foreign exchange market in Nigeria up to its present state was influenced by a number of factors such as the changing pattern of international trade, institutional changes in the economy and structural shifts in production. Before the establishment of the Central Bank of Nigeria (CBN) in 1958 and the enactment of the Exchange Control Act of 1962, foreign exchange was earned by the private sector and held in balances abroad by commercial banks which acted as

⁴The Exchange Control (Anti – Sabotage) Act (ECA), the Foreign Currency(Domiciliary Account), and the Second-Tier Foreign Exchange Market Act. These enactments were all repealed by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.

⁵Cap F34 LFN 2004.

agents for local exporters. During this period, agricultural exports contributed the bulk of foreign exchange receipts. The fact that the Nigerian pound was tied to the British pound sterling at par, with easy convertibility, delayed the development of an active foreign exchange market.

15. However, with the establishment of the CBN and the subsequent centralisation of foreign exchange authority in the Bank, the need to develop a local foreign exchange market became paramount.
16. The increased export of crude oil in the early 1970s, following the sharp rise in its prices, enhanced official foreign exchange receipts. The foreign exchange market experienced a boom during this period and the management of foreign exchange resources became necessary to ensure that shortages did not arise.
17. However, it was not until 1982 that comprehensive exchange controls were applied as a result of the foreign exchange crisis that set in that year. The increasing demand for foreign exchange at a time when the supply was shrinking encouraged the development of a flourishing parallel market for foreign exchange.
18. The exchange control system was unable to evolve an appropriate mechanism for foreign exchange allocation in consonance with the goal of internal balance. This led to the introduction of the Second-tier Foreign Exchange Market (SFEM) in September, 1986. Under SFEM, the determination of the Naira exchange rate and allocation of foreign exchange were based on market forces. To enlarge the scope of the Foreign Exchange Market Bureaux de Change were introduced in 1989 for dealing in privately sourced foreign exchange.
19. As a result of volatility in rates, further reforms were introduced in the Foreign Exchange Market in 1994. These included the formal pegging of the naira exchange rate, the centralisation of foreign exchange in the CBN, the restriction of Bureaux de Change to buy foreign exchange as agents of the CBN, the reaffirmation of the illegality of the parallel market and the discontinuation of open accounts and bills for collection as means of payments sectors.

20. The Foreign Exchange Market was liberalised in 1995 with the introduction of an Autonomous Foreign Exchange Market (AFEM) for the sale of foreign exchange to end-users by the CBN through selected authorised dealers at market determined exchange rate. In addition, Bureaux de Change were once more accorded the status of authorized buyers and sellers of foreign exchange. The Foreign Exchange Market was further liberalized in October, 1999 with the introduction of an Inter-bank Foreign Exchange Market (IFEM)⁶.

Post Foreign Exchange Control in Nigeria

21. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act liberalized the exchange control regime of Nigeria so that it became easier to import capital and repatriate profits. The Act created an autonomous foreign exchange market for transactions with end users through authorized dealers (such as banks). The Act specifically makes provision for the transferability of capital in any convertible currency without any conditions. The transfer must be made through an authorized dealer; the authorized dealer must check supporting documents and tax clearance certificates before making the transfer to ensure that the applicant is not laundering the money.
22. The foregoing has however changed in recent times as the Central Bank of Nigeria (CBN) in addressing the depreciation cum devaluation of Nigeria's currency alongside the recent blow struck on the Nigerian economy by the dwindling price of crude oil, has adopted very stringent measures in regulating foreign exchange dealings in Nigeria.
23. This might be as a result of the fact that post 1999 i.e. after the 1999 Nigerian Constitution; the CBN would seem to have read too much into section 1(2) of the Foreign Exchange Act, which gave it power to issue guidelines for "matters as may be deemed appropriate for the effective operation of the market".

⁶<http://www.cbn.gov.ng/IntOps/FXMarket.asp> accessed on 21th October 2016.

24. Section 16 of the Central Bank Act empowers the CBN to devise a suitable mechanism for determining the exchange rate of the Naira. Section 9 of the Foreign Exchange Act on the other hand provides that the rate in the market shall be determined by market forces. These two provisions appear to be in conflict. This has however, been addressed by section 37(2) of the Foreign Exchange Act which states that the provisions of the Foreign Exchange Act shall prevail over the provision of any other law that is inconsistent with the Foreign Exchange Act.
25. In most cases, difficult times bring out the effectiveness or weakness in a law. The current economic recession in Nigeria has brought to question the effectiveness of the foreign exchange law in Nigeria. An examination of the Act and its operations reveal lapses in the law which this reform seeks to address. The Act makes it difficult for foreign exchange transactions in Nigeria to be regulated. For instance, the Act-
- a. is narrow in scope and did not provide for objectives;
 - b. allows foreign currency purchased from the market to be repatriated from Nigeria without restriction;
 - c. allows foreign currency in excess of five thousand dollars to be imported or exported subject to declaration for statistics reasons only; and
 - d. prohibits the seizure, forfeiture or expropriation of imported money by the government without providing for exceptions.
26. Again, the Act does not provide for sufficient safeguard to ensure the integrity of the process in the market. For instance the Act did not provide for audit of the foreign exchange transactions, no conditions for appointment or revocation of authorised dealers and buyers, Minister's power to reinstate an authorised dealer or buyer whose appointment is revoked by CBN. Furthermore, the Act should prohibit and punish monopoly, hoarding and insider trading in the market, and set time limit within which foreign currency could remain in private hands.

27. It is in consideration of these challenges and other issues that the Nigerian Law Reform Commission in pursuance of its mandate under section 5 of its establishment law⁷ and in line with the economic reforms of the government decided to embark on this reform exercise with a view to making proposals to reform the Foreign Exchange Act in order to inter-alia check money laundering and strengthen the Nigerian economy.

Objectives

28. The objectives of this reform exercise include –
- a. To forestall money laundering by strengthening the legal framework for the regulation, monitoring, supervision and implementation of foreign exchange transactions in Nigeria.
 - b. To enhance the development of the national economy through a well coordinated foreign exchange regime.
 - c. To ensure transparency, accountability and integrity of the process in foreign exchange transactions in Nigeria.
 - d. To ensure that appropriate measures are put in place to strengthen the value of the national currency while ensuring the liberalisation of foreign exchange transactions in Nigeria.

⁷Nigerian Law Reform Commission Act, Cap.N118, Laws of the Federation of Nigeria 2004.

PART

B

OVERVIEW OF THE ACT

OVERVIEW OF THE ACT

29. **Section 1** of the Act establishes the Autonomous Foreign Exchange Market where transactions in foreign exchange shall be conducted, and gives the Central Bank of Nigeria (CBN) the power to issue guidelines from time to time to regulate the procedures for transactions in the market subject to the approval of the Minister.
 30. **Section 2** provides for instruments of transactions in the market which includes any convertible foreign currency such as as foreign bank notes, foreign coins, travellers' cheques, bank drafts, etc and such other instruments as may be determined by CBN.
 31. **Section 3** provides for non-disclosure of sources of imported foreign currency by any person executing a transaction in the market except as required under any enactment or law.
 32. **Section 4** provides for sources of foreign currency that may be sold in the market such as foreign currency provided by CBN, tourist into Nigeria, imported for direct investment in Nigeria, in domiciliary accounts maintained in authorized banks in Nigeria, held or imported by Nigerian citizens returning from abroad, held by foreign nationals resident in Nigeria, etc.
 33. **Section 5** provides for the appointment of authorized dealers and buyers in the market by the CBN subject to such terms and conditions as the CBN may specify in the letter of appointment.
 34. **Section 6** provides for revocation of appointment of any authorized dealer or buyer by the CBN if it has reason to believe that such revocation is for national interest. Although, appeal could be made to the Minister within 28 days of the receipt of the letter of revocation by the aggrieved person, and the Minister may reverse or affirm the decision of the CBN where there are circumstances to so hold.
- Section 7** provides for persons that could carry out transactions in the market. These include the public, authorized dealers and buyers, and the transactions are conducted as prescribed from time to time by the CBN.

35. **Section 8** provides for supervision and monitoring of the market by the CBN to ensure efficient performance and the Minister may also issue directives as may seem appropriate and consistent with the Act for the efficient operation of the market.
36. **Section 9** provides that the rate of exchange at the market shall be as mutually agreed by the parties (the applicant purchaser and the authorized dealer or buyer).
37. **Section 10** provides for the transactions permitted in the market, that is, any transaction adequately supported by appropriate documentation shall be an eligible transaction in the market unless such transaction is prohibited by law.
38. **Sections 11** provides for transactions not permitted by the Act. These transactions include goods and services or items that are absolutely prohibited by any enactment or laws.
39. **Section 12** provides for the importation and exportation of foreign currencies requiring the declaration of any amount in excess of \$5,000.
40. **Section 13** provides for the manner in which purchased foreign currency can be repatriated from Nigeria.
41. **Section 14** provides for the exportation of the Naira as Nigeria's legal Tender. The section prohibits the exportation of the Naira except with permission of the Central Bank of Nigeria.
42. **Section 15** provides for the investment of foreign currencies and capital imported into Nigeria in various forms whether in enterprises or securities as the case may be. The section further provides for channels through which the imported foreign currencies can be invested and the method through which such currencies can be transferred and the period within which an authorised dealer can act after the importation of the currencies. The section further provides for the furnishing of the Central Bank with information about the importation by the authorised dealer.
43. **Section 16** provides for the submission of returns by an authorised dealer and buyer appointed under the Act to the Central Bank in a particular form as may be directed by the Central Bank. The section further makes it an offence for failure to

submit such returns as at when due and it is punishable under the Central Bank Act and Banks and other Financial Institutions Act (BOFIA)

44. **Section 17** provides for the operation of foreign currency Domiciliary Account. The section provides for who is to open such account, the type of foreign currencies (Pounds, Dollar, Yen, etc). The section further allows a person to open more than one account.
45. **Section 18** provides for the payment of interest by a bank where such account is domiciled. It also provides for the way and manner the bank can deal with such deposit in terms of business transaction.
46. **Section 19** provides for opening of foreign currencies domiciliary account by exporters of goods, which shall include petroleum products. Such account may contain the entire proceeds of the export business.
47. **Section 20** provides for the supervisory and monitoring power of the Central Bank in relation to transactions under Part II of the Act.
48. **Section 21** deals with the importation and exportation of foreign currency in cash. It provides that where a person imports foreign currency in excess of Ten thousand US dollars or its equivalent in cash and deposit same in a domiciliary account with an authorized dealer, he shall only make cash withdrawals from the account. Also such foreign currency imported in cash shall only be exportable from Nigeria in cash. Lastly, the section prohibits any authorized dealer from facilitating the withdrawal of such foreign currency by any means other than by cash.
49. **Section 22** deals with payments for certain goods. It prohibits the purchase in Nigeria of landed properties, securities, motor cars including other vehicles of any description whatsoever with cash whether in foreign currency or not. It goes further to provide that such payment shall be made by means of bank transfers of cheques drawn on banks in Nigeria only.
50. **Section 23** deals with special surveillance of certain transactions. The section authorizes the Central Bank of Nigeria to access at all reasonable times the offices, registers, books of accounts and documents relating to accounts maintained with

an authorized dealer to confirm compliance with the provisions of the Part II of the Act.

51. **Section 24** deals with maintenance and preservation of records by authorised dealers at least seven years after the last entry in it.
52. **Section 25** deals with duty to report International transfer of funds. It mandates an authorized dealer to notify the Central Bank of any cash transfer to or from a foreign country of a sum more than \$10,000 or its equivalent for the purpose of determining and monitoring the flow of foreign currencies into Nigeria. It also mandates the Central Bank to furnish returns on such transactions to the Minister on quarterly basis.
53. **Section 26** provides for dealings in securities. It empowers any person whether resident in or outside Nigeria, whether or not a citizen of Nigeria to deal in, invest in, acquire or dispose of, create or transfer any interest in securities and other money markets instruments whether denominated in foreign currencies in Nigeria or not. Such investment may be securities traded on the Nigerian Capital Market or by private placements in Nigeria.
54. **Section 27** provides for export of goods and services. It allows for export of goods and services from Nigeria which are not prohibited by law and the payment could be made by means of letter of credit or any other internationally acceptable mode for payment and the amount should represent a fair return for the goods or services.
55. **Section 28** deals with the duty to collect debts. The section empowers the agency of government responsible for collection of duties in respect foreign exchange transactions to do so promptly unless where the Minister directs otherwise. The section also absolves such agency from liability for carrying out their duties and the Minister may also assign to the Accountant-General power to demand and receive foreign currency or payment.
56. **Section 29** creates offences in relation to Part I of the Act. Punishment to the offences created in the section in the case of an individual is five years

imprisonment or to a fine of five times the amount of foreign currency involved and in the case of a body corporate, to a fine of ten times the amount of foreign currency involved. Also all the assets, moveable or immovable of a person convicted under the section shall be forfeited to the Federal Government. If the person convicted under the section is an authorized dealer, the Central Bank shall revoke his appointment. Finally, the foreign currency involved shall be forfeited to the Federal Government.

57. **Section 30** creates offences in respect of Part II of the Act. The section makes it an offence to- sell foreign currency to an unauthorized dealer, forge or mutilate any passbook for foreign exchange transaction with intention to defraud, and to convert illegally the proceeds of any domiciliary account maintained. The punishment for the offences amongst others include, forfeiture of the foreign currency with the associated assets to the federal government, wounding up of the company and revocation of license of the authorised dealer concerned.
58. **Section 31** provides for where an offence has been committed by a body corporate under the Act, that the persons who were officers of the body corporate is deemed to be guilty of the offence and liable to punishment as prescribe in the Act, unless the officer proves that the offence was committed without his consent or connivance and that he had exercised due diligence with regard to the nature of his functions.
59. **Section 32** refers to foreign currency that is seized based on a contravention of the Act. Where such seizure occurs, the foreign currency is lodged in a blocked account with the central bank. If after three years no action is brought by whom such foreign currency was seized, the Minister shall direct the Central Bank to transfer such money into the Consolidated Revenue Fund.
60. **Section 33** provides for where there is a seizure of foreign currency for any reason connected with the contravention of the Act, the foreign currency shall be lodged in a blocked account with the Central bank.
61. **Section 34** provides for the court with jurisdiction to try offences under the Act.

62. **Sections 35 and 36** provide for the scope and application of the Act.
63. **Section 37** modifies existing legislation that relates to foreign exchange and provides that any law inconsistent with it is to the extent of its inconsistency void.
64. **Section 38** provides for the list of existing legislations repealed by the enactment of Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995. The Section also states that all documents or order made under the provision of the repealed Acts remains valid as though made under the current Forex Act.
65. **Section 39** empowers the Minister to make such transitional provisions as are necessary or expedient for full effect of the Act.
66. **Section 40** empowers the Minister of Finance in consultation with the Central Bank to make regulations as may be required for carrying into effect the intendment of this Act.
67. **Section 41** is the interpretation section.
68. **Section 42** is the short title.

PART

C

DEFECTS IN THE ACT AND RECOMMENDATIONS FOR REFORM

DEFECTS IN THE ACT AND RECOMMENDATIONS FOR REFORM

Section 1: Establishment of the Autonomous Foreign Exchange Market

69. Section 1 of the Act establishes the Autonomous Foreign Exchange Market and gives the CBN power to issue guidelines from time to time to regulate the procedures for transactions in the market subject to the approval of the Minister.

The section did not provide for objectives. This could make supervision and monitoring difficult because without a predetermined goal there will be no clear policy direction of what the law seeks to achieve. In India for instance, the Foreign Exchange Management Act, 1999 declares in the long title that the objective of the foreign exchange law is to facilitate external trade and payments and for promotion of orderly development and maintenance of foreign exchange market in India.

70. Similarly, in Malaysia, the objective of the foreign exchange administration is to maintain liberal rules which are prudential measures to support the overall macroeconomic objectives of maintaining monetary and financial stability, enhance the competitiveness of the economy through the creation of a more supportive and facilitative environment for trade, business and investment activities.⁸

Recommendation

71. Section 1 of the Act should be amended to provide for objectives.

Section 2: Instruments of Transactions in the Market

72. Under section 2 (2) (e) of the Act, telegraphic transfer is recognized as an instrument of transaction. It is suggested that the term “electronic” transfer should be added so as to broaden the spectrum of making it IT friendly in line with modern practices.

⁸<http://www.bnm.gov.my/index.php?lang=en&ch=en>, accessed on 19th August, 2016.

Recommendation

73. The word “electronic” should be added to Section 2 (2) (e) of the Act.

Section 4: Sources of Foreign Currency in the Market

74. Section 4 of the Act provides for sources of foreign currency in the market. However, the section did not provide for one of the surest and reliable source of foreign currency into the country; that is, foreign currency sent by Nigerians resident abroad to their relations and friends. There may not be an accurate figure of the number of Nigerians in the Diaspora, but the fact remains that returns or remittances made to relatives and friends from Nigerians all over the world could be huge and cannot just be hidden under anonymous sources. Even though, the Minister under paragraph (L) of section 4 may specify by order other sources of foreign currency, there is no such order in force to date.
75. Also, there are foreigners who send foreign currencies to their relations, families, children and friends in Nigeria. This source of foreign exchange is not captured in section 4 of the Act.
76. There is need to include these sources in the list of sources of foreign currency listed in section 4 of the Act.

Recommendation

77. Section 4 of the Act should be amended to provide for foreign currencies sent by Nigerians resident abroad and non Nigerians to their relations, families and friends in Nigeria.

Section 5: Appointment of Authorised Dealers and Authorised Buyers

78. Section 5(1) of the Act provides for appointment of authorized dealers and buyers without specifying the conditions for such appointment. The subsection merely provides that the CBN may appoint any bank or non-banking corporate

organization which shows evidence of adequate resources and capacity to operate in accordance with the provisions of this Act. This provision is nebulous, vague and subjective. The evidence of adequate resources and capacity if not expressly stated in the Act could be subject to abuse as it may never be shown, and the CBN is not answerable to anybody as to the yardstick used in appointment.

79. Foreign exchange transaction is the life wire of any nation and should not to be left to chance. In Uganda for instance the conditions for granting a license to an operator in the market are specified in the Act⁹. The conditions for appointment of authorized dealers and buyers should be provided in the Act to enable Nigerians to know the capacity and integrity of those entrusted with the responsibility of handling this important component of the nation's economic activity. The conditions may include

- (a) asset declaration;
- (b) share capital base of ₦10 million;
- (c) proof of investment in development of agriculture or other sectors of the economy;
- (d) list of shareholders and directors;
- (e) liquidity base of 25 billion naira;
- (f) consistency in profitability; and
- (g) evidence of consistent tax payment for 3 years.

Recommendation

80. Section 5 of the Act should be amended to provide for conditions for appointment of authorized dealers and buyers.

⁹Section 5 of the Foreign Exchange Act 2004 of Uganda

Section 6: Revocation of Appointment as Authorised Dealers and Authorised Buyers

81. Section 6(1) of the Act provides for revocation of appointment of authorized Dealer or Buyer by the CBN where it is not in the national interest to continue to operate as authorized dealer or buyer. The determination to be made by CBN could be subjective and could lead to abuse of the process as it can diminish the security and integrity of authorised dealers or buyers. The Act should clearly provide the grounds for revocation. Under section 12 of the Foreign Exchange Act 2006 of Ghana, a license for operation of foreign exchange could be revoked where the licensee -
- (a) fails to utilize the license within 30 days
 - (b) fails to disclose in their application for grant, extension or renewal, material information known to the licensee or reasonably expected to have been known to the licensee.
 - (c) provided material information which is false in material particular.
 - (d) has not complied with a directive under the Act
 - (e) has since the issue of the license cease to qualify for the license.
 - (f) is found to be in malpractice or irregularity in the management of the business of dealing in foreign exchange.
 - (g) is placed under liquidation, receivership, or is adjudged bankrupt.
82. There is similar provision in section 6 of the Foreign Exchange Act 2004 of Uganda.
83. However, CBN should provide for procedures for making such revocation like giving of notice of intention and giving the authorised dealer or buyer opportunity to make representation.
84. Also, section 6(3) which gives the Minister power to reverse or affirm a revocation made by the CBN should be reconsidered. This provision could lead to impunity and undermine the operation of the foreign exchange market. The decision of the

CBN on revocation should be final subject to application to the court within 30 days as provided in section 14 of the Foreign Exchange Act 2006 of Ghana.

Recommendation

88. Section 6 of the Act should be amended to make provisions for-
- (i) conditions for revocation of appointment of authorized dealer or buyer.
 - (ii) CBN should give notice of revocation
 - (iii) the revocation by CBN should be final, subject to application to court of competent jurisdiction.

Section 8: Supervision and Monitoring of the Market

89. Section 8 of the Act gives the CBN power to supervise and monitor the operation of the market. In furtherance of this mandate, it is necessary for purposes of transparency, public confidence and fair competition in the market for the CBN to maintain a neutral posture in its supervision and monitoring role. This can only be guaranteed if members of the CBN board, staff, agents and proxies are prohibited from involving in any form of insider trading and disclosure of privileged information that will put any authorized dealer or buyer in a vantage position over others in the market.
90. It should also be made an offence for any member of the CBN, Board or Staff to either directly or through their agents and proxies own, invest or have any interest in foreign exchange business.
91. Likewise, it should be an offence for any member of the CBN, Board or Staff to either directly or through their agents and proxies be involved in insider trading or disclosure of any privileged information to an authorized dealer or buyer as to give it an advantage over others in the market.

Recommendation

92. Section 8 of the Act should be amended to provide for prohibition of insider trading or disclosure of privileged information, and insider trading should be defined in the Act.

Section 9: Rate in the Market

93. Section 9 of the Act allows the exchange rate at the market to be determined by the market forces; that is, as mutually agreed by the parties (purchaser and the authorized dealer or buyer). In order to avoid abuse of this provision the authorized dealers and buyers in the market should be prohibited and be made an offence with appropriate punishment provided for practicing organized monopoly or acts intended to manipulate the market to their favour.
94. Also, hoarding of foreign currency should to be prohibited and made an offence because that would work against the economy of Nigeria. In South Africa for instance, if a person has as applied and obtained from an authorized dealer any gold or foreign currency and it turns out that he no longer requires all or any part of such gold or foreign currency for the purposes stated in his application, he shall forthwith offer for sale to the Treasury or an authorized dealer that gold or foreign currency which is not so required, which may be repurchased at the price at which it was sold to him or such other price as the treasury may determine.¹⁰
95. Foreign currency should be held only by the CBN and the authorized dealers or buyers and not by private individuals. There should be a time limit within which an individual can hold foreign currency upon receipt, and after such a time, it should be deposited in the domiciliary account.

¹⁰ Section 2(5) Foreign Currency Regulation 2012 of South Africa

Recommendation

96. Section 9 of the Act should be amended to introduce provision to prevent monopoly and hoarding and a time limit for deposit of foreign currency in the bank.

Section 12 (2): Importation and Exportation of Foreign Currencies

97. Section 12 (2) of the Act allows foreign currency in excess of five thousand dollars to be imported or exported subject to declaration for statistics reasons only. This provision could incapacitate a regulator who wants to place restrictions or prohibition to protect the economy. It will therefore be necessary to amend the provision to enable the regulator to restrict the export of foreign currency where necessary in order to protect the economy.

Recommendation

98. Section 12 (2) of the Act should be amended to enable the CBN to restrict or prohibit the exportation of foreign currencies when and where necessary to protect the economy.

Section 13: Repatriation of Funds

99. This section provides for repatriation of funds purchased from the market without further approval. This provision is porous and is capable of abuse leading to money laundering. It gives open license to both Nigerians and non Nigerians to repatriate foreign currency without restriction. This is dangerous for a mono-economy like Nigeria, especially with the collapse of oil prices in the international market and drastic reduction in the volume of crude oil export as a result of vandalisation of oil pipelines. The need to check terrorist financing in the face of increase in terrorist activities globally.
100. Nations make conscious effort to have control over its foreign exchange transactions because it is the life-wire of its economy. For instance in South

Africa, Angola, Uganda, Ghana, Malaysia, India, etc restrictions are imposed on foreign exchange transactions, especially on importation and exportation of foreign currencies.¹¹

Recommendation

101. Section 13 of the Act should be amended to give CBN power to approve and where necessary restrict or prohibit repatriation of foreign currency to save the Nigerian economy.

Section 15: Investment of Foreign Currencies and Capital in Enterprises or Securities in Nigeria

102. Section 15(1) of the Foreign Exchange Act provides that, any person may invest in enterprise or security, in Nigeria 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. However, the Authorised dealer is also required to issue a certificate of capital importation to the investor within 24 hours of importation and information on transactions must be filed with the Central Bank of Nigeria by an authorized dealer within 48 hours.

The use of the word “telegraphic” should be changed to electronic or on-line transactions to conform with digital age and international best practice.

103. **Section 15 (4)** of the Act provides for the transferability of capital in any convertible currency without giving any conditions in relation to dividends or profits (net of taxes) attributable to the investment; payments in respect of loan servicing where a foreign loan has been obtained; and remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the

¹¹ Section 3 of the Exchange Control Regulations, 1961 of South Africa (amended by Government Notice of 18th June, 2012); Article 14 of Foreign Exchange Law 1997 of Angola; Section 10 of Foreign Exchange Act 2004 of Uganda; Section 18(1) Foreign Exchange Act 2006 of Ghana; Section 5 of Exchange Control Act 1953 of Malaysia (amended 1st October 2008); Sections 3, 4 and 6 of Foreign Exchange Management Act 1999 of India

enterprise or any interest attributable to the investment. The repatriation of such funds should be communicated to Central Bank within fourteen days of the repatriation and the Central Bank shall furnish same to the Minister of Finance on monthly basis for information and statistical purposes only.

Recommendation

104. i) Section 15 should be amended by substituting the word "Telegraphic" with the word "Electronic Transfer/Internet Banking".
- ii) Conditions should be provided to mandate the Authorised Dealer to check other important document such as Certificate of Capital Importation and Tax Clearance Certificates before making the transfer.

Section 16: Authorised Dealer to Submit Returns

105. Section 16 of the Foreign Exchange Act requires that both Authorised Dealer and Buyer appointed by the Act are to submit returns of the activities in the market to the Central Bank at intervals and the details of the report on return shall be submitted to the Minister on quarterly basis. However, the Authorised Dealer or Authorised Buyer that fail to submit returns of the operation of the market to the Central Bank 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. Section 16 of the Act creates an offence without punishment but made recourse to the Central Bank Act and the Banks and Other Financial Institutions Act for punishment of an offence committed in the Act (FOREX ACT, 2004).

Recommendation

106. In order to make the law tidy and precise the Act should make provision for punishment in respect of offences under this section.

Section 17: Domiciliary Accounts

107. Subsection 5 of section 17 prohibits the seizure or forfeiture or expropriation by the Federal or State Government of any money imported for the purposes of this Act. There is need to provide for an exception to this section because there could be circumstances that could warrant seizure or forfeiture or expropriation. For instance, where money is imported to sponsor terrorist activities or any other subversion activities to undermine the security of Nigeria.

Recommendation

108. Section 17(5) of the Act should be amended to provide for such exception.

Section 21: Importation and Exportation of Foreign Currency in Cash

109. By the provision of section 21, a person who imports foreign currency in excess of US \$10,000 or its equivalent in other currency in cash and deposits same in a domiciliary account with an authorised dealer shall only make cash withdrawal from the account. By subsection 2 such cash can only be exportable from Nigeria in cash. The section under subsection 3 makes it illegal for an authorised dealer to permit or facilitate the withdrawal of the foreign currency by any means other than by cash.

The essence of the provision is to give a legal guarantee to any investor who imports foreign currency for investment in Nigeria to withdraw and export his money back when the need arises.

110. However, if the provision is considered with that of section 22 which deals with payment for certain goods like landed property, securities, and motor car, it appears that there is a conflict. Section 22 prohibits payments for the items listed therein in cash whether in foreign or local currency. The implication of section 22 is that the importer cannot transact with his fund through money transfer of cheque

denominated in any currency. To cure this conflict, it is suggested that one of the sections be made subject to the provision of the other.

- III. Though subsection (3) of section 21 makes it illegal for an authorised dealer to permit or facilitate the withdrawal of the foreign currency referred to in subsection (1) of the section by any means other than by cash. However, the section did not explicitly create an offence and prescribe a penalty for such offence. However, it is observed that some offences in relation to section 21 has been created and punished under section 30 of the Act. For clarity sake, it is suggested that all offences in relation to act prohibited under section 21 should be created in the section as a subsection and punished under the same section, or in the alternative, the offences and punishment can be created immediately after the section as section 22.
112. Furthermore, the use of the words "mail or telegraphic" in line 2 of subsection (1) of section 21 is restrictive as it tends to exclude other electronic means of transfer. It is suggested that the words be deleted and replaced with "electronic" which covers "mails or telegraphic" transfers.

Recommendation

113. i) Section 21 should be made subject to section 22.
ii) The words "mails or telegraphic" be deleted and be replaced with "electronic"

Section 24: Preservation of Records

114. The section mandates an authorized dealer to maintain a register for the purpose of recording details of all transactions carried out by it and to preserve such records for a minimum of seven years after the last entry in it. However, in view of digitalisation the stipulation of the number of years will not be necessary.
115. Also there should be punishment in the section for not preserving the record. This will put all authorised dealers on their toes and will make them appreciate the importance of keeping register of all their transactions.

Recommendation

116. i) The provision in the Act limiting the period of preservation should be deleted.
ii) There should be punishment in the section for not keeping a register and preserving the record.

Section 32: Blocked Accounts

117. The defect in section 32 is the omission of the definition of the phrase “Blocked Account” in the interpretation section. If a blocked account is given its literal meaning, one will find that it is completely different from how it is actually defined. Investopedia¹² defines it as an account that is subject to foreign exchange controls in a country that restricts the amount of its currency that can be transferred to other countries or exchanged into other currencies. In several Acts,¹³ a blocked account is used mainly for the receipt and disbursement of foreign currency. Therefore, a blocked account is a title of a specific account rather than the act of freezing an account. For these reasons and for clarity, the definition of “Blocked Account” should be included in the interpretation section of this Act.

Recommendation

118. For the purposes of this Act, Blocked Account should be defined in the interpretation section as-
“An account created for lodgement of seized foreign currency with the Central Bank.”

Section 36: Extent of this Act

119. The provision of section 36 on the extent or scope of application of the Act is limited and lacking in respect to the nature of transaction covered. The nature of

¹²<http://www.investopedia.com/terms/b/blocked-account.asp>

¹³ Section 31 of Sri Lanka Exchange Control Act (1986), Section 38 Bermuda Exchange Control Regulations (1973), South Africa Exchange Control Regulations (1961)

transactions covered by the Act should be reflected in the scope of application for purposes of clarity. For instance Article 2 of the Foreign Exchange Law, 1997 of Angola clearly provides that the law and its complementary charters and regulations applies to: (1) foreign exchange operations and (2) trade in foreign exchange. From this provision it is clear that the law covers foreign exchange operations and trade in foreign exchange in Angola. It is therefore proposed that the following nature of transactions be specified in the scope of application of the Act.

- a. foreign exchange transactions performed in the Federal Republic of Nigeria;
- b. transactions, payments or receipts between Nigeria and a foreign country (including those which are performed in a foreign country and which have an effect in Nigeria; and
- c. transactions by a private person having domicile or residence in a foreign country and a juristic person having a main office in a foreign country which are denominated in the currency of Nigeria or in which payment is to be made in such currency, or other related transactions.

Recommendation

- 120. Section 36 of the Act should be amended to enlarge the scope or extent of application of the Act.

Provision for Audit Report

- 121. There is no provision in the Act for audit of foreign exchange transactions in Nigeria. To make for transparency and accountability in the foreign exchange transactions it will be necessary to have an annual audit report including audit report management letter that will enable gray areas in the report to be identified

for proper evaluation. The audit report should be laid before the National Assembly.

Recommendation

122. Provision should be made for bi-annual audit report and for such report to be laid before the National Assembly for transparency and accountability.

PART

D

CONCLUSION

CONCLUSION

123. Foreign exchange transactions are governed by laws and every country has its own law that regulates and keep in check the variables that play in the market to safeguard the economy. In the case of Nigeria, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 2004 is the law that regulates foreign exchange transactions.
124. Nigeria as a mono-economy that depends majorly on foreign exchange earnings from sale of crude oil has been affected by the fall in oil prices in the international market coupled with vandalisation of pipelines by terrorists which have reduced drastically the volume of crude oil export. This has impacted negatively the foreign exchange earnings and the economy of the country.
125. An examination of the Act and its operations, reveal lapses in the law which this reform seeks to address.
126. The Act makes it difficult for foreign exchange transactions in Nigeria to be effectively regulated. For instance the Act-
 - (a) is narrow in scope and does not provide for objectives;
 - (b) allows foreign currency purchased from the market to be repatriated from Nigeria without restriction;
 - (c) allows foreign currency in excess of five thousand dollars to be imported or exported subject to declaration for statistics reasons only; and
 - (d) prohibits the seizure, forfeiture or expropriation of imported money by the government without providing for exceptions.
127. Also, the Act does not provide for sufficient safeguard to ensure the integrity of transactions in the market. For instance the Act did not provide for audit of the foreign exchange transactions, no conditions for appointment or revocation of authorised dealers and buyers, Minister's power to reinstate an authorised dealer or buyer whose appointment is revoked by CBN. Furthermore, the Act should prohibit and punish monopoly, hoarding and insider trading in the market, and set time limit within which foreign currency could remain in private hands.

28. These and other issues are addressed in this reform exercise to strengthen the Nigerian economy.

**PART
E**

DRAFT BILL

DRAFT BILL

FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT (AMENDMENT) BILL 2016

A BILL

FOR

AN ACT TO AMEND THE FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT, CAP. F34 LFN 2004 TO PROVIDE FOR OBJECTIVES AND STRENGTHEN THE FRAMEWORK FOR EFFECTIVE MONITORING AND CONTROL, AND TO ENSURE PROBITY IN FOREIGN EXCHANGE TRANSACTIONS IN NIGERIA AND OTHER RELATED MATTERS.

Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34 LFN 2004 (in this Act referred to as the Principal Act is amended as set out below:

2. **Section 1: Establishment of the Autonomous Foreign Exchange Market**

Section 1 of the Principal Act is amended by the addition of subsection 1 (3) as follows:

“(3) The objectives of the Act include to –

(a) facilitate external trade and payments;

(b) promote orderly development and maintenance of foreign exchange market in Nigeria;

- (c) maintain an equilibrium of balance of international payments;
- (d) stabilize the value of currency by ensuring the liberalization of foreign exchange transactions and of other foreign transactions; and
- (e) strengthen the national economy.”

Section 2: Instruments of Transactions in the Market

Section 2(2)(e) of the Principal Act is amended by inserting the words “or electronic” immediately after the word “telegraphic” that is:

“(e) mail or telegraphic **or electronic** transfers; and

Section 4: Sources of Foreign Currency in the Market

Section 4 of the Principal Act is amended by the addition of new paragraphs “L” and “m” renumbering the existing paragraph “L” as “n”, that is:

“(L) foreign currency sent by Nigerians resident abroad to their relations and friends.

“(m) foreign currency sent by non-Nigerians to their children and friends in Nigeria.”

Section 5: Appointment of Authorised Dealers and Authorised Buyers

Section 5(1) of the Principal Act is amended by deleting the existing provision and inserting a new provision as follows:

“(1) The Central Bank may appoint as an Authorised Dealer or Authorised Buyer of foreign currency, any bank or non-banking corporate organization which certifies the following conditions to operate in accordance with the provisions of this Act.

- (a) Asset declaration;
- (b) Share capital base of 10 million naira;
- (c) Proof of investment in the development of agriculture or other sectors of the economy;
- (d) List of shareholders and directors;
- (e) Liquidity base of 25 billion naira;
- (f) Consistency in profitability; and

(g) Evidence of consistent tax payment for 3 years.

6. Section 6: Revocation of Appointment as Authorised Dealer or Authorised Buyer

Section 6 of the Principal Act is amended by deleting the existing provision and inserting a new provision as follows:

- (1) The Central Bank may revoke the appointment of an Authorised Dealer or Authorised Buyer where he –
 - (a) fails to utilize the license to operate within 30 days;
 - (b) fails to disclose material information known to him or reasonably expected to have been known to him at the time of grant, extension or renewal of his appointment;
 - (c) provided material information which is false in material particular;
 - (d) has not complied with a directive under the Act;
 - (e) has since the appointment cease to qualify for a licence;
 - (f) is found to be involved in malpractice or irregularity in the management of the business of dealing in foreign exchange;
 - (g) is placed under liquidation, receivership, or is adjudged bankrupt.
- (2) Where the Central Bank proposes to revoke the license or appointment of an Authorised Dealer or Authorised Buyer pursuant to subsection (1) of this section, the Bank may give notice of its intention to revoke the appointment to the Authorised Dealer or Authorised Buyer and the Authorised Dealer or Authorised Buyer may within 30 days, make a representation to the Bank in respect thereof.
- (3) An Authorised Dealer or Authorised Buyer who is dissatisfied with the decision of the Bank or failure of the Bank to make a decision within 30 days, may apply to the Federal High Court.

7. Section 8: Supervision and Monitoring of the Market

Section 8 of the Principal Act is amended by the addition of new subsections (2), (3) and (4) as follows and renumbering the existing subsection (2) as subsection (5):

“(2) No member of the Central Bank Board or staff shall either directly or through their agents or proxies own, invest or have any interest in foreign exchange business.

(3) No member of the Central Bank Board or staff shall either directly or through their agents or proxies be involved in insider trading with an Authorised Dealer or Buyer as to give it an advantage over others in the foreign exchange market.

(4) Any member of the Central Bank Board or staff who contravenes the provisions of subsections (2) and (3) of this section is guilty of an offence and shall be liable on conviction to a fine of five million naira.”

8. Section 9: Rate in the Market

Section 9 of the Principal Act is amended by making the existing provision as subsection (1) and creating new subsections (2), (3) and (4) as follows:

“(2) Authorised Dealers and Authorised Buyers shall not create any form of monopoly or hoard foreign Currency for the purposes of influencing the rate in the foreign exchange market.

(3) Any Authorised Dealer and Buyer who contravenes the provision of subsection (2) of this section is guilty of an offence and shall be liable on conviction to a fine of five million naira.”

9. New Section 9A: Prohibition of Possession of Foreign Currency

The Principal Act is amended by inserting **new section 9A** immediately after section 9 as follows:

“Section 9A: Prohibition of Possession of Foreign Currency

The possession of foreign currency by any person without depositing same in a domiciliary account within 30 days of its acquisition constitutes an offence

liable on conviction to two years imprisonment or to a fine of 20% of the amount of the foreign currency involved.”

10. New Section 9B: Return of Unused Foreign Currency to Domiciliary

Account

The Principal Act is amended by inserting **new section 9B** immediately after the new section 9A as follows:

“Section 9B: Return of Unused Foreign Currency to Domiciliary Account

- (1) If a person has applied and obtained from an Authorised Dealer any foreign currency and the person no longer requires all or any part of such foreign currency for the purpose(s) stated in his application, he shall within 30 days offer for sale to the an Authorised Dealer that foreign currency which is not so required, which may be repurchased at the price it was sold to him or such other price as the Central Bank may determine.**
- (2) Any person who contravenes the provision of subsection (1) of this section commits an offence and shall be liable on conviction to two years imprisonment or to a fine of 20% of the amount of the foreign currency involved.”**

11. Section 12: Importation and Exportation of Foreign Currencies

Section 12(2) of the Principal Act is amended by deleting the words “declared on the prescribed form for reasons of statistics only” and inserting the words “ **in accordance with the terms and conditions as may be prescribed by the Central Bank from time to time.**” that is:

“(2) Foreign currency in excess of US \$5,000 or its equivalent, whether being imported into or exported out of Nigeria, shall be **in accordance with the terms and conditions as may be prescribed by the Central Bank from time to time.**”

12. Section 13: Repatriation of Funds

Section 13 of the Principal Act is amended by deleting the words “and shall not be subject to any further approval” and inserting the words “ **in accordance with the**

terms and conditions as may be prescribed by the Central Bank from time to time.” that is:

“Any foreign currency purchased from the Market may be repatriated from Nigeria in accordance with the terms and conditions as may be prescribed by the Central Bank from time to time.”

13. Section 15: Investment of Foreign Currencies and Capital in Enterprises or Securities in Nigeria

Section 15 of the Principal Act is amended as follows:

- a. Subsection (1) is amended by deleting the word “telegraphic” which appears in line 2, and inserting the word “**electronic**” and immediately after the word “transfer,” insert the words “**/internet banking**” that is:

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

- b. Subsection 15(4) is amended by deleting the word “unconditional” in line 2 and adding a proviso after paragraph (c) thus: “**Provided the Authorised Dealer inspects and confirms in writing that other important documents including Certificate of Capital Importation, Tax Clearance Certificates and other obligations under any other law are certified.**” that is:

“(4) Foreign currency imported into Nigeria and invested in any enterprise pursuant to subsection (1) of this section shall be guaranteed 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;

(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.

Provided the Authorised Dealer inspects and confirms in writing that other important documents including Certificate of Capital Importation, Tax Clearance Certificates and other obligations under any other law are complied with."

14. Section 16: Authorised Dealers to Submit Returns

Section 16(3) of the Principal Act is amended by deleting the words "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" and inserting the words **"a fine not exceeding #25,000 for each day during which the offence continues."** that is:

"(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 a fine not exceeding ₦25,000 for each day during which the offence continues."

15. Section 17: Domiciliary Accounts

Section 17(5) of the Principal Act is amended by the addition of the words **"except there is reasonable ground to believe that the money is imported for illicit purpose(s) or in contravention of the provisions of this Act"** at the end of the sentence, that is:

"(5) No money imported for the purposes of this Act shall be liable to seizure or forfeiture or suffer any form of expropriation by the Federal or a State Government except there is a reasonable ground to believe that the money is imported for illicit purpose(s) or in contravention of the provisions of this Act."

16. Section 21: Importation and Exportation of Foreign Currency in Cash

Section 21(1) of the Principal Act is amended by substituting the word “telegraphic” in line 2 with the word “**electronic**” that is:

“(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 **electronic** transfer and deposits the foreign currency in a domiciliary account with an Authorised Dealer shall only make cash withdrawals from the account.”

17. Section 22: Payments for Certain Goods

Section 22(1) of the Principal Act is amended by inserting the words “the provisions of section 21 of this Act and” immediately after the word “Notwithstanding” in line 1 of the subsection. That is:

“(1) Notwithstanding **the provisions of section 21 of this Act** and 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-”

18. Section 24: Preservation of Records

Section 24 of the Principal Act is amended by deleting paragraph “24(b)” and making the remaining existing provision as subsection (1) and creating a new subsection (2) as follows:

“(2) Failure to maintain the register as required in subsection (1) of this section is guilty of an offence and liable on conviction to imprisonment for two years or fine of one million naira or both.”

19. Section 36: Extent of this Act

Section 36 of the Principal Act is amended by making it subsection (1) and inserting a new subsection (2) as follows:

“(2) The provisions of this Act shall apply to –

(a) foreign exchange transactions performed in the Federal Republic of Nigeria;

- (b) transactions, payments or receipts between Nigeria and a foreign country (including those which are performed in a foreign country and which have an effect in Nigeria; and
- (c) transactions by a private person having domicile or residence in a foreign country and a juristic person having a main office in a foreign country which are denominated in the currency of Nigeria or in which payment is to be made in such currency, or other related acts.”

20. New Section 37A: Audit Report

The Principal Act is amended by inserting immediately after section 37 a new section 37A as follows:

“Section 37A: Audit Report

- (1) The Central Bank of Nigeria shall, prepare annually a report on the activities of the foreign exchange market transactions and shall include in such report a copy of the audited accounts of the foreign exchange market transactions and the auditor’s report thereon.
- (2) The Auditor-General of the Federation shall conduct an examination of the accounts of the foreign exchange market transactions and submit his report thereon.
- (3) The Central Bank of Nigeria shall, within two months after the close of each financial year, transmit to the National Assembly and the President a copy of the report mentioned in subsection (1) of this section.”

21. Section 41: Interpretation

Section 41 of the Principal Act is amended by including the definitions of “Insider Trading” and “Blocked Account” as follows:

“Insider Trading” is the illegal practice of trading in foreign exchange market to one’s own advantage through having access to confidential information.”

“Blocked Account” means an account created for lodgement of seized foreign currency with the Central Bank.”

22. Section 42: Short Title

“This Act may be cited as the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (**Amendment**) **Bill 2016.**”