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HON. JUSTICE GEORGE ADESOLA OGUNTADE, CON.

Foreword by
Hon. Justice P. O. Aderemi

Funmilayo Quadri (BL,LL.M)
Editor

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Gwarinpa Abuja,
P.O. Box 10914, Garki, Abuja.
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LIST OF CONTRIBUTORS

1. Hon. Justice Emmanuel Olayinka Ayoola CON, JSC (Rtd)
   Chairman, Independent Corrupt Practices and other Related Offences Commission (ICPC), Abuja.

2. Hon. Justice Pius Olayiwola Aderemi
   Justice of the Supreme Court.

3. Hon. Justice (Professor) Mojeed A. Owoade JCA
   Justice of the Court of Appeal
   Calabar Judicial Division
   Calabar.

4. Hon. Justice Lambe Olajire Arasi (Rtd)
   Adeitan Chambers
   Adamasingba
   Ibadan.

5. Hon. Justice Diran Akintola
   Judge of the High Court of Oyo state.

6. Hon. Justice Adegbola Adeniyi
   Judge of the High Court of the Federal Capital Territory
   Abuja.

7. Hon. Justice Abiodun Akinyemi
   Judge of the High Court of Ogun State
   Otta Judicial Division, Ogun State.

8. Chief Wole Olanipekun SAN
   Principal Partner
   Wole Olanipekun & Co
   Lagos State.

9. John Oluwole Akintayo Esq
   Department of Public and International Law
   University of Ibadan
   Ibadan, Nigeria.

10. Kevin Nwosu Esq *pnm*
Director-General
Settlement House
Asokoro, Abuja.

11. G. A. Ajayi Esq, FCIArb
Registrar
Chartered Institute of Arbitrators
Ikorodu, Lagos State.

12. Alh. Lasun Sanusi Esq
Lasun Sanusi & Co
Ibadan. Challenge.

13. Funmilayo. A. Quadri Esq.
Funmi Quadri & Co.,
91, Iwo Road, Ibadan.

14. Idowu Adegbite Esq.
Head of Department of
Private Law
Faculty of Law
Olabisi Onabanjo University (OOU)
Ago-Iwoye, Ogun state.

15. Bunmi Y. Osifeso Esq
Department of Business and Industrial Law
Faculty of Law
OOU, Ago-Iwoye, Ogun State.

16. Okeowo Ademola Oladimeji Esq
Associate Matrix Solicitors,
Lagos.

17. Arasi Olayinka Esq.
Wale Babalakin & co.
Abuja.

18. Laiyemo Tumininu Modupe Esq.
Wale Babalakin & co.
Abuja.

19. Magnate Utake Ajokpaoghene
Lord Advocate,
Legal Magnates and Company

20. Magnate Samuel A. Adeniji
Chief Chancellor
Legal Magnates and Company

21. Magnate Oladipupo Abraham
Info-Technologist
Legal Magnates and Company

22. Magnate Solagbade Oluwole
Chancellor
Legal Magnates and Company

23. Magnate Ajijola Ephraim
Librarian,
Legal Magnates and Company

24. Magnate Oyegbami Ahmed
Chancellor,
Legal Magnates and Company

Chapter 20

INTERNATIONAL LEGAL REGIME OF MONEY LAUNDERING*

INTRODUCTION

Universally, money laundering has been coded as an act of transferring illegally obtained money through legitimate people or account so that its original source cannot be traced[1]. The laundering of money derived from illicit drug trafficking, as well as from other serious crimes, has become a global threat to the integrity and stability of financial and trading systems. Because some money laundering is conducted across national borders, enforcement of money laundering laws often requires International cooperation, fostered by organizations such as Interpol.

Money after all, is both the lifeblood and the sole end of illicit operations. It is critical to prevent the cash that comes directly from illicit operations from being converted into other financial instruments or assets. After the conversion has been made, subsequent transaction can create a complex paper trial that makes identification of the illicit source difficult.

To harmonize the effort of the International community to counter money laundering, the United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances of 1988 requires

* Magnate Samuel Adeniji is a Part IV Law Student of Olabisi Onabanjo University and also the Chief Chancellor of Legal Magnates and Company

[1] Bryan Garner-Blacks' Law Dictionary 8th Edition

the States that are parry to it to declare money laundering a punishable offence. They are also required to adopt measures to identify and freeze or confiscate proceeds from the sale of illicit drugs and promote International cooperation against money laundering.

THE PROCESSES OF MONEY LAUNDERING

Money laundering has three stages: Placement, Layering and Integration.

PLACEMENT

This constitutes initial entry of funds into the financial system that serves the purpose of relieving the holder of large amount of actual cash and positioning these funds in the financial system for the next stage. Placement is the most vulnerable stage of the process, as the chance of discovery of the illicit origin of the money is easily possible at the beginning.

LAYERING

It describes a series of transactions designed to conceal the money's origin, at this level, money is often sent from one country to another and then broken up into a variety of investments, which are moved frequently to evade detection.

INTEGRATION

This is the final stage and in this stage, the funds have been fully assimilated into the legal economy, where they can be used for any purpose.

Meanwhile, a number of countries have instituted a set of control measures, including the requirement for financial institutions to disclose suspicious

operations, in order to detect and trace financial operations on dirty money. However, other countries, including many offshore banking "*havens*" are still subject to few such regulations. Hence, global agreement and cooperation are essential to prevent launderers from moving their business to unregulated countries and thus evading prosecutions[2]

INTERNATIONAL INITIATIVES OF ANTI-MONEY LAUNDERING

Nature and the Objectives of Anti-Money Laundering

Before September 11, 2001, the United States of America had in place, along with other countries, rules designed to stop money laundering. This is the process in which criminal activities like drug trafficking generates large cash receipts which are deposited in the banking system of major countries, where the drugs are sold, and then moved to offshore banking centers or into legitimate businesses. The objectives of anti-money laundering laws are in twofold.

First, to make it harder to deposit such cash, without attracting attention from authorities and second, to record information about such deposits, or wire transfers generally which could later be used to investigate criminal activities[3].

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2 http:/www.fas.org/irp/news/1998/06/ money. 5html

3 International Finance: Law and regulation by Hal. S. Scott pub. London/Sweet & Maxwell 2004 p 619-620

A. UNITED STATES ANTI-MONEY LAUNDERING LAW

The United States of America has devised many ways to deal with money laundering issues. Some of these measures are;

1. *Suspicious Activity Reporting*

Every bank operating in the United States must, where warranted, file a Suspicious Activity Report (SAR). After December 31, 2001, money services and other types of financial businesses have also been required to do so. Regardless of the amount involved, a bank must file a SAR when the bank believes it was an actual or potential victim of a criminal violation or has a substantial basis for believing that its own people were so involved.

Banks must also file SARs, pending on the size of aggregate transactions where a suspect of a crime can be detected, where a crime is suspected but no suspect has been identified, or when the bank suspects that a transaction involves funds derived from illegal activities, is designed to evade regulations, or has no apparent purpose.

2. *Currency Transaction Reporting*

Every financial institution, including banks and security firms, must file a report for each non-exempted "deposit withdrawal, exchange of currency or other payment or transfer by, through, or to the financial institution which involves a transaction in currency of more than $10,000" in one business day. Multiple transactions of less than $10,000 by the same person must be aggregated. Transactions with certain persons who generate large currency transactions in

the normal course of business, such as the other banks, large corporations listed on an exchange, and government agencies, are exempt from reporting.

3 *Wire (Funds) Transfer Requirements*

Under the so-called "travel" rule, for any transmittal of funds of $3,000 or more, involving more than one Financial Institution, each financial institution must forward certain information to the next Financial Institution. This facilitates the tracing of laundering transactions between the US and Foreign Financial Institutions.

4. *Know Your Customer* (KYC)

In December 1988, the Federal Reserve Board and other US banking regulators promulgated proposed KYC regulations.[4]

The basic idea was that banks must know their customers and their businesses to decide whether they engaged in suspicious or illegal activities. The KYC regulations would have required among other things, that banks determine the sources of funds and the normal and expected transactions of their customers.

5. *Information Sharing*

Section 314(a) of the Patriot Act provides that financial institutions may be compelled to share information with law enforcement officials about their clients. Banks have long been subject to subpoena powers but this makes it easier for the Government to obtain information.[5]

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[4] 63 Federal Register 67,516, Dec. 7, 1998

[5] See 67 Federal Register 60579 September 26, 2002

6. *Private Banking*

Private banking involves the provision of banking services to high net-worth individuals including money management and financial advice. Such services often involve setting up offshore facilities and banking arrangements. Banking regulators give guidance on how to handle these activities so as to minimize the possibility of money laundering.[6]

B. FINANCIAL ACTION TASK FORCE (FATF)

Work on identifying jurisdictions that pose money laundering threats has been carried on by the FATF, an organization of 31 countries including the United States.[7]

The FATF was founded by the G7 nations in 1989 to foster money laundering controls worldwide. In 1990, FATF issued forty recommendations on money laundering that has been repeatedly endorsed by major countries. The recommendations call for the criminalization of money laundering, International Cooperation in money laundering cases, and a wide range of money laundering control duties for financial institutions, including customer identification, mandatory suspicious activity reporting and due diligence.

FATF has also formulated certain principles to determine when a jurisdiction is not taking adequate measures to combat money laundering e.g.

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6 See e.g. Federal Guidance on Private Banking Activities, Sr-97-19, June 30, 1997

7 FATF, Review to identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures (June 22, 2000)

1. Loopholes in financial regulations
2. Lack of regulatory mechanisms to identify beneficial owners of accounts;
3. Obstacles to International Cooperation, such as laws prohibiting information exchange; and
4. Inadequate resources devoted to prevent and detect money laundering.

These requirements were further elaborated in February 2000 by setting forth twenty-five (25) criteria that would be used to make this determination.[8]

As of April 2003, nine (9) jurisdictions were identified as non-cooperating countries and territories (NCCTs) including Egypt, Indonesia and the Philippines. In 2001, Russia and Israel were also on the list but have been subsequently removed.

(C) THE INTERNATIONAL MONETARY FUND

The IMF is involved in monitoring and assessing the implementation of international standards through the financial sector assessment programme. The IMF Directors generally agreed in November 2001 that the FATF forty (40) recommendations on money laundering should become part of that process, following the development of an appropriate methodology and assessment procedure.[9]

[8] FATF, Report on Non-cooperation Countries and Territories (2000)

[9] International Monetary Fund, Intensified Fund Involvement in Anti-Money laundering work and combating the financing of terrorism, Nov. 5, 2001. This report contemplates that the fund would have a similar role with respect to FATFs anti-terrorist funding recommendations.

D. THE UNITED NATIONS

Latest developments concerning International instruments in the field of combating money laundering are:

- UN convention against Transnational Organized crime and its two protocols (Dec 2000).
- UN convention for the suppression of the financing of terrorism (Feb. 2001).

These conventions are of great benefit towards the eradication of money-laundering worldwide.

E. THE EUROPEAN UNION DIRECTIVE

On December 4, 2001, the European Union adopted a directive on prevention of the use of the financial system for the purpose of money laundering.[10]

The most interesting part of the new Directive is that its anti-money laundering prohibitions are imposed not only on Financial Institutions but on a wide array of other persons, including auditors, external accountants, tax advisers, notaries, real estate agents, dealers in high value goods and attorneys. The Directive exempts independent members of professions like attorneys from reporting requirements where the information is obtained in connection with representation of a client unless the attorney is himself involved in the money laundering.

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[10] Directive 2001/97/Eeo, O.J L344/6, December 28, 2001. This amended a prior directive on money laundering, directive 91/308/EEC O.J. L 166/77, June 28, 1991.

Moreover, it permits attorneys to make their reports to the bar rather than to governmental agencies.

F. NIGERIAN LEGISLATION

In Nigeria of today, the Money Laundering Act[11] has made it an offence for *"a person who converts or transfers resources or property derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic of narcotic drugs or psychotropic substances to evade the legal consequences of his action; or collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or rights thereto derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances, is guilty of an offence under this section and liable on conviction to imprisonment for a term of not less than fifteen (15) years or more than 25 years"*[12]

In the same vein, a transfer to or from a foreign country of funds or securities of a sum, greater than US $10,000 or its equivalent shall be reported to the Central Bank of Nigeria.[13] And only the Federal High Court shall have exclusive jurisdiction to try offences under the Money Laundering Act.[14]

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[11] Cap M18 Laws of Federation of Nigeria 2004
[12] *Section 14(1)(a)(b) of the Money Laundering Act*
[13] *Section 2 (1) Money Laundering Act*
[14] *Section 18 (1) Money Laundering Act*

Furthermore, it is the responsibility of the Economic and Financial Crimes Commission to enforce the provisions of the Money Laundering Act. This is in consonance with the Economic and Financial Crimes Commission Act.[15]

Many notable Nigerians had been alleged of Money laundering such as the former Governor of Bayelsa State-Chief Diepreye Alamieyeseigha, Governor of Plateau State- Chief Joshua Dariye, amongst others.

RECOMMENDATIONS AND CONCLUSION

It is pertinent at this juncture to proffer way forward in addition to the aforementioned initiatives of different bodies/ organizations and countries.

The following principles are hereby suggested:

1. Enactment of a comprehensive legislative framework to criminalize money laundering related to serious crimes and to prevent, detect, investigate and prosecute money laundering by:
   - Identifying, seizing and confiscating the proceeds of crime; and
   - Including money laundering in mutual legal assistance agreement to ensure assistance in investigations, court cases, or judicial proceedings.
2. Establishment of an effective financial regulatory regime to deny access to National and International Financial Systems by criminals and their illicit funds.
3. Implementation of enforcement measures to provide for;

[15] Laws of Federation of Nigeria, 2004

- Effective detection, investigation, prosecution and conviction of criminals engaging in money laundering activity.
- Extradition procedures; and
- Information sharing mechanisms.

4. It is equally suggested that the United Nations Assembly should also request the United Nations Office for Drug Control and Crime Prevention (ODCCP), with the framework of its global programme against Money Laundering, to continue to provide training, advice and technical assistance in the above areas to countries that request it.

Finally, let it be known that it shall be down with the enemies of the people, the exploiters of the weak and the launderers of the public money. The days of those who have enriched themselves at the expense of the poor are numbered except they repent.