

ADVANCE FEE FRAUD AND OTHER FRAUD RELATED OFFENCES DECREE NO.13 OF 1995 ACT CAP. A 6 L.F.N. 2004

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An Act to create offences pertaining to advance fee fraud and other fraud related offences; to provide for the arrest and trial of persons who commit such offences and for matters connected thereto:

[1st April 1995]
Commencement.

PART I - OFFENCES

1. Obtaining property by false pretence, etc.

(1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud -

(a) obtains, from any other person, in Nigeria or in any other country, for himself or any other person; or

(b) induces any other person, in Nigeria or in any other country, to deliver to any person,

(c) any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, is guilty of an offence under this Act.

(2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for is guilty of an offence under this Act.

(3) A person who is guilty of an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not than less 10 years without the option of a fine.

2. Other fraud related offences.

A person who -

(a) with intent to defraud, represents himself as capable of producing, from a piece of paper or from any other material, any currency note by washing, dipping or otherwise treating the paper or material with or in a chemical substance or any other substance; or

(b) with intent to defraud, represents himself as possessing the power or as capable of doubling or otherwise increasing any sum of money through scientific or any other medium of invocation of any juju or other invisible entity or of anything whatsoever; or

(c) not being the Central Bank of Nigeria, prints , makes or issues, or represents himself as capable of printing, making or issuing any currency note,

is guilty of an offence and liable on conviction to imprisonment for a term of

not less than 5 years without the option of a fine.

3. Use of premises.

A person who, being the occupier or is concerned in the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence under this Act is guilty of an offence and liable on conviction to imprisonment for a term of not less than 5 years without the option of a fine.

4. Fraudulent invitation.

A person who by false pretence, and with the intent to defraud any other person, invites or otherwise induces that person or any other person to visit Nigeria for any purpose connected with the commission of an offence under this Act is guilty of an offence and liable on conviction to imprisonment for a term of not less than 7 years without the option of a fine.

5. Receipt of fraudulent letter, etc by victim to constitute attempt.

(1) Where a false pretence which constitutes an offence under this Act is contained in a letter or other document, it shall be sufficient in a charge of an attempt to commit an offence under this Act to prove that the letter or other document was received by the person to whom the false pretence was directed.

(2) Notwithstanding anything to the contrary in any other law, every act or thing done or omitted to be done by a person to facilitate the commission by him of an offence under this Act shall constitute an attempt to commit the offence.

(3) In this section -

"other document" includes a document transmitted through a fax or telex machine or any other electronic or electrical device, a telegram and a computer printout.

6. Possession of fraudulent letter to constitute attempt.

A person who is in possession of a letter containing a false pretence which constitutes an offence under this Act is guilty of an attempt to commit an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the letter contains the false pretence.

7. Laundering of funds obtained through unlawful activity, etc.

(1) A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specified unlawful activity

(a) with the intent to promote the carrying on of a specified unlawful activity; or

(b) where the transaction is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity, or

(ii) to avoid a lawful transaction under Nigerian law,

is guilty of an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the property involved in the financial transaction represents the proceeds of some form of unlawful activity.

(2) A person who is guilty of an offence under subsection (1) of this section, is liable on conviction -

(a) in the case of a financial institution or corporate body, to a fine of N 1 million, and where the financial institutions or corporate body is unable to pay the fine, its assets to the value of the fine shall be confiscated and forfeited to the Federal Government; or

(b) in the case of a director, secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term of not less than 10 years without the option of a fine.

(3) A person who transports or attempts to transport a monetary instrument or funds from a place in Nigeria to or through a place outside Nigeria or to a place in Nigeria from or through a place outside Nigeria -

(a) with the intent to promote the carrying on of a specified unlawful activity; or

(b) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the

ownership, or the control of the proceeds of a specified unlawful activity, or

(ii) to avoid a lawful transaction under Nigerian law,

knows, if he know or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation is the proceeds of some form of unlawful activity and the intent of the transaction.

(4) A person who is guilty of an offence under subsection (3) of this section is liable on conviction to a fine of N 500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is higher, or imprisonment for a term of not less than 10 years or to both such fine and imprisonment.

(5) In this section -

(a) "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction;

(b) "financial institution" means a bank or other financial institution as defined in the Banks and Other Financial Institutions Act;

(c) "financial transaction" means -

(i) a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects foreign monetary instrument, or

(ii) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, foreign commerce in any way or degree;

(d) "knows or ought to know that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew or ought to have known that the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes an offence under this Act;

(e) "monetary instrument" means coin or currency of Nigeria or of any other country, traveller's cheque, personal cheque, bank cheque, money order, investment security in bearer form or otherwise in such form that title

thereto passes upon delivery;

(f) "proceeds" means any property derived or obtained, directly or indirectly through the commission of an offence under this Act;

(g) "property" includes assets, monetary instruments and instrumentalities used in the commission of an offence under this Act;

(h) "specified unlawful activity" means -

(i) any act or activity constituting an offence under this Act,

(ii) with respect to a financial transaction occurring in whole or in part in Nigeria, an offence against the laws of a foreign nation involving obtaining property by fraud by whatever name called;

(i) "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

8. Conspiracy, aiding, etc.

A person who -

(a) conspires with, aids, abets, or counsels any other person to commit an offence; or

(b) attempts to commit or is an accessory to an act or offence; or

(c) incites, procures or induces any other person by any means whatsoever to commit an offence,

under this Act, is guilty of the offence and liable on conviction to the same punishment as is prescribed for that offence under this Act.

9. Conviction for alternative offence.

(1) Where a person is charged with a offence under this Act and the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence although the attempt

is not separately charged and such a person shall be punished as is prescribed for the offence under this Act.

(2) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Act.

10. Offences by bodies corporate.

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Act, the High Court may order that the body corporate shall thereupon and without any further assurance, but for such order, be wound up and all its assets and properties forfeited to the Federal Government.

11. Restitution.

(1) In addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person.

(a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim;

(b) in any other case -

(i) to return the property to the victim or to a person designated by him, or

(ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.

(2) An order of restitution may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as a judgment in a

civil action.

PART II - JURISDICTION, ETC.

Jurisdiction to try offences, etc.

(1) The High Court shall have exclusive jurisdiction to try offences under this Act.

(2) The High Court shall have power to impose the penalties provided under this Act.

13. Possession of pecuniary resources, etc. not accounted for.

In a trial for an offence under this Act, the fact -

(a) that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income; or

(b) that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account,

may be proved and may be taken into consideration by the High Court as corroborating the testimony of a witness in the trial.

14. Power to control property of an accused person.

(1) Where at any stage of a trial, the High Court is satisfied that a prima-facie case has been made out against a person, the High Court may by an order and for such time as it may direct or require -

(a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order;

(b) addressed to the manager of the bank or to the head office of the bank where the person has an account or is believed to have an account, direct the manager or the bank -

(i) to stop all outward payments, operations or transactions (including any bill of exchange) for the time being specified in the order,

(ii) to supply any information and produce books and documents,

in respect of the account of that person; and

(c) where necessary or expedient, vest in the High Court or otherwise acquire the custody of, any property, movable or immovable, of the person, for the preservation of the property, pending the determination of the proceedings.

(2) An order under subsection (1) of this section shall have effect as specified therein, but the order may at any time thereafter be varied or annulled by the High Court.

(3) Failure to comply with the requirement of an order under this section shall be an offence punishable on conviction -

(a) in the case of an individual, by imprisonment for a term of not less than two years or more than five years without the option of a fine;

(b) in the case of any group of persons not being a body corporate, by the like punishment of each of such persons as is prescribed in paragraph (a) of this subsection;

(c) in the case of a body corporate, by a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or N 500,000, whichever is higher.

15. Power of arrest.

The power of arrest in respect of an offence under this Act shall be in accordance with the provisions of the Criminal Procedure Act or the Criminal Procedure Code, as the case may be.

16. Power to grant bail.

(1) The High Court shall have power to grant bail to an accused person charged with an offence under this Act or any other law triable by the High Court upon such terms and conditions as the High Court may deem fit including -

(a) the payment of deposit of one-quarter of the amount of money involved in the offence;

(b) the provision of a surety or such number of sureties who shall deposit adequate security for the balance of the amount involved in the offence; and

(c) the handing over of his passport to the High Court of

the State concerned for the duration of the bail.

(2) Notwithstanding the provisions of subsection (1) of this section, the police shall, before any person is charged before the High Court for an offence under this Act , have power to grant bail to any person who is arrested or detained upon such terms and conditions as are reasonably necessary to ensure compliance with the provisions of subsection (i)(a)-(c) of this section.

17. Interpretation.

In this Act, unless the context otherwise requires.

"false pretence" means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true;

High Court means the High Court of the State concerned and shall for the purpose of this Act include the High Court of the Federal Capital Territory, Abuja.

18. Short title.

This Act may be cited as the Advance Fee Fraud and other Fraud Related Offences Act.