LEAD DEBATE ON THE GENERAL PRINCIPLES OF THE BILL FOR AN ACT TO ESTABLISH THE NIGERIAN FINANCIAL INTELLIGENCE AGENCY (NFIA) AND FOR MATTERS CONNECTED THEREWITH, 2017.

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INTRODUCTION

Mr. President, Distinguished Colleagues, thank you for the honour to lead the debate on the general principles of the bill for an Act to establish the Nigerian Financial Intelligence Agency. Following a motion on the dire implications of the suspension of Nigeria from the EGMONT Group of Financial Intelligence Units, this Senate by resolution mandated the Senate Committee on Anti-Corruption and Financial Crimes to present a draft bill to create an autonomous Nigeria Financial Intelligence Unit, NFIU. This was in consideration of the huge implications to our fight against corruption and other grave economic and political implications, and in further consideration of the imminent annual recess of the National Assembly which would impact the deadeline given to Nigeria to comply with the requirements of the Group. The first reading of the bill was taken on Thursday, July 20th 2017.

WHAT IS FINANCIAL INTELLIGENCE UNIT

1. The Financial Intelligence Unit is essentially to provide financial intelligence to all law enforcement agencies and other relevant agencies and Ministries, for example, the DSS, Nigeria Police Force, the Nigeria Customs Service, the ICPC, the EFCC, the Nigeria Immigration Service, NAPTIP, NDLEA, DMI, NIA, Federal Ministries of Justice, Finance and Interior, the Federal Inland Revenue Service, and to all the financial regulators such as the Central Bank of Nigeria (CBN), Securities and Exchange Commission, National Insurance Commission (NAICOM) and many other relevant governmental agencies in addition to facilitating the oversight responsibilities of the National Assembly. The nature of the operations of these agencies places premium on confidentiality in their relationship with NFIU. This confidentiality can hardly be achieved if the NFI is operating as a department of one of the Agencies.
2. You may recall that the Nigerian Financial Intelligence Unit (NFIU) is currently domiciled within the Economic and Financial Crimes

Commission, EFCC, as a department as provided by Section 1 (2) (c) of the EFCC Act, 2004. This provision has, however, been found inconsistent with international standards and has affected the effective functioning of the NFIU. This is because the provision merely describes that the Commission is the NFIU. Since the NFIU is not set up to be a law enforcement agency, this provision negates the core objectives for which the NFU was established in the first place.

3. The mandate of an FIU is different from that of law enforcement; while law enforcement agencies carry out investigations and prosecution, FIUs are mostly collection, collation and analytical.

4. It is important to note further that there can only be one Financial Intelligence Unit in every country and the case of Nigeria is awkward because it created one without giving it powers to operate. When fully enabled, the NFIA is expected to play a dual role, notably at the domestic level, with the agencies afore-mentioned, and at the international level where they interface with the Financial Action Task Force, the EGMONT Group of FIUs and other FIUs of at least 153 countries. Furthermore, when fully enabled, the Nigeria Financial Intelligence Unit, NFIU, should enjoy the benefit of the privileged information which the members of the groups share among themselves. This intelligence sharing is crucial to the universal and local war against corruption, money laundering, terrorism financing, financial and economic crimes, etc. For example, by virtue of her membership, Nigeria relies on the EGMONT Group for assistance in the investigation of the crimes listed above as all bank accounts and other assets of suspects are made available to the country wherever they are located in the world.

COMPELLING REASONS WHY THE NFIU SHOULD BE INDEPENDENT

5. The Financial Action Task Force (FATF) Standards on Money Laundering and Financing of Terrorism under Recommendation 29 of 2012 set out the basic principles and objectives of a financial intelligence unit as follows:

"Countries should establish a financial intelligence unit (FIU) that serves as a national center for the receipt and analysis of suspicious transaction reports; and

other information relevant on money laundering, and terrorist financing for dissemination of the results of the analysis to relevant agencies."

6. Further, Article 58 of the United Nations Convention Against Corruption (UNCAC) 2005 emphasized the need for the FIU to be established by State Parties and it reads:

"States Parties shall consider establishing a financial intelligence unit to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions".

7. The NFIU is currently a member of the EGMONT Group of FIUs. The EGMONT Group is the global body that sets standards for FIUs' operations and is made up of 153 FIUs from different jurisdictions/countries. NFIU was admitted in 2007 but is yet to meet up with the Group's principles on confidentiality, security and operational independence of the FIU. As a result of Nigeria's failure to grant the NFIU operational autonomy, the Group at its July 2017 meeting in China, suspended NFIU till January 2018 with a threat of an expulsion if Nigeria did not meet the standards of the Group with regards to its operations

8. There have been several reports by the International Monetary Fund (IMF), GIABA, EGMONT Group of FIUs reflect the urgent need for the NFIU to have a different framework from the EFCC and to ensure that a budget is provided for the NFIU through the "appropriation budget" so as to ensure the security of information and data in the NFIU;
9. The GIABA Plenary in Accra made the following observations:

"That the Plenary cannot exit Nigeria from the Expedited Regular Follow up process to the voluntary biannual process on grounds of certain remaining deficiencies pointed out by the Working Group on Mutual Evaluation and Implementation (WGMEI) during its meeting on Tuesday May, 7, 2013. The outstanding issues are:

a. Lack of operational autonomy of the NFIU

b. Lack of comprehensive legislation on mutual legal assistance

c. *Lack of a comprehensive legislation on recovery of stolen assets and proceeds of crime."*

10. This Senate, indeed the National Assembly, is steadily and incrementally fulfilling the requirements for meeting the standards of the EGMONT Group and indeed that of the Financial Action Task Force, FATF. We have passed the Mutual Legal Assistance Bill. We are on the verge of passing the Proceeds of Crime Bill. This bill is in furtherance of the fulfillment of those requirements.

11. It is in the light of the above that the yawning need for the establishment of the NFIU by clearly defining its mandates in a law as an autonomous entity can be located.

OBSERVED CHALLENGES OF THE NFIU AS DOMICILED IN THE EFCC

12. A few examples of the constraints faced by the NFIU currently are described below:

(a) The "Commission" is the term recognized under the Money Laundering Prohibition Act, 2011 and not the NFIU even in areas where the NFIU is the only recognized entity to perform those functions related to the receipt of suspicious transaction reports. As such the NFIU is constantly confronted with situations where such reports are rendered to various units of the EFCC, in clear breach and departure from the intended rationale behind the establishment of the NFIU. A good example is Section 6 of the MLP Act, 2011 as amended in 2012.

(b) The attendant non-cooperation of other law enforcement agencies in working with the NFIU is as a result of lack of confidence in the independence of the NFIU and clear definition of the mandate of the NFIU which should be distinct from the mandate of the EFCC.

(c) The fact that in the last few years, EFCC has continued to unilaterally remove the Heads of the NFIU is a clear indication that it is not autonomous.

(d) The need for high-level confidentiality in the conduct of the NFIU cannot be guaranteed as it is currently constituted;

(e) Inadequate funding is hindering the implementation of the core functions of the NFIU as no separate budgetary provision has been made for it in the EFCC budget.

13. In practical terms, the question is whether Nigeria really has a FIU? Strictly speaking, we do not have a FIU as what is currently in existence is an "EFCC Department" glorified as a "FIU".

14. It is important to point out that the reason why FATF prescribes for an independent FIU is to maintain checks and balances and prevent the manipulation of financial intelligence. For Nigeria to meet the standards of FATF and Egmont, the NFIA must have the following powers as set out in the Bill:

a) Powers to receive disclosures from reporting entities (such as banks, capital market operators, insurance companies, BDCs,) relating to suspicious transactions and other reports such as currency transaction reports and customs declarations;

b) Powers to undertake operational analysis: this include the power to analyze the information to ensure that where crime is committed, including terrorism, the information can be transmitted to the relevant law enforcement agency such as DSS, ONSA, DMI, EFCC, ICPC, NSCDC, NIS, NCS, NAPTIP, NPF, DIA, etc.

c) The power to work with the regulators to ensure compliance by financial institutions and non-financial institutions with the anti-money laundering laws and financing of terrorism measures

d) The power to undertake strategic analysis in order to understand crime patterns and to advise government based on the patterns on the best policy available to prevent a particular crime from reoccurring

e) Power to disseminate financial intelligence to all law enforcement agencies when relevant.

f) Power to ensure that the information it receives are secured and handled in a confidential manner and restricted to only those with the security clearance to deal with such information.

g) Operational independence - powers to deal with information received in a discrete manner without interference in order to ensure that information is not used to victimise anybody. Since information received by the NFIU is only suspicion, it should not be used by law enforcement agency until after the NFIU has analyzed it and considered it fit to be sent to a law enforcement agency. However, because of lack of independence at the moment and because of the location of the NFIU in the EFCC, the NFIU lacks independence and lacks security and confidentiality for its information. The NFIU does not have powers to secure its information because it is within the EFCC premises and within the EFCC ICT platform thus giving EFCC undue advantage over other law enforcement agencies.

h) Powers to act as the only one "central agency for the receipt, analysis and dissemination of financial intelligence"

i) Powers to have adequate financial, human and technical resources

j) Powers to ensure that its staff maintains high professional standards, including standards to maintain high integrity.

k) Powers to ensure that the FIUs can engage independently with other agencies and international bodies without interference.

l) The FIU must also comply with the Egmont Group's Statement of Purpose and Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorist Financing cases.

OVERVIEW OF THE NIGERIA FINANCIAL INTELLIGENCE AGENCY BILL

15. The Bill has 38 sections and 8 parts. The part covers the following issues:

PART I - OBJECTIVES OF THIS BILL

PART II - ESTABLISHMENT OF NIGERIAN FINANCIAL INTELLIGENCE AGENCY

PART III - MANAGEMENT AND STAFF OF THE AGENCY

PART IV - FINANCIAL PROVISIONS

PART V - SUPERVISION AND MONITORING BY THE AGENCY

PART VI - APPLICATION OF COUNTER-MEASURES AND RISK MANAGEMENT

PART VII - LEGAL PROCEEDINGS AGAINST THE AGENCY

PART X - MISCELLANEOUS PROVISIONS

16. The major highlights of the Bill are:

a. The Bill creates an autonomous Financial Intelligence Agency in accordance with international best practices.

b. For purposes of institutional location and logistical support, and in line with what obtains in other jurisdictions, the Agency is domiciled in the Central Bank of Nigeria, not as a Department or Unit but for institutional support. For clarity, this provision bears further illumination.

i. All the 14 FIUs in West Africa are administrative in nature. None, except Nigeria, is located in a law enforcement center, as could be seen below: Ghana -independent board and Executive Director -located under Ministry of Finance; Gambia - independent Director and Board -located in the Central Bank; Senegal, Benin, Cote d'Ivoire, Mali, Togo, - independent Directors and Board - located under the Ministry of Finance.

ii. Majority of the administrative FIU the world over are domiciled in the Ministry of Finance, Justice or Central Bank. In the United States of America, where you have many law enforcement agencies, just like Nigeria, the FIU is administrative and is located in the Treasury Department. The FIUs in Canada, Australia, etc are also administrative. In Canada, Australia, Belgium and France, it is located in the Ministry of Finance.

(c) To ensure operational independence, the Bill provides that the budgetary allocations to the Agency shall be a first-line charge on the Consolidated Revenue charge of the Federal Government.

17. The consequential amendments that will be made to existing laws are as follows:

(a) The Economic and Financial Crimes Commission (Establishment) Act, 2004 is amended by deleting sections 1 (2) (c); 6 (j) (iv), and 6 (l) of the Act among others.

(b) The Money Laundering (Prohibition) Act, 2011 (as amended) is amended in sections 1, 4, 5,6, and 13 by substituting for the words "Commission" and "Federal Ministry of Commerce" with the words "Nigerian Financial Intelligence Agency" among others

FINANCIAL COMPENDIUM

18. Since the NFIU is already in existence, the Senate is now required to give the NFIA an enabling law and this will not create additional financial burden on the treasury. This is because the NFIU has existing office and personnel that are currently on EFCC payroll. What would be required is a take-off grant.

19. Mr. President, across the world, 153 FIUs, such as the FIC Ghana; CENTIF (FIU), Senegal; CENTIF, Cote d' Ivoire; FIC South Africa; FINCEN (FIU) USA; UKFIU; FINTRAC, CANADA; and FIU India, have ministerial level supervision in order to ensure its operational independence and access to funding from their parliament. The huge embarrassment of the suspension of Nigeria from the EGMONT Group and the impending visit of the FATF High-level Mission to Nigeria to evaluate Nigeria's preparedness towards its membership of the Task Force, makes it all the more urgent that we move fast to meet these global requirements.

20. In conclusion, Mr., President, Distinguished colleagues, I crave your indulgence to support this bill and ensure its accelerated passage.