LEGISLATIVE BRIEF

LONG TITLE: A Bill for an Act to amend the Money Laundering (prohibition) Act, 2011 by Repealing some provisions and including some definitions and for other matters connected.

SHORT TITLE: Money Laundering (Amendment) Bill 2016

SPONSOR: Hon. Edward Gyang Pwajok.

BACKGROUND:

The Principal Act was first enacted in 2003 and is cited as CAP M18 LFN, 2004. It was amended in 2011.

The objective of the Principal Act was to tackle corruption, specifically the use of money to cover up financial crimes. Indeed, other parts of the world had noticed that money was laundered to facilitate terrorist and narcotic activities among other criminal activities. Nigeria therefore joined other parts of the world to provide the legal framework to criminalize these kinds of sophisticated financial crimes.

OBJECTIVE:

Certain provisions of the Principal Act, which criminalizes cash transactions above N500,000 are not realistic.

Section 1 provides thus:

Prohibition of money laundering.

1. Limitation to make or accept cash payment.

    (1) No person or body corporate shall make or accept cash payment of a sum exceeding-

(a) N500,000 or its equivalent, in the case of an individual; or

(b) N2,000,000 (Two million naira) or its equivalent, in the case of a body corporate, except in a transaction through a financial institution.

Section 15. Other offences

1. Without prejudice to the penalties provided for illicit traffic in narcotic drugs or psychotropic substances, the laundering of drug money or the proceeds of a crime or illegal act, any person who

   (d) Makes or accepts cash payments exceeding the amount authorized under this Act, or commits an offence under this section.

   The implication of this law is that it is an offence for two individuals to transact any business in cash worth more than N500,000 even if it is a legitimate transaction.

In view of the fact that the Executive has brought a bill to repeal the existing Principal Act and to replace it with a new Bill, may I take the liberty to refer to HB 390 (Executive Bill) particularly Sections 16 (1) and 19 (1)

16 (1) A person shall not, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding the "prescribed amount".

19 (1) The Attorney-General shall, by way of regulations made on the recommendations of the supervisory authorities, set out the prescribed amounts and the specified particulars referred to in Sections 16 (2) 17 (1) and 18 (1) of this Act.

20 (1) The Attorney General may by regulations prescribe the form and manner in which a report is made under Section 16 (2) or 17 (1) shall be made.

It is important to note that Section 1 of the Principal Act is not retained in the Executive Bill, However, it is replaced with Section 2.

2 (1) Money laundering is prohibited in Nigeria.

(2) A person who knows, ought reasonably to have known or suspects that property has a criminal origin, commits an offence if he conceals, disguises, converts, transfers or removes the property from Nigeria.

(3) A person does not commit an offence under sub section (2) of this section if;

(a) He makes a report under sections 12 of this Act and if the report is made before he does any act referred to in sub section (2) of this section; he has the appropriate consent:

(b) He intended to make a report referred to in paragraph (a) of this section but had a justifiable reason for not doing so…

IN OTHER WORDS, in the Executive Bill, the offence of money laundering is only committed if the property is removed from Nigeria. This definition is nebulous and grossly inadequate.

I am not unmindful of other provisions creating offences, such as:

4 (1) A person who knows, ought reasonably to have known or suspects that property has a criminal origin, commits an offence if he:

(a) acquires the property;

(b) uses the property; or

(c) has possession of the property

(2) A person does not commit an offence under sub section (1) of this section if:

(a) he makes a report under section 12 of this Act and, if the report is made before he does any act referred to in sub section (1) of this section has the appropriate consent:

The Executive Bill as couched suffers from uncertainty and is predicated on the futuristic whims and caprices of the executive and not the legislature.

For instance, "The prescribed amount" shall be determined by the Attorney General through Regulations he would make in future.

Contrast this with USA prevention of money laundering Act, 2002, which among other things provides thus

... "Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified Unlawful Activity, or with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified unlawful activity or to avoid a transaction reporting requirement under state or federal law, shall be sentenced to a fine of not more than N500,000 or twice the value of the property involved in the transaction whichever is greater or imprisonment for twenty years, or both"...

Furthermore, in other to clear any ambiguity, the Americans under their law defined "Financial Transaction" which does not merely involve a financial institution or even a business merely passing money from one person to another, so long as it is done with the intent to disguise the source, ownership, location or control of the money is deemed a financial transaction. Section 1957 prohibits spending in excess of $10,000 derived from SUA (Specified Unlawful Activity) regardless of whether the individual wishes to disguise it.

CONCLUSION

Though the Executive Bill has taken care of my Bill by repealing the obnoxious provisions, a lot of work probably amounting to a wholesale redrafting has to be done in line with international best practices and separation of powers. This is what the relevant committee may do if the Executive Bill passes this stage, Alternatively the Executive Bill may be withdrawn to be reworked and re-presented in view of the importance of the fight against corruption and if that will take a long time, then I humbly urge that my Bill in view of the grave issues raised be considered.