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**THE CYBERSECURITY LEVY UNDER
THE NIGERIAN CYBERCRIMES
(PROHIBITION, PREVENTION, ETC)
ACT 2015 (AS AMENDED)**

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BACKGROUND

On 3 May 2024, it was reported that the National Security Adviser, Mallam Nuhu Ribadu, had directed relevant persons to initiate mechanisms for the full implementation and enforcement of the Cybercrimes (Prohibition, Prevention etc) Act, 2015 (the “Act”), including the collection of the levy imposed by the Act. The Act¹ established the National Cybersecurity Fund (the “Fund”) to be administered by the Office of the National Security Adviser.

The Central Bank of Nigeria (CBN) subsequently issued a circular to all banks, other financial institutions, mobile money operators, and payment service providers on 6 May 2024, directing financial institutions to comply with the Act by applying the Levy on eligible transactions at the point of electronic transfer origination by deducting and remitting 0.5% of the transaction value to the Fund’s account with the CBN through Nigeria Interbank Settlement System.

This article aims to provide an analysis of the applicability of the Levy, as well as the legal issues arising from its proposed application by the CBN.



¹ Section 44

THE LEVY AND ITS APPLICATION

Section 44(1)(a) of the Act which was amended by section 11(a) of the Cybercrimes (Prohibition, Prevention etc.) Amendment Act 2024 provides that the Fund shall be credited from five (5) ways including .

“a levy of 0.005 (0.5%) which is equivalent to half percent on all electronic transactions value by the businesses specified in the Second Schedule of this Act.”



The businesses listed under the Second Schedule are GSM service providers, all telecommunication companies, internet service providers, banks and other financial institutions, insurance companies and the Nigerian Stock Exchange² (Obligated Businesses). The CBN circular of 6 May 2024 directed that commencing from 20 May 2024, the Levy was to be applied with a clear description as “Cybersecurity Levy”.

² Second Schedule of the Act

LEGAL ISSUES RELATING TO THE LEVY

Following the release of CBN's circular on 6 May 2024, much discussion ensued, focusing on the proposed application of the Levy and its potential impact on Nigerians. It was apparent that the provisions of section 44 of the Act and the CBN circular were ambiguous and potentially subject to misinterpretation. Essentially:

- The CBN circular suggested that the Levy was to be applied on all transactions processed, managed or facilitated which many have argued to be unfair considering that Nigerians are already subject to several taxes and deductions on electronic transactions;
- The wording of section 44 of the Act (as amended) is unclear on whether the Levy will be applied on the gross values or net values after certain deductions (refunds or chargebacks) for the eligible electronic transactions which can lead to inconsistent interpretation and potential disputes between financial institutions and customers; and
- The Act does not specifically describe or define what constitutes an electronic transaction, but it was expected that this will include all transactions undertake or through Obligated Businesses through an electronic channel such as payments initiated through internet or mobile banking platforms/services.

Where the provisions of a statute are ambiguous, a just, reasonable and sensible construction is usually adopted³. Hence, the typical interpretation of section 44 of the Act would be that banks and other financial institutions are to deduct the Levy from the accounts of the Obligated Business outlined above when they undertake such electronic transactions and remit the deducted sums to the Fund. Such interpretation means that the Levy should not be imposed on the accounts or transactions involving individuals or persons not listed under the Second Schedule of the Act except where they are receiving funds or payments from the Obligated Businesses.

Additionally, section 44 (8) of the Act provides that failure to remit the levy is an offence and is liable on conviction to a fine of not less than two percent (2%) of the annual turnover of the defaulting business and the closure or withdrawal of the business operations license of the defaulter⁴. If the CBN circular of 6 May 2024 was to be implemented and in the event of a failure to deduct the Levy, the party liable for the punishment indicated in the Act following would have been unclear.

³ Buhari v Obasanjo (2005) 2 NWLR (Pt. 910) 241, Ararume v. INEC (2007) 9 NWLR (Pt. 1038) 127

⁴ Section 44(8) of the Act

IMPACT ON BUSINESSES AND CONSUMERS

The implementation of the Levy may have significant implications for businesses and consumers alike. Obligated Businesses may face increased operational costs and administrative burdens associated with levy collection and remittance. Consumers, on the other hand, may experience higher transaction fees or reduced access to certain financial services due to the pass-through of levy costs. The impact of the Levy on customers will be more pronounced if the Levy is applied on all Nigerians.

Balancing the need for cybersecurity funding with the potential economic impact on businesses and consumers should be a key consideration for policymakers. The adequacy of funds generated through the Levy in addressing Nigeria's cybersecurity challenges adequately is questionable and transparency in the allocation and utilization of the Fund will be critical to ensure that resources are effectively deployed to enhance cybersecurity infrastructure and capabilities.

CONCLUSION

In a circular dated 17 May 2024, the CBN withdrew its earlier circular dated 6 May 2024, which implies that banks and financial institutions are no longer required to implement the Levy as previously indicated.

However, it is recommended that any future efforts to implement the Levy should include detailed information on the scope of transactions it will apply to, the parties liable to pay, and the nature and specific value of the electronic transactions subject to the Levy.



Additionally, issues such as chargebacks and reversals must be addressed to ensure fairness and a net-positive impact on the economy.

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