

THE CYBERCRIMES (PROHIBITION, PREVENTION ETC.) (AMENDMENT) ACT, 2024: A SLIPPERY SLOPE? OR MUCH ADO ABOUT NOTHING

By Taiwo Adetipe

The Central Bank of Nigeria yesterday, May 6th, 2024, released a circular on the implementation guidelines for the collection and remittance of the national cybersecurity levy in pursuance to section 44 (2a) of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024 which so far has sparked mixed reactions by members of the public.

The public sentiment on the Central Banks Circular has been that of disdain, outrage, and spurn. Many have since taken to various social media platforms to vent their frustrations against this administration and its policies, though with a varying conception of the Circular and its implications for the masses.

To resolve any misconception, prudence dictates that we tread carefully by refusing the temptation of diving into baseless conclusions without first appraising all available information.

The Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024 is an amendment to the Cybercrimes (Prohibition, Prevention, etc) Act, 2015. The Amendment Act amends sections 17, 21, 22, 24, 27, 30, 37, 38, 41, 44 & 48 of the 2015 Cybercrimes Act. Nevertheless, the ire of the masses concerning this amendment specifically pertains to section 44 (2) of the Act.

For Clarity, the said section 44 of the 2015 Cybercrimes Act is replicated below:

44. (1) There is established a Fund, which shall be known as the National Cyber Security Fund (in this Act referred to as “The Fund”)
- (2) There shall be paid and credited into the Fund established under subsection (1) of this section and domiciled in the Central Bank of Nigeria:
- (a) A levy of 0.005 of all electronic transactions by the businesses specified in the second schedule to this Act.
- (b) grants-in-aid and assistance from donor, bilateral, and multilateral agencies;
- (c) all other sums accruing to the Fund by way of gifts, endowments, bequest or other voluntary contributions by persons and organizations: Provided that the terms and conditions attached to such gifts, endowments, bequest or contributions will not jeopardize the functions of the Agency;
- (d) such monies as may be appropriated for the Fund by the National Assembly; and
- (e) all other monies or assets that may, from time to time accrue to the Fund.

The amendment to section 44 2(a) has the effect of substituting paragraph (a) of section 44(2) to wit:

"(a) a levy of 0.5% (0.005) equivalent to a half percent of all electronic transactions value by the business specified in the Second Schedule to this Act"

It is imperative to state at this juncture that the aforementioned section specifically and unequivocally states that a levy of 0.5% (0.005) equivalent to a half percent of **all electronic transactions value by the business** specified in the Second Schedule to the Act shall be imposed. This implies that the Act has specifically mentioned the categories of 'entities' to which this provision applies. For the avoidance of doubt, this provision applies to the following businesses as listed in the second schedule to the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024. (**Emphasis mine**)

- (a) GSM Service providers and all telecommunication companies
- (b) Internet Service Providers
- (c) Banks and other Financial Institutions
- (d) Insurance Companies
- (e) Nigerian Stock Exchange.

This notwithstanding, a problem arises, does the said levy apply to the above-stated businesses personally or to their customers? To this, I take the position that the Act does not on the face of it refer to or envisage that the said levy would be paid by the customers of the businesses listed in the schedule to the Act. Section 44 (2) (a) may be read altogether as follows: "There shall be **paid and credited** into the Fund established under subsection (1) of this section and domiciled in the Central Bank of Nigeria a levy of 0.5% (0.005) equivalent to a half percent of all electronic transactions value by the business specified in the Second Schedule to this Act". (**Emphasis mine**)

Interestingly, no part of this section or any other part of the Act mentioned that the said levy should be collected from the **customers** of the listed businesses in the second schedule to the Act. All that the Act states is that the said levy should be paid by these businesses. To state otherwise is to include into the law what the law was silent on. This is particularly so because our appellate courts have held in a plethora of cases that the express mention of one or more things of a particular class may be regarded as silently excluding all other members of the class based on the *expressio unius est exclusio alterius* rule, see the case of *Enyi v. Benue State Judicial Service Commission & Ors* (2021) LPELR-54437(CA). This connotes that the express mention of one thing in a statutory provision or Constitution automatically excludes any other that otherwise would have been included by implication.

Furthermore, the Central Bank of Nigeria's circular is arguably a brazen attempt to usurp the powers of the Office of the Attorney General of the Federation under section 57 of the Act, which empowers the Attorney General of the Federation to make orders, rules, guidelines or regulations as are necessary for the efficient implementation of the provisions of the Act. No part of this Act confers on the Central Bank of Nigeria the power to prescribe who pays the said levy and the categories of transactions that are

exempt from the levy or to make any other such circular, regulation, or guideline for the implementation of the Act.

Strangely, the action of the Central Bank seems to be an attempt to by regulation, alter the provisions of a statute by extending the application of section 44 (2a) of the Act to individuals and other entities when the Act never provided for the application of the levy on individuals, rather on the businesses listed in the Schedule to the Act. This is an abomination!!! In further disdain of the rule of law, the Central Bank of Nigeria's said circular never referred to the Office of the Attorney General of the Federation or any such delegation by the office of the AG of the Federation in the said circular. Moreover, contrary to the provisions of section 44 (4) of the Act prescribing a 30-day window within which the affected businesses are to remit the levy to the National Cyber Security Fund, the circular requires financial institutions to remit the funds by the 5th business day of each subsequent month after the commencement of the Circular.

It is worthy of note that in the unreported case of Attorney General for *Rivers State v Attorney General of the Federation & Ors*, suit number FHC/ABJ/CS/511/2020, the Federal High Court Per Justice A. R. Mohammed held that in line with the provisions of section 162(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended, the Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja. Drawing insight from section 162 (1) of the Constitution, the Court held that the Police Trust Fund Act 2019, was void to the extent of its inconsistency with the Constitution and that the Federal Government lacks the power to utilize direct collections of levies from companies for the funding of the Nigerian Police Trust Fund to finance the federal government or any of its organ or agency.

Hence, it is arguable that section 44(1) of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024 is void to the extent of its inconsistency with the Constitution in line with Section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

In conclusion, the general intendment of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024 is clearly to create an efficient and effective legal framework for combating cybercrime and cyber-threats to National security, not to increase the hardship of hardworking Nigerians by overburdening them with unlawful levies. Consequently, the true and correct position of the law is that it does not and cannot apply to individuals or business entities not belonging to the categories of entities in the second schedule of the Act.