

## **An Assessment of the Legal Validity of the Cybersecurity Levy in Nigeria\*\***

### **Abstract**

The apex financial institution in Nigeria (Central Bank of Nigeria), on May 6<sup>th</sup> 2024, ordered the banks and all financial service providers in the country to commence the process of deducting cybersecurity levy from their customers' businesses and transactions in Nigeria. The administration of the levy, according to the apex bank, would be carried out by the Office of the National Security Adviser (ONSA). The Circular bearing the information, was issued to different categories of Banks, Mobile Money Operators, Payment Service providers, and others, and was co-signed by the Director of Payments System Management and the Director of Financial Policy and Regulation of the Central Bank of Nigeria. The directive has generated a lot of concerns from well-meaning Nigerians. This Article aimed at examining the legality or otherwise of the cybersecurity levy in Nigeria. The study adopted doctrinal research methodology for interrogating the legal structure for cybersecurity in Nigeria. Findings from the study revealed amongst others that the administration of the cybersecurity levy is inconsistent with the provision of section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as the Section 2 of the Federal Inland Revenue Service (Establishment) Act, (FIRSEA) 2007. The research ended with recommendations centred around amendment of the cybersecurity Act to reflect the provision of Constitution, addressing the issue of timing of the implementation among other things.

**Keyword:** Legality, Cybercrime, Cybersecurity, Levy

### **1. Introduction**

Cybersecurity, simply put, has to do with the process and practice of defending and protecting computers (otherwise called systems), servers, networks, electronic systems, mobile devices, data and programs from malicious digital attacks. Basically, cybersecurity is the convergence of people, processes, and technology that combine to protect organizations, individuals, or networks from digital attacks. It is the application of technologies, processes, and controls to protect systems, networks, programs, devices and data from cyber-attacks<sup>1</sup>. It aims at reducing the rate and risk of cyber-attacks and unauthorized exploitation of systems.

No doubt, the continuous rise in cases of digital cyberattacks is what that has made cybersecurity a priority for not just businesses, individual and organizations but also governments. As humans have continued to grow and expand their reach and use of technologies, in the increase in cyberattacks have also become inevitable. Increase in the use of technology amounts to increase in the exposure to cyberattacks, and measures have to be taken to combat and mitigate the resulting risks. It is against this background the Nigerian National Assembly Nigeria passed into law the Cybercrimes (Prohibition, Prevention, Etc) Act, of 2015 to provide a legal and regulatory framework for the prohibition, prevention, detection, and prosecution of cybercrimes in Nigeria. Some of the key provisions of the Act include the protection of critical national information infrastructure, and the establishment of a Cybercrimes Advisory Council<sup>2</sup>. The Act, also, provides for the establishment of a National Cybersecurity Fund (NCF), and stipulates a levy of 0.005% on electronic transactions as one of the means of or sources of funding the National Cybersecurity Fund<sup>3</sup>. Despite the Act having been in existence since 2015, its provisions have not actually been implemented. This is chiefly because of ambiguities noted and/or detected in the Act.

In February 2024, the National Assembly of Nigeria amended the Cybercrimes (Prohibition, Prevention Etc) Act, 2015 with the Cybercrimes (Prohibition, Prevention Etc) Amendment Act, 2024. The new amendment Act, no doubt, provides clarifications to some of the ambiguous provisions of the 2015 Act, and included address of the omissions noted in the Act. Chief among the clarifications made by the amendment Act is the provision of a clear definition of cybersecurity levy to be 0.5% (0.005%)<sup>4</sup> on all electronic transactions value of certain businesses and transactions. In a Circular dated 6<sup>th</sup> May, 2024, the apex bank in Nigeria, Central Bank of Nigeria, released implementation guideline on the collection and remittance of the cybersecurity levy, stating in the circular that the levy shall be paid and credited into the "National Cybersecurity Fund" (NCF)". This, among other things, has generated a lot of controversies and concerns from Nigerians. This study sets address the legality or otherwise of

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<sup>1</sup> [Itgovernance.co.uk/what-is-cybersecurity](https://www.itgovernance.co.uk/what-is-cybersecurity). Accessed 30/7/2024.

<sup>2</sup> Section 44 of the cybercrimes (Prohibition, Prevention Etc) Act, 2015.

<sup>3</sup> Section 33(2)(a) *ibid*.

<sup>4</sup> Section 11 Cybercrimes (Prevention, Prohibition Etc) Amendment Act, 2024.

the administration of the cybersecurity levy in Nigeria and other issues around the implementation and the timing of the commencement.

## **2. The Cybersecurity Levy Implementation: Who Pays the Levy?**

Following the amendment of the principal Act<sup>5</sup> and the 2018 Central Bank of Nigeria Circular by the Cybercrimes (Prohibition, Prevention Etc) Amendment Act, 2024, the apex bank on May 6<sup>th</sup> 2024, issued a Directive and/or Circular to all concerned financial institutions in the country for the implementation of the cybersecurity levy on all electronic transactions. The Central Bank of Nigeria specifically cited the amendment of section 44(2)(a) 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 businesses specified in the second schedule to this Act”<sup>6</sup>.*

In the circular, the Central Bank of Nigeria Stated that the applicable businesses for the purpose of the levy include<sup>7</sup>:

- 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.

Through the Circular, more so, the apex bank in Nigeria listed 16 exemptions to the levy *to wit*:

- a) Loan disbursements and repayments
- b) Salary payments
- c) Intra-account transfers within the same bank or between different banks for the same customer.
- d) Intra-bank transfers between customers of the same bank.
- e) Interbank placements.
- f) Bank’s transfers to CBN and Vice-versa
- g) Inter-branch transfers within a bank
- h) Cheques clearing and settlements
- i) Letters of credit (LCs)
- j) Banks’ recapitalization-related funding (only bulk funds movement from collection accounts)
- k) Savings and deposits including transactions involving long-term investments such as treasury bills, bonds, and commercial papers.
- l) Government social welfare programme transactions (e.g. Pension payments).
- m) Non-profit and charitable transactions (including do nations to registered non-profit organizations or charities).
- n) Educational institution transactions (including tuition payments and other transactions involving schools, universities, or other educational institutions).
- o) Transactions involving banks internal accounts such as suspense accounts, clearing accounts, profit and loss accounts, inter-branch accounts, reserve accounts, and escrow accounts.
- p) Other financial institutions’ (OFIs), institutions to their correspondent banks<sup>8</sup>.

As can be gleaned from the Circular, it is worthy to note that the levy will be applied at the point of electronic transfer origination (the sender) – then deducted and remitted by the financial institution except transactions listed in Appendix 1 of the circular. However, the deducted amount, according to the Central Bank of Nigeria, shall be reflected in the customer’s account with the narration: “cybersecurity levy”.

## **3. The legality or otherwise of the Administration of the Cybersecurity levy**

Although there has been a widespread concern by stakeholders and the generality of Nigerians over the timing and implementation of the cybersecurity levy, the principal issue is the legality or otherwise of the administration of the levy by the Office of the National Security Adviser (ONSA).

The section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

*“The Federation shall maintain a special account to be called be paid all revenues collected by the Government of the Federation, except the proceeds from the Personal Income Tax of the personal of the*

<sup>5</sup> Cybercrimes (Prohibition, Prevention etc) Act, 2015.

<sup>6</sup> Cybercrimes (Prohibition, Prevention Etc) Act, 2015.

<sup>7</sup> See Second Schedule to the Cybercrimes (Prohibition, Prevention Etc) Amendment Act, 2024.

<sup>8</sup> Appendix 1 of the Center Bank of Nigeria Circular, 2024.

*armed forces of the Federation, the Nigeria Police Force, the Ministry of department of government changed with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja”.*

From the above provision, it is abundantly clear that the requirement of the cybersecurity levy to be paid to the National Cybersecurity Fund (NCF) and administered by the Office of the National Security Adviser (ONSA) is actually in conflict with the provisions of the Constitution of the Federal Republic of Nigeria.

More so, the Federal Inland Revenue Service (Establishment) Act (FIRSEA)<sup>9</sup> provides that:

*“The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made, from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected”.*

It is obvious from the provision above that the Federal Inland Revenue Service (FIRS) is clearly saddled with the responsibility to administer federal revenues including the cybersecurity levy and not the Office of the National Security Adviser (ONSA) as provided by the Cybercrimes Act.

There are, moreover, plethora of authorities or precedents on the collection of revenue generated by the Federation. For instance, in the case of *Guaranty Trust Bank Plc v Anambra State International Revenue Service & Ors*<sup>10</sup>, the Federal High Court (FHC) sitting in Awka rightly held that the Federal Inland Revenue Service (FIRS) was truly the relevant authority for the collection of Stamp Duties, as part of revenue generated by the Federal Government. In the popular case of *Attorney-General of Rivers State v Attorney-General of the Federation & 3 Ors*<sup>11</sup>, more so, the Federal High Court (FHC) rightly ruled that the section 4 (1)(b) of the Nigeria Police Trust Fund (Establishment) Act<sup>12</sup> 2018 which provides that “0.5% of the total revenue accruing to the Federation account” should be remitted to the Police Trust Fund was unconstitutional as such was inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria.

Flowing from the above, it is illegal to have given the Office of the National Security Adviser the responsibility of administering the cybersecurity levy as such is in consisted with the 1999 Constitution of Nigeria. The responsibility for the administration of the levy should ordinarily be with the FIRS as the service is the relevant authority for the administration of revenue generated by the federal government. The amounts collected would be recognized as being to the credit of the levy and the NCF.

#### **4. Conclusion and Recommendations**

In today’s digital world as pointed out earlier, cybersecurity is very germane and critical as it aids the protection of individuals and organizations from cyber-attacks, damage, and/or harm. It, no doubt, prevents identity theft, breach of data and indeed other forms of attacks. This study has reviewed some of the provisions of the Cybercrimes Act in Nigeria and the issues relating to the cybersecurity fee. The study also discussed the illegality of the administration of the levy as it is inconsistent with the provision of the Constitution of the Federal Republic of Nigeria as well as the provision of the Federal Inland Revenue Service (Establishment) Act, (FIRSEA).

Although the president of Nigeria (President Bola Ahmed Tinubu) through a Circular dated 17<sup>th</sup> May, 2024 has suspended the implementation of the cybersecurity levy due to public outcry and widespread concerns expressed by state holders as a result of the timing of the implementation, lack of stakeholders engagement before the passing of the law, and its inconsistency with the provision of the constitution, it is the considered view of the researchers that the levy will still be resurrected in the future. But before then, the researchers recommend the following:

- a. The Cybercrimes (Prohibition, Prevention Etc.) Amendment Act, 2024 which provides that the cybersecurity levy should be paid to the National Cybersecurity Fund (NCF) and administered by the Office of the National Security Adviser (ONSA), should be further amended by the National Assembly to be in line with the provision of the Constitution. The Federal Inland Revenue Service (FIRS) is the relevant authority for the collection of revenue generated by the federation. The FIRS therefore, is the appropriate body to administer the cybersecurity levy, while the total sum of money collected should be seen as being to the credit of the levy and the National Cybersecurity Fund (NCF).

<sup>9</sup> Section 2 of the Federal Inland Revenue Service (Establishment) Act, 2007.

<sup>10</sup> FHC/AWK/CS/01/2022.

<sup>11</sup> FHC/ABJ/CS/511/2020.

<sup>12</sup> Nigerian Police Trust Fund (Establishment) Act, 2018 (as amended).

- b. The Government should always consider the timing when implementing any of its policies, especially those that will directly affect the citizens. You don't begin the implementation of a levy such as this in a time that such would occasion serious economic hardship and add to the sorrow and pain of the citizens of the country. The economy is at its worst stage already, inflation too is on the high rate and cost of basic necessities such as electricity, food items and even Premium Motor Spirit (PMS) have all skyrocketed. It is certainly not the best of times to commence the implementation of a levy that has been in existence since 2015.
- c. There should be stakeholders engagement and indeed serious and intentional orientation and sensitization of the general populace before passing into law anything that will have serious effect on the citizenry. Many people are not even aware of the existence of any law backing the collection of the cybersecurity levy due to lack of awareness.