



# BRIEFING NOTE

Proposed Stamp Duties Amendment Bill 2017 -  
*Highlights and Remarks*



The Stamp Duties Act (SDA) is 78 years old. It has not been significantly amended since its inception. In recent times, the Federal Government of Nigeria was advised on the capacity of the law to generate about N2 Trillion in taxes annually. Efforts have since then been deployed to take benefit of the opportunities of the SDA. Quite interestingly, the efforts have been dissipated by different agencies of the Federal and Municipal Governments, often acting at cross purposes. The Courts

have had a filled day pronouncing, most times, on the illegality of the actions of the State actors, principally because the SDA, as worded, does not support their intentions and actions to tax a relatively modern economy. This should be rational enough to appreciate – how does a 78 year old law speak to the realities of the current age? For example, how will the SDA have envisaged the possibilities of paperless documentation!

In Q4 2016, one of the State actors, seeking to take benefit of the fiscal advantages of an improved SDA, instigated a process for a substantial amendment of the SDA. Our brief below undertakes a legal review of the Bill to amend the SDA.



## A Preliminary Points:

1	Short Title:	Stamp Duties Act Amendment Bill 2017 (the <b>"Bill"</b> )
2	Principal Purpose:	Amendment of the Stamp Duties Act 1939, currently compiled as Cap. S8, Laws of the Federation of Nigeria, 2004 (the <b>"Act"</b> )
3	Tax Base:	All documents (surface and electronic)
4	Nature of Tax:	Direct Tax
5	Tax Payer:	Users of documents
6	No. of Sections:	24
7	Sponsor:	Honourable Fijabi Saheed Akinade (Ibadan North-West/South-West) (APC)
8	Status:	Passed 1 <sup>st</sup> Reading at the House of Representative on February 27, 2017. Awaiting Sponsor to list it for 2 <sup>nd</sup> Reading

## B Summary and Analysis of the Bill:

	Subject	Reference	Synopsis of Provision	Remarks
9	Electronic documents and transactions to be dutiable.	Section 3 of the Bill	By the proposed new Section 5(7) and (8) to the Act, all electronic instruments and transactions, including those done on behalf of individuals, by banks, operators of clearance services and electronic payment systems shall become liable to stamp duties.	The definition of "instrument" was not amended to include documents other than written documents, for example, printed documents. Notably however is the use of the word "includes" in the definition under the Act, which is suggestive that the category of "instrument" for the purposes of the Act is not closed to written document. We consider it arguable however that, other than expressly stated in Section 13(2) of the Act, the current definition of "instrument" can be interpreted to include printed documents. In the absence of a wholesome review of the Act, this provision will likely call the law to question at litigation. See remarks in paragraph 12 below on the liability of transactions, as opposed to documents, to stamp duties.

	Subject	Reference	Synopsis of Provision	Remarks
1 0	NIPOST to be the only authority to issue adhesive stamps in the form of postage stamps.	Section 3	Postage stamps will be the means by which adhesive stamps are to be affixed on dutiable documents. Only the Nigerian Postal Service (NIPOST) will be authorised to issue such postage stamps.	The permissive use of postage stamps as a means for denoting adhesive stamps (Section 5(2) of the Act) has been amended to become a mandatory requirement.
1 1	Electronic Postage Stamps	Sections 3, 14, 23 and 24 of the Bill	By the proposed new Sections 2, 5(6)(7)(8), 50(4), 83(2) and 89(2) of the Act, postage stamps may be issued electronically, including online.	Following the proposed amendment, postage stamps can be generated electronically and online; and can also be affixed electronically and online as well.
1 2	Bank deposits to become dutiable transactions.	Sections 21 and 28 of the Bill	By the proposed new Section 83(2) of the Act, all bank deposit made for individuals and corporate bodies shall become liable to stamp duties. The relevant provision of the Schedule to the Act (precisely Sections 89 to 92 (although erroneously stated as Section 83)) which exempts receipts given for monies deposited in the Bank has also been repealed.	It is significant that what will become dutiable under the proposed amendment will not be the receipt for monies deposited in a bank (see Section 90 of the Act) nor any document evidencing such transaction, rather it will be the transaction of depositing itself that becomes dutiable. The intended provision runs against the notion of stamp duties which is a tax on documents and not the transactions themselves. The provision, if enacted will likely be subjected to judicial interpretation for its variance with such provision as Section 3 (the charging provision) of the Act which expressly imposes stamp duties on instruments.

Subject	Reference	Synopsis of Provision
13 Change in Rates	Section 7 of the Bill	By the proposed amendment to Section 28 of the Act, stamp duties on agreements (other than as stated in the Schedule to the Act) will no longer be N10. The proposed amendment did not provide a new value.
	Section 10 of the Bill	By the proposed amendment to Section 39 of the Act, stamp duties on bills of exchange shall no longer be 2kobo. The proposed amendment did not provide a new value.
	Section 15 of the Bill	By the proposed amendment to Section 66 of the Act, stamp duties on each duplicate or counterpart of a document shall be N500 instead of the existing 25kobo. The increase in rate reflects what the practice at the Stamp Duties Offices have been in recent past where, despite the statutory rate of 25kobo, values between N100 and N500 is often charged for the stamping of duplicates or counterparts of a dutiable document.
	Section 16 of the Bill	By the proposed amendment to Section 71 of the Act, the tenure threshold for a dutiable leasehold documentation shall be 3 years and not 1 year.
	Section 18 of the Bill	By the proposed amendment to Section 74(1) of the Act, stamp duties on powers of attorney shall no longer be 2kobo. The proposed amendment did not provide a new value.
	Section 22 of the Bill	By the proposed amendment to Section 85 of the Act, the maximum threshold on stamp duty payable on accident insurance policies has been increased to N200,000 from 6kobo.
	Section 24 of the Bill	By the proposed amendment to Section 89 of the Act, the threshold for a dutiable receipt has been increased from N4 to N1,000.

14	Increment in Penalties	Section 4 of the Bill	By the proposed amendment to Section 11 of the Act, failure to cancel an adhesive stamp as required by law shall attract a fine of N50,000 and or 6months imprisonment for individuals; and a fine of N250,000 and or 1 year imprisonment for corporate persons. It is incongruous that a prison term is envisaged for corporate offenders.
		Section 5 of the Bill	By the proposed amendment to Section 13 of the Act, a fraudulent removal, re-usage or attempted re-usage of an adhesive postage stamp shall attract a fine of N250,000.
		Section 6 of the Bill	By the proposed amendment to Section 27 of the Act, failure of preparer of a document of admission to duly stamp same now attracts a fine of N50,000 and or 6 months' imprisonment.
		Section 8 of the Bill	By the proposed amendment to Section 32 of the Act, failure of a preparer of a valuation document to duly stamp same now attracts a fine of a fine of N250,000. Anyone who receives such unstamped valuation document shall also incur a fine of N100,000.
		Section 9 of the Bill	By the proposed amendment to Section 35 of the Act , a banker who issues a bank note other than bills or notes issued by the Central Bank of Nigeria shall be liable to a fine of N2million.
		Section 12 of the Bill	By the proposed amendment to Section 42 of the Act, the use of any unstamped dutiable bill of exchange or promissory note shall attract a fine of N50,000.
		Section 13 of the Bill	By the proposed amendment to Section 44of the Act, the making or execution of any unstamped dutiable bill of exchange shall attract a fine of N250,000.
		Section 14 of the Bill	By the proposed amendment to Section 50of the Act, the making or execution of any unstamped dutiable contract note shall attract a fine of N100,000.
		Section 17 of the Bill	By the proposed amendment to Section 72 of the Act, anyone who executes, grants, issues or delivers a letter of allotment, renunciation, scrip certificate or scrip before same is stamped shall be liable to a fine of N100,000.
		Section 18 of the Bill	By the proposed amendment to Section 74of the Act, the use of any unstamped power of attorney for purposes of voting shall attract a fine of N250,000.

Section 19 of the Bill	By the proposed amendment to Section 78(3) of the Act, the use of any unstamped transferable marketable security shall attract a fine of N100,000.
Section 20 of the Bill	By the proposed amendment to Section 79(2) of the Act, the re-use of any unstamped transferable marketable security document in Nigeria shall attract a fine of N100,000.
Section 23 of the Bill	By the proposed amendment to Section 87 of the Act, failure to duly stamp a policy of insurance including giving value to it, shall attract a fine of N100,000.
Section 25 of the Bill	By the proposed amendment to Section 91(1) of the Act, the use of unstamped receipt within 28 days of its issue shall attract a fine of N10,000, while its use within 56 days of issue shall attract a fine of N50,000.
Section 26 of the Bill	By the proposed amendment to Section 92 of the Act, an act calculated to evade or avoid stamp duty on receipts shall attract a fine of N50,000 and or 6 months imprisonment for individuals; and a fine of N250,000 and or 1 year imprisonment for corporate persons. It is incongruous that a prison term is envisaged for corporate offenders.



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BD (Bidemi Daniel), as he is popularly called, leads the Tax, Corporate Commercial, Trusts and Criminal Law Practices of the firm. At the core of his professional life is his ability to provide Clients with time and cost-effective solutions to the most complex legal challenges. BD is known to avail the most-sophisticated Clients, a one-stop shop in legal advisory, management and representation services.

A practicing barrister and solicitor, BD's legal experiences straddle the following economic sectors: agriculture, energy, entertainment, construction, fast-moving consumer goods, financing, Government, information & communication technology, medical services, not-for-profits, professional services, real estates, solid minerals, telecommunications and transportation.

Prior to joining AO2 Law, BD was Senior Associate at the commercial law firm of Adepetun Caxton-Martins Agbor & Segun.

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