

Extraordinary



Federal Republic of Nigeria Official Gazette

No. 116

Lagos - 16th July, 2021

Vol. 108

Government Notice No. 171

The following is published as supplement to this *Gazette* :

<i>S.I. No.</i>	<i>Short Title</i>	<i>Page</i>
46	Presidential Executive Order 008, 2018 (Amended), on Voluntary Offshore Assets Regularization Scheme (Implementation of Special Clearance Provisions and Non-Prosecution Agreements) Regulations, 2021	B2603-2609

Printed and Published by The Federal Government Printer, Lagos, Nigeria
FGP 129/72021/650

Annual Subscription from 1st January, 2021 is Local : ₦45,000.00 Overseas : ₦60,500.00 [Surface Mail] ₦75,000.00 [Second Class Air Mail]. Present issue ₦2,000 per copy. Subscribers who wish to obtain *Gazette* after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

**PRESIDENTIAL EXECUTIVE ORDER 008, 2018 (AMENDED), ON
VOLUNTARY OFFSHORE ASSETS REGULARIZATION SCHEME
(IMPLEMENTATION OF SPECIAL CLEARANCE PROVISIONS
AND NON-PROSECUTION AGREEMENTS) REGULATIONS, 2021**



ARRANGEMENT OF REGULATIONS

Regulation :

PART I—OBJECTIVE AND APPLICATION

1. Objectives.
2. Application.

PART II—IMPLEMENTATION OF THE SPECIAL CLEARANCE
AND NON-PROSECUTION AGREEMENT PROVISIONS

3. Application for Special Clearance.
4. Profiling and Case Review by Law Enforcement Agencies.
5. Powers of the Minister.
6. Notification by the Minister.
7. Non-conviction Agreement.
8. Non-Conviction Based Forfeiture and Forbearance.

PART III—MISCELLANEOUS

9. Application for Non-prosecution Agreement
10. Declarable Assets or Property.
11. Non-Prosecution Agreements for Cooperating Asset Managers, Banks, and Intermediaries.
12. Interpretation.
13. Citation.

S. I. No. 46 of 2021

PRESIDENTIAL EXECUTIVE ORDER 008, 2018 (AMENDED), ON VOLUNTARY OFFSHORE ASSETS REGULARIZATION SCHEME (IMPLEMENTATION OF SPECIAL CLEARANCE PROVISIONS AND NON-PROSECUTION AGREEMENTS) REGULATIONS, 2021

[16th Day of July, 2021] Commence-
ment.

In the exercise of the powers conferred on me by Order 14 of the Presidential Executive Order 008, 2018, (as amended), and all other powers enabling me in that behalf, I, ABUBAKAR MALAMI, SAN, Honourable Attorney-General of the Federal Republic of Nigeria and Minister of Justice, make the following Regulations—

PART I—OBJECTIVE AND APPLICATION

1. The objective of these Regulations is to prescribe procedures for the implementation of the— Objectives.

(a) non-prosecution agreement provisions specified in Orders 4 and 7 ; and

(b) Special Clearance provisions specified in Order 5(c) and (d),

of the Presidential Executive Order 008, 2018 (as amended) on Voluntary Offshore Assets Regularization Scheme (in these Regulations referred to as “the Order”).

2. These regulations shall apply to—

(a) relevant persons referred to in the Order ;

(b) other persons, entities, and their intermediaries holding offshore assets or any other assets within Nigeria or outside Nigeria, who may be under investigation or charged with a crime such as, theft of public funds or obtaining assets through corrupt practices ;

(c) custodian banks, asset managers, trust companies and other intermediaries in custody of undeclared assets for the persons mentioned in paragraphs (a) and (b) of this regulation ; and

(d) custodian banks, asset managers, trust companies and other intermediaries in custody of assets of the Federal Republic of Nigeria deposited either by known or unknown public officials.

Application.

PART II—IMPLEMENTATION OF THE SPECIAL CLEARANCE PROVISIONS AND NON-PROSECUTION AGREEMENT PROVISIONS

3.—(1) A relevant person, who wishes to obtain a Special Clearance to access the Voluntary Offshore Assets Regularization Scheme (VOARS) shall—

(a) make a written application to the Minister, in person or through a proxy ; and

Application
for Special
Clearance.

(b) submit the application to the Minister through the VOARS desk in the Office of the Attorney-General of the Federation or through any relevant VOARS declaration facility situated in the United Arab Emirates, United Kingdom, or any other country.

(2) An application under sub-regulation (1) of this regulation may be made, notwithstanding that the—

(a) applicant is under investigation, or the applicant's asset is under investigation or a subject of prosecution within or outside Nigeria ; or

(b) applicant's asset is the subject of an interim forfeiture order in a non-conviction-based asset recovery proceeding.

(3) Upon the receipt of the application the Minister may invite the applicant to appear for profiling before the VOARS desk in the Office of the Minister in Nigeria, or VOARS declaration facility situated in Liechtenstein, United Arab Emirates, Switzerland, United Kingdom, or in other country.

(4) The applicant under sub-regulation (3) of this regulation shall make full disclosure to the VOARS desk, and furnish the desk with—

(a) a recognised means of identification of the applicant ;

(b) proof of ownership of the assets sought to be declared ;

(c) documentary evidence of ongoing prosecution, investigation, or interim forfeiture order ; and

(d) such other particulars, as the VOARS desk may require from time to time,

provided that where the applicant is a corporate entity it shall, in addition to the documents prescribed in this regulation, furnish the following—

(i) original certificate of incorporation and other incorporation documents,

(ii) the resolution of the corporate entity seeking a Special Clearance to access the Scheme,

(iii) a power of attorney, appointing a proxy to represent the corporate entity in all its dealings with the scheme, and

(iv) such other particulars, as the VOARS desk may require from time to time.

4.—(1) Notwithstanding the provisions of regulation 3(3) of these Regulations, the profiling of an applicant shall be conducted—

(a) by the VOARS Desk in the Office of the Attorney-General of the Federation, or VOARS declaration facility situated in Liechtenstein, United Arab Emirates, Switzerland, United Kingdom, or any other country ; and

(b) in consultation with the Nigeria Financial Intelligence Unit (NFIU), relevant anti-corruption agency, and relevant law enforcement agency.

(2) The profiling exercise shall include a review of investigations and court proceedings, as the case may be, before a recommendation is made to the Minister in respect of the application by the VOARS Desk.

5. The Minister may, in the course of an application for Special Clearance—

Powers of
the Minister.

(a) request and receive from the investigating authority, a written status report and other relevant particulars, in respect of the applicant ;

(b) takeover and continue, or discontinue the prosecution of the applicant ;

(c) enter into a Non-Prosecution Agreement with the Applicant ; or

(d) enter into a Non-Conviction based Agreement or forfeiture Agreement concerning the assets.

6. Upon the completion of the profiling conducted subject to regulation 3(3) of these Regulations, the Minister shall notify the applicant of the outcome of the application within 60 calendar days of the conclusion of the profiling.

Notification
by the
Minister.

7. The Minister may, on the conclusion of the profiling, direct that a—

(a) Non-Conviction Agreement be entered with the applicant ; or

(b) Forfeiture Agreement be entered, concerning the assets, to give effect to the approval for Special Clearance granted to an applicant.

Non-
conviction
Agreement
and Non-
Conviction
Based Asset
Forfeiture
Agreement.

8.—(1) Where an application for Special Clearance is granted, the applicant shall—

Non-
Conviction
Based
Forfeiture
and
Forbearance.

(a) pay a minimum of 35 percent of the assets to the Federal Republic of Nigeria, only if the applicant has satisfactorily established the source of the offshore assets, as not being connected with any corrupt practices ; or

(b) forfeit a minimum of 75% percent of the assets, as levy, to the Federal Republic of Nigeria, if it is established that the—

(i) assets is a misappropriated public funds or assets,

(ii) assets is a private funds that is connected with corrupt practices,

(iii) source of the asset is unverifiable ;

(iv) applicants wishes to reach non-conviction or forfeiture agreement with the Federal Republic of Nigeria, on the basis of the provisions of the Order ; or

(v) asset originated from the Federal Republic of Nigeria and was placed with a domestic or foreign custodian bank, assets manager, trust company, and other intermediary, whether by known or unknown public officials.

12. In these Regulations, unless the context otherwise requires—

“*Minister*” means the Honourable Attorney-General of the Federation and Minister of Justice ;

“*non-prosecution agreement*” means the undertaking by Federal Republic of Nigeria not to take or continue legal action against applicants such as enablers, custodian banks, asset managers, trust companies and other intermediaries, who have undertaken to take agreed steps to ensure that relevant persons using their services disclose their offshore assets expediently under the Scheme ; and

“*Special Clearance*” means a written Order by the Federal Republic of Nigerian, which clears any pending hurdle such as legal proceedings and admits a defaulter to use the Scheme to regularize undeclared assets.

13. This Regulation may be cited as the Presidential Executive Order 008, 2018 (Amended), on Voluntary Offshore Assets Regularization Scheme (Implementation of Special Clearance Provisions and Non-Prosecution Agreements) Regulations, 2021.

Citation.

MADE at Abuja this 16th day of July, 2021.

ABUBAKAR MALAMI, SAN
*Honourable Attorney-General of the Federation
and Minister of Justice*