

International **Comparative** Legal Guides



Practical cross-border insights into anti-money laundering law

Anti-Money Laundering **2022**

Fifth Edition

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Frederick Festus Ntido

1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

The legal authority to prosecute money laundering at the national level is the Economic and Financial Crimes Commission (EFCC).

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

The government must prove the direct or indirect concealment, disguise, origin of, conversion or transfer, removal from the jurisdiction, acquisition, use, retention or taking possession or control of any fund or property, knowingly or which should be known to be the proceeds of a crime or criminal activity.

Any criminal activity would constitute a predicate offence, as the Money Laundering (Prohibition) (Amendment) Act 2011 (Money Laundering Act) refers to illegal or criminal activity.

Since any criminal activity can serve as a predicate offence, the violation of tax and currency exchange laws in Nigeria amounts to a criminal act, and such violation would serve as a predicate offence.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Yes, Nigeria's money laundering laws have extraterritorial reach. The offence of money laundering has been extended to apply to natural or legal persons outside of Nigeria. The relevant section is 15(2) of the Money Laundering Act.

The laundering of the proceeds of foreign crimes is also punishable in Nigeria.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The EFCC, National Drug Law Enforcement Agency (NDLEA), Central Bank of Nigeria (CBN), Nigeria Police Force and Nigerian Customs Service are the responsible government authorities.

1.5 Is there corporate criminal liability or only liability for natural persons?

There is both corporate criminal liability and liability for natural persons.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

The maximum penalties are a term of imprisonment of between seven to 14 years, a fine of at least 1 million Naira for individuals and the prosecution of the principal officers of the corporate body and its winding up, or the winding up and forfeiture of assets and properties for legal persons.

1.7 What is the statute of limitations for money laundering crimes?

There is no statute of limitations for money laundering crimes in Nigeria.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

Enforcement is essentially at the national level, and there are no parallel state or provincial criminal offences.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

The EFCC and the NDLEA request the Courts to order the forfeiture or confiscation of assets. The Judiciary acts as the responsible authority for confiscation or forfeiture of assets in Nigeria.

All properties, whether tangible or intangible, that can directly or indirectly be linked to the crime can be subject to confiscation.

There is a procedure that allows for interim forfeiture or confiscation of funds or property, pending conclusion or determination of cases by the relevant Courts. The procedure is mainly criminal in nature and seldom civil.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Yes, some regulated financial institutions, their directors, officers, and employees have been convicted of money laundering.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Plea bargains, settlement agreements, prosecutorial discretion and similar means are often employed in dealing with persons accused or suspected of money laundering, without resort to the judicial process. The records of the fact and terms of such settlements are usually not made public.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

Anti-money laundering (AML) enforcement priorities or areas of particular focus are: inherent and residual money laundering activities; terrorist financing; and fraud-related matters.

2 Anti-Money Laundering Regulatory/Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The EFCC, CBN and the Special Control Unit against Money Laundering are the main agencies responsible for imposing AML requirements, which include the following:

1. Designation of an AML chief compliance officer at management level.
2. Identifying AML regulations and offences.
3. Nature of money laundering.
4. Money laundering 'red flags' and suspicious transactions.
5. Reporting requirements.
6. Customer due diligence.
7. Risk-based approach to AML.
8. Record-keeping and retention policy.
9. Monitoring of employees' accounts.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

The AML requirements imposed on regulated entities are also applicable to self-regulatory and some professional associations.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

The self-regulatory organisations or professional associations are not responsible for AML compliance and enforcement against their members, as this is regulated at national level.

2.4 Are there requirements only at national level?

Yes, the requirements are essentially at national level.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

The CBN, EFCC and the Special Control Unit against Money Laundering are responsible for examination for compliance and enforcement of AML requirements.

Yes, the criteria for examination are publicly available.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

Yes, there is a government FIU known as the Nigerian Financial Intelligence Unit (NFIU), which is responsible for analysing information reported by financial institutions and businesses subject to AML requirements.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

There is no statute of limitations for competent authorities to bring enforcement actions.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

The maximum penalty for failure to comply with the regulatory/administrative AML requirements is the imposition of monetary fines. Failures that are subject to penalty provisions include the following:

- a non-financial institution failing to verify the identity of a customer and submitting records of transactions within seven days of such transactions (section 5 of the Money Laundering Act);
- failure to report transactions in excess of 5 million Naira for legal persons within the stipulated periods (section 10);
- destroying or removing a register or record required to be kept under the Act (section 16b); and
- failure to report an international transfer of funds or securities required to be reported under the Act (section 16e).

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

Errant individuals and principal officers of legal entities can be subject to a term of imprisonment for breach of AML regulations/requirements.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

The penalties are not only administrative/civil, as violations of AML obligations are also subject to criminal sanctions.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

The process for assessment and collection of sanctions is as follows:

1. The examination of a financial institution and observance of contraventions by CBN examiners.
2. The recommendation of relevant agencies.
3. In determining the sanctions to apply, the circumstances of the case shall be taken into account, including the nature and seriousness of the contravention, conduct of the regulated financial institution or person concerned in its management after the contravention, previous record of the financial institution or person concerned and other general considerations.
 - a. All resolutions of penalty actions by competent authorities are usually public, as the Financial Action Task Force (FATF) Recommendations require disclosure.
 - b. Financial institutions have rarely challenged penalty assessments in judicial or administrative proceedings as the current sanctions regime was imposed pursuant to Recommendation 35 of the FATF, which advised that the administrative sanctions regime should be proportionate and dissuasive; a similar recommendation was issued by the regional Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

These include financial institutions, advisory firms, jewellers, chartered accountants, legal practitioners, hotels, casinos, supermarkets, tax consultants, car dealers, dealers in luxury goods, bureaux de change, insurance institutions, money brokerage firms, investment management firms, project consultancy firms, and pension fund management firms.

The professional activities subject to such requirements and the obligations of the financial institutions and other businesses are as follows:

1. Client account opening by stockbrokers, fund managers, solicitors, accountants, estate agents and other intermediaries.
2. Dealings with politically exposed persons (PEPs).
3. Cross-border and correspondent banking.
4. New technologies and non-face-to-face transactions.
5. Money or value transfer services.

6. Foreign branches and subsidiaries transactions.
7. Wire transfers.

To initiate a new client or business partner relationship, the following steps must be followed:

- the financial institution shall identify its customers and verify their identities using reliable, independently sourced documents or information;
- where the client is a legal person or a legal arrangement, the financial institution shall identify any person purporting to have been authorised to act on behalf of that customer by obtaining evidence of the customer's identity and verifying the identity of the authorised person;
- identifying and verifying the legal status of the legal person or legal arrangement by obtaining proof of incorporation from the Companies Registry or similar evidence of establishment or existence;
- identifying and taking reasonable steps to verify the identity of a beneficial owner; and
- taking reasonable measures to understand the relevant information or data obtained from a reliable source regarding the identity of the beneficial owner.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

Since any criminal activity would constitute a predicate offence under AML regulations, any money payment or money transmission activities relating to and in furtherance of tax evasion, theft, fraud, bribery, terrorist financing, sale or transfer of high-value items purchased with laundered funds, sale or transfer of real estate purchased with laundered funds and legitimate purchases of securities and other financial instruments in the launderer's name or the launderer's legitimate business entity's name, etc., would be subject to AML requirements. As such, there is unlikely to be any exception where crime or illegal activity is involved.

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

The CBN Circular dated 12 January 2017 banned banks and other financial institutions from using, holding and/or trading in cryptocurrency. As such, AML requirements are currently not being applied to the cryptocurrency industry.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

The CBN in its Circular dated 12 January 2017 stated that virtual currencies are not legal tender in Nigeria, and any bank or financial institution that transacts with them does so at their own risk. In a similar move four years later, in a letter dated 5 February 2021, the CBN also reminded financial institutions and banks not to hold cryptocurrency or facilitate payments with them, and further instructed them to identify persons transacting in crypto or operating crypto exchanges and immediately close their bank accounts.

Although section 25 of the Cybercrime (Prohibition, Prevention etc) Act 2015 contains language which might include NFTs, AML requirements do not typically extend to NFTs in light of the CBN directives.

3.5 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

Yes, the Money Laundering Act requires certain financial institutions or designated businesses to maintain compliance programmes.

The AML requirements include the following:

- Designation of an AML chief compliance officer at management level.
- Identifying AML regulations and offences.
- Identifying the nature of money laundering.
- Reporting money laundering 'red flags' and suspicious transactions.
- Meeting reporting requirements.
- Carrying out customer due diligence.
- Adopting a risk-based approach to AML.
- Record-keeping and adhering to retention policy.
- Monitoring of employees' accounts.

3.6 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

Covered institutions are required to maintain records including identification data, business correspondence and account files of all transactions, both domestic and international, for at least five years after completion of the transaction or such longer period as may be required by the regulatory authorities.

Financial institutions and designated non-financial institutions must report transactions in excess of 5 million Naira for individuals or 10 million Naira for legal persons to the EFCC within seven days of such transaction taking place.

3.7 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

Yes. For example, where a transaction's frequency is unjustifiable or unreasonable, appears to have no economic justification or lawful objective or is simply inconsistent with the known transaction relationship, the covered institutions or persons are required to:

- draw up a written report containing the identity of the principal and beneficiary or beneficiaries, within 24 hours of the transaction;
- take appropriate action to prevent the laundering of the proceeds of criminal conduct, within 24 hours of the transaction;
- send a copy of the report and action taken to the NFIU, within 24 hours of the transaction;
- keep the record of a customer's identification for a period of at least five years following the closure of the account or the severance of relations with the customer; and
- keep the record and other related information of a transaction carried out by a customer for a period of five years after carrying out the transaction.

3.8 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

No, there are no cross-border transaction reporting requirements.

However, in relation to combatting the financing of terrorism, the CBN legislation provides for requisite due diligence to be carried out by the covered institutions for cross-border and correspondent banking relationships.

3.9 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

To initiate a new client or business partner relationship, the following steps must be followed:

- the financial institution shall identify its customers and verify the customers' identities using reliable, independently sourced documents or information;
- where the client is a legal person or a legal arrangement, the financial institution shall identify any person purporting to have been authorised to act on behalf of that customer by obtaining evidence of the customer's identity and verifying the identity of the authorised person;
- identifying and verifying the legal status of the legal person or legal arrangement by obtaining proof of incorporation from the Companies Registry or similar evidence of establishment or existence;
- identifying and taking reasonable steps to verify the identity of a beneficial owner; and
- taking reasonable measures to understand the relevant information or data obtained from a reliable source regarding the identity of the beneficial owner.

Yes, there are special or enhanced due diligence requirements for PEPs. Financial institutions are mandated to obtain senior management approval before they establish or continue relationships with PEPs, and they are required to render monthly returns on all transactions to the relevant regulatory authorities.

Financial institutions are also required to take reasonable measures to establish the source of wealth and funds of customers and beneficial owners of PEPs.

Financial institutions in business relationships with PEPs shall conduct enhanced and ongoing monitoring of such relationships, and report any abnormal transactions as suspicious transactions.

3.10 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

Yes, the Money Laundering Act prohibits the operation of shell bank accounts in Nigeria, and financial institutions are prohibited from dealing with foreign banks or correspondent banks that allow their accounts to be used by shell banks.

Financial institutions subject to the prohibition include both natural and legal entities involved in the provision of financial services in their various forms.

3.11 What is the criteria for reporting suspicious activity?

The criteria for reporting suspicious activity to the NFIU is any single lodgment or transfer of funds in excess of 5,000,000 Naira and 10,000,000 Naira or their equivalent made by an individual or corporate body, respectively.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

There is no legal requirement for financial institutions and businesses subject to AML controls to share information with one another. However, there are ongoing discussions to ensure that specific mechanisms are agreed upon which would not violate privacy or confidentiality obligations.

There is a legal requirement for sharing of information between government authorities and financial institutions and businesses subject to AML controls to assist with identifying and reporting suspicious activity.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

Yes, the recently enacted Companies and Allied Matters Act 2020 (CAMA 2020) requires the Companies Registry or Corporate Affairs Commission (CAC) to maintain accurate information on the beneficial ownership and control of legal entities.

This information is maintained by the CAC and is available both to financial institutions to assist with their AML due diligence responsibilities, and to government authorities.

3.14 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

Yes, it is a mandatory requirement that accurate information on originators and beneficiaries be included in payment orders for a funds transfer, and that such information also be included in payment instructions to other financial institutions.

Another key payment transparency requirement is inclusion of the purpose of the funds transfer; this is applicable to both local and cross-border transactions.

3.15 Is ownership of legal entities in the form of bearer shares permitted?

No, it is not. Section 175 of CAMA 2020 expressly prohibits bearer shares. It provides that no company has the power to issue bearer shares, which are defined as shares represented by a certificate, warrant or other document (in any form or by whatever name called) that states or otherwise indicates that the bearer of the certificate is the owner of the shares.

3.16 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

Yes, there is. There are specific AML requirements which apply to non-financial institutions, including the following: advisory firms; jewellers; chartered accountants; legal practitioners; hotels; casinos; supermarkets; tax consultants; car dealers; dealers in luxury goods; bureaux de change; insurance institutions; money brokerage firms; investment management firms; project consultancy firms; and pension fund management firms.

3.17 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

Yes, the CBN Guidelines stipulate that banks within free trade zones (FTZs) are required to ensure strict adherence to the provisions of the Money Laundering Act, Terrorism (Prevention) Act, 2011 (as amended) and the CBN AML/CFT Regulations for Banks and Other Financial Institutions in Nigeria, 2013.

Persons engaged in international trade are also subject to AML requirements.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

Yes, there are. The CBN is driving this process, along with other government regulatory bodies.

3.19 Describe to what extent entities subject to anti-money laundering requirements outsource anti-money laundering compliance efforts to third parties, including any limitations on the ability to do so. To what extent and under what circumstances can those entities rely on or shift responsibility for their own compliance with anti-money laundering requirements to third parties?

The AML requirements stipulate the personal liability and responsibility of the subject or concerned entities to ensure compliance, and as such it is not the expectation or contemplation that subject entities or individuals would outsource compliance to third parties. In any event, if subject entities elect to outsource compliance to third parties, it nevertheless will not shift the responsibility for compliance to such third parties, as these are not within the purview of the requirements.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

There are several pieces of legislation on money laundering, which are reviewed on a regular basis to ensure that the regulation and enforcement of AML activities in Nigeria are kept up to date with global trends.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

The AML regime of Nigeria has been deliberately framed in line with the Recommendations and expectations of the FATF. The various guidelines, clarifying regulations and legislation also reference the FATF Recommendations.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

Yes, it has. Nigeria has undertaken FATF evaluations in the past. However, such evaluations are now conducted by GIABA, an institution of the Economic Community of West African States (ECOWAS) responsible for facilitating the adoption and implementation of AML and counter-financing of terrorism (CFT) regulation in West Africa.

GIABA is also an FATF-Style Regional Body working with its Member States to ensure compliance with international AML and CFT standards.

GIABA's Seventh Follow-Up Mutual Evaluation Report for Nigeria was issued in May 2015. Another FATF evaluation was conducted in September 2019. The last Mutual Evaluation Report for Nigeria was issued in 2021, and Nigeria was deemed Compliant with seven and Largely Compliant with 14 of the FATF 40 Recommendations.

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

The key Nigerian AML legislation and regulations are as follows:

- Money Laundering Act.
- Terrorism Prevention Act, 2012 (as amended).
- Terrorism Prevention (Freezing of International Terrorist Funds and other Related Matters) Regulations, 2013.
- Economic and Financial Crime Commission (Establishment) Act 2004.
- Banks and Other Financial Institutions Act (BOFIA) 1991.
- CBN AML/CFT Regulations, 2013.
- CBN Act, 2017.
- CBN AML/CFT Risk-Based Supervision Framework, 2011.
- CBN Circulars and other communications by regulators.
- National Drug Law Enforcement Act (1990).
- Other international instruments (such as FATF Recommendations, United Nations Security Council Resolutions).

All the above pieces of legislation and regulations are available on the internet in English, and are accessible by typing any title.



Frederick Festus Ntido is a dual-qualified Nigerian and United Kingdom Solicitor. He has over two decades of practical experience in the corporate/commercial, anti-bribery and anti-corruption, energy, litigation, employment and labour, shipping, government regulatory and compliance practice areas.

He has and continues to advise international and local businesses on all aspects of establishing their operations in Nigeria, through obtaining all requisite government and regulatory approvals, interfacing with government agencies.

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