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TEMPLARS ThoughtLab

Anti-Corruption Laws and Regulatory Compliance Requirements that Businesses in Nigeria Need to Know

Introduction

Generally, corruption is an abuse of entrusted power for private gain(s). Virtually all countries in the world are determined to curb or eliminate the hydra-headed monster (corruption) because of its deleterious and ravaging effects on economies and societal development in general. As a result, responsible governments enact laws designed to curb corruption. These laws and subsidiary legislations arising there from are expected to be obeyed by persons and businesses in that country. Nigeria is not left behind in the fight against graft and unethical practices in the conduct of businesses. Thus, several legislations regulating the marketplace were enacted to help eliminate corrupt practices in Nigeria.

Our goal is to briefly highlight these laws and refer to few specific compliance obligations imposed on businesses. Since compliance with these obligations are mandatory, businesses must take note of them to ensure compliance with the legal and regulatory requirements to avoid penalties and reputational harm. Thus, the object of this newsletter is not to exhaustively consider all the laws and the compliance obligations they impose on businesses; rather, it is to briefly examine the selected laws and show their importance to businesses by highlighting core provisions of the laws demanding the performance of duties/obligations. Nigeria has a myriad of legislation relating to anti-corruption, anti-money laundering, anti-bribery, and related matters. Some of the key legislations regulating anti-bribery and corruption in Nigeria are:

1. Money Laundering (Prevention and Prohibition) Act 2022;
2. Advance Fee Fraud and Other Related Offences Act 2006;
3. Economic and Financial Crimes Commission Act 2004; and
4. The Miscellaneous Offences Act.

Highlights of some Compliance Obligations Generally Applicable to Businesses in Nigeria

A. The Money Laundering (Prevention and Prohibition) Act, 2022

The purpose of the Money Laundering Act is to provide an effective and comprehensive framework for the prevention, prohibition, detection and punishment of money laundering and other related offences in Nigeria.

Some of the compliance obligations mandated by the Money Laundering Act include:

- a. The requirement that financial institutions and designated non-financial businesses must conduct a know-your-customer (KYC) due diligence which entails the identification of their customers using identification documents, data, or information as may be prescribed in any law or regulation¹.
- b. Every new designated non-financial business and profession whose business involve cash transaction exceeding US\$1,000 or its equivalent shall before entering into such transaction conduct a KYC due diligence following the prescribed forms under the Act. The transaction must be recorded and preserved for a period of five years from the date of the transaction².
- c. Financial institutions and designated non-financial businesses and professions are to report in written within seven days of any single transaction, lodgment or transfer of funds in excess of N5,000,000 (Five Million Naira), in the case of individuals or N10,000,000 (Ten Million Naira) in the case of a company to the Unit for a financial institution and to the Special Control Unit Against Money Laundering in the case of a designated non-financial businesses and professions.³
- d. Financial institutions or designated non-financial businesses and professions must implement effective risk management systems and procedures to assess whether a customer or the beneficial owner of a customer is a politically exposed person (PEP).⁴

B. Advance Fee Fraud and Other Related Offences Act 2006

The purpose of this law is to prohibit and punish certain offences pertaining to Advance Fee Fraud and other fraud related offences. Under this law:

- a. An individual who transports or attempts to transport a monetary instrument or funds:
 - i. From a place in Nigeria to a place outside Nigeria or from a place outside Nigeria to a place in Nigeria, with the intent to promote the carrying on of specified unlawful activity; or
 - ii. Where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity, and the transportation is designed, either wholly or partly, to conceal or disguise the nature, location, source, ownership, or control of the proceeds of a specified unlawful activity, or to avoid a lawful transaction under Nigerian law, commits an offense under the Act. The individual will be held accountable if s/he knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation are **proceeds of unlawful activity**, and the intent of the transaction aligns with the conditions mentioned above.⁵
- b. An entity offering electronic communication services or remote computing services, must obtain certain information from their customers or subscribers. The required information includes; the full names of the customer or subscriber, residential address, applicable to individuals, and corporate address, applicable to corporate bodies.⁶

C. The Economic and Financial Crimes Commission (Establishment) Act 2004

¹ Section 4 of the Money Laundering (Prevention and Prohibition) Act 2022

² Section 6 of the Money Laundering (Prevention and Prohibition) Act 2022

³ Section 11 of the Money Laundering (Prevention and Prohibition) Act 2022

⁴ Section 4(7) of the Money Laundering (Prevention and Prohibition) Act 2022

⁵ Section 7(4) of the Advance Fee Fraud and Other Related Offences Act 2006.

⁶ Section 12 of the Advance Fee Fraud and Other Related Offences Act 2006.

The Economic and Financial Crimes Commission (Establishment) Act (the “EFCC Act”) aims to create a framework for the investigation and prevention of various forms of economic and financial crimes, including money laundering, fraud, corruption, advance fee fraud, counterfeiting, tax evasion, and other fraudulent activities. The primary objective is to ensure the integrity of Nigeria’s financial system and protect it from illicit activities.

The EFCC is charged with the responsibility of enforcing the provisions of several laws that deal with corruption and financial crimes.⁷ Apart from the enforcement of relevant laws, the EFCC enforces Regulations made pursuant to those laws. For instance, the EFCC enforces the EFCC (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and other Related Matters) Regulations, 2022. (the “Anti-Money Laundering Regulations 2022”).

Some of the compliance obligations arising from the EFCC Act and the Anti-Money Laundering Regulations 2022⁸ include the following:

- i. **Suspicious Transactions Reporting Obligations:** Financial institutions are required to report any suspicious transactions to the EFCC. These transactions include those that are inconsistent with a customer’s known legitimate business, lack an apparent economic or lawful purpose, or involve the proceeds of a crime. The reporting obligation should be exercised promptly and in accordance with the guidelines issued by the Central Bank of Nigeria (“**CBN**”) and the Nigerian Financial Intelligence Unit (“**NFIU**”).⁹
- ii. **Record Keeping:** Financial institutions and designated non-financial institutions must maintain records of transactions, accounts, and customer identification data for at least five years from the date of the transaction. These records should be easily accessible and made available to the EFCC, NFIU, or other relevant authorities upon request¹⁰.
- iii. **Training and Awareness:** Financial institutions and designated non-financial institutions are expected to provide regular training to their employees on the prevention of money laundering and terrorist financing. The training should cover the relevant provisions of the EFCC Act, applicable regulations, and internal policies and procedures. This aims to enhance the employees’ understanding of money laundering risks, suspicious transaction indicators, and the reporting process¹¹.
- iv. **Internal Controls and Policies:** Financial institutions and designated non-financial institutions are required to establish and implement internal controls and policies to prevent money laundering and terrorist financing. These controls should include measures to identify, assess, and mitigate the risks associated with money laundering and terrorist financing activities. The policies should be reviewed regularly and updated to reflect changes in the regulatory environment¹².
- v. **Establishment of risk identification and management policies:** Financial institutions and designated non-financial institutions are required to take appropriate steps to identify money laundering and allied risks in the operation of its business, establish policies to mitigate these identified risks, as well as monitor the implementation of the policies¹³.

⁷ Section 7(2) of the EFCC Act.

⁸ Primarily applicable to financial institutions and designated non-financial institutions (also called designated non-financial business and profession) which include— (a) automotive dealers, (b) businesses involved in the hospitality industry, (c) casinos, (d) clearing and settlement companies, (e) consultants and consulting companies, (f) dealers in jewellery, (g) dealers in mechanised farming equipment, farming equipment and machineries, (h) dealers in precious metals and precious stones, (i) dealers in real estate, estate developers, estate agents and brokers (j) high value dealers, (k) hotels, (l) legal practitioners and notaries, (m) licensed professional accountants, (n) mortgage brokers, (o) practitioners of mechanised farming, (p) supermarkets, (q) tax consultants, (r) trust and company service providers, (s) pools betting, or (t) such other businesses and professions as may be designated by the Minister for Trade and Investment.

⁹ Paragraph 35 (1) & (4) of the Anti-Money Laundering Regulations 2022.

¹⁰ Paragraph 18 of the Anti-Money Laundering Regulations 2022.

¹¹ Paragraph 16 of the Anti-Money Laundering Regulations 2022.

¹² Paragraph 9 of the Anti-Money Laundering Regulations 2022.

¹³ Paragraph 11 of the Anti-Money Laundering Regulations 2022.

- vi. Customer Due Diligence (CDD): there is also the obligation on companies to put in place customer due diligence measures to establish the identity of their customers, understand the nature of their business relationships, and assess the risk of money laundering or terrorist financing. This includes verifying the identity of customers, obtaining information about the purpose and intended nature of the business relationship, and conducting ongoing monitoring of customer transactions¹⁴.

D. The Miscellaneous Offence Act (MOA)

The MOA, amongst other functions, aims to criminalize and impose penalties on persons or entities that are involved in willful forgery and altering negotiable instruments. The Act penalizes and regards these as offences: the fraudulent forgery, procurement, alteration, acceptance or presentation to another person any cheque, promissory note or other negotiable instrument, with the knowledge that such document is false, forged, stolen or unlawfully procured¹⁵.

Businesses are therefore advised to put in place measures to ensure that documents utilized in the course of their daily activities are indeed genuine; and have no taint of fraud or illegality.

Consequences of not Complying with the Laws

- i. Non-compliance with the provisions of the Money Laundering (Prevention and Prohibition) Act may lead to penalties including fines, imprisonment, withdrawal or revocation of licenses.
- ii. Non-compliance with the provisions of the Advance Fee Fraud and Other Related Offences Act may lead to penalties including fines, imprisonment, winding up of the company, forfeiture of the company's assets and properties to the Federal Government of Nigeria.
- iii. It must be noted that businesses that fail to comply with the provisions of the EFCC Act will be subject to penalties, including fines, suspension or revocation of licenses to do business, and imprisonment of their officers or employees, as the EFCC Act provides for the prosecution of individuals involved in money laundering or terrorist financing activities.
- iv. Non-compliance with the provisions of the Miscellaneous Offences Act may lead to imprisonment without the option of fine and loss of reputation.

Recommendations and Conclusion

On the above premise, it is advised that Board of Directors of companies should ensure that their companies have adequate anti-corruption policies; and that these policies are updated periodically to ensure that the companies comply with applicable laws; and that their policies are strictly implemented to eradicate corruption. Compliance officers of

¹⁴ Paragraph 28 of the Anti-Money Laundering Regulations 2022

¹⁵ Section 1 (2) of the Miscellaneous Offence Act

companies should be responsible for the day-to-day implementation and enforcement of their companies' policies. This responsibility should include regular training of their employees about compliance programs.

Furthermore, it is crucial for companies to permit and foster a culture of integrity and ethical behaviors among its workforce. This can be achieved by promoting transparency, accountability, and whistle-blowing mechanisms that encourage employees to report any suspected acts of corruption without fear of retaliation.

Finally, understanding Nigeria's anti-corruption laws and regulatory compliance requirements is essential for businesses operating in the country. By implementing comprehensive anti-corruption policies, fostering a culture of integrity, collaborating with external stakeholders, conducting risk assessments, and maintaining robust monitoring mechanisms, companies will not only meet their legal obligations but also contribute immensely towards eradicating corruption in Nigeria. The collective efforts of all stakeholders are crucial in building a more transparent and accountable business environment; and, thus, promoting sustainable development, fostering trust and confidence in Nigeria's economy.