

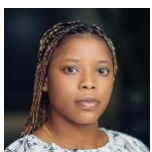
Key contacts



Dayo Okusami
Partner and Co-Head,
Energy and Natural Resources,
Investigation, White Collar and
Compliance
dayo.okusami@templars-law.com



Lawal Kazeem, ACI Arb
Associate,
Dispute Resolution, Investigation, White
Collar and Compliance
lawal.kazeem@templars-law.com



Mariam Adebayo
Associate,
Energy and Natural Resources,
Investigation, White Collar and
Compliance
mariam.adebayo@templars-law.com

TEMPLARS ThoughtLab:

Central Bank of Nigeria’s Guidance Notes on Politically Exposed Persons 2023: Key Provisions

Introduction

On the 22nd of June 2023, the Central Bank of Nigeria (CBN) issued Guidance Notes on Politically Exposed Persons (the “**Guidance Note**”) further to its 2022 Regulation on Money Laundering/Terrorist Financing/Proliferation Financing (ML/TF/PF), and the CBN issued Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, which addresses the increasing use of corporate vehicles such as companies, trusts, foundations, etc. to cover up ML/TF/PF (click here to read the Newsletter on these [Guidelines](#))

The Guidance Note provides minimum standards on how financial institutions (FIs)¹ can identify and manage ML/TF/PF risks associated with their dealings and transactions with Politically Exposed Persons (PEPs) and further to efforts by the CBN to combat ML/TF/PF.

However, before the issuance of the Guidance Notes, on 24 February 2023, the Financial Action Task Force (“FATF”) placed Nigeria (South Africa and several other countries) on its “Grey List”². As a result, it was agreed that Nigeria would implement a nine-point FATF action plan, one of which requires Nigeria to “*improve AML/CFT/CPF risk-based supervision of financial institutions and DNFBPs³ and enhance implementation of preventive measures for high-risk sectors*”.

In line with the said action plan, the Guidance Note requires financial institutions to apply risk-based procedures in determining whether a customer is a PEP, either before or shortly after a relationship is established with the customer. Broadly, the Guidance Note prescribes three practical steps that should be taken by financial institutions to identify and manage the ML/TF/PF risks associated with PEPs; namely: (a) identification and verification of PEPs, (b) ML/TF/PF risks assessment, and (c) ML/TF/PF risks management.

¹ By the provision of Paragraph 73 of the CBN (Anti- Money Laundering, Combating the Financing of Terrorism and Countering Proliferation of Weapons of Mass Destruction in Financial Institutions) Regulations, 2022, Financial Institutions include any person or entity who conducts as a business of accepting deposits and other repayable funds from the public, lending, financial leasing, payment services, money and currency, etc. on behalf of a customer regardless of whether such business is conducted digitally, virtually or electronically.

² This a term used to categorize countries under increased monitoring by FATF and are actively working with FATF to address strategic deficiencies in their ML/TF/PF regimes.

³ Designated Non-financial Business and Professions.

IDENTIFICATION AND
VERIFICATION OF PEPS

ML/TF/PF RISKS
ASSESSMENT

ML/TF/PF RISKS MANAGEMENT

A. Identification and Verification of Peps

FIs are required to identify and verify the identities of PEPs either before providing them with financial services or as soon as possible afterwards. To achieve this, the Guidance Note mandates FIs to conduct Customer Due Diligence (CDD). For both new and existing customers, relevant information can be obtained for CDD purposes through self-declarations⁴, questionnaires⁵, onboarding forms⁶, periodic review of customer database⁷, conduct of internet and media searches⁸, conduct of searches using commercial databases⁹, creation of in-house databases and information sharing within financial groups or countries¹⁰, information sharing by competent authorities.

In conducting CDD, FIs are also mandated by the Guidance Note to extend their identification and verification to the beneficial owner of legal entities or legal arrangements¹¹. The rationale for this requirement is that PEPs could circumvent AML/CFT/CPF and anti-corruption safeguards by opening accounts, establishing business relationships or conducting transactions through the said legal entities or legal arrangements¹².

B. ML/TF/PF RISKS ASSESSMENT

Using the information garnered during the identification and verification stage, FIs are expected to measure the level of ML/TF/PF risks posed by a PEP¹³. The risk factors to be considered by FIs are geography, product, business type, and delivery channel¹⁴. For domestic/international organization PEPs, FIs are mandated under the Guidance Note to consider the following factors, among others, (a) the relationship between the business interests vis-à-vis the public functions of the organisation, (b) whether the PEP holds several (related or unrelated) prominent public functions which may enable influence to be exerted at several key decision-making process, (c) whether the organisation is from a country identified by FATF as having strategic AML/CFT/CPF regime deficiencies or plays in sectors known to be exposed to higher corruption level like the oil and gas sector, mining constructions, etc.

If a higher level of ML/TF/PF risk is discovered, FIs are required to conduct Enhanced Due Diligence (EDD). EDD involves undertaking a higher level of scrutiny to uncover ML/TF/PF risks that cannot be detected by the basic CDD. The EDD will assist FIs in developing bespoke measures to manage higher ML/TF/PF risk posed by a PEP.

C. RISKS MANAGEMENT

The essence of the Guidance Note, and indeed CBN's AML/CFT/CPF policies, is to prevent FIs from being used for illicit purposes should a PEP be involved in criminal activities. Accordingly, the Guidance Notes contain a number of measures to mitigate the risk of ML/TF/PF.

First, FIs are required to put in place adequate and efficient systems/controls to mitigate the risk of doing business with a particular PEP¹⁵. To create the appropriate risk control systems, FIs are encouraged to understand their customer risks profile¹⁶. Second, conducting ongoing screening and monitoring of PEPs, which may either be automated or done manually¹⁷. The essence of this is to identify and report potential suspicious transactions and activities on an ongoing basis,¹⁸ as a customer's risk profile may change

⁴ Paragraph 5.5 of the Guidance Note.

over time¹⁹. Third, FIs are required to obtain senior management approval for establishing (or continuing, for existing) business relationships with PEPs²⁰.

Furthermore, it is stated that the fact a PEP no longer holds a public office or entrusted with a prominent public function should not be the sole reason for relaxing the necessary ML/TF/PF risk measures in respect of such a person. Thus, the Guidance Note prescribes that for as long as corruption risk remains even if a PEP has been out of office for a certain time, FIs may continue to treat a customer as a PEP²¹.

In addition to the foregoing, FIs are mandated under the Guidance Note to file a suspicious transaction/activity report (STR) to the Nigerian Financial Intelligence Unit if there is a suspicion that transactions involving funds are linked to any form of criminal activity²². Overall, FIs are obligated to put in place AML/CFT/CPF training policies that will include ongoing employee training programs, and real-life case studies and examples to make it up to date²³. In designing the said policy, emphasis should be placed on human input and analysis from experienced and trained employees rather than on automated softwares²⁴.

Conclusion

FIs are the most vulnerable to being used as vehicles for perpetrating ML/TF/PF. Therefore, it is no surprise that the CBN continues to roll-out guidelines and regulations on how FIs can identify, assess, and manage the risk of ML/TF/PF. Based on its emphasis on a risk-based approach to countering ML/TF/PF risks, the Guidance Note will strengthen the existing legal regime on ML/TF/PF in Nigeria, but also, in a way, give the necessary assurance to the business community that the Nigerian Government has zero tolerance for ML/TF/PF, which may in turn increase the ease of doing business in Nigeria. The most important requirements of the Guidance Note are Monitoring and Enforcement and these are needed to show the world that Nigeria is serious about battling ML/TF/PF.

Authors

Dayo Okusami

Partner and Co-Head,
Energy and Natural Resources,
Investigation, White Collar and
Compliance
dayo.okusami@templars-law.com

Lawal Kazeem, ACI Arb

Associate,
Dispute Resolution, Investigation,
White Collar and Compliance
lawal.kazeem@templars-law.com

Mariam Adebayo

Associate,
Energy and Natural Resources,
Investigation, White Collar and Compliance
mariam.adebayo@templars-law.com

Chijioke Ukomadu

Associate,
chijioke.ukomadu@templars-law.com

⁵ Paragraph 5.5 of the Guidance Note.

⁶ Paragraph 5.5 of the Guidance Note.

⁷ Paragraph 5.1 of the Guidance Note.

⁸ Paragraph 5.2 of the Guidance Note.

⁹ Paragraph 5.3 of the Guidance Note.

¹⁰ Paragraph 5.4 of the Guidance Note.

¹¹ Paragraph 7 of the Guidance Note.

¹² Paragraph 7.1 of the Guidance Note.

¹³ Paragraph 4.1, and 4.2 of the Guidance Note.

¹⁴ Paragraph 4.4 of the Guidance Note.

¹⁵ Paragraph 6.1 Guidance Note.

¹⁶ Paragraph 6.2.1, Guidance Note.

¹⁷ Paragraph 6.2.3 Guidance Note.

¹⁸ Paragraph 6.4, Guidance Note.

¹⁹ Paragraph 9.1, Guidance Note

²⁰ Paragraph 6.3 Guidance Note.

²¹ Paragraph 6.5, Guidance Note.

²² Paragraph 11.1 Guidance Note

²³ Paragraph 12 Guidance Note.

²⁴ Paragraph 12 Guidance Note.