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Key contacts

TEMPLARS ThoughtLab

Safeguarding Cross-Border Transactions: Essential Anti-Money Laundering Considerations

Introduction

On 27 August 2024, the Chairman of the Economic and Financial Crimes Commission (“EFCC”), Mr. Ola Olukayode charged legal practitioners in Nigeria to always observe due diligence in their practices and in particular to ascertain the legitimacy of the source of their clients’ funds in order not to receive proceeds of crimes as payment for legal services. The EFCC Chairman was speaking at a panel discussion on money laundering during the 64th Annual General Conference of the Nigerian Bar Association held in Lagos. The panel discussion highlighted Nigeria’s placement on the Financial Action Task Force (“FATF”) Grey List¹ which has necessitated enhanced due diligence procedures on the part of service providers for customers and counterparties, as well as thorough customer assessments, including the source of funds/wealth and associated parties. This publication explores the essential anti-money laundering (AML) considerations for safeguarding cross-border transactions. It will spotlight the legal landscape of anti-money laundering in Nigeria; discuss the steps to safeguard cross border transactions with emphasis on compliance requirements; and in the final analysis, highlight, using the illustrative examples of Ghana in Africa, United Kingdom in Europe and Brazil in South America, best practices obtainable in other jurisdictions to mitigate risks for businesses.

Background

In today’s rapidly globalising economy, the risks of money laundering is more significant than ever, posing substantial threats to cross border transactions. In Nigeria, the rapid growth of international trade and financial services has necessitated robust measures to prevent and detect money laundering through cross-border transactions.



Emmanuel Gbahabo
Partner and Head
Investigations, White Collar, &
Compliance and Dispute Resolution
emmanuel.gbahabo@templars-law.com



Emediong Okodi
Associate,
Corporate & Commercial
emediong.okodi@templars-law.com

¹ This is a term used to describe countries under increased monitoring by FATF and are actively working with the organisation to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, proliferation financing and have committed to swiftly resolve the identified strategic deficiencies.

Cross-border transactions involve trade, business or financial dealings between entities in different countries. They comprise a wide range of activities ranging from the sale and purchase of goods, provision of services, cross-border payments and transfer of funds, investments in foreign financial instruments, to lending transactions. Cross-border transactions reflect the globalisation of commercial activities as businesses continue to pursue expansion plans outside their countries of incorporation. This has become a global phenomenon propelled by globalisation and technology.

In **Kalu v. Federal Republic of Nigeria & Ors**² the Nigerian Court of Appeal cited with approval the definition of money laundering by Toby Graham, Evan Beil & Nicholas Elliot in their book: MONEY LAUNDERING Butterworths as “*varied means used by criminals to conceal the origin of illicit activities. The term ‘laundering’ is used because these techniques are intended to turn ‘dirty money’ into ‘clean’ money, but laundering is not confined to cash.*”

The international nature of cross-border transactions heightens the risks associated with money laundering, as they often involve the transfer of funds across national borders and thereby increase their susceptibility to money laundering activities. The subsequent sections of this publication explore the key Anti-Money Laundering (“**AML**”) considerations in cross-border transactions in Nigeria, emphasising the legal landscape, compliance requirements, and best practices to mitigate risk for businesses engaged in cross border transactions. However, before delving into the crux of this publication, it is important to briefly conceptualise the practice of money laundering.

Stages of Money Laundering

Money laundering typically occurs in three stages:

1. Placement: Illegally obtained funds are introduced into the financial system, often through banks or businesses.
2. Layering: The funds are moved through various transactions to obscure their origin, which can be done by buying assets in high value, which may be bought by proxy to conceal the launderer's identity in the transaction.
3. Integration: The laundered money is reintroduced into the economy, appearing as legitimate income or assets.

These three stages may not necessarily follow a rigid structure without deviation. With the recent changes brought on by technology, the world is likely to experience novel approaches to money laundering that are very likely to defeat preconceived models.

Legal Landscape of Money Laundering in Nigeria

The Nigerian regulatory framework provides several laws and regulations aimed at combating money laundering including the Money Laundering Prevention and Prohibition Act 2022 and compliance measures.

1. The Money Laundering (Prevention and Prohibition Act) 2022 (the “Act”)

The Act is the primary legislation that addresses the challenge of money laundering in Nigeria while providing specific anti-money laundering measures for national and international transactions. It establishes the Special Control Unit Against Money Laundering (“**SCUML**”) under the EFCC for the implementation of the AML provisions of the Act in relation to Designated Non-Financial Businesses (“**DNFB**”) and

² (2012) LPELR-9287(CA)

professions.³ The Act provides for AML prevention and compliance measures with cross-border effects which include:

a. Reporting International Transfers

The Act requires that any transfer of funds or securities exceeding US\$10,000 (Ten Thousand United States Dollars) or its equivalent should be reported to SCUML, Central Bank of Nigeria ("CBN") and Securities and Exchange Commission ("SEC") within 24 hours.⁴

b. Reporting of Suspicious transaction

Financial institutions and businesses must report suspicious transactions⁵ involving criminal proceeds, money laundering, or terrorist financing to SCUML.⁶ Upon reporting, the transaction may be deferred for up to 72 hours to identify the origin of the funds.⁷ If the origin remains unclear, the Federal High Court ("FHC") may block the funds. Timely reporting supports AML efforts and aids law enforcement in combating illicit activities. This reporting is a key part of transaction monitoring and helps in the identification of unusual patterns or transactions that may indicate potential money laundering and terrorist financing schemes.

c. Measures for Foreign Politically exposed persons (PEPs)

Financial institutions and DNFBs are required to obtain senior management approval before establishing or continuing (for existing business relationships) when dealing with a foreign PEP⁸, and to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP and conduct enhanced ongoing monitoring on that relationship.⁹

d. Cross-border Correspondent Banking.

When engaging in cross-border correspondent banking, financial institutions and DNFB and professions must perform customer due diligence on the respondent institution including assessing its AML controls, documenting responsibilities, and obtaining management approval before establishing new relationships.¹⁰

³ A designated non-financial business and profession include automotive dealers, businesses involved in the hospitality industry, casinos, clearing and settlement companies, consultants and consulting companies, dealers in jewelleries and so on as defined under section 30 of the Act.

⁴ Section 3 Money Laundering (Prevention and Prohibition Act) 2022

⁵ The Act does not limit the transaction to that which occurs within Nigeria and can be taken to extend to even cross-border transactions.

⁶ Section 7(1)(e) of the Act.

⁷ Section 7(5) of the Act.

⁸ Politically exposed persons are defined under the Act as (a) individuals who are or have been entrusted with prominent public functions by a foreign country, (b) individuals who are or have been entrusted domestically with prominent public functions; and (c) persons who are or have been entrusted with a prominent function by an international organisation and includes members of senior management such as directors, deputy directors and members of the board or equivalent functions and their family members and close associates, other than middle ranking or more junior individuals in the foregoing categories.

⁹ Section 4(8) of the AML Act.

¹⁰ Section 4(4)(c) of the AML Act.

2. The Central Bank of Nigeria (Anti-money Laundering and Combating the Financing of Terrorism and Proliferation Financing of Weapons of Mass Destruction in Financial Institutions) Regulations 2022 (The “CBN Regulation”).

This Regulation seeks to promote compliance with AML laws and regulations and safeguard financial institutions from being used for financial crimes. It equally requires compliance obligations on financial institutions which includes, conducting customer due diligence measures, identification and verification of customers, tiered Know Your Customer (“KYC”) measures. Some cross border application of the Regulation include:

a. Extension of Terrorism Financing to Persons and Entities outside Nigeria

Terrorism financing offences extends to any person or entity within or outside Nigeria who directly or indirectly and willingly provides, collects or solicits any property, funds or other services with the intention or knowledge that it will be used in full or in part to carry out a terrorist act by a terrorist or terrorist organisation.¹¹

b. Customer Due diligence requirement in Cross-border Wire transfer

Financial institutions are mandated to undertake customer due diligence measures when carrying out transactions that are wire transfers including cross-border and domestic transfers between financial institutions and when credit or debit cards are used as a payment method to effect money transfer.¹²

c. Enhanced Customer Due Diligence Measures

High-risk customers or businesses or transactions involving cross-border banking business, financial institutions are required to perform enhanced due diligence.¹³ In addition to taking the normal customer due diligence measures, they are required to; (i) gather information about a respondent institution to understand the nature of its business, determine from publicly available information the reputation of the institution and the quality of supervision; (ii) assess the respondent institution’s AML, CFT and CPF controls and ascertain that they are in compliance with the FATF standards; (iii) obtain approval from senior management before establishing correspondent relationship; and (iv) clearly understand and document the respective AML, CFT and CPF responsibilities of each respondent institutions.

d. Customer Due Diligence for Pay Through-accounts.

The Regulation also addresses the potential money laundering risks associated with Payable Through Accounts (PTAs). Money launderers may exploit PTAs to conduct multiple transaction with the intention of obscuring the origin of illicit funds. This can be done by involving multiple payees and beneficiaries to create layers of transactions, making it difficult to trace the source of funds. The Regulation provides that where the correspondent relationship involves the maintenance of PTAs, the financial institution shall (i) be satisfied that the respondent bank has performed the normal Customer Due Diligence (“CDD”) obligations on its customer that have direct access to the accounts of the

¹¹ Regulation 5 (1) of the CBN/AML/CFT/CPF Regulation 2022.

¹² Regulation 19(1) (c) of the CBN/AML/CFT/CPF Regulation 2022.

¹³ Regulation 28(f) of the CBN/AML/CFT/CPF Regulation 2022.

correspondent financial institution and (ii) the respondent financial institution is able to provide upon request, CDD information¹⁴.

e. Attention to Transactions with Persons in High-Risk Countries.

Where the FATF has raised concerns regarding a country, a financial institution is required to apply enhanced due diligence proportionate to the risks, to have business relationships and dealings with natural or legal persons from such countries.¹⁵

3. Securities and Exchange Commission (Capital Market Operator) Anti-Money Laundering and Combating the Financing of Terrorism) Regulations 2022. (The “SEC Regulation”)

SEC Regulation applies to the activities of money laundering, terrorism and proliferation financing in Nigeria’s capital market operations and related matters. It provides for compliance obligations on capital market operators ranging from CDD measures, internal controls and audit, monitoring and reporting of suspicious transaction, employee education and training programmes, KYCs and identification procedures. The SEC Regulation defines a cross-border transaction to mean any transaction where the originator and beneficiary operators are located in different jurisdictions. The term also refers to any chain of transaction that has at least one cross-border element. The SEC regulation requires a capital market operator (CMO) to exercise a greater degree of CDD when opening an account or conducting transactions for high-risk clients in cross-border business relationships.¹⁶

Steps to Safeguard Cross Border Transactions

1. Engaging in regular AML trainings for employees on AML regulations and red flags, empowering employees to act as the first line of defense against money laundering.
2. Timely reporting of suspicious transaction, which can shield businesses from being implicated in illegal activities and demonstrates commitment to being regulatory compliant. Therefore, establishing a clear internal protocol for identifying and reporting suspicious activities to the relevant authorities is important.
3. Conducting CDD, which includes thoroughly verifying the identities of customers and understanding the source of their funds, especially for high-risk clients.
4. Leveraging technology for transaction monitoring which can quickly identify suspicious activities, allowing for timely reporting and escalation of potential money laundering schemes.
5. Regular review and update of AML policies to align with international standards, such as those set by FATF, which facilitates smoother international operations and builds credibility with global stakeholders.

¹⁴ Regulation 30(2) of the CBN/AML/CFT/CPF Regulation 2022.

¹⁵ Regulation 34 of the CBN/AML/CFT/CPF Regulation 2022.

¹⁶ Regulation 12(2)(b) of the SEC Regulation 2022.

A Look at Other Jurisdictions:

GHANA

Ghana's removal from the FATF grey list and subsequent removal from the EU AML list in 2022 is commendable and shows that the country made significant stride in strengthening its AML/CFT regime. In Ghana, the Anti-Money Laundering/Combating the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (AML/CFT&P) Guidelines 2022 ("Ghana AML Guidelines") constitute the primary legislation combating money laundering and related offences. The Ghana AML Guidelines were issued by the Bank of Ghana and Financial Intelligence Centre for Accountable Institutions. Unlike Nigeria, the Ghana AML Guidelines require compliance obligations of only banks (accountable institution). Under the Ghana AML Guidelines, a cross-border transfer is defined as any wire/electronic transfer where the originator and beneficiary institutions are in different jurisdictions and refers to any chain of wire/electronic transfer that has at least one cross-border element.¹⁷

Under the Ghana AML Guidelines, cross-border banking and business relationships fall within the "high risk category of customers".¹⁸ Accountable institutions are saddled with several anti-money laundering obligations which include:

- a. performing enhanced due diligence. The procedure for this is to be adopted on a risk sensitive basis, taking into consideration, the type of customer, product, transaction, location of the customer and other relevant factors.
- b. obtaining the approval of senior management within their organisation before establishing a business relationship with a high-risk customer.

The Ghana AML Guidelines prescribe additional measures to be taken by accountable institutions in relation to cross border and correspondent banking which includes:

- a. gathering sufficient information about a correspondent institution to understand fully the nature of its business;
- b. determining from publicly available information the reputation of the institution and the quality of supervision, including whether or not it has been subjected to ML/TF&PF investigation or a regulatory action;
- c. assess the correspondent institution AML/CFT&P controls and ascertain that the latter are in compliance with FATF standards;
- d. obtain approval from senior management before establishing correspondent relationship; and document the respective AML/CFT&P responsibilities of correspondent bank.

The Ghana AML Guidelines take into consideration business relationships with high-risk countries, and also labels countries not compliant with FATF as high-risk countries. Consequently, accountable institutions are mandated to give special attention to business relationships that come from these countries and generally limit financial transactions that come from such countries. More importantly, reporting obligations exist for suspicious transactions that have no apparent economic or visible lawful purpose. As part of the measures to mitigate money laundering, the Ghana AML Guidelines have specific provisions made in relation to cross border wire/electronic transfers of US\$1,000 (One Thousand United States Dollars) and above, mandating such transfers to be

¹⁷ Appendix A of the Ghana AML Guideline 2022.

¹⁸ Paragraph 2.6 Ghana AML Guidelines.

accompanied by a standard set of information including originator and beneficiary details, including their address, or national identity number, date and place of birth or customer identification number.

The United Kingdom has long been a global leader in Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) efforts. Its **Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations (MLR) 2017**, came into force in June 2017. The MLR 2017 outlines stringent AML obligations for financial institutions and businesses operating in areas of higher money laundering risk within and across the UK. The UK's **Financial Conduct Authority (FCA)** plays a key role in monitoring compliance and imposing sanctions on non-compliant institutions. For cross-border transactions, the Regulations require enhanced due diligence when dealing with PEPs, non-EU-based high-risk customers, and transactions originating from jurisdictions with weak AML frameworks. The **Proceeds of Crime Act 2002 (POCA)** further enables the UK to target and seize laundered assets, including those derived from cross-border money laundering schemes. The UK's exit from the EU has also led to an even stronger emphasis on autonomous AML controls.

BRAZIL

Brazil, as a leading economy in South America, has also made significant strides in AML enforcement, particularly since the enactment of its **Anti-Money Laundering Law (Law No. 9,613/1998)** later amended by **Law 12,683/12**. Brazil's financial intelligence unit, known as the Council for Financial Activities Control (**COAF**) has taken proactive measures to ensure compliance with FATF standards, focusing heavily on high-risk sectors such as real estate and luxury goods. Cross-border transactions are scrutinised through stringent reporting requirements, especially when funds exceed BRL 10,000. Brazil's commitment to combatting money laundering in cross-border activities has been instrumental in improving its international reputation. Brazil is another country that has been included, and subsequently removed from FATF's Grey List and therefore serves as a good example for Nigeria's quest to exit the List. Nevertheless, some concerns still remain and enhanced due diligence, including assessing the AML controls of foreign entities involved in cross-border transactions, remain key focus areas for Brazil's anti-money laundering regime.¹⁹

Conclusion

Money Laundering, Terrorism Financing and Proliferation of weapons are global menaces which pose major threats to cross border transactions and have the potential to undermine Nigeria's development efforts. As the global village becomes increasingly connected by advancements in technology, the magnitude of illegitimate money circulating the world economy has soared. Although Nigeria has rolled out regulations and laws to combat this menace, they generally lack diligent implementation frameworks and compliance monitoring mechanisms for the obligations prescribed. With respect to cross-border transactions, its very nature of being inter-country requires regional and international efforts to monitor and prevent laundering of money and other related offences. Addressing these challenges will also necessitate a multilayered approach, one that requires strengthening institutions involved. The listing of Nigeria in the FATF Grey List requires Nigeria to implement a 9-point action plan before May 2025 to avoid the greater danger of being upgraded to the Black List.²⁰ All hands must therefore be on deck to ensure that Nigeria does not make it into the Black List.

¹⁹ <https://www.fatf-gafi.org/content/fatf-gafi/en/countries/detail/Brazil.html>

²⁰ <https://www.templars-law.com/app/uploads/2023/05/THE-WHAT-AND-WHY-OF-NIGERIAS-GREY-LISTING.pdf>