

STREN & BLAN PARTNERS' REPORT



WHITE-COLLAR CRIME AND INVESTIGATIONS REPORT UPDATE ON NIGERIA

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UPDATE ON NIGERIA

INTRODUCTION

"If you think compliance is expensive: try non-compliance" – Paul McNulty Former U.S Deputy Attorney General

A key concern of regulatory authorities worldwide is the implementation of robust policies, mechanisms and controls for anti-corruption and anti-money laundering compliance by both foreign and local companies operating within their jurisdictions, this consideration is even more important for a country such as Nigeria presently tackling insurgency as well as a biting foreign exchange crisis. Certainly, where adequate policies and mechanisms for monitoring and ensuring compliance are set up, directors, officers and employees will be prevented from engaging in illegal activities, which can harm a company's reputation if same is discovered by regulators.

For Multi-National Corporations ('MNCs') engaged as government contractors, the need for an effective compliance program cannot be dispensed with, past events have shown in the drive to increase profits and gain advantages, officers, directors and employees many times have indulged in bribery, money laundering, corruption, and other anti-social practices that show little regard for ethics and even laws. These illicit activities are usually undertaken by the subsidiary or affiliated entity without the knowledge or complicity of the MNC, although in some rare cases the MNC's either feign ignorance or are active participants. A case in point is the Halliburton Scandal which led to a guilty plea

and one of the largest corruption settlements ever paid by a US company in a high-level bribery case involving payments from multinationals to secure contracts in Nigeria and other countries.

Similarly, in December 2023, after the earlier ruling of the English Commercial Court in the case of Federal Republic of Nigeria v. Process and Industrial Developments Limited [2023] EWHC 2638 (COMM) holding that the Awards previously obtained against Nigeria were obtained by fraud and the Awards were and the way in which they were procured was contrary to public policy, the English Court went ahead to set aside the Awards on the principle that "fraud unravels all".

In recognition of the potential for corporate organizations to be involved passively or actively in the perpetration of financial crimes such as money laundering and in extreme cases for financing terrorism, regulators worldwide are constantly raising expectations with respect to the compliance programs put in place by corporations. Essentially, what is required are effective policies, controls, and procedures to prohibit a wide range of concerns including corruption, money laundering, terrorism financing and financial crimes in general.¹

For a developing nation like Nigeria, the need to put in place standards,

¹ See Section 9 and 10 Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation

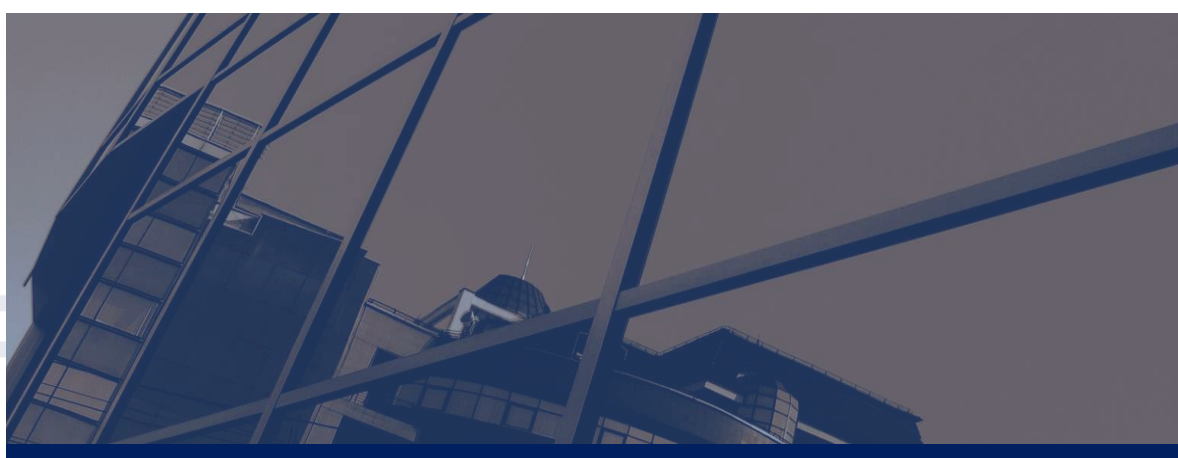
Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and Other Related Matters) Regulations, 2022

regulations and procedures that minimize the risk of Anti-Money Laundering/Counter Financing of Terrorism and Proliferation (AML/CFT/P) at a level satisfactory to the Financial Action Task Force cannot be over-emphasized.

Notwithstanding the measures put in place and the activities of the regulators, Nigeria's business crime rate still ranks high on the global scale. In a 2023 report by the Global Initiative Against Transnational Organized Crime, Nigeria ranked 6th in the world, with a crime index of 7.28. The Report

noted a significant rise in electronic banking fraud, exacerbated by the government's implementation of a cashless policy, which although intended to promote digital transactions, however, inadvertently led to an increase in attempted cyber-enabled fraud through mobile channels, web platforms, and point-of-sale systems².

In this report, we aim to provide an overview of some of the regulatory changes in Nigeria aimed at stringing the Nigerian landscape as it relates to white-collar crimes.



HIGHLIGHTS ON REGULATORY ACTIVITIES IN 2023

The Apex Bank

In January 2023 the Apex Regulator for Banks and other Financial Institutions (FIs), the Central Bank of Nigeria published its "Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements".³ The CBN aims to assist FIs in identifying and verifying the beneficial owners of legal persons and legal arrangements as part of efforts to prevent the use of corporate entities as vehicles for perpetrating financial crimes.

The Guidance imposes certain

responsibilities on FIs to comply with, including undertaking customer due diligence, verifying the identity of a beneficial owner, board, senior management, settlor, trustee, beneficiary and other positions denoting control; ensuring the records of all relevant documents used in determining the beneficial owner for legal persons or legal arrangements are kept and updated periodically; adoption of a risk management system and assessment of beneficial owner and ensuring that relevant authorities have timely access to beneficial owner information.

² Global Initiative Against Transnational Organized Crime <https://ocindex.net/country/nigeria> Global Organized Crime Index, 2023

³ Central Bank of Nigeria, 2023, Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, FPR/DIR/PUB/CIR/001/064

On 24th February, 2023, the Financial Action Task Force ("FATF") placed Nigeria on its "Grey List", meaning the Country has been placed under increased monitoring by the FATF having noted deficiencies in the Country's regime to counter money laundering, terrorist financing etc.

The major implication of this which is of great concern to businesses operating in Nigeria is the increased level of difficulty in obtaining funding for potential investments in Nigeria due to concerns about the intended use of the funds. Furthermore, there is now a need for stricter levels of due diligence by foreign entities intending to transact business in Nigeria.

The way forward for the Country is to take active steps to resolve the deficiencies identified by the FATF. Presently Nigeria is under increased monitoring and is actively working with the FATF to address the strategic deficiencies in the legal regimes governing white-collar crime.

Following the above, in June, 2023 the CBN issued the Customer Due Diligence Regulations 2023⁴ ("CDD") as part of the measures adopted to remedy the deficiencies in the Countries AML policies. Following up on the "Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements" earlier published by the CBN, the CDD regulation requires companies to submit names and identification documents of the relevant persons having a senior management position in the companies and information on their beneficial owners. As part of innovative steps to ensure depth in the process of the customer due diligence

FIs are also required to obtain the social media addresses of their customers.⁵

Further, the Regulation also prohibits FIs from opening accounts where the arrangement for Foreign Trust or Foundation is unclear or information on the parties to the legal arrangements cannot be provided because it is incorporated in a jurisdiction (such as tax havens and offshore financial centres) that makes it impractical to do so.⁶

Also, where a trust scheme has been established for the purpose of employee stock options, retirement benefits, and other employee benefits, and an account is to be established for the purpose of the employees, the trustees, and persons who have control over the account shall be considered as the holders of the account. In such instances, the customary due diligence exercise shall be conducted by the financial institution in respect of the account controllers/ managers/operators.⁷

Additionally, the Apex Bank further to its AML/CFT/CPF Regulations 2022 which requires banks and other FIs to amongst others, establish measures for mitigating potential money laundering, terrorism financing and proliferation financing (ML/TF/PF) risks posed by high-risk customers including Politically Exposed Persons (PEPs) in June, 2023 published a Guidance Note on Politically Exposed Persons (PEPs) for Banks and Other FIs to assist the FIs in the assessment as well as mitigation of ML/TF/PF risks associated with business relationships with PEPs.⁸

¹Central Bank of Nigeria, 2023, Customer Due Diligence Regulations, FPR/DIR/PUB/CIR/007/076

²Paragraph 6, CDD regulation

⁴Paragraph 29, CDD regulation

⁷Paragraph 42, CDD regulation

⁸Central Bank of Nigeria, 2023, Customer Due Diligence Regulations, FPR/DIR/PUB/CIR/007/075

The objective of the Guidance is to assist FIs in the identification and management of risks associated with Politically Exposed Persons (PEPs) in the course of business relationships. The view is that considering Nigeria's high corruption index, domestic PEPs are highly vulnerable to financial risks because such individuals may misuse their position and power for personal gains.

Special Control Unit Against Money Laundering

In a similar vein, the Special Control Unit Against Money Laundering (SCUML) had in November 2022 published a Guidance Note on Politically Exposed Person Due Diligence for Designated Non-Financial Businesses and Professions (DNFBPs), with the purpose of the Guidance being to provide clear directions to DNFBPs in implementing measures to prevent the misuse of their business by PEPs, and to detect such potential abuse if and when it occurs.

By the Guidance, DNFBPs are mandated to identify customers as PEPs or their close family members or close associates by putting in place a risk management system to determine whether a potential customer or an existing customer or beneficial owner falls within the category of PEPs.⁹ The Guidance also mandates risk consideration in the identification of PEPs their close family members or close associates, to determine whether the DNFBP has adequate

controls in place to prevent its institution from being abused for illicit purposes should the PEP be involved in criminal activities.

Additionally in compliance with the EFCC (Anti-Money Laundering, Combating the Financing of Terrorism and Proliferation of Weapons of Mass Destructions for DNFBPs and other Related Matters) Regulations 2022, DNFBPs are mandated to file monthly reports on transactions above One Hundred Million Naira (N100,000,000.00) in respect of their transactions with PEPs.

Proceeding from the above, in January 2024, SCUML published a Circular to all DNFBPs announcing the development of a Report Template to be used by DNFBPs for the purpose of filing the monthly report on transactions conducted for and on behalf of PEPs.

Re-examining the Money Laundering (Prevention and Prohibition) Act, 2022

We find it pertinent to note that the purpose of the reforms and regulatory updates cited above are intended to ensure that corporate entities are not used as vehicles for the perpetration of business crimes. Within the last few years Nigeria has made great strides to improve its AML/CFT/P legislative frameworks, notably the passing into law of the Money Laundering (Prevention and Prohibition) Act, 2022, which has intensified efforts to curb money laundering and other related offences in Nigeria.

⁹Paragraph 3, PEP Guidance

The Act contains reporting requirements for both designated FIs and non-FIs operating in Nigeria. The Act also contains requirements for the training of employees of corporate entities on programs for combating money laundering, record keeping, establishing risk identification and management policies, amongst others. The intendment of the reforms is primarily to ensure that business owners are responsible for making sure that existing gaps in their internal processes through which illicit activities could be undertaken are effectively monitored and controlled. Businesses are therefore advised to take cognizance of these regulatory requirements to avoid risks to their reputation, liabilities, and regulatory sanctions. More updates should be anticipated in the year 2024 as with the Country being placed on the Grey List, enhanced levels of AML/CFT/P are to be expected to be put in place in a bid to resolve the deficiencies noted by the FATF.

Proceeding from the activities of the CBN, other regulators such as the Economic and Financial Crimes Commission (EFCC) are actively undertaking investigations into alleged business crimes. In a report by the Punch Newspaper dated 25th December 2023, the EFCC was stated to have arrested a contractor in connection with the ongoing probe into the N37bn allegedly stolen from the Ministry of Humanitarian Affairs,

Disaster Management, and Social Development under former Minister, Sadiya Umar-Farouk. It was further reported that Investigation revealed that the N37.1bn (approximately USD\$24,000,000) was transferred from the Federal Government's coffers and sent to 38 different bank accounts domiciled in five legacy commercial banks belonging to or connected with the contractor.

In another publication by the Guardian Newspaper dated 16th May, 2023, the EFCC was reported to have received a petition against a director in a new generation bank and four other companies' directors for alleged money laundering and breach of public procurement act. The Petition alleged failure to abide with the law establishing the Special Control Unit Against Money Laundering (SCUML) in respect of Section 11(1) of the Money Laundering (Prevention and Prohibition) Act, 2022, which contains reporting requirements for designated non-financial businesses.

The above highlight the activities of regulators and emphasizes the need for well-designed internal policies which align with the requirements of regulators and also provide adequate internal control mechanisms to dissuade the use of the corporate structure for the perpetration of business crimes.



Standards for Compliance

Companies must put in place adequate compliance programs that encompass the principal aspects of corporate compliance: risk assessment, management control mechanisms, training and reporting, and supervision.

a. Risk Assessment: An important aspect of compliance is the ability to assess the risks associated with operating in a region, including the use of contractors, relations with government officials which will enable the company to understand the potential risks that may arise from business expansion activities. The benefit of this is that it creates awareness for the company on potential problems which the company can act proactively to prevent.

b. Management: In appointing senior management of a company, consideration must be given to compliance expertise. Additionally, companies must engage highly experienced compliance personnel, who have the responsibility of managing the compliance functions of the company on a day-to-day basis. The personnel must equally be able to access and influence the decisions of the members of the board in matters pertaining to compliance.

c. Control Mechanisms: Most companies have in place codes of conduct which are easy-to-read rules expected to guide

employees on various subjects including human rights, money laundering, corruption, anti-bribery, sexual harassment, data privacy, accounting, etc. However, for a robust and effective corporate compliance program additional control must be put in place such as KYC requirements for customers, third-party agents and contractors. There is also the need to address interactions with government officials and ensure that due diligence exercises are undertaken in respect of business partners.

d. Training and Reporting: An important feature of a strong compliance program is the designing training programs on compliance for directors, employees, third-party agents, officers on the relevant laws, regulations, internal policies and codes of conduct. Additionally, going beyond the training programs, the company must be able to evaluate the effectiveness of the training.

e. Supervision: Having put in place the necessary policies, provide training initiatives, the final lap of a robust compliance framework is the ability to monitor levels of compliance and detect problems before or immediately they arise. Auditing accounts is one of the ways but setting up a compliance committee saddled with the responsibility of actively audit operations in high-risk regions takes it a notch higher.

Compliance trends in the year 2024

The year 2023 came with a surge in the development of various technologies, particularly in Artificial Intelligence (AI). AI represents the future for businesses all over the world, however, the need to ensure the safe use of AI will not go unnoticed by regulators.

Regulations covering AI, cryptocurrency, foreign exchange, climate change and corporate disclosures are expected to be at the forefront of regulatory concerns in the year 2024. The Central Bank of Nigeria just before the close of the year, recognized the need to regulate the activities of virtual assets service providers (VASPs) in line with the Recommendations 15 of the FATF and issued its Guidelines on the Operation of Bank Accounts for Virtual Asset Service Providers.

Section 8 of the VASPs Guidelines mandates the establishment of appropriate risk management systems by FIs to determine whether a designated account opened under the Guidelines has been used or is likely to be used for money laundering, terrorism financing and proliferation financing. The VASPs Guidelines also mandate customer due diligence, continuous verification, record keeping, monitoring and reporting of suspicious transactions.

The Country's current economic

position, precisely the alarming depreciation of the Naira has necessitated active steps by the CBN to significantly revise the regulatory framework for the operation of Bureau de Change (BDCs) operations as part of an ongoing reform of Nigerian Foreign Exchange Market. On 23rd February, 2024 the CBN issued a circular to all BDCs and stakeholders in the Financial Services, publishing its Exposure Draft for Revised Regulatory and Supervisory Guidelines for Bureau de Change Operations in Nigeria for inputs/comments from stakeholders in the Industry.

The BDC Guidelines also revises Anti-Money Laundering/ Combating the Financing of Terrorism provisions for Bureau de Change (BDCs) operations. The Exposure Draft features AML/CFT/CPF requirements that BDCs will be expected to comply with including the development of compliance unit and function; monitoring and filing of suspicious transactions reports with the Nigerian Financial Intelligence Unit (NFIU) and other reporting requirements; AML/CFT/CPF employee training, etc.

Considering recent regulatory activities, the Nigerian compliance landscape in 2024 is expected to be strategic, as regulators will develop more reforms to existing frameworks, with the primary aim being to enhance risk assessment and compliance processes by businesses.

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General Recommendations on Compliance for Businesses in the Year 2024

- a. Undertake regular training initiatives to keep senior management abreast of changing trends in corporate compliance, global and local data protection standards, human right requirements, climate change; new technology and its impact of money laundering, terrorism financing; and risk management trends.
- b. Adoption of a whistleblowing policy to engender anonymous reports and tip-offs of actions being carried out in contravention of company's standards and policies.
- c. Set up compliance teams in regions or countries of operation with direct reporting lines to a central compliance team located at the headquarters of the company and aided by experienced external compliance professionals.
- d. Conduct annual risk assessment to enable a continuous update on potential risks associated with the region of operation, this may include impact of change in government, change in national policies, enforcement actions of law enforcement agencies.
- e. Conduct regular trainings for employees, directors, officers and third-party agents on developments in anti-crime laws, human rights protection, data protection, environmentally friendly initiatives, international policies, reporting procedures, guidance on how to handle government officials who require bribes for undertaking processes and examine real life scenarios.
- f. Design procedures for undertaking thorough internal investigations, receiving information from employees, managing and keeping information of all persons having connections to the company and disciplinary measures where misconduct or a crime is detected.
- g. Undertake risk assessment exercises to determine their exposures and any operational risks arising from the deficiencies in Nigeria's AML/CFT/P framework.
- h. Regularly conduct comprehensive reviews of the company's governance structures and practices to assess alignment with the Nigerian Code of Corporate Governance (NCCG), Companies and Allied Matters Act, and other applicable sector-specific codes of Governance.
- i. Establish specific, measurable, and time-bound goals across environmental, social, and governance aspects. This includes targets for reducing environmental impact, improving social responsibility, and enhancing governance practices.
- j. Carry out due diligence exercises adopting both local and foreign standards to confirm their Know Your Customer (KYC) of all counter parties in the country including beneficial ownerships of existing business relations and counter parties.
- k. Ensure compliance with regulatory reporting standards, including ESG Reporting, reporting requirements under the countries AML/CFT/P framework.

ABOUT STREN & BLAN PARTNERS

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our clients' business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

THE AUTHORS



AMALA UMEIKE

Partner

amalaumeike@strenandblan.com



OMOBOLAJI BELLO

Associate

omobolajibello@strenandblan.com

Stren & Blan Partners

+234 (0)702 558 0053
4 Princess Folashade Ojutalayo
Cl, Lekki Phase 1, 106104, Lagos

www.strenandblan.com
contact@strenandblan.com
[@strenandblan](https://www.instagram.com/strenandblan)