NIGERIAN BANKING SECTOR

Protecting The Bottom Line Through Effective Anti-Money Laundering Compliance Strategies

A McPherson and OpenSpaces Whitepaper

McPherson

www.mcphersonllp.com

Open Spaces

www.openspacesltd.com

Table of Contents

Introduction

Quite recently, the Central Bank of Nigeria (CBN) released its Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018 (the "New Regulations"). These regulations were made *"pursuant to the requirement of the Financial Action Task Force (FATF) Recommendation 35 of effective, proportionate and dissuasive sanctions and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)'s recommendation..."*[1] in the same vein.

The New Regulations have been made subject to existing Anti- Money Laundering (AML) and Countering the Financing of Terrorism (CFT) Laws and Regulations and focus solely on the administrative sanctions regime for AML/CFT infractions committed by Money Deposit Banks (DMBs) and Other Financial Institutions (OFIs) under CBN's purview.

The difference of note arising from the New Regulations is that they place much stiffer pecuniary sanctions on banks and other financial institutions and also impose hefty personal liability upon the Directors, Executive and Chief Compliance Officers and other key management staff of these institutions.

In a nutshell, AML/CFT Compliance in Nigeria's Banking industry can no longer be trifled with as the sanctions for non-compliance have the potential of leaving a significant dent in industry players' profitability and continued existence.

1 See the circular to Banks and Other Financial Institutions from the CBN on the AML/CFT Regulations, dated 9th April, 2018.

Executive Summary

Nigeria's financial sector until recently, showed apathy towards compliance with Anti- Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations. This stemmed from feigned ignorance in the bid to maximise profit for relevant stake-holders. Failing to comply with these regulatory requirements aids corruption, collusion, and slowly erodes the reputational integrity of these financial institutions. To ignore the need for effective AML/CFT compliance could however lead to overall negative effects not only on the bottom line of the particular institution(s) concerned, but on the nation's development as a whole.

The Central Bank of Nigeria has developed a robust Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018, made pursuant to the requirement of the Financial Action Task Force (FATF) Recommendation 35 of effective, proportionate and dissuasive sanctions and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)'s recommendation. The New Regulations have stiffer pecuniary sanctions on banks and other financial institutions and also impose hefty personal liability upon the Directors, Executive and Chief Compliance Officers and other key management staff of these institutions.

In addition to the introduction of CBN's regulatory regime, Nigeria's suspension in July 2017, by the Egmont Group of Financial Intelligence Units (Egmont Group) elicited great condemnation and the Nigerian Senate in response to this suspension speedily passed the Nigerian Financial Intelligence Agency Bill (NFIA) (the Bill is pending presidential assent to become a law). This Bill if finally passed into law will have far-reaching consequences beyond the Intelligence unit's independence as it also seeks to impose heavier sanctions on erring financial institutions than what presently exists.

On the global scene, significant AML related fines have been imposed on financial institutions including the instance where the French Prudential Supervision and Resolution Authority (ACPR) fined BNP Paribas €10 million Euros for inadequate anti-money laundering controls following a 2015 inspection of the bank which revealed various shortcomings in the bank's provisions for preventing money laundering and financing of terrorism.

In the event that Nigerian banks are looking to be strong players in the global arena, they must meet up with the compliance standards set by regulators. Failure to meet necessary standards may result in large fines being imposed, revocation of operating licences or other types of undesirable enforcement actions.

In avoiding the pitfalls of poor AML/CFT compliance, a proactive bank or financial institution in keeping in line with global standards of AML/CFT compliance (as now enforced by the CBN) must ensure it adopts certain practices herein highlighted.

The Merits of Compliance

The introduction of the New Regulations brings to the fore the discussion on the merits of compliance with AML/CFT laws and regulations, and the average Nigerian professional's attitude towards compliance. Until a few years ago, compliance was largely viewed as esoteric concerns of the international community who do not have a full grasp of 'indigenous' challenges of developing nations such as Nigeria. This mindset has gradually changed as it is now clear that AML/CFT provisions have far-reaching ramifications on a burgeoning economy like Nigeria's and to ignore the need for effective compliance with these obligations could have an overall negative effect not only on the particular institution(s) concerned, but on the nation's development in the long run. To buttress this point, it is of interest to note that a number of studies have shown the correlation between money laundering and its negative impact on a nation's economic development.[2]

AML/CFT provisions have far-reaching ramifications on a burgeoning economy like Nigeria's and to ignore the need for effective compliance with these obligations could have an overall negative effect not only on the particular institutions concerned, but on the nation's development in the long run.

As our nation slowly exits from a hard hitting recession, her perception within the international business and investment community, especially the financial sector, is of utmost importance. The flow of Foreign Direct Investment will be greatly hindered by the perception of corruption and its perpetuation with both overt and covert collusion from our financial institutions. The financial sector in playing its part to deepen the economy must be perceived as a strong, independent and globally compliant institution. The perception that banks and their top management are deliberately failing to comply with regulatory requirements in this respect cannot not augur well for Nigeria's economy as a whole.

2 http://shodhganga.inflibnet.ac.in/bitstream/10603/31150/11/11_chapter5.pdf

Profitability Versus Compliance: Must One Suffer For The Other?

It is acknowledged that banks and other financial institutions, like other businesses, are set up to make profit and ensure an increase in shareholders' returns. This informs the drive to secure deposits and investments from the banked public through creative and innovative means. Profitability can however be effectively achieved without compromising AML/CFT compliance. This point becomes more cogent when one examines the negative impact of regulatory sanctions, fines and enforcement actions these institutions may suffer when compliance is not ensured.

Profitability can however be effectively achieved without compromising AML/CFT compliance

Nigeria's Regulatory Landscape

In understanding the arguments for compliance when weighed against the need to drive or maximise a bank or financial institution's profitability, it is pertinent to have a sense of Nigeria's regulatory landscape as it relates to money laundering and similar financial crimes.

The applicable laws addressing money laundering and its prevention in Nigeria include the **Economic and Financial Crimes Commission Act, 2004 (EFCC Act), the Money Laundering Prohibition Act, 2011 (MLPA) and the Central Bank of Nigeria Anti-Money Laundering/Combating Financial Terrorism Regulations, 2013 (CBN AML/CFT Regulations)** and the newly introduced **CBN Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018.**

Other relevant laws and regulations include the **Terrorism Prevention Act, 2011 (as amended)** and **Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2013**.

As stated earlier, the New Regulations are made subject to existing laws and regulations in place for AML/CFT. In this respect therefore, the provisions of the MLPA for instance are still applicable generally. However, when it comes to the sanctions to the meted upon entities under the purview of the CBN, the sanctions provided by the New Regulations will apply.

A very brief comparative analysis is presented below, highlighting the difference in sanctions contained in the MLPA when compared with the New Regulations.

Section 6(9) MLPA provides that failure of financial institutions to file the required report for transactions that have no economic justification, lawful objective, involves frequency that is unjustifiable or unreasonable or suspected by the financial institution to involve terrorist financing or inconsistent with known transaction patterns of the account or business relationship makes the financial institution liable on conviction to a fine of N1,000,000.00 for each day the offence continues.

The **New Regulations,** in this respect, provide penalties for failure to render suspicious transaction reports to the NFIU as a minimum penalty of ₦2, 500,000 on the Executive Compliance Officer, ₦2,000,000 on the Chief Compliance Officer and ₦20 million on the DMBs[3].

By **Section 10 of the MLPA**, banks are required to report to the EFCC in writing within 7 days and 30 days respectively, any single transaction, lodgement or transfer of funds in excess of N 5,000,000.00 for individual and N 10,000,000.00 for body corporate.

3 A minimum penalty on the Chief Compliance Officer is as follows;₦100,000 Unit Micro Finance Bank (MFB), ₦200,000 Finance Company (FC)/ Bureau De Change (BDC)/ State MFB, ₦500,000 National Primary Mortgage Bank (PMB). For the Other Financial Institutions (OFIs), ₦300,000 – Unit MFB, ₦500,000- BDC/ FC/State PMB, ₦1Million – National MFB/ State PMB, ₦2Million National PMB

It constitutes an offence where a bank fails in this regard and such bank is liable on conviction to a fine of not less than N 250,000.00 and not more than N 1,000,000.00 for each day the contravention continues.

Under the New Regulations, failure to render the required returns within the prescribed time attracts a minimum penalty of N750,000 on the Executive Compliance Officer, N500,000.00 on the Chief Compliance Officer, N5,000,000.00 on the DMB in the first instance and N200,000.00 for each day that the contravention continues. Outright failure to render the required reports attract a penalty of N1,250,000.00 on the Executive Compliance Officer, N1,000,000.00 on the Chief Compliance officer and N15,000,000.00 on the DMB.

Section 11 of the MLPA prohibits the opening or maintenance of anonymous accounts by a person, and where a bank contravenes this provision, it is liable on conviction to a fine of not less than N10, 000,000.00 but not more than N50, 000, 000.00.[4] The **New Regulations** provide that failure to have a policy on the prohibition of numbered or anonymous accounts will attract a penalty of N1, 000,000.00 on each member of the DMB's Board and N15, 000,000.00 on the DMB itself.

In addition to the above, the **CBN AML/CFT Regulations, 2013,** provide guidance on the steps to take to verify the identity of bank's customers- be they individuals or corporate entities- and provides hints for identifying 'red flags' that suggest the presence of money laundering and terrorist financing.[5] CBN expects strict compliance in this respect and any bank that does not take these obligations seriously not only stands a risk of fines being meted upon it but such institution is also exposed to the ultimate risk of losing its operating license.

4 See also Sections 13 and 16 of the MLPA.
5 See Schedules II and III of the CBN AML/CFT Regulations.

The EFCC, Its Watchdog Role and the Egmont Group Debacle

By virtue of **Section 1(1) (c) of the Economic and Financial Crimes Commission Act, 2004 (EFCC Act)**, the Economic and Financial Crimes Commission (EFCC) is the designated unit charged with the responsibility of co-ordinating the various institutions in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria[6]. The Nigerian Financial Intelligence Unit, (NFIU) is the department under the supervision of EFCC directly responsible for monitoring economic and financial crimes in this respect. The lack of independence of the NFIU has been a matter of contention for a prolonged period and has ultimately culminated into Nigeria's suspension in July 2017, by the Egmont Group of Financial Intelligence Units (Egmont Group).[7]

This suspension has elicited great condemnation and the Nigerian Senate in response to this suspension speedily passed the Nigerian Financial Intelligence Agency Bill (NFIA) (the Bill is pending presidential assent to become a law[8]). This Bill if finally passed into law will have far-reaching consequences beyond the Intelligence unit's independence as it also seeks to impose heavier sanctions on erring financial institutions than what presently exists.

6 Noteworthy is the fact that apart from the EFCC Act, the NFIU also derives its powers from the Money Laundering (Prohibition) Act, 2011 (As Amended) and the Terrorism Prevention Act, 2011 (As Amended).
7 A united body of Financial Intelligence Units (FIUs) providing a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing.
8 It is however important that the Nigerian President cannot wait a long time to assent to the said NFIA Bill as the Egmont Group has threatened to expel Nigeria permanently by January, 2018 if the Nigerian government fails to grant the NFIU autonomy as required. Also, the Financial Action Task Force (FATF) threatened to suspend its mission to visit Nigeria between the period of 20-21, November, 2017 should Nigeria fail to meet the demands of the Egmont Group. The purpose of the FATF's visit is to enable the body do a fact-finding in order to determine whether Nigeria has met the requirements for its admission into the Egmont Group. See Senate Passes Financial Intelligence Bill in One Week available at www.vanguardngr.com.

The above notwithstanding, there is no doubt that for the suspension of Nigeria's Financial Intelligence Unit's from the Egmont Group to be lifted, there will have to be a higher bar set for compliance with AML/CFT regulation and responsibilities which will ultimately be applicable to all stakeholders. In other words, it will not remain business as usual. Furthermore, there will be an ***even higher threshold*** to scale for lifting the suspension partly because Nigeria has not met the required conditions for the lifting of the ban before the March 2018 deadline set by the Egmont Group after which time, Nigeria could be expelled from the Group. There is no gainsaying that the time is up and the clock is ticking. Expulsion will have dire consequences for the Nigerian economy as a whole and the banking sector in particular.[9]

In this respect, the top banking regulator disclosed its intention to revoke licences of banks whose compliance with AML regulations is found to be below expectation. The CBN linked the low level of rendition of AML/CFT returns with resultant adverse effects on the economy.

CBN's Approach

Before the introduction of the New Regulations, CBN's approach had gradually become more compliance-focused as seen, for example, from the top banking regulator's announcement in May, 2017, of its dissatisfaction with the level of compliance with AML laws and regulations by banks and other financial institutions. In this respect, the CBN disclosed its intention to revoke licences of banks whose compliance with AML regulations is found to be below expectation. The CBN linked the low level of rendition of AML/CFT returns with resultant adverse effects on the economy. That same month, the CBN and the Securities and Exchange Commission (SEC) fined some top Nigerian banks the sum of N 200 million for committing approximately 16 regulatory infractions, ranging from violation of regulatory guidelines on anti-money laundering/ combating the financing of terrorism, rendition of reports on politically exposed persons etc., during the 2016 financial year.

The New Regulations clearly show that the terrain in getting stricter and AML/CFT compliance has become unavoidable.

9 The rumour mill is rife with news that global financial operators are already mulling the suspension of the use of Nigerian bank-issued bank cards abroad if the expulsion occurs.

Compliance in More Advanced Markets

In more developed financial markets such as Europe and the USA, we see a very strict expectation of compliance; with financial institutions being fined large sums of money for contravening AML regulations[10].

Nigerian and other Africa-owned banks have in this vein, not completely escaped this strict regulation in instances where subsidiaries or sister companies of the banks operating in foreign jurisdictions have at one point or the other been fined for violating AML regulations.

In the event that Nigerian banks are looking to be strong players in the global arena, these are the standards that they must aim to adopt.

In 2014 for example, the Financial Conduct Authority (FCA) in the UK fined Standard Bank Plc, a UK subsidiary of a South African Bank the sum of €7.6 million for failings relating to its AML policies and procedures regarding corporate customers and their links to politically exposed persons. Also, in 2013 a UK subsidiary of a leading Nigerian bank was fined £ 525,000 for failings in its AML controls for high risk customers.

On the global scene, AML related fines of significance include the June 2017 incident where the French Prudential Supervision and Resolution Authority (ACPR) fined BNP Paribas €10 million Euros for inadequate anti-money laundering controls following a 2015 inspection of the bank which revealed various shortcomings in the bank's provisions for preventing laundering and financing of terrorism. Also, in July, 2017, the Federal Reserve System (Fed) in the United States of America fined BNP Paribas $ 246 million for unsafe and unsound foreign exchange practices[11].

10 The New York State Department of Financial Services (NYDFS) and the UK Financial Conduct Authority issued penalties of more than $600 million for AML failings at Deutsche Bank from 2011 to 2015 in connection with securities trades which originates in Russia. See Sven Stumbauer: Five Steps for Anti-Money Laundering Compliance in 2017.
11 See BNP Paribas Fined Over Weaknesses in Anti-Money Laundering Controls. Available at https:// uk.reuters.com.. See also www.cnbc.com

Deutsche Bank was in January, 2017, fined the sum of $ 630 million by US and UK authorities for failing to prevent $10bn of Russian money being laundered, thus exposing the UK financial system to the risk of financial crimes[12].

The above examples show the global trend towards zero tolerance for money laundering and related activities. In the event that Nigerian banks are looking to be strong players in the global arena, these are the standards that they must aim to adopt.

Reputational Perception and the Bottom Line

It is important to note that in Nigeria, regulators have increasingly become awake to their responsibility in ensuring financial institutions comply with their AML/CFT obligations and as such, banks will be made to face appropriate consequences in the event that they remain non-compliant. As pointed out earlier, a number of Nigerian banks operate in more developed markets which makes them subject to the requirements of foreign based regulators. Operations of the Nigerian banks in these countries make them accountable to their local counterparts operating in such countries. Failure to meet necessary standards may result in large fines being imposed, revocation of operating licences or other types of undesirable enforcement actions. Furthermore, banks need to ensure compliance with their AML/CFT obligations in order to maintain their correspondent banking relationships as these relationships grant banks access to foreign markets. Maintenance of correspondent banking relationships necessitates that banks meet higher requirements to satisfy foreign banks that they are sufficiently risk averse. Also, Nigerian banks have their securities listed in one form or the other on foreign stock exchanges and the reputational risk of being regarded as non-compliant will have a negative impact on their stock/instrument performance.

12 See www.theguardian.com

The import of reputational perception and its resultant risk is showcased in the matter of the Federal Bank of the Middle East (FBME). Here, FBME, headquartered in Tanzania and the country's largest bank with assets in the tune of $2 billion, (although over 90% of its assets and global banking business are located in Cyprus) started to encounter challenges when the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) tagged the bank a 'foreign financial institution of primary laundering concern' and proposed steps to shut FBME out of the US financial system. Following this pronouncement, the Central Bank of Cyprus (CBC) took over the management of the bank's operations in Cyprus. The CBC feared the FinCEN pronouncement would deal a serious blow to FBME's operations, endangering the stability of the Cypriot financial system and thus risk depositors' funds. The Central Bank of Tanzania, Bank of Tanzania (BoT), took control of FBME's Tanzanian operations, protecting the stability of the Tanzanian banking system and the safety of customer deposits[13].

This is not a scenario one would hope to see played out in Nigeria or with 'Nigerian interests' domiciled in jurisdictions outside Nigeria due to compliance failure.

Failure to meet necessary standards may result in large fines being imposed, revocation of operating licences or other types of undesirable enforcement actions.

13 See Financial Services in Nigeria available at www.pwc.com

Conclusion

In avoiding the pitfalls herein highlighted, a proactive bank or financial institution in keeping in line with global standards of AML/CFT compliance (as now enforced by the CBN) must ensure it adopts certain practices that include:

1. Reviewing AML programs, assessing effectiveness with the aim to enhance them where necessary to meet up with ever-evolving regulatory developments.[14].

2. Reviewing and broadening AML risk assessment. Risk assessments of banks are meant to be tailored not only to their operations but also to their third-party relationships. In essence, banks should assess their potential risk exposure across the entire organisation and across their counterparties and affiliates.

3. Reviewing existing automated transaction-monitoring systems and procedures to ensure results of their monitoring efforts get considered when reassessing existing customers.

4. Ensuring that the requirements of the Customer Due Diligence (CDD) principles are well implemented across their global operations.

5. Developing and regularly enhancing existing policies and procedures to meet the technical requirements of the CDD rule and aligning this with the bank's risk appetite.

6. Creating a culture of compliance in the bank and as such focusing on the achievement of compliance goals and not just financial goals.

14 An example of regulatory changes are the NYDFS anti-terrorism and anti-money-laundering rule which requires that institutions ensure their transaction monitoring and filtering programs are designed to comply with regulatory standards and expectations; that financial institutions adopt and submit either an annual board resolution or a senior officer compliance finding that confirms compliance with the NYDFS regulation beginning April 15, 2018 See Sven Stumbauer: Five Steps for Anti-Money Laundering Compliance in 2017.

7. Utilising sophisticated IT compliance systems to train their employees in the use of the technology. Such systems should be upgraded to meet the demands of current challenges and be well integrated into the banks' day-to-day operations.

8. Transforming the role of their compliance departments from that of adviser to one that emphasises active risk management and monitoring.

9. Ensuring independence of the internal audit function.

10. Ensuring active Board oversight and participation in the compliance regime.

In essence, the import of compliance must be underscored when looking holistically at a bank or financial institution's profitability.

In essence, the import of compliance must be underscored when looking holistically at a bank or financial institution's profitability.

From the above, it is the writer's view that compliance does not hinder an institution's profitability but on the contrary enhances it as it shields such institution from regulatory sanction/ enforcement action that may prove very costly (both monetarily and reputation wise) – primarily to the institution involved and to the nation's economy as a whole.

The role of compliance departments in these institutions and the resources and expertise they utilise is therefore crucial and cannot be dispensed with.

It is hoped that as the Nigerian financial sector continues to deepen, more effective tools will be deployed to ensure compliance without adversely affecting the crucial bottom line for the desired maximisation of profitability, whilst also securing market and sector integrity.

A Mcpherson and Openspaces Collaboration

Authors

Yetunde Olasope
Partner, McPherson
Barristers and Solicitors

Adeyemi Johnson
CEO OpenSpaces

Profile

McPherson Barristers and Solicitors (McPherson) and OpenSpaces Compliance Consultants Limited (OpenSpaces) are engaged in a collaborative effort to deliver world class Compliance and Regulatory Advisory Services to identified clients within Nigeria, Africa and beyond.

OpenSpaces operates out of the United Kingdom and is a regulation and compliance consulting firm that provides advice on regulation and compliance to a wide range of clients, while McPherson is a full service firm of legal practitioners based in Nigeria and renders quality legal and regulatory compliance services to both its local and international clients.

The combined experience of McPherson and OpenSpaces, makes us highly competent to develop and deliver world class Compliance and Regulatory Consulting Services to clients in Nigeria and beyond.

McPherson
www.mcphersonllp.com

Open Spaces
www.openspacesltd.com

design: 2018 Theo