CML 101: AML/CFT

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Overview of Money Laundering Act 2011: Implications of the provisions for Insurance Industry.

Outline

- Introduction
- What is Money Laundering
- Reasons for Money Laundering
- Money Laundering Legislation
- Salient Provisions: MLPA and NAICOM
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- Development on hand
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Module Objectives

- Understanding the law and regulations around AML/CFT.
- Eliciting respect for the law and regulations.
- Understanding where you stand; a stakeholder.
- Understanding the need to develop an inquisitive mind.
- Building competencies, confidence and reliability.

Introduction

- Anti-money laundering (AML) and combating the financing of terrorism (CFT) have become significant global concerns, particularly in the wake of terrorist attacks world over.
- The increased attention is in recognition of the fact that money laundering and terrorist financing are global phenomena and that these criminal activities pose major threats to international peace and security and could also seriously curtail national development and progress.
- AML/CFT laws not only designate money laundering and predicate offences but also prescribe criminal sanctions for non-compliance with the relevant laws and regulations.
- This paper aims to shed some light on the development of anti-money laundering Legislation in Nigeria and the provisions of the Money Laundering Prohibition Act 2011 (as amended by Act No 1 of 2012), and Guidelines for Anti-Money Laundering/Combating Financing of Terrorism for the Insurance Industry in Nigeria.

What is Money Laundering?

- "Money laundering is the processing of criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source. Terrorist Financing (FT) includes the financing of terrorist acts, and of terrorists and terrorist organizations." - 15.1Guidelines for Anti-Money Laundering/Combating Financing of Terrorism for the Insurance Industry in Nigeria, 2011.

- Deception is key attribute of Money laundering.

- Money laundering is a derivative crime
- As communication and transport have become significantly more advanced in the past few decades, money laundering has become more sophisticated and in many cases harder to detect.
- In Nigeria, billions of Naira are looted through embezzlement and other forms of corruption schemes.
- International Monetary Fund estimates $900 billion to $2.25 trillion annually are laundered worldwide

Reasons for Money Laundering

Criminals want to:

- Avoid detection and prosecution
- Increase profits
- Avoid seizure of illegally acquired wealth
- Appear legitimate
- Tax evasion

They are trying to conceal the origin of the illegally obtained money.

Money Laundering Legislation

Nigeria has undertaken several initiatives aimed at combating money laundering some of these have arguably been in response to international pressure.

- The first step was in 1989, with the National Drug Law Enforcement Agency (NDLEA) Act, which brought Nigeria in line with the Vienna Convention – (United Nations Convention on Illicit Traffic in Narcotics and Psychotropic Substances, 1988).

Other legislations to combat money laundering include the following:

- 1991 Banks and Other Financial Institutions Act (BOFIA), as amended.
- 1993 Advanced Fee Fraud and Other Related Offences Decree.
- 1994 Failed Banks (Recovery of Debt and Financial Malpractice in Banks) Act.
- 1995 Money Laundering Act (amended 2002).
- 1995 Advance Fee Fraud and Other Related Offences Decree (creating "419" offences).

Money Laundering Legislation

2000 Corrupt practices and other Related Offenses Act (establishing the independent Corrupt Practices Commission)

- **2002 Electoral Act (replaced 2001 Electoral Act).**
- **2002 Economic and Financial Crimes Act (establishing the Economic and Financial Crimes Commission). 2004 Money Laundering (Prohibition) Act**
- **2010 SEC AML/CFT Compliance Manual for Capital Market Operators.**
- **2011 Money Laundering (Prohibition) Act as amended.**
- **2011 Guidelines for Anti-Money Laundering/Combating Financing of Terrorism for the Insurance Industry in Nigeria.**
- **2011 Terrorism Prevention Act amended by 2013 Terrorism (Prevention) (Amendment) Act.**
- **2013 CBN (AML/CFT in Banks and Other Financial Institutions) Regulations**

Money Laundering Prohibition Act

The 2011 Money Laundering Prohibition Act:

- **The Act provides for the repeal of the Money Laundering Act, 2004. The 2011 Act was amended in 2012.**
- **It makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime or an illegal act.**
- **It provides appropriate penalties and expands the scope of regulatory authorities to address the challenges of money laundering.**

MLPA 2011 as amended is divided into 3 parts namely:

- **Part 1: Consists of 14 sections and basically deals with the day to day operations of institutions.**
- **Part 2: Consists of 5 sections (sections 15-19) and it deals with resultant offences of not adhering to Part 1.**
- **Part 3: Consists of 7 sections and deals with the miscellaneous part of the law. It reinforces the powers of the regulatory bodies.**

Salient Provisions MLPA

Limitation To Make or Accept Cash Payments: Sec. 1(a) and (b) provides:

- **No person (individual) shall except in a transaction through a financial institution make or accept cash payment of a sum exceeding ₦5,000,000 or its equivalent.**

- **No body corporate shall except in a transaction through a financial institution make or accept cash payment of a sum exceeding ₦10,000,000 or its equivalent.**

Identification of Customers:

- **S. 3 provides:**

- **A Financial Institution or Designated Non-Financial Institution shall verify its customer's identity and update all relevant information before opening an account for, issuing a passbook to, entering into any fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer and during course of relationship with the customer.**

Salient Provisions MLPA cont.

Identification of Customers:

- **Section 3(1) provides that a Financial Institution and a Designated Non-Financial Institution shall-**

(a) **identify a customer, whether permanent or occasional, natural or legal person, or any other form of legal arrangements, using identification documents as may be prescribed in any relevant regulation;**

(b) **verify the identity of that customer, using reliable, independent source documents, data or information; and**

(c) **identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the Financial**

Salient Provisions MLPA cont.

Mode of Customer Identification:

Initially, an individual was required to provide proof of his identity by valid original of an official document bearing his names and photograph, as well as:

- **Address by original receipts issued by a public utility within the past three months.**
- **While a body corporate was required to provide proof of its identity by presenting its Certificate of Incorporation and other valid documents attesting to its existence.**
- **Conduct on-going due diligence on a business relationship;**
- **Scrutinize transactions undertaken during the course of the relationship to ensure that they are consistent with the knowledge of the customer, their business and risk profile and where necessary, the source of funds.**
- **Ensure that documents, data or information collected under the customer due diligence process is kept up-to-date and relevant**

Salient Provisions MLPA cont.

Mode of Customer Identification:

- **Undertake reviews of existing records for higher risk categories of customers;**

- **Periodic reviews where there is a suspicion of money laundering, terrorist financing, or doubts about the adequacy of previously obtained customer identification data regardless of any exemptions or thresholds**

Customer Identification and Risk Management:

FIs and DNFIs are required to take enhanced measures to manage and mitigate risks.

- **Where higher risks are identified, take simplified measures to mitigate the risks.**
- **Where lower risks are identified, take simplified measures to manage and mitigate the risks except in cases where there is suspicion of money laundering or terrorist financing.**

Salient Provisions MLPA cont.

Customer Identification:

Politically Exposed Persons Where the customer is a Politically Exposed Person, the FI or DNFI shall, in addition;

- **Put in place appropriate risk management systems; and**
- **Obtain senior management approval before establishing and during any business relationship with a Politically Exposed Person.**

Reporting obligations: Suspicious Transactions Section 6 provides:

(2) An FI or DNFI shall immediately report any suspicious transaction to the EFCC.

(4) The EFCC shall acknowledge receipt of any report received and may demand such additional information as it may deem necessary.

(5)(b) The Chairman of the EFCC or authorised representatives shall place a Stop Order not exceeding 72 hours, on any account or transaction if such account or transaction is suspected to be involved in any crime

Salient Provisions MLPA cont.

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Reporting obligations: Suspicious Transactions

- **This period could be extended where an application is made to the Federal High Court for such an extension. The Federal High Court also has power to order that the funds and the accounts or securities referred to in the FI or DNFI report should be blocked forthwith.**

- **If the customer is a Politically Exposed Person, the FI or DNFI shall, put in place appropriate risk management systems; and**

- **Obtain senior management approval prior to and during any business relationship**

Salient Provisions MLPA cont.

- **Preservation of Records Section 7 provides:**
- **An FI and DNFI shall preserve record of customers identification and information on transactions for at least 5 years after the transaction or closing the account.**
- **Records of reports of suspicious transactions must be preserved for 5 years after making the report.**

Awareness programmes: Section 9:

- **An FI and DNFI shall develop programmes to combat the laundering of the proceeds of a crime or other illegal acts such as designation of compliance officers at management level at its headquarters and at every branch, regular training programmes for its employees, centralisation of information and establishment of an internal audit unit.**

Who must report Money Laundering?

- Financial entities (banks, credit unions)
- Insurance companies, broker or agents
- Securities dealers
- Persons engaged in foreign exchange dealings
- Money services businesses
- Accountants and accounting firms
- Lawyers
- Real estate brokers
- Casinos
- Individuals

Salient Provisions MLPA cont.

What must be reported?

- **Suspicious activities**
- **Large cash transactions over ₦5,000,000 or its equivalent in case of individual**
- **₦10,000,000 in case of a body corporate**
- **Cross-border currency or monetary instruments in excess of $10,000**

Deadline for reporting:

- **Deadline for reporting a suspicious transaction is immediately after the transaction occurred.**
- **Deadline for reporting cash transaction exceeding the stated amount is 7 days after the transaction occurred.**

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Salient Provisions- NAICOM

General Requirements: Objective and Scope of the Guidelines.

- **All insurance business shall be conducted in compliance with the Insurance Act, National Insurance Commission Act and the AML/CFT legislation.**
- **The obligation to establish AML/CFT program applies to Insurance Companies only. However, each Insurance Company is required to integrate its Agents and Brokers into its AML/CFT programmes and to monitor their compliance with its programme.**
- **Each Insurance Company is required to state that it will comply promptly with all the requests made in pursuant to AML/CFT legislation and provide information to NFIU.**
- **Each Insurance Company's shall implement procedures for responding to authorised requests for information on AML/CFT.**
- **Insurance Companies shall not in any way inhibit the implementation of the requirements in the guidelines.**
- **Insurance Companies are required to direct their employees in writing to always co-operate fully with the Regulators and law enforcement agents and to promptly report suspicious transactions to the NFIU.**

Salient Provisions- NAICOM

- **To discharge the statutory responsibility to prevent AML/CTF every insurer needs to have an AML/CFT program which should, at a minimum, include:**

  (i) Policy holder identification (KYP), CDD and EDD;

  (ii) Suspicious and currency transactions reporting;

  (iii) Internal policies, procedures, and controls;

  (iv) Appointment of a Chief Compliance Officer;

  (v) Training of Employees/Agents;

  (vi) Records preservation;

  (vii) Ongoing training;

  (viii) Internal Control/Audit

Salient Provisions- NAICOM

The guidelines provides for sanctions:

- Against Insurance Companies: Non compliance shall attract fine of ₦500,000 in addition to any other specific punishment under the provision of the AML/CFT legislations.
- Against Officers: infraction and non compliance by director, senior management, manager or employee attracts the following:
  - (i) first infraction, *be warned in writing by the NAICOM*;
  - (ii) second infraction, direction by NAICOM to terminate/blacklist the officer from working in the insurance industry; and
  - (iii) The names of the penalised officer to be published in the financial statements and newspapers;
  - (iv) The officer shall also be reported to the professional body, for appropriate disciplinary action;

Note: in addition particulars of the insurance company and/or officer(s) involved shall be forwarded to the relevant authorities such as EFCC, NPF, ICPC, etc for possible criminal investigation and prosecution

Salient Provisions- NAICOM

The guidelines is divided into two parts:

- **Part A:**

  Has 15 provisions on various heads of guidelines with four appendices.

- **Part B:**

  Has very elaborate and comprehensive guidance note on know your policyholder (KYP) for the insurance industry.

The guidelines for AML/CFT for the insurance industry is made pursuant to the Insurance Act, National Insurance Commission Act and the AML/CFT legislation.

Offences and penalties

MLPA provides for offences and penalties which regulation and NAICOM Guidelines is in consonance with.

- Section 15(1) – prohibits money laundering in Nigeria.
- (2) – a person or body corporate commits money laundering if;
  a. conceals or disguises the origin of;
  b. converts or transfers;
  c. removes from the jurisdiction;
  d. acquires, uses, retains or take possession or control of;

  any fund or property knowingly or reasonably ought to have known that such fund or property forms part of proceeds of an unlawful act.
- Insurance Companies shall not in any way inhibit the implementation of the requirements in the guidelines.
- Insurance Companies are required to direct their employees in writing to always co-operate fully with the Regulators and law enforcement agents and to promptly report suspicious transactions to the NFIU.

Offences and penalties cont.

- **Failure to render Suspicious Transaction Report immediately by a Financial Institution or DNFI is an offence that attracts a fine on conviction of ₦1m for each day during which the offence continues. S.6 (9).**
- **CBN, SEC, NAICOM and any other relevant regulatory authority may impose a fine of not less than ₦1m for a capital brokerage and Financial Institutions and N5m in case of Bank and in addition to suspend any licence issued to Financial Institution or DNFI for failure to put in place internal procedures, policies and controls to combat the laundering of the proceeds of crime and other illegal acts. S. 9(2).**
- **Failure to report to EFCC within 7 days single lodgement or transfer exceeding allowable threshold by a Financial Institution or DNFI is an offence that on conviction attracts a fine of not less than ₦250,000 and not exceeding ₦1m for each day of the contravention continues. S.10(3)**

Offences and penalties cont

Offences and Penalties

- Establishing a shell bank or opening and maintaining correspondent bank relationship with a shell bank is an offence that attracts liability on conviction to:
  - For an individual a term of imprisonment for not less than 2 years and not more than 5years.
  - For a Financial Institution or corporate entity for a fine of not less than ₦10m but not more that ₦50m n addition to:

    ✓Prosecution of the principal officers of the corporate entity.

    ✓Winding up and the prohibition of its incorporation or constitution in any guise. S.11(4).

- A person who collaborates in concealing or disguising the genuine nature, origin or ownership of resources or property derived from traffic in drugs and narcotics or organised criminal group – is liable on conviction to not less than 7 years and not more than 14years imprisonment;

- For a company, a fine of not less than 100% of the funds/assets acquired as a result of the offences and may include withdrawal of license and further regulatory action for persistent commission of the offence. S. 15 (3) and (4).

Offences and penalties cont

Offences and Penalties

- S. 15 (6): The various predicate criminal activities

- Racketeering
- Drug trafficking
- Counterfeiting and piracy of products
- Extortion
- Corruption
- Fraud
- Kidnapping,
- Illegal restraints and hostage taking
- Human trafficking
- Migrant smuggling
- Sexual exploitation

- Terrorism
- Terrorist financing
- Tax evasion
- Theft
- Robbery
- Forgery
- Piracy
- Smuggling
- Illegal mining
- Insider trading
- Market manipulation
- Illegal bunkering

Offences and penalties cont.

Liability of Directors or employees

- Under section 16 - A person who being a director or employee of a Financial Institution (FI) warns or intimates (tipping-off) the owner of the funds, destroys records or makes cash payment exceeding authorised amounts or fails to report international transfer of funds is liable to:
  - Imprisonment not less than 2 years or fine not less than ₦10million or both,
  - May be banned indefinitely or for a period of 5 years from practicing the profession,
  - For a director imprisonment not less than 3 years or fine not less than ₦10m or both or ₦25m in case of an entity.
  - Where as a result of serious oversight or flaw in internal control, further sanctions may be imposed by the Disciplinary authority in charge of the FI.

Exemption from Liability of Directors or employees

Under S. 6(10) - The Directors, officers and employees of any FI or DNFI who complies with the provisions of the Act, in good faith, are not liable to having any civil or criminal proceedings bought against them by their customers for making a money laundering report.

Offences and penalties cont.

- **Destruction of records to be kept, carrying out transactions under false identity, making or accepting cash payments exceeding the limit, failure to report an international transfer as required is liable to imprisonment for a term not less than 3 years or fine of ₦10,000,000 or to both, in the case of an individual and ₦25,000,000 in the case of a body corporate**.

Development on hand

Nigeria's Money Laundering (Prevention & Prohibition) Bill, 2016

- President Muhammadu Buhari in January, 2016 sent to the National Assembly the bill for the repeal of the Money Laundering (Prohibition) Act 2011 and the 2012 amendment Act.
- The bill proposes to make comprehensive provisions to prohibit the laundering of the proceeds of criminal activities, expand the scope of money laundering offences, provide protection for employees of various institutions, bodies and professions who may discover money laundering, enhance customer due diligence, provide appropriate penalties and expand the scope of supervisory bodies whilst recognising the role of certain self – regulatory organisations; address the challenges faced in the implementation of a comprehensive anti – money laundering regime in Nigeria

Development on hand cont.

Nigeria's Money Laundering (Prevention & Prohibition) Bill, 2016

- Provisions already generating controversy amongst interested and affected stakeholders.
- For e.g.:
  - In the bill the definition of Designated Non-financial Business & Professionals (DNFBs) has been expanded to include law firms and notaries, estate firms and brokers, trust companies, NGOs, religious organisations and charities, consultants and consulting firms, etc.
  - Introduction of Bureau for Money Laundering Control (the Bureau) which is the body proposed to take over the functions of Special Control Unit on Money Laundering (SCUML).
  - EFCC Position: bill is antithetical to the extant AML regime and should not be passed into law.

Conclusion

- Financial Institutions should recognise they are exposed to various money laundering and terrorist financing risks and possible financial and reputational damage if they violate relevant laws and regulations.
- Financial Institutions should adopt and implement policies stating their commitment to comply with AML/CFT obligations under the law.
- The need to be perceived as being compliant and pursuing best practices in the conduct of the business of a company, is a unique selling point which could enhance customer goodwill and competitive advantage, especially as good business ethics has acquired increasing pride of place

Conclusion

- The ultimate responsibility for AML/CFT compliance is placed on the Board/Top Management. It is, therefore, imperative that the Board ensure that a comprehensive compliance programme, including internal control measures and the training and education of staff, etc., is in place.

- As stakeholders in this shared responsibility, the resolve is to take ownership and not be a passive by-stander.

Thank You!