



## CENTRAL BANK OF NIGERIA

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FPR/DIR/GEN/CIR/03/003

### CIRCULAR TO BANKS AND OTHER FINANCIAL INSTITUTIONS:

#### **AMENDMENT OF ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM (AML/CFT) REGULATION, 2009 (AS AMENDED) TO ALIGN WITH MONEY LAUNDERING (PROHIBITION) ACT (MLPA), 2011 (AS AMENDED), TERRORISM (PREVENTION) ACT (TPA), 2011 (AS AMENDED) AND THE REVISED FATF 40 RECOMMENDATIONS (2012)**

Further to our circulars dated 5<sup>th</sup> May, 2010, referenced FPR/DIR/CIR/AML/CFT/01/001 and 5<sup>th</sup> December, 2011 referenced FPR/DIR/CIR/GEN/01/025, the Central Bank of Nigeria (CBN) has reviewed the CBN AML/CFT Regulation 2009 (as amended) and aligned same with the Money Laundering (Prohibition) Act (MLPA), 2011 (as amended); Terrorism (Prevention) Act (TPA), 2011(as amended); and the Revised Financial Action Task Force (FATF) 40 Recommendations issued in February, 2012.

In view of the need to carry along operators, other stakeholders and ensure that the reviewed Regulation meets international best practice and FATF requirements, the Bank deems it fit to expose the draft document for comments from relevant stakeholders prior to its gazetting and release to the industry. Consequently, the amended Regulation is hereby exposed for comments from stakeholders to enable the CBN finalize the document and issue same subsequently. The exposure draft can be accessed at the CBN website [www.cbn.gov.ng](http://www.cbn.gov.ng).

Comments should be forwarded in hard or soft copies. Hard copies should be sent to the Acting Director, Financial Policy & Regulation Department, Central Bank of Nigeria, Abuja, while soft copies be e-mailed to [uaobot@cbn.gov.ng](mailto:uaobot@cbn.gov.ng) and [abisah@cbn.gov.ng](mailto:abisah@cbn.gov.ng) **not later than 17<sup>th</sup> May, 2013**. Due to the urgent need for the final document, any comments received later than this deadline may not be considered in updating the draft Regulation, please.

**I.T. Nwacha**  
Ag. Director, Financial Policy & Regulation Department

**AMENDMENT OF ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM (AML/CFT) REGULATION, 2009 (AS AMENDED) TO ALIGN WITH MONEY LAUNDERING (PROHIBITION) ACT (MLPA), 2012, TERRORISM (PREVENTION) ACT (TPA), 2013 AND THE REVISED FATF 40 RECOMMENDATIONS (2012)**

Further to our circulars dated 5<sup>th</sup> May, 2010, referenced FPR/DIR/CIR/AML/CFT/01/ 001 and 5<sup>th</sup> December, 2011 referenced FPR/DIR/CIR/GEN/01/025, the following amendments are hereby made to the under-listed sections of the AML/CFT Regulation, 2009 (as amended):

**A. SCOPE OF OFFENSIVE PROCEEDS**

**Targeted Financial Sanctions Related To Proliferation**

Insert as section 1.1.2 after 1.1.1 in the AML/CFT Regulation, 2009 the following:

Financial institutions are required to report to CBN & NFIU any assets frozen or actions taken in compliance with the prohibition requirements of the relevant United Nations Security Council Resolutions (UNSCRs) on terrorism, proliferation of weapons of mass destruction and their financing, including attempted transactions.

**B. MEASURES TO BE TAKEN AGAINST ML/TF**

Insert in section 1.2 of the AML/CFT Regulation, 2009 after the words “where this is required or necessary” the following:

Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in this Regulation or for refusing to be a witness to facts likely to constitute an offence under ML/TF laws, regulation or any other law.

**C. CDD MEASURES**

**Beneficial Ownership**

Include the following in section 1.4.3 of AML/CFT Regulation, 2009:

This can be done through, but not limited to, the following:

**(a) For legal persons:**

- (i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person;

(ii) To the extent that there is doubt under (i) above as to whether the person(s) with the controlling ownership interest are the beneficial owners or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means; and

(iii) Where no natural person is identified under (i) or (ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

**(b) For legal arrangements:**

i) Trusts – the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); and

ii) Other types of legal arrangements – the identity of persons in equivalent or similar positions.

Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

The relevant identification data may be obtained from a public register, from the customer or from other reliable sources.

**D. CUSTOMER DUE DILIGENCE (CDD) AND TIPPING-OFF**  
**Customer Due Diligence And Tipping-Off**

Insert as section 1.8.3 after 1.8.2 in the AML/CFT Regulation, 2009 the following:

If, during the establishment or course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to money laundering or terrorist financing, then the institution should:

(a) Identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional, and irrespective of any exemption or any designated threshold that might otherwise apply; and

- (b)** Make a suspicious transaction report (STR) to the Nigerian Financial Intelligence Unit (NFIU), in accordance with FATF Recommendation 20.

In cases where financial institutions form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they are permitted not to pursue the CDD process, and instead are required to file an STR.

Financial institutions are required to ensure that their employees are aware of and sensitive to these issues when conducting CDD.

When assessing risk, financial institutions are required to consider all the relevant risk factors before determining what the level of overall risk is and the appropriate level of mitigation to be applied.

Financial institutions are also allowed to differentiate the extent of measures, depending on the type and level of risk for the various risk factors. In a particular situation, they could apply normal CDD for customer acceptance measures, enhanced CDD for ongoing monitoring or vice versa.

## **E. POLITICALLY EXPOSED PERSONS (PEPs) AND FINANCIALLY EXPOSED PERSONS (FEPS)**

### **Definition of FEPs**

Insert as section 1.10.1.2 after section 1.10.1 of the AML/CFT Regulation, 2009 the following:

Persons who are or have been entrusted with a prominent function by an international organization, including members of senior management such as directors, deputy directors and members of the board or equivalent functions other than middle ranking or more junior individuals.

## **F. SUSPICIOUS TRANSACTION REPORTING**

Include the following in section 1.16.1 of AML/CFT Regulation (2009) under “Definition of a Suspicious Transaction” after the words “economic rationale”:

- (1) Where a transaction—
- (a)** involves a frequency which is unjustifiable or unreasonable;
  - (b)** is surrounded by conditions of unusual or unjustified complexity;
  - (c)** appears to have no economic justification or lawful objective; or

(d) in the opinion of the Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious.

The Financial Institution is required to seek information from the customer as to the origin and destination of the fund, the aim of the transaction and the identity of the beneficiary.

(2) A Financial Institution is required to immediately— (not later than 72 hours):

- (a) draw up a written report containing all relevant information on the transaction, together with the identity of the principal and (where applicable) of the beneficiary or beneficiaries;
- (b) take appropriate action to prevent the laundering of the proceeds of a crime or an illegal act; and
- (c) report any suspicious transaction and actions taken to the NFIU.

(3) This provision shall apply whether the transaction is completed or not.

(4) A Financial Institution which fails to comply with these provisions is liable to a fine of N1, 000,000 for each day during which the offence continues.

(5) The directors, officers and employees of Financial Institutions who carry out their duties in good faith shall not be liable to any civil or criminal liability, or have any criminal or civil proceedings brought against them by their customers.

## **G. SANCTIONS**

Delete the sentence “However, the amount of penalties for infraction still remains at the maximum limit of N2 million per infraction” in section 1.18.1.2 of the AML/CFT Regulation, 2009 (as amended) under sanctions and replace it with “The amount of penalties for infraction is as provided for in the MLPA, 2012, TPA, 2013, other relevant laws and regulations.”

Insert a new section 1.18.1.3: **Other Offences**

### **(1) Offences By Individuals**

**Any person who—**

- (a) being a director or employee of a Financial Institution warns or in any other way intimates the owner of the funds involved in any reportable transaction about the report he is required to make or the action taken on it or who refrains from making the report as required;
- (b) destroys or removes a register or record required to be kept under this Regulation or ML Act;

- (c) carries out or attempts under a false identity to carry out any of the transactions contained in this Regulation or ML Act;
- (d) makes or accepts cash payments exceeding the amount authorized under this Regulation or ML Act;
- (e) fails to report an international transfer of funds or securities required to be reported under this Regulation or ML Act;
- (f) being a director or an employee of a Financial Institution is liable to fine of N10,000,000 in the case of individual and N25,000,000 in the case of a body corporate.
- (g) A person found culpable of an offence under this section may also be banned indefinitely or for a period of 5 years from practicing the profession which provided the opportunity for the offence to be committed.

**(2) Offences by body corporate**

Where an offence under this Regulation which has been committed by a body corporate is committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary, or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate where applicable, shall be liable to be proceeded against or fined as provided in (1)(f) above.

**H. PROHIBITION OF NUMBERED OR ANONYMOUS ACCOUNTS, ACCOUNTS IN FICTITIOUS NAMES AND SHELL BANKS**

**Insert immediately after section 1.18.2.2. of the AML/CFT Regulation (2009) the following:**

**(1)** A financial institution shall:

- (a) not enter into or continue correspondent banking relationships with shell banks; and
- (b) satisfy itself that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

**(2)** Any person, Financial Institution or corporate body that contravenes these provisions is liable to:

- a) a fine of not less than N10,000,000 but not more than N50,000,000 and in addition to:
  - (i) the prosecution of the principal officers of the corporate body, and
  - (ii) the winding up and prohibition of its constitution or incorporation under any form or guise.

## **I. OTHER FORMS OF REPORTING**

Replace section 1.18.3 of the AML/CFT Regulation (2009) under “Other Forms of Reporting” with the following:

- (1)** Financial Institutions are required to report to the NFIU in writing within 7 days any single transaction, lodgement or transfer of funds in excess of-
  - (a)** N5,000,000 or its equivalent, in the case of an individual; or
  - (b)** N10, 000,000 or its equivalent, in the case of a body corporate.
  
- (2)** A person other than a Financial Institution may voluntarily give information on any transaction, lodgement or transfer of funds in excess of—
  - (a)** N1,000,000 or its equivalent, in the case of an individual; or
  - (b)** N5, 000,000 or its equivalent, in the case of a body corporate.
  - (c)** Any Financial Institution that contravenes the provisions of this section shall be liable to a fine of not less N250,000 and not more than N1million for each day the contravention continues.

## **J. STR ON TERRORISM**

Delete the words “section 14 of the Terrorism (Prevention) Act (TPA), 2011” in paragraph 3 of section 1.18.3 of AML/CFT Regulation, 2009 (as amended) and replace it with the words “Section 31 of the Terrorism (Prevention) Act (TPA, 2011 (as amended))”.

## **K. FUNDS OR PROPERTY USED FOR TERRORIST ACTS**

- i. Delete the words “Terrorist financing offences extend to any person who willfully provides or collects funds by any means to directly or indirectly... by a terrorist organization or an individual terrorist” in section 1.24.1 of AML/CFT Regulation, 2009 and replace it with the following:

Terrorist financing offences extend to any person or entity who, solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to terrorists/terrorist organizations, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part to carry out a terrorist act by a terrorist or terrorist organization.

- ii. Insert the words “or entity” between the words “the person” and “alleged to” in line two of section 1.24.3 of AML/CFT Regulation, 2009.

## **L. RISK ASSESSMENT AND RISK BASED APPROACH**

### **Risk Assessment**

#### **1. Financial institutions are required to:**

- (a)** Take appropriate steps to identify, assess, and understand their ML/TF risks for customers, countries or geographic areas of their operations; and products, services, transactions or delivery channels.
- (b)** Document their risk assessments;
- (c)** Consider all the relevant risk factors before determining what is the level of the overall risk and the appropriate level and type of mitigation to be applied;
- (d)** Keep these assessments up to date; and
- (e)** Have appropriate mechanisms to provide risk assessment information to competent authorities and Self-Regulatory Bodies (SRBs).

When a financial institution suspects or has reasonable grounds to suspect that the amount involved in a transaction is the proceeds of a crime or an illegal act, it is required to obtain the identification of the customer notwithstanding that the amount involved in the transaction is less than US\$1,000 or its equivalent.

### **Risk mitigation**

#### **2. Financial institutions are required to:**

- (a)** Have policies, controls and procedures which are approved by senior management to enable them manage and mitigate the risks that have been identified (either by the country or by the financial institution);
- (b)** Monitor the implementation of those controls and enhance them, if necessary; and
- (c)** Take enhanced measures to manage and mitigate the risks where higher risks are identified.

Financial institutions are allowed to take simplified measures to manage and mitigate risks, if lower risks have been identified and the criteria (2) and (3) above are met. Simplified measures should not be permitted whenever there is a suspicion of ML/TF.

## **M. WIRE TRANSFERS**

Insert as section 1.26.12 after section 1.26.11 of the AML/CFT Regulation, 2009 the following:

### **Implementation of Targeted Financial Sanctions (Wire Transfers)**



Financial institutions are required to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, such as UNSCRs 1267 and 1373, and their successor resolutions.

## **N. FINANCING OF TERRORISM**

(1) A person or entity who, within or outside Nigeria—

(a) solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to terrorists or terrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part, commits an offence.

(b) possesses funds intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by a terrorist or terrorist groups, commits an offence.

(2) A person who knowingly enters into or becomes involved in an arrangement—

(a) which facilitates the acquisition, retention or control by or on behalf of another person of terrorist funds by concealment, removal out of jurisdiction, transfer to a nominee or in any other way ; or

(b) as a result of which funds or other property are to be made available for the purposes of terrorism or for the benefit of a specified entity or proscribed organization, commits an offence.

## **O. DEALING IN TERRORIST PROPERTY**

A person or entity who, knowingly—

(a) deals directly or indirectly, in any terrorist funds;

(b) acquires or possesses terrorist funds;

(c) enters into or facilitates, directly or indirectly any transaction in respect of terrorist funds;

(d) converts, conceals or disguises terrorist funds or property; or

(e) provides financial or other services in respect of terrorist fund or property at the direction of a terrorist or terrorist group, commits an offence.

**P. FUNDS TO SUPPORT TERRORISM**

A person or body corporate who, in any manner, directly or indirectly, willingly provides, solicits or collects any fund or attempts to provide, solicit or collect any fund with the intention or knowledge that they will be used, in full or in part to finance a terrorist or terrorist organization, commits an offence.

**Q. FUNDS OR PROPERTY USED FOR TERRORIST ACTS**

(1) A person or body corporate, within or outside Nigeria, who—

(a) solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means, whether legitimate or otherwise, to—

(i) terrorist organisation; or

(ii) individual terrorist, directly or indirectly, with the unlawful intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit or facilitate an offence under this regulation or ML Act;

(b) attempts to do any of the acts specified in paragraph (a) above; or

(c) possesses funds with the unlawful intention that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorists or terrorist groups, commits an offence.

(2) Any person who knowingly enters into or becomes involved, participates as an accomplice, organizes or directs others in an arrangement as a result of which funds or other property is to be made available for the purpose of terrorism or for the benefit of an individual terrorist, terrorist organization or proscribed organization, commits an offence.