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Examination of the Anti-Money Laundering/Combating Financing of Terrorism Provisons for Legal Practitioners in Nigeria

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Abstract

The role of legal practitioners in Nigeria has come under increasing scrutiny in the global fight against money laundering and the financing of terrorism (AML/CFT). As gatekeepers of the financial and legal system, lawyers are often exposed to transactions that may be exploited to conceal illicit funds or facilitate terror-related financing. This article interrogates the legal and regulatory framework governing the application of AML/CFT provisions to legal practitioners in Nigeria, particularly under the *Money Laundering (Prevention and Prohibition) Act 2022*, the *Terrorism (Prevention and Prohibition) Act 2022*, and the guidelines of the Nigerian Financial Intelligence Unit (NFIU). It highlights the professional obligations of lawyers to conduct due diligence, maintain client identification procedures, and report suspicious transactions, while critically examining the tension between these obligations and the principle of attorney–client privilege. The analysis situates Nigeria's AML/CFT framework within international standards, especially the Financial Action Task Force (FATF) Recommendations, and explores the challenges of enforcement, compliance culture, and institutional oversight within the Nigerian Bar. The article argues that while Nigeria has made significant strides in aligning its AML/CFT framework with global best practices, practical implementation remains weak due to resistance from practitioners, gaps in awareness, and institutional

bottlenecks. It concludes by proposing reforms to balance professional ethics with regulatory compliance, strengthen collaboration between regulators and the Nigerian Bar Association, and ensure that lawyers contribute effectively to national and global efforts against financial crime and terrorism financing.

Introduction

Money laundering is a process where the earnings of crime and the ownership of the earnings are transformed and integrated into the society in order that the earnings would seem to come from legal sources/avenues. In another route, money laundering is a procedure whereby illegally acquired money/proceeds (dirty money) would appear as though it is legally earned/acquired (clean money).[1] Therefore, money laundering is any act that conceals the illicit nature or existence, location or application of proceeds of crime/criminality.

The feature of the global anti-money laundering regime is the extensive range of legislative, regulatory and policy framework, guidelines, standards and institutions and the conscription of private, non-state actors into the fight against "dirty" money. This has involved a number of obligations being imposed on those believed to be in a position to prevent the movement of illicit funds into the legitimate financial system. This is referred to as "responsibilisation strategy" which means a system whereby responsibility for the prevention and control of money laundering is passed to private entities and bodies.

Banks and other financial institutions were the first to be assigned a role in the prevention of money laundering with expectations of improved customer due diligence, identification procedure and record keeping forming a key objective of the Financial Action Task Force's (FATF) original recommendations. The FATF is an international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing. The group is the global money laundering and terrorist financing watchdog. It sets international standards that aim to prevent these illegal activities and the harm they cause to society and has its headquarters in Paris whose President is Raja Kumar of Singapore. He succeeded Dr. Marcus Pleyer of Germany. Financial Action Task Force was established in 1989 by the G7 to examine

11 See generally, US Department of the Treasury, Financial Crimes Enforcement Network, "History of Anti-Money Laundering Laws" in Yantis, B. et al, Money Laundering, *American Criminal Law Review*, 55, 1469, 2018; Felix Emeakpore Eboibi and Inetimi Mac-Barango, "Global Eradication of Money Laundering and Immunity for Legal Practitioners under the Nigerian Money Laundering Regulation: Lessons from the United Kingdom", *Beijing Law Review,* 2019, 10, 769-794

and develop measures to combat money laundering and terrorist financing across the globe.

The FATF recommendations provide a comprehensive framework of measures to help countries tackle illicit financial flows. These include a robust framework of laws, regulations and operational measures to ensure national authorities can take effective action to detect and disrupt financial flows that fuel crime and terrorism, and punish those responsible for illegal activity. The 40 Recommendations are divided into seven (7) distinct areas. They are as follows:

a. Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) policies and coordination;
b. Money laundering and confiscation;
c. Terrorism financing and financing of proliferation;
d. Preventive measures
e. Transparency and beneficial ownership of legal persons and arrangements;
f. Powers and responsibilities of competent authorities and other institutional measures; and
g. International cooperation.

These FATF Recommendations are the basis on which all countries should meet the shared objectives of tackling money laundering, terrorist financing and the financing of proliferation. The FATF calls upon all countries to effectively implement these measures in their national systems. Therefore, these FATF Recommendations are referred to as the FATF Standards, which comprise the Recommendations themselves and the Interpretative Notes, together with the applicable definitions. As countries have diverse legal, administrative and operational frameworks and different financial systems, they are expected to adapt the implementation of the Recommendations to their particular circumstances.

The cornerstone of the FATF Recommendations is the risk-based approach which emphasizes the need for countries to identify and understand the money laundering and terrorist financing risks they are exposed to. This ensures they can prioritise their resources to mitigate risks in the highest risk areas. The FATF continuously monitors new and evolving threats to the financial system and regularly updates and refines its Recommendations so that countries have up-to-date tools to go after criminals. From the Recommendations, countries are expected to do the following:

a. Identify the risks and develop policies and domestic coordination;
b. Pursue money laundering, terrorist financing and the financing of proliferation;
c. Apply preventive measures for the financial sector and other designated sectors;

d. Establish power and responsibilities for the competent authorities (e.g. investigative, law enforcement and supervisory authorities) and other institutional measures;
e. Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements;
f. Facilitate international cooperation.

Pursuant to the above, in 2001, FATF identified legal professionals as "gatekeepers" to money laundering and terrorist financing activities as result of the nature of the services they render to their clients. As a result of this determination, in 2008, the FATF issued guidelines for legal practitioners to apply the risk-based approach with respect to issues on anti-money laundering and terrorist financing and financing of proliferation. Legal practitioners are expected to engage in due diligence prior to being engaged by a client and an examination of the origin of client's funds. Moreover, politically exposed persons (PEP) and legal practitioners services that involves the transfer of funds through accounts under their control and services that require legal practitioners to obscure illegitimate benefits or ownership from competent authorities should be treated as high risk transaction or services.

It should be noted that the 2008 guidelines did not mandate legal practitioners to be involved in the FATF recommendations that deals with "suspicious transactions report" (STR), however, 2012 Recommendation of the FATF included legal practitioners and other "Designated Non-Financial Business and Profession" (DNFBPs) and stated that they should mandatorily report transactions that are suspicious, same way financial institutions are required to do in course of dealing with financial transactions.

In 2001, Nigeria was included in the list of Non-Cooperative Countries and Territories (NCCT) by the FATF. The "blacklist" features countries with poor Anti-Money Laundering/Counter Terrorism Financing (AML/CFT) regimes and this was accompanied with a word of caution to the international community to deal cautiously with any listed country. This blacklisting had negative impacts on the economies of countries listed thereon. For Nigeria, concerted efforts were made by the Federal Government to improve the image of the country in this regard which led to the enactment of the Money Laundering (Prohibition) Act of 2004 (MLA) and the Economic and Financial Crimes Commission (EFCC) (Establishment) Act of 2004.

These laws gave birth to the EFCC, Nigerian Financial Intelligence Unit (NFIU) and the Special Control Unit against Money Laundering (SCUML) for the purposes of enforcement of the MLA through the investigation and combating of financial and economic crimes. SCUML was a department created under the Federal Ministry of Industry, Trade and Investment and empowered to handle supervision, monitoring and

regulation of the activities of Designated Non-Financial Institutions (DFNIs (now re-designated by FATF and the CBN as "Designated Non-Financial Businesses and Professionals-DNFBPs")) and submit reports to the EFCC. The NFIU has the duty to receive, analyse and dissemination of financial intelligence to law enforcement agencies.[2] Following the practical actions which the Federal republic of Nigeria has taken towards combating money laundering, in June 2006, Nigeria was delisted from the register of blacklisted countries in the world and in 2013 the country was deemed fully compliant with the FATF requirements.

Following identified lapses in the MLA, the Act was repealed by the Money Laundering (Prohibition) Act of 2011 and subsequently further amended in 2012 to accommodate some key thematic areas such as unambiguously prohibiting and criminalizing the act of money laundering in Nigeria; provision of stiffer penalties for offences and enhancement of customer due diligence for financial institutions and DNFIs. Although legal practitioners were considered as DNFIs since 2004, there was no active implementation of the relevant provisions of the law until after the enactment of the 2011 Act. By a circular dated 2nd August, 2012, the Central Bank of Nigeria (CBN) directed all financial institutions to demand evidence of registration of all DFNIs including legal practitioners before establishing a new business relationship with them, while the existing customers were required to update their records with the institutions within six months from the date of the circular.[3] Attempts by the SCUML to enforce the said directive against legal practitioners in the country triggered the institution of a suit at the Federal High Court, Abuja, which judgment delivered on the 17th of December, 2014 was in favour of the Nigerian Bar Association.[4]

In Registered Trustees of Nigerian Bar Association v Attorney General of the Federation & Central Bank of Nigeria,[5] instituted on the 15 day of march, 2013, the Applicants prayed the Court for the following Orders:

a. A declaration that the provisions of section 5 of the Money Laundering (Prohibition) Act, 2011, insofar as they purport to apply to legal practitioners are invalid, null and void.
b. A declaration that the inclusion of "legal practitioners" in the definition of "Designated Non-Financial Institution" in section 25 of the Money Laundering (Prohibition) Act, 2011 is inapplicable.

2 See, sections 6 and 7

3 Ndidi Ahiauzu and Teingo Inko-Tariah, "Applicability of Anti-Money Laundering Laws to Legal Practitioners in Nigeria, NBA v. FGN & CBN", *Journal of Money Laundering Control*, Oct., 2016

4 Ibid.

5 Suit No. FHC/ABJ/CS/173/2013

c. An Order of perpetual injunction restraining the Central Bank of Nigeria from taking any step to implement its circular reference FPR/CIR/GEN/Vol. 1/028 dated 2nd August 2012 in relation to legal practitioners.
d. An Order of perpetual injunction restraining the Federal Government of Nigeria, by itself or acting through the Special Control Unit on Money laundering (SCUML), the National Financial Intelligence Unit (NFIU), the Economic and Financial Crimes Commission (EFCC) or otherwise howsoever, from seeking to enforce the provisions of section 5 of the Money Laundering (Prohibition) Act, 2011 in relation to legal practitioners.

Sections 5 of the Act, 2011 provides for "occasional cash transaction by Designated Non-Financial Institutions" and further provides that "a Designated Non-Financial Institution that fails to comply with the requirements of customer identification and the submission of returns on such transactions as specified in this Act within 7 days from the date of the transaction commits an offence and is liable to (a) fine of N250,000 for each day during which offence continues; (b) suspension, revocation or withdrawal of license by the appropriate licensing authority as the circumstances may demand".[6]
Section 25 is the interpretation section which provides as follows: "Designated Non-Financial Institution" includes dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, **legal practitioners**, hotels, casinos, supermarkets, and such other businesses as the Federal Ministry of Industry, Trade and Investment or appropriate regulatory authorities may from time to time designate".
The argument was that the Legal Practitioners Act has already made specific regulations for the legal profession in Nigeria and the MLA has a different target audience, which is wider in scope. In this regard, it was argued by NBA that section 5 and 25 of the MLA should be struck down as null and void by virtue of section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as being inconsistent with the provisions of section 37 of the Constitution and with respect to the provisions of the Legal Practitioners Act and the Evidence Act, 2011. The contention was that section 192 of the Evidence Act, 2011 has overridden the provisions of section 5 because it is specifically on the legal practitioners. It was further argued that section 13(1) and (2) of the Legal Practitioners Act empowers the Supreme Court and the Chief Justice of Nigeria to take disciplinary action against any legal practitioner found guilty of infamous conduct in a professional respect. This provision should take precedence over the general provisions of the MLA, which empowers the SCUML to regulate legal practitioners in this regard.

6 See, Section 5(6)(a) & (b) of the MLA, 2011

The court in its judgment held that the legal profession did not fit into the league of trades captured by the DNFIs as provided for in the MLA, as such as supermarkets, car dealers, casinos and so on. The reason being that there are stringent qualifications and regulatory measures that bare attached to the practice of legal profession, which makes it unnecessary for them to be included in the category of DNFIs. Moreover, the penalty provided by section 9(2)(b) of the MLA is not applicable to legal practitioners because they cannot be sanctioned in their capacity as legal practitioners outside the parameters of the existing regulatory regime applicable to them. This is because only the Supreme Court (as the custodian of the register/roll of legal practitioners licensed to practice law in Nigeria) has the power to confirm the suspension of a legal practitioner or a revocation of license to practice where such legal practitioner has committed a misconduct after proceedings by the Legal Practitioners Disciplinary Committee (LPDC).

The court finally held that section 5 of MLA, 2011 insofar as it purports to apply to legal practitioners were invalid, null and void. The court further held that the term "legal practitioners" should be deleted from the list of DNFIs. A perpetual injunction was granted against the CBN from taking any step to implement its circular dated 2 August, 2012 in relation to legal practitioners. A perpetual injunction was also granted restraining the Federal Government of Nigeria by itself or acting through thr SCUML, NFIU, EFCC or otherwise from seeking to enforce the provisions of section 5 in relation to legal practitioners.

The CBN appealed the Federal High Court judgment in Central Bank of Nigeria v NBA & Attorney General of the Federation,[7] where the judgment of the lower court was affirmed as the Court refused to interfere with the judgment and as such dismissed the appeal. The Court of Appeal held that even though the national Assembly pursuant to section 4(1) of the Constitution has powers to enact laws for the peace, order and good government of Nigeria, it has no such uninhibited legislative powers to enact laws that are beyond their legislative duties. Section 4(8) provides that any law made that ultra vires their legislative powers is entitled to be struck down by the court. Before the enactment of the MLA, 2011 and its amendment, the National Assembly is deemed to have knowledge of the existence of the Legal Practitioners Act, Rules of professional Conduct and the Evidence Act made by the same National Assembly, especially sections 20 and 21 of the LPA, which had already ensured maximum protection for legal practitioners' clients and their monies. Legal practitioners are mandated to open a Client Bank Account where monies collected for or on behalf of a client by a legal practitioner are paid into. Legal practitioners are seen as trustees in respect to client's

7 Appeal No. CA/A/202/2015 (Unreported) judgment delivered by the Court of Appeal, Abuja Division on 14th june, 2017, per Abdu Aboki JCA

monies which should not be mixed with monies belonging to the legal practitioners in any licensed bank.

The Court further held that it was the bank that is responsible to carry out identification of her customers and not the legal practitioners. The LPA has already stipulated the penalty or punishment that would accrue to a legal practitioner that refuses to comply with the rule on opening of clients' account. Thus, it is irresistibly obvious that the LPA and MLA are in conflict with respect to the responsibilities of legal practitioners; their duty to clients and legal practice and therefore impossible for both laws to run side by side. The court wondered why the National Assembly enacted the MLA in the absence of any reference to the LPA neither is the MLA shown to have amended or repealed the LPA, in whole or in part. The blue-pencil rule was adopted to strike down sections 5 and 25 of the MLA from applying to legal practitioners.

The Court observed that the definition accorded to the word "transaction" in section 25 of the MLA unambiguously shows the nature of business transaction the National Assembly intended when they enacted the MLA. The word "transaction" in section 25 of the MLA do not form part of the business of legal practitioners. If the lawmakers intended legal practitioners to be inclusive, they would have made their intention obvious in the MLA by stating clearly the amendment or repeal of the LPA. What MLA has done is to include legal practitioners through the "back door".

By virtue of the decisions of the superior courts in Nigeria, it has been affirmed that matters with respect of legal practitioners fees and its payment by his client is a privilege matter. Where a legal practitioner is queried by the EFCC or any agent of the Government based on legitimate proceeds accrued from clients, it constitutes an infraction of the lawyer-client privilege. The client-lawyer relationship is contractual in nature and a third party like EFCC or any other agency has no locus standi to determine the basis upon which the legal practitioner can earn his legitimate professional fees.

In another development, the Court of Appeal in *Federal Republic of Nigeria v Chief Mike Ozekhome (SAN)*,[8] per Chidi Nwaoma Uwa, JCA (as he then was but now a Justice of the Supreme Court) determined the question as to whether a legal practitioner is required to investigate the source of money paid to him as professional fees is not from an illicit act or proceeds of unlawful activities, and answered the question in the negative as follows:

> The learned counsel to the Appellant had argued that the Respondent ought to have known that the source of money paid to him as professional fees was from an illicit act or proceeds of unlawful activities. No doubt a Legal Practitioner is entitled to his fees for professional services rendered and such fees cannot be

8 (2021) LPELR-54666 (CA)

rightly labeled as proceeds of crime. Further, it is not a requirement of the law that a legal practitioner would go into inquiry before receiving his fees from his client, to find out the source of the fund from which he would be paid. There was nothing on record at the time the money was paid to the Respondents Chambers to show that the money was from the proceeds of unlawful activities and the lower Court was right not to have agreed that the money was from unlawful activities. The second issue is resolved against the Appellant . The third issue is whether legal practitioners are excluded from the definition of designated nonfinancial institutions contained in the Money Laundering Prohibition Act, 2011? The learned counsel to the Respondent had argued that the Legal Practitioners are excluded from the definition of designated nonfinancial institutions as contained in the Act, while the learned counsel to the Appellant submitted otherwise. There is no dispute that in a decision of the Federal High Court in **Suit No. FHC/CS/173/2015, REGISTERED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION VS. A.G. FEDERATION & CBN,** his lordship Kolawole, J. (as he then was) held that legal practitioners are excluded from the definition of designated nonfinancial institutions as contained in the Money Laundering Prohibition Act, 2011 (hereafter referred to as the Act) as far as it applies to legal practitioners invalid, null and void, Section 25 of the Act which was held to be inconsistent with Section 192 of the Evidence Act , therefore Section 25 of the Act would give way to Section 192 of the Evidence Act , it cannot override or amend the Evidence Act. The decision of Kolawole, J. has not been set aside but, rather upheld by this Court, in Appeal No. **CA/A/202/2015, CBN VS. REGISTERED TRUSTEES OF THE NBA (unreported).** The above decision has defined the law until it is set aside. The learned counsel to the Appellant has neither argued nor shown that it has been set aside by the Supreme Court, his argument seems to challenge the decision of Kolawole, J. (as he then was) which is not on appeal before this Court. See, **AKINTOKUN VS. LPDC (2014) LPELR22941 (SC) PP. 6466 PARAS. FB. The GOVERNOR OF KADUNA STATE VS. LAWAL KAGOMA (1982) LPELR3176 (SC) PP. 4143, PARAS. BC, UWAIFO VS. AG BENDEL STATE & ORS (1982) LPELR3445 (SC) P. 51, PARAS. DF, ONYEMA & ORS VS. OPUTA & ANOR (1987) LPELR2736 (SC) PP. 8384, PARA. B, IBIDAPO VS.**

> **LUFTHANSA AIRLINES (1997) LPELR1397 (SC) P. 59, PARAS. AB and IKINE & ORS VS. EDJERODE & ORS (2001) LPELR1479 (SC) PP. 2627, PARAS. EC.** The lower Court was right to have followed the decision in **CBN VS. REGISTERED TRUSTEES OF THE NBA (supra)** which reaffirmed the position of the law to the effect that Legal Practitioners are excluded from those tagged Designated NonFinancial Institutions under Section 25 of the Money Laundering Act, 2011 . I resolve issue three against the Appellant. In the final analysis, I hold that the appeal is without merit, it is hereby dismissed in its entirety. I affirm the Ruling of the lower Court in Suit No. FHC/L/CS/102/17 delivered on 3rd April, 2017.

GIUDELINES AND RULES ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM FOR LEGAL PRACTITIONERS

By virtue of the decisions of the courts on the non-applicability of the MLA on legal practitioners, the General Council of the Bar, whose responsibility it is to regulate legal practitioners,[9] amended the Rules of Professional Conduct, 2007 with the enactment of the Rules of Professional Conduct, 2024 wherein its Chapter 2 provides for the "Guidelines and Rules on Anti-Money Laundering and Combating the Financing of Terrorism for Legal Practitioners". The new Rules took effect on the 1st day of January, 2024. The spirit and intendment of this piece of legislation can be determined by its objectives.[10] It must be noted that this Guidelines as provided for in Chapter 2 applies only to all legal practitioners whose names appear on the role and as particularly described in section 2 of the Legal Practitioners Act.[11] The new RPC was made on the 6th day of June, 2023 and was for the purposes of maintaining a high standard of conduct, etiquette, and discipline amongst legal practitioners in Nigeria.

The provisions contained in Chapter 2 are to address money laundering, terrorism financing and proliferation financing in layer-client relationship and the provision of legal services. The inclusion of these provisions in the new Rules is as a result of the ever rising cases of risk encountered in the financial sector and the prospect of using legal practitioners for the perpetration of financial crimes, on the premise that legal practitioners continuously deal on clients' money.[12] This Chapter provides a

9 Section 12(4) Legal Practitioners Act

10 See, Rule 55 of the RPC, 2024

11See, Rule 56, ibid.

12 Atoyebi, O. M., Money Laundering, Terrorism Financing and the Legal Profession: An Examination of Chapter 2 of the Rules of Professional Conduct, 2023, omaplex.com.ng; see also, Ahiauzu N. and Inko-Tariah T, Applicability of Anti-Money Laundering Laws to Legal Practitioners I Nigeria, NBA v FGN & CBN (supra)

comprehensive guidelines for legal practitioners to identify, determine, assess and address money laundering, terrorism financing and proliferation financing risks. Furthermore, this Rules established a Committee of the Nigerian Bar Association which bear the responsibility of monitoring compliance with the Rules as well as related functions.

The **objectives** of this Chapter are to:

a. Promote adherence to the rule of law;
b. Promote the duty of confidentiality and the client-lawyer privilege toward their clients, and provide yardstick for the overall ethics and best practices of the profession to ensure that legal services are not being misused by criminals or for legal practitioners to be unwittingly involved in Money laundering and terrorism financing;
c. Internally self-regulate members of the legal profession and where applicable, recommend legal practitioners who are in breach to appropriate disciplinary authorities in accordance with relevant provisions of the Legal Practitioners Act; and
d. Adopt the risk-based approach for legal practitioners to be able to identify money laundering, terrorism financing and proliferation financing situations and circumstances before they occur and thus provide ethical and professional advice to clients when it becomes necessary, while providing professional services as a legal practitioner.

Reporting and Compliance

The reporting and compliance obligations of a legal practitioner under these guidelines arise when acting as formation agent for legal persons (biological or artificial persons), acting as or arranging for proxies on behalf of another person, partner or any other legal person, acting as trustee or hiring another person to act as such, acting as or hiring another person to act as nominee shareholder for another person, conducting sales or purchases of real estate for clients or providing advisory services to clients in a real estate transaction.[13] In the process of rendering legal services to his client and a legal practitioner fails or neglects to comply with the provisions of this Chapter, he shall be deemed to have committed a professional misconduct and shall be liable to disciplinary proceedings within the provisions of the Legal Practitioners Act.

A legal practitioner is mandated to comply with the provisions of this Chapter if he is instructed by his client in a transaction to advice or assist him in the planning or execution of the transaction or acting for or on behalf of his client in the transaction listed in Rule 57(1). However, where a legal practitioner merely notarises or certifies a

13 See Rule 57(1)(a-f), ibid.

document utilised in a contractual or related transaction, having not prepared same, the obligation imposed under this Rule will not bind him. That is to say, if the legal practitioner only certifies the execution or authenticity of a power of Attorney or another instrument which may facilitate the buying or selling or real property or business entities, managing of client's money or assets, opening or managing of bank or securities account, formation or operation of companies, trusts and others; the legal practitioner is not bound to comply with this Rules.[14] It mandatory for a legal practitioner to conduct internal risk assessment in order to understand, identify and mitigate the risk of money laundering, terrorism financing and proliferation financing when he is providing his client with legal services.[15]

Obligation to Keep Record of Clients

A legal practitioner is obligated to maintain a current record of vital information of his clients which will assist in the easy identification of such client. This information must be kept or preserved in accordance with the relevant data protection and client professional privilege laws and rules in Nigeria. In addition, a legal practitioner must maintain records of transactions of both domestic and international clients and such record must be kept for a minimum of five (5) years after the completion of the transaction or termination of the business relationship.[16]

In another development, a legal practitioner is mandated to set up mechanisms for the implementation of the United Nations Targeted Financial Sanction relating to Terrorism and Proliferation Financing and such mechanisms must provide an adequate procedure for the screening of all their clients to be sure that they do not fall within or are related to entities on the United Nations Consolidated List or the Nigerian Sanction List. Where there is a positive match of both lists of persons as stated above,[17] the legal practitioner is obligated to immediately identify and freeze all funds, assets belonging to the client, in their possession and report same to the NBAAMLC for an onward transmission to the Nigerian Sanctions Committee and to also file a Suspicious Transactions Report for onward transmission to the NFIU for additional analysis on the financial activities of such a client.[18]

14 Rule 57(4)(a-e), ibid.

15 Rule 57(5), ibid.

16 See, Rule 58, ibid.

17 UN Consolidated List of persons and entities designated by the UN in accordance with UNSCR 1267 (1999) and the Nigerian Sanction List

18 See, Rule 60, ibid.

Identification of Risk Based Approach

As part of the Customer Due Diligence or Enhanced Due Diligence requirements of the new Rules, a legal practitioner is mandated to identify, assess and understand the money laundering, terrorism financing and proliferation financing risks associated with a specific legal service rendered or to be rendered to the client and accordingly develop internal mechanisms and measures to effectively and efficiently mitigate and manage such risks. Such procedures must reasonably identify clients and the potential risks and complexities that may be associated with them and ensure that his firm's standards and policies can address such intricacies as may be associated with them. It is mandatory that a legal practitioner and his law firm should develop and provide employee training programme to match the complex nature of their duties and to ensure adequate screening processes in hiring employees in order to guarantee high standards.[19]

The combat maximally money laundering and terrorism financing risks, a legal practitioner is expected to identify his clients, addresses and fathom the true beneficiary of any transaction instructed by his client. He must have an overt understanding of the sources of the funds and source of wealth of his client and the purpose of the transaction.[20] It is imperative that a legal practitioner should know the exact nature of the legal services he is rendering to his client and to understand the capacity of same and how such may facilitate the movement or obscure the proceeds of crime and take mitigating steps as provided in the Rules. In the same vein, if the legal practitioner lacks the requisite expertise to determine and identify money laundering and terrorism financing risks, he is required to seek expert support and assistance in order to decline such client's instruction and to report same. Similarly, a legal practitioner or his law firm is required by the Rules to identify red flags or indicators and to carefully review every aspect of client's transaction to determine any reasonable grounds to suspect that funds provided by the client or any other party may be proceeds of crime or criminal activity or shares a relationship with terrorist financing and must document same and this singular act is sufficient for the legal practitioner to be seen to have complied to assist to discern red flags or indicators of suspicion.[21]

Risk Type or Factor

In determining the categories of risks that may be associated with services rendered or to be rendered by a legal practitioner, the Rules stated that while no universally accepted category or methodology exists for assessment, the provisions of the Rules can guide in such determination.

19 Rule 61(1)-(3), ibid.

20 Rule 61(5)(a)(i)-(ii), ibid.

21 Rule 61(5)(b)-(f), ibid.

Country Geographic Risk

The Rule provides that a legal practitioner or law firm on transnational transactions must carry out proper risk assessment with respect to the geographic or country risks involved or likely to be involved in such transaction. Geographic risk of money laundering and terrorism financing may arise by virtue of the location of the transaction or the source of the wealth or funds. Therefore, risk categories may include geographic risk, client risk, transaction risk and so on. Geographic or country-based risk may be determined by taking cognisance of the peculiarities of such countries including a positive identification by credible sources as financiers of terrorism, corruption and other criminal activities or have terrorist organisations operating within their territories, or are subject to sanctions, embargoes or other restrictions by international organisations, or have weak regulatory frameworks for countering money laundering or terrorism financing.[22] A legal practitioner shall be deemed to have satisfied the obligation to assess the country or geographic risk if he shows by compliance document his review and understanding of such risk in the engagement of his client.

Client Risk

It is obligatory for a legal practitioner or hid firm to determine potential/possible money laundering and terrorist financing risk posed by his client(s) in order to develop and implement risk-based framework. It is also the duty of the legal practitioner to develop an internal mechanism which will assist him or his law firm to determine if/when a specific client poses as or a higher risk and the possible impact or same and any mitigating factors on such assessment or whether the application of risk variables will mitigate or increase the risk assessment.[23] To assist a legal practitioner in his assessment of categories of clients whose activities may indicate higher risk are:

a. Politically Exposed Persons (PEPs), their family members, friends and associates. The nature or magnitude of their risk should be considered through the following circumstances as their company, trust or any other investments where the PEP exercises effective control or a beneficiary, the PEP will affect the rick assessment profile. The nature of services sought but if the PEP is not the client but a director of a client company or regulated entity and the client is purchasing property for adequate consideration, a legal practitioner involved in the movement or transfer of funds or assets or purchasing high value property or assets for the said client is expect to know that such is a higher risk platform/profile and should do the needful as provided for in the Rule, in that

22 See, Rule 63, ibid.

23 See, Rule 64(1) & (2), ibid.

regard. The legal practitioner must consider the source of wealth and source of funds of clients and the beneficial owners identified as PEPs, which is the activity that generates the funds and total net worth of the client(salary, trading revenues, or payments out of a trust).

b. Clients conducting or requesting for services in unusual or unconventional circumstances. A legal practitioner can assess as high risk indicator when a client is engaged in an unusual business relationship and requests a legal service.
c. Obscure structure or nature of a business or nature of business transaction. A red flag for high risk indicator id shown when clients conceal the nature of their business activities and for which a legal practitioner cannot identify the true ownership structure of such business.
d. Client companies that operate a considerable part of their business in or have major subsidiaries in countries that may pose higher geographic risks.
e. Clients that are cash or cash equivalent intensive businesses which may include: Money or Value Transfer Service (MVTS) businesses (remittance houses, currency exchange house, bureau de change, money transfer agents and bank note traders or other businesses offering money transfer facilities); operators, brokers and other providing services in virtual assets, casinos, betting houses and gambling related institutions, business that rely heavily on new technologies; unincorporated charities and "not for profit" organisations (NPOs); clients acting on someone's instruction without disclosing the identities of such persons; clients who avoid face-to-face meetings or evasive or very difficult to reach, when this would be normally expected; clients who request that transactions be completed in unusually tight or accelerated time frames without any reasonable explanation which will make it difficult or impossible for the legal practitioner or law firm to perform a proper risk assessment; clients who have no address or who have multiple addresses without legitimate reasons; clients who have funds that are obviously and inexplicably disproportionate to their circumstances by virtue of their age, income, occupation or wealth; clients who offer to pay unusually high legal fees for services that would not ordinarily warrant such a premium; sudden activity from a previously dormant client without clear explanation; the reason for the client choosing the legal practitioner or law firm is unclear with regard to the size, location or specialization of same; client's reluctance to provide all relevant information or the legal practitioner or law firm have reasonable doubt that the information provided is false or insufficient.[24]

24 See, Rule 64(3)(c) to (w), ibid.

A legal practitioner is deemed to have satisfied the obligation to assess client risk factor if he tenders evidence of compliance document showing his review and understanding of such risk in his relationship with the client and attaching affidavit on oath deposed to by his client attesting to the genuineness of the transaction, source of funds and other relevant information to the risk assessment outcomes.[25]

Transaction or Service Risk

A legal practitioner or law firm is obligated to undertake an overall risk assessment of his client including determining the potential risk which his/their services may pose.[26] In determining the risk associated with his legal services, a legal practitioner must consider factors such as: services that allow clients to deposit or transfer funds through the legal practitioner's trust account which a not tied t a transaction for which the legal practitioner is carrying out; services where the legal practitioner is effectively acting as financial intermediary which will include the receipt and transmission of funds through accounts he controls in the act of facilitating the business transaction; services where the client will request financial transactions outside of the legal practitioner's trust account (i.e. the account held by the legal practitioner for the client) or through the firms general account or a personal or business account held by the legal practitioner himself; services where the legal practitioner will represent or assure a third party, his client's reputation and credibility, without even having much knowledge about his client's affairs in that regard; any service that conceals beneficial ownership from government or other authorities; transfer of real estate or of high value goods and assets between parties in a period that is unusually short for similar transactions without legal , tax, business, economic or other legitimate reason; use of virtual assets and other anonymous means of payment and wealth transfer within the transaction without apparent legal, tax, business, economic or other legal reason; transactions using unusual means of payment such as precious metal or stones; transfer of goods that are difficult to value such as jewels, precious stone, object of art or antiques, virtual assets where this is not common for the type of client or transaction, without any explanations; successive capital or other contributions in a short period of time to the same entity with no fathom legal, tax, business, economic or other legitimate reason; acquisitions of businesses in liquidation with no apparent legal, tax, business, economic or other legitimate reason.[27] The Rule states that a legal practitioner or law firm will be deemed to have satisfy the obligation to assess transaction or service risk if he shows through a document showing compliance platform, by his review and understanding

25 Rule 64(4), ibid.

26 Rule 65(1), ibid.

27 Rule 65(2)(a)-(m), ibid.

of such risk in the engagement with his client and this must be done through a deposed affidavit on oath by his client attesting to the genuineness of the transaction, source of funds and other information relevant to the risk assessment outcomes.[28]

Documentation of Risks

The Rules provide that it is mandatory for legal practitioners to implement the documentation of all risks assessment and as such provide for the rules that will guide such documentation which is: all risk assessment should be documented and a legal practitioner or law firm is obligated to understand his/their money laundering and terrorist financing risks; a legal practitioner or law firm must conduct a documented risk assessment for each of his client; documented risk assessment should cover specific risks and categorize them into geographic, client-based, or service-based risks; each of the risk should be assessed using indicators such as low risk, medium risk and high risk, as well as a short note explaining the reasons for such attribution to be included while the overall assessment of the risk should be determined.[29]

Furthermore, in assessing the risk profile of the client, a legal practitioner must make reference to the relevant targeted financial sanctions list in order to confirm that neither the client nor the beneficial owner is designated or included in any of them; internal Risk Assessment Guidelines (RAG) must be made accessible to all legal practitioners and in all law firms which perform or engage in Anti-Money Laundering and Combating Terrorism Financing (AML/CFT) duties, however, proper safeguards must be put in place to ensure privacy of clients. Where legal practitioners or law firms are involved in a longer term transaction, risk assessments must be undertaken at suitable intervals across the lifespan of the transaction, to ensure that no significant risk factors have changed in the intervening period and a final assessment should be undertaken before a transaction is completed, to allow time for any required suspicious transaction report to be filed.[30]

Risk Management and Mitigation

Legal practitioners' nature of services which they render to members of the society are replete with vulnerabilities, in this regard to adopt the methodology of risk-based approach will facilitate the easy identification of such circumstances and to adopt certain practices which will mitigate these vulnerabilities which would be by conducting at the earliest possible time, Client Due Diligence (CDD) and monitoring and other internal policies including training which was put in place so as not to be

28 Rule 65(3), ibid.

29 Rule 66(a)-(d), ibid.

30 Rule 66(e)-(j), ibid.

unwittingly involved or to facilitate the crime of money laundering or terrorism financing.[31] It is obligatory that a legal practitioner must put/have policies and procedures in place to identify and verify the identities of client by using reliable, independent source documents, data, or information in order to obtain evidence of the veracity of such identities.

There are certain instructions from a client that form as red-flags to a legal practitioner to a possible AML and TF risks and which the legal practitioner must be on the watch out for. These instructions may include acting as a settlor; to act as a nominee; to act as a protector; to prepare a trust, where the legal practitioner is not acting as trustee; to act as a trustee; to act as named beneficiaries or class of beneficiaries and to act as any other natural person exercising effective control over the trust. It is mandatory that legal practitioners or law firms to identify and assess the ML and TF risks associated with their clients as it relates to certain kinds of work which will allow him/them to determine and implement reasonable and proportionate measures and controls to mitigate such risks.[32] This risk and appropriate measures will depend on the nature of the legal practitioner or law firm's role and involvement, and circumstances may vary considerably between practitioners who represent clients directly and those who are engaged for distinct purposes.

It is also required that legal practitioners and law firms should implement appropriate measures and control to mitigate the potential ML and TF risks for those clients that, because of internal RAG, are determined to be higher risk, and these measures will be tailored to the specific risks faced, both to ensure the risk is adequately addressed and to assist in the appropriate allocation of finite resources for CDD.[33] For effectiveness and efficiency in this regard, it is mandatory for legal practitioners of all categories(sole practitioners, partners and other nature or legal practitioners), para-legal and other supporting staff in a law firm must be trained to identify and detect relevant changes in client activity by reference to risk-based criteria.[34]

The measures and controls to be adopted in order to achieve the provisions of the above immediate paragraph may include the general training on ML and TF methods and risks relevant to legal profession; targeted training for increased risk awareness by the legal practitioners providing specified activities to higher risk clients or to legal practitioners undertaking higher risk work; training on when and how to ascertain a high-risk client and potential risk, evidence, and record of source of wealth and beneficial ownership information; periodic review of the services offered by the legal

31 Rule 67(1), ibid.

32 Rule 67(3)(a-g) and (4), ibid.

33 Rule 67(6), ibid.

34 Rule 67(7), ibid.

practitioner or law firm and the periodic evaluation of the AML and CFT framework applicable to the law firm or legal practitioner and law firm's own AML and CFT procedures, to determine whether the ML and TF risk has increased, and adequate controls put in place to mitigate those increased risks; and reviewing client relationships on a periodic basis to determine whether the ML and TF risk has increased.[35]

Internal Risk Assessment Guidelines (RAG)

It is mandatory for a legal practitioner or law firm to develop Internal Risk Assessment Guidelines which is to be used as the basis for assessing client's risks. There are certain factors to be considered by the legal practitioner in the development of the risk assessment guidelines. They include the responsibilities, status and role of the legal practitioner or law firm; resources that may be allocated to implementation and management of an appropriately developed RAG and the resources available to the legal practitioner or law firm, in other words, the RAG of a legal practitioner or law firm is expected to be proportionate to the scope and nature of the legal practitioner or law firm's practice and clients; risk variables specific to a particular client or type of work; and if the client and proposed work would be unusual, risky or suspicious for the legal practitioner or law firm, and this factor will always be considered in the context of the legal practitioner's practice, as well as the legal profession, and ethical obligations in Nigeria.[36] For a sole practitioner, he is required to rely on publicly available records and information supplied by a client for risk assessment.[37] Where a legal practitioner or law firm have put into existence a RAG in his practice, and possible/visible demonstration of compliance with same in any situation, it will be a prima facie proof of compliance, unless the contrary is shown.[38]

Client Due Diligence (CDD)

Section 69(1) of this Rule mandatorily requires a legal practitioner or law firm to put in place internal measures to establish with certainty the identity of each client. Such measures required must include procedures to identify and appropriately verify the identity of each client on a timely basis; identify with reasonable measures the real identity of the beneficial owner on risk-sensitive basis such that the legal practitioner or law firm is reasonably satisfied that it knows who the beneficial owner is, in order to ascertain those natural persons who exercise effective influence or control over a client,

35 Rule 67(8)(a-e), ibid

36 Rule 68(1) and (2)(a-d), ibid.

37 Rule 68(3), ibid

38 Rule 68(4), ibid.

whether by means of ownership, voting rights or otherwise; determine the extent to which they are required to verify the identity of beneficial owner, depending on the type of client, business relationship and transaction, for the purpose of helping legal practitioners avoid conflicts of interest with other clients.[39]

The procedures also include to obtain appropriate information in order to understand the client's circumstances and business depending on the nature, scope and timing for the services to be provided, including, where necessary, the source of funds of the client, and this information may be obtained from clients during the normal course of their instructions to the legal practitioner or law firm; to conduct ongoing CDD on the business relationship and scrutiny of transactions throughout the course of that relationship to ensure that the transaction being conducted are consistent with the legal practitioner's knowledge of the client, its business and risk profile, including where necessary, the source of funds and finally, it must be noted that ongoing due diligence ensure that the documents, date, or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for high-risk categories of clients.[40]

It is also mandatory that legal practitioners and law firms should develop procedures to determine how their immediate clients can be identified, and how the said identity given by them can also be validly verified.[41] For such client identification to be made possible, the following procedures can be adopted by the legal practitioners or law firms: firstly, is personal meeting with the client and verifying his true identity by producing his valid identity card or any other means of his identification or producing any other document that will confirm his or her address; these documents presented by the client should be ones that are capable of being obtained from a dependable public available sources which will be independent of the client; for corporate bodies or organizations, a legal practitioner or law firm is required to take reasonable steps and be satisfied about the identity of the beneficial owners and must also take reasonable measures to verify the beneficial owners' identity through understanding the ownership and control of the said corporate body or organization which is the client, this coukd be done either through public searches or by seeking information directly from the client.[42]

For any client that is a legal entity and not a biological person, a legal practitioner or law firm is required to obtain this information from them; the name of the company/corporation; the company registration number; registered address and

39 Rule 69(1)(a-c), ibid

40 Rule 69(1)(ed-f), ibid

41 Rule 69(2), ibid.

42 See, Rule 69(2) and (3)(a-c), ibid.

principal place of business (if it is different); the identity of shareholders or trustees and their percentage ownership; names of the board of directors, or trustees or principal members responsible for the company's operations; the law to which the company or organization is subject and its memorandum and articles of association and constitution and the object, types of activities and transactions in which the company or organization engages.[43]

In the bid to verify the above information given by the company or corporation, legal practitioners or law firms are obligated to use the following sources: constitutional documents of the said company such as certificate of incorporation, memorandum and article of association and the constitution of the company itself; details from company registers with the company or organization and Corporate Affairs Commission (CAC); shareholders agreement or other agreements between shareholders concerning control of the company/corporation and the company or corporation's filed audited accounts.[44]

In order to identify beneficial owners of client-companies or corporation, legal practitioners or law firms are requested to engage the combination of public sources and also seek further confirmation from the particular client that the information from public sources is correct and up-to-date. In that process, additional documentation that may confirm the beneficial ownership and company structure may be requested by the legal practitioner or the law firm. In a client due diligence identification, a legal practitioner or law firm can assess the risks that each client may pose by taking into consideration any appropriate risk variables and the corresponding mitigating factors before making a decision to either accept the client, reject the client or request for additional information from the client. A legal practitioner or law firm must document all risk assessment and the said document must be kept in the client's file, and the file must be reviewed from time to time, especially in a situation where the client is a one-off or where a new red-flag arises.

The appropriate CDD requirements which a legal practitioner or law firm may determine are: a standard level CDD to be applied to all clients to whom specific legal services are provided for; a simplified level of CDD which could be a reduction of the standard level after consideration of appropriate risk variables, and in recognized lower risk scenarios and whether an enhanced CDD would be required for clients that are reasonably expected by the legal practitioner or law firm, to be of higher risk should be determined, and this may be the result of the client's business activity, ownership structure, particular service offered including work involving higher risk countries or defined by applicable law or regulation as posing higher risk.[45]

43 Rule 69(2)(d)(i-vii), ibid.

44 See, Rule 69(3)(e)(i-iv), ibid.

45 Rule 69(3)(g) and (h)(i-iii), ibid.

Furthermore, in the conduct of CDD, legal practitioners and law firms are required additionally to look out for the following: if the transaction is unusual, especially where the type of document to notarize is clearly inconsistent with the size, age or activity of the company or natural person acting in the stead; if the transactions are unusual because of their size, nature, frequency or manner of execution; if there are conspicuous and highly significant differences between the declared price and the approximate actual values in accordance with any reference which could give an approximate idea of the value or in the judgment of the legal practitioner or law firm; if a non-profit organisation requests services for purposes or transactions not compatible with those declared or not typical for that body; if the transaction involves a disproportionate amount of private funding, bearer cheques or cash, especially if it is inconsistent with the socio-economic profile of the individual or the company's economic profile; if the customer or third party is contributing a significant sum in cash as collateral provided by the borrower or debtor rather than simply using those funds directly, without logical explanation; the source of the fund is unusual; the transaction is third party funded either for the transaction or for fees or taxes involved with no apparent connection to the client nor legitimate explanation; the funds received from or sent to a foreign country when there is no apparent connection between the country and the client; funds are sent or received from high-risk countries; the client is using multiple bank accounts or foreign accounts without good reasons; the private expenditure is funded by a company, business or government.[46]

Further to the above, a legal practitioner or law firm, in conducting CDD must also look out for a situation where selecting the method of payment has been deferred to a date very close to the time of notarization, in a jurisdiction where the method of payment is usually included in the contract, particularly if no guarantee is available to secure the payment is established, without a logical explanation; or an unusual short repayment period has been set without logical explanation; mortgages are repeatedly repaid significantly prior to the initial agreed maturity date, with no logical explanation; or the asset is purchased with cash and then rapidly used as collateral for a loan; or there is a request to change the payment procedures previously agreed upon without logical explanation, especially when payment instruments are suggested that are not appropriate for the common practice used for the ordered transaction.

Similarly, if the finance is provided by a lender, either a natural or legal person, other than a credit institution, with no logical explanation or economic justification; the collateral being provided for the transaction is currently located in a high-risk country; there has been a significant increase in capital for a recently incorporated company or successive contributions over a short period of time to the same company, with no

46 See generally, Rule 69(4)(a-l), ibid.

logical explanation; there has been a increase in capital from a foreign country, which either has no relationship to the company or is high risk; the company receives an injection of capital or assets in kind that is excessively high in comparison with the business, size or market value of the company performing, with no logical explanation.[47]

Additionally, there is excessively high or low price attached to the securities transferred, with regard to any circumstances indicating the excess[48] or with regard to the sum declared in another operation and large financial transactions, especially if requested by recently created companies, where these transactions are not justified by the corporate purpose, the activity of the customer or the possible group of companies to which it belongs or other justifiable reasons.[49]

In all the above requirements set out for the legal practitioner or law firm, he is deemed to have satisfied the obligation to assess this risk if he shows by any compliance document, his or her review and understanding of such risk in the engagement with the client and provides an affidavit on oath from the client covering the field of review and attesting to the genuineness of the transaction, and other relevant information to the risk assessment outcomes.[50]

The Rule provides that in the event that a legal practitioner or law firm is unable to comply with the applicable CDD requirements, or the client did not pass the CDD, the legal practitioner or law firm must not carry out the transaction nor commence business relations, or it should terminate the business relationship and consider filing a suspicious transaction report (STR) in relation to the client to the Nigerian Bar Association Anti-Money Laundering Committee (NBAAMLC).[51]

Monitoring of Clients and Specific Activities

Under the monitoring of clients by a legal practitioner or law firm, it is guided by the type of legal practice, the size of the law firm, the identified ML and TF risks and the nature of the specific activities provided by the legal practitioner or law firm involved. It is believed that a legal practitioner or law firm needs to have the full and up-to-date understanding of the client's business in order to satisfy his/its fiduciary duties towards the clients. therefore, a legal practitioner or staff in a law firm need to be adequately

47 See, Rule 69(4)(r-v), ibid.

48 Such as volume of revenue, trade or business, premises, size, knowledge of declaration of systemic losses or gains.

49 Rule 69(4)(w-x), ibid.

50 Rule 69(5), ibid.

51 Rule 69(6), ibid.

trained to have the required understanding of those events that should trigger additional due diligence or a refreshing of existing due diligence.[52]

Monitoring is best achieved when there is personal contact with the client, which could be face to face or by other means of communication, provided that such monitoring does not automatically convert firms or legal practitioners to law enforcement or investigative authority on the client. Again, monitoring of advisory relationships cannot be achieved solely by reliance on automated systems and whether any such systems would be appropriate will depend in part on the nature of the legal practice and resources available to the law firm or the legal practitioner.[53] A legal practitioner or law firm is mandatorily expected to assess the adequacy of systems, control and monitoring processes on a period basis, and document the results accordingly.[54]

Legal Practitioners Reporting Obligations to NBAAMLC

This Rule makes it mandatory that legal practitioners and law firms must possess a system which sets out the requirements for filing of Suspicious Transaction Report (STRs) to the NBAAMLC for onward transmission to the NFIU.[55] In the conduct of a client's instructions/matter, once a legal practitioner or law firm, develops a reasonable suspicion on a suspicious activity of a client, he is required to report such suspicion promptly to the NBAAMLC. A failure, refusal or negligent to report same will amount to misconduct on the part of the legal practitioner or members of the law firm and will be liable to disciplinary proceedings in accordance with the Act.[56]

Note that Suspicious Transaction Reports (STRs) are not part of risk assessment but rather reflect a response mechanism to reasonably formed suspicions. Therefore, a legal practitioner or law firm must develop an effective internal controls structure against ML and TF.[57] For the purposes of an effective internal control structure, the measures to be adopted are that: a legal practitioner or law firm practice environment must be designed considering a risk-based framework for internal controls system; the type and extent of measures to be taken by a legal practitioner or law firm for each of its requirements should be appropriate having regard to the size, nature and risk profile of the business. The risk-based process must be a part of the internal controls of the law firm or legal practitioner and also a legal practitioner or law firm must ensure engagement the principals or managers with staff in AML and CFT related matters as

52 See, Rule 70(1) to (3), ibid.

53 Rule 70(4) and (5), ibid.

54 Rule 70(6), ibid.

55 See, Rule 71(1), ibid.

56 See, Rule 71(2), ibid

57 Rule 71(3) & (4), ibid.

such engagement reinforces culture of compliance, ensuring that staff adheres to the law firm or legal practitioners' policies, procedures and processes to effectively manage ML and TF risks.[58]

The nature and extent of AML and CFT controls, by a law firm or legal practitioner, will depend largely upon several prevailing factors on the part of such law firm or legal practitioner. The factors may include: the nature, scale and complexity of the legal practitioner or law firm's business; the diversity of his legal operations, including his geographical diversity or the legal practitioner's client, service and activity profile. Again, the degree of risk associated with each area of the legal practitioner's operations is one of the factors as well and the services being offered and the frequency of client's contact, either by face-to-face meeting or by other means of communication.[59]

Depending on the size and scope of the legal practitioners or law firm organisation, the framework of risk-based internal controls must: have appropriate risk management systems to determine whether a client, potential client or beneficial owner is a PEP or a person subject to applicable financial sanctions; provide for adequate controls for higher risk clients and services as necessary, including additional due diligence information on the source of wealth and funds of a client, escalation, or additional review and/or consultation by the legal practitioner or within a law firm; provide increased focus on a legal practitioner's operations, for instance, services, clients and geographic locations which are more vulnerable to abuse for ML/TF; provide for periodic review of the risk assessment and management processes.[60]

Furthermore, the framework of the risk-based internal control must designate personnel at an appropriate level who are responsible for managing AML and CFT compliance; provide for an AML and CFT compliance function and review programme as appropriate given the scale of the organisation and the nature of the legal practitioner's practice. It must also inform the principals of compliance initiatives, identified compliance deficiencies and corrective action taken and provide for programme continuity despite changes in management or employee composition or structure. It must also focus on meeting all regulatory measures for AML and CFT compliance, including record-keeping requirements and provide for timely updates in response to changes and implement risk based CDD policies, procedures and processes including review of client relationships from time to time to determine the level of ML and TF risks.[61]

58 Rule 71(5)(a-d), ibid.

59 Rule 71(6)(a-e), ibid.

60 Rule 71(7)(a-d), ibid.

61 Rule 71(7)(e-j), ibid.

Framework of risk-based internal controls must further provide for adequate supervision and support for staff activity that forms part of the organisation's AML and CFT programme and incorporate AML and CFT compliance into job description or relevant personnel and further provide for policies and procedures to ensure staff awareness of STR filing requirements and to make sure to implement a documented programme of ongoing staff AML and CFT awareness and training.[62]

A legal practitioner or law firm is required to employ same measures and controls to address more than one of the identified risks in the organisation, and it is not mandatory that the legal practitioner should establish specific controls targeting each risk criterion.[63] In order to carry out the above, the legal practitioner may consider the following: using reputable technology-driven solutions to minimize the risk of error and find efficiency in their AML and CFT processes. High level members in the law firm must have a clear understanding of ML and TF risks to manage the affairs of the law firm and to ensure procedures are put in place to identify, manage, control and mitigate risks effectively and the RBA to AML and CFT must be embedded in the culture of law firms and the legal profession in general.[64] Further to the above, legal practitioners or law firms must review their firm-wide risk assessments regularly and make sure that policies and procedures continue to target those areas where the ML and TF risks are highest and finally, legal practitioners or law firms is expected to consider the skills, knowledge and experience of staff in relation to AML and CFT before they are appointed to their roles on an ongoing basis.[65]

Legal Practitioners Obligations on Education, Training and Awareness

It is obligatory for a legal practitioner to make adequate resources available for training on anti-money laundering and terrorism financing, preventive measures for relevant staff in the law firm who may in the course of their duties, be exposed to these risks due to the services they render in the firm.[66] These law firms or legal practitioners is also required to conduct training for their staff on AML and CFT, which must qualify as continuing legal education, and the training may include group study where one member of staff outlines to other staff, relevant guidance, credible sources of information on legal sector risk or firm policies and provides regular email updates. In conducting these training, legal practitioners or law firms must pay close attention to the scope of application of legal practitioner's privilege and client confidentiality in

62 Rule 71(7)(k-n), ibid.

63 Rule 71(8), ibid.

64 Rule 71(9)(a-b), ibid

65 Rule 71(9)(c-e), ibid.

66 Rule 72(1), ibid.

relation to AML and CFT laws.[67] The frequency, delivery mechanisms and focus of these training is expected to be with the sole discretion of the legal practitioners or firms.

It is mandatory that legal practitioners or firms must review their own staff and available resources and implement training programmes that provide appropriate AML and CFT information which is fashioned to the relevant staff responsibility, for instance, client contact or administration; at the appropriate level of detail, such as considering the nature of services provided by the legal practitioner and at a frequency suitable to the risk level of the type of work undertaken by the law firm or legal practitioner.[68]

Self-Regulatory Body

The Nigerian Bar Association as a self-regulatory body for the legal profession is mandated to create an ad hoc committee, to be described as the Nigerian Bar Association Anti-Money Laundering Committee (NBA AMLC) whose obligations will be to advise the NBA on the implementation and to monitor the compliance of firms or legal practitioners with respect to this present provisions of this Rules.[69] This Committee will consists of individuals that have received adequate training or who might have enrolled in courses on anti-money laundering and terrorist financing, who are of reputable character and have a track record of a high repute and standing in the legal profession who have not been found guilty of money laundering or any offence connected therewith.[70] The NBA must ensure that members of the NBAAMLC are trained to assess the quality of ML and TF risks and to consider the adequacy, proportionality, effectiveness and efficiency of the AML and CFT policies, procedures and internal controls of legal practitioners. The NBA Committee must be in the forefront of identifying ML and TF risks, identify the peculiarities of the legal sector, assess its risks, control and procedures and publish them from time to time. The Committee must further develop policies and the procedure of identifying legal practitioners or classes of legal practitioners who are at great risk of being used by criminals and criminal elements to launder monies or finance terrorism and communicate its findings to the NBA.[71]

The NBA AMLC is expected to consider the risk profile of legal practitioners when assessing their recommendations and letters of good standing.[72] This Committee is

67 Rule 72(3 & 4), ibid.

68 Rule 72(5) & (6)(a-c), ibid.

69 Rule 73(1), ibid.

70 Rule 73(2), ibid.

71 Rule 73(3-5), ibid.

72 Rule 73(6), ibid.

required to create a supervisory framework which will help to ascertain that accurate and current basic and beneficial ownership information on legal persons and legal arrangements is maintained by legal practitioners and law firms.[73]

The referred legal framework to be created by the NBAAMLC will take cognizance of the following: a requirement that legal practitioners should perform risk assessment at firm, client and transactional level; requirement that legal practitioners should perform appropriate risk based CDD; engage in a procedure which is determined to ensure prompt investigations of legal practitioners' misuse of client or trust funds or alleged involvement in ML and TF schemes; requirement that legal practitioners complete periodic continuing legal education in CDD and AML and CFT topics; requirement that legal practitioners report suspicious transactions, comply with confidentiality requirement and internal controls requirements and finally, a requirement that legal practitioners adequately document risk assessment, CDD and other AML related decisions and processes undertaken.[74]

Enforcement of the Rules

For violation of any of the provisions contained in this Rule, there are sanctions and accountability mechanisms. Therefore, any legal practitioner who contravenes provisions of Chapter 1 of this Rule or who fails to perform any of the duties imposed by the Chapter, commits a professional misconduct and is liable to punishment as provided in the legal Practitioners Act.[75] On the enforcement of this Rule, the NBAAMLC is empowered to recommend any disciplinary proceedings in relation to chapter 2 of the Rules, to the Legal Practitioners Disciplinary Committee or take any other appropriate legal measures against a legal practitioner who fail to comply with the provisions of Chapter 2.[76] Every legal practitioner has the responsibility to report any breach of these Rules that comes to his knowledge to the NBAAMLC for necessary disciplinary action.[77]

Conclusion

The imperative of combating money laundering and the financing of terrorism in Nigeria demands that legal practitioners occupy a central role as both gatekeepers of the financial system and custodians of justice. While the *Money Laundering (Prevention and Prohibition) Act 2022* and the *Terrorism (Prevention and Prohibition) Act 2022* have

73 Rule 73(7), ibid

74 Rule 73(8)(a-f), ibid.

75 Rule 74(1), ibid.

76 Rule 74(2), ibid.

77 Rule 74(3), ibid.

expanded compliance obligations on lawyers, the tension between these statutory duties and the sacrosanct principle of attorney–client privilege continues to generate practical and ethical dilemmas. This challenge is not peculiar to Nigeria but reflects broader global debates on reconciling professional confidentiality with the exigencies of financial crime prevention.

Despite Nigeria's strides in aligning its AML/CFT framework with international standards such as the Financial Action Task Force (FATF) Recommendations, effective enforcement is hindered by weak institutional oversight, inadequate compliance culture among practitioners, and resistance rooted in concerns over professional independence. To address these gaps, there is a need for tailored sensitization programmes within the Nigerian Bar Association, stronger collaboration between regulatory bodies and professional associations, and the creation of clear guidelines that delineate the scope of reporting obligations without eroding legal professional privilege.

Ultimately, legal practitioners must appreciate that compliance with AML/CFT obligations is not merely a regulatory burden but an essential contribution to strengthening Nigeria's financial integrity, promoting the rule of law, and safeguarding national security. The future of Nigeria's AML/CFT regime will depend on how effectively the legal profession embraces its responsibilities as a frontline stakeholder in the global fight against illicit financial flows and terrorism financing.

Recommendations

1. **Strengthening Awareness and Capacity-Building**
    - The Nigerian Bar Association (NBA), in collaboration with the Nigerian Financial Intelligence Unit (NFIU) and other regulators, should establish continuous training programmes to educate legal practitioners on AML/CFT obligations, risk indicators, and compliance procedures.
    - Mandatory continuing legal education (MCLE) courses should include AML/CFT compliance as a core module.
2. **Clear Guidelines on Attorney–Client Privilege**
    - The government, in consultation with the NBA, should issue regulations or practice directions that clearly delineate the scope of attorney–client privilege in relation to AML/CFT reporting obligations.
    - Such guidelines should ensure that while lawyers fulfill statutory reporting duties, the sanctity of privileged communications in litigation and advisory contexts remains protected.

3. **Integration of Risk-Based Compliance Systems**
    - Law firms should adopt internal compliance frameworks, including client due diligence (CDD) and know-your-customer (KYC) procedures, tailored to the risk profile of their clientele.
    - Larger firms should establish compliance officers or AML desks responsible for monitoring transactions and liaising with regulators.
4. **Institutional Collaboration and Oversight**
    - Regulators such as the Special Control Unit Against Money Laundering (SCUML) should strengthen cooperation with the NBA to create a sector-specific monitoring mechanism for lawyers.
    - Joint task forces between regulators and professional bodies can foster compliance while reducing adversarial enforcement approaches.
5. **Enhancing Enforcement and Incentives**
    - Compliance should be incentivized through recognition schemes, professional accreditation, and reduced regulatory burdens for firms with strong compliance records.
    - Non-compliance should attract proportionate sanctions, including disciplinary measures by the Legal Practitioners Disciplinary Committee (LPDC), to enhance deterrence.
6. **Promoting Technological Solutions**
    - Adoption of digital platforms for suspicious transaction reporting, record-keeping, and client verification should be encouraged to streamline compliance and reduce human error.
    - Investment in legal-tech compliance tools can assist practitioners in meeting international AML/CFT standards efficiently.
7. **Alignment with International Standards**
    - Nigeria should ensure regular review of its AML/CFT laws to reflect evolving Financial Action Task Force (FATF) Recommendations and best practices from other jurisdictions.
    - Cross-border cooperation should be strengthened, given the transnational nature of financial crimes and terrorism financing.