

# **Customer Due Diligence as an Instrument for Combating Financial Crimes in Nigeria**

**By**

**Jide Akinsoto** LL.B. BL. MSc (ABS)

Email: [compliance\\_initiate@yahoo.com](mailto:compliance_initiate@yahoo.com)

## **Introduction**

Customer Due Diligence (CDD) is a key segment<sup>1</sup> of the Recommendations of the Financial Action Task Force on Money Laundering, a body setup by the Group of 7 industrialised nations. These Recommendations serve as global practices against money laundering. CDD, if effectively utilised can stem the growth of financial crimes in a country because of the frustration financial criminals will encounter from the investigative checks carried out on their money laundering activities.

The Task Force views money laundering as “*the processing of criminal proceeds to disguise their illegal origin*”<sup>2</sup>. Okogbule (2007) on the other hand defines it as the practice whereby funds obtained from illegal transactions are transferred into secret accounts to shield their detection and possible sanctions. This definition may have been borne from his knowledge of the activities of public office holders in his country, Nigeria, who loot the treasury and transfer the wealth of the nation abroad in secret bank accounts.

This essay considers the Task Force’s Recommendations with respect to anti-money laundering issues particularly customer due diligence as a barrier against money laundering. It further considers CDD in the light of operations in the banking industry in Nigeria: an influential element within the sub-Saharan region and a country that is strategically positioned to be a role model to the region. Two financial crimes, money laundering and advanced fee fraud (more commonly referred to as 419 in Nigeria<sup>3</sup>) are the focus of the essay.

## **Impact of Money Laundering**

Society experiences more damage from criminal activities if money laundering can easily be perpetrated because the criminals have less barriers or deterrents to overcome. The cost implication of money laundering is varied for example, the IMF believes it is between \$590 billion and \$1.5 trillion<sup>4</sup>; KPMG estimates US\$1 trillion annually<sup>5</sup> while Schneider and Enste reports over \$3 trillion

---

1 Recommendations 5 to 12 of the Financial Action Task Force’s (FATF) deals with issues of Customer Due Diligence

2 [http://www.fatf-gafi.org/document/29/0,3343,en\\_32250379\\_32235720\\_33659613\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html) - Access Date - 2-July-2009

3 Derived from section 419 Criminal Code Act (Chapter 77) Laws of the Federation of Nigeria 1990 (As amended)

4 Money Laundering: the Importance of International Countermeasures found at -  
<http://www.imf.org/external/np/speeches/1998/021098.htm> Accessed Date 05 July 2009

5 <http://www.kpmg.com/Global/WhatWeDo/Industries/FinancialServices/RB/Pages/Global-anti-money-laundering-survey.aspx>  
Accessed Date 18-Oct-2009

annually. In Nigeria, Corruption is the bane of the Nigerian society, robbing Nigeria's economy of an estimated \$2bn to \$3bn each year (Ayttey, 1992). Many of the corruption practitioners operate at various tiers of government especially at the highest level of political office (Tive, 2006). In 2005, Nigeria's Economic and Financial Crimes Commission (EFCC) revealed that a succession of military dictators stole or squandered approximately \$500 billion with General Abacha, the late military dictator plundering from the treasury an estimated US\$6 billion during his five-year rule (Goodspeed, 2005). Furthermore, Ribadu,<sup>6</sup> the former Chairman of Nigeria's EFCC who is currently in exile reiterates these figures.

Although these figures may vary per territories or the different studies undertaken, this however cannot diminish the fact that they are worrying figures that do not only affect the global economy significantly but also contributes to political and social instability in developing countries<sup>7</sup>.

In addition, the money laundering activities by Nigeria political office holders have significantly impoverished the populace, the intended beneficiaries of the funds stolen.

### **The Nigerian Money Laundering Legislation**

For the purpose of this essay, customer due diligence may be described as the process or measures taken to obtain sufficient information including the independently verified identity of a person who has or intends to have relationships directly or otherwise with financial institutions. This description of customer due diligence also applies to a number of designated non-financial businesses and professions in certain situations. Recommendations 5 to 12 of the Task Force's Recommendations deal with customer due diligence (CDD).

The Money Laundering (Prohibition) Act 2004 (MLPA) is Nigeria's most recent law on anti-money laundering. It is however deficient in providing more detailed coverage of customer due diligence, an area the legislature should improve on if the government is serious about combating money laundering. For example, the government could legislate in the area of politically exposed persons (PEPS) and the use of biometrics for enhanced CDD.

### **Money Laundering and Politically Exposed Persons in Nigeria**

The essay in adopting a risk based approach focuses mainly on political office holders in Nigeria some of who have looted with impunity the resources of the country. This group will be classified as PEPS. PEPS are individuals who hold prominent public functions in their country<sup>8</sup>. The Task Force's Recommendation 6 provides financial institutions with four additional steps alongside the CDD measures found in Recommendation 5 which should be performed when dealing with politically exposed persons. These include having systems in place including risk management system to determine which customers are politically exposed person and their source of wealth or funds. It also requires senior management involvement in approving such customers.

---

<sup>6</sup> <http://www.pbs.org/newshour/video/share.html?s=news01n2560q8c9> (Accessed Date - 22 July 2009)

<sup>7</sup> <http://www.fbi.gov/congress/congress06/morehart051806.htm> Accessed Date 05 July 2009

<sup>8</sup> Interpretative Notes to the Forty Recommendations (Recommendation 6). Also see glossary to the Recommendations.

Unfortunately, the MLPA is silent on this Recommendation. If there are Recommendations that ought not to be dispensed with in Nigeria's money-laundering law, the Politically Exposed Persons Recommendation is one of such. One wonders if the complete omission of Recommendation 6's provisions is a legislative inadvertence or a calculated attempt by these few, highly influential Nigerian political figures to dim the searchlight on the source of their wealth.

Overall, how much due diligence is carried out by bank staffs that bear the burden of meeting their monthly targets; and when they do, how effective are they? Do banks that are afraid to lose the patronage of some of their high net worth (but unworthy) clients question these PEPS about the source of their wealth? A respectful answer will be seldom. The Nigerian regulator, the Central Bank of Nigeria (CBN), does not appear proactive in its conduct of financial institutions. Where legislative measures are lacking, a forward thinking financial regulator should implement policies that fill the legislative lacunae. It also fails to impose stern punitive measures on regulatory breaches hence the level of irregularities within the Nigeria financial services industry.

Furthermore, there is a need for an improved level of disclosure and transparency within the political strata of Nigeria just as would be expected in the financial services industry. Political office holders should be made to declare their assets before taking office. They should be able to give account of how these assets accrued to them. Furthermore, forfeiture provisions should be in place to seize assets that cannot be accounted for. Based on this asset declaration exercise, government can demand payment of income tax, which many in power may be evading. Strictly speaking, failure to pay income tax is tantamount to money laundering – another crime on the charge sheet. However, the declaration of assets gives the regulators a base to monitor the assets of public office holders and makes them very accountable.

The essay also suggests that a database of PEPS should be instituted, as it is found in many countries, both for financial institutions in carrying out Enhanced Due Diligence and for the regulators and enforcement agencies in asset monitoring.

In Nigeria, it would not be inconceivable for some PEPS to set up companies in which to operate their nefarious activities and launder their proceeds. It is therefore compelling for financial institutions to conduct proper identification and verification of companies and who the beneficial owners<sup>9</sup> are, using reliable, satisfactory and independent source documents, data or information. This would hopefully expose these PEPS.

### **Advanced Fee Fraud - Taking the bull by the horn**

In Nigeria, the internet over the years has caused an explosion in perpetrators of advanced fee fraud scams. Scam artists' victims are mostly internationally domiciled. Over seven billion dollars has been lost to these scammers (Tive, 2006) much of which is remitted via wire transfer, the most popular been Western Union.

---

<sup>9</sup> The natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. (Found in the glossary to the FATF's Recommendations)

The additional reputational damage which these scammers have afflicted hardworking, honest Nigerians with cannot be quantified.

This problem raises the question of culpability. Who is culpable for this perennial financial crime? Who should be exculpated? The remittance service companies, the financial institutions (banks), the Central Bank of Nigeria, the Nigerian Police Force, or the Nigerian Financial Intelligence Unit (part of the EFCC). Is there sufficient notice at points of payment and the websites of these remittance service companies to warn the potential victim of making payments to countries where advanced fee fraud is prevalent? Do these companies believe that it is not their corporate social responsibility to do so? From a different perspective how much effort is the Nigerian government, its agencies and financial institutions putting into combating 419?

Most 419 scams require the victim to make a money transfer. There is therefore a point of payment at the victims end and a point of collection at the scammers end. This essay suggests the application of extensive CDD in curtailing this fraud. In Nigeria, the use of passport for the identification of persons receiving money via remittance services as is currently the case does not suffice. It is not unlikely for someone to have more than one passport, and with the possibility that they bear fictitious details. The use of passport identification for CDD exercise should be complemented with better data capturing schemes. Two schemes which should be introduced in Nigeria to complement the current passport identification scheme are the reintroduction of the photographing scheme (whereby recipients' photographs are taken and stored) and the use of biometrics to capture finger print identification which will be matched with the photograph and passport details. Furthermore a secure data handling and storage facility should be provided to safeguard customers' details.

The captured data can be used in effectively monitoring and tracking culprits. Victims should also be encouraged to report incidents, and with sufficient data in place the EFCC can publish on its website, the pictures of scammers whose data has been captured with rewards provided. It would also be helpful if the technologically advanced nations provide strategies and technical knowhow on how to further combat this menace.

Fortunately, a credit bureau in Nigeria currently implements biometrics technology in its operations. It however seems unfortunate that the Nigerian government's attention has not been steered to its usefulness. This approach is guaranteed to secure a drastic drop in the amount of scammers confident enough to claim remitted funds for fear of their details being captured, hence a drop in 419 activities. However, scammers will always think up new ways to circumvent these barriers and the onus is therefore on regulators and enforcement agencies to be proactive in their operations and always be a step ahead.

### **Conclusion**

Finally, it not only helps if laws providing for money laundering countermeasures are in place but that such countermeasures are rigorously pursued. The efficiency of the enforcement agencies and other participants like the financial institutions and professional bodies in dealing with money laundering activities; as well as the speed of the administration of justice have a great impact on the growth of money laundering activities in a country. These factors may not extirpate money laundering instantaneously but will help in reducing financial crime and by extension, money laundering.

## **REFERENCES**

### **BOOKS**

1. Ayittey, G. (1992) Africa Betrayed. Palgrave Macmillan
2. Muller et al, (2007) Anti-Money Laundering: International Law and Practice. Wiley
3. Schneider and Enste (2000) and Schneider (2002) : Underground economy as percent of GDP (Found in Chasing Dirty Money by Reuter, P. and Truman, E. (2004) Peterson Institute for International Economics)
4. Tive, C (2006), 419 Scam: Exploits of the Nigerian Con Man (Bloomington: iUniverse)

### **JOURNALS**

1. Okogbule, N. (2007). Regulation of money laundering in Africa: the Nigerian and Zambian approaches. Journal of Money Laundering Control Vol. 10, No. 4, pp. 449-473.
2. Okogbule, N. (2007). Combating money laundering in Nigeria: an appraisal of the Money Laundering Prohibition Act 2004", Statute Law Review, vol. 28, no. 2, pp. 156-164

### **REGULATORY AND LEGISLATIVE DOCUMENTS**

1. Criminal Code Act (Chapter 77) Laws of the Federation of Nigeria 1990 (As amended)
2. Money Laundering (Prohibition) Act 2004
3. The Forty Recommendations (20 June 2003) Standards of the Financial Action Task Force on Money Laundering

### **WEB RESOURCES**

1. FATF Money Laundering FAQ  
[http://www.fatf-gafi.org/document/29/0,3343,en\\_32250379\\_32235720\\_33659613\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html) -  
Access Date - 2-July-2009
2. Corruption in Nigeria Carries Costly Toll & Spotlight: Nigerian Corruption  
<http://www.pbs.org/newshour/video/share.html?s=news01n2560q8c9> (Access Date - 22 July 2009)

3. Goodspeed, P. (2005) Corruption's take:  
\$148B <http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=13294>  
Accessed Date 18-Oct-2009
4. Money Laundering: the Importance of International Countermeasures found at -  
<http://www.imf.org/external/np/speeches/1998/021098.htm> Accessed Date 05 July 2009
5. <http://www.kpmg.com/Global/WhatWeDo/Industries/FinancialServices/RB/Pages/Global-anti-money-laundering-survey.aspx> Accessed Date 18-Oct-2009