



POLICY BRIEF ON THE NIGERIAN LEGAL SECTOR ANTI-MONEY LAUNDERING, COUNTERING FINANCING OF TERRORISM AND PROLIFERATION FINANCING RISK ASSESSMENT REPORT

2024

Expert Contributors

Juliet Ibekaku-Nwagwu, LL.M. CAMS.

Dr Nkechikwu Azinge-Egbiri

Dr Joy Malala

Assessors

Prof Smart Otu

Sulayman Dawodu

Chris O. Ugwuala

Esther Agbaje, Esq

Chinaka Chukwuma

Benjamin Dina

Emmanuela OkonkwoAbutu

Emmanuel Yusufu

About the Research

The Nigerian Bar Association Anti-Money Laundering Committee (NBA-AMLC) carried out mixed methods research between 12 to 25 of October 2024. The projects investigated the perception of legal professionals on their vulnerabilities to anti-money laundering, counter-terrorist financing and proliferation financing (AML/CFT/PF). Additionally, it examined legal professionals' level of knowledge, awareness and trainings undertaken in relation to AML/CFT/PF compliance. We prepared a five-section questionnaire with 67 qualitative and quantitative questions. 562 legal professionals filled out the questionnaire. Participants were recruited in two ways. First, six assessment workshops were held throughout six geopolitical zones in Nigeria, involving 375 lawyers from around the country. Second, we sent the survey to a larger network of lawyers via our database, resulting in an additional 187 responses. The Foreign Commonwealth and Development Office (FCDO) and the African Centre for Governance, Asset Recovery and Sustainable Development enabled these operations.

The Role of Lawyers in Combatting Money Laundering, Terrorist Financing and Proliferation Financing.

Legal professionals are uniquely placed to gatekeep^[1] against the entry of illicit funds into the global financial market. The significant role of lawyers is primarily attributed to their involvement in transactions utilised by launderers to facilitate financial crimes, including real estate and the establishment and management of companies. Additionally, lawyers have specialist knowledge, and their client account may be utilised to mask illegal transactions.

Lawyers were classified "designated non-financial business professionals" (DNFBPs) by the Financial Action Task Force due to case studies showing their vulnerability. Subject to jurisdictional laws, Lawyers are required to undertake due diligence and report suspicious client activity to authorities without disclosing their clients. Scholars have examined the vulnerabilities of legal professionals to financial crime. Beare noted that lawyers, particularly high-profile ones, are uniquely important for criminals looking to launder funds.^[1] Middleton and Levi highlighted the dangers posed by organised crime groups utilising law firms as fronts for criminal activities, as this would grant criminals access to legal professional privileges and services such as legal aid and client accounts.^[2] Benson and Gelvez find that pooled client accounts pose a money laundering and terrorist financing risk for legal professionals.^[3] Disciplinary cases involving lawyers across different jurisdictions demonstrate a spectrum of involvement, ranging from naïve participation to negligent or deliberate engagement in criminal activities.^[4] Levi, however considers the available evidence of lawyers involvement in financial crime and argues that there are data gaps that undermine robust responses on the influences of legal professionals in enabling financing crime.^[5] While these studies expose the risks faced by lawyers as gatekeepers, they also highlight lawyers potential role as enablers of financial crime. Existing studies predominantly concentrate on the Global North, and there is a lack of research analysing a substantial jurisdictional dataset regarding lawyers' perceptions of their vulnerabilities to financial crime. The NBA-AMLC administered a questionnaire to address the identified gap and posits that the findings should be integrated into policy and practice to enhance the country's efforts against financial crime.

Key Findings

The project yielded various outcomes, and the findings are detailed in the NBA-AMLC Legal Sector's Anti-Money Laundering, Counter-Terrorist Financing and Poliferation Financing risk assessment. Four key themes emerged from the research.

1. Legal professionals are vulnerable to money laundering risks especially when involved in real estate transactions and client asset management.

Those in the legal profession acknowledged that their services may be abused for illegal purposes and pointed out that certain client types, high-risk transactions, and practice areas are particularly vulnerable to abuse or exploitation. In response to the question 'Do you consider ML/TF/PF a risk in your work as a lawyer?' 75% respondent affirmatively, highlighting their cognizance of the risks associated in certain legal services. Additionally, when asked if they 'think lawyers may become involved in ML/TF/PF during their business', 78% respondent affirmatively. Yet, it is critical to note that only 18% confirmed their awareness of specific cases of lawyers involvement with facilitating financial crime.

Lawyers confirmed their involvement in covered legal services, particularly conveyancing, and to a lesser extent- asset management amongst other areas. A significant number of respondents expressed concern about the high vulnerability of these services (conveyancing and the management of clients assets) to ML/TF/PF risk. Conversely, lawyers noted that conversations which involve shell companies or nominee shareholders which are often used to obscure ownership rarely occur.

2. Lawyers prioritise client confidentiality, a fundamental aspect of their profession, which poses a dilemma in relation to AML/CFT/PF compliance.

Client confidentiality is a cornerstone of the legal profession, enshrined in both statutory and ethical codes governing legal practice in Nigeria. The Nigerian Constitution, the Evidence Act and the Rules of Professional Conduct (RPC), underscore the lawyer's obligation to safeguard information disclosed by a client, reinforcing trust and the sanctity of the attorney-client relationship. However, the evolving AML/CFT/PF regulatory landscape introduces a complex dynamic, requiring lawyers to balance these ethical duties against obligations to mitigate financial crimes.

Survey results indicate a notable tension, as 56.1% of respondents recognise client confidentiality as an essential ethical principle. Compliance with AML/CFT/PF regulations frequently requires the disclosure of client information in cases of suspicious transactions, presenting notable professional and ethical challenges. Lawyers, serving as gatekeepers, encounter the challenge of determining when to breach confidentiality to adhere to statutory obligations, especially in instances involving politically exposed persons (PEPs), high-risk transactions, or unclear beneficial ownership structure.

Key Findings

This dilemma is further compounded by the absence of clear protocols for navigating conflicts between legal confidentiality and AML/CFT/PF requirements. The RPC does provide for exceptions, such as when disclosure is mandated by a court order or in instances of suspected illegality. However, ambiguities in interpreting and applying these provisions contribute to uncertainty, with potential repercussions for both professional integrity and compliance effectiveness.

3. Many law firms lacked formal AML/CFT/PF policies, and those that possessed such policies had not conducted reviews since their initial adoption.

The NBA-AMLC survey revealed critical gaps in law firms adoption and review of the AML/CFT/PF policies. Approximately 66.3% of the respondents noted that firms lacked written AML/CFT policies, and most do not have procedures for client screening, transaction monitoring, or suspicious activity reporting. Additionally, only 33.7% of respondents confirmed that their firms possessed written AML/CFT/PF policies and a mere 36.3% implement targeted financial sanctions. This gap in formal compliance measures increases lawyers' vulnerability to financial crimes. Furthermore, approximately 33.7% of respondents confirmed that their firms had formalized AML/CFT/PF policies, and of these, 64.4% had not conducted policy reviews since their adoption.

This stagnation reflects a troubling lack of vigilance in adapting to the rapidly evolving financial crime landscape. Notably, 59.2% of sole proprietorships lacked a designated compliance officer or independent audit function, which raises questions regarding the effectiveness of self-regulation and monitoring capabilities within these smaller practices. Such inertia not only contravenes international best practices but also exposes firms to heightened risks, particularly in areas like client onboarding, transaction monitoring, and compliance reporting. Without regular reviews, policies fail to address emerging threats, leaving legal practitioners vulnerable to exploitation when dealing with clients within high-risk sectors such as real estate and asset management.

4. Disparities were observed in compliance resources among firms of varying sizes. Smaller firms encountered financial constraints that affected their ability to comply.

Several AML/CFT/PF failings were particularly pronounced in smaller firms. For instance, these firms were less likely to have or review the AML/CFT/PF policies and ensure its operationalisation, even when their staff were trained. These are attributable to the disparity in compliance resources across firm sizes especially smaller firms which face financial constraints that affect their compliance.

Key Recommendations

There are numerous approaches to enhance policy and practice so that legal practitioners can strike a better balance between complying with FATF rules and retaining client confidentiality.

1. Develop and Mandate Comprehensive AML/CFT/PF Policies Across All Legal Practices Including Legal Trainings.

The NBA-AMLC is mandated by the RPC, Rules and Protocols, to implement measures that obstruct criminals from accessing the legal profession. This entails performing "fit and proper" evaluations of those aspiring to become lawyers. To fulfil market entrance prerequisites, all lawyers seeking admission or already admitted to practise law in Nigeria must complete compulsory AML/CFT/PF training. The NBA AMLC should advocate to the Council of Legal Education for the inclusion of mandatory AML/CFT/PF lectures in the Nigerian Law School curriculum. This would bridge the AML/CFT/PF knowledge gap and enhance the number of solicitors cognisant of their AML/CFT obligations and inclined to pursue AML/CFT training for continuous skill enhancement.

2. Enhanced Supervisory Measures

The NBA-AMLC ought to enhance compliance monitoring and risk-based oversight of legal practitioners and law firms. Supervision must encompass routine evaluations to discern the particular money laundering and terrorist financing concerns linked to certain groups of legal practitioners. This will also encompass the application of novel and developing technologies for the execution of off-site and on-site monitoring in accordance with recognised risks. To rectify the existing deficiencies in supervision and insights from NFIU sanitised case studies, it is imperative for supervisors to implement effective, proportionate, and deterrent consequences when attorneys or law firms wilfully disregard the standards of professional conduct.

Concerning law firms, formulating a detailed directive that delineates the precise AML/CFT responsibilities of the firms, encompassing the necessity for continuous staff training; segregation of client funds from operational accounts, stringent transaction controls, and periodic audits to avert the exploitation of client accounts for laundering activities will enhance the compliance frameworks of law firms. The guidance will outline the dangers in cross-border legal services and how solicitors should mitigate vulnerabilities related to customers from high-risk jurisdictions.

3. Evaluation and Adaptation

The NBA-AMLC should develop sustained approach to risk assessment and ongoing monitoring of compliance through regular reviews of AML/CFT compliance policies and practices of law firms to ensure they remain easily adaptable in addressing emerging risks. This approach necessitates embedding adaptability into compliance practices, enabling firms to respond effectively to the evolving landscape of financial crime. Furthermore, the limited adoption of formal AML/CFT/PF policies and the lack of compliance officers in many firms underscore the challenges of self-regulation in a high-risk environment. Moving forward, strengthening compliance frameworks through mandatory audits, enhanced training programs, and robust client due diligence mechanisms could mitigate these vulnerabilities. Ultimately, this report underscores the imperative for a proactive regulatory approach that balances ethical standards with the demands of global AML/CFT/PF compliance, thereby safeguarding both the integrity of the profession and the financial system at large. Key measures include mandating periodic independent audits, implementing targeted and continuous training programs, and strengthening client due diligence processes to mitigate vulnerabilities.

Conclusion

In conclusion, these recommended measures underscore the necessity for a multi-faceted regulatory approach by the NBA-AMLC to secure Nigeria's legal profession against financial crimes. Preventive actions, including "fit and proper" assessments and mandatory training, lay a strong foundation, while supervisory enhancements ensure ongoing vigilance and adaptability. Additionally, improved transparency and accountability within TCSPs represent a crucial step towards comprehensive risk mitigation.

As Nigeria continues to navigate complex financial crime landscapes, the NBA-AMLC's proactive adoption of these strategies will not only bolster national compliance with international standards but also reinforce public trust in the legal profession's role as a defender of lawful conduct. Through this concerted regulatory effort, the NBA-AMLC can elevate Nigeria's legal framework to a benchmark of integrity and resilience in global AML/CFT practices.

A resolution lies in strengthening guidance frameworks that clarify when and how disclosures should be made, coupled with capacity-building initiatives to equip legal practitioners with the skills to manage these ethical tensions. To do this, the NBA-AMLC should require regular policy reviews and annual evaluations to ensure alignment with increasing standards. Incentivising compliance, such as decreased bar fees for audited companies or fines for noncompliance, has the potential to develop a proactive culture within the profession. Furthermore, specialised training programs for smaller businesses would close knowledge gaps and strengthen the sector's overall resilience to financial crime risks.

Through these measures, the NBA-AMLC can position Nigeria's legal framework as a model of integrity and resilience in the global fight against financial crime, ensuring that the legal profession remains a bulwark against illegal activity while adhering to its ethical and professional responsibilities.

REFERENCES

1. Ndidi Ahiauzu and Teingo Inko-Tariah, 'Applicability of anti-money laundering laws to legal practitioners in Nigeria: NBA v FGN & CBN' 19.4 [2016] JMLC 329-336.
2. Nathanael Tilahun Ali, 'States' Varied Compliance with International Anti-Money Laundering Standards for Legal Professionals' 88.2 [2019] NJIL 280 - 307.
3. Micheal Levi, 'Lawyers as Money Laundering Enablers? An Evolving and Contentious Relationship' 23.2 Global Crime [2022] 126 - 147.
4. Felix 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' [2019] 10 Beijing Law review 769-794.
5. FATF, 'Guidance for a risk-based approach: Legal Professionals' (June 2019) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Risk-Based-Approach-Legal-Professionals.pdf.coredownload.inline.pdf>> accessed 1 December 2024.
6. FATF Report, 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals' (June 2013) < <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf.coredownload.pdf> > accessed 1 December 2024)
7. Global South Dialogue on Economic Crime 'AML: Lawyers as Gatekeepers' (November 2021) < <https://gsdec.network/10202/aml-lawyers-as-gatekeepers/> > accessed 1 December 2024.